

B-13



**STATE OF NEW JERSEY**

In the Matter of Assistant Business  
Administrator (M0270R), Jersey City  
School District

**DECISION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2014-2160

**Appointment Waiver Request**

**ISSUED: NOV 10 2014 (CAG)**

The Jersey City School District (District) requests permission not to make an appointment from the October 16, 2013 certification for Assistant Business Administrator (M0270R).

The record reveals that the District provisionally appointed Rhonda Curry, pending open-competitive examination procedures, to the title of Assistant Business Administrator, effective October 25, 2012. As a result of the provisional appointment, an examination was announced with a closing date of April 9, 2013. Four applicants were admitted to the unassembled examination. For reasons that are not clear in the record, Curry did not apply for the examination. The resulting list of four eligibles promulgated on October 10, 2013 and expires on October 9, 2016. The District took no action to obviate the need for the examination at the time of the announcement or prior to the promulgation of the eligible list. On October 16, 2013, the names of all four eligibles were certified from the list. The District returned the certification and requested a waiver of the appointment requirement. Specifically, it stated that the provisional in the title had been removed. In addition, the District stated that it does not have the title of Assistant Business Administrator. Rather, it asserted that the title it utilizes is Assistant School Business Administrator which is not recognized by Civil Service.

The District's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, the District requested a waiver of the costs of the selection process. Specifically, it asserts that the

appointing authority at the time, Dr. Hermione McNeil, attempted to resolve this matter via e-mail with staff of the Division of Classification and Personnel Management (CPM) to no avail. It states that an e-mail was sent to CPM dated March 18, 2013 requesting that the examination for Assistant Business Administrator not be posted based on the fact that the District's title is Assistant School Business Administrator which is not recognized by Civil Service. It asserts that the title is an "unaffiliated/unclassified" title that was approved by the county. Therefore, there could be no appointment made to the title of Assistant Business Administrator. In addition, the District states that there were other attempts to resolve this matter via e-mail with CPM, but the matter was never resolved.

Patrick Pisano, represented by Philip Feintuch, Esq., states that he is on the eligible list for Assistant Business Administrator. He argues that Curry was appointed to the title of Assistant Business Administrator on October 18, 2012 without the benefit of passing a Civil Service examination. He also argues that her title was changed to Assistant School Business Administrator at a later date without the benefit of passing a Civil Service examination. In addition, he argues that she is currently performing the work of an Assistant Business Administrator. Further, he argues that the District's request for an appointment waiver for the title of Assistant Business Administrator violates the protections he should be afforded under Civil Service law and rules. Therefore, he requests that the appointment waiver request be denied.

Personnel records reveal that Curry's provisional appointment as an Assistant Business Administrator was discontinued effective December 2, 2013. There is no record of Curry's appointment to another title after this date in CAMPS.

### CONCLUSION

In accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

It is noted that, although Pisano argues that he has been denied the protection of Civil Service law and rules, merely appearing on an eligible list for a Civil Service title does not confer a right of appointment to any eligible. It is further noted that, if it is determined that an appointment must be made from the eligible list for the title of Assistant Business Administrator, there are four eligibles on the certification as indicated above.

In the instant matter, the examination for the title of Assistant Business Administrator was generated as a result of the provisional appointment of Curry. After a complete certification was issued, the District indicated that Curry was removed from the title of Assistant Business Administrator and appointed to the "unaffiliated/unclassified" position of Assistant School Business Administrator. As a result, Curry's provisional appointment as an Assistant Business Administrator was terminated effective December 2, 2013 and the District stated that she was appointed to the "unaffiliated/unclassified" title of Assistant School Business Administrator. Although the District argues that Curry is serving in an unclassified title, there is no record of her appointment to the title of Assistant School Business Administrator since it is not a title recognized by this agency's classification plan, and, therefore, cannot be recorded in CAMPS. Although Curry's title may be Assistant School Business Administrator according to the District, it would be considered a functional title since it is not included in the classification plan. Therefore, it appears as if the new position was created so that Curry could continue to be employed even though she did not apply for the open-competitive examination for the title of Assistant Business Administrator and, consequently, she was not eligible for appointment on the subject certification.

*N.J.S.A. 11A:3-1* and *N.J.A.C. 4A:3-3.1(a)* provide that each position in the career and unclassified services shall be assigned to a job title. *N.J.A.C. 4A:3-3.3(d)* provides that positions in the career, unclassified and senior executive service shall be subject to job audit to ensure accurate classification and compliance with Titles 11A and 4A. Moreover, *N.J.A.C. 4A:3-3.4* provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. In the instant matter, the District asserts that Curry's proper classification should be Assistant School Business Administrator, an "unaffiliated/unclassified" title. However, it appears that such an appointment might have been an attempt to circumvent Civil Service law and rules as explained above. Since the Commission cannot determine on the existing record the title to which Curry should be classified, it is appropriate that this matter be referred to the Division of Classification and Personnel Management for a classification review of Rhonda Curry's position.

### **ORDER**

Therefore, it is ordered that the request for the waiver of the appointment requirement be held in abeyance pending the determination of the Division of Classification and Personnel Management regarding the proper classification of Rhonda Curry's position.

It is further ordered that the Division of Classification and Personnel Management complete its classification review of Curry's position and issue its

determination to Curry, the Jersey City School District and the Civil Service Commission within 30 days of the issuance of this decision.

**DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>TH</sup> DAY OF NOVEMBER 2014**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312**

**c: Rita Salley  
Rhonda Curry  
Philip Feintuch, Esq.  
Kenneth Connolly  
Diane Lukasewycz  
Joseph Gambino**