

## New Jersey Commissioner of Education

## Final Decision

Board of Education of the Township of Pennsauken,  
Camden County,

Petitioner,

v.

Lovell Pugh-Bassett, Executive County Superintendent,  
Camden County Office of Education, Camden County,

Respondent,

And

Board of Education of the Township of Pennsauken,  
Camden County,

Petitioner,

v.

Peggy Nicolosi, Interim Executive County Superintendent,  
New Jersey Department of Education.

## Synopsis

In these consolidated matters, the Board of Education of the Township of Pennsauken (Board) appealed the determinations of the respondents, Lovell Pugh-Bassett, Executive County Superintendent (ECS), and Peggy Nicolosi, Interim ECS, to disapprove certain merit goals submitted by the Board's superintendent, Ronnie Tarchichi, and the payments related thereto, for the 2017-18 and 2018-19 school years.

The ALJ found, *inter alia*, that: two of the disapproved goals for the 2017-18 school year should have been approved, and that the ECS's denial of payment was arbitrary, capricious and unreasonable; for the 2018-19 school year, the proposed merit goals should have been approved; and the ECS was unreasonable in failing to reply to Tarchichi's refusal to further revise his goals. The ALJ ordered that Tarchichi be authorized to provide documentation of completion of 2018-19 goals to the Board for approval of payment and to the ECS for confirmation of payment.

Upon review, the Commissioner rejected the Initial Decision, finding, *inter alia*, that: the ALJ applied the wrong standard of review; the appropriate standard is whether the ECS decisions were consistent with applicable statutes and regulations; based on the appropriate standard of review, the Commissioner disapproved Goals A and E for 2017-18, and Goals A and B for 2018-19; Goals C, D, and E for 2018-19 were approved; Tarchichi may submit documentation of completed goals to the Board for review; and the Board may submit any approved payments to the appropriate ECS for review pursuant to *N.J.A.C. 6A:23A-3.1(e)(11)(iv)*.

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.

**New Jersey Commissioner of Education**

**Final Decision**

Board of Education of the Township of  
Pennsauken, Camden County,

Petitioner,

v.

Dr. Lovell Pugh-Bassett, Executive County  
Superintendent, Camden County Office of  
Education, Camden County,

Respondent,

And

Board of Education of the Township of  
Pennsauken, Camden County,

Petitioner,

v.

Peggy Nicolosi, Interim Executive County  
Superintendent, New Jersey Department of  
Education,

Respondent.

The record of these consolidated matters and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the respondents in accordance with *N.J.A.C. 1:1-18.4*, and the petitioner Pennsauken Board of Education's (Board) reply thereto.

These matters involve the superintendent merit goals for the Board's Superintendent of Schools, Ronnie Tarchichi, for two school years: 2017-18 and 2018-19. In the 2017-18 school year, Tarchichi submitted five proposed merit bonus goals to Lovell Pugh-Bassett, the Executive County Superintendent (ECS) for Camden County, for review and approval. Pugh-Bassett approved four of the proposed goals, but disapproved the fifth proposed goal, Goal E. At the end of the 2017-18 school year, the Board approved payment of a merit bonus to Tarchichi for completion of the four merit goals and sought Pugh-Bassett's approval in order to issue payment. Pugh-Bassett approved payment for three of the four goals, but denied payment for Goal A. The Board paid Tarchichi for the three goals approved by Pugh-Bassett.

Tarchichi then submitted proposed merit goals to Pugh-Bassett for the 2018-19 school year. Pugh-Bassett requested revisions to those goals and communicated back and forth with Tarchichi regarding her request, as well as additional requested revisions. On December 17, 2018, the Board filed a petition of appeal with the Commissioner challenging the disapproval of Goal E and the denial of payment for Goal A in the 2017-18 school year. The following day, the review of Tarchichi's proposed merit goals for the 2018-19 school year was reassigned to Peggy Nicolosi, the Interim ECS for Salem County. Nicolosi requested new revisions and began exchanging emails with Tarchichi regarding her requested changes. Ultimately, Tarchichi informed her that he was unwilling to revise his merit goals any further. The Board then filed a second petition of appeal seeking approval of Tarchichi's five proposed merit goals for the 2018-19 school year.

Following a hearing on the merits, the Administrative Law Judge (ALJ) found that for the 2017-18 school year, payment for Goal A should have been granted and that the denial of

payment by Pugh-Bassett was arbitrary, capricious and unreasonable. The ALJ also concluded that Goal E should have been approved for Tarchichi to complete during the 2017-18 school year and that Pugh-Bassett was unreasonable in failing to approve it. The ALJ found that since the requested relief – *i.e.*, approval of Goal E for the 2017-18 school year – is moot, the Board should be compensated for fees and costs to litigate this matter.<sup>1</sup>

For the 2018-19 school year, the ALJ concluded that the proposed merit goals should have been approved. Specifically, the ALJ found that Nicolosi was unreasonable in failing to reply to Tarchichi's refusal to further revise his proposed goals and failing to "pivot" and address each goal separately as the superintendent suggested rather than tiering the goals as Nicolosi requested. The ALJ ordered that, to the extent Tarchichi worked on the 2018-19 goals, he be authorized to provide documentation of the completion of the goals to the Board for approval of payment and to the ECS for confirmation of payment.

In their exceptions, ECSs Pugh-Bassett and Nicolosi argue that the Initial Decision should be rejected because the ALJ failed to show deference to both ECSs. The ECSs contend that Pugh-Bassett and Nicolosi provided detailed explanations for their positions on each of Tarchichi's goals, which cannot be considered arbitrary, capricious, or unreasonable.

With respect to the 2017-18 school year, the ECSs argue that Pugh-Bassett correctly denied payment for Goal A because Tarchichi did not satisfy the goal as written because he only worked with a subset of half of the eligible students rather than all eligible students as his proposed Goal A had stated. The ECSs indicate that Pugh-Bassett offered to pay half of the goal's monetary amount, but Tarchichi refused. The ECSs contend that Pugh-Bassett

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<sup>1</sup> The Commissioner finds that counsel fees are not permitted in this forum, nor are they warranted in this matter.

appropriately disapproved Goal E because it was not meritorious, as the proposed goal was already required by regulation. For the 2018-19 school year, the ECSs argue that Nicolosi was not unreasonable in disapproving the proposed goals because she was not satisfied with the evidence of completion for each goal. The ECSs maintain that the ALJ incorrectly relied on the fact that other ECSs approved similar proposed goals because the needs of each county are different; thus, what occurred between other ECSs and other superintendents regarding proposed merit goals is irrelevant. Accordingly, the ECSs urge the Commissioner to reject the Initial Decision.

In reply, the Board argues that the Initial Decision demonstrates that Tarchichi was treated unfairly compared to how other superintendents are treated. The Board further explains that the ALJ's credibility findings involving Pugh-Bassett – that she testified in a “stilted manner, using jargon and superfluous language,” that her communication style was “perceived as passively condescending,” and that her testimony was “not particularly persuasive” – demonstrated that she had an “ax to grind.” Additionally, the Board points out that there is no standardized method for how ECSs review merit goals, so the actions of the ECSs were arbitrary, capricious, and unreasonable.

At the outset, the Commissioner notes that the ALJ mistakenly applied an incorrect standard of review in this matter. When there is a challenge to a determination made by an office within the Department of Education, the Commissioner is not mandated to give deference to her staff, but instead determines if the finding was legally appropriate. *See, Board of Trustees of the Passaic County Elks Cerebral Palsy Center v. New Jersey Dept. of Educ., Office of Fiscal Accountability and Compliance*, Commissioner's Decision No. 334-14, dated

August 14, 2014 (finding that a decision of the Office of Fiscal Accountability and Compliance is not given deference by the Commissioner). Moreover, where the Department of Education has limited the scope of review of a subordinate office or division, it has done so by regulation, *i.e.* appeals filed under *N.J.A.C. 6A:4* challenging a decision of the State Board of Examiners revoking/suspending a certificate, or a decision of the School Ethics Commission.

In the Initial Decision, the ALJ mistakenly referenced *N.J.A.C. 6A:4-4.1(a)* and stated that an arbitrary, capricious and unreasonable standard of review applied to this case. The petition of appeal in this matter was filed in accordance with *N.J.A.C. 6A:3*, which consists of completely different regulatory provisions than *N.J.A.C. 6A:4*; these two Administrative Code sections should never be conflated. As such, this challenge to the actions of two ECSs is not entitled to the arbitrary, capricious or unreasonable standard of review that is afforded to appeals filed under *N.J.A.C. 6A:4*. Instead, the appropriate standard of review for ECS decisions is whether the decisions are consistent with the applicable statutory and regulatory provisions.

Upon review of the record and applying the appropriate standard of review, the Commissioner finds that the Initial Decision must be rejected. The Commissioner will provide an analysis of the legal sufficiency of each of the proposed merit goals below.

### **2017-18 Merit Bonus Goals**

#### **1. Goal A**

Proposed Goal A for the 2017-18 school year was written as follows:

In order to ensure effective science education for the high school's [English Language Learner] population, the superintendent will create additional writing instruction to assist with the vocabulary and grammar growth with our ELL students in science. The Superintendent will create a Pre-Test and Post-test that will measure student growth on writing strategies embedded

in student learning. Writing strategies will be created by the superintendent and administered by teachers. This will be supplemental instruction.

All supplemental instruction will be standards-specific and relevant to the pacing guide of the curriculum. 30% of ELL students will show an increase in score from the pre-test exam given initially to the last post-test given in the spring. Focus on 9<sup>th</sup> and 10<sup>th</sup> grade students.

[Joint 0009.]

Tarchichi's documentation of completion of the goal demonstrated that he used a sample of 20 ELL students from ninth and tenth grade, and all 20 students improved between the pre-test and post-test.

In denying payment for Goal A, Pugh-Bassett found that by focusing on a sample of 20 ELL students in the ninth and tenth grade – half of the 40 total ELL students in those grades – the superintendent did not satisfy the goal as written, which indicated that he would “focus on 9<sup>th</sup> and 10<sup>th</sup> grade students.” (Joint 0017). Additionally, Pugh-Bassett found that Tarchichi did not submit documentation that he had created “additional writing instruction to assist with vocabulary and grammar growth with ELL students in science,” nor did he demonstrate how multiple choice pre- and post-tests measured student growth in writing strategies. *Ibid.*

Tarchichi testified that he used a sample of 20 students instead of all 40 because “that’s just simply not how research works.” (1T48:17-18). He explained that “you’re supposed to take a sample of a population, not the entire population, and you also have to remember we’re dealing with ELL high school students that one, might not be able to participate in the study; two, don’t want to be in the health professions; three, simply [have] zero interest in participating in a study.” (1T48:18-24). Tarchichi further testified that the tests he created

were multiple choice and short answer, and the results of the test demonstrated the students' growth in "biological content knowledge." (1T51; 1T55:23). Tarchichi indicated in correspondence with Pugh-Bassett that the pre-test was entirely multiple choice to provide a gauge of the students' science content knowledge, and "the writing to learn strategies were the treatment (independent variable), so that was not measured in the original pretest as that would not be the point of the study." (Joint 2480).

The Commissioner finds that Tarchichi was not entitled to payment for Goal A for two reasons. First, the proposed goal states that Tarchichi would focus on 9<sup>th</sup> and 10<sup>th</sup> grade ELL students, not a sample of those students. The goal, as written, demonstrates that the 9<sup>th</sup> and 10<sup>th</sup> grade students were the intended sample, which is a smaller population than all of the ELL students in the entire school. If Tarchichi intended to work with an even smaller group of students, then he needed to make that clear when he was drafting the goal. Instead, his goal stated that he would work with the 9<sup>th</sup> and 10<sup>th</sup> grade ELL students, but he failed to do so. Second, the goal states that the superintendent would "create a Pre-Test and Post-Test that will measure student growth on writing strategies embedded in student learning." The pre-test was strictly multiple choice which does not qualify as a means to measure growth on writing strategies. The Commissioner acknowledges that the post-tests were a combination of multiple choice and short answer but notes that a pre-test that does not include any writing does not enable the ECS to accurately measure improvement in writing. The Commissioner also points out that Tarchichi testified that the test demonstrated the students' growth in "biological content knowledge," but according to the goal, the tests were to demonstrate student growth

on writing strategies. (1T55:23). Accordingly, the Commissioner finds that Goal A for the 2017-18 school year was not completed and the Board may not pay Tarchichi.<sup>2</sup>

## 2. Goal E

Proposed Goal E was submitted as follows:

The Superintendent will conduct and implement monthly training academy for new administrative staff about training and supervising staff, setting instructional objectives, developing academic programs, creating instructional resources for use in the classroom, and working to build a rapport with parents at Pennsauken Public Schools. The goal is to give additional support so they transition into more seasoned administrators. The group will meet for a minimum of 10 sessions during the 2017-2018 school year.

[Joint 0011.]

Pugh-Basset found that the goal was not “meritorious” because the existing mandatory requirements set forth in *N.J.A.C. 6A:9C-3.2* already require support of new school leaders through professional learning. *Ibid.* Pursuant to the regulation, professional development encompasses a “broad range of professional learning,” and Pugh-Bassett testified that a goal must go beyond the minimum requirements to be meritorious.

In support of his contention that Pugh-Bassett erred in disapproving Goal E, Tarchichi pointed to two instances wherein he had proposed nearly identical Merit Bonus goals which were approved. Tarchichi testified that in the 2019-20 school year (two years after the school year at issue here), he submitted a proposed goal for a monthly training academy to ECS Judith DeStefano, which was approved. (1T69:4-25)

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<sup>2</sup> There was some discussion between the parties about whether Tarchichi could be paid for half of the goal because he worked with half of the students. The Commissioner finds that would not be appropriate here as that was not the sole rationale for determining that Goal A was not completed.

Tarchichi also explained that in the 2015-16 school year, when he was the Superintendent at Woodlynne School District, Pugh-Bassett approved a similar goal for a monthly training academy for new teachers and educational staff. (1T70:23-71:12) According to Tarchichi, given that his nearly identical goals for similar workshops were approved by Pugh-Bassett in 2015-16 and DeStefano in 2019-20, Goal E should have been approved.

The Commissioner finds that *N.J.A.C. 6A:9C-3.2* already requires training of administrative staff; accordingly, the proposed Goal E cannot be approved. The regulation provides:

(b) Professional development shall encompass a broad range of professional learning that contributes to improved practice, including, but not limited to:

1. Participation in the work of established collaborative teams of teachers, school leaders, and other administrative, instructional, and educational services staff members who commit to working together to accomplish common goals and who are engaged in a continuous cycle of professional improvement focused on:
  - i. Evaluating student learning needs through ongoing review of data on student performance; and
  - ii. Defining a clear set of educator learning goals based on the rigorous analysis of data on student performance.

[*N.J.A.C. 6A:9C-3.2(b).*]

The professional development of school staff, including the training of administrative staff, is already contemplated by this regulation. The regulation requires districts to provide professional development that includes a broad range of professional learning, including collaboration in teams. Tarchichi may have the flexibility to train his staff in one-on-one sessions or in monthly training academies, but regardless of the format, professional

development is a requirement. Accordingly, a monthly training academy for administrative staff is not a meritorious goal.<sup>3</sup>

### **2018-19 Merit Bonus Goals<sup>4</sup>**

The final revised version of the proposed goals for the 2018-19 school year was submitted as follows:

#### **DESCRIPTION OF GOAL: A**

In order to ensure the students of Pennsauken Public Schools continue to receive further course and career choices in secondary education, the superintendent will continue to work to approve more academic courses that are considered dual credit course initiatives. The superintendent will identify articulation agreements and dual credit courses that benefit students at the advanced placement level, honors level, and college prep level.

