

CHRISTOPHER CONCATO, :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :

RIVER DELL REGIONAL SCHOOL DISTRICT, :

BERGEN COUNTY, :

RESPONDENT. :

DECISION

SYNOPSIS

Petitioner – who was hired by the respondent Board in February 2002 under his Teacher of Industrial Arts certification – claimed that his tenure and seniority rights were violated when the Board abolished his full-time position as part of a reduction in force (RIF), and reduced his assignment to a .2 part-time position for the 2015-2016 school year. Petitioner sought restoration of a full-time position under his certifications/endorsements or the creation of a new position, claiming that the Board continued to employ non-tenured and less-tenured teachers in twenty-two positions to which petitioner claimed entitlement based on his endorsements in Elementary Education with Specialization in Science 5-8 and in Industrial Arts. Petitioner claimed that the Industrial Arts endorsement had been “converted” into an endorsement in Technology Education pursuant to *N.J.A.C. 6A:9B-10.6(b)*. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; an “endorsement” is an authorization that allows an instructional certificate holder to teach one or more specific subject areas; pursuant to *N.J.A.C. 6A:9B-9.2(a)*, a teaching endorsement is required for a corresponding teacher assignment; by means of a special “grandfather” provision found at *N.J.A.C. 6A:9B-10.6(b)*, an endorsement in “Technology Education” is available to holders of an Industrial Arts endorsement who had been employed by a school before April 23, 2004; despite the “grandfather” provision, the Technology Education endorsement must be procured actively through application to the Board of Examiners; *N.J.S.A. 18A:28-1 to -18* defines the conditions under which teachers may obtain tenure, which is achieved in a particular position; individuals may claim eligibility to a new position based on tenure in another position only when the two positions are substantially similar, and when the individual holds the appropriate certification; here, petitioner did not obtain the Technology Education endorsement until after the RIF occurred in June 2015, even though he had been eligible to apply for this additional endorsement for years; petitioner notified the Board of his application on September 29, 2015, but did not receive the endorsement until November 2015 – well after the date of the RIF in June 2015; and careful analysis of each of the twenty-two positions to which petitioner claimed entitlement revealed that his credentials, as of June 8, 2015, did not entitle him to teach any of the disputed positions. The ALJ concluded that: petitioner has not met his burden to show that he is entitled to any of the positions he sought; the issue of seniority does not arise in this case; and, as a tenured teacher affected by a RIF, the petitioner’s name must be maintained on a preferred eligibility list in a position for which he is qualified. Accordingly, the ALJ granted the Board’s motion for summary decision, and denied petitioner’s motion.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

<p>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.</p>

OAL DKT. NO. EDU 10269-15
AGENCY DKT. NO. 146-6/15

CHRISTOPHER CONCATO,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
RIVER DELL REGIONAL SCHOOL DISTRICT,	:	
BERGEN COUNTY,	:	
	:	
RESPONDENT.	:	

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

In his exceptions, petitioner argues that the Administrative Law Judge's (ALJ) findings were not supported by substantial credible evidence in the record. Specifically, petitioner argues that the ALJ erred when he found that petitioner could not use his Technology Education endorsement as a basis for making a seniority claim because it was acquired after the reduction in force (RIF) took place. Petitioner contends that his situation is an exception to the general rule that tenured teachers cannot make a seniority claim using a certificate that was not held at the time of the RIF. Here, petitioner emphasizes that he did not need any additional education or training to obtain the Technology Education endorsement; instead, *N.J.A.C.* 6A:9B-10.6(b) authorized him to obtain the Technology Education endorsement automatically upon application to the Board of Examiners. Accordingly, petitioner argues that he was eligible to teach classes under the Technology endorsement at the time of the RIF.

Petitioner further argues that the ALJ failed to review the curricula of the subjects to determine whether his Technology Education certification would authorize him to teach them. Petitioner emphasizes that the ALJ also erred in finding that petitioner did not have the credentials to teach any classes, despite the fact that he had been teaching the same or similar classes for twelve years. Petitioner maintains that the Board manipulated class assignments to prevent him from being assigned a teaching position. Finally, petitioner contends that the ALJ did not analyze whether the teachers assigned to teach the classes were qualified or had greater seniority than petitioner, and requests that the Commissioner remand this matter for a plenary hearing on this issue.

In reply, the Board urges the Commissioner to adopt the ALJ's initial decision for the reasons expressed therein because petitioner did not meet his burden of proving by a preponderance of the evidence that his teaching certifications and endorsements as of the date of the RIF authorized him to teach any of the courses to which he claims entitlement. The Board asserts that the ALJ properly found that the Industrial Arts endorsement is narrow in focus – pursuant to *N.J.S.A. 18A:26-2.6(b)* – and only qualifies petitioner to teach certain subject areas, none of which were available at the time of the RIF; likewise, petitioner's endorsement for Elementary School with Subject Matter Specialization: Science in Grades 5-8 did not qualify him to teach any available courses. Further, the board contends that the ALJ correctly found that petitioner may not use his Technology Education endorsement as a basis for entitlement to the positions because it was not acquired prior to the RIF, and there is no basis in law for petitioner's argument that it should be considered a valid endorsement. Therefore, as petitioner does not have the required endorsements, he is statutorily precluded from teaching any of the classes.

The Board further argues that the ALJ properly conducted a course-by-course analysis of the twenty-two courses to which petitioner claims entitlement. Specifically, the Board points out that the ALJ examined the curriculum, the course content, the endorsements required to teach the courses, as well as petitioner's arguments as to why his credentials were sufficient. The Board asserts that the ALJ appropriately found that the twenty-two courses have additional duties and different responsibilities than the courses petitioner previously taught, and that petitioner lacked the credentials to teach any of the courses. Finally, in response to petitioner's argument that the ALJ should have compared the seniority of the staff members who were assigned to teach the courses at issue, the Board maintains that such an exercise would be irrelevant, as petitioner did not possess the proper endorsements to teach those courses.

Upon review, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that petitioner is unable to use his Technology Education endorsement as a basis for claiming one of the twenty-two positions that he seeks because he obtained the endorsement after the RIF took place. Even though petitioner argues that he was able to obtain the Technology Education endorsement automatically after the “ministerial task” of submitting an application, the Commissioner agrees with the ALJ that seniority rights are fixed as of the date of the RIF and petitioner did not submit his application for the Technology endorsement until more than three months after that date. See *Fracey v. Board of Education of the City of Salem, Salem County*, 286 N.J. Super. 354, 358-61 (App. Div. 1996).

