

New Jersey Commissioner of Education
Final Decision

Teresa-Anne Lucas,

Petitioner,

v.

Board of Education of the Township of
Willingboro, Burlington County,

Respondent.

Synopsis

Petitioner, who has been continuously employed by the respondent Board since 1997, asserted that her tenure rights were violated when the Board failed to place her in the position of Director of Special Services after her position as Director of Early Childhood was eliminated in June 2020. Instead, the Board appointed a non-tenured employee to that position and reassigned petitioner to a position as a principal. The parties filed cross motions for summary decision, which were denied by the ALJ because of factual disputes, and a hearing was held in October 2021.

The ALJ found, *inter alia*, that: petitioner has earned tenure as a director, and her tenure protection extends to other director-level positions, notwithstanding the absence of prior service in those positions; petitioner satisfied all mandatory qualifications for the position of Director of Special Services, as well as an optional qualification involving experience with special education administration or supervision; petitioner demonstrated that she had experience in special education, obtained when she served as an administrator and a principal in respondent's school district. The ALJ concluded that petitioner's tenure rights entitled her to appointment as the Director of Special Services over a non-tenured employee and ordered that she be placed in the position of Director of Special Services immediately with all salary, benefits and other emoluments to which she is entitled, retroactive to the date the current Director of Special Services was appointed.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusion of the ALJ that petitioner did achieve tenure as a director and that her tenure protection extends to all other positions for which she is qualified by virtue of her administrator and principal endorsements, even if she has not served in those positions. Further, the Commissioner concurred that petitioner was qualified for the position of Director of Special Services at the time her former Director position was eliminated and is entitled to appointment as Director of Special Services effective July 1, 2020.

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.

123-22

OAL Dkt. No. EDU 08601-20

Agency Dkt. No. 169-8/20

New Jersey Commissioner of Education

Final Decision

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Petitioner,

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Board of Education of the Township of
Willingboro, Burlington County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the Board pursuant to *N.J.A.C. 1:1-18.4*, and petitioner's reply thereto, have been reviewed and considered.

Petitioner holds an administrative certificate with school administrator, principal, and supervisor endorsements, and an instructional certificate with a Teacher of Psychology endorsement. Petitioner's position as the Director of Early Childhood Education in the Willingboro school district was eliminated in July 2020, and she was reassigned to a position as a principal. She filed a petition of appeal, alleging that the Board had violated her tenure rights by failing to assign her to the position of Director of Special Services and instead appointing a non-tenured employee to that position. Following cross-motions for summary decision, the Administrative Law Judge (ALJ) concluded that petitioner had earned tenure as a director¹ and that her tenure protection extended

¹ Tenure was earned during petitioner's prior service in the Director of Special Projects position. Petitioner then served as assistant superintendent before being appointed to the Director of Early Childhood Education position.

to other director-level positions, notwithstanding the absence of petitioner's prior service in those positions. However, the ALJ denied the motions for summary decision because facts were in dispute, and a hearing was held to develop the record. Thereafter, the ALJ found that petitioner satisfied all of the mandatory qualifications for the position of Director of Special Services, as well as the optional qualification concerning experience with special education administration or supervision. The ALJ rejected the Board's argument that petitioner was ineligible for the position of Director of Special Services because she does not possess an adequate knowledge of special education law and practice, finding that a specific degree of experience and substantive knowledge was not a job requirement and that the Board had not demonstrated that it was a necessary prerequisite. The ALJ further noted that petitioner did demonstrate that she had experience in special education, obtained when she served as an administrator and principal. Accordingly, the ALJ concluded that petitioner's tenure rights entitled her to appointment as the Director of Special Services over a non-tenured employee.

In its exceptions, which reiterate arguments made below, the Board argues that petitioner does not have the experience in special education that would allow her to successfully perform the duties of a Director of Special Services, while the individual who is employed in that position does have experience and has been successful in the position since he was appointed. The Board contends that the State Board of Education's decision² in *Nicholas Duva v. State-Operated School District of the City of Jersey City, Hudson Cty.*, State Board Decision No. 56-99, decided March 6, 2002, was incorrectly decided. According to the Board, tenure accrued as a Director of Special Projects should not extend to any other director position.

² The Board erroneously attributes the decision to the Commissioner but, as noted herein, the decision was issued by the State Board of Education, which heard appeals of Commissioner decisions prior to July 7, 2008.

In reply, petitioner primarily relies on her arguments below, noting that respondent's arguments regarding a subjective preference for any other non-tenured individual are irrelevant to the tenure analysis mandated by precedent and relied upon by the ALJ to correctly conclude that petitioner is entitled to the Director of Special Services position.

Upon review, the Commissioner concurs with the ALJ that petitioner achieved tenure as a director, and her tenure protection extends to all other positions for which she is qualified by virtue of her administrator and principal endorsements, even if she has not served in those positions.³ It is well settled that an "educator who has attained tenure by virtue of the requisite service in a specific position will have tenure with respect to all positions under the particular certificate. Tenure under any one endorsement entitles an educator to tenure under all endorsements obtained under his or her certificate. Thus, an educator with tenure in any endorsement that he or she possesses can, in effect, extend or transfer that tenure to other endorsements that are subsumed under the same certificate." *Dennery v. Bd. of Educ. of the Passaic Cty. Regional High School District #1, Passaic Cty.*, 131 N.J. 626, 634 (1993) (citations omitted).

There are three types of certificates issued by the Department of Education: instructional, educational services, and administrative. N.J.A.C. 6A:9B-5.3. For instructional and educational services certificates, case law makes clear that tenure transfers between endorsements under the same certificate.

Regarding the instructional certificate, "a tenured teacher seeking reinstatement within the endorsements on his or her certificate is entitled to preference in a [reduction in force (RIF)] as against a non-tenured applicant with the same certification." *Capodilupo v. Bd. of Educ. of the Twp.*

³ This conclusion does not apply to any of the positions enumerated in N.J.S.A. 18A:28-5, which require service in those positions for tenure to accrue, as explained herein. The record does reflect that petitioner earned tenure as an assistant principal and principal based on her prior service in those positions, but her tenure in those positions is not at issue in this matter and is irrelevant to the analysis herein.

of West Orange, Essex Cty., 218 N.J. Super. 510, 515 (App. Div. 1987). This principle applies even when the tenured teacher has no experience in the position he or she is seeking, and even when the non-tenured teacher does have experience in the position. *Id.* at 513.

Regarding the educational services certificate, in *Ellicott v. Bd. of Educ. of the Twp. of Frankford, Sussex Cty.*, 251 N.J. Super. 342 (App. Div. 1991), the board of education argued that the reasoning of *Capodilupo* should not apply to staff members holding an educational services certificate because the endorsements under that certificate constituted separate categories of jobs rather than subject areas, as is the case with instructional certificate endorsements. The Appellate Division concluded that the tenure laws do not make a distinction between categories of certification and, therefore, a tenured employee holding an educational services certificate was entitled to preference in a RIF against a non-tenured employee for a position that required an educational services certificate. *Id.* at 350. In so doing, the Appellate Division noted that the State Board of Education, applying its expertise, grouped the various endorsements of the educational services certificate together “for sound administrative and educational reasons.” *Ibid.* Furthermore, the Appellate Division stated that “any differences among the endorsements, in the context of tenure rights, become less significant since the teaching staff member asserting a tenure right under the certification must still qualify for the particular position by securing the pertinent endorsement.” *Ibid.* The Appellate Division therefore concluded that an employee who held both speech-language specialist and learning disabilities teacher-consultant (LDTC) endorsements could transfer tenure earned while serving as a speech-language specialist to an LDTC position. *Ibid.*

In the context of an administrative certificate,⁴ there is a statutory limitation on the transferability of tenure. Pursuant to *N.J.S.A. 18A:28-5*, tenure in any of the administrative or supervisory positions enumerated in the statute – principal, other than administrative principal, assistant principal, vice-principal, and assistant superintendent – accrues only by employment in that administrative or supervisory position. Accordingly, an employee cannot transfer tenure rights to an enumerated position unless he or she has served in that enumerated position, even if the employee has the appropriate endorsement for the position. *Nelson v. Bd. of Educ. of the Twp. of Old Bridge, Middlesex County*, 148 N.J. 358 (Mar. 1997) (holding that an employee who achieved tenure as a supervisor and also possessed a principal endorsement had no claim to a principal position following a RIF because he had never served as a principal).