#### **Superintendent's Role:**

- Continue to work with administration of Camden County College to generate dual credit options for students; currently the district has 20 approved courses from Camden County College.
- Continue to work with the administration of Rowan College of Burlington County to generate dual credit options for students; currently the district has 10 approved courses from RCBC.
- Begin to work with the administration of Rowan College of Gloucester County to generate dual credit options for students.
- Superintendent will meet with all eligible students in Pennsauken High School in two assemblies and go over the options of dual credit courses and introduce concepts such as senior year options with students.
- Separation of specific dual credit courses for AP students, Honors students and College Prep students.

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<sup>3</sup> The Commissioner recognizes that Tarchichi was approved for a similar training academy in the 2019-20 school year, but whether that goal should have been approved is not at issue in this matter. The Commissioner also notes that the requirement for a broad range of professional learning went into effect *after* Tarchichi was approved for a similar goal in the 2015-16 school year while working in the Woodlynne school district.

<sup>4</sup> When Tarchichi was reassigned to Nicolosi, he submitted proposed merit goals to her on December 19, 2018 (in a version that was dated December 17, 2018); he then submitted further revised versions of those goals on December 21, 2018 and January 2, 2019. In this decision, the Commissioner will review the January 2, 2019 version, as that is the final version submitted by Tarchichi before he declined to submit any further edits.

Evidence of Completion:

- Sign in sheets and dates for all meetings with College level administrators
- Generated list of all dual credit course offered in every post-secondary institution listed above
- Assembly Presentations offered in a PowerPoint Format for the students of Pennsauken Public Schools
- List of divided courses for AP students, Honors students, and College Prep students
- Creation and submission of all necessary documentation to Cumberland County College for an Articulation Agreements [sic] with dual credit courses for students
- Course descriptions for all current and approved courses
- Approval letters for all approved courses.

**DESCRIPTION OF GOAL: B**

In order to ensure the students of Pennsauken Public Schools continue to receive further career and technical education (CTE) choices in secondary education, the superintendent will continue to work to approve more CTE that are considered both dual credit course and non-dual credit initiatives. The superintendent will focus on the creation of courses linked to programs that have direct links to employment for students, apprenticeships for students and pathways to college.

Superintendent's Role:

- Continue to work with the administration of Camden County College to generate dual credit options linked to CTE courses at the post-secondary level. Currently the Automotive 1 course is currently [sic] our only dual credit CTE course.
- Meet with professionals in the CTE fields along with stakeholders in education (including teachers, administrators, and parents) in advisory board meetings to further enhance CTE program offerings. Examples include HVAC and Nursing programs.
- Superintendent will meet with all eligible students in Pennsauken High School in two assemblies and go over the options of CTE programs and introduce concepts such as apprenticeships and potential job placements after completion of the CTE program

- Begin to work with the administration of Atlantic County Community College to generate dual credit options for students in Culinary Arts CTE program

Evidence of Completion:

- Sign in sheets and dates for all meetings with College level administrators
- Sign in sheets for CTW advisory board meetings
- Generated list of all dual credit course offered in every post-secondary institution listed above
- Assembly Presentations offered in a PowerPoint Format for the students of Pennsauken Public Schools
- Creation of dual credit courses for Culinary Arts with Atlantic County Community College
- Course descriptions for all current and approved courses
- Approval letters for all approved CTE programs.

**DESCRIPTION OF GOAL: C**

The Superintendent will further impact college and career readiness though [sic] the offering of SAT prep (5 sessions) to students of Pennsauken High School. Pennsauken High School students, especially student athletes that wish to become collegiate athletes, need to show growth in their SAT scores. This goal will target student athletes and non-student athletes; it will open to all students if they choose to partake.

- Create a statistical analysis of the SAT scores of 11<sup>th</sup> grade students and differentiate data by subgroups
- Create a statistical analysis of the SAT scores of 12<sup>th</sup> grade students and differentiate data by subgroups
- Offer students that score red [sic] below a 900 on the SAT, Saturday SAT tutoring sessions taught by the superintendent and other designated instructors
- Hold Town Hall Meetings for Parents and Community Members discussing the importance of preparation of SAT prep for students in addition to SAT importance in NCAA athletic eligibility
- Hold 2 student town hall meetings for the 11<sup>th</sup> grade class discussing the importance of SAT scores in college scholarship and NCAA athletic eligibility; all student athletes and non-student athletes will be invited to the assembly.

#### Evidence of Completion

Data analysis of SAT scores of 11<sup>th</sup> grade students by subgroups

- Sign in sheets of 11<sup>th</sup> grade students that participate in Saturday SAT tutoring sessions
- Sign in sheets of 12<sup>th</sup> grade students that participate in Saturday SAT tutoring sessions
- Town Hall sign in sheets for parents and community members
- Presentations of student town hall meetings
- SAT Reading and Math growth goal of a 5-10% increase in student scores
- Board minutes, lesson plans, and a NJ School Performance Report

#### **DESCRIPTION OF GOAL: D**

To address the need of more Emergency Medical Technicians (EMTs) needed in the State of New Jersey and the desire of the New Jersey Department of Education for more EMT programs within secondary settings, Pennsauken Public Schools is looking to create an EMT program in our Career and Technical Education (CTE) division of Pennsauken High School.

#### Superintendent's Role:

- Meet with professionals in the EMT field in Pennsauken Township along with stakeholders in education (including teachers, administrators, and parents) in advisory board meetings to further enhance CTE program offerings.
- Recruit a teacher to facilitate the program with the high [sic] and educate students in the EMT CTE program.
- Superintendent will meet with interested students and discuss the launch of an EMT program in [sic] and introduce concepts such as apprenticeships and potential job placements after completion of the EMT program.

#### Evidence of Completion:

- Sign in sheets and dates for all EMT advisory board meetings
- Creation and submission of all necessary documentation to the NJDOE for an EMT program for students
- Board Approval of EMT program in Pennsauken High School
- Board Approval of EMT Teacher in Pennsauken High School
- Renovation of High School Facilities layout to include an EMT classroom.
- Course descriptions for the EMT courses provided at Pennsauken High School

- Approval letter for the EMT program for the NJDOE
- Completed EMT classroom by 9-1-2019

#### **DESCRIPTION OF GOAL: E**

To address climate and culture issues in Pennsauken High School, the superintendent will conduct and implement a climate club for teachers, parents, stakeholders and students. The goal is to give additional support to the culture of Pennsauken Public Schools regardless of age, race, disability, ethnic origin, sex, and gender in order to promote respect for other people and treat everyone fairly. Additionally, the superintendent will hold 3 book readings to address the importance of global issues. The goal is to enlighten students about national and global issues facing an international civilization. The books that are being used are “The hate you give [sic],” “A Land of Permanent Goodbyes,” and a [sic] “The Girl with Seven Names: A North Korean Defector’s Story.” This is an afterschool club open to all interested students in the high school. There are global current event issues that are continuous topics of conversations in courses with our high school student body [sic].

The three topics that will be discussed in the high school book club’s presentations will be:

- Issues of racism and violence
- Middle Eastern Conflict and religious underpinnings
- North Korean Conflict, nuclear weapons and the United States of America

#### **Evidence of Completion:**

- Facilitate the discussions and presentations of the topics
- Climate & Culture Club Agendas and Sign in Sheets (8 meetings)
- Facilitate guest speakers for all book club discussions
- Board Minutes to outline the steps needed to improve the climate and culture of Pennsauken Public Schools

[Joint 592-596.]<sup>5</sup>

Nicolosi did not approve these superintendent merit goals because she was not satisfied with the evidence of completion outlined therein, which she testified is important because the

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<sup>5</sup> The Commissioner notes that Tarchichi submitted a goal involving chronic absenteeism to Pugh-Bassett at the beginning of review process. Such goal will not be considered here because it was replaced with another goal.

evidence of completion is what avoids issues when it comes time for payment to the superintendent based on achievement of the goals. (3T28:24-29:3). Additionally, Nicolosi wanted to combine Goals B (CTE) and D (EMT) into one tiered goal because they were very similar in their relation to career readiness classes. (Joint 580-81). Originally, Nicolosi suggested combining Goal A (college prep) as well, but ultimately agreed that it could stand alone. (Joint 532; 580-81). Tarchichi did not agree that the goals should be tiered as it would be too extensive for one merit goal. (Joint 545; 585).

With respect to those three goals, Nicolosi thought Tarchichi needed to provide meeting minutes to show board approval for the dual credit courses and a video tape of his presentations to demonstrate his involvement. (Joint 581). He refused both, arguing that he was not comfortable with a video tape, and that meeting minutes should not be required for a quantitative goal. (Joint 545). Nicolosi offered to consider alternative evidence to videotaping but Tarchichi did not propose one. (Joint 598).

Additionally, Nicolosi needed a finite measurement as to the number of courses he would be attempting to add or a percentage increase in the number of courses, such as 25%. (Joint 580). Tarchichi argued that a 25% increase was too much to guarantee and that he could not guarantee a percentage increase at all because the community colleges may place limitations on the dual credit courses. (Joint 548). Nicolosi asked for evidence of those limitations or some alternative means to measure the goals, which were not provided. (Joint 598; 599).

With respect to Goal C (SAT prep), Nicolosi proposed that the goal should also include ACT preparation, because according to the New Jersey School Performance Report, students in

the district – predominantly minority students – take the ACT. (Joint 542; 581; 598). Tarchichi refused, and argued that he only wanted to focus on one test and that it is “illogical” to expand the goal given that it was already January, and most students take the SAT. (Joint 585). Nicolosi also suggested that he should demonstrate a 25% increase in test scores. (Joint 542). Tarchichi argued that 25% was too high and proposed a 5-10% increase. (Joint 549). Nicolosi indicated that she was willing to compromise at a 15% increase based on the New Jersey School Performance Report, because a 15% increase would bring students closer to the state average. (Joint 581). Tarchichi refused and kept the proposed goal at a 5-10% increase. (Joint 585; 594). Finally, Nicolosi required that Tarchichi video tape his town hall meetings, but Tarchichi argued that while he would be willing to submit sign in sheets, he would be unwilling to videotape himself due to risks of the tape being placed online. (Joint 545). Nicolosi asked what alternative he could provide to videotaping because sign in sheets were not sufficient evidence of his role in the accomplishment of the goal. (Joint 599).

Finally, with respect to Goal E (culture book club), Nicolosi suggested separating the meetings between students, community members, and teachers, rather than having combined meetings. (Joint 544). Tarchichi argued that he wanted students to interact with stakeholders and therefore, they should attend meetings together. (Joint 586). Nicolosi asked for documentation on how many students, community members and teachers attended the December meeting in order to better assess how to achieve the goal, but the documentation was not provided. (Joint 599). She also suggested moving the location of the meeting into the community and closer to homes. *Ibid.*

The Commissioner finds that proposed Goals A and B were appropriately disapproved because the description of the goals and evidence of completion did not provide a means for measuring these quantitative goals. A quantitative goal needs to be measurable, and the proposed goals indicated that the superintendent would “continue to work to” approve dual credit initiatives in both college prep and vocational classes. As written, it is unclear what would be accomplished in the 2018-19 school year, such as how many courses would be approved. Nicolosi proposed a percentage increase in the number of classes, but when Tarchichi indicated that a percentage would not be possible, Nicolosi asked for an alternative means to measure the goals, which was not provided. While a percentage may not be the only way to measure completion of these quantitative goals, the goals as written do not contain a sufficient finite measurement of completion.

While Nicolosi sought to combine Goal D (EMT) with Goal B (CTE) as a quantitative goal, the Commissioner notes that Goal D (EMT) is currently submitted as a qualitative goal. The Commissioner finds that this goal, as written, may be approved. The creation of an EMT program at Pennsauken High School is substantially different from creating dual credit opportunities with local colleges, so while Nicolosi suggested that the goals be combined, the Commissioner finds that disagreement with such suggestion is not sufficient to disapprove the goal.

With respect to Goal C (SAT prep), the Commissioner finds that the quantitative goal may be approved. While including ACT prep as well – as Nicolosi had suggested – would have enhanced this goal, Goal C can still be considered meritorious without it. Additionally, while Nicolosi’s proposed 25% increase was reasonable because it would bring the district’s scores up

to the State average, the smaller percentage proposed by Tarchichi would also demonstrate a significant increase in student SAT performance.

Finally, as to Goal E (culture book club), the Commissioner finds that the qualitative goal may be approved. Nicolosi's suggestions regarding separating the meetings and moving the location closer to homes in the community were just that, suggestions to improve the goal during the review process. Disagreement as to the location and whether to combine the meetings did not render the proposed goal non-meritorious.

Accordingly, the Initial Decision of the OAL is rejected. For the 2017-18 school year, Goal A is disapproved for payment, and proposed Goal E is disapproved. For the 2018-19 school year, proposed Goals A and B are disapproved, and proposed Goals C, D, and E are approved. To the extent that Tarchichi completed any of the now-approved goals during the 2018-19 school year, Tarchichi may submit documentation to the Board for review as to payment. Should the Board approve payment for any of the goals, the Board may submit them to the currently-assigned ECS for review in accordance with *N.J.A.C. 6A:23A-3.1(e)(11)(iv)*.

IT IS SO ORDERED.<sup>6</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 12, 2023

Date of Mailing: January 13, 2023

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<sup>6</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**

**TOWNSHIP OF PENNSAUKEN  
BOARD OF EDUCATION,**

Petitioner,

v.

**DR. LOVELL PUGH-BASSETT, EXECUTIVE  
COUNTY SUPERINTENDENT, CAMDEN  
COUNTY OFFICE OF EDUCATION, CAMDEN  
COUNTY,**

Respondent,

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**TOWNSHIP OF PENNSAUKEN  
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COUNTY SUPERINTENDENT, NEW JERSEY  
DEPARTMENT OF EDUCATION,**

Respondent.

OAL DKT. NO. EDU 02392-19

AGENCY DKT. NO. 304-12/18

OAL DKT. NO. EDU 05255-19

AGENCY DKT. NO. 36-2/19

**CONSOLIDATED**

**William C. Morlok**, Esquire, for petitioner (Parker McCay, P.A., attorneys)

**Sydney Finkelstein**, Deputy Attorney General, for respondents (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: April 18, 2022

Decided: October 17, 2022

BEFORE **ELAINE B. FRICK**, ALJ:

### **STATEMENT OF THE CASE**

Petitioner, Township of Pennsauken Board of Education (Pennsauken BOE), seeks approval of a proposed merit goal from the 2017–2018 school year, to be completed by its Superintendent, Ronnie Tarchichi (Tarchichi), which proposed goal was not approved by respondent, Lovell Pugh-Bassett (Pugh-Bassett), Executive County Superintendent (ECS), Camden County Office of Education. The Pennsauken BOE also seeks approval for the payment of a 2017–2018 merit goal which the Pennsauken BOE approved as having been completed by Tarchichi, which was not approved for payment by Pugh-Bassett. The Pennsauken BOE further seeks approval of Tarchichi’s proposed merit goals for the 2018–2019 school year, which were not approved either by Pugh-Bassett or by Peggy Nicolosi (Nicolosi), Interim ECS, Salem County Office of Education. Respondents oppose the relief requested.

### **PROCEDURAL HISTORY**

Pennsauken BOE’s appeal regarding Pugh-Bassett’s disapproval of a proposed merit goal by Tarchichi for the 2017–2018 school year, and Pugh-Bassett’s disapproval of payment of a merit goal for Tarchichi for the 2017–2018 school year, was transmitted by the New Jersey Department of Education (DOE) to the Office of Administrative Law (OAL), where it was filed on February 15, 2019, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and 14F-1 to 14F-13. The Pennsauken BOE’s appeal regarding Nicolosi having not approved Tarchichi’s proposed 2018–2019 merit bonus goals was transmitted to the OAL, where it was filed on April 17, 2019, to be heard as a contested

matter. N.J.S.A. 52:14B-1 to 14B-15 and 14F-1 to 14F-13. The matters were consolidated, at the joint request of counsel, by Order of Consolidation entered on May 9, 2019.

