

BARBARA RUSSO, :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE WARREN HILLS : DECISION
 REGIONAL SCHOOL DISTRICT,
 WARREN COUNTY :
 RESPONDENT. :

SYNOPSIS

Petitioner – who had been employed as a full-time, tenured music teacher by the respondent Board when her position was reduced to part-time as part of a reduction in force (RIF) – claimed entitlement to several elementary school teaching positions held by non-tenured or less senior teaching staff members. At issue in this matter is whether petitioner may assert entitlement to teaching positions in the middle school for specific subject areas based on her tenure as a music teacher and her possession of an Elementary School Teacher certificate. Specifically, petitioner asserted that she is entitled to five middle school teaching positions – in the subject areas of Health/Physical Education, Mathematics and English Language Arts – that were occupied by non-tenured teachers and/or teachers with less seniority during the 2017-2018 school year. The Board contended that petitioner neither holds the certifications required for the positions she seeks, nor is entitled to these positions by virtue of her tenure or seniority rights. The Board further noted that petitioner does not possess the certifications, endorsements, or content knowledge appropriate to any of these subjects.

The ALJ found, *inter alia*, that: tenure is a legislative status, earned by operation of law and upon meeting the precise requirements of the tenure statute; pursuant to *N.J.S.A.* 18A:28-5, an employee of a local board of education may earn tenure only if she works for the requisite period of time in a position for which a certificate issued by the State Board of Examiners is required, and if she is the holder of the proper certificate “...in full force and effect”; petitioner is tenured in respondent’s school district as a music teacher; petitioner holds an Elementary Teacher certification with a K-12 Music endorsement on her instructional certificate; however, the job descriptions for the positions she sought to “bump” in the aftermath of the RIF require a middle-school endorsement in the respective subject matter; when petitioner received her teaching certificate for elementary education in 1993, she was qualified – under the regulations then in effect – to teach any subject K-8 in public schools without any additional endorsement; over the years, however, new regulations have been enacted to ensure higher standards for certification of middle school teachers, such that now elementary teachers K-8 teaching grades 6, 7, and 8 must pass the Praxis II test in the subject they seek to teach, as codified at *N.J.A.C.* 6A:9B-9.2(a)(3); petitioner herein has admittedly never satisfied the enhanced requirements to teach any subject outside of her stand-alone certificate as a Music Teacher. The ALJ concluded that petitioner is not qualified to perform the duties of a middle school teacher of Math, English Language Arts, or Physical Education/Health, and further lacked the seniority to “bump” the remaining full time teacher of Music from his position. Accordingly, the ALJ ordered the petition dismissed.

Upon review, the Commissioner concurred with the ALJ’s determinations thoroughly set forth in the Initial Decision – which was adopted with modification to clarify that petitioner’s assertions of entitlement to the positions she claimed were based on misunderstanding of the governing regulations and standards for Highly Qualified Teachers. The petition of appeal 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>

September 6, 2018

BARBARA RUSSO, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 BOARD OF EDUCATION OF THE WARREN : DECISION
 HILLS REGIONAL SCHOOL DISTRICT, :
 WARREN COUNTY :
 :
 RESPONDENT. :

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. This dispute concerns whether petitioner may assert entitlement to teaching positions in the middle school for specific subject areas based on her tenure as a music teacher in the District and possession of an Elementary School Teacher certificate, following reduction of her full-time teaching position to part-time pursuant to a reduction in force (“RIF”).¹ Petitioner contends that the Board violated her tenure rights when it reduced her from a full-time teaching position to part-time and did not employ her as a teacher in one of the following subject areas in middle school: Health and Physical Education (“Health/Phys Ed”), Mathematics (“Math”), and English Language Arts (“English”). Petitioner specifically claims entitlement to five teaching positions – two in Health/Phys Ed, two in Math, and one in English – which were occupied by non-tenured teachers and/or tenured teachers with less seniority than petitioner during the 2017-2018 school year. The Board contends that petitioner is not entitled to be placed in the

