



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Heather Osowski, *et al.*, Marie H. Katzenbach School for the Deaf

Administrative Appeals

CSC Docket Nos. 2019-629, *et al.*

**ISSUED: AUGUST 26, 2020 (SLD)**

Heather Osowski, Barbara Poling, Gina Bencivengo, Jennifer Matthews, Jeffrey Arvin and Patricia Pierro, all Instructor 1, Education, 10-months, Marie H. Katzenbach School for the Deaf, Department of Education, appeal their salaries upon their initial appointments.

By way of background, Osowski was appointed to the unclassified title of Instructor 2, Education, 10-months, effective September 1, 2004 with a salary of \$38,740.24 (salary range P19, step 2). Osowski was then appointed to the unclassified title of Instructor 1, Education, 10-months, effective September 13, 2008 with a salary of \$55,778.19 (salary range P22, step 4). Poling was appointed to the unclassified title of Instructor 1, Education, 10-months, effective October 3, 2005 with a salary of \$49,253.71 (salary range P22, step 4). Bencivengo was appointed to the unclassified title of Instructor 2, Education, 10-months, effective September 2, 2003 with a salary of \$37,648.44 (salary range P19, step 2). Bencivengo was then appointed to the unclassified title of Instructor 1, Education, 10-months, effective September 1, 2007 with a salary of \$54,153.59 (salary range P22, step 4). Matthews was appointed to the unclassified title of Instructor 2, Education, 10-months, effective September 3, 2002 with a salary of \$38,356.29 (salary range P19, step 3). Matthews was then appointed to the unclassified title of Instructor 1, Education, 10-months, effective February 5, 2005, with a salary of \$44,358.99 (salary range P22, step 2). Arvin was appointed to the unclassified title of Instructor 1, Education, 10-months, effective September 3, 2002 with a salary of \$43,940.96 (salary range P22, step 3). Pierro was appointed to the unclassified title of Instructor 2, Education, 10-months, effective

September 13, 1993 with a salary of \$26,980.03 (salary range P19, step 2). Pierro was then appointed to the unclassified title of Instructor 1, Education, 10-months, effective September 14, 1996, with a salary of \$36,420.28 (salary range P22, step 3).

Thereafter, effective May 12, 2018, all of the appellants' salaries went from \$77,920.91 (salary range P22, step 10) to \$80,468.95 (salary range P22, step 10, with an extra increment of \$2,548.04) pursuant to FY 2018 Salary Regulation Section 3:G - Teachers: Educational Incentive Program (Educational Incentive Program).<sup>1</sup> The Educational Incentive Program provides, in relevant part, that:

1. Employees serving in one of the titles indicated below [which includes Instructor 2, Education 10-months and Instructor 1, Education, 10-months] are eligible for this incentive program.
2. Effective on the first pay period following presentation of a Master's Degree by an employee to the appointing authority, the salary of the employee is adjusted upward by the amount of one increment of the salary range assigned to the employee's title.

\* \* \*

4. This program is not applied to the Master's Degree which is necessary to meet the minimum educational requirements for the title held by the employee. An employee receives only one additional increment for possession of a Master's Degree and one additional increment for possession of a Doctorate Degree.
5. Application of this program may result in a rate beyond the maximum step of the salary range assigned to the employee's title. In such cases, the additional amount is recorded as extra salary. Future adjustments due to across-the-board increases, promotion or reevaluation are based upon total salary, including extra salary, until termination of employment in an eligible title.
6. Implementation of this program is by submission of individual personnel actions citing this Salary Regulation.

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On appeal, the appellants argue that they are entitled to differential back pay since their initial appointments. Specifically, they maintain that, although they were entitled to a one-step salary increase pursuant to the Educational Incentive Program, they did not receive the increase until May 2018, despite their repeated inquiries.

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<sup>1</sup> This program has appeared in the Compensation Compendium since at least 1997.

The appointing authority argues that the appellants are not entitled to any retroactive relief and that, on the contrary, they were not entitled to the additional increase they received effective May 12, 2018. Specifically, the appointing authority asserts that all of the appellants had already received an additional step upon their initial appointment for their possession of a Master's degree, pursuant to *N.J.A.C.* 4A:3-4.4. Therefore, it argues that they were not entitled to receive an additional increment pursuant to the Educational Incentive Program. In this regard, the appointing authority argues that once an employee receives additional compensation in recognition of their educational level upon hire, they cannot receive additional compensation in the form of an additional increment under the Educational Incentive Program. The appointing authority notes that the Educational Incentive Program is only for employees who were hired with a Bachelor's degree and who then receive their Master's degree. Consequently, the appointing authority argues that the appellants have been overpaid since May 12, 2018, but it requests that the overpayment be waived.

Agency records indicate that the minimum educational requirements for the titles of Instructor 1, Education, 10-months and Instructor 2, Education, 10-months, is a Bachelor's degree.

## CONCLUSION

*N.J.A.C.* 4A:3-4.4(a) provides, in pertinent part, that an appointing authority may place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title.

In the instant matter, the appellants argue that they should have received the Educational Incentive Program increase upon their initial appointment, and thus, are entitled to retroactive relief. However, the appointing authority maintains that pursuant to *N.J.A.C.* 4A:3-4.4(a), the appellants had already received an extra step upon their initial appointment and were not entitled to the additional 2018 Educational Incentive Program increase. In this regard, it argues that the Educational Incentive Program is only for employees who receive the advanced degrees after their employment begins. However, *N.J.A.C.* 4A:3-4.4(a) does not specify that new employees are to be provided with an additional step for a particular degree. Rather, it provides appointing authorities with the discretion to set a new employee's salary, up to step four for any non-discriminatory reason. Moreover, the Educational Incentive Program does not indicate that it is only available for employees who complete the specified degree while an employee. Rather, it provides, in relevant part, that "[e]ffective the first pay period following presentation of a Master's degree . . . the salary of the employee is adjusted upward by the amount of one increment of the [relevant] salary range." The only prohibition is that if the Master's degree is a minimum requirement for the position at issue, then the

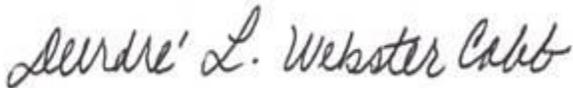
Educational Incentive Program does not apply. As noted above, neither the title of Instructor 2, Education, 10-months, nor the title of Instructor 1, Education, 10-months, requires possession of a Master's degree. Therefore, the appellants would be eligible for the Educational Incentive Program upon their presentation of their Master's degree and, therefore, no salary overpayment occurred. Regardless, the Civil Service Commission cannot provide the appellants with any retroactive relief as it does not have the jurisdiction to relax the Educational Incentive Program, which is a salary regulation found in the Compensation Compendium.<sup>2</sup> As it is not a rule promulgated by the Civil Service Commission in Title 4A of the New Jersey Administrative Code, the provisions to relax rules in that Title do not apply. Therefore, based on the foregoing, the appellants' appeals are denied.

### ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19<sup>TH</sup> DAY OF AUGUST 2020




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c: Heather Osowski (2019-629)  
Barbara Poling (2019-1235)  
Gina Bencivengo (2019-1276)

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<sup>2</sup> The appropriate forum would be the Salary Adjustment Committee. It is noted that determinations made by the Salary Adjustment Committee are not appealable to the Civil Service Commission as, similar to the current matter, its authority is derived through the salary regulations found in the Compensation Compendium.

Jennifer Matthews (2019-1293)  
Jeffrey Arvin (2019-1294)  
Patricia Pierro (2019-1340)  
Jackie Backlund  
Agency Services  
Records Unit