Multiple prehearing telephonic conferences were conducted with counsel regarding discovery and scheduling issues. Hearing dates were set and adjourned due to a change in the Deputy Attorney General (DAG) handling the matter; discovery issues; settlement conferences; and the COVID-19 pandemic and executive orders entered, beginning in March 2020, by the Governor of the State of New Jersey, which impacted the normal operations of the OAL, including the suspension of in-person proceedings.

On May 10, 2020, respondents filed a motion to dismiss regarding the Nicolosi appeal, asserting that the matter was not ripe. Disposition of the motion was held in abeyance while the parties engaged in settlement discussions. Oral argument on the motion was heard via Zoom audio/video remote technology on November 4, 2020. An Order denying the motion was entered on November 10, 2020. The order included a conclusion that Nicolosi's request for additional revisions to the proposed merit goals for 2018–2019, and Nicolosi's failure to issue an approval of the goals in response to Tarchichi's communication that he would not do further revisions of the goals, constituted de facto disapproval of the proposed goals.

On October 9, 2020, Pennsauken BOE filed a motion to compel discovery. Oral argument on the motion was heard via Zoom on November 4, 2020. An Order was entered on November 10, 2020, granting the motion, thereby requiring respondents to provide unredacted copies of documentation it produced in discovery.

The hearing was conducted via Zoom, due to the continued suspension of in-person proceedings at the OAL because of the COVID-19 pandemic. The hearing was held on October 20, 2021; October 27, 2021; and October 28, 2021. The record remained open for the submission of written summations. Extensions for the submission of written summations were granted. The record closed on April 18, 2022. Orders granting extensions for the completion of this decision were entered.

### **FACTUAL DISCUSSION AND FINDINGS**

Based upon the testimony and documentary evidence presented during the proceedings, certain facts are undisputed, and I thus **FIND** as **FACTS** the following:

Tarchichi is the Superintendent of Schools for the Pennsauken School District. Tarchichi drafted proposed merit bonus goals for the 2017–2018 school year. He forwarded the proposed goals to ECS Pugh-Bassett for her review and approval. Pugh-Bassett approved four of the proposed goals, and disapproved the fifth requested goal. (J-1 at 0009–0011.)

Tarchichi thereafter worked on the four approved merit goals and submitted a request for approval of completion and payment to be made by the Pennsauken BOE. The Pennsauken BOE approved payment for Tarchichi's four completed merit goals for the 2017–2018 school year. The Pennsauken BOE forwarded to Pugh-Bassett its approval of payment confirmation and Tarchichi's documentation of completion of the goals for her review and approval of payment to be issued. Pugh-Bassett approved payment for three of the completed merit goals and denied payment for goal A. (J-1 at 0015–0018.) The Pennsauken BOE paid Tarchichi for the three approved goals.

Pennsauken BOE submitted a petition to the DOE, dated December 14, 2018, objecting to the determinations made by Pugh-Bassett regarding the 2017–2018 merit bonus goals. (J-1.) The Pennsauken BOE seeks a finding that Pugh-Bassett acted arbitrarily and capriciously, and was otherwise unreasonable in failing to approve one of Tarchichi's proposed merit goals. (J-1.) The Pennsauken BOE further asserts that Pugh-Bassett acted arbitrarily and capriciously in failing to approve payment of goal A, which the Pennsauken BOE approved for payment. The Pennsauken BOE seeks equitable relief, including payment of its counsel fees and costs incurred for the petition.

Tarchichi submitted proposed merit bonus goals for the 2018–2019 school year to Pugh-Bassett for her review and approval. Pugh-Bassett requested revisions of the goals. Tarchichi sent revised proposed merit bonus goals to Pugh-Bassett. Further

revisions were requested by Pugh-Bassett. Tarchichi requested that another ECS review his proposed merit bonus goals. The request was initially denied.

Tarchichi was thereafter directed to submit his 2018–2019 proposed merit bonus goals to Interim ECS Peggy Nicolosi (Nicolosi) of Salem County. Tarchichi provided same to Nicolosi, who asked for revisions. Tarchichi submitted another revised set of merit bonus goals to Nicolosi, who requested further revisions. Tarchichi responded to the request, and Nicolosi asserted she would not change her opinion as to the revisions she sought Tarchichi to make. Tarchichi was unwilling to further revise his merit bonus goals, and requested approval of same. Interim ECS Nicolosi did not respond with approval or disapproval. This was found to be de facto disapproval, by order entered on November 10, 2020.

Pennsauken BOE filed a second petition with the DOE, seeking relief from Nicolosi's failure to provide approval of the merit bonus goals submitted by Tarchichi for the 2018–2019 school year. (J-2.) Pennsauken BOE seeks a finding that Nicolosi's failure to approve Tarchichi's merit goals was arbitrary, capricious, and otherwise unreasonable; and that all five proposed merit bonus goals submitted by the Pennsauken BOE be approved immediately or, in the alternative, directing that the ECS of Burlington County be assigned to review and approve the proposed merit bonus goals for the 2018–2019 school year. The Pennsauken BOE further seeks equitable relief, including reimbursement of counsel fees and costs incurred for the petition. (J-2 at 5–6.)

### **Testimony**

**Ronnie Tarchichi** testified on behalf of Pennsauken BOE. He holds six master's degrees. He also holds two doctorates, in the areas of Educational Leadership and Special Education.

He began his employment as Superintendent of Pennsauken schools on July 1, 2016. He is the chief administrator of the school district, overseeing a staff of approximately 1,000 individuals and a population of approximately 5,000 students. There are ten schools within the district, two of which are high schools. There are multiple

vocational programs in the district, through the Career Technical Vocational Education (CTVE, also referred to as CTE) program, ten of which he started, in addition to the district serving the collegiate bound students.

He explained that the State of New Jersey capped superintendent salaries in the 2017–2018 and 2018–2019 school years. Superintendents were permitted to seek to earn merit goals, which if achieved, would result in payment to the superintendent of a percentage of their contracted salary. Proposed merit bonus goals may be qualitative or quantitative goals, being a program or activity that a superintendent does above and beyond normal duties, which assists or benefits the district and students. Merit goals must be submitted for review and approval to the Executive County Superintendent (ECS). That is generally done from August through October at the start of the school year. If approved, the superintendent works on the goals during the school year.

The superintendent then must submit proof of completion of the goals to be approved for payment by the BOE. If approved by the BOE, the ECS then reviews the documentation and information submitted by the superintendent, and must determine whether to approve the completion and approval of payment for the goals, so that the BOE can issue payment to the superintendent.

Tarchichi indicated that he never saw any guidelines promulgated by the DOE for a superintendent to follow when formulating merit goals. He was not aware of any information or training from the DOE as to what merit goals should or should not include. He was unaware of any instructions or training provided by DOE to ECSs for their protocols to follow when reviewing merit goal requests or when approving or denying same. (J-3, J-5.) Most communication Tarchichi had when submitting proposed goals to the ECS for review and approval was through email and some phone calls.

#### 2017–2018 Merit Bonus Goals

Tarchichi submitted five proposed merit goals, identified as A through E, for the

2017–2018 school year, for review and approval by Camden County ECS Pugh-Bassett.<sup>1</sup> She did not approve the fifth goal, goal E, and he seeks approval for same through this litigation. (J-1 at 0011.)

Goal E was proposed as:

The Superintendent will conduct and implement [a] monthly training academy for new administrative staff about training and supervising staff, setting instructional objectives, developing academic programs, creating instructional resources for use in the classroom, and working to build a rapport with parents at Pennsauken Public Schools. The goal is to give additional support so they transition into more seasoned administrators. The group will meet for a minimum of 10 sessions during the 2017–2018 school year. (2.5%\\$4,187.50)

(J-1 at 0011.)

Tarchichi explained that the purpose of this goal was to conduct a monthly training academy for new administrative staff to give them something extra as they transitioned from being a teacher to an administrator. There was to be a minimum of ten sessions.

Pugh-Bassett did not approve this as a merit goal, asserting that the goal “*does not* meet the threshold of being ‘*meritorious*’ in relation to existing mandatory requirements for the support of new school leaders through professional learning as outlined at N.J.A.C. 6A:9C-3.2.” (J-1 at 0011, italics original.)

Tarchichi asserts the goal should have been approved. He was superintendent in the Woodlynne School District for 2015–2016. He submitted the proposed qualitative goal of implementing a monthly training academy for new teachers and educational staff, aiming to provide additional support as the staff transitioned to more seasoned educators. The goal was approved, and he submitted documentation to support completion of same to get approval for payment by ECS Pugh-Bassett. She approved payment of same,

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<sup>1</sup> The 2017–2018 merit goals were identified in the documentation as goals A through E. During testimony, and in some of the documentation, the goals were referred to by number, such as goal number 1 for goal A, goal number 2 for goal B, etc.

finding that the goals Tarchichi had submitted for the 2015–2016 school year had been completed satisfactorily. (P-19 at 2082.)

Tarchichi acknowledged that a superintendent's regular job duties include training their staff. He denied that providing a monthly training academy was part of his regular duties. The goal he proposed in 2017–2018 for the administrative training academy was submitted by him to another Interim ECS, Judy DeStefano, for the 2019–2020 school year. (P-18.) Interim ECS DeStefano approved the goal for Tarchichi for the 2019–2020 school year. (P-18 at 1768.)

Tarchichi contends that since Pugh-Bassett previously approved a similar goal for him in the 2015–2016 school year in a different district, and he was approved by another ECS for the 2019–2020 school year to work towards achieving the very same administrators training academy goal he submitted to Pugh-Bassett for 2017–2018, Pugh-Bassett should have approved goal #5 for him. Had she approved it, Tarchichi contends he could have worked to achieve it in 2017–2018 school year.

The four other proposed merit goals for the 2017–2018 school year were approved by Pugh-Bassett. (J-1 at 0009–0011.) Tarchichi asserts he completed all of those goals. The Pennsauken BOE approved payment for same during its meeting of July 17, 2018. (J-9 at 1094.) The Pennsauken BOE sought approval from Pugh-Bassett to issue payment to Tarchichi. ECS Pugh-Bassett approved payment for three of the four merit goals. (J-1 at 0015–0018.) She did not approve payment for goal #1. (J-1 at 0017–0018.)

The Pennsauken BOE issued payment to Tarchichi for three of the four goals as approved by Pugh-Bassett. Pennsauken BOE seeks to be permitted to issue payment to Tarchichi for the remaining goal #1, which Pugh-Bassett did not approve for payment. Tarchichi was to be paid 3.33% of his contract if he achieved goal #1, which calculated to be \$5,577.75. (J-1 at 0010.)

Pugh-Bassett denied approval of payment for goal #1, noting that the submission from Tarchichi to demonstrate achievement of the goal “*did* not satisfy the requirements

for approval and therefore *will not* be approved for payment[.]” (J-1 at 0017, italics original.) Goal #1 was stated as:

In order to ensure effective science education for the high school's ELL [English Language Learner] population, the superintendent will create additional writing instruction to assist with the vocabulary and grammar growth with our ELL students in science. The Superintendent will create a Pre-Test and Post-Test that will measure student growth on writing strategies embedded in student learning. Writing strategies will be created by the superintendent and administered by teachers. This will be supplemental instruction.

All supplemental instruction will be standards-specific and relevant to the pacing guide of the curriculum. 30% of ELL students will show an increase in score from the pre-test exam given initially to the last post-test given in the spring. Focus on 9<sup>th</sup> and 10<sup>th</sup> grade students.

(J-1 at 0017.)

Tarchichi explained that Pennsauken public schools have “a lot” of non-English speaking students. He wanted to take the ninth and tenth grade population of ELL students who had issues with the English language and offer them the possibility of entering the field of science, nursing, or health occupations. Many of those students expressed an interest in entering the healthcare field. Since a large part of the studies in that field require biological language writing, he sought to focus that first goal on assisting the ELL students and giving them a push towards health professions.

Tarchichi asserts that he achieved this goal and the Pennsauken BOE approved payment for same. Pugh-Bassett wrongfully denied payment of \$5,577.75 for this goal. Pugh-Bassett denied approval of payment, asserting that Tarchichi had focused on a sampling of the ELL students, that being twenty students, rather than the “focus on 9<sup>th</sup> and 10<sup>th</sup> grade students” as stated in the goal. (J-1 at 0017.) Pugh-Bassett indicated that there were forty students in that focus group. Tarchichi testified that as of 2018, there were approximately forty ELL students in the ninth and tenth grade population of Pennsauken high school.

Tarchichi contended that if all forty ELL students were sampled, that is simply not how research works. You are supposed to take a sample of the population, not the entire population. Plus, working with ELL students, some might not be able to participate in the study; some may not be interested in the health field; and others have no interest in participating in the study. He sampled twenty students from the ELL forty student population. Pugh-Bassett did not offer to approve payment for a portion of the goal. He did not interpret her letter indicating additional documentation needed to be provided, to mean that she would approve payment of a portion of the goal. (J-1.)

Pugh-Bassett also noted that Tarchichi did not provide documentation relative to the creation of additional writing instruction to assist with the vocabulary and grammar growth with ELL students in science, as outlined in goal #1. Pugh-Bassett indicated that the documentation provided did not show how the multiple choice pre- and post-testing measured student growth on writing strategies embedded in student learning, as outlined in goal #1. (J-1 at 0017.)

Tarchichi testified that he submitted to ECS Pugh-Bassett a great deal of documentation demonstrating that he completed goal #1. (J-9 at 1095–1138.) He submitted an outline of everything done for merit goal #1. (J-9 at 1137.) He submitted the post-test he created, with questions specific to the goal, to test the students' fundamental understanding of the basics of biological science and included writing to learn strategy, requiring the students to write answers to essay questions. (J-9 at 1096–1100.) He also created a genetics test that was used in the program. (J-9 at 1131.) He included agendas and sign-in sheets in the documentation submitted to Pugh-Bassett. (J-9 at 1102–1128.) Tarchichi explained that the agendas demonstrate writing strategies were discussed with staff members in the professional learning community specific to the ELL students. During a student assembly on February 9, 2018, Tarchichi addressed the high school ELL student sample of twenty students, talking about careers in the health profession, science field, and educational requirements, including the importance of writing in science. (J-9 at 1128.) The twenty students' pre-test and post-test scores were outlined in a table. (J-9 at 1138.) Tarchichi asserted this demonstrates the student growth in biological content knowledge. Every student listed on the chart had progressive increases in their post-testing scores compared to their pre-test score. (J-9 at 1138.)

Tarchichi explained that goal #1 was a quantitative goal. The students' testing scores demonstrated that the students grew quantitatively. He explained to Pugh-Bassett what writing strategies he implemented. (J-9 at 2480.) He believed he was not getting anywhere with Pugh-Bassett to approve payment of the goal. He proposed to Pugh-Bassett consideration of approving payment for half of the goal amount, that being \$2,788.87, since she questioned why he did not sample the entire population of forty ELL students in ninth and tenth grades. (R-8.) He noted in his email to her, "I never specified in my goals that I would be using the entire population of ELL." (R-8.) Tarchichi stated that during the course of this OAL proceeding, Pugh-Bassett has not offered to approve payment of goal #1.

#### 2018–2019 Merit Bonus Goals

For the 2018–2019 school year, Tarchichi submitted six merit goals to Pugh-Bassett for her review and approval. She did not approve same. She requested additional information and submissions from him. Tarchichi requested from the DOE that his merit goals be reviewed and approved by another ECS from Burlington County. Eventually, a representative from the DOE directed Tarchichi to submit his 2018–2019 requested merit goals to the Salem County Interim ECS Nicolosi. Upon review, Nicolosi requested additional revisions and additional information from Tarchichi. He advised her he was not going to revise his goals again. She never approved the goals. Pennsauken BOE seeks to have Tarchichi's 2018–2019 merit goals approved.