¹ The Elementary School Teacher certificate was issued in September 1993, at which time the “elementary school teacher” endorsement allowed certificate holders to teach any subject from preschool through to eighth grade. Petitioner also possesses a Teacher of Music certificate, which was issued in April 1992.

aforementioned teaching position as she does not possess the content knowledge appropriate to teach those subjects. The Administrative Law Judge (“ALJ”) determined that petitioner was not entitled to employment in the middle school subjects by virtue of her tenure because she did not possess the appropriate subject-matter certifications, endorsements, or content knowledge. Upon comprehensive review, the Commissioner is in accord with the ALJ’s determinations thoroughly set forth in the Initial Decision, and as clarified 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. In her exceptions – which are verbatim sections of her April 19, 2018 post-hearing brief – petitioner primarily argues that the ALJ improperly relied on “non-statutory administrative policies” to limit her tenure protections, and that the ALJ failed to apply the Highly Qualified Teacher (“HQT”) rules for Health/Phys Ed, which petitioner asserts would have qualified petitioner to teach Health/Phys Ed in middle school. In reply, respondent argues that the ALJ did not improperly limit petitioner’s tenure protections because petitioner lacks content knowledge appropriate for teaching Health/Phys Ed, Math, and English. Respondent further argues that petitioner does not possess a Health/Phys Ed endorsement and falls under the “Elementary Generalist” category; therefore, petitioner is required to demonstrate content knowledge under the HQT rules.²

It 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 Cnty*, 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

² Elementary Generalists are listed under “required to demonstrate content expertise” under the HQT rules.

N.J. AGEN LEXIS 302 (May 27, 1998). A tenured teacher seeking reinstatement within the endorsements on her certificate is entitled to preference in a RIF over a non-tenured teacher with the same certification. See *Capodilupo v. Bd. of Educ. of Twp. of West Orange, Essex Cnty*, 218 *N.J. Super.* 510 (App. Div. 1987).

The facts in this matter – and the evidence in support thereof – establish that petitioner does not possess endorsements in Health/Phys Ed, Math, or English, nor has she obtained any middle school subject matter specialization endorsements. Petitioner’s Elementary School Teacher certificate – issued in September 1993 – allows her to teach middle school subjects so long as she demonstrates “content knowledge.”³ Petitioner admittedly does not have experience teaching any of the aforementioned subjects; she has not taken the relevant Praxis tests; and she has not taken additional coursework in the subject matters that she believes she is entitled to teach. During testimony, petitioner further admitted to her lack of content knowledge in those subject areas. Despite such, petitioner asserts entitlement to teach the courses – particularly Health/Phys Ed – due to her misunderstanding of the governing regulations and the HQT standards.

The onus is on petitioner to demonstrate content knowledge in a subject area that she claims entitlement to. Content knowledge can be objectively demonstrated by acquiring the proper endorsements, taking the appropriate Praxis tests, having teaching experience in the subject areas, taking relevant coursework, and/or meeting the standards and criteria developed by the Department of Education. Petitioner has not demonstrated content knowledge in Health/Phys Ed, Math, and English. Moreover, the HQT standards are inapplicable in this matter. Petitioner’s reliance on the HQT standards to argue that her Elementary School Teacher certificate is sufficient to qualify her to teach Health/Phys Ed in middle school, is improper. Petitioner posits that in order to be deemed

³ *N.J.A.C.* 6A:9B-9.2(a)(3) provides in pertinent part: Teachers with elementary school endorsements valid in preschool through grade eight issued no later than March 1, 2008, may teach in preschool through grade eight in any employing school district, subject to the qualification for teaching three- and four-year-old children in *N.J.A.C.* 6A:9B-11.2(b). The teachers shall demonstrate to the school district they have content knowledge appropriate to the subject(s) taught.