However, with regard to unenumerated positions, the State Board of Education (State Board) has extended the reasoning of the Appellate Division in *Capodilupo* and *Ellicott* to allow tenure to transfer between unenumerated positions requiring an administrative certificate. In *Duva, supra*, the petitioner’s position of Director of Planning/Evaluations/Grants was abolished and he was not reemployed in another supervisory position that was held by a non-tenured individual. The State Board found that neither “director” nor “supervisor” was a position enumerated in *N.J.S.A. 18A:28-5*⁵ and that “[g]iven the plain language of the statute and the applicable precedent, there is no basis to hold that these assignments constitute ‘separately tenurable positions.’” *Id.* at 11. The State Board concluded:

⁴ The endorsements that are issued under the administrative certificate are school administrator, principal, supervisor, and school business administrator. *N.J.A.C. 6A:9B-12.3*.

⁵ The State Board noted that although director and supervisor were added to the list of expressly enumerated positions when *N.J.S.A. 18A:28-5* was amended to clarify that enumerated positions are separately tenurable, they were deleted prior to the final passage of the bill. *Id.* at 11, n.3.

[P]etitioner's tenure protection extended to all assignments under his Administrative Certificate for which he held the appropriate endorsement, except for those positions specifically enumerated in *N.J.S.A. 18A:28-5*. . . Hence, upon abolishment of his director's assignment, the petitioner was entitled to be employed in assignments requiring a supervisor endorsement in preference to any non-tenured individuals.

Duva, supra, at 17-18.

While the Board characterizes the *Duva* decision as a "creative statutory interpretation" and asserts its disagreement with its holding, the Commissioner finds no basis to overturn the holding. First, a plain reading of the statute, as well as its legislative history, demonstrates that the only limitation on the transferability of tenure is for enumerated positions. *N.J.S.A. 18A:28-5* contains a clear list of the positions which require actual service before tenure can accrue. "Director" is not one of the positions, and the Commissioner declines to impose a limitation that is not written into the statute. Furthermore, the removal of "director" and "supervisor" from the list of separately-tenurable positions enumerated in *N.J.S.A. 18A:28-5* during the course of the bill's passage strongly suggests the Legislature's intent for tenure to be transferable between different director or supervisor positions.

Second, a long line of cases regarding the tenure laws supports the conclusion that tenure may transfer between unenumerated administrative positions. The Tenure Act, *N.J.S.A. 18A:28-1 et seq.*, "should be liberally construed to achieve its beneficent ends." *Spiewak v. Board of Education of Rutherford*, 90 *N.J.* 63, 74 (1982). In *Dennery, supra*, the Court stated, "Endorsements under a single certificate represent a related combination of qualifications, reflecting the common or related skills that are required for the satisfactory performance of educational responsibilities under that certificate." 131 *N.J.* at 637. This principle applies equally to the endorsements issued under the administrative certificate as to those issued under the instructional and educational services certificates. Furthermore, as the Appellate Division noted in *Ellicott, supra*, the tenure laws do not

make a distinction among the categories of certification. 251 *N.J. Super.* at 350. Accordingly, the Commissioner concludes that there is no basis to allow tenure to transfer under the instructional and educational services certificates, but not to unenumerated positions under the administrative certificate.

Finally, the Commissioner finds that the authorizations conferred by the school administrator and principal endorsements are not limited by subject area. Pursuant to *N.J.A.C.* 6A:9B-12.3, an individual holding a school administrator or principal endorsement⁶ is authorized to provide educational leadership by directing the formulation and implementation of goals, plans, policies, and budgets. They have authority regarding personnel actions, evaluations, operations, and programs. These functions are largely administrative in nature, rather than being based in a particular subject area. By obtaining one of these endorsements, an individual demonstrates that she is qualified to perform all of the administrative functions for which that endorsement is required.⁷ Accordingly, there is no basis to limit petitioner's ability to transfer her tenure as a director to other unenumerated positions for which she has earned the appropriate endorsement.

The Commissioner further concurs with the ALJ that petitioner was qualified for the position of Director of Special Services. The Commissioner has previously held that "a supervisor endorsement is generic and authorizes the holder to supervise any subject matter and any grade level." *Galbraith v. Bd. of Educ. of the Lenape Regional High School District, Burlington Cty.*, 1996

⁶ The primary distinction between these endorsements is the level of responsibility that is authorized. The school administrator endorsement authorizes activities at the district level, while the principal endorsement authorizes activities at the level of a school or a unit within a school or district.

⁷ The endorsements themselves establish the parameters of the employee's qualifications. As the Appellate Division noted in *Ellicott*, "the teaching staff member asserting a tenure right under the certification must still qualify for the particular position by securing the pertinent endorsement." 251 *N.J. Super.* at 350. For example, petitioner does not possess a business administrator endorsement, and therefore is not qualified to fill any position requiring a business administrator endorsement.


N.J. Agen. LEXIS 91, at*54. Furthermore, while a board of education may establish additional instructional certification requirements for a supervisory position, “absent a showing that an instructional certificate is necessary to perform the duties of the position at issue, such requirements cannot sidestep the educator’s tenure rights.” *Id.* at *54-55. *See also Anecchino v. Bd. of Educ. of the Twp. of Irvington, Essex Cty.*, Commissioner Decision No. 267-14, decided June 24, 2014 (holding that a tenured supervisor had a greater right to a supervisory position than non-tenured supervisors, even though the non-tenured supervisors had knowledge and experience in the subjects they were supervising, while the tenured supervisor did not).⁸ Here, the Board did not require the Director of Special Services to hold an endorsement as a Teacher of Students with Disabilities or any other instructional endorsement, nor does the Commissioner find such a requirement necessary for the position. Instead, the Board only indicated that experience in the area of special education administration or supervision was “preferred.” Therefore, as petitioner is in possession of both a school administrator endorsement and a principal endorsement, either of which fulfills the endorsement requirement for the position, the Commissioner concludes that she is qualified for it.⁹ When petitioner’s position as Director of Early Childhood Education was abolished, she was entitled to be employed as Director of Special Services over non-tenured employees.

⁸ Both *Galbraith* and *Anecchino* involved tenured supervisors, rather than directors. However, as neither “supervisor” nor “director” is enumerated in *N.J.S.A. 18A:28-5*, the Commissioner finds that the analyses used in those decisions are applicable to this matter.

⁹ Although this conclusion is sufficient to establish petitioner’s right to the position, the Commissioner further concurs with the ALJ that petitioner has met all of the other qualifications listed in the job description, including having successful experience in special education administration or supervision. The ALJ thoroughly detailed petitioner’s testimony regarding her prior experience and found that testimony to be credible. The Commissioner finds no reason to disturb that finding.

Accordingly, petitioner is entitled to appointment as Director of Special Services effective July 1, 2020, with all salary, benefits, and emoluments of that position, subject to mitigation. If any disputes arise regarding the calculation of back pay or other related issues, including the issue of membership dues that was raised before the ALJ following the close of the record, a new petition may be filed.