The Commissioner further agrees with the ALJ that petitioner – using his endorsements in Industrial Arts and in Elementary School with Subject Matter Specialization: Science in Grades 5-8 – does not have the qualifications necessary to teach any of the twenty-

two courses to which he claims entitlement. The Commissioner does not find petitioner's exceptions to be persuasive. The ALJ thoroughly and comprehensively conducted an analysis of each course – examining the curriculum, the endorsements the Board states are required, as well as petitioner's arguments – prior to making a determination on each course as to the necessary endorsement and whether petitioner has the required credentials to teach the course. As the ALJ found that petitioner lacked the certifications and endorsements to teach these twenty-two courses, there was no need for the ALJ to analyze the seniority of those teachers who were assigned to teach them.

Accordingly, the Initial Decision of the OAL is adopted – for the reasons thoroughly set forth therein – as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 13, 2017

Date of Mailing: February 13, 2017

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 10269-15

AGENCY DKT. NO. N/A

CHRISTOPHER CONCATO,

Appellant,

v.

RIVER DELL BOARD OF EDUCATION,

Respondent.

Alfred F. Maurice, Esq., for Appellant (Springstead & Maurice, attorneys)

Rodney T. Hara, Esq., for Respondent (Fogarty & Hara, attorneys)

Record closed: November 14, 2016

Decided: December 29, 2016

BEFORE **JOHN P. SCOLLO**, ALJ:

STATEMENT OF THE CASE

The River Dell Regional Board of Education (hereinafter, River Dell, the Board or BOE) operates a school district comprised of grades seven (7) through twelve (12), i.e. both a Middle School and a High School for the residents of the Borough of Oradell and the Borough of River Edge in Bergen County, New Jersey. Appellant, Christopher Concato (Concato) was employed by the Respondent Board and taught under his Teacher of Industrial Arts certification since February, 2002. On June 8, 2015, the BOE passed a

resolution abolishing one of two full-time positions of teacher of Industrial Arts and creating a .2 or twenty percent (part-time) position in its place. By letter dated June 11, 2011, the BOE informed Concato that his full time position was reduced to a .2 part-time position for the 2015-2016 school year for reasons of economy and efficiency. The BOE also stated that due to enrollment, positions had been reduced and programs had been restructured.

PROCEDURAL HISTORY

On June 22, 2015, Concato filed a Petition of Appeal with the Commissioner of Education (the Commissioner) claiming that the BOE had violated N.J.S.A. 18A:6-10, et seq. by continuing to employ, on a full-time basis, non-tenured teachers and teachers with less seniority than him to teach courses which he is qualified to teach. Concato seeks restoration of his full-time position, retroactive salary and benefits including pension contributions, lost seniority, and other just and equitable relief. On July 13, 2015, the BOE filed its Answer with the Commissioner. The Commissioner transferred the matter to the Office of Administrative Law on July 14, 2015, as a contested case.

On October 22, 2015, the first of several Pre-Hearing conferences took place, wherein the parties expressed their opinion that the matter might be resolved via cross-motions for Summary Decision. A Pre-hearing order was issued on October 28, 2015, which included the setting of dates for propounding and responding to discovery requests. The parties agreed that disposition of the case via cross-motions for summary decision was appropriate. Several sets of Certifications and Supplemental Certifications with Briefs, responding Briefs, and Replies were exchanged. Several case-management conferences took place before and after each set of submissions as well as several conferences to explore settlement possibilities.

The Petitioner filed his Notice of Motion for Summary Decision, Certification of Christopher Concato and Brief on March 1, 2016. Respondent filed its Motion for Summary Decision, Certification of Superintendent Patrick J. Fletcher and Brief on March 4, 2016. The Petitioner opposed the Respondent's Motion in his Reply Certification and Reply Brief dated March 17, 2016. The Respondent opposed the

Petitioner's Motion in the (first) Supplemental Certification of Patrick J. Fletcher and its Reply Brief dated March 18, 2016.

Thereafter, during a telephone settlement conference, the parties and the tribunal discussed several questions of fact which appeared to be unresolved. It was decided that both parties would benefit from further discovery in order to clarify the facts. On May 6, 2016, Attorney Alfred Maurice, on behalf of Petitioner, served a one-item Notice to Produce upon the Respondent seeking the job histories, certifications, and endorsements of certain individuals whom Petitioner claimed were teaching courses which he was qualified and entitled to teach. On May 26, 2016, the Respondent responded to the Petitioner's Notice to Produce with documents showing the job histories and certifications of the fourteen teachers of the twenty-two courses in dispute. On June 30, 2016, Petitioner's counsel submitted supplemental argument and materials. On July 1, 2016, Respondent's counsel submitted the Second Supplemental Certification of Patrick J. Fletcher dated June 28, 2016, as well as respondent's Supplemental Brief dated July 1, 2016.

Subsequently, the tribunal and counsel held a telephone conference wherein the tribunal requested further clarifications from counsel. The tribunal framed a number of questions in a letter dated October 31, 2016. The parties responded with further clarifying submissions between November 7 through 9, 2016. Thereafter, the record closed on November 14, 2016.

FACTUAL DISCUSSION

The parties submitted a "Joint Stipulation of Facts." (See attached.) The parties agree that Concato was employed by the Respondent and taught under his Teacher of Industrial Arts certification since February, 2002. They also agree that on June 8, 2015, the River Dell Board of Education passed a resolution abolishing one of two full-time positions of Teacher of Industrial Arts and creating a .2 or twenty percent (part-time) position in its place. The parties also agree that by letter dated June 11, 2015, the BOE informed Concato that his full-time position was reduced to a .2 part-time position for the

2015-2016 school year and that the BOE stated that this was done for reasons of economy and efficiency.