Tarchichi asserts that during the beginning of the school year of 2018–2019, he was trying to get his proposed merit goals approved by Pugh-Bassett so that he could work to accomplish them. He prepared a timeline outlining the dates and times of his efforts and the status of Pugh-Bassett's responses. (J-17 at 1726–1729.) He initially sent his proposed merit goals via email to Pugh-Bassett on September 14, 2018. (J-17 at 1726 and 1730.) Pugh-Bassett first responded on October 17, 2018, offering feedback, and noted that "none of the goals as proposed are approvable." (J-17 at 1732–1733.) The two engaged in back-and-forth email communications regarding suggested revisions and discussion attempts to set-up a meeting regarding revisions to the merit goals.

Tarchichi submitted revised goals for review and approval to Pugh-Bassett on November 15, 2018. (J-17 at 0431.) He submitted goals identified as goal A through goal E. (J-17 at 0432–0436.)

The revised 2018–2019 merit goals covered several topics. Goal A generally dealt with continuing to approve more academic courses considered dual credit course initiatives, benefiting students at the advanced placement level, honors level, and college prep level, to receive college credits for courses directly aligned to what they wanted to pursue in college. (J-7 at 0432.) Goal B focused on growing the Career Technical Education (CTE) programs, creating courses that would directly link the students to employment, apprenticeships, and pathways to college. (J-7 at 0433.) Goal C dealt with college and career readiness for students, focusing on offering an SAT prep course, particularly to student athletes who wished to become collegiate athletes. (J-7 at 0434.) Goal D was addressing the chronic absenteeism issue, including data analysis and to create town hall meetings and incentives for students to be in school more. (J-7 at 0435.) Goal E was the creation of a climate and culture club to address global issues and read relevant books and hear from speakers on the issues of racism and violence; middle eastern conflict and religious underpinnings; and the North Korean conflict that was a global issue at the time. (J-7 at 0436.) His goal was to make all students more globally conscious, and not just aimed at students of a specific culture or descent.

He received a reply from Pugh-Bassett on November 26, 2018, with multiple questions about the revised proposed merit goals. (J-17 at 1753.) They spoke on the phone, and she provided another list of questions and comments on November 27, 2018, mandating that his final responses had to be sent to her by November 30, 2018, to guarantee he would have time to execute the goals. (J-17 at 1756.) They exchanged further email communications. (J-17 at 1756–1760.) He did consider Pugh-Bassett's comments and implemented those remarks into his “beefed” up revised goals and forwarded them to her on November 30, 2018. (J-7 at 1761; J-17 at 0470–0474.)

Pugh-Bassett responded on December 10, 2018, with more comments and remarks about the revised goals. (J-17 at 1762–1767.) Tarchichi found her comments

to be unprofessional, giving him deadlines, yet she had no deadlines for her response to him to approve or disapprove the proposed goals. She made remarks about portions of the goals she had not addressed previously, one of which made a comment about chronic absenteeism being a statutory requirement and could not be a merit goal effective June 1, 2018. She never mentioned that during the first round of revisions she provided when she should have done so.

Tarchichi again revised the goals and submitted them to Pugh-Bassett on December 16, 2018. (J-7 at 0482–0489.) Goal A still focused on the dual credit courses for college prep and honors students. Goal B still focused on the development of additional programs for CTE students. Goal C still focused on the SAT preparation program. Goal D no longer dealt with chronic absenteeism, and instead focused on the need for more Emergency Medical Technicians (EMTs) in the State and to create an EMT program in the CTE division. (J-7 at 0488.) Goal E still focused on the culture and climate club.

In the meantime, Tarchichi had requested that another ECS review his proposed merit goals for 2018–2019. He had to initiate litigation against Pugh-Bassett regarding the prior year's 2017–2018 merit goals. He spoke to representatives at the DOE. He was advised that Interim ECS Nicolosi would review the 2018–2019 merit goals. He was uncomfortable with that choice since Pugh-Bassett had recommended that Nicolosi should take over the review and approval of his proposed goals. He was not aware of any information disseminating from the DOE to its ECSs as to how they were to apply and follow a consistent review method and provide consistent recommendations for proposed merit goals.

Tarchichi submitted his proposed merit goals for 2018–2019 to Interim ECS Nicolosi on December 19, 2018. (J-7 at 0573.) She responded the following day, having made changes such as combining all goals into three goals with tiers. (J-7 at 0572; 0539–05044.) He responded by email on December 20, 2018, and submitted another revised version of the proposed merit goals on December 21, 2018. (J-7 at 0545; 0571, 0580–0584; and 0575–0579.) Nicolosi responded on December 24, 2018, providing

commentary to each of the points Tarchichi had addressed in his December 20, 2018, email. (J-7 at 0580–0582.)

Tarchichi sent an email on January 2, 2019, to Nicolosi, outlining his responses to Nicolosi's previous comments, and provided his revised merit goals A through E. (J-7 at 0580; 0585–0591; 0592–0597.) He took issue with many of her comments and requests which went beyond what Pugh-Bassett had asked of him. For example, Nicolosi suggested that multiple goals be combined and then layered, or tiered, within the goal. He felt the situation was getting ridiculous and he was not willing to do certain things. She wanted him to combine an ACT prep course into the goal he proposed for SAT preparation. It just posed more hills to climb for him, which he felt he had been doing over the prior five months trying to get the initially proposed goals approved. He engaged in back-and-forth communications with Nicolosi. (J-7 at 0580–0586.)

Nicolosi responded on January 9, 2019, indicating in bold face type that they were both educators, professionals, and both wanted to see students succeed, and she wanted him to succeed in the accomplishment of his goals. (J-7 at 0597.) She noted that having reviewed his revised merit goals, it appeared that they were “at odds in the tiering or combination of goals and documentation” required to demonstrate accomplishment of goals. (J-7 at 0597.) She would not change her position on the combining and tiering of goals. She concluded that she anticipated his reply “will help bring closure to this process [of review and approval of merit goals.]” (J-7 at 0597.) Tarchichi found the response to be unprofessional and he stopped communicating with her. He believed Nicolosi's feedback and Pugh-Bassett's feedback contradicted one another. This demonstrated to him that there was no training given to ECSs as to how to proceed in reviewing and approving proposed merit goals.

Tarchichi asserted that there were other superintendents from other school districts who had proposed similar goals which were approved, while his were not approved by Pugh-Bassett and Nicolosi. (P-19.) As of February 7, 2013, Nicolosi approved goals for the Superintendent of Waterford Elementary School, including a goal to improve attendance, identified as a qualitative goal, when it should have been a quantitative goal. (P-19 at 1791.) He submitted a similar goal to Pugh-Bassett for 2018–

2019, to address chronic absenteeism. (J-7 at 443.) Pugh-Bassett did not approve it, and he eventually abandoned that goal, and replaced it with the goal to create the EMT program for the CTE curriculum. As of September 25, 2018, Nicolosi approved the Collingswood School District Superintendent's quantitative goal for the 2018–2019 school year regarding chronically absent students. (P-19 at 1807–1810.)

Nicolosi also approved a proposed goal by the Collingswood School District's Superintendent to expand the pre-school program for the 2018–2019 school year. (P-19 at 1808–1810.) Tarchichi asserted that the proposed goal was similar to the goals he proposed to expand the dual credit programs, to implement the EMT program, and to expand the HVAC and nursing CTE programs at Pennsauken. (J-7 at 0575–0576.)

Nicolosi approved the proposed goal by the Collingswood School District's Superintendent to ensure there was equity in education so that each child has an equal chance for success, requiring an understanding of the unique challenges and barriers faced by individual students or student populations to overcome barriers. (P-19 at 1809–1810.) Nicolosi approved payment for the completion of the goal. (P-19 at 1811–1814.) Tarchichi contends that he had a proposed goal which was similar, more detailed, and included bringing in community members as stakeholders, yet his goal was deemed not meritorious.

Nicolosi approved payment to be made to the Collingswood Superintendent for 2018–2019 completion of a goal to work with Rowan University to bolster and improve the quality of teaching candidates for the district. (P-19 at 1813–1814.) Tarchichi asserted this was similar to his proposed goal to partner with Rowan University to improve the district, regarding growth of courses for students for dual certification credits.

In 2015–2016, Tarchichi was superintendent in the Woodlynne School District. Pugh-Bassett approved completion and payment to be made to Tarchichi for accomplishment of merit bonus goals. (P-19 at 2080–2082.) One goal related to a three percent increase in proficiency in science. (P-19 at 2081.) In 2018–2019, one of his proposed goals for Pennsauken high school students was to improve the SAT test scores with an SAT preparation program. (J-7 at 577.) The evidence of completion for that goal

was to demonstrate a five to ten percent improvement in reading and mathematics, which was greater than that which he proposed in the 2015–2016 goal to improve science proficiency in his prior school district, which was approved by Pugh-Bassett in 2015.

Pugh-Bassett approved merit goals for the 2017–2018 school year for the Winslow School District Superintendent, including a goal to create a STEM robotics program, which was already part of its curriculum, but would be an additional program for the first-year students at their middle school. (P-19 at 1778.) The second approved goal for that District's superintendent was to create a computer science pilot program for thirty-five students. The other approved goal was to create a pilot computer program for gaming design. (P-19 at 1778–1781.) Tarchichi asserts that the merit goals he submitted for the 2018–2019 school year called for the creation of new programs and the expansion of existing programs, just as those Pugh-Bassett approved for the Winslow Superintendent in 2017–2018. He sought in goals A and B to expand dual credit and academic programs and his revised goal D was to implement a new EMT program.

In 2015, Pugh-Bassett approved proposed merit goals by the Barrington School District Superintendent. The first qualitative goal dealt with presentations in a town meeting to parents and community members to be made aware of current educational trends, changes, and incentives. (P-19 at 1823.) Tarchichi asserts this is similar to his proposed goal E for the 2018–2019 school year regarding the proposed cultural book club and involving community stakeholders, which was not approved by Pugh-Bassett or Nicolosi. The second goal approved by Pugh-Bassett for the Barrington Superintendent dealt with revising job descriptions and updating same, which Tarchichi indicated was merely an administrative task and was not meritorious. He did not find any comparison between that proposed and approved goal to his goals, particularly the goal regarding the creation and implementation of the EMT program. He took issue that Nicolosi asked him to combine proposed goals, which had been revised multiple times for Pugh-Bassett.

In 2016, Pugh-Bassett approved payment for the completion 2015–2016 merit goals for the Barrington School District Superintendent. (P-19 at 1828.) Those goals dealt with conducting research on the district's existing STEAM program, based upon science, technology, engineering, arts, and math, and expansion of same; and

spearheading professional development to increase the district's standardizing math testing benchmarks. The Barrington BOE approved payment of the goals. Pugh-Bassett noted in her letter that one goal was not fully documented, yet she did approve full payment as per the Board's decision. (P-19 at 1829.) Tarchichi compared this to his goal for the 2017–2018 school year regarding ELL students and the development of their language skills and writing for biological sciences careers. The Pennsauken BOE approved full payment for accomplishment of this goal. Pugh-Bassett did not approve payment and never offered that she would accept certain documentation in lieu of something else to affirm the goal was completed. She provided a warning or reminder to the Barrington Superintendent regarding documentation that would confirm completion of a goal, yet never provided that to Tarchichi.

Likewise, Pugh-Bassett never provided any suggestions regarding the EMT goal Tarchichi was trying to get approved for the 2018–2019 school year. Even though the goal was not approved by Pugh-Bassett, Tarchichi did roll out an EMT program that year and completed the goal, as set forth in his proposed goals.

In January 2018, Pugh-Bassett approved payment for the Barrington School District's Superintendent for accomplishment of 2016–2017 school year goals. (P-19 at 1838–1840.) One goal was the development of a multi-cultural club, similar to Tarchichi's proposed goal for a cultural club, except that his was for high school level students. Tarchichi asserted his responsibilities to accomplish the goal were more detailed than the Barrington Superintendent had achieved, and Tarchichi also proposed using three books dealing with current events and race issues. (P-19 at 1840.) Tarchichi asserted that his more detailed goal was not approved, with Pugh-Bassett indicating it was not meritorious.

As of June 2015, an Interim ECS from Camden approved payment for accomplished goals by the Bellmawr School District. One goal was that the superintendent would direct their staff members to design and create a data collection system to be used to track achievement in reading and math. (P-19 at 1857.) Tarchichi did not find this to be a qualitative goal. Another goal approved for the Bellmawr School District's Superintendent was to secure a referendum for funding and beginning an early childhood center. (P-19 at 1857.) Tarchichi has secured multi-million referendums and

has had new buildings created and new facilities renovated for security purposes. These tasks were part of his job as a superintendent and were not done as a merit goal.

As of June 7, 2018, Pugh-Bassett approved payment of merit goals for the Black Horse Pike Regional School District's Superintendent. (P-19 at 1863.) That superintendent's first merit goal was to grow a program in which the school had partnered with a finishing trades institute to train and support the growth of a skilled labor force in the area. The superintendent sought to increase the student participation fifty percent, from twenty-four students by adding twelve more students. (P-19 at 1863–1864.) Tarchichi asserted that his proposed goal to create the EMT program was similar to the Black Horse Pike Regional School District's Superintendent's goal which was approved for payment by Pugh-Bassett.

As of June 30, 2014, another Interim ECS had approved payment to the Collingswood School District's Superintendent for completion of a merit goal to increase the percentage of students taking the PSAT exam. (P-19 at 1919.) Tarchichi contended that the goal he submitted to both Pugh-Bassett and Nicolosi required a great deal more work in preparing the students to take the SAT, and not just increase the number of students taking the test.

As of March 2, 2017, Pugh-Bassett approved the Haddonfield School District's Superintendent's proposed goal to move the district from a STEM-based approach to a STEAM-based approach, and proposed establishing a school district task force comprised of community members and stakeholders to culminate in a report of recommendations the superintendent would then present to the Board of Education for implementation in the 2017–2018 school year. (P-19 at 1990.) Tarchichi contended his proposed goals were similar but much more detailed.

Nicolosi approved the Logan Township School District's Superintendent's proposed goals for 2016–2017, including a goal to strengthen communication with the district's parents and community members regarding the district's mission in the community. This would be measured by using social media venues and the business administrator meeting with township administrators to develop communication with the

governing bodies. (P-19 at 1994–1995.) Tarchichi asserted that communicating with folks in the community, as well as parents and students, was something that he did as part of his job. He did not see how the approved goal for the Logan Township Superintendent was a meritorious goal if it was proposing doing something that is part of the job of being a superintendent.

Another Interim ECS approved Winslow Township Superintendent's goal for the 2014–2015 school year to implement a STEM program at the middle school. (P-19 at 2050.) Pugh-Bassett approved compensation for the Winslow Superintendent for having completed 2015–2016 merit goals, including one goal with the aim to have students become more fully immersed in the new STEM program. (P-19 at 2052.) Another approved completed goal was to create and implement a journalism program in the middle school. (P-19 at 2052–2053.) Tarchichi affirmed that his proposed goals also offered to create and expand new programs at Pennsauken in 2018–2019, such as the EMT program, other CTE programs, and the dual credit programs.

Tarchichi agreed and disagreed that issues presented in one school district may not be the same in another district. He did agree that every school year can bring new and different needs to a district. He acknowledged that he was not present nor a part of any discussions or communications which may have occurred between other superintendents from other school districts during the merit goal process with Pugh-Bassett, Nicolosi, or any other ECS as he outlined. He did not work alongside any other superintendents while they completed their own merit goal processes. He did not have personal knowledge as to how the other superintendents' goals originated, regarding the other letters he pointed to demonstrating others' approvals. He was only aware of the final result as set forth in the letters for the other superintendents.