IT IS SO ORDERED.¹⁰


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 16, 2022
Date of Mailing: June 16, 2022

¹⁰ 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

OAL DKT. NO. EDU 08601-20

AGENCY DKT. NO. 169-8/20

TERESA-ANNE LUCAS,

Petitioner,

v.

**BOARD OF EDUCATION OF THE,
TOWNSHIP OF WILLINGBORO,
BURLINGTON COUNTY,**

Respondent.

Maria M. Lepore, Esq., for petitioner

Eric L. Harrison, Esq. for respondent (Methfessel & Werbel, attorneys)

Record Closed: February 14, 2022

Decided: May 4, 2022

BEFORE **JUDITH LIEBERMAN, ALJ**

STATEMENT OF THE CASE

Petitioner, Teresa-Anne Lucas, asserts respondent, Board of Education of the Township of Willingboro, Burlington County (Board), violated her tenure rights when it did not place her in the position of Director of Special Services after her position as Director of Early Childhood was eliminated.

PROCEDURAL HISTORY

Petitioner filed an appeal on August 5, 2020. The New Jersey Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 10, 2020, as a contested case. N.J.S.A. 52:14B-1 to-15; N.J.S.A. 52:14F-1 to-13.

During the first status conference, conducted October 20, 2020, counsel sought leave to file cross-motions for summary decision after discovery was completed. A briefing schedule established that all moving and reply briefs would be submitted by February 2, 2021. Two extensions of the brief submission deadlines were requested and approved, and all briefs were received by March 12, 2021. On April 29, 2021, respondent was asked to clarify a statement in its reply. It responded to this request on May 11, 2021, and the record for the cross-motions thus closed on May 11, 2021.

On May 21, 2021, I issued an Order partially granting petitioner's motion. The Order provided:

The fundamental issue here is whether petitioner's tenure status requires the Board appoint her to another supervisor position to which a non-tenured but otherwise qualified individual was appointed. The cases cited above established, and I **CONCLUDE**, that her tenure protection shall extend to other supervisor positions, notwithstanding the absence of prior service in those positions.

The Order was clarified in an August 24, 2021, Letter Order, which provided:

Clarification of this statement was required because, here, petitioner sought appointment to a director-level position. She contended that, having obtained tenure in the position of director within the respondent district, she should have been reassigned to a director position when her prior director-level position was eliminated. The Order, in its entirety, addressed this issue. Thus, during the status conference, it was clarified

that the Order addressed petitioner's tenure rights with respect to director-level positions.

The May 21, 2021, Order addressed the issue that remained to be decided:

The parties, however, raised an issue that cannot be resolved by way of this motion. Respondent contends that other factors, such as petitioner's experience with special education, are relevant. While it is unclear whether petitioner concedes that this analysis is even required, she seems to acknowledge that it may be relevant. In her brief, she noted that she did not seek appointment to another director position for which she "does not claim to possess the required expertise for purposes of this motion." Pet. Brf. at 3, f.n. 3. She also addressed her qualifications at length. Id. at 5. While petitioner may have intended to merely underscore that she sought a position for which she was qualified and opted to not pursue an alternate position for which she was eligible, this analysis cannot be made by way of a summary decision motion. The record indicates that petitioner previously held positions that required at least some degree of responsibility with respect to special education. By way of example, her curriculum vitae represents that, in her current position of Director of Early Childhood, she is responsible for the development, implementation and monitoring of program plan budgets. J-H. It also represents that, in this position, she monitors, supervises and coordinates child study team referrals. Ibid. While Director of Special Projects, she prepared and administered "centralized state and federal project budgets[.]" Ibid. However, the parties assert that these facts are in dispute and a record has not been developed in this regard. Consequently, I **CONCLUDE** that summary judgment is inappropriate at this time.

A hearing on this remaining issue was held on October 2, 2021. The record remained open for the submission of briefs after the parties received the hearing transcript. Briefs were initially due on January 31, 2022. An extension was granted in response to petitioner's request. All briefs were received by February 14, 2022, and the record closed that day. An extension of time for the issuance of the Initial Decision was granted on March 28, 2022.

FACTUAL DISCUSSION AND FINDINGS

The parties stipulated to the following. I, therefore, **FIND** the following as **FACT**:

1. Petitioner has been continuously employed by the Board since September 1997.
2. Petitioner held the following positions in the District:
 - a. Teacher of Psychology (September 1997 – August 2002).
 - b. Assistant Principal (August 2002 – December 2004).
 - c. Principal (December 2004 – June 2013).
 - d. Director of Special Projects (June 2013 – December 2016).
 - e. Assistant Superintendent – Chief of Schools (December 2016–June 2018).
 - f. Director Early Childhood Education (July 2018 – June 2020).
 - g. Principal (July 1, 2020 to present).
3. Subsequently, petitioner became tenured in the following positions:
 - a. Teacher of Psychology;
 - b. Assistant Principal;
 - c. Principal; and
 - d. Director of Special Projects.
4. On or about May 14, 2020, the superintendent notified petitioner that her position as Director of Early Childhood would be eliminated, effective July 1, 2020, and that she would be reassigned to the position of Principal at the Early Childhood Center at Garfield East.
5. Subsequently, petitioner, through her undersigned counsel, notified the District, through its counsel, that petitioner contends that she has tenure in the position of director within the District and, as such, she contends her tenure rights require that she be placed in the vacant position of Director of Special Services.
6. The District subsequently appointed another individual to the position of Director of Special Services.

7. The individual currently holding the position of Director of Special Services does not have tenure in any position in the District.
8. Petitioner began performing her duties as a Principal on July 1, 2020, as she was directed by the District.
9. Petitioner did not experience a reduction in compensation beginning July 1, 2020.
10. Petitioner holds the following standard certificates issued by the New Jersey Department of Education:
 - a. School Administrator;
 - b. Principal;
 - c. Supervisor; and
 - d. Teacher of Psychology.

The following is undisputed. I, therefore, **FIND** it as **FACT**. The job description for director of special service lists the following qualifications:

1. New Jersey School Administrator or Principal Certificate
2. Regular or special education teaching experience.
3. Master's Degree; Doctoral Degree preferred.
4. Successful experience in special education administration or supervision preferred.
5. Required criminal history background check, physical proof of U.S. citizenship or legal resident alien status.
6. Shall possess knowledge of budget development and fiscal review.
7. Strong interpersonal and communication skills.

[R-10.]

The job description provides that the "function" is "To provide leadership and direction for the delivery and maintenance of a comprehensive program of special services which

includes child study team and related services, in-class support services, and medical and health services.” Ibid.

ADDITIONAL FACTUAL FINDINGS

Testimony

For Petitioner:

Petitioner **Theresa-Anne Lucas** testified that, as assistant principal, she was assigned to regular and special education students. She met with child study teams and case managers on a biweekly basis to be familiar with the students’ needs; evaluate whether those needs were being met; and ensure that the classrooms were properly equipped.

She was required to successfully participate in the Principal Residency Program, a one-year, mentored program that was required for a standard certificate. She had a provisional certificate while she participated in the program. The program involved training and participation in “required experiences.” P-6 at 16. One was “pupil personnel services,” which referred to special education. Ibid. She met with guidance counselors; worked with child study teams (CSTs); and attended CST meetings. P-6 at 19. She reviewed departmental budgets and identified budget priorities; reviewed extracurricular activities’ budgets; and identified methods to raise funds to support student activities. P-6 at 20. She worked closely with the chairs of two departments to develop their budgets after evaluating their staffing, resources, and other needs. She also worked with the school banker to address the budgets of extracurricular activities and reported to the comptroller who monitored spending. She also facilitated, with the Board policy committee, the rewriting the school discipline policy, also called the code of conduct.

