

AUDREY PRESS, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE BOROUGH : DECISION  
OF MANVILLE, SOMERSET COUNTY :  
RESPONDENTS. :  
\_\_\_\_\_ :

### SYNOPSIS

The petitioner contended that her tenure rights were violated when the respondent Board reduced her compensation following a reduction in force (RIF). Petitioner previously served as Director of Special Services/Guidance K-12 from the 2012-2013 school year through to the end of the 2015-2016 school year, when the Board abolished the Director of Guidance K-12 position pursuant to a RIF; subsequently, the Board stopped paying petitioner an additional sum of \$8,000. Petitioner asserted that she had been reassigned from one director position to another, and was improperly reduced in compensation. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in this case, and the matter is ripe for summary decision; the Director of Guidance K-12 position was separate and apart from the Director of Special Services position, and was appropriately eliminated pursuant to a RIF; petitioner was originally appointed as “Director of Special Services/Guidance, K-12” at a salary of “\$126,838 plus \$8,000 additional compensation,” and her annual reappointment letters separately listed her salary for “Special Services Director” and “Director of Guidance, K-12”; language relating to the responsibilities of the “Director of Guidance, K-12” was removed from petitioner’s job description after the position was eliminated in the RIF; petitioner has not contested the fact that the Director of Guidance K-12 position was eliminated and that all associated guidance responsibilities were, likewise, removed from petitioner’s job description; and petitioner’s claim that her District Bullying Coordinator responsibilities were part of the Director of Guidance K-12 position is without merit. The ALJ concluded that the position of Director of Guidance K-12 was a separate position, lawfully eliminated as part of a RIF, and petitioner is therefore not entitled to the salary associated with the Director of Guidance position. Accordingly, the ALJ granted the Board’s motion for summary decision.

Upon comprehensive review, the Commissioner concurred with the ALJ’s determinations herein and adopted the Initial Decision as the final decision in this case, with modification. The Commissioner found, *inter alia*, that petitioner’s arguments evolved during the course of the litigation, first conceding that the Director of Guidance position was an “additional assignment” for which she received “additional compensation” in the amount of \$8000, but later arguing that “Director of Special Services/Guidance K-12” was a single position, and when the RIF resulted in a “decoupling” of the former title, she was “reassigned” as Director of Special Services and improperly reduced in compensation. The facts, however, establish that the additional assignment was, in fact, a separate position which was separately enumerated from petitioner’s base salary as Director of Special Services, such that when this position was abolished, petitioner was no longer eligible to receive the additional sum of \$8,000 that was attached to the duties of the Director of Guidance K-12 position; since petitioner’s base salary as Director of Special Services was never reduced, petitioner’s tenure rights were not implicated. Accordingly, the petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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May 31, 2018

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The record of this matter, along with the Initial Decision of the Office of Administrative Law (OAL), have been reviewed. Petitioner’s exceptions, and respondent’s reply thereto, were also considered by the Commissioner.<sup>1</sup> This dispute concerns whether respondent violated petitioner’s tenure rights when the Board reduced petitioner’s compensation following a reduction in force (RIF). Specifically, petitioner – who had been serving as Director of Special Services/Guidance K-12 from the 2012-2013 school year through to the 2015-2016 school year – contends that the Board violated her tenure rights when it stopped paying her an additional sum of \$8000 following abolishment of the Director of Guidance K-12 position at the conclusion of

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<sup>1</sup> *N.J.A.C. 1:1-18.4* provides, in pertinent part, that exceptions to the Initial Decision must be filed with the agency head within 13 days from the mailing date of the decision. Furthermore, as the parties are aware, *N.J.A.C. 1:1-18.4* requires that the exceptions be served on all parties. The understanding – and practice – is that all parties are served at the same time. The Initial Decision was mailed on March 1, 2018; therefore, the last possible day for filing of the exceptions was March 14, 2018. The Commissioner received a copy of petitioner’s exceptions on March 13, 2018, and therefore, deemed the exceptions as timely. The Commissioner notes, however, that the exceptions did not include proof of service to respondent or the judge; nor has petitioner provided a certification of service or an affidavit acknowledging that respondent was duly served on or about March 13, 2018. The only proof of service made available to the Commissioner was dated March 26, 2018, and therefore, respondent was provided an opportunity to file its reply outside of what would have been the timeframe had the proper timelines been followed. Although the Commissioner has accepted petitioner’s exceptions – as it was timely filed with the agency – the parties are reminded that adherence to the Administrative Code, and professional candor, are expected of all parties before this tribunal. Litigants are directed to ensure proper compliance with the rules to avoid procedural defects and unnecessary delays.

the 2015-2016 school year, pursuant to a RIF.<sup>2</sup> The Administrative Law Judge (ALJ) determined that “Director of Guidance K-12” was a separate position from “Director of Special Services” and was eliminated pursuant to a RIF; therefore, petitioner was not entitled to the additional compensation associated with the abolished position. Upon comprehensive review, the Commissioner is in accord with the ALJ’s determinations, as modified herein.