HQT for Health/Phys Ed, the teaching staff member does not need to demonstrate “content expertise,” and since she meets the definition of HQT she is entitled to teach Health/Phys Ed in middle school by virtue of her tenure. However, petitioner has failed to distinguish the fact that all the subject areas listed under “not required to demonstrate content expertise,” including but not limited to health/physical education, school nurses, family and consumer science, technological literacy and technical education, and special education, presumes that the teaching staff members specific to those areas have the requisite endorsements. Therefore, to suggest that petitioner can teach Health/Phys Ed because she does not need to demonstrate “content expertise” to be deemed a HQT is a mischaracterization of the HQT standards, the regulatory requirements under *N.J.A.C. 6A:9B et seq.*, and her tenure rights.

It is clear that petitioner cannot demonstrate content knowledge to teach Health/Phys Ed, Math, or English in middle school, and therefore, she is not entitled to employment as a Health/Phys Ed, Math, or English teacher in middle school based on her current instructional certificate and endorsements.

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

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2018

Date of Mailing: September 6, 2018

⁴ 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.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11967-17N

AGENCY DKT. NO. 124-6/17

BARBARA RUSSO,

Petitioner,

v.

BOARD OF EDUCATION OF WARREN HILLS

REGIONAL SCHOOL DISTRICT,

Respondent.

Gregory T. Syrek, Esq., for petitioner (Bucceri and Pincus, LLC, attorneys)

Mark Zitomer, Esq., for respondent (Schenck, Price Smith & King, LLP, attorneys)

Record Closed: May 3, 2018

Decided: June 18, 2018

BEFORE **DANIELLE PASQUALE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Barbara Russo (“petitioner”), was employed as a tenured music teacher by respondent, Warren Hills Regional School District (“District” or “Board”), when her full-time position was reduced to part-time via a reduction in force (“RIF”). She asserts an entitlement over several less senior individuals to several elementary-

school teaching positions currently held by non-tenured teaching staff members. The Board replies that petitioner neither holds the certifications required for the positions she seeks, nor is entitled to these positions by virtue of her tenure or seniority rights, noting that she does not possess the certifications, endorsements, or content knowledge appropriate to any other subject.

The parties appeared for hearing on January 26, 2018. The final post-hearing submission was received on May 3, 2018, and the record was closed.

STIPULATED FACTS

The parties stipulated to the following facts, and thus I **FIND** as follows:

1. The Warren Hills Regional Board of Education (“Board”) is a body corporate under the laws of the State of New Jersey and is charged with the supervision of Warren Hills Regional School District (“District”), located in Warren County, New Jersey, pursuant to N.J.S.A. 18A:1-1, et seq.
2. The District educates pupils in grades 7 to 12. The District is comprised of one middle school and one high school.
3. Petitioner has been employed by the Board as a teacher of music since she commenced work on or about January 3, 1994, in a half-time (.5 FTE) capacity.
4. Petitioner has never taught any other subject besides music for the Board or any other school district.
5. Petitioner worked in half-time capacity for the 1994–95 and 1995–96 school years. Petitioner left the district at the end of the 1995–96 school year and returned to teach music on a half-time basis during the 2011–12 school year. She taught music half time in the 2012–13 and 2013–14

school years. She then taught music full time during the 2014–15, 2015–16, and 2016–17 school years.

6. Due to declining enrollment, on May 2, 2017, the Board reduced petitioner's full-time music-teaching position to half time, commencing in the 2017–18 school year.
7. Petitioner currently teaches music half time at the middle school at an annual salary of \$33,046. She is the only half-time music teacher in the middle school.
8. Petitioner possesses an Elementary School Teacher certification issued by the State Board of Examiners in September 1993.
9. Petitioner also possesses a Teacher of Music certification issued by the State Board of Examiners in April 1992.
10. Jason Graf is the only full-time music teacher at the middle school. Mr. Graf, who commenced employment in the 2010–11 school year as a music teacher and has worked full time in that capacity since that time, has more seniority than petitioner.
11. Petitioner claims an entitlement, by virtue of her tenure, to the teaching positions occupied by the individuals identified in paragraphs 12 through 16 below.
12. The Board employs David Sbriscia as a non-tenured middle-school health and physical education teacher for the 2017–18 school year. Mr. Sbriscia possesses a Health & Physical Education/Driver Education endorsement on his instructional certificate.
13. The Board employs Megan Bublitz as a non-tenured middle-school health and physical education teacher for the 2017–18 school year. Ms. Bublitz

possesses a Health & Physical Education/Driver Education endorsement on her instructional certificate.