Petitioner also attended a professional development program about the Individuals With Disabilities Act (IDEA) in New Jersey. P-6 at 19. She monitored changes to special education law and reviewed them with the Board’s policy committee and director of special services to identify where policy changes should be made. In line with this, they examined a new program that, with appropriate supports, would enable more students to stay in the District. Petitioner’s mentor, who signed the Principal Residency Program Formative Evaluation Form, wrote that petitioner exhibited “no areas of weakness and [she] is extremely competent in all areas of the principalship.” R-6 at 17. All other individuals who were required to approve her training and qualifications signed the form, including District-level personnel. P-6 at 20.

As director of special projects, petitioner was responsible for early childhood for disabled preschool students, who were “part of the special education department.” T¹ 29:3-4. Her supervisor, Dr. Dale Talbert, reviewed her performance as director of special projects for the 2014-2015 school year. P-4. Petitioner received “excellent” evaluations for all skill areas except for “staffing” for which the rating was “at standard.”² Id. at 2. Petitioner believed the rating for staffing was appropriate because she was new to the position and “there were a number of areas that we needed to address . . . and I felt that I wanted to build the program and grow myself[.]” T 27:22 to 28:1.

Petitioner was rated “excellent” in the “business acumen/organizational knowledge” category. Her responsibilities included:

The development and oversight of the preschool education grant, the Perkins Grant[,] . . . school-wide plans developed by each individual school and following through to make sure that the funding was . . . used by each school in accordance with the school-wide plan and to make sure that we avoided supplanting and that the funding for supplemental resources were used . . . for improving our instruction and instructional

¹ T refers to the transcript of the October 2, 2021, hearing. It is followed by the referenced page and line numbers.

² The evaluation included a “self-assessment.” P-4 at 2. Because this was the first time this evaluation form was used, petitioner and Dr. Talbert “worked in the document together and discussed it.” T 27:14-15.

support and programs for our students. Part of that included working with the director of special services at the time to make sure that we were creating programs on an equal playing ground for special education students, that we were building our instructional programs in terms of whether it's technology or a variety of instructional support resources that they were in line with the regular education programs and to make sure that the teachers in special education were receiving the same resources and the same professional development . . . at the same level with regular education. It was looking at the inclusion classes in early childhood for special education and making sure the inclusion classes were receiving the same . . . resources and they were balanced with regular education as well.

[T 29:5 to 30:8.]

She was also responsible for No Child Left Behind (NCLB), which is now called Every Student Succeeds Act (ESSA). She advised parents of their rights under NCLB and the “supplemental resources and services that could be provided to children.” T 30:22-23. She worked with the director of special education in reviewing individualized education plans (IEPs) for pre-K through third grade students, to “make sure that we had the resources available within the classrooms.” T 31:5-6.

Petitioner was rated “excellent” for “customer focus,” which was a key element of the position. It required responding to the needs of students, by “understanding where they are versus what the state requirements are for where they need to be and helping them to move towards that goal.” T 32:10-13. For parents, it meant “understanding their perspective and their needs for their children[;] . . . helping them to understand instruction and programs and the supports[;]” and referring them to appropriate personnel for further assistance. T 32:13-20. Petitioner also served her staff and district administrators to “build capacity so I can help them grow professionally.” T 32:8-9. With respect to special education students, her responsibilities included responding to corrective action plans; working with the director of special education to ensure that students are in the least restrictive environment; and facilitating mainstreaming of children in regular education classes where appropriate. She met with the child study team “when we had situations

with early childhood children in regards to their placement and what was actually agreed upon with the parents for their IEP.” T 35:15-18.

“Strategic insight,” for which petitioner received an “excellent” rating, involved “think[ing] outside the box.” T 35:24-25. This included using alternative methods to address children’s needs and help them engage in the learning process. For example, use of playground designs that address fine motor skills and help develop social and emotional skills, which was implemented during the 2017-2018 school year. Also, “sensory rooms” can be used by students who need an opportunity to have “time away just to transition.” T 36:8-9.

The “vision and purpose” skill category, also rated “excellent,” involved evaluation of the “overarching goal” for all students and implementation of methods to help them achieve long term success and “be equipped with . . . 21st century learning skills.” T 37:21-22. This required that staff and students expand their use of technology. In 2013, as director of special projects, petitioner provided all classes, special education and otherwise, with iPads and other technologies have also been incorporated, such as interactive technology that is used by non-verbal special education students. The technology provides feedback to the students and provides visual and auditory stimulation.

With respect to the “values and ethics” skill category, also rated “excellent,” petitioner discussed her commitment to her school district. She chose to work in Willingboro, her home community, and dedicated her career to the District. As an administrator, she conveyed to her staff her belief that “we should not be treating any child with any less than we would want for our own. They are our children that the parents are entrusting to us[.]” T 39:18-21. The skill also requires an “understanding that . . . everyone learns differently.” T 39:25 to 40:1. Personnel and students “can have equal levels of experience, but we’re all in different places at that time, so it’s respecting that, it’s knowing that I have to go that extra mile to make sure that I’m meeting those needs.” T 40:2-6. In line with this, she had “ongoing professional dialogue(s)” with her staff

“because it’s not a one woman show and it has to be an inclusive process if we’re going to be successful, so I value what my staff brings to the table, what each child brings with them and the parents as well[.]” T 40:6-11.

Petitioner also received an “excellent” rating for the “Action” rating category. She evaluated programs and worked with the director of special services, principals and assistant principals, for pre-K through twelfth grade, to learn each programs’ needs. For example, the District’s English as a Second Language (ESL) program required review in response to a State audit that found students were enrolled in the program longer than the desired number of years. Recognizing that these students required additional time, there was an analysis of the way the program would be conducted, such as teacher training and technology and other tools that would “increase their chances for success.” T 42:6. For special education, she collaborated with the director of special services to allocate funds based on preschool disabled students’ needs and procure the necessary resources. They also ensured that the special education teachers had the professional development, tools and support they needed. She also addressed appropriate life skills services, and other areas of assistance, for students through twenty-one years old who had cognitive impairment.

The “innovation” skill set, also rated “excellent,” involved creating a learning environment for the students, including those in special education, which helped them to interact with their peers and “expand their interest in learning.” T 45:25. This is important because of the students’ social and emotional challenges. Non-traditional settings are used to facilitate this. With respect to the “staffing” and “developing people” categories, both rated “excellent,” petitioner was required to know staff members’ individual strengths and challenges and to collaborate to support and address their strengths and weaknesses. A positive work culture is established through this type of peer collaboration.

Petitioner was required to oversee the budget to ensure compliance with NCLB requirements. This involved monthly meetings with the deputy superintendent,

comptroller and a consultant. She received an “excellent” rating with respect to NCLB. She also reviewed individual school’s budgets to ensure that they were aligned with the State plan and provided for appropriate support programs. In conjunction with the New Jersey Quality Single Accountability Continuum (NJQSAC), petitioner served as the auditor of instruction for all regular and special education programs. Among other things, this involved updating the special education curriculum, incorporation of special education reading programs and teacher training.

“2014/2015 Performance Highlights” referenced petitioner’s work on budgetary and fiscal issues. It included, “Continued to work with WHS Principal and Assistant Principal and District Comptroller to identify and develop a budget for 2015-2016 courses[.]” P-4 at 10. Also, “Increased effectiveness of spending, communication with schools and implementation of individual Schoolwide Plans[.]” Ibid.