While reflecting her obvious disagreement with the findings and conclusions contained within the Initial Decision, petitioner’s exceptions are unpersuasive, and substantially recast and reiterate the arguments made below.<sup>3</sup> In her exceptions – which are identical to petitioner’s brief in support of her motion for summary decision before the OAL – petitioner primarily argues that she acquired tenure in the “Director” position and category; therefore, following the RIF – when she was “reassigned” from one director position to another – she was improperly reduced in compensation.<sup>4</sup> Petitioner also argues that – since she did not have two separate job descriptions or two distinct assignments, operated under a single title, and was paid

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<sup>2</sup> Petitioner was receiving \$8000 – in addition to her annual base salary (inclusive of incremental increases) – each year from the 2012-2013 school year through to the 2015-2016 school year, when she served as Director of Special Services/Guidance K-12. Prior to the 2012-2013 school year, petitioner had served as Director of Special Services. At the inception of the 2012-2013, petitioner was additionally assigned the role of Director of Guidance K-12 and her title in the District was revised from “Director of Special Services” to “Director of Special Services/Guidance K-12,” to reflect the additional assignment. Petitioner oversaw two different departments and carried out duties specific to each position. The record reflects that petitioner was provided an additional sum of \$8000 for her duties related to “Guidance K-12.” At the conclusion of the 2015-2016 school year, however, the Board abolished the “Guidance K-12” position and ceased payment of the additional \$8000 to petitioner effective with the 2016-2017 school year. Petitioner continued to serve in her position as Director of Special Services as it was not affected by the RIF, and was paid the annual base salary commensurate with her tenured position as Director of Special Services.

<sup>3</sup> In reviewing the record of this matter, the Commissioner observes petitioner’s evolving arguments through the course of this litigation. In petitioner’s *corrected* petition of appeal and the joint stipulation of facts submitted by the parties, petitioner concedes that “Director of Guidance K-12” was an “additional assignment” for which she received “additional compensation” in the amount of \$8000. Petitioner also acknowledges that the Director of Guidance K-12 position was abolished following a RIF at the conclusion of the 2015-2016 school year. In petitioner’s motion for summary decision and in her exceptions to the Initial Decision, petitioner argues that “Director of Special Services/Guidance K-12” was a single position, and when the RIF resulted in a “decoupling” of the former title, she was “reassigned” as Director of Special Services.

<sup>4</sup> As will be addressed below, there is no evidence of a reassignment from one director position to another.

one salary – reduction in compensation was improper following elimination of the guidance position pursuant to a RIF. Petitioner further contends that the additional \$8000 does not constitute a stipend, as it was not treated as such by the Board. Petitioner submits that, even if the additional compensation was a stipend, decisional law prohibits reduction of a tenured staff member’s stipend following “reassignment.”

In its reply, respondent argues that petitioner’s exceptions were not properly filed as they were untimely served upon the Board.<sup>5</sup> Respondent further contends that the positions of Director of Special Services and Director of Guidance K-12 were “two distinct positions” where petitioner “administered and supervised two separate departments with two separate staffs” and “[i]n no meaningful way can they be characterized as a single position, even if the two job titles were at one time combined.”<sup>6</sup> Respondent further argues that petitioner was not reassigned; rather, the Director of Guidance K-12 position was subject to a RIF and petitioner’s compensation was, therefore, properly reduced.

In the context of a RIF, a tenured staff member may be dismissed or reduced in salary “for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause. . . .” See *N.J.S.A.* 18A:28-9; see also *Carpenito v. Bd. of Educ. of Boro of Rumson, Monmouth County*, 322 *N.J. Super.* 522 (App. Div. 1999); *Bassett v. Bd. of Educ. Boro of Oakland, Bergen County*, 223 *N.J. Super.* 136 (App. Div. 1988); *Reinertsen v. Bd. of Educ. of Twp. of East Brunswick, Middlesex County*, 1998 *N.J. AGEN LEXIS* 302 (May 27, 1998).

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<sup>5</sup> As discussed above, petitioner’s exceptions were considered timely filed by the Commissioner.

<sup>6</sup> It is unclear why the Board chose to combine the two positions under one title, but it is evident from the Commissioner’s review of the record that the Board intended for the two positions to be separate, as will be addressed below. Additionally, it is improper to rely on a “title” within a district to validate (or invalidate) tenure rights. See *Stilwell v. Bd. of Educ. of the Twp. of North Brunswick, Middlesex County*, 2017 *N.J. AGEN LEXIS* 604 (Aug. 14, 2017).