14. The Board employs Todd Solecitto as a non-tenured middle-school math teacher for the 2017–18 school year. Mr. Solecitto possesses a Mathematics endorsement on his instructional certificate.
15. The Board employs Jacqueline Gibbs as a tenured middle-school math teacher for the 2017–18 school year. Ms. Gibbs possesses a Mathematics endorsement on her instructional certificate. Ms. Gibbs commenced employment in the District during the 2013–14 school year as a mathematics teacher on a full-time basis.
16. The Board employs Alivya Jacobson-Ricci as a non-tenured middle-school English teacher for the 2017–18 school year. Ms. Jacobson-Ricci possesses an English endorsement on her instructional certificate.

FACTUAL DISCUSSION

The Testimony

Petitioner Barbara Russo

Ms. Russo testified that she was employed full time by the District as a music teacher for many years. Most recently, she was changed to part time for the 2017–18 school year due to a RIF that she learned about on May 2, 2017, from a meeting with the superintendent. At that meeting she learned that due to budgetary reasons, she would go from full-time to part-time music teacher for the following school year (2017–18). At that point she was told that there were no other positions available to her. She testified that there was a discussion about her elementary teaching certification from 1993 for N–8 (preschool through eighth grade) with a “code 1,000 on it.” Ms. Russo’s understanding was that for elementary school she could have taught every class based upon said certification. She testified, and all parties agree, that she is teaching in a

grade 7–12 district in the middle school. She noted she had no additional endorsements, certifications, course work, or content knowledge.

Ms. Russo noted that her pay was cut in half and her health benefits pulled. On cross-examination, Ms. Russo attempted to defend her content knowledge to argue that she is eligible to teach middle-school math, language arts, or health and physical education. She admitted that the only courses she took in that regard were during her undergraduate education in 1985 through 1989. Ms. Russo could not identify core content standards for mathematics in middle school, and admitted that if she had to “teach algebra tomorrow,” she would not be able to. In fact, she was candid that she would have to relearn it and familiarize herself with the standards for mathematics set forth by the New Jersey Department of Education. She added that she has never taught math before at any level. In fact, other than her undergraduate courses in math she has never done any “continuing professional development in math.” She indicated that same level of knowledge for language arts and for health and physical education, and said that she has never taught any of those subjects at any level.

It bears mentioning that Ms. Russo was an extremely credible witness who admitted that her lack of additional content knowledge would be a disservice to the students if she were to teach the aforementioned subjects without taking a Praxis test, studying the New Jersey Department of Education (NJDOE) guidelines, or having additional certifications or endorsements. In fact, she agreed candidly, “I feel I’m a good teacher, but I do understand that you’re saying I’m not necessarily ready tomorrow to do that.” Furthermore, she agreed on cross-examination that the teachers listed in the Joint Stipulation of Facts are better suited to teach the subjects by virtue of the fact that they have endorsements in those areas.

I **FIND** that Russo was responsible for her music class. I **FIND** that her teaching certification was instructional for elementary education, and her experience was only in music.

I further **FIND**, by her own admissions, that she did not obtain any additional instruction or endorsements or the content knowledge necessary to teach any of the positions open where she has seniority in this District.

Dr. Louis R. Centolanza, Ed.D.

Dr. Centolanza was offered and qualified as an expert in education, tenure, certifications, endorsements and the mechanics of RIFs. As his curriculum vitae spells out; he received his undergraduate degree in elementary education from Kean University in 1969. In 1971 he graduated from Montclair State University in student personnel services, and then graduated from Kean in 1973 for a certification in school administration and supervision. He received his doctorate in curriculum and teaching from Rutgers in 1986. Dr. Centolanza's dissertation was regarding curriculum.