In May 2015, petitioner received training about the Americans With Disabilities Amendment Act of 2008 (“ADA”) and Section 504 of the Rehabilitation Act (“Rehabilitation Act”). P-5. The amendment changed how the ADA was applied so that people would have less difficulty proving that they are disabled. The Rehabilitation Act addressed the need for accommodations for students with health needs. Both laws are relevant to special education students, whose disabilities and health issues impact their learning.

Petitioner was appointed assistant superintendent in December 2016. The Superintendent of the Easton Regional School District served as her mentor, which was required for a certificate of eligibility. Together, they met with the Superintendent’s business administrator and superintendents from other districts on a quarterly basis. In 2018, petitioner successfully completed training sessions provided by the Superintendent’s Academy, a prerequisite to receipt of her standard certificate. The Academy addressed multiple issue areas including board of education dynamics and relations, financial resources and business operations, personnel management including staff hiring, evaluation and development, improving student performance through

collaborative labor management partnerships, staff and community relations, “special populations, equity and excellent” and strategic planning. R-11 at 34.

Her training in “special populations, equity and excellence” was “extensive.” T 85:23. It addressed the ADA, students with 504 plans pursuant to the Rehabilitation Act, the IDEA and students with IEPs, the CST and its duties, the intervention and referral services team that supports students and addresses their needs, extraordinary aid available for special education, communication with and support of parents; and parents’ rights.

As assistant superintendent, petitioner was responsible for the operations of all of the schools, including principals’ evaluations, supervisors, instruction and programming. She was involved with “realignment of instructional” time, which referred to identifying and providing addition services to at-risk children, special education eligible and otherwise, who needed extra support. She was also involved with the professional development evaluative tool that was used for school counselors and child study team members. She also worked with the director of special services and program administrator to address standardized testing accommodations required for students with IEPs and she reviewed IEPs to determine where needs existed.

Petitioner worked with the ESSA grant administrator and director of special projects to monitor grant expenditures at each school. This required ensuring that the “expenditures were aligned with the school wide plans . . . that they weren’t supplanting and that we were expending” funds prior to the deadline. T 77:14-17.

In February 2018, petitioner was evaluated in her capacity as assistant superintendent for the 2017-2018, school year. P-7. The same rubric that was used for her 2015 evaluation was used. Again, the self-evaluation was performed collaboratively with Dr. Talbert and she received a rating of “excellent” for all categories. Her evaluation for the 2017-2018 school year summarized her strengths, in part, as:

Knowledge and in-depth understanding of the District, school administrators and program needs, as evidenced by (1) development of common instructional schedules and realignment of instructional time to include intervention and enrichment for students at the middle and elementary schools; (2) Planned professional development for Principals, Assistant Principals and teachers at all grade levels[.]

[P-7 at 28.]

She received “excellent” ratings with respect to interpersonal and presentational skills, as evidenced by her “effective conveyance of program, information/data to school administrators and parents, in addition to the positive rapport with parents, faculty, staff and colleagues[.]” P-7 at 29. She also received “excellent” ratings for “strong research and communication skills[.]” Ibid.

When the 2017-2018 evaluation was issued, petitioner was working to schedule budget roundtable discussions with principals, the comptroller and department heads. The discussions would address each school’s needs and budgets in advance of presentation of the final proposed budgets to the business administrator.

Petitioner currently she works with special education programs and is responsible for “meeting those needs and working with individuals in the department of special services and to make sure that our programs are properly aligned with the student IEPs and we’re meeting their needs.” T 90:6-11.

Petitioner explained that she meets the requirements listed in the job description for director of special services. R-10. She holds both required certificates: School Administrator and Principal; taught psychology to regular and special education students; holds a master's degree and is close to obtaining her doctoral degree.

With respect to the requirement of “successful experience in special education or supervision preferred,” petitioner “had a significant number of years working with child study teams” as a principal, director of special projects “and then [as] assistant

superintendent with oversight for operations.” T 88:10-15. Petitioner noted, however, that the job description did not specify that this experience was mandatory.

Petitioner satisfied the requirement that she “shall possess knowledge of budget development and fiscal reviews.” R-10 at 31. She has “practical experience in both” areas from having worked in a variety of District administrative positions and also while administering grants for the Newark Housing Authority. T 89:4. She highlighted that her strong interpersonal and communication skills were rated excellent in her evaluations. She reported to the superintendent and their designee while serving as principal, director of special projects, assistant superintendent and in her current position.

Petitioner enumerated her experience with respect to each of the position’s specific job duties:³

1. Having served as a principal for pre-K through twelfth grade, she met with the case manager and members of the child study team a few times each week to monitor their programs; review resources; and determine whether students’ needs are being met, including supports, related services and medical and health requirements.
2. As director of special projects and assistant superintendent, petitioner coordinated special services among departments. As assistant superintendent, she was “responsible for all operations.” T 92:2.
3. Petitioner was a member of the superintendent’s cabinet from 2013 through 2020. As assistant superintendent, she was responsible for supervising principals. She was involved with all components of operations including planning, supervision and budget development. This included special

³ The duties are listed on the job description at R-10. They are numbered 1 through 33 and are incorporated here by reference to R-10.

education as auditor for NJQSAC, which involved reporting concerning curriculum budget shortfalls, including for special services.

4. As assistant superintendent, her daily role involved oversight of special education programs. She collaborated with the principals in reviewing the “effectiveness of teaching and learning what was taking place on a regular basis and meeting . . . with the program administrator” and the director of special projects. T 93:18-21. As principal, she collaborated with child study teams “in regards to student programs and needs[.]” T 93:23-24. This work was done with all departments, including student guidance counseling.
5. While she did not develop procedures for identification, referral, evaluation, classification, and placement of educationally handicapped pupils in accordance with state and federal regulations and timelines “in depth,” she worked with the director of special services on the referral process because too many students were referred with a “progressive process in place[.]” T 94:12-16. They needed to ensure “that schools were trained appropriately for the intervention and referral service process . . . [and] we weren’t just arbitrarily referring a student[.]” T 94:16-18. For preschool students, they established the “preschool intervention and referral team” and incorporated monthly meetings with parents to address needs for additional supports. T 94:24.
6. Petitioner organized, staffed, supervised, managed and evaluated clerical and support functions of the office of special services every year since she became an administrator.
7. As assistant superintendent in charge of operations, she worked with the family liaison to homebound students. She ensured that teachers and necessary services were provided for home instruction and hospitalized students. She did this for regular and special education students.

8. Petitioner developed procedures to maintain, update and safeguard pupil records every year since she became an administrator.
9. Petitioner maintained an inventory of purchased equipment every year since she became an administrator, particularly as a principal, for all classrooms, including special education.
10. As a member of the superintendent's cabinet, she was responsible for working with the Board policy committee and curriculum and instruction committee. She would review and present policy and legal change recommendations to the committees. The recommendations would next be made to the superintendent and presented to the Board of Education.
11. As assistant superintendent, petitioner monitored the students in special education with an eye toward retaining them in-district. With the director of special services, she reviewed "the actual needs of the student and have that dialogue as to whether or not it's really warranted to send them out of district, what's best suited for them[.] . . . [T]hat was an ongoing part of my responsibilities." T 99:17-22.
12. She did not have a lot of experience with SEMI, which concerns Medicaid.
13. She monitored special education services and reviewed student progress, including IEP compliance, while assistant superintendent, as discussed above.
14. Recognizing that special education personnel may be involved with evaluations, reevaluations and case management meetings, schedules must be coordinated to ensure teacher coverage.
15. Continuous staff development is and was a regular obligation of petitioner's current and past positions. As assistant superintendent, she was involved with monthly professional development meetings with principals; planned "ongoing professional development with staff based on staffing needs and student