Tarchichi contends that he was not dealt with fairly in the process of the approval of proposed goals and approval for payment of completed goals for the 2017–2018 school year and for the approval of proposed goals for the 2018–2019 school year. There were many other superintendents who had proposed goals approved which were much less detailed than his proposed goals, or were goals that he did not see as meritorious as they involved tasks which were part of the job of being superintendent. There were other

superintendents who were approved to be paid for the completion of such goals. His goals were rejected. He was never offered a partial payment of goal #1 from the 2017–2018 school year. He was never advised that any of the goals and resubmissions of revised goals for the 2018–2019 school year were ever approved.

**Nicholas Perry** testified for petitioner. He is the Pennsauken BOE president. He has been a member of the BOE for five years, the last three of which he has served as president. He is a retired educator. He taught for thirty-six years in the Philadelphia public school district, in a blue-ribbon school.

When he became president of the Pennsauken BOE, the board decided there was a much needed change in the direction of their district. He realized a change was needed when 110 students of the graduating class of Pennsauken High School stood up at graduation to signify they were college bound. The other approximate 410 students who were graduating were receiving just a diploma without having other guidance. The Board chose to remove the Superintendent, Human Resources Administrator, and the Business Administrator. The district began with a “clean slate,” which included the hiring of Tarchichi as the Superintendent for the Pennsauken School District.

Perry noted that Tarchichi has been responsible for implementing sixteen new programs related to CTE technical educational programming at Pennsauken. Such new programs include carpentry, EMT/Medical technician, Jr. ROTC, and will soon include a diesel technician program and a baking program in conjunction with an international baking company which has a local baking/manufacturing facility.

Perry was engaged in the review of Tarchichi’s contract and specifically wanted to include the opportunity for Tarchichi to propose merit goals for the 2017–2018 and 2018–2019 school years. Perry understood the importance of having merit goals, as that would enable Tarchichi to get paid for additional services that he would perform above and beyond his contracted duties. Perry acknowledged that the school district, through its citizens, would be responsible to pay for Tarchichi’s contract and his merit goals.

Perry believes that there has been a shift in the culture in the school district. He

asserted that the students are now engaged, with the high school students more involved in their future planning, knowing that they will be learning skills through the CTE programs for future employment. He credits Tarchichi for working above and beyond his superintendent duties, including serving as principal for one of the schools within the district, but he is not getting paid for that. Tarchichi is the only employee in the district with certification in Special Education. That is also a savings to the Pennsauken BOE.

Perry asserted that Tarchichi deserves to get paid for the services he provided under the proposed merit goals. Perry identified himself as being a “union person” and individuals should be paid for things they have done, including services that went over and above their contract. That is why the Pennsauken BOE authorized proceeding with these lawsuits, believing it is imperative that Tarchichi be paid for the merit goals he achieved.

**Lovell Pugh-Bassett** testified. She is currently employed by Camden County College, which employment began approximately August 2021. Prior to that, she was the ECS for Camden County for approximately six years. She previously was employed by the DOE for approximately twenty years.

Pugh-Bassett explained that a new ECS receives “collegial training” by being partnered with other ECSs for mentoring. She learned the “nuances” of the ECS position by having been employed with the DOE. While at the DOE, she learned how to “navigate” through the DOE system. Outside of that, there is no formal “onboarding training” for an ECS. Much of the collegial mentoring occurred during monthly ECS meetings, where the ECSs would share their “challenges” from their respective counties and would exchange advice and support.

The duties of an ECS are all encompassing, with daily responsibilities varying depending upon the ebb and flow of the school year. An ECS is responsible for overseeing budget reviews, contracts, and providing support to school districts for compliance with best practices. ECSs will monitor school districts via the New Jersey Quality Single Accountability Continuum (NJ QSAC) process and guide districts about regulations, statutes, and code. There are regulations that govern an ECS’s duties.

Some regulations provide broad guidance while others go into more detail for very targeted areas of an ECS's job duties.

As ECS for Camden County, Pugh-Bassett was responsible to oversee thirty-eight school districts and approximately nine to ten charter schools. Her specific work in overseeing superintendents of school districts varied. Generally, she would meet with the superintendents who were coming into a new school district to give them support and to share openly and transparently about what was going on in their new school district. She generally would check back in with the superintendent after two or three years to see how things were going. She did a lot of troubleshooting and "a lot of support." She navigated all the "moving parts."

There are monthly roundtable meetings for district superintendents to attend. They get together to discuss concerns they may have. Information is shared which may come "from Trenton" about compliance, regulations, or sharing of initiatives posed by the DOE. They are voluntary meetings.

Review and approval of bonus merit goals were included duties as an ECS. Pugh-Bassett described merit goals as an opportunity for superintendents to identify a specific issue they wished to address within their district that goes above and beyond the requirements of the school district. This gives the superintendent an opportunity to be compensated for addressing issues that go beyond their minimum job duty requirements. A quantitative merit goal is measured by a numerical value. A qualitative merit goal is measured by "soft indicators" like videos and newspaper clips.

Pugh-Bassett acknowledged there was no written guidance, nor protocols or instructions in the entire state to explain how an ECS should review a superintendent's merit goals. When asked what the merit goal process was, she explained that when she was first promoted to ECS for Camden County, she placed an agenda item on one of the monthly roundtable meetings to have a discussion of what her expectations would be with regard to superintendents' merit goals. The way she handles merit goals is to have a conversation with the superintendent to "troubleshoot" their proposed goals with her, prior to the superintendent submitting the goals to their BOE for approval. This is done to avoid

the embarrassment of having the BOE submit the approved proposed merit goals to her with which she did not agree. She saw this as “a bit of cover for the superintendent and opportunity to really have some pre-talks about what they would like to address, I do that process first.” (Transcript 2, page 41:13–20.) Then she will “solidify” the goals and come up with consensual language the superintendent will follow, and give her a final draft she will then approve.

Other times, she might have additional meetings, or the superintendent of a district “comes to the table” and says they want to address something “in my equity” and they will figure out based upon her monitoring, performance, and the climate, how to come up with a merit goal very specific to the district. After she approves a merit goal, she sends a letter to the BOE advising them the goal has been approved. She goes through “this painstaking process of trying to make sure that the goal matches a need and that the documentation to be submitted to support the goal is specific enough to be able to demonstrate that they’ve achieved the goal.” (T2 42:5–12.)

She has seen the process evolve over the years, due to document requests from members of the public. Pugh-Bassett developed her procedure to be sure she had the right information available in the event documentation was needed to support that she did go through the process of having merit goals for a superintendent. Also, every now and then, the ECS office gets audited, so she likes to have the documentation “also in kind” to show what she reviewed when “approving or denying or whatever the process was included in the development of the goal.” She asserted that the goal should be impactful for the district, although she was not certain if the regulation regarding merit goals expressly stated that the goal must be specific to the needs of the district.

Pugh-Bassett did not know if this was the same process for all county superintendents. She acknowledged that she was not aware how each ECS handled approval of merit goals in their counties. She only had the opportunity to find out what other ECSs did on a daily basis during “collegial conversations” with them. She was not aware whether every ECS even received merit goals for review, asserting that is optional for the district to submit. She was not certain if all other ECSs in the state did review merit goals, but believed that “a good number” or “good portion” of them did have to deal with

merit goals.

Pugh-Bassett asserted that the “skeletal process” of handling merit goals was having an ECS review and approve of proposed goals, and then letting the BOE know that a goal has been approved. An ECS then goes through the process of reviewing submitted documentation and approving payment to be made by a BOE when the superintendent has completed a merit goal.

She described that a superintendent decides “in house” how they want to procedurally have their proposed goals submitted to their BOE for approval. She explained that most superintendents will wait until she and they have “95% approvable” goals before vetting the proposed goals through the superintendent’s BOE for formal approval. If she gets such proposed goals from a BOE that is seeking her approval, she will just “respond in kind” with a formal letter.

Other superintendents will go to the BOE first with their proposed goals. She will then respond to the BOE and say whether the goals are approvable or not, and the BOE will respond to her with approvable goals based upon conversations she has had with the superintendent. The BOE may also wait for her to come to a consensus with the superintendent before going through the formal process again of approving proposed merit goals. She was not aware if the DOE issued any specific guidance regarding the writing of merit goals.

The BOE must approve proposed goals since they are the entity that must pay the superintendent for completed goals. The merit goals are activities being carried out on behalf of the school district so the BOE must be aware and approve of the proposed goals. Pugh-Bassett, as ECS, is required to approve the proposed merit goals following the BOE’s approval, because the statute says that is her role. The goals cannot be executed and worked upon until she has granted approval.

Pugh-Bassett asserted that the statute pertinent to merit goals does not outline specific deadlines for the process of approval of the proposed goals and approval of payment for the completion of goals. The “natural flow” is that “a lot” of superintendents

submit their goals in August so she has an opportunity to review them before the kick-off of the school year. Her office gets very busy at the start of the school year. She tried to get the merit goals “closed out by September 30<sup>th</sup>” but noted the process could go beyond that date, depending upon the “back and forth.” She acknowledged that she goes back and forth as long as possible so that she gets to a “yes” regarding the language of a goal and does not have to go through the process of denial of a goal. This gives the superintendent time to get the language of a merit goal “in a way that makes it approvable[.]” During the back and forth process, she provides her feedback on the document submitted by the superintendent, which outlines the goals by using the track-changes function in the word processing program, or she will do bulleted lists and emails which are very thorough and responsive to make sure that she can “honor them and give them the respect that they deserve for having taking the time to submit the merit goal so that I can give them good responses.” On occasion, she has done research to assist a struggling superintendent to come up with ideas for a merit goal. She will give a suggestion for a replacement idea for a merit goal so that the superintendent does not fall short of the intended number of goals being proposed for the school year.

Pugh-Bassett asserted that she typically meets with the superintendent after the first submission of proposed goals to her through scheduling a remote GoTo Meeting so they can have an extensive conversation. Sometimes she schedules in-person meetings with the superintendent. She then provides written feedback to the superintendent. They are fine-tuning the information for the superintendent so that the superintendent does not get “blindsided” when they come to meet with her about their proposed goals. She was unaware if any of her superintendents provided their BOE with the feedback she gave to the superintendent when helping them to draft their goals.

She believes that merit goals are important for a superintendent who is trying to do additional initiatives in their district. She thus gives the proposed goals “time and attention that they need even if it exhausts past what a soft deadline would be so that we could get to the point where the merit goal could possibly be approved.” Pugh-Bassett could not consider approval of proposed merit goals for a prior school year because the goals are developed based upon the need of the district at the time, and those needs shift “so very frequently.” She noted that an ECS has no stake in whether a merit goal is

approved or not. It only provided her a point of pride, where she could brag as an ECS of a superintendent who had done amazing initiatives.

### 2017–2018 Merit Goals

During the 2017–2018 school year, Pugh-Bassett had approximately seven to eight superintendents who each submitted four or five proposed merit goals for her to review. Tarchichi was one of those superintendents. Pugh-Bassett had provided a form to her superintendents to use when submitting goals. A colleague from Bergen County had crafted the form which was used by that colleague in their process of going through merit goals. The colleague shared the form with Pugh-Bassett. Pugh-Bassett found the “informal form” to be a good template for superintendents to better organize their merit goals. On the form, there is an area for “goal type” and it is filled in as quantitative or qualitative goal. The value, or compensation that is sought for the goal, is included under the type of goal by inputting the percentage of the superintendent’s salary that is sought to be paid if the goal is accomplished. The actual amount in dollar value may be placed under the percentage. (R-3.) Pugh-Bassett was unsure if the person who served as Camden County ECS prior to her had used that same form.

Tarchichi used the form provided to him by Pugh-Bassett, and submitted to her a draft of five proposed goals, identified as A through E, and that “began the conversation around his merit goals.” (R-1.) She responded to Tarchichi’s first proposed merit goal submissions, via email, on September 25, 2017, indicating in her first sentence that “these merit goals need work.” (R-2.) She proceeded to explain in the email that all of the goals are not approvable because “they are simply replications of requirements of a district (see comments).” (R-2.) She gave a few examples of issues her office knew that the Pennsauken district was facing which he could address in merit goals. She asserted that the superintendent is supposed to be the “star” of the goal, meaning the superintendent has to be the person doing the work to earn the pay. She included her comments in tracking-text boxes on the form he had submitted to her. (R-2.) She also made comments on the areas of the goals that were questionable. This is the format she typically used to provide feedback to all superintendents.

She thereafter had a conversation with Tarchichi about his proposed goals and her feedback. She followed up with him in an email on October 3, 2017, believing it to be their “second round” of her giving additional feedback. The email provided feedback in bullet-point format and additional instructions as to how he should revise his proposed goals for her further review. (R-2 at 2463.)

Tarchichi sent her a revamped version of his merit goals after their initial back and forth. (R-3.) He submitted proposed merit goals A through E, which eventually were all approved by Pugh-Bassett, as per her letter of January 4, 2018, except for goal E. (R-4.) The Pennsauken BOE thereafter approved the proposed goals A through D for the 2017–2018 school year.

Pugh-Bassett did not approve of proposed goal E. (R-3.) That goal dealt with Tarchichi conducting a monthly training academy for new administrative staff to give additional support to the staff as they transitioned into more seasoned administrators. (R-3 at 2471.) Tarchichi proposed that the group would meet for a minimum of ten training sessions during the 2017–2018 school year. (R-3.)

Pugh-Bassett’s letter to the Pennsauken BOE of January 4, 2018, described that this goal did not “meet the threshold of being *“meritorious”* in relation to existing mandatory requirements for the support of new school leaders through professional learning as outlined in N.J.A.C. 6A:9C-3.2.” (J-1 at 11; R-4 at 2474, internal quotation and italics original.) Pugh-Bassett explained that in early 2017, the professional standards regulations were revised to include a requirement that school districts provide a broad range of professional learning opportunities for teachers and school administrators. To be meritorious, a goal must be something going above and beyond minimum requirements. She wanted Tarchichi’s proposed goal to go above and beyond what the regulation indicated was to be provided. She got no response from him about this in their back and forth exchange over proposed goals, so she deemed the goal as not being approvable. She claimed she did not “outright deny” this goal.

She asserted she is not permitted to approve a goal to do something that is already a requirement to be done, since superintendents would then be paid twice for executing

requirements of their job. She acknowledged that the regulation she cited, N.J.A.C. 6A:9C-3.2, requires school administrators, which she described as teachers and administrators, being the “school leaders” to receive training as per the regulation. She avoided confirming that the regulation does not specify that the superintendent is to provide that training, but that professional development and training are required to be done and superintendents are responsible for their school district. The superintendent has the inherent responsibility to make sure the requirements are being implemented.

Pugh-Bassett stated that if a goal was denied for not being meritorious, a superintendent absolutely could not resubmit that goal. The Superintendent may expand or build upon a previously denied goal, but it should not be duplicated and resubmitted. She confirmed that the proposed training academy goal by Tarchichi was later approved by another Interim ECS, Judy DeStefano, from Cape May County, to be worked upon by Tarchichi for the 2019–2020 school year. (P-18 at 1768.) She further acknowledged that the approved goal did not specify the number of sessions required, while the goal she reviewed specified ten sessions would be conducted. She did not agree with Interim ECS DeStefano’s approval of the goal for Tarchichi. Pugh-Bassett recognized that each ECS comes from a different background of experience and skills and that none received “on boarding training” or a training process when hired as an ECS. She thus recognized that ECSs could evaluate merit goals differently and might review the exact same proposed merit goal and come to a completely different conclusion, as occurred here.

Pugh-Bassett thereafter had not received, as of July 16, 2018, confirming documentation from Tarchichi that he completed the proposed goals A through D for the 2017–2018 school year. She needed to review such documentation to determine if she would approve payment to be made by the Pennsauken BOE to Tarchichi. She sent a letter to the Pennsauken BOE indicating that the merit goals had been approved for completion by the close of the school year, June 30, and are to be reviewed for completion by the Pennsauken BOE and then submitted to her for approval to be paid. (R-5.) She requested that the Pennsauken BOE advise her if Tarchichi had completed his 2017–2018 merit goals or whether they would no longer be seeking approval for payment. She noted the documentation had to be forwarded to her by August 31, 2018, because there may be a delay in reviewing such documentation since her focus would be shifted to

approval of proposed goals submitted for the 2018–2019 school year. The August 31, 2018 deadline was a date she set to give Tarchichi the opportunity to submit the documentation of completed goals so she could provide a timely response.