LEGAL ANALYSIS AND CONCLUSIONS

Certificates And Endorsements

In New Jersey, no teaching staff member can be employed as a teacher unless he is a holder of a valid certificate to teach. N.J.S.A. 18A:26-2 and N.J.A.C. 6A:9B-5.1. A “certificate” is defined as a legal document that permits an individual to serve as a teaching staff member. N.J.A.C. 6A:9-2.1. Three categories of certificates are available: instructional, administrative, and educational services. N.J.A.C. 6A:9B-5.3. An “instructional certificate” is a certificate that permits an individual to serve as a teacher in a classroom setting. N.J.A.C. 6A:9B-2.1. A “standard certificate” is a permanent certificate issued to a person who has met all requirements for a particular certificate. N.J.A.C. 6A:9B-2.1. A “standard instructional certificate” is a permanent certificate issued to a person who has met all teacher certification requirements. N.J.S.A. 18A:26-2a(a).

The requirements for obtaining instructional certification, referred-to as a “standard instructional certificate,” are set forth in N.J.A.C. 6A:9B-8.1 through 8.10. (The case at bar involves only instructional certificates.) Each certificate must be issued with at least one “endorsement.” N.J.A.C. 6A:9-2.1

The entity responsible for the promulgation of rules setting forth certification and endorsement requirements for teachers is the State Board of Education, an agency under the New Jersey Department of Education. N.J.S.A. 18A:26-2.5. The entity that has the power to issue and to revoke certificates is the Board of Examiners. N.J.A.C. 6A:9B-3.2.

The Board of Examiners of the Department of Education issues certificates pursuant to N.J.A.C. 6A:9B-5.3 and 5.4 in accordance with the “Professional Standards For Teachers” set forth in N.J.A.C. 6A:9-3.3 and 3.4, which are designed to evaluate the

teacher's knowledge of how and why learners (i.e. students) learn; the teacher's knowledge of content (i.e. the subject matter of the body of knowledge he teaches); instructional practice (ability to assess the learners, planning instruction; and instructional strategies for encouraging learners to build skills and apply knowledge) and the teacher's ability to take responsibility for furthering the teacher's continued development of his teaching skills, fostering the learner's development, and abiding by ethical practices to promote the success of all students.

An "endorsement" is an authorization allowing an instructional certificate holder to teach one or more specific subject area(s) or to serve in one or more specific teaching staff role(s). N.J.A.C. 6A:9B-2.1

To fulfill the endorsement requirements necessary for instructional certification candidates must complete certain college credit and degrees, which are set forth in N.J.A.C. 6A:9B-9.1(a)(1)(i) an undergraduate degree with a major in the subject area; and/or (ii) a master's degree in the subject area; and/or (iii) thirty credits in a coherent sequence of courses appropriate to the subject area of which at least twelve credits must have been earned at an advanced level of study at a four-year college.

A teaching endorsement is required for a corresponding teaching assignment (position). N.J.A.C. 6A:9B-9.2(a). The types of endorsements issued by the Board of Examiners are found at N.J.A.C. 6A:9B-9.3 through 6A:9B-10.15. The Department of Education maintains a list of approved job titles with their corresponding required certificates and endorsements. N.J.A.C. 6A:9B-5.5(a). Using the aforesaid list of approved job titles, the district superintendent of schools determines which teachers have the appropriate certificates and endorsements. N.J.A.C. 6A:9B-5.4(a). Following the superintendent's determination, the District Board of Education assigns teachers with appropriate certificates and endorsements to positions to perform their assigned duties. N.J.A.C. 6A:9B-5.5(a).

“EDUCATIONAL TECHNOLOGY” versus “TECHNOLOGY EDUCATION

Lest there be confusion in the terminology employed in the regulations, it is important to differentiate the term “educational technology” found in N.J.A.C. 6A:9B-5.17 from the endorsement called “Technology Education” found in N.J.A.C. 6A:9B-9.3(a)(8). The term “education technology” found at N.J.A.C. 6A:9B-5.17(a) refers to the prerequisite that every teacher in New Jersey must demonstrate knowledge and understanding of computers or other “educational technology” resources and tools as defined in the “Professional Standards For Teachers” in N.J.A.C. 6A:9-3.3. N.J.A.C. 6A:9B-5.17(b) provides with certain exceptions that an endorsement shall not be required to deliver instruction in educational technology, computers, and other digital tools. The term “Technology Education” is explained below.

An endorsement titled “Technology Education,” found at N.J.A.C. 6A:9B-9.3(a)(8), authorizes the holder of this endorsement to teach, in all public schools, a variety of technical education courses (see those listed in 6A:9B-9.3(a)(8)(1)(A through F)), but does not authorize the holder to teach “career and technical education programs” listed in N.J.A.C. 6A:9B-9.4(a) and (c).

By means of a special “grandfather” provision found at N.J.A.C. 6A:9B-10.6(b) an endorsement in “Technical Education” is available to holders of an Industrial Arts endorsement who have been employed by a school district before April 23, 2004. These individuals can obtain the Technology Education endorsement upon his/her application to the Board of Examiners. N.J.A.C. 6A:9B-10.8(b).

Tenure

In New Jersey, state statutes grant teachers the right to tenure. The Tenure Act, N.J.S.A. 18A:28-1 to -18, defines the conditions under which teachers are entitled to the security of tenure. The Tenure Act defines the term “position” as any office, position or employment. N.J.S.A. 18A:28-1. A teacher is entitled to tenure if (1) he works in a position for which a teaching certificate is required (i.e. he is a teaching staff member); (2) he holds the appropriate certificate; and (3) he has served (i.e. been employed in the

district) for the requisite period of time. N.J.S.A. 18A:28-5. When a teacher has achieved tenure under an instructional certificate, he receives tenure for all endorsements under that certificate. See Dennery v. Bd. of Educ., 131 N.J. 626, 634 (1993).

Tenured teaching staff members shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause. N.J.S.A. 18A:28-5. Tenure rights are designed “to aid in the establishment of a competent and efficient school system by affording principals and teachers a measure of security in the ranks they hold after years of service.” Viemeister v. Bd. of Educ. of Prospect Park, 5 N.J. Super. 215, 218 (App. Div. 1949). Being of remedial purpose, the Tenure Act is to be liberality construed to achieve its beneficent ends. Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 74 (1982). The burden of proving a right to tenure rests with the teacher. Canfield v. Bd. of Educ., Borough of Pine Hill, 51 N.J. 400 (1968).