- needs;" and professional development was incorporated into the monthly faculty meetings. T 101:16-18.
16. Petitioner has experience selecting special education and special services staff. At the time of the hearing, she was in the process of interviewing special education teachers, autism teachers and others. While director of early education, she served on the director of special services' hiring committee.
 17. Petitioner previously discussed her experience with departments' budgetary requirements.
 18. While petitioner has been involved in the supervision and evaluation process for special education, she has not "done the formal supervision." T 103:3. It was a collaborative process when she was a member of the superintendent's cabinet.
 19. As principal and assistant superintendent, petitioner planned, organized and presided over meetings with special services staff.
 20. Petitioner worked on the procedural handbooks, including the 2017 code of conduct, while serving in all her positions.
 21. As a member of the Board of Education's curriculum instruction committee, she reviewed and approved recommendations for improvements to regular and special education curriculum.
 22. She submitted monthly reports on multiple subjects, including but not limited to grants, NCLB and ESL, to her supervisors and staff. She initiated "monthly operations meetings for principals with department heads to work with them and provide reporting[.]" T 107:3-5.
 23. Petitioner previously discussed her experience with interviewing prospective special services staff.

24. Petitioner worked with “child study teams over the years as a principal” to understand their caseloads. She reviewed this with the program administrator or director of special services “to understand how we were balancing and meeting the needs of students and . . . based on work assignments . . . that were there.” T 107:16-24.
25. Petitioner previously discussed her experience ensuring effective planning and communication.
26. Petitioner previously discussed her experience supervising and coordinating ordering and use of materials for the special services area.
27. Petitioner reviews multiple publications for and by educators, such as those published by the Association for Supervision and Curriculum Development and New Jersey Association of School Administrators. She is aware of professional development opportunities.
28. Petitioner previously discussed her experience with budget preparation and monitoring.
29. Petitioner has evaluated staff every year since she became a school administrator. She has collaborated with the director of special services in this regard.
30. All administrators are required to ensure implementation of State and federal regulations, including those requiring free and appropriate education and age appropriate instruction for early childhood students,
31. As director of special projects and early childhood, petitioner prepared applications for federal and state aid, including the preschool expansion grant. She worked on the preschool program plan update, which led to additional funding, and Perkins Grants for technical education.

32. Petitioner attends professional development workshops required by the superintendent, including those addressing social and emotional learning for children who attended school remotely. She also continues to work toward her doctorate.

On cross-examination, petitioner was asked several questions concerning the provision of special education. She acknowledged that she has not written an IEP; however, she “sat in on the IEP process.” T 143:4. When asked how she would evaluate whether case managers are writing appropriate IEPs, petitioner replied that she would consult the statute and regulations that govern special education, which are in her office.

As a seasoned school administrator, you can't possibly know every code under 6A or 18A[.] . . . [Y]ou know that there has to be a balance between regular ed and special ed. You know that there has to be the least restrictive environment. You know that the criteria that has to be set that a child can't just be classified at will, we have to go through the process of the intervention and referral services team and so on, so you follow all of these components and you know the basic guidelines that are there, but if I want to be specific to a code . . . I would open that book, I would look at the code and then have a conversation with my staff.

. . . .
I am proficient as an administrator because I know my job and I know it well, which also includes all the components[.] [S]o for the basics of the dos and the don'ts and what should and should not be done in the best interest of the child and the duty of care that I have to each child that enters my building, I know it and I know it well. If it's something outside of that scope I am not . . . embarrassed to say that, yes, I would flip open the code to double check. Like I know in an autistic kindergarten class I shouldn't have more than six children, but guidelines change all the time, so if I have a child study team member saying I can add number seven in there with an additional paraprofessional, I'm going to check in that case just to make sure nothing has changed and I have other checks in place that I would do beyond that[.]

[T 157:24 to 159:12.]

In response to several substantive questions about special education, petitioner testified that she would need to research the law and regulations for guidance. These included when scoring would support the classification of specific learning disability; the “discrepancy model” in the context of learning disability classifications; all criteria for eligibility for special education and related services; and “Naples placements.” She also provided substantive responses to questions about specific special education issues. For example, she discussed the process for manifestation determinations when a child exhibits behaviors that result in suspension or removal. The child study team and others must meet “to determine if the child’s behaviors that they are exhibiting is part of the child’s diagnosis of what’s written in the IEP. That will determine how you can proceed with the child.” T 134:12-15. She knows when parental consent is required to take an action, including issuance of annual IEP reviews, and that the District can file a due process petition under certain circumstances to take action without consent. She is familiar with the “intervention model” for classification and explained that students are categorized “based on their needs or however they test[.]” T 121:13-14. “[R]esponse to intervention refers to helping students based on what is accessed for the specific skill level and identifying interventions for that individual student in order to meet their needs.” T 121:14-18. While she is not an expert on student testing, she is familiar with how the testing process is implemented and evaluated by the CST and other professionals to determine a student’s qualification for a disability classification. She “worked with directors of special services and program administrators of special services and so on for a number of years and . . . a child’s classification [is] based on the overall scoring[.]” T 122:21-25.

Petitioner was not familiar with a Department of Education memorandum that addressed failures to provide all IEP-required services due to COVID-19 restrictions. She explained, “it’s not an area that I supervised, so it wouldn’t be sent to me,” T 140:3-4. However, she noted that the District is obligated to provide the services mandated by IEPs and it “did extremely well despite the challenges that we were faced with[.]” including

the corrective action plans that were in place when the director of special services was appointed. T 136:6-8.

Petitioner noted that she is responsible for evaluating “special education teachers to determine if they’re effective in their classroom[s].” T 155:22-23. If she were appointed director of special services, she would use the methodology she currently uses to evaluate special education teachers. She utilizes a guidebook and rubric developed under the guidance of Dr. Hackett that provides the criteria for evaluation of all staff. She explained, “I don’t have to be a math expert to evaluate a math teacher. I know what good instruction looks like. I can go into that classroom with the appropriate rubrics and the guidelines that the state sets forth through the Danielson model and determine whether the instruction is effective.” T 156:20-156:25.

On redirect examination, petitioner testified that, as director of special services, she would be able to consult with the attorneys retained by the District. The position did not require a law degree, memorization of or familiarity with the law, or certification as a school psychologist, guidance counselor or learning disabled teacher. She clarified that IEPs are tailored to each student, based on their individual abilities. They include “goals and objectives that are specific to that student’s abilities and projected timetable for growth.” T 165:16-18. Multiple students with the identical classifications could have different IEPs and accommodations.

For respondent:

Dr. Neely Hackett has been the District Superintendent of Schools since April 2020. Shortly after she began working as superintendent, Director of Special Services Dr. Melody Alegria advised that she intended to leave the District. Dr. Hackett understood that almost 20 percent of the District’s students were in special education and there were “many corrective action plans dealing with non-compliance with IEPs, due dates and parent consent, services, there were about three to four major court cases where parents were asking for thousands and thousands of dollars[.]” T 170:11-16. Parents were

dissatisfied with the program and its curriculum and the department was “separated from everyone else” with respect to staff interviews and supply procurement. T 170:18. They did not “engage in the overall climate of the district” or “let everyone know that these are our kids and not their kids[.]” 170:23-25. This was a “major problem” and improvement was a “herculean task.” T 171:1, 175:12.

The position was posted immediately. Dr. Hackett assembled a diverse interview team of experienced staff members who “knew the culture of the district and who were expert in their particular areas[.]” T 171:22-24. The business administrator, the human resources director, three principals from elementary and high schools and petitioner were on the team.