The doctor offered that on an annual basis he attends national conferences on a variety of matters tied to administration and supervision, and that he has presented nationally in a number of forums. He holds certifications in elementary education, student personnel services, principal, supervisor, assistant superintendent, school business administrator, and school administrator. He also has endorsements for and has held all of the aforementioned positions. He has an instructional certificate in elementary education K-8. He has taught grades 4, 6, and 8. He has also been the director of guidance and supervisor of buildings and grounds at several schools.

Dr. Centolanza explained that he also taught a master's program at Montclair State University as an associate professor in the department of educational leadership, working with aspiring school leaders, administrators, and supervisors. In short, after his course the students would leave with a degree of master of arts in educational leadership, which entitled them to a principal and or supervisor's certificate with the potential for a school administrator and/or school business administrator's certificate. He also taught school law at Montclair, William Paterson University, Rutgers University, Seton Hall University, and Kean College regarding tenure, seniority, RIFs, certification, non-renewals, etc. He has worked as a consultant for Passaic County Vo-Tech for the past fourteen years for all aspects of school law, including the areas outlined above and

involved in the case at bar, and has been published on the issue many times. In view of all of the above, I **FIND** that Dr. Centolanza was properly qualified as an expert in the area of education, tenure, certifications, endorsements and the mechanics of RIFs as they relate to this case, specifically, “bumping” rights.

Dr. Centolanza explained that the New Jersey Department of Education, under the command of the State Board of Examiners, issues the appropriate certifications and endorsements. He noted three major categories of certifications. One example of an endorsement under the “Instructional” category would be a Pre-K certificate or endorsement. Also under the “Instructional” category is the Elementary endorsement. Up until 2003, he explained, that covered grades K–8 as another endorsement. He continued that every other subject matter under the “Instructional” category, whether it be mathematics, science, English, world languages, social studies, music, art, or physical education, are also K–12 certifications; each one “stands alone.” In short, every one is an “Instructional” certification, with the specific subjects called “endorsements.”

He further explained that the NJDOE has created another set of endorsements called “Middle School Specializations,” where grades 6, 7, and 8 require teachers to have middle-school endorsements in mathematics, language arts literacy, science, social studies, and world languages. He further explained that if a teacher has a K–12 endorsement, the teacher would not need a special middle-school endorsement for physical education and health.

Dr. Centolanza continued that he reviewed this file carefully, including the petitioner’s certifications. He noted that public schools in the state of New Jersey are not allowed to assign teaching-staff members to classes for which they are not properly certified. In fact, he noted that on an annual basis, the superintendent of the District must certify to the State DOE that every faculty member in the district teaching holds the appropriate certification, in an NJ SMART report of certificated staff, under the auspices of the Matrix Report. That reports enables the NJDOE to disqualify a teacher from teaching certain classes if they don’t have the proper certification, endorsement, or content knowledge.

The expert continued that a RIF can occur even with respect to tenured employees. The District is required to eliminate non-tenured teachers first. But that can only happen if the tenured teacher being RIF-ed has a valid certificate and endorsement to “bump” the non-tenured teacher in the position at issue. In short, you must always maintain the integrity of tenure before you release that person and replace that person with a non-tenured individual, and take into consideration seniority.

In this case, Dr. Centolanza reviewed all of the certifications of the individuals noted in the joint stipulation of facts above for which Ms. Russo claims an entitlement. All of them hold a certificate of either teacher of mathematics, teacher of English, or teacher of physical education, and while only one is tenured, they all hold certificates or endorsements that permit them to teach the areas as a non-tenured individual. In short, their certificates are Instructional, with endorsements in middle-school English, math, physical education, and health. Thus, he concluded that those teachers properly “bumped” Ms. Russo, who only had an instructional certification for K–8 with a “stand-alone” music endorsement, and as those facts are noted in the Joint Stipulation of Facts above, I so **FIND**.