Tenure is achieved in a particular position. Howley v. Ewing Bd. of Educ., 1982 S.L.D., 1328, 1337, adopted, Comm’r 1982 S.L.D. 1356 (also published at 6 N.J.A.R. 509), aff’d, St. Bd. 1983 S.L.D. 1554. The courts have permitted an individual to claim eligibility to a new position based on tenure in another position only when the two positions are “substantially identical.” “When the duties of a position in which a teaching staff member has acquired tenure are substantially identical to those of the position that the person seeks, a local school board may not sidestep an educator’s tenure rights by simply re-naming the position or tacking on additional meaningless requirements” and “must extend the teaching staff member’s tenure rights to the newly created position.” Dennery, supra, 131 N.J. at 639; see Viemeister, supra, 5 N.J. Super. at 218. A mere overlap of duties, however, does not mean that the two positions are equivalent for tenure purposes. If a newly created position is similar to a tenure holder’s abolished position but also requires additional duties or different responsibilities, then the newly created position is not considered to be substantially similar to the former position. Dennery, supra, 131 N.J. at 640.

Reduction In Force (Rif)

A Board of Education may effectuate a reduction in force for reasons of economy, because of reduction in the number of pupils, because of a change in the administrative or supervisory organization of the district, or for other good cause. N.J.S.A. 18A:28-9. A RIF, “whether of tenured or non-tenured teachers, if done for reasons of economy, is entirely within the authority of the board,” Maywood Bd. of Educ. v. Maywood Educ. Assoc., 168 N.J. Super. 45, 55 (App. Div. 1979), certif. denied, 81 N.J. 292 (1979). A reduction in hours of employment is considered a reduction in force under N.J.S.A. 18A:28-9. Klinger v. Board of Educ. of Cranbury Twp., Middlesex County, 190 N.J. Super. 354 (App. Div. 1982), certif. denied, 93 N.J. 277 (1982).

Seniority

The concept of seniority applies only after tenure has been achieved and only has meaning when an RIF occurs. Seniority “comes into play only if tenure rights are reduced by way of dismissal or reduction in tangible employment benefits.” Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 531 (App. Div. 1999). Seniority refers to an employee’s “bumping” rights upon a reduction in force. Howley v. Ewing Bd. of Educ., 1982 S.L.D., 1328 at 1339. Seniority provides a mechanism for ranking all tenured teaching staff members so that reductions among the tenured force can be affected in an equitable fashion and in accord with sound educational policies.” Capodilupo v. West Orange Bd. of Educ., 218 N.J. Super. 510 (App. Div. 1987), certif. denied, 109 N.J. 514 (1987). Seniority is a right afforded to tenured employees entitling the employee to either continue in an existing job opening based on their longevity of employment or to be placed upon an eligible list for reemployment when a new position becomes available. Id. at 531. Dismissals resulting from an RIF must be made on the basis of seniority according to standards established by the Commissioner and approved by the State Board. N.J.S.A. 18A:28-10. N.J.A.C. 6A:32-5.1 sets forth standards for determining seniority. A tenured teaching staff member dismissed as a result of a reduction in force must be maintained on a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such

person is qualified and must be reemployed if and when such vacancy occurs. N.J.S.A. 18A:28-12.

Summary Decision

Motions for summary decision, the OAL equivalent of a summary judgment motion, are covered under N.J.A.C. 1:1-12.1 et seq. This regulation provides that in order to be granted, the moving party must show that there is no genuine issue of material fact and that they are entitled to prevail as a matter of law. In order to prevail, an adverse party must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Ibid. The provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether component evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving the party] must prevail as a matter of law.” Id. at 536.

Issue Number One: Did Concato earn the Technology Education endorsement before or after the RIF occurred?

Christopher Concato seeks either restoration of a full-time position under his certifications/endorsements or the creation of a new position. He claims that his tenure and seniority rights were violated because there currently are non-tenured and less-tenured teachers in positions which he claims. Concato claims, by the “breadth of his endorsement in Elementary Education with Specialization in Science 5-8” and by the “breadth of his endorsement in Industrial Arts (which he claims has been “converted” into an endorsement in Technology Education pursuant to N.J.A.C. 6A:9B-10.6(b)), that he possesses the credentials to teach the twenty-two courses (i.e. positions) at issue in this case. (The twenty-two courses are set forth in Concato’s answer to Respondent’s

Interrogatory Number 6, which is attached to Concato's March 1, 2016, Brief at pages 2-3.) Concato's argument is set forth in his submissions of October 22, 2015; March 17, 2016; and June 30, 2016.

Central to Concato's argument is his contention that his Industrial Arts endorsement has been "converted" into a Technology Education endorsement, which increases the number of positions in which he is eligible to teach and thus enhances his tenure and seniority protections.

Throughout his submissions, Concato's counsel asserts or assumes that his Industrial Arts endorsement converted into an endorsement in Technology Education before the RIF occurred. Examples follow:

First, on page 2 of his October 22, 2015, letter Petitioner's counsel states that Concato's Industrial Arts endorsement "has been *renamed* Technology." On page 4 of the Petitioner's October 22, 2015, Brief it is argued that Petitioner's "Industrial Arts endorsement was converted to a Technology Education endorsement, under N.J.A.C. 6A:9B-10.6(b)."

Second, in Petitioner's March 17, 2016, Reply Brief, in Point II, on page 6, Concato references N.J.A.C. 6:9B-9.3(A)(8) (a superseded regulation) and states that he is "entitled to the benefits of the *conversion* of his Industrial Arts certificates". The tribunal interprets this possibly as an attempt to cite N.J.A.C. 6A:9B-10.6(b), which governs the "grandfather" provision under which holders of Industrial Arts endorsements might obtain a Technology Education endorsement. However, N.J.A.C. 6A:9B-10.6(b) does not provide that an Industrial Arts endorsement can automatically "convert" into a Technology Education endorsement. There are procedures to follow.

Third, in Petitioner's counsel's June 30, 2016, letter (page 2, third paragraph) he refers to "the umbrella of his (Concato's) Industrial Arts/Technology certification." Inherent in this terminology is Petitioner's assumption that his Industrial Arts endorsement and the Technology Education endorsement, which he earned after the RIF, were one and the same before the RIF.