Dr. James Nesmith was selected because he had experience as a supervisor of student services. Dr. Hackett “believe[d] that he knew how to run a department [and] that he would be familiar with running a special services department[.]” T 173:16-18. The skill sets listed on his resume indicated that “he had experience in working with child study team members and dealing with the coordination of curriculum and professional development.” T 173:20-23, R-29. Also, Dr. Nesmith worked as a school social worker for approximately ten years, which indicated that he has experience working on a child study team, being a case manager, and developing and implementing IEPs. He, thus, would also “have familiarity with the law and timelines regarding the IEP process, which was one of the major issues in Willingboro that we were not meeting the legal requirements for IEPs.” T 174:9-13.

Since becoming director of special services, Dr. Nesmith addressed every corrective action plan and the State has advised that the “corrective action measures” have been met. T 175:17-18. He also resolved a majority of the pending litigation, many without requiring monetary payments, and suggested creating a new teacher trainer position. Teachers have received training about students who do not engage in the New Jersey Student Learning Standards and the laws and timelines. Training concerning the laws and timelines was necessary because staff could not rely upon the attorney hired by

the District for daily matters. Also, a special education manual was developed—previously, there was not a single manual that explained the law and timelines—and a specific evaluation protocol was developed for the first time for child study team members.

Dr. Nesmith’s knowledge of procedures, the law, timelines and mandates enabled him to take the above steps and then to direct his staff to “improve on those corrective action plans[.]” T 178:20-23. He had to “delegate and inform and educate to made sure we were all on the same page[.]” T 178:24-25.

Dr. Hackett acknowledged that Dr. Nesmith did not have a standard certification as a school administrator. She did not know whether he had a standard certification as a principal. She was aware that “whatever certifications he needs for this particular job, he has the provisional and he has to go through the one year mentoring program.” T 181:21-23. Dr. Hackett did not know if he obtained standard certificates by the day of the hearing.

Dr. Hackett proposed that petitioner’s position should be eliminated for budgetary reasons. Although Dr. Hackett had “listen and learn meetings” with petitioner, she did not have much in the way of interactions with petitioner. T 184:24.

Dr. Hackett appreciates petitioner’s experience. However, given the problems with the District’s special services department, “there’s no room for a learning curve.” T 179:24-25.

Document Review

Dr. Nesmith’s resume does not list experience as a regular or special education teacher. Rather, he worked as a school social worker from 2001 through 2011 and as Supervisor of Student Support Services from 2012 until he was hired by the District. The resume lists no other work experience. R-9. His resume indicated that he had principal and administrator certificates of eligibility. R-9.

Additional Factual Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

I had the ability to observe the demeanor, tone, and physical actions of the witnesses during the hearing. Both testified clearly, directly and professionally. Each sought to provide thorough answers to questions and full explanations for their decisions and actions. Neither was hesitant or evasive. I find their testimony to be credible.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following as **FACT**:

The Job Description for Director of Special Services lists seven qualifications for the position. Qualifications number one, two, five, six and seven are mandatory. Qualification number three provides that a master's degree is required while a doctorate degree is "preferred." Qualification number four provides that "successful experience in special education administration or supervision is preferred." Thus, the latter two qualifications are not mandatory.

Based upon petitioner's credible testimony, her performance reviews and other documentation of her training and experience, I further **FIND** as **FACT** that petitioner satisfies the five remaining mandatory qualifications:

- She holds New Jersey School Administrator and Principal Standard Certificates.
- She has experience with regular education, having taught psychology. She holds a New Jersey Standard Certification as teacher of psychology.
- She has undergone the required criminal history background check and provided proof of citizenship.
- In her prior positions, she engaged in budget development and fiscal review. Her performance reviews document that she received excellent scores with respect to her work in this regard.
- Her performance reviews highlight her exemplary interpersonal and communication skills.

As noted, petitioner holds a master's degree and the job description does not require a doctorate degree.

While special education administration or supervision is only preferred, the evidence in the record supports a finding that petitioner has had an administrative and supervisory role with respect to special education. For example, as principal, director of special projects and assistant superintendent, she engaged with and supervised child study teams. As director of special projects, she was responsible for early childhood for

disabled preschool students who were involved with special education. She was also involved with special education teachers' professional development. She worked with the director of special services to address funding for special education students' needs and for life skills programs for cognitively impaired students. She has received training in relevant areas of the law including the IDEA, Rehabilitation Act and ADA. While this evidence does not permit a finding that petitioner is fluent in the area of special education, neither fluency nor experience at a high level is a prerequisite. I, therefore, **FIND as FACT** that petitioner satisfied all the mandatory qualifications for the position of Director of Special Services as well as the optional qualification concerning successful experience in special education administration or supervision.

I further **FIND as FACT** that Dr. Nesmith did not possess a New Jersey School Administrator or Principal Standard Certificate at the time he was appointed. He also does not have experience as a teacher of regular or special education.

LEGAL ANALYSIS AND CONCLUSION

The law governing tenure was discussed at length in the Order partially granting summary decision. It is restated here. The purpose of the teaching staff tenure laws, 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)). Our courts have held that "the widest range should be given to the applicability of the [tenure statutes] law." Sullivan v. McOsker, 84 N.J.L. 380, 385 (E. & A. 1913). See also Barnes v. Bd. of Educ. of Jersey City, 85 N.J. Super. 42, 45 (App. Div. 1964). "[B]ecause of its remedial purpose, the Tenure Act should be liberally construed to achieve its beneficent ends." Spiewak v. Bd. of Educ., 90 N.J. 63, 74-75 (1982). The employee has the burden of proving an entitlement to tenure protection. Canfield v. Pine Hill Bd. of Educ., 51 N.J. 400 (1968), rev'd on dissent 97 N.J. Super. 483, 493 (App. Div. 1967).

N.J.S.A. 18A:28-5 governs the requirements for tenure. It provides in pertinent part:

[t]he services of all teaching staff members employed . . . in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

- (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or
- (2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (3) The equivalent of more than three academic years within a period of any four consecutive academic years.

Section (c) of the above statute provides that “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 and nothing herein shall limit or restrict tenure rights

which were or may have been acquired pursuant to N.J.S.A. 18A:28–6⁴ in a position in which the individual actually served.”

N.J.S.A. 18A:26-2 provides that teaching staff members shall hold a “valid certificate to teach, administer, direct or supervise the teaching, instruction, or educational guidance of, or to render or administer, direct or supervise the rendering of nursing service to, pupils in such public schools and of such other certificate, if any, as may be required by law.” N.J.A.C. 6A:9B-5.3 provides for three categories of educational certificates: instructional, administrative, and educational services. The regulations enumerate endorsements under each certificate and identify the categories of positions for which each endorsement is required. The endorsements under the administrative certificate are school administrator, principal, supervisor and school business administrator. N.J.A.C. 6A:9B-12.3.

New Jersey’s courts and the State Board of Education have addressed tenure rights in the context of administrative and supervisory positions that are not enumerated in N.J.S.A. 18A:28-5. “Tenure is achieved in either one of the positions specifically designated N.J.S.A. 18A:28-5, which are separately tenurable, or in ‘positions which require them to hold appropriate certificates.’” Perri v. Bd. of Educ. of the Twp. of Belleville, Essex County, 2008 N.J. AGEN LEXIS 380, *15, modified, Comm. of Education, 2008 N.J. AGEN LEXIS 1016 (September 10, 2008)(quoting Duva v. State Operated School District of the City of Jersey City, 2002 N.J. AGEN LEXIS 1373 (State Board of Education) (March 6, 2002)).