A few weeks after Pugh-Bassett sent the “tickler” letter to the Pennsauken BOE, she did receive, in her office, documentation to demonstrate that Tarchichi had completed his goals. She did not know whether the Pennsauken BOE submitted the documentation or if Tarchichi himself submitted it, since she is not “privy” to those internal workings. Typically, documentation would come into her office via courier to her assistant, but she did not know who had submitted it.

She reviewed the documentation and prepared a page of comments regarding all four goals and the documentation she still needed to review to determine if Tarchichi should be approved for payment. Pugh-Bassett’s assistant sent an email on August 27, 2018, to Tarchichi, forwarding Pugh-Bassett’s comments and advising him the documentation requested had to be provided no later than September 7, 2018. (R-6.) Pugh-Bassett described that she provided comments because she needed some clarity about each goal that was originally submitted as she lined up the documents sent in to demonstrate completion. She needed to “tease out” what she was looking at to gain “clarity” to figure out exactly what documentation was provided to respond to what part of the originally approved goal.

Specifically, as to goal A, also referred to as goal 1, Pugh-Bassett wanted additional documentation. (R-6.) That goal was for ELL students in ninth and tenth grades to improve their science vocabulary. She had confirmed with Tarchichi that there were forty students at Pennsauken who fell into that category of students, but she had only received documentation for twenty students. She requested additional documentation, which she did receive from Tarchichi, but he did not respond to her questions about writing strategies and evidence of completion. Later, they had a conversation and “delves” into “that number 20” due to her comparison of the number of ninth and tenth grade students who were eligible “to receive the treatment of his merit goal.” They went through another round of emails in mid-September. (J-1 at 13.) She asserted in an email of September 18, 2018, to Tarchichi, that this was his final

opportunity to provide additional responses to satisfy attainment of his goals, and that she would not be considering his proposed 2018–2019 goals until she received responses from him to allow her to close out his 2017–2018 goals. (J-1 at 13.)

Pugh-Bassett received voluminous documentation, so it was clear to her that some work had been done on the first goal. She wanted to give Tarchichi the opportunity to receive partial approval, and was outlining in dollars and cents in her email what that could be if he provided appropriate documentation. (J-1 at 13.) Since the proposed population of students was forty, she expected to see documentation that forty students were served. There was “no conversation” around serving a sub-population of that group. She asserted that she offered to approve payment of fifty percent of the goal, since twenty students would be fifty percent of the forty students she expected to have been served, as set forth in her email. (J-1 at 13.) She does not always offer that as an option.

Tarchichi did respond to her September 18, 2018, email, by dropping off additional documentation, as of September 28, 2018. He also sent a reply email on that date. (R-7; J-1 at 13.) He asserted he never specified in his original goal that he would be using the entire population of ELL ninth and tenth grade students. He wanted to engage students interested in sciences, especially the field of health care. He used a sample of the entire population. (R-8; J-1 at 13.) She received the documentation he dropped off, but it did not satisfy her inquiries regarding the first goal.

Pugh-Bassett received the Pennsauken BOE’s resolution approving payment to Tarchichi for completion of merit goals A–D for the 2017–2018 school year. She authored a letter on October 12, 2018, in response to the Pennsauken BOE. (J-1 at 15.) She approved payment for goals B through D. (J-1 at 17.) She did not approve payment for the first goal, A. She noted in her letter that the submission from Tarchichi did not satisfy the requirements for approval and would not be approved for payment. (J-1 at 17.) She indicated that Tarchichi had focused on a sampling of the ELL students, that being twenty students, rather than focusing on all ninth and tenth grade ELL students, which she was told was comprised of forty students. She claimed, during cross-examination, that her “take away” of the goal was that the focus was on all ninth and tenth grade students. She acknowledged that she had previously approved merit goals that only impacted a small

subset of students.

Pugh-Bassett also criticized that Tarchichi had not provided documentation to demonstrate additional writing instruction to assist with the vocabulary and grammar growth of ELL students, and that the documentation did not demonstrate how the multiple choice tests measured student growth on writing strategies embedded in student learning. (J-1 at 17.) She acknowledged, during cross-examination, that there was nothing in the approved proposed goal requiring submission of writing samples to gain approval for payment of the goal. She dodged confirming that the proposed goal never required submission of the actual tests administered. She was not satisfied with the summary sheet of student scores provided by Tarchichi. She was steadfast that the information provided to her as documentation of fulfillment of the goal was not complete enough for her to make an accurate assessment of the achievement of the goal.

Pugh-Bassett denied telling Tarchichi directly that she refused to discuss payment for goal #1 anymore, and denied that she suggested he could file a lawsuit. She did confirm, in correspondence to the Pennsauken BOE on October 12, 2018, that if Tarchichi wished to appeal to the Commissioner of Education due to her denial of compensation for goal #1, he could submit a request to the Office of Controversies and Disputes. (J-1 at Exhibit C.) She did not want to “litigate this goal denial in my office” and he could file an appeal.

### 2018–2019 Merit Goals

Tarchichi submitted his proposed 2018–2019 merit goals in October 2018. Pugh-Bassett responded with remarks about re-crafting each of the proposed goals. (J-7 at 419–420.) They exchanged several emails over several days to set up a meeting to review his 2018–2019 proposed goals. (J-7.) As of November 7, 2018, Pugh-Bassett sent an email to Tarchichi outlining some suggestions for his proposed merit goals. (J-7 419–420; R-10.) He submitted his revised proposed goals, identified as A through E, to her on November 15, 2018, on the merit goals submission form. (J-7 at 431–436.) She provided a feedback email to him, with bulleted points for each proposed goal. (J-7 at 445–456.)

He forwarded to her, via email on November 20, 2018, certified minutes from the Pennsauken BOE meeting of November 19, 2018. (J-7 at 437–439.) The minutes confirmed that the Pennsauken BOE approved resubmitting Tarchichi’s proposed 2018–2019 merit goals to Pugh-Bassett. (J-7 at 439.) The minutes also confirmed that the Pennsauken BOE approved having the Board’s solicitor pursue litigation regarding Tarchichi’s merit goals. (J-7 at 438.)

On November 26, 2018, she sent an email to Tarchichi with an outline of feedback for each of his proposed goals A through E. (J-7 at 445.) She was confident they could work through the goals by the end of the day. (J-7 at 445.) Tarchichi responded that he needed to discuss the goals with her. (J-7 at 446.) They exchanged emails, agreeing to talk that evening on the phone. (J-7 at 448–454.) They spoke on the phone, and Pugh-Bassett stated it was a very contentious phone call and she had “to exit the conversation” because she was “becoming offended.” During that conversation, Tarchichi requested that another ECS review his merit goals. She told him that she would forward that information to her supervisor and respond to him. She was advised that he could not have another county’s ECS review his goals. She communicated that to Tarchichi. (J-7 at 458.) She was willing to continue to work with him to clarify his goals so that they would be approvable. (*Id.*) Pugh-Bassett gave another detailed bulleted list of comments and questions about each of the five proposed goals. (J-7 at 458–459.) She advised him that he needed to respond by that Friday to guarantee he would “have time to execute the goals in order to maximize its impact on student success.” (J-7 at 460.)

Pugh-Bassett testified that Tarchichi again requested to have another ECS review his merit goals and wanted to speak to the DOE supervisor with whom she had spoken. In an email of November 27, 2018, Tarchichi indicated that she was the one who suggested that he have another ECS review his merit goals and he agreed. (J-7 at 458.) As of December 18, 2018, the Acting Director of the Office of Field Services Coordination for the DOE sent an email to Tarchichi advising him that effective immediately, Nicolosi would be responsible for reviewing his proposed 2018–2019 merit goals. (R-13.)

Pugh-Bassett discounted that the Barrington Superintendent’s goal from 2016,

which she approved regarding that district's STEAM program, was similar to Tarchichi's 2017–2018 goal regarding ELL students' improvement in science writing and vocabulary. (P-19 at 1828.) She asserted the Barrington goal targeted district-wide students, while Tarchichi's goal only focused on a subset of students in ninth and tenth grades.

Pugh-Bassett authored a letter, as of January 2, 2018, approving payment for merit goals achieved by the Barrington Superintendent from the 2016–2017 school year. (P-19 at 1838–1840.) One goal was for the establishment of a middle school multicultural/diversity club. Pugh-Bassett explained that the Barrington School District had issues that “bubbled up” throughout the previous school year regarding ethnicity and race, and since the goal dealt with preparing middle school students to be successful in high school on issues of multi-culturalism and diversity, she approved it. She acknowledged that Tarchichi's proposed goal for the culture and climate club would be “in a similar bucket” yet asserted that the Barrington's Superintendent's goal was “a little bit more focused on the students based upon existing issues that have been raised or have come up” in that district. (Trans Oct 27, 2021, 144:25-23.)

She did not approve Tarchichi's proposed goal for the 2018–2019 school year for the culture and climate club because she had “some questions of clarity” regarding the benefit of the proposed goal and Pennsauken's student demographic. She defended her position, asserting that she did not insinuate that his goal was not an approvable goal, per se. She wanted to get additional information to determine what would be the impact. She asserted she engaged in significant back and forth with the Barrington Superintendent to approve his proposed goals. Since the letter was from January 2018, which was for the 2016–2017 school year, that reflected a very intense back and forth process.

Pugh-Bassett supported her position that a superintendent is supposed to be the “star” of a merit goal, meaning that the superintendent is performing most of the work to execute a goal. She could not discredit Tarchichi's assertion that a goal approved for another superintendent in another school district in 2015 was a goal in which the superintendent was not the star. (P-19 at 1857.) She was not involved in the back and forth approval process for the goals and did not believe that the template form she utilized

for superintendents to develop and submit their proposed merit goals was being utilized prior to her becoming ECS for Camden County.

She testified that the “process of merit goals evolves every iteration” and that process was the topic of “intense conversations” at monthly ECS meetings after 2015. The process of approval of goals “depends upon the landscape of the county” and that there are “very focused initiatives” in each county, going down to the district level, depending upon the specific needs of the district. If the DOE is embarking upon a specific focus or initiative, the individual superintendents may want to piggyback on those initiatives and create goals “that enhance those initiatives to be consistent and aligned.” She emphasized that there are “very, very, very unique” needs of school districts that force very targeted and varying goals. A common theme may be found between districts, but the specificity of merit goals will vary based upon the needs of the district.

**Margaret “Peggy” Nicolosi** testified. She is the Interim ECS for Salem County, which position she has filled for approximately thirteen years. In the 2018–2019 school year, she was Interim ECS for Salem County and Cumberland County.

She described merit goals as an opportunity for a superintendent to take on initiatives that they may not normally address, being over and above what they normally do. There can be three quantitative goals for the year, paid out at 3.33% of the superintendent’s salary; and two qualitative goals for the year, paid out at 2.5% of the superintendent’s salary. A qualitative goal is doing something in the district to improve the life or district situation, which is a program or project with not a lot of data involved. A quantitative goal is a program or project with specific data involved, which can be more rigorous than a qualitative goal.

Nicolosi described the merit goal process. Generally, a school board will establish their district goals for the upcoming school year in July, and then the superintendent will propose merit goals aligned with the district’s initiatives for the year, usually in approximately August. She will then go back and forth with the superintendent, similar to any type of negotiation process, to develop the merit goal and agree upon what is going to be the baseline data required to demonstrate completion of the goal.

Her communications with a superintendent are generally via email, but sometimes done in person or over the phone. She usually will insert comments or questions in red directly into the proposed merit goals document she gets from the superintendent. She also provides feedback in more detail in an email she usually sends in response with the red comments. She described that as in any negotiation process, neither party is going to be completely happy with the result, but if the students are the end benefit, the merit goals are settled, and she will send a letter to the school district approving the goals. The superintendent then works on the goals during the school year. In approximately mid-May through the end of June, the superintendent will submit to her the documentation they already agreed upon to demonstrate if the goal was accomplished. If the documentation demonstrates completion, a letter is sent to the BOE authorizing payment of the goal to the superintendent.

Some superintendents will tier their merit goals. Nicolosi explained that it means the superintendent has broken down a goal into parts with steps or levels. If the superintendent is only able to attain part of the goal, they can still be paid a certain amount of money for the part that was accomplished. Tiering a goal is something that may be initiated by the superintendent, or through discussions she has with the superintendent when she is in the process of reviewing the proposed drafted goals. If it is a complicated or multi-step goal, it may be to the advantage of the superintendent to tier the goal.

Nicolosi confirmed that she has never received written guidance from the DOE regarding how she should evaluate merit goals. She agreed that there was no formal onboarding or training for new ECSs. She disagreed with Pugh-Bassett's testimony that the process of reviewing and authorizing merit goals varies from county ECS to county ECS. She recognized that ECSs come into their role from various backgrounds with various experience.

During the 2018–2019 school year, approximately twenty-five percent of the superintendents she oversaw were working on merit goals. She was assigned to review Tarchichi's 2018–2019 merit goals as of December 18, 2018, when she received an email from the DOE representative. (R-13.) She assumed Pugh-Bassett had reviewed the

proposed goals prior to her being assigned to review them. She was not given any other information as to why she was assigned to review his goals. She did not speak to the previous ECS, Pugh-Bassett, when she received the assignment. She was not aware of the back and forth that had occurred between Pugh-Bassett and Tarchichi before she was assigned the review. Nicolosi did not request Pugh-Bassett's suggested changes. Nicolosi did not review any of Tarchichi's prior submissions. She did not request Pennsauken BOE's goals for the year. She assumed what was submitted to her from Tarchichi was aligned with the BOE's goals. She did not speak to any Pennsauken BOE members regarding the proposed goals.

Nicolosi received Tarchichi's proposed goals for 2018–2019 on a merit goal submission form. (R-14.) He emailed the information to her on December 19, 2018. (J-7 at 606.) Goal A dealt with dual credit programs for Camden County College, Rowan College, and Cumberland County College. Goal B dealt with CTE vocational programming, including a culinary program with Atlantic Cape Community College. Goal C dealt with SAT improvement. Goal D was to create an EMT program in the district. Goal E was the culture book club. (J-7 at 485.) After reviewing the proposed goals, she responded to Tarchichi, with red line modifications and comments she made directly on the form. (R-15.) She recalled going back and forth with him several times via email, making headway on some goals and not so much on others.

Nicolosi believed that three of Tarchichi's goals were very similar. She revised goals A, B, and D, into one goal, as goal A. (R-15.) She was attempting to put those goals together into one because the activities were very similar regarding career readiness, contacts with local colleges, and getting dual credits. One suggestion she made was to substitute Rowan College at Gloucester County instead of Cumberland County College, due to the closer proximity of that school to Pennsauken. (R-15.) She acknowledged that the regulation pertaining to review of merit goals did not include requirements for distances for proposed merit goal programming. She wanted to delineate documentation and information to be submitted so she could see finite numbers. She could not approve the three goals, which she modified into one goal, as he had proposed.

She had not seen or heard Pugh-Bassett's comments regarding the three proposed goals from Tarchichi, which Nicolosi combined into one goal. She could not confirm if the colleges in each of Tarchichi's goals had the exact same programming. Nicolosi recognized that she approved two separate goals for the Oldmans Township superintendent in 2014, where both goals addressed the same improvements to be achieved in language arts literacy, except one goal was for grades three through five, while the other goal was for grades six through eight. (P-19 at 1795.) She confirmed she did not require tiering of the goal into one goal, rather than two separate goals. She candidly commented that looking back upon goals she approved in 2016 for the Kingsway superintendent should have been tiered, due to their similarity. (P-19 at 2093.)