Concato's argument does not differentiate between positions he is able to teach based solely on his "former" Industrial Arts endorsement and courses he is able to teach based on the "new" endorsement he claims in Technology Education. Underlying Concato's argument is the assumption that, pursuant to the language of N.J.A.C. 6A:9B-10.6(b), his Industrial Arts endorsement "converted" into a Technology Education endorsement before the RIF (reduction in force) occurred and that this "conversion" enables him to lay claim to the twenty-two positions currently occupied by the others. An analysis of that assumption is necessary.

Concato's claim is that his Industrial Arts endorsement converted into a Technology Education endorsement before the RIF occurred. Concato does not specify a date on which the purported conversion took place. His arguments simply presume that he held a Technology Education endorsement on June 8, 2015, the date of the RIF. The text of N.J.A.C. 6A:9B-10.6(b) sets forth procedures and does indeed "grandfather" holders of Industrial Arts endorsements who have been teaching technology education courses before April 23, 2004, if they apply for the Technology Education endorsement. For those who have not been teaching technology education courses, they too can obtain the Technology Education endorsement by applying for it, but they must also pass a State test. Concato availed himself the opportunity to apply for the Technology Education certificate under the "grandfather" provision of N.J.A.C. 6A:9B-10.6(b). However, he notified the River Dell District that he was applying for the Technology Education endorsement on September 29, 2015, (three and one-half months after the RIF) and he received it in November 2015 (five months after the RIF).

Both counsel cite the case of Francey v. Board of Education of the City of Salem, 286 N.J. Super. 354 (App. Div. 1996) as authoritative on the issue of whether post-RIF acquisitions of endorsements can enhance a teacher's tenure or seniority rights. (See Petitioner's counsel's citation of Francey on page 6 of his October 22, 2016, submission and Respondent's counsel's citation of same on page 5 of his March 18, 2016, submission). The Appellate Division in Francey held that a teacher's tenure and seniority rights are fixed as of the date of the RIF and any subsequent endorsements

obtained by a teacher are not afforded any tenure protections. Francey, 286 N.J. Super. at 358-61.

In the Parties' "Joint Stipulation of Facts" (numbered Paragraph 4) it was agreed that Christopher Concato was assigned to teach courses in the River Dell Regional School District pursuant to his Industrial Arts certificate. It was also agreed that he never taught science in the District pursuant to his Elementary School Science grades 5-8 certificate. Although tenure is achieved in a specific position, whenever tenure is awarded under a certificate, tenure extends to all endorsements held by the teacher under that certificate (see Dennery, supra, 131 N.J. at 634). So although Concato never taught science in the River Dell District, he nonetheless earned tenure as a Teacher of Science by virtue of having his endorsement in Elementary Education with Specialty in Science grades 5-8.

Concato taught several courses (all of which have been set forth in his answer to respondent's Interrogatory number 6) pursuant to his Standard Certificate with endorsement in Industrial Arts. He was granted tenure as a teacher of Industrial Arts.

I **CONCLUDE** that because it was procured after the RIF occurred, Concato cannot use his post-RIF Technology Education endorsement as a basis for claiming any of the twenty-two positions he seeks.

I **CONCLUDE** that any claim Concato makes to said positions must be made solely on the basis of the certifications/endorsements he held on the date the RIF occurred (June 8, 2015), namely his Standard Certificate with endorsement in Elementary Education with Specialization in Science grades 5-8 and his Standard Certificate with endorsement in Industrial Arts.

Issue Number Two: Which positions is Concato qualified to teach by virtue of his Standard Certificate with endorsement in Industrial Arts and in Elementary Education with Specialization in Science Grades 5-8?

The holder of an endorsement in Industrial Arts is authorized to teach Industrial Arts, which, by statute, includes: graphic arts, drafting, woodworking, metal working arts, and power mechanics. N.J.S.A. 18A:26-2.6(b). The case of Polo v. Board of Education Vocational Schools County of Bergen, 93 N.J.A.R.2d (EDU) 498, affirmed, 94 N.J.A.R.2d (EDU) 36, demonstrates that the statutory limits of the Industrial Arts endorsement have been narrowly construed. In Polo, a teacher who had a permanent instructional certificate with endorsements in “Skilled Trades” and in “Industrial Arts” was determined to lack the appropriate endorsements to teach plumbing or custodial training courses. Polo illustrates the narrow confines of the subject matter which the holder of an Industrial Arts endorsement may teach.

Concato’s argument is that the breadth of his Instructional certificate with an endorsement in Elementary Education with Specialization in Science grades 5-8 and with an endorsement in Industrial Arts qualifies him to teach a wide variety of courses including the twenty-two courses he seeks, which are currently being taught by others.

The District maintains that an appropriate teaching endorsement is required for the corresponding teaching assignment. N.J.A.C. 6A:9B-9.2 and 9.3(a). The District also counters Concato’s assertion with the Certifications submitted by Patrick J. Fletcher, Superintendent of Schools for the River Dell School District.

A course-by-course analysis is set forth below. The curriculum of each of the twenty-two disputed courses, the endorsements which the District says are required in order for a teacher to qualify to teach the courses, and Concato’s statements about why his credentials meet the requirements for teaching said courses will be analyzed. Concato relies on the breadth of his aforesaid Certificate and endorsements and his work experience. The District relies on Mr. Fletcher’s perusal of the Department of Education’s list of approved job titles with corresponding authorized certificates/endorsements as referenced in N.J.A.C. 6A:9B-5.5.

Analysis of the Twenty-Two Disputed Courses

(1) Projects and Performances

The District says that the courses in “Projects and Performances 7 & 8” are part of the “Gifted and Talented” curriculum and are a component of the Language Arts Department. These courses emphasize study of fiction, non-fiction, and persuasive writing. The District stated that the Department of Education’s required endorsements for this position is “Teacher of English” and/or “Elementary School with Subject Matter Specialization: Language Arts/Literary Specialization in Grades 5-8.”

Concato says that he taught this course under his Industrial Arts certification and that teachers of science, social studies, general K-8, and home economics have all taught this course in the past.