In Duva v. State Operated School District of the City of Jersey City, the petitioner held a director position, which required an administrative certificate with an endorsement as either a principal or supervisor. When his director position was abolished, he argued that “by virtue of his service of the position title of ‘director’ he had acquired tenure rights

⁴ Concerning tenure upon transfer or promotion with consent of the employee.

entitling him to employment as a supervisor over any individuals who had not achieved tenure.” 2002 N.J. AGEN LEXIS 1373 at *3. The State Board of Education found, “Since neither ‘supervisor’ nor ‘director’ are among the positions enumerated in N.J.S.A. 18A:28-5, the scope of petitioner’s tenure protection under his Administrative Certificate extended to all assignments for which he was qualified by virtue of possessing a supervisor’s endorsement. Hence, upon abolishment of his director’s assignment, the petitioner was entitled to be employed in assignments requiring a supervisor’s endorsement in preference to any non-tenured individuals.” Id. at *28.⁵ See also Nelson v. Bd. of Educ., 148 N.J. 358 (1997)(addressing the Legislature’s intention to distinguish specifically enumerated position categories from those not listed with respect of the application of tenure rights).

In Galbraith v. Bd. of Educ. of the Lenape Regional High School District, Burlington County, 96 N.J.A.R.2d (EDU) 396, 1996 N.J. AGEN LEXIS 91 (Final Agency Decision January 12, 1996), a tenured supervisor who was subject to a reduction in force (RIF) claimed she should have been assigned to another supervisor position to which a non-tenured supervisor was appointed. The Commissioner of the Department of Education agreed that the tenured supervisor was entitled to the other supervisory position. He wrote:

The law is well settled that a supervisor endorsement is generic and authorizes the holder to supervise any subject matter and any grade level. . . . Moreover, while there is nothing to prevent a local board from establishing additional instructional certification requirements, absent a showing that instructional certification is necessary to perform the duties of the position at issue, such requirements cannot sidestep the educator’s tenure rights on a preferred eligibility list of supervisors. [Id. at *54-55.]

⁵ In so holding, the State Board of Education observed that, when N.J.S.A. 18A:28-5 was amended to require service in specifically-enumerated positions, it initially included director and supervisor positions in the amendment. However, these positions were deleted before the amendment was adopted, underscoring the Legislature’s intention to not apply the service requirement to these positions. Id. at *16, fn.3.

See also Annechino v. Board of Education of the Township of Irvington, Essex County, OAL Dkt. No. EDU 13415-12, adopted, Comm. of Education, 2014 N.J. AGEN LEXIS 173 (seniority analysis is inapplicable when tenured employee replaced by non-tenured employee after RIF; tenured employee had greater right to supervisory position than non-tenured positions); Herbert v. Board of Education of the Township of Middletown, Monmouth County, 1990 S.L.D. 1759 (State Board of Education July 25, 1989), A-318-90T1 (App. Div. Unpub. May 22, 1991); Rogers v. Board of Education of Highland Park, Middlesex County, OAL Dkt. No. Edu 5850-89, aff'd, State Board 1990 S.L.D. 691 (May 10, 1990)(“having achieved tenure in the separately tenurable position of ‘supervisor,’ petitioner was entitled to tenure protection following a reduction in force in any supervisory assignment for which he was qualified by virtue of his certification as against individuals with no tenure as supervisors”).

Here, petitioner seeks appointment to the position of director of special services. She contends that, having obtained tenure in the position of director within the respondent District, she should have been reassigned to the newly available director position when her prior director-level position was eliminated. I previously ordered that petitioner’s tenure protection extends to other director-level positions, notwithstanding the absence of prior service in those positions. This order will not be revisited here.

Despite this determination, respondent contends that petitioner is ineligible for the position because she does not possess an adequate knowledge of special education law and practice. The evidence in the record suggests that she does not possess the degree of substantive knowledge that a person who has worked in the area on a full-time basis may have. However, a specific degree of experience and substantive knowledge is not a job requirement and respondent has not demonstrated that a prerequisite of this sort is necessary. Nonetheless, petitioner has demonstrated that she has experience in the special education area, which she obtained while serving as an administrator and principal.

It is noteworthy that the job description for director of special services highlights the importance of administrative and supervisory experience, given the requirement of a certificate in at least one of these areas. In Dennery, the Court discussed the significance of an administrator certificate. It explained that certificates “represent distinct and separate areas spanning the entire field of public education, and the different certificates relate to discrete and distinctive categories of functions, duties, and responsibilities of educators.” 131 N.J. 626, 637. “The endorsements listed under the administrative certificate . . . relate to the administration or supervision of a school and its staff. Such endorsements include positions such as principal, superintendent and school administrator.” Ibid.

Here, the District requires an administrator or principal certificate and not demonstration of experience in special education. It is thus reasonable to conclude that the District determined that the position requires and demands broad supervisory or administrative experience, and that it prioritized this over a specific area of expertise. It is undisputed that petitioner has ample experience as an administrator and principal and that her performance in these capacities was reviewed quite favorably.

For the foregoing reasons, I **CONCLUDE** that petitioner has established by a preponderance of the credible evidence that she satisfies each of the eligibility prerequisites for the director of special services position. She has also demonstrated that she has a degree of experience with special education as an administrator or supervisor, which is not a mandatory requirement for eligibility. Therefore, I **CONCLUDE** that petitioner’s tenure entitled her to appointment to the director of special services position over the non-tenured appointee.

ORDER

For the foregoing reasons, I **ORDER** that petitioner be placed into the position of Director of Special Services immediately with all salary, benefits and other emoluments

to which she is entitled, retroactive to the date the current director of special services was appointed.⁶

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

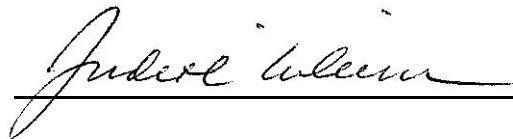
This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five 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.

⁶ On April 8, 2022, after the record was closed, petitioner advised that respondent failed to pay her dues for membership in the New Jersey Association of School Administrators. In response, respondent reiterated that it did not reduce or change petitioner's compensation and benefits when she was placed in the principal position and it advised that it pays her dues for the professional association for which she is currently eligible, the New Jersey Principals and Supervisors Association. This issue was not addressed during the hearing and was raised after the initial decision was drafted. As this appears to be a matter that the parties can address and resolve as they evaluate the retroactive compensation and benefits to which petitioner is entitled, it is not necessary to reopen the record to address it.

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.

May 4, 2022 _____

DATE

 _____

JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

mph

APPENDIX

Witnesses

For petitioner

Teresa-Anne Lucas

For respondent

None

List of Exhibits

For petitioner

- P-1 Supervisor Standard Certificate
- P-2 Teacher of Psychology Standard Certificate
- P-3 Principal/Supervisor Certificate of Eligibility, Standard Certificate
- P-4 2014-2015 Evaluation
- P-5 Training Certificate of Completion
- P-6 Principal residency Program Evaluation Form
- P-7 Executive and Middle Management Level Evaluation Form

For respondent

- R-1 Petition
- R-2 Answer
- R-3 Joint Stipulation of Facts from Motion for Summary Decision
- R-4 Assistant Principal Job Description
- R-5 Principal Job Description
- R-6 Director of Special Projects Job Description
- R-7 Assistant Superintendent – Chief of Schools Job Description
- R-8 Director of Early Childhood Education Job Description

- R-9 Resume of current Director of Special Services
- R-10 Director of Special Services Job Description
- R-11 Petitioner's curriculum vitae
- R-12 Petitioner's responses to discovery requests
- R-13 Respondent's responses to discovery requests