Nicolosi revised Tarchichi's proposed goal C, regarding improvement in preparation and scores for the SAT test, into goal B. (R-15.) Nicolosi reviewed the Pennsauken performance report and saw that Pennsauken students also took the ACT, which minority students traditionally perform better on than the SAT. She wanted Tarchichi to expand the goal to include tutoring and preparation for both the SAT and ACT. She tiered the goal. She also needed more information as to the number of students who would demonstrate improvement. She wanted Tarchichi to videotape the proposed programs he intended to present to the students, and he did not agree to videotaping the programs. She acknowledged she did not see any other ECS requiring a superintendent to videotape themselves doing any of the merit goals in the volumes of documents entered into evidence. Nicolosi also requested additional documentation for Tarchichi to provide to demonstrate whether other staff members who apparently were going to be assisting with the preparation programs were going to be paid. She wanted lesson plans for the sessions. He would not agree to provide such information. Nicolosi could not approve the revised goal B she suggested to Tarchichi without the modifications she sought.

She revised his proposed goal E, for the proposed culture and climate club, into goal C. (R-15.) She reviewed the Pennsauken performance report and saw the demographics of school's population of Hispanics, African Americans, and Asians. She was curious as to the proposed books selected by Tarchichi since they were in areas of the world such as North Korea and the Middle East. She was not certain if the topics

from the proposed books were areas of concern for Pennsauken. She checked to see if there were diversity complaints lodged from parents or the public and wanted to know if such matters could be dealt with in a social studies class. Nicolosi recommended taking some of the book club discussions out into the community, rather than all occurring in the school. She had no problem with the spirit of the goal. It was the evidence of completion which was the stumbling block and why she was not able to approve the goal as presented.

They communicated by email over the changes and modifications she was requesting to his proposed goals. (J-7 at 580–605.) She recalled most of the responses from Tarchichi began with “I will not do” whatever it was she had proposed. Their communications broke down, mainly over what she perceived as the documentation and information she was trying to delineate that he would need to provide to demonstrate evidence of completion of the goals. She acknowledged having received a revised set of goals for 2018–2019 from Tarchichi as of January 2, 2019, with his goals A, B, C, D, and E. (J-7 at 592.) She understood this to mean that he refused to turn three of his merit goals into one goal, as she had suggested. (R-15.) She noted, during cross examination, that all five of the goals, as outlined by Tarchichi in his January 2, 2019, submission, could be approvable with more evidence of completion.

When asked if goals from different counties and different years could be compared, Nicolosi responded “Not really.” (Tran Oct 28, 2021, 34:12-15.) She confirmed that in 2013, she approved for the Waterford District’s Superintendent a merit goal involving attendance. (P-19 at 1791.) She acknowledged she would not be able to approve such a goal now, given that the regulations were modified in 2018 to include attendance improvement as a mandated corrective action plan. She recognized that she approved goals in 2016 for the Upper Township Superintendent, regarding curriculum creation, when she agreed that the creation of curriculum is a requirement for school districts in New Jersey. (P-19 at 1796.)

She further acknowledged that there were goals approved by her in other districts in other years involving those superintendents doing goals, such as website development and contract negotiation, which would require the superintendent to consult with

professionals, such as computer technicians and attorneys, to develop and complete the program or proposed action in the merit goals. She approved a new student attendance committee goal in 2016 for the Kingsway Superintendent, when the superintendent was not identified as being the individual to head up such a committee, nor how many times the committee was supposed to meet, or that the superintendent would even be at the attendance committee meetings. (P-19 at 2092–2093.)

Nicolosi acknowledged that a 2014 goal by the Collingswood Superintendent, regarding PSAT preparation and scoring was approved for payment and was a goal like the SAT goal Tarchichi had proposed for 2018–2019. (P-19 at 1919.) She had questioned Tarchichi's goal based upon the lack of baseline data regarding the number of students who would be anticipated to improve in score and the increase anticipated.

Nicolosi confirmed that an example of a tiered goal appeared in the merit goals from 2016 for the Logan Township Superintendent, for merit goal number one regarding improvement of achievement of three subgroups of students in grades one through eight from standardized test scores. If projected improvement of a percentage of students was not achieved, then only a percentage of the merit goal would be paid. (P-19 at 1994.) Such tiering of a goal would be identified at the beginning of the goal review process. She was familiar with the district, and approved the goal because it set forth a project which was not normally required by a school district. There was extensive data provided as evidence of completion, where she could see from child to child what type of growth had occurred. She was provided not only the subgroup data but data for all of the students from grades one through eight.

Nicolosi believed it was important to treat the proposed goals from Tarchichi as if they were brand new goals. She would not take into account anything that a previous ECS might have thought about the goals. She defended her red line remarks and combination of goals as being suggestions to Tarchichi and that they would be going back and forth ironing out the details of his goals. She reiterated that, for example, the cultural book club goal would have been approvable, but they were having issues with what was going to be the documentation to demonstrate completion of the goal.

## **Credibility**

A fact finder is obligated to weigh the credibility of witnesses. 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 observations 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, their motive or bias. Credibility findings are “often influenced by matters such as observations of character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463, 475 (1999). “A trier of fact may reject testimony because it is inherently incredible, or because it is overborne by other testimony.” Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Tarchichi presented his testimony in a professional, serious, and confident manner. His expression of concern and interest in improving the educational opportunities for all students in the district was genuine. He outlined, in a matter-of-fact method, his past efforts and accomplishments in the district without appearing boastful or cocky. It was apparent how his confident nature of speaking and direct method of communicating in his emails could be perceived by someone as an intimidating response, such as when he would reply to the ECSs with his disagreement to their suggested revisions or modifications. He supported his positions with examples and thoughtful reasons for his proposed goals and methods. His testimony was persuasive.

Perry testified in a forthright, concerned, and supportive manner. It is recognized that he, as the Pennsauken BOE president, has a vested outcome in this proceeding, to find in the Board’s favor. However, his testimony in support of Tarchichi’s position was delivered in a sincere manner, supportive of Tarchichi’s past efforts and accomplishments in the district, and the Pennsauken BOE’s mission to serve the students of the district in the best manner possible with the taxpayers in mind. His testimony was not delivered in a condescending or antagonist position towards the ECSs and the DOE, but rather with a focus on getting a fair conclusion to these matters to enable the district to move forward.

Pugh-Bassett testified in a stilted manner, using jargon and superfluous language which was difficult to follow. It was evident that her style of communication with Tarchichi was perceived as passively condescending, and the tension it created was palpable in their written communications and observed through the Zoom proceeding. Her testimony was not particularly persuasive.

Nicolosi was direct and assertive during her testimony. She was self-assured in describing her style of offering suggestions to the superintendents as to how they should draft their goals, such as by tiering. When confronted with prior goals she approved in the past, which did not include tiering or merging of similar goals, her candid acknowledgement that she should not have approved such goals was appreciated. Likewise, her candid comments indicating that Tarchichi's goals would have been approvable as presented, but with more documentation to support completion of same, were reflective of her honest recognition of the subjectivity of this process.

Based upon a review of the documentary evidence and having heard and observed the testimony of the witnesses, I **FIND** as further **FACTS** the following:

There is no standardized method, procedure, or training provided by the NJ DOE to the ECSs or superintendents addressing how to formulate merit goals; how to review same; and the timing for the submission and approval of such proposed goals; requested revisions; and timing for the approval of payment of same. There are no regulations, manuals, or written guidelines for superintendents to follow regarding merit goals, nor for an ECS to follow when reviewing and providing feedback and approval or disapproval of goals.

Tarchichi sought approval from Pugh-Bassett for him to work on five proposed merit goals for the 2017–2018 school year. She did not approve goal E, the fifth proposed goal for a monthly training academy for new administrators. Tarchichi had previously been approved to complete a similar goal in 2015–2016, by Pugh-Bassett, when Tarchichi was superintendent at another school district. He later proposed this same goal for the 2019–2020 school year, and was approved by another ECS to do so.

Pugh-Bassett approved Tarchichi's first four proposed goals for the 2017–2018 school year. Tarchichi submitted proof of completion of those four goals to the Pennsauken BOE, and the Board approved payment for same. When the Pennsauken BOE sought approval from Pugh-Bassett to pay Tarchichi for those four goals, she approved payment for three of the goals. Tarchichi has received payment for the three goals in 2017–2018.

Pugh-Bassett did not approve payment for the first goal for 2017–2018, regarding ELL students and testing their growth and improvement in the field of science with writing and learning science-field vocabulary. Pugh-Bassett contended that Tarchichi only provided information for twenty of the ninth and tenth grade ELL population, when there were forty students in that specific student population. The approved proposed goal indicated the ninth and tenth grade ELL population was targeted, but did not specify the number of students. Tarchichi contends that the submission of information for twenty students represents a sampling of the student population and demonstrated fulfillment of the goal since all twenty of the sampled students made progress. Pugh-Bassett also contended that the documentation was insufficient to demonstrate the goal was completed because it did not demonstrate that writing and vocabulary were specifically addressed and improved. Tarchichi asserts that the pre- and post-testing, which was multiple choice, did address vocabulary and writing within the test itself, and that essay questions were part of the testing. He asserts that writing and vocabulary were addressed and stressed during a student assembly; the topic was an agenda item in a staff meeting; and all documentation he submitted supported his completion of this goal, as approved for payment by the Pennsauken BOE.

Tarchichi submitted six proposed goals for the 2018–2019 school year to Pugh-Bassett. They were all disapproved. He cut out a proposed goal for improving attendance, when advised by Pugh-Bassett that attendance became a statutory requirement for superintendents in June 2018, so the issue could no longer be presented as a proposed merit goal. Nicolosi had approved, in September 2018, a proposed attendance goal addressing improved attendance for the Superintendent of Collingswood School District.

Tarchichi revised his initial proposed goals for the 2018–2019 school year and submitted them again to Pugh-Bassett. She disapproved them again. Tarchichi's first proposed goal for the 2018–2019 school year addressed the dual credit program improvement for college prep and honors students with Rowan University and other county colleges. The second proposed goal addressed the development and expansion of the CTE programs, in HVAC and nursing. The third proposed merit goal dealt with improving SAT preparation and scores. The fourth proposed goal was to create another CTE program specifically for EMTs. The fifth proposed goal was to create a culture and climate club, focusing on reading books on current trending global topics and bringing in members of the community and community stakeholders to focus on the global culture and climate.

Tarchichi sought to have another ECS review his proposed goals for the 2018–2019 school year. He was directed to submit his proposed goals to Nicolosi as of December 18, 2018. He did so on December 19, 2018. There was back and forth communication between Nicolosi and Tarchichi, with Nicolosi providing her feedback and suggested modifications to Tarchichi's proposed goals, including her request to combine three goals into one merit goal. Tarchichi again submitted his five proposed goals as of January 2, 2019, to Nicolosi. He refused to do any further revisions. Nicolosi's failure to provide approval was deemed to be de facto disapproval of Tarchichi's proposed merit goals for 2018–2019, by order of this tribunal, entered on November 10, 2020. Nicolosi testified that Tarchichi's goals as presented could have been approval, but with additional documentation and information to be specified in the goals as evidence of completion.

Voluminous documentation demonstrated multiple instances of other superintendents being approved to complete proposed merit goals, similar to goals proposed by Tarchichi which were not approved. For example, in 2015–2016, Pugh-Bassett approved Tarchichi to demonstrate a three percent increase in proficiency for test taking, yet his goal proposing an improvement of five to ten percent for the SAT scores was disapproved. In 2014, another Interim ECS approved the Collingswood Superintendent's merit goal to improve PSAT preparation and scoring.

In 2015, Pugh-Bassett approved the Barrington School District's Superintendent's proposed merit goal dealing with educational trends and involving community stakeholders, like Tarchichi's 2018–2019 proposed fifth goal for the culture and climate club. In 2018, the Barrington Superintendent was approved to complete a merit goal addressing the formation of a culture club.

In 2014–2015, the Winslow School District's Superintendent was approved for a merit goal addressing the creation and expansion of the STEM program, which Tarchichi analogized to his proposed second goal in 2018–2019 to expand CTE programs in nursing and HVAC, and his fourth proposed goal in 2018–2019, to create and implement a CTE program for EMTs. In 2017, Pugh-Bassett approved the Winslow School District's Superintendent's merit goal addressing the creation of new programming, which is similar to Tarchichi's proposal for creating the EMT program. In 2018–2019, Nicolosi approved the expansion of the pre-school program as a merit goal for the Collingswood Superintendent, akin to Tarchichi's proposal to expand the CTE programs in 2018–2019, and his merit goal for dual credit program development and expansion for college prep and honors students with Rowan University and county colleges. In 2018, Pugh-Bassett approved the Black Horse Pike Regional Superintendent's proposed merit goal to grow a program for increasing participation in trades, like Tarchichi's proposed goal to create the EMT program.

In 2014, Nicolosi approved a goal by the Collingswood Superintendent, regarding PSAT preparation and scoring, like Tarchichi's proposed goal regarding SAT preparation and scoring improvement.

In 2014, Nicolosi approved two separate goals for the Oldmans Township Superintendent, where both goals addressed the same improvements to be achieved, except one goal was for grades three through five, while the other goal was for grades six through eight, without requiring the goals to be combined into one goal and tiered. Nicolosi confirmed that in 2016, she approved goals for the Kingsway Superintendent which in retrospect, she should have required to be tiered, due to their similarity.

## **LEGAL ANALYSIS AND CONCLUSIONS**

The New Jersey Statutes and New Jersey Administrative Code governing education in the state provide for the appointment of an Executive County Superintendent (ECS). N.J.S.A. 18A:7, et seq; N.J.A.C. 6A:23A, et seq. The statutes and regulations outline the general powers and duties of an ECS. One such duty is that an ECS shall review and approve contracts for superintendents of school districts within their county. N.J.A.C. 6A:23A-3.18(a); N.J.S.A. 18A:7-8j and N.J.S.A. 18A:7-8.1. The ECS's review and approval of a superintendent's contract shall be consistent with several standards, as enumerated in the regulation. N.J.A.C. 6A:23A-3.18(e).

A superintendent of a school district can craft proposed merit bonus goals. A merit goal is a project or program, besides the general duties and responsibilities of the superintendent, which if completed, entitles the superintendent to additional compensation based upon a percentage of their contract. The superintendent's proposed merit goals are to be reviewed and approved by their BOE and ECS. The ECS is also tasked with reviewing and approving for payment merit goals the BOE seeks to compensate the superintendent when the goal has been completed.

There is one regulation in the administrative code pertaining to merit bonus goals. That regulation provides that an ECS's review and approval of the superintendent's contract shall be consistent with standards, including specifically the standard as follows:

11. No provision for a merit bonus shall be made except where payment is contingent upon achievement of quantitative merit criterion and/or qualitative merit criterion:
  - i. A contract may include no more than three quantitative merit criteria and/or two qualitative merit criteria per contract year.
  - ii. The executive county superintendent shall approve or disapprove the selection of quantitative merit and/or qualitative merit criteria and the data that forms the basis of measuring the achievement of quantitative merit and/or qualitative merit criteria.

- iii. A contract may provide for merit bonuses in an amount not exceeding 3.33 percent of annual salary for each quantitative merit criterion achieved and 2.5 percent of annual salary for each qualitative merit criterion achieved. Any such merit bonus shall be considered “extra compensation” for purposes of N.J.A.C. 17:3-4.1 and shall not be cumulative.
- iv. The district board of education shall submit to the executive county superintendent a resolution certifying that a quantitative merit criterion or a qualitative merit criterion has been satisfied and shall await confirmation of the satisfaction of that criterion from the executive county superintendent prior to payment of any merit bonus.

N.J.A.C. 6A:23A-3.18(e)11; See, N.J.S.A. 18A:7-8.1(i).