I **CONCLUDE** that the parameters of what constitutes Industrial Arts is set forth in N.J.S.A. 18A:26-2.6. The endorsement in Industrial Arts authorizes the holder of that endorsement to teach graphic arts, drafting, woodworking, metal working arts, and power mechanics. I **CONCLUDE** that the teaching of literature (fiction and non-fiction) and the teaching of persuasive writing do not fall within the ambit of Industrial Arts. Clearly the course is a language arts course. I **CONCLUDE** that the requirement that the teacher of this course must hold an endorsement as a “Teacher of English” or “Elementary School with Subject Matter Specialization in Grades 5-8” is correct. I **CONCLUDE** that Concato lacks the required credentials and therefore, as a matter of law, he has no legitimate claim to teach this course.

(2) Research 4 Today

The District claims that the courses in “Research 4 Today” 7 and 8 are a component of the Language Arts Department. These courses emphasize reading, understanding literary devices, and writing. The District stated that the required endorsements are

either “Teacher of English” or “Elementary School with Subject Matter Specialization in Grades 5-8.”

Concato says that his Industrial Arts certificate is appropriate for these courses because they are basic courses that teach students to perform digital research and that they are extensions of courses he taught called “Strive for Success” and “Digital Communications.”

I **CONCLUDE** that the courses are reading and writing courses that require the teacher to develop the student’s critical literary skills and to teach good writing skills, both of which are outside the subject matter (i.e. the scope) set forth for Industrial Arts under the aforesaid statute. I **CONCLUDE** that the requirement that the teacher of this course must hold either a “Teacher of English” or “Elementary School with Subject Matter Specialization in Grades 5-8” is correct. I **CONCLUDE** Concato lacks the required credentials and therefore, as a matter of law, he has no legitimate claim to teach these courses.

(3) Robotics

The District says that “Robotics” is a component of the Science Department. The course emphasizes high-level programming languages and the engineering process. The curriculum entails concepts of science, technology, mathematics, and engineering. The District stated that the required endorsement is “Teacher of Physics.”

Concato says that he taught Robotics as part of his previous technology courses in middle school. He says the course is properly classified as a technology course and that it is not a physics course.

I **CONCLUDE** that while Robotics may have been part of a previous course taught by Concato, this particular Robotics course involves the teaching of high-level programming languages and an emphasis on scientific and mathematical concepts that are closer to Physics than they are to the subject matter set forth for Industrial Arts under the aforesaid statute. I **CONCLUDE** that the requirement of a “Teacher of

Mathematics” endorsement is correct. I **CONCLUDE** that Concato does not possess all of the required credentials that would enable him to teach the “Robotics” course and therefore, as a matter of law, he has no legitimate claim to teach this course.

(4) Introduction to Computer Science

The District says that the course is named “Computer Programming with Python” and is also referred to as “Introduction to Computer Programming.” The curriculum is for grades 9-12 and includes familiarizing students with computer languages, focuses on the development of mathematical problem-solving skills, enabling them to write programs in the Python computer language, and enabling students to create applets. The District stated that the required endorsement is “Teacher of Mathematics.”

Concato says that the course contains more technology material than mathematics. He says that he is qualified to teach the basic math skills which are part of this course under his Elementary Education K-6 endorsement course. He did not state that he is familiar with Python or any other particular computer languages.

I **CONCLUDE** that while Concato taught computer programming as part of a course called Computer Literacy for grades 7 and 8, Computer Programming with Python involves much deeper subject matter and is a math-oriented course. The District’s requirement that the teacher of this course must have a “Teacher of Mathematics” endorsement is correct. I **CONCLUDE** that the subject matter set forth for Industrial Arts under the aforesaid statute does not comport with the requirements of Computer Programming with Python. I **CONCLUDE** that Concato does not possess all of the required credentials that would enable him to teach this course and therefore, as a matter of law, he has no legitimate claim to teach this course.

(5) Engineering Your World (Grades 10-12)

The District says that “Engineer Your World” is a component of the high school Science Department. It is a five-credit, full-year honors course wherein students engage in authentic engineering practices applying principles of engineering, science, technology,

and mathematics. The required endorsements are “Teacher of Biological Science” or “Teacher of Physical Science.” Concato says that his Industrial Arts/Technology certification authorizes him to teach this course. His argument assumes that he can utilize the Technology Education endorsement that he earned post-RIF to advance his claim to teach this course. As decided above, he cannot do so. Concato’s claim can only be based on his Industrial Arts and Elementary Education endorsements.

I **CONCLUDE** that the “Engineer Your World” honors course requires a teacher with credentials in science and mathematics, namely a teacher who holds either an endorsement as a “Teacher of Biological Science” or “Teacher of Physical Science.” I **CONCLUDE** that the requirement for either of these endorsements is correct. I **CONCLUDE** that Concato has not presented evidence of his expertise in all of the areas needed to teach this high school honors course. I **CONCLUDE** that Concato lacks the required credentials and, therefore, as a matter of law, has no legitimate claim to teach this course.

(6), (7), (8), (9) TV Production I (Grades 9-10); TV Production II (Grades 10-11); TV Production III (Grades 11-12); and Advanced Media Project (Grade12)

The District says that these four courses are components of the high school Art Department and together constitute a four-level series of television production courses. Each are five-credit, full-year courses. “TV Production I” teaches students the art skills (writing, acting, videotaping, and editing) needed to create video projects. “TV Production II” expands upon the skills acquired in “TV Production I” so as to enable students to obtain skills in interviewing, writing news stories, and the creation of documentaries and short films for TV broadcast on the school’s television system. “TV Production III” builds upon the two previous courses in the series with an emphasis on the creation of stories and studio productions for broadcast on the school’s TV system, web page, and YouTube channel. “Advanced Media Project” is a course for high school seniors who have excelled (grade of 85 or better) in “TV Production III.” This course emphasizes close student-teacher collaboration on special media projects designed for the particular student’s chosen interest. The District says that the required

endorsements for “TV Production I” are either “Teacher of Audio/Visual Broadcast Production Technology” or “Teacher of Skilled Trades: Television Broadcasting.” For the latter three courses the required endorsement is: “Teacher of Skilled Trades: Television Broadcasting.”

Concato says that his Industrial Arts/Technology certificate authorizes him to teach these courses, that his certificate authorized him to teach courses in elementary school or middle school entitled “Information and Communication” and “Technology and Society,” which he claims are part and parcel of the above-named courses. He adds that the original curriculum of the TV/Media courses were written by an Industrial Arts teacher.