The expert continued that in 1993 when Ms. Russo received her teaching certificate for elementary education she was qualified to teach any subject K–8 in public schools without any additional endorsement. However, as the years went by, the U.S. and New Jersey noted that those certificates issued prior to 2003 “no longer sufficed to teach” the new curriculum mandates. So, the Commissioner of the NJDOE in 2003 created what is now referred to as a “house standard-high, objective, uniform standard evaluation.” To that end, every elementary teacher K–8 who is teaching grades 6, 7, and 8 had to prove to the school district between 2003 and 2006 that they had the qualifications, content knowledge, means of instruction and understanding of the content standards to continue to teach those grades in math, English, social studies, etc. Music was excluded as a stand-alone endorsement for K–12. So, each district would have the ability to “grandfather” in teachers and give them an opportunity to get those additional endorsements or content-based knowledge through workshops, classes, etc., to the satisfaction of the administration.

Dr. Centolanza further explained that the 2003–06 window closed and the “house standard” was not met; after that there was a newer higher standard to meet. In July 2006 there was a Highly Qualified Teacher (HQT) standard that the NJDOE instituted for content knowledge for the above-listed subjects. So the teachers would need to take a subject-matter test on a Praxis exam, or fifteen credits in a subject-matter field, as well as a course in adolescent development due to the special factors for dealing with a middle-school child. At that point, upon completing those requirements, the district would determine that the teacher satisfied the HQT standard, and the teacher would receive an endorsement for the subjects in questions. After that, President Obama went one step further and signed legislation called Every Child Succeeds; the HQT standard was abandoned, and the Praxis exam was made mandatory for the subjects the middle-school teachers sought to teach. Dr. Centolanza explained correctly that this is codified in N.J.A.C. 6A:9B-9.2(a)(3), requiring middle-school subject teachers to take the Praxis II in that subject they sought to teach.

In short, the expert confirmed, as Ms. Russo previously testified, that she neither satisfied the house standard in 2003–06, nor the HQT standard of 2006–15, nor any additional course work in any of the subjects she wishes to teach, nor did she take a Praxis II test in any of the above-mentioned subjects. To that end, she only has an Instructional certification with an Elementary Education endorsement; and a K–12 endorsement in music, which is a stand-alone endorsement. She is only qualified to teach music at the middle-school level, and teaching any subject other than music would be a “disservice” to her students, and I so **FIND**. Dr. Centolanza summarized that in 2018 the world of education put additional demands and expectations on teachers and students, including PARCC testing, and the like. He opined that petitioner has not satisfied the regulatory requirement that she demonstrate content knowledge appropriate to the subject taught in order for her to teach in any of those specialized subjects in the middle school, with the exception of music, for which she holds the proper endorsement. Dr. Centolanza was knowledgeable, experienced, and clear, and he examined every possible path that Ms. Russo could have taken to become qualified. He very credibly explained, in uncontroverted testimony, that she did not pursue any of these paths, which I so **FIND**. As petitioner could show nothing other than her

undergraduate course work, I **FIND** that she demonstrated no additional content knowledge coursework, tests, etc., under any of the standards developed since the 1980s, when she went to undergraduate school for her teaching certificate.

ANALYSIS AND CONCLUSIONS OF LAW

Tenure is a legislative status, and is earned by operation of law, and upon meeting the precise requirements of the tenure statute. Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63 (1982); Zimmerman v. Newark Bd. of Educ., 38 N.J. 65 (1962). Ms. Russo's claims spring from N.J.S.A. 18A:28-5, which provides in pertinent part:

a. The services of all teaching staff members . . . in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect . . . shall be under tenure during good behavior and efficiency . . . after employment in such district or by such board for:

(a) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

(b) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(c) The equivalent of more than three academic years within a period of any four consecutive academic years.

By the express terms of N.J.S.A. 18A:28-5, an employee of a local board of education may earn tenure only if he works for the requisite period of time in a position for which a certificate issued by the State Board of Examiners is required, and he is the holder of "proper certificates in full force and effect." Spiewak, 90 N.J. at 73.