When there is a controversy or dispute arising under school law in New Jersey, a determination shall be rendered by the Commissioner of Education. N.J.A.C. 6A:3-1.14(a). The Commissioner may transmit the controversy to the OAL for a hearing to be conducted, and a written decision to issue by an Administrative Law Judge (ALJ). N.J.A.C. 6A:3-1.11. If the appeal is from a decision of the State Board of Examiners or the School Ethics Commission, it shall be determined whether the decision was supported by “sufficient credible evidence in the record” and the decision shall not be disturbed unless it has been demonstrated that the Board or Ethics Commission “acted in a manner that was arbitrary and capricious or contrary to law.” N.J.A.C. 6A:4-4.1(a). Likewise, here a determination shall be made whether the decisions made by Pugh-Bassett and Nicolosi have been supported by sufficient credible evidence in the record, unless it has been demonstrated that they acted in an arbitrary and capricious manner or contrary to the law. “Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances.” Bayshore Sewerage Co. v. Department of Environmental Protection, 122 N.J. Super. 184, 199, citations omitted. If there is “room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Id.

The dispute at issue between Pennsauken BOE and Pugh-Bassett is whether

Pugh-Bassett arbitrarily and capriciously denied payment by the Pennsauken BOE to Tarchichi for merit goal A for the 2017–2018 school year, and whether she arbitrarily and capriciously failed to approve Tarchichi’s proposed goal E for the 2017–2018 school year. The Pennsauken BOE further asserts that both Pugh-Bassett and Nicolosi arbitrarily and capriciously denied approval of Tarchichi’s proposed 2018–2019 merit goals.

There are no other regulations, statutes, or guidelines promulgated for superintendents or ECSs regarding the procedures to be followed to draft merit goals; the process for approval of proposed goals or approval for payment of completed goals; or any time guidelines for the process. It is thus a subjective process, for which each individual ECS has developed their own style in handling the review and approval of proposed goals, and the review and approval of alleged completed goals to authorize payment to be made by a BOE to its superintendent.

### **2017–2018 Merit Bonus Goals**

1. *Goal A focusing on ELL ninth and tenth grade students interested in science to improve their writing and vocabulary skills, not approved for payment.*

Proposed goal A for the 2017–2018 school year was for Tarchichi to create additional writing instruction to assist with the vocabulary and grammar growth with Pennsauken’s ELL ninth and tenth grade students in the field of science. Evidence of completion of the goal would be documentation of pre- and post-tests showing a thirty percent growth in the ninth and tenth grade students’ scores, measured from the original pre-test to the final post-test. (R-3 at 2464.)

This goal was one of the four goals approved by Pugh-Bassett. Tarchichi worked on the approved proposed goals during the school year. He sent documentation to the Pennsauken BOE demonstrating his completion of same, which included documentation that all twenty sampled students from the sub-population of ELL ninth and tenth grade students improved their pre- and post-test scores. The Pennsauken BOE approved payment to be made to Tarchichi for completion of all four merit goals for the 2017–2018 school year. Pugh-Bassett approved payment for three of the goals, but denied payment

for goal A. The Pennsauken BOE paid Tarchichi for the three approved goals. The Pennsauken BOE seeks approval to pay Tarchichi for goal A.

Pugh-Bassett crafted her own style of review and approval for payment of goals, based upon her prior employment with the DOE and her insider knowledge she gained for “navigation” through the DOE system, and through collegial conversations and roundtable meetings with other ECSs. She recognizes that her opinion could differ from another county’s ECS decision, and their ultimate conclusions could be completely opposite.

Pugh-Bassett denied approval of payment for this goal, noting that the submission from Tarchichi to demonstrate achievement of the goal “*did* not satisfy the requirements for approval and therefore *will not* be approved for payment[.]” (J-1 at 0017, italics original.) She expressed her displeasure that Tarchichi only provided information for twenty students in the ninth and tenth grade ELL population, rather than all approximately forty students in that population. She stated, during cross-examination, that she expected all ninth and tenth grade students to be served under the goal. She was not satisfied with the documentation provided by Tarchichi asserting that just the test scores by students were not enough, and that the actual tests and students’ answers should have been submitted.

Pugh-Bassett approved the goal, which did not have language that all forty of the students of the ELL ninth and tenth grade population were to be sampled. The goal specifically targeted that ELL population and never referenced that all ninth and tenth grade students were to be served. The approved goal targeted the subset population at Pennsauken, just as multiple other districts’ superintendents had in their approved goals. The asserted documentation Pugh-Bassett deemed as lacking was not specified in the approved goal to be submitted as proof of completion of the goal. The Pennsauken BOE deemed the documentation and information provided by Tarchichi regarding completion of this goal to be satisfactory, and sought approval from Pugh-Bassett for the BOE to pay Tarchichi for completion of this goal.

I **CONCLUDE** the documentation provided by Tarchichi that the goal was

completed was sufficient and in line with the initial approved goal's language. I **CONCLUDE** the evidence preponderates that the documentation appropriately demonstrated that the approved merit goal was completed, and thus payment should have been approved. I **CONCLUDE** that the evidence preponderates, under a totality of the circumstances, that denial of payment by ECS Pugh-Bassett for goal A for the 2017–2018 school year was unreasonable and done in an arbitrary and capricious manner. I **CONCLUDE** that the Pennsauken BOE's request for approval to tender payment to Tarchichi for goal A from the 2017–2018 school year is **GRANTED**.

*2. Proposed goal E never approved by Pugh-Bassett as a proposed goal for Tarchichi to work on for the 2017–2018 school year.*

Goal E was the fifth proposed goal Tarchichi submitted to Pugh-Bassett for her approval for the 2017–2018 school year. (R-3 at 2471.) She did not approve proposed goal E regarding the training academy Tarchichi sought to establish for new administrators. Pugh-Bassett denied approval of the proposed goal, contending it was not an approvable goal because it was a proposal for training, which Tarchichi was already tasked with overseeing, pursuant to N.J.A.C. 6A:9C-3.2. She asserted that the regulation regarding professional development required school leaders, whom she interpreted as being the superintendent, to have professional development and training programs for the teachers and staff.

Tarchichi demonstrated that other superintendents had similar merit goals approved. Tarchichi's goal went beyond standard training, and provided for programming of monthly sessions for the new administrators. Tarchichi subsequently submitted the same goal, without specifying the number of academy sessions, for the 2019–2020 school year, which was approved by ECS DeStefano.

Pugh-Bassett rendered her determination based upon her interpretation of the regulation regarding professional development, and her opinion as to what a merit goal was supposed to be targeting, being something separate and apart from the regular duties and responsibilities of a superintendent. There is no guidance promulgated by the DOE, nor codified anywhere, to support Pugh-Bassett's opinions. The applicable

regulations do not specify that the superintendent cannot propose a merit goal that is deemed within the superintendent's umbrella of responsibility. The superintendent is the overseer of a school district. All proposed goals are going to have some type of connection to such oversight.

I **CONCLUDE** that the evidence preponderates that the academy for new administrators, proposed by Tarchichi, was an approvable goal, and should have been approved for him to attempt to complete during the 2017–2018 school year. I thus **CONCLUDE** that Pugh-Basset's failure to approve this goal was unreasonable, and done in an arbitrary and capricious manner. I thus **CONCLUDE** that the goal should have been approved.

Given that Tarchichi has subsequently proposed a substantially similar goal for 2019–2020, which was approved by another ECS, the issue is rendered moot in terms of granting the requested relief by the Pennsauken BOE. However, having concluded that Pugh-Basset's failure to approve the proposed goal was arbitrary and capricious, the Pennsauken BOE is entitled to relief, such as compensation for their fees and costs to litigate this matter. I thus **CONCLUDE** that, to the extent such relief is permissible by law, the Pennsauken BOE's request to be compensated for their fees and costs incurred by the DOE is **GRANTED**.

### **2018–2019 Merit Bonus Goals**

There is no guidance in the regulations, statutes, or anything promulgated by the DOE as to how merit goals should be drafted or structured, reviewed and approved, or disapproved. The review process is a subjective one, with each ECS left to their method of developing a style for procedural and substantive review, and for approval of proposed merit goals.

Logically, it makes sense that proposed merit goals should be drafted and completed in August or September, at the start of the school year, if the purpose is for the superintendent to be working on goals during the academic school year. That was done by Tarchichi, who submitted his proposed goals to Pugh-Basset. Unique here was that

he was wrangling with whether a goal from the previous year would be approved for payment by Pugh-Bassett. This set up an adversarial position between them, rather than being the so-called collaborative and cooperative process that was to occur. It was not until December 18, 2018, that the DOE finally confirmed that Nicolosi would be assigned to review Tarchichi's goals.

Nicolosi began the process fresh, not reviewing the prior suggested revisions by Pugh-Bassett. She presented completely overhauled revisions to Tarchichi's goals, combining three proposed goals into one, and drilling down on the remaining two goals as to their purpose, and as to the documentation to demonstrate completion.

Nicolosi cannot be faulted for her approach, given that there are no guidelines in the process for timing and review methods. Yet, Tarchichi had already been engaged in the "back and forth" negotiations for several months with Pugh-Bassett. Tarchichi forwarded his proposed goals to her one day after she was assigned to take over the review from Pugh-Bassett. Nicolosi's initial response was unreasonable, given the time that transpired for Tarchichi already into the 2018–2019 school year, to combine three proposed goals into one in multiple tiers, and creating more issues and responsibilities within the other two goals.

Nicolosi and Tarchichi engaged in back and forth communications, but in January 2019, when Nicolosi received Tarchichi's communication that he was not going to do any further revisions, she considered the process to be at a point that she could not reach an agreement with him. However, she stated during her testimony that his goals as presented could have been approvable goals, but they needed more documentation to demonstrate completion. That position was not communicated to Tarchichi. She never responded to confirm that his proposed five goals could be approved, and just the issue of documentation had to be resolved. She was unwavering on her insistence that Tarchichi videotape himself for one of his goals, rather than negotiating another method of documented proof of completion.

A review of the mountain of documentation regarding other proposed and approved merit goals demonstrates that although school districts have social, cultural,

racial, and economic variants, all of the merit goals focus on similar topics and programs such as improving social, cultural, and racial harmony; improving student and staff performance; creating and improving diverse learning programs; and encouraging neglected or minority subsets of student populations to participate in same. Thus, such information was persuasive and supportive to demonstrate that ECSs have approved similarly proposed goals. I thus **CONCLUDE** that the evidence preponderates that the merit goals for the 2018–2019 school year should have been approved.

Nicolosi was assigned Tarchichi's goals in December 2018, and she acted quickly to review the goals as presented to her. She cannot be faulted for taking her fresh start on the review of his goals, since there is no guidance provided by the DOE or in the regulations or statutes as to the method of review. Where the process broke down was her failure to reply to Tarchichi's refusal to combine his goals as she suggested, and she failed to pivot and address each goal separately as he proposed, with her suggestions. Nicolosi indicated in her testimony that his goals could have been approvable, but would have needed more documentation.

The record supports that although she viewed the goals as being similar, there are instances where each goal could have been approved as a separate goal rather than tiering them into one goal. Likewise, her failure to bend in suggesting other methods of demonstration of goal completion stopped the collaborative process of getting the goals to an approvable manner as she would have liked to see it. I **CONCLUDE** that the evidence preponderates that it was unreasonable, and thus arbitrary and capricious for Nicolosi to not take any further action to have the goals approved, which resulted in de facto disapproval of Tarchichi's 2018–2019 merit goals. I **CONCLUDE** that if Tarchichi worked on the proposed goals for the 2018–2019 school year, he shall be afforded the opportunity to demonstrate completion of same to the Pennsauken BOE for approval of payment, and to have an ECS review the information and determine if payment may be approved.

## **ORDER**

It is **ORDERED** that:

1. The Pennsauken BOE's request for approval to tender payment to Tarchichi for completion of 2017–2018 school year merit goal A is **GRANTED**.
2. The Pennsauken BOE's request for a determination that Pugh-Bassett acted arbitrarily and capriciously in failing to approve the 2017–2018 proposed merit goal E regarding a training academy for new administrators is **GRANTED**.
3. The Pennsauken BOE's request for reimbursement of their fees and costs is **GRANTED**, as permitted by law, to be paid by the DOE.
4. The Pennsauken BOE's request for a determination that Nicolosi acted arbitrarily and capriciously by her de facto disapproval of Tarchichi's proposed 2018–2019 merit goals is **GRANTED**.
5. If Tarchichi worked on the proposed 2018–2019 goals and seeks to be approved for payment of same, he shall provide documentation of completion of the goals to the Pennsauken BOE for approval and, if approved for payment, the Pennsauken BOE shall seek approval from an ECS to review and confirm if payment may be made.

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

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

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 17, 2022

DATE



ELAINE B. FRICK, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

EBF/jns

## **APPENDIX**

### **WITNESSES**

#### **For petitioner**

Ronnie Tarchichi

Nicholas Perry

#### **For respondent**

Lovell Pugh-Bassett

Margaret “Peggy” Nicolosi

### **EXHIBITS**

#### **Joint**

- J-1 Verified petition of appeal received December 18, 2019, by DOE
  - Ex A: Letter of January 4, 2018, by Pugh-Bassett to Pennsauken BOE president
  - Ex B: September 18, 2018, email from Pugh-Bassett to Tarchichi
  - Ex C: Letter of October 12, 2018, by Pugh-Bassett to Pennsauken BOE president
- J-2 February 14, 2019, cover letter by counsel with Verified petition of appeal received by DOE February 15, 2019
- J-3 Pre-marked, not utilized
- J-4 Request for Production of Documents by petitioner propounded upon respondents
- J-5 Email response May 12, 2020, regarding document request #3
- J-6 Pre-marked, not utilized
- J-7 DOE response to discovery request
- J-8 Pre-marked, not utilized
- J-9 BOE certification of resolution from BOE meeting July 17, 2018, approving submission of completed merit goals of Tarchichi for the 2017–2018 school year

J-10 through J-16 Pre-marked, not utilized

**Petitioner**

- P-17 Emails regarding 2018/2019 school year merit goals
- P-18 January 3, 2020, letter from Interim ECS Judith DeStefano, approving 2019/2020 proposed merit goals by Tarchichi
- P-19 Multiple letters from DOE document production regarding merit goals
- P-20 Not admitted<sup>2</sup>
- P-21 Not admitted
- P-22 Pre-marked, not used
- P-23 Not admitted

**Respondent**

- R-1 First draft of 2017/2018 merit goals submitted to Dr. Pugh-Bassett
- R-2 Email by Pugh-Bassett to Tarchichi, September 25, 2017
- R-3 2017/2018 revised merit goals submitted to Dr. Pugh-Bassett
- R-4 Pre-marked, not entered, duplicative of J-1 Exhibit A
- R-5 Letter by Pugh-Bassett, July 16, 2018
- R-6 August 27, 2018, email
- R-7 Pre-marked, not entered, duplicative of J-1 Exhibit B
- R-8 September 18, 2018, email
- R-9 Pre-marked, not entered, duplicative of J-1 Exhibit C
- R-10 Email dated November 7, 2018, by Pugh-Bassett
- R-11 Pre-marked, not entered, duplicative of J-7 at pages 432–436
- R-12 Pre-marked, not entered, duplicative of J-7 at pages 445–446
- R-13 Email dated December 18, 2018, by Bloom
- R-14 Merit goals 2018-2019 school year from Tarchichi to Nicolosi
- R-15 Nicolosi red color edits to proposed merit goals 2018–2019

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<sup>2</sup> Judicial notice taken that a complaint was filed on September 2, 2020, captioned as Dr. Ronnie Tarchichi versus Record Custodian Jeannette Larkins, ECS Lovell Pugh-Bassett, and the New Jersey Department of Education, Superior Court of New Jersey, Mercer County, docket number MER-L-001551-20. The matter was resolved by a settlement agreement executed in December 2020.