I **CONCLUDE** that all four courses require a teacher to have an in-depth knowledge of all aspects of the use and operation of any equipment related to television production. They also require in-depth knowledge needed to teach students the skills related to interviewing, writing, and producing TV shows, documentaries, and movies. I **CONCLUDE**, as determined above, that Concato cannot utilize the Technology Education endorsement that he earned post-RIF. I **CONCLUDE** that Concato’s credentials in Industrial Arts and Elementary Education are insufficient for teaching courses in Television Production and advanced television projects. I **CONCLUDE** that the requirement of an endorsement in either “Teacher of Audio/Visual Broadcast Television Production Technology” or “Teacher of Skilled Trades: Television Broadcasting” is correct. I **CONCLUDE** that Concato lacks the required credentials (“Teacher of Audio/Visual Broadcast Production Technology” or “Teacher of Skilled Trades: Television Broadcasting”) and therefore, as a matter of law, he has no legitimate claim to teach these courses.

(10, 11, 12) Math Plus Algebra a/k/a Math Lab Algebra I; Algebra II Lab a/k/a Math Lab Algebra II; and Geometry Lab a/k/a Math Lab Geometry

The District says that the curriculum for each of these courses are as follows: “Math Lab Algebra I” is a five-credit, full-year course for high school students in need of remediation or extra assistance while they take the course in “Algebra I.” “Math Lab

Algebra II” is a five-credit, full-year course for high school students in need of remediation or extra assistance while they take the course in “Algebra II.” “Math Lab Geometry” is a five-credit, full-year course for high school students in need of remediation or extra assistance while they take the course in “Geometry.” All three courses are components of the Mathematics Department. The District stated that the required endorsement for these three positions is “Teacher of Mathematics.”

Concato says that he is authorized to teach basic skills courses under his Elementary Education endorsement. In answer to Interrogatory Number 20 inquiring about the basis of his claim that he is entitled to teach remedial courses, he cites his aforementioned credentials and his unspecified previous teaching assignments.

I **CONCLUDE** based on Numbered Paragraph 4 of the “Joint Stipulation of Facts” that there is nothing in Concato’s teaching history which demonstrates that he ever taught Algebra or Geometry to elementary, middle, or high school students. I **CONCLUDE** that the teaching of Mathematics is outside the scope of Industrial Arts as that endorsement is defined in the aforementioned statute. I **CONCLUDE** that the three aforementioned math courses require a teacher that holds the “Teacher of Mathematics” endorsement. I **CONCLUDE** that Concato lacks the required credentials (a “Teacher of Mathematics” endorsement) to teach “Math Lab Algebra I,” “Math Lab Algebra II,” or “Math Lab Geometry” and therefore, as a matter of law, he has no legitimate claim to teach any of these three courses.

(13, 14, 15, 16, 17) Digital Imaging; Animation; Digital Arts Major; Digital Illustration;
Digital Commercial Design

The District says that all five of the above-listed courses are components of the Art Department. “Digital Imaging” is a five-credit, full-year course for grades 9 thru 12. In this course the student learns how to work with digital imaging software, how to distinguish between elements of art and principles of design with the goal of using desktop publishing software to produce a finished work product for a commercial or professional audience. “Animation” is a five-credit, full-year course for grades 9 thru 12 wherein the student is called-upon to learn the basic principles of animation, use various

software, and ultimately create his own digital animated movie. “Digital Arts Major” is a five-credit, full-year course for grades 11 thru 12. This course builds upon previous courses to enable the student to expand his knowledge of digital software to solve design problems and produce portfolio-quality artwork. “Digital illustration” is a five-credit, full-year course for grades 9 thru 12. It emphasizes the student’s use of Adobe Illustrator software to complete creative assignments in areas such as fashion, publishing, fine art, etc. “Digital Commercial design” is a five-credit, full-year course for grades 10 thru 12. Working alone or in teams on design projects, the students study the design and workflow process to create book illustrations, advertisements, packaging mock-ups, and game designs for everyday use. The District says the required endorsement is “Teacher of Art.”

Concato says that his Industrial Arts and Elementary Education credentials qualify him to teach any of these courses. He has previously taught in each of these areas as part of the Middle School “Computer Literacy 7 & 8” courses.

I **CONCLUDE** that while Concato has taught courses in Middle School “Computer Literacy 7 & 8,” the subject matter associated with the five above-listed high school courses is much deeper, is geared for students planning a career in jobs involving a high order of digital illustration and creative design. Moreover, the subject matter is decidedly art-oriented. I **CONCLUDE** that the subject matter set forth for Industrial Arts under the aforesaid statute does not comport with the requirements of any of the five, above-listed art courses. Moreover, I **CONCLUDE** that Concato cannot use the Technology Education endorsement, which he acquired post-RIF to advance his claim to teach these five courses. I **CONCLUDE** that the requirement of a “Teacher of Art” endorsement is correct. I **CONCLUDE** that Concato does not hold the “Teacher of Art” endorsement and therefore, as a matter of law, he has no legitimate claim to teach any of these five courses.

(18, 19, 20) Introduction to Photography; Advanced Photography; Advanced Placement Photography

The District says that all three of these courses are components of the Art Department. "Introduction to Photography" is a five-credit, full-year course for grades 10-12. Together they can constitute a three-level series of photographic expertise. "Introduction to Photography" teaches students how to use traditional cameras, to develop black-and-white film, and later how to use digital cameras. "Advanced Photography" is a five-credit, full-year course for students in grades 10 thru 12, who have passed "Introduction to Photography." In "Advanced Photography" students expand upon their earlier knowledge, learn to use compute image processing software like Photoshop. In "Advanced Placement Photography" a five-credit, full-year course for grade 12 students only. These seniors are required to create a portfolio which demonstrates their developing sense of art, an appreciation of the depth of a particular artistic concern, and their formal, technical and expressive artistic abilities. The District says that the required endorsement is "Teacher of Art."

Concato says that his Industrial Arts and Elementary education credentials qualify him to teach any of these courses. He has previously taught in each of these areas as part of the Middle School "Computer Literacy 7 & 8" courses.