In this matter, it is undisputed that a RIF was conducted, but the parties diverge in their understanding of the effect of the RIF. The Board represents that although “Director of Special Services/Guidance K-12” was a single title, it was in fact two distinct positions encompassing separate duties, and only the Director of Guidance K-12 position was eliminated by way of a RIF. The Board further argues that the compensation for the two positions was separate.<sup>7</sup> Petitioner argues that “Director of Special Services/Guidance K-12” was a combined, single position, and petitioner was simply reassigned as Director of Special Services after the combined Director of Special Services/Guidance K-12 position was eliminated.<sup>8</sup> As noted above, petitioner’s assertions deviate from her representations in the joint stipulation of facts that Director of Guidance K-12 was an additional assignment, concomitant with which was an additional compensation of \$8000.

The facts in this matter, and the evidence in support thereof, establish that – although petitioner’s *title* was revised from “Director of Special Services” to “Director of Special Services/Guidance K-12,” reflecting the additional assignment, and her job description was also revised to include the duties related to the “Guidance K-12” position – the additional assignment was, in fact, a separate position: petitioner’s job duties were distinct, she was provided additional compensation for the Director of Guidance K-12 position, which was separately enumerated from her base salary as Director of Special Services, and her annual contracts and renewal letters reflected the same.<sup>9</sup> Therefore, when the Director of Guidance K-12 position was

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<sup>7</sup> Petitioner may have been paid for both positions through the same paychecks, but the record supports a finding that each position had a separate compensation amount attached to it.

<sup>8</sup> Nothing in the record supports a finding that petitioner’s position of “Director of Special Services” was eliminated or that the Board took action to abolish any position entitled “Director of Special Services/Guidance K-12.” The record supports a finding that “Guidance K-12” was the only position subject to the RIF.

<sup>9</sup> It is undisputed that petitioner’s base salary as Director of Special Services was not increased by \$8000, as said sum was specifically provided to her *in addition* to her annual salary, and was strictly related to the Director of

abolished by the Board at the conclusion of the 2015-2016 school year, petitioner was no longer eligible to receive the additional sum of \$8000 that was attached to the duties of the Director of Guidance K-12. Significantly, at no point was petitioner's base salary as the Director Special Services – which position she retained – reduced. As such, petitioner's tenure rights were not implicated.

Petitioner's reliance on *Reinertsen, supra* and *Baldwin, infra* are improper, as both of those matters dealt with reassignment and transfer, not RIF. *Baldwin v. Bd. of Educ. of the Town of West New York, Hudson County, 2017 N.J. AGEN LEXIS 983* (June 5, 2017). Likewise, petitioner's argument that removal of the additional compensation is a violation of her tenure rights – even if it was a stipend – is inapplicable in this matter because, unlike *Baldwin, supra*, the additional compensation was attached to the abolished Guidance K-12 position, and not related to her position or duties as Director of Special Services. Similarly, *Bassett, supra* and *Casey, infra* do not apply here because following the abolishment of the Director of Guidance K-12 position, petitioner was not “reassigned” to another guidance position or another director position. *Casey v. Bd. of Educ. of the Twp. of Cinnaminson, Burlington County, 1993 N.J. AGEN LEXIS 1678* (Dec. 19, 1993). Instead, petitioner remained in her position as Director of Special Services and her annual salary for the position of was not reduced.<sup>10</sup>

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Guidance K-12 assignment. Furthermore, any change to petitioner's annual base salary during that time period was the result of increments, which remains unchanged. The fact that the Board did not issue separate paychecks – which was not unreasonable for the Board – has no bearing in this matter, as it is clear from the record that petitioner held two different positions with differing compensation for each position. *See Stallone v. Bd. of Educ. of the Camden Cnty Tech Sch. Dist., Camden County, 2012 N.J. AGEN LEXIS 444* (Sept. 10, 2012); *see also Ciamillo v. Bd. of Educ. of the Boro of Ridgely, Bergen County, 2005 N.J. AGEN LEXIS 389* (Jul. 15, 2005).

<sup>10</sup> While the duties related to the “Guidance K-12” position were altogether eliminated from petitioner's job description following the RIF, petitioner maintains that her guidance-related duties as the “District Bullying Coordinator” from the former combined title remains. The Commissioner finds that the duties related to her role as the District Bullying Coordinator are not related to Guidance K-12. *N.J.S.A. 18A:37-15* requires every school district to appoint an “anti-bullying specialist” and “anti-bullying coordinator,” and such positions – *unrelated* to guidance – are assigned to employees at the school district's discretion. Therefore, the Commissioner is

Accordingly, the recommended decision of the OAL is adopted – as modified herein – as the final decision in this matter, and the petition is dismissed.

IT IS SO ORDERED.<sup>11</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 31, 2018

Date of Mailing: June 4, 2018

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unpersuaded that petitioner’s appointment as “District Bullying Coordinator” is related to her previous title and role as Director of Guidance K-12.

<sup>11</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.