It is uncontroverted that Russo was employed in a position that required an Educational Services certificate issued by the State Board of Examiners, and that she

served in the Warren Hills Regional School District for more than three years and a day. I **CONCLUDE** that tenure is not an issue for petitioner.

However, petitioner claims an entitlement to one of the full-time teaching positions for middle-school math, middle-school English, and middle-school health and physical education. Any right to these positions of employment upon the abolishment of her full-time position as music teacher arises from her tenure rights. N.J.S.A. 18A:28-1 to -18 defines the conditions under which teaching-staff members are entitled to the security of tenure. Tenure is a “statutory right imposed upon a teacher’s contractual employment status.” Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962), cert. den., 371 U.S. 956 (1963). These statutory provisions supersede contractual terms. Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 72 (1982). They are “designed to aid in the establishment of a competent and efficient school system by affording to principals and teachers a measure of security in the ranks they hold after years of service.” Viemeister. v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949). It is uncontroverted, and I **CONCLUDE**, that the petitioner held her position of employment as music teacher under tenure.

This issue at hand is whether her dismissal under a reduction in force was proper. Dismissals resulting from a 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; see N.J.A.C. 6A:32-5.1; Howley v. Ewing Bd. of Educ., 1982 S.L.D. 1328, 1339, aff’d, 1983 S.L.D. 1554. Our courts have held that “seniority provides a mechanism for ranking all *tenured* teaching staff members so that reductions among the tenured force can be effected in an equitable fashion and in accord with sound educational policies.” Capodilupo v. West Orange Bd. of Educ., 218 N.J. Super. 510, 514 (App. Div.), certif. denied, 109 N.J. 514 (1987). Accordingly, the regulations specify precise categories of prior employment to which a tenured employee, such as this petitioner, may assert an entitlement in the event of a RIF. To this end, it was stipulated that Mr. Graf was a full-time music teacher with more seniority than Ms. Russo, and he properly retained the only full-time music position left at the middle school.

But our case law recognizes that the rights of this petitioner are more expansive than mere seniority rights would reflect. A tenured staff member continues to be entitled to retention as against a non-tenured teacher, regardless of his or her seniority rights. Our courts have held that “[t]o hold otherwise would be to defeat the purpose of tenure[,] which was to give a measure of security to teachers after the prescribed number of years of service.” Id. at 515. Thus, this petitioner may be entitled to any positions in which she holds tenure, and that are currently held by non-tenured staff members.

The sometimes complex issue of which positions fall within the scope of an employee’s tenure protection is the subject of a wealth of post-Capodilupo case law. The “position” in which a teaching staff member achieves tenure is either one of the specifically designated positions in N.J.S.A. 18A:28-5 or other employment for which an appropriate certificate is required. Ellicott v. Frankford Twp. Bd. of Educ., 251 N.J. Super. 342, 347 (App. Div. 1991); see Howley, 1982 S.L.D. at 1337. The system of educational certificates established by the New Jersey Department of Education provides for three distinct types of certificates: the Instructional certificate, the Educational Services certificate, and the Administrative certificate. N.J.A.C. 6A:9-5.2 et seq. Endorsements on these certificates specify categories within which an individual is authorized to provide service in a public school.

The petitioner here holds an Elementary Teacher certification with a K–12 Music endorsement on her Instructional certificate. However, the job descriptions of the positions she seeks to “bump” in the RIF also require either a middle-school endorsement in that subject matter, house standard if completed in 2003–06, HQT standard for the time period after as outlined by the District’s expert and the NJDOE above, or additional course work or a Praxis II exam in any of those subjects in order to satisfy NJDOE content-based knowledge to teach same. I **CONCLUDE** that these additional certification requirements imposed by the Board and the NJDOE serve to defeat Ms. Russo’s tenure entitlements as a music teacher. N.J.A.C. 6A:9-5.5(a) provides that “[e]ach district board of education shall assign position titles to teaching staff members that are recognized in these rules.” Should a district board of education determine that the use of an unrecognized position title is desirable, prior to appointing

a candidate the district board must submit to the county superintendent a written request for permission to use the proposed title, which shall include a detailed job description. N.J.A.C. 6A:9-5.5(b)(1). The county superintendent will then exercise his discretion regarding approval of the request and determine the appropriate certification and title for the position. N.J.A.C. 6A:9-5.5(b)(2).

The requirement that a music teacher hold subject-matter certification in middle-school math, language arts, or physical education/health is quite logically related to the requirements of the position, and thus I **CONCLUDE** that this requirement may properly limit the entitlements of petitioner in the aftermath of her RIF. Petitioner's testimony and post-hearing brief make plain that she does not argue otherwise, except to note that she took some courses in college decades ago related to math and language arts. Ms. Russo is making a claim to positions outside her content expertise, and she acknowledges that she never sought additional training or education with regard to the subjects she seeks to teach. Accordingly, I **CONCLUDE** that the petitioner was not entitled by virtue of her tenure to employment in the middle-school math, language arts, or physical education/health positions as follows:

The petitioner was not entitled by virtue of her tenure as a music teacher with her Music Teacher and Elementary Education certificate to the position of middle-school physical/education health, middle-school mathematics, or middle-school language arts. She does not hold the proper subject-matter certifications to bump any of the non-tenured teachers with said certifications currently holding those positions. Furthermore, she has the Music Certification, but has less seniority than the other music teacher in the District. Russo does not hold the proper certification, endorsements, or content knowledge to the above-captioned positions she is vying for, and, accordingly, I **CONCLUDE** that she is not qualified to perform the duties of middle-school math, language arts, or physical education/health teacher in the District.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the petitioner's appeal be **DISMISSED**.

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.

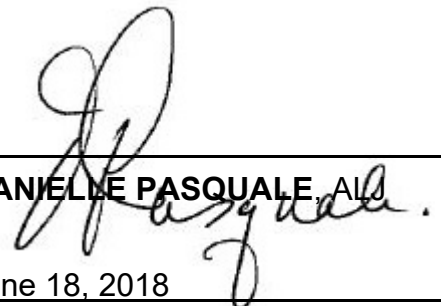
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey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

June 18, 2018
DATE

Date Received at Agency:

Date Mailed to Parties:

lr


DANIELLE PASQUALE, ALJ
June 18, 2018

APPENDIX

Witnesses

For Petitioner

Barbara Russo, petitioner

For Respondent

Louis Centolanza, Ed.D.

Evidence

Joint Exhibits

- **Exhibit A** – Résumé of Barbara M. Russo as of September 19, 2011
- **Exhibit B** – Warren Hills Regional Employment Contracts for Barbara Russo from 1994–1996; 2011–2018
- **Exhibit C** – Warren Hills Regional Board of Education Agenda with Salary Guide dated May 2, 2017
- **Exhibit D** – Letter from Barbara M. Russo to Superintendent Clymer accepting part-time music teacher position dated May 7, 2017
- **Exhibit E** – State of New Jersey Department of Education: Elementary School Teacher Standard Certificate to Barbara M. Russo issued on September 1993
- **Exhibit F** – State of New Jersey Department of Education: Teacher of Music Standard Certificate to Barbara M. Russo issued on April 1994

- **Exhibit G** – Warren Hills Regional Schools: Employment History Card of Jason Graf
- **Exhibit H** – Warren Hills Regional Schools: Employment History Card of David Sbriscia
- **Exhibit I** – Warren Hills Regional Schools: Employment History Card of Megan Bublitz
- **Exhibit J** – Warren Hills Regional Schools: Employment History Card of Todd Solecitto
- **Exhibit K** – Warren Hills Regional Schools: Employment History Card of Jacqueline Gibbs
- **Exhibit L** – Warren Hills Regional Schools: Employment History Card of Alivya Ricci