

New Jersey Commissioner of Education

Final Decision

Amanda Hersh Luterzo,

Petitioner,

v.

Board of Education of the Borough of
Cresskill, Bergen County,

Respondent.

Synopsis

The petitioner – a tenured teacher employed in the respondent Board’s school district prior to a Reduction in Force (RIF) – appealed the determination of the Board not to offer her employment for the 2016-17 school year, alleging that her tenure rights were violated. Petitioner holds a standard New Jersey Instructional Certificate with an endorsement as a Teacher of Business: Finance/ Economics/Law; in addition to teaching high school business, marketing, and business law courses, petitioner had taught Grade 6 Computer Technology during the 2013-14 and 2015-16 school years, and Grade 7 Computer Technology in the 2014-15 school year. In June 2016, petitioner was “bumped” from her high school business teaching position for the 2016-17 school year by a more senior tenured teacher, whose position had been abolished in the RIF; petitioner was terminated as of June 30, 2016, and placed on a preferred eligibility list for reemployment. The controversy herein relates to the assignment of Grades 6 and 8 Computer Technology classes for the 2016-17 school year – to which petitioner claims entitlement – to a non-tenured art teacher, rather than to petitioner. The Board contended that its actions were consistent with applicable law and regulation. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner acquired tenure under her standard instructional certificate, and the protections afforded thereby encompass not only those classes she is authorized to teach within the scope of her Teacher of Business endorsement, but also those that she is authorized to teach within the scope of her standard instructional certificate pursuant to *N.J.A.C. 6A:9B-5.17*, including the middle school Computer Technology courses she taught prior to the RIF; as such, the Board violated petitioner’s tenure rights by failing to employ her to teach those classes during the 2016-17 school year and instead assigning them to a non-tenured art and graphic design teacher. Accordingly, the ALJ granted petitioner’s motion for summary decision, denied the Board’s cross motion for summary decision, and ordered the Board to compensate petitioner for any salary and benefits lost, and to credit her for any seniority credit lost during the 2016-17 school year.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusions as thoroughly set forth in the Initial Decision. Accordingly, the recommended decision of the OAL was adopted as the final decision in this matter; summary judgment was granted in favor of the petitioner, and the Board was ordered to compensate petitioner for salary and benefits lost, and credit her for seniority she would have accrued during the 2016-17 school year.

<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>

May 13, 2019

New Jersey Commissioner of Education

Final Decision

Amanda Hersh Luterzo,

Petitioner,

v.

Board of Education of the Borough of
Cresskill, 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 by the Board pursuant to *N.J.A.C. 1:1-18.4*, and the petitioner's reply thereto.

In this matter, petitioner alleges that the Board violated her tenure rights when it did not offer her employment for the 2016-17 school year. Petitioner – who began teaching in the District in 2012 and earned tenure in September 2015 – has a standard New Jersey Instructional Certificate with an endorsement as a Teacher of Business: Finance/Economics/Law. In addition to teaching high school business, marketing, and business law courses, she taught Grade 6 Computer Technology in the 2013-14 and 2015-16 school years and Grade 7 Computer Technology in the 2014-15 school year. In June 2016, the Board abolished the position of School Testing Coordinator and the person vacating that position replaced petitioner as the high school business teacher for the 2016-17 school year. Petitioner was terminated effective June 30, 2016 and placed on a preferred eligibility list. For the 2016-17 school year, a non-

tenured art teacher was assigned to teach Computer Technology 6 and 8 in addition to the art classes that she taught.

Petitioner filed an appeal with the Department of Education, alleging that her tenure rights extended to the computer technology classes and that the Board violated her rights by employing a non-tenured teacher to teach those classes. The Administrative Law Judge granted summary decision to petitioner, concluding that petitioner's standard instructional certificate extends to Computer Technology 6 and 8, and therefore the Board violated her tenure rights by failing to employ her to teach those classes during the 2016-17 school year. The ALJ further concluded that the Board should compensate petitioner for any salary and benefits lost, and credit her for any seniority credit lost for the 2016-17 school year.

The Board takes exception to the ALJ's finding that petitioner is afforded tenure protections not only to the classes she is authorized to teach under her Business: Finance/Economics/Law endorsement, but also to those classes she is authorized to teach under the scope of her standard instructional certificate. The Board argues that there is no legal support for the ALJ's expansive view of tenure protections as the cases cited in the Initial Decision only hold that a tenured staff member has tenure protections over any position within the scope of his or her endorsements. As such, the Board contends that tenure only adheres to positions under a teacher's endorsements and not to general positions. The Board explains that otherwise, districts would have to "create a seniority list of every instructional certificated employee and would effectively limit the superintendent's managerial prerogative to determine schedules and assign those teachers he considers more proficient in the use of educational technologies, computers, and other digital tools to teach these courses." (Board's Exceptions at 14) The Board argues that, pursuant to *Kathi Savarse v. Board of Education of the Borough of Bernardsville, 1990*

S.L.D. 1541, tenure and seniority rights do not attach to courses that do not require a particular endorsement; as no particular endorsement is required to teach middle school computer technology, the superintendent may choose any teacher to teach those courses. Further, the Board contends that it should not be required to create a four-tenth position for a subject that does not require an endorsement, because if an endorsement is not required, then petitioner has no entitlement to teach those courses. As such, the Board finds the ALJ's conclusion that petitioner's instructional certificate authorizes her to teach computer classes to be erroneous.

Additionally, the Board contends that – following amendments to the regulations in December 2015 – *N.J.A.C. 6A:9B-5.17(b)* no longer permits the chief school administrator to assign petitioner to the computer classes because keyboarding and word processing are not considered “educational technology.” Instead, these classes now require an endorsement pursuant to *N.J.A.C. 6A:9B-9.4*. As petitioner failed to maintain the appropriate business endorsement under *N.J.A.C. 6A:9B-9.4*, which would have authorized her to provide keyboarding and word processing instruction, she is no longer qualified to teach these computer courses. The Board also takes exception to the ALJ's interpretation that *N.J.A.C. 6A:9B-9.4* only requires endorsements for grade 9-12 CTE programs, arguing that *N.J.A.C. 6A:9B-9.