I **CONCLUDE** that while Concato has taught courses in middle school "Computer Literacy 7 & 8," the subject matter associated with the three Photography courses involves the use of film photography, not only digital photography. Concato has not presented any evidence demonstrating his expertise in the use of the various types of photographic equipment, film development, etc. Nor has he demonstrated training and expertise that would enable him to instill in his students the sense of artistic sensibility that is an essential element of each of these three courses. I **CONCLUDE** that the three photography courses are decidedly art-oriented. I **CONCLUDE** that the subject matter set forth for the Industrial Arts under the aforesaid statute does not comport with the requirements of any of the three, above-listed photography courses. I **CONCLUDE** that Concato cannot use the Technology Education endorsement, which he acquired post-RIF to advance his claim to teach these three courses. I **CONCLUDE** that the

requirement of a “Teacher of Art” endorsement is correct. I **CONCLUDE** that Concato does not hold the “Teacher of Art” endorsement and therefore, as a matter of law, he has no legitimate claim to teach any of these three courses.

(21) World of Music & Music Technology 7

The District says that this course is a component of the Related Art Department. “World of Music” is a middle school course which introduces students to the fundamentals of music, including scales, chords, and music notation; the basics of recording and editing; and an appreciation of a wide variety of musical genres and composers. The District says that the New Jersey Department of Education, Bergen County office, issued a decision in July 2014 stating that the required endorsement for this position is “Teacher of Music.”

Concato says that he was assigned to teach this course in June 2014 for the 2014-2015 school year. Then the course was re-assigned. His argument is that the assigning of this position to him means that he was deemed qualified to teach it.

I **CONCLUDE** that the District was required by N.J.S.A. 18A:26-2 and N.J.A.C. 6A:9B-5.1(a), (b), and (c) to follow the decision of the Department of Education requiring that the position must be filled by a person who holds a “Teacher of Music” endorsement. I **CONCLUDE** that Concato does not hold that endorsement and therefore, as a matter of law, he has no legitimate claim to teach this course.

(22) Painting and Printmaking

The District says that this course is a component of the high school Art Department. “Painting and Printmaking” is a five-credit, full-year course for students in grades 10 thru 12, who have passed Drawing & Sculpture. The goal of the course is to teach students to develop an understanding of aesthetics and principles of art. Students are taught to use acrylics, oil pastel, and ink to create paintings and prints using the techniques of pointillism, monotype, and chine colle.

Concato says that his Industrial Arts and Elementary Education credentials qualify him to teach any of these courses. He claims to have taught in each of these areas as part of the middle school “Computer Literacy 7 & 8” courses.

I **CONCLUDE** that while Concato has taught courses in middle school “Computer Literacy 7 & 8,” the subject matter associated with “Painting and Printmaking” involves the use of paint, ink, and materials that are peculiar to the fine art of painting and the fine art of print-making. Concato has not presented any evidence demonstrating his expertise in the use of oils, acrylics, inks, brushes and other types of applicators, canvasses, linens, etc. which are used in the making of paintings and prints. Nor has he demonstrated training and expertise that would enable him to equip his students to use the aforesaid materials to create their own works of art. I **CONCLUDE** that the subject matter set forth for Industrial Arts under the aforesaid statute does not comport with the requirements of the “Painting & Printmaking” course. I **CONCLUDE** that the requirement of a “Teacher of Art” endorsement is correct. I **CONCLUDE** that Concato does not hold that endorsement and therefore, as a matter of law, he has no legitimate claim to teach this course.

I **CONCLUDE** that Concato has not met his burden to prove by a preponderance of the credible evidence that his credentials, as of the June 8, 2014, RIF, entitled him to teach any of the twenty-two disputed courses.

As stated previously, tenure is achieved in a particular position. Eligibility to teach in a newly created position or in another position is possible only when the two positions are “substantially similar”. Denney, supra, 131 N.J. at 639. A mere overlap of duties does not mean that the positions are similar. Id. at 640. Concato’s tenure in the positions he has taught (by virtue of his endorsements in Industrial Arts and in Elementary Education Grades 5-8 with Specialization in Science) does not transfer to any of the twenty-two courses that he seeks to teach because he lacks the credentials to teach these courses and because the positions he seeks to teach have many additional duties and different responsibilities than the courses he has taught. The twenty-two courses are not “substantially similar” to the courses which he has previously taught. Because there is such dissimilarity between the positions in which Concato holds tenure and the

credentials required for teaching the twenty-two positions which he seeks to teach, I **CONCLUDE** that the issue of seniority cannot and does not arise in this case.

Because Concato is a tenured teacher affected by a RIF, I **CONCLUDE**, per N.J.S.A. 18A:28-12, that his name must be maintained on a preferred eligible list in a position for which he is qualified.

ORDER

Having considered the moving papers and responding papers filed by the parties, and good cause having been shown, it is hereby **ORDERED** that the Summary Decision Motion filed by Petitioner, Concato, is hereby **DENIED**. It is further **ORDERED** that the Summary Decision Motion filed by the Respondent, River Dell Board of Education, is hereby **GRANTED** and that Summary Decision is hereby entered in favor of Respondent, River Dell Board of Education; and that Petitioner, Concato's name shall be placed and maintained on a preferred eligible list in the order of seniority for reemployment if and when a vacancy occurs in a position for which he is qualified.

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, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



December 29, 2016

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Exhibits

For Petitioner:

P-1 Petitioner Christopher Concato's Motion for Summary Decision and Brief dated 3/1/16, including Petitioner's Answers to Interrogatories

P-2 Petitioner's Reply Brief dated 3/17/16 and Certification of Petitioner

P-3 Petitioner's submission dated 11/7/16 in response to the tribunal's letter of 10/31/16

Respondent's Exhibits:

R-1 Respondent's Motion for Summary Decision, Certification of Superintendent Patrick J. Fletcher dated 2/27/16 and Brief dated 3/3/16

R-2 Respondent's Reply Brief dated 3/18/16 and supplemental Certification of Fletcher dated 3/18/16

R-3 Respondent's Response to Petitioner's "Notice to Produce and Request for Supplementary Information"

R-4 Respondent's Supplemental Brief dated 7/1/16 and Second Supplemental Certification of Fletcher dated 6/28/16

R-5 Respondent's submission dated 11/7/16 in response to the tribunal's letter of 10/31/16

R-6 Respondent's submission dated 11/9/16 in reply to Petitioner's submission dated 11/7/16

Joint Exhibit:

J-1 The Parties' Joint Stipulation of Facts (undated copy), received at OAL on March 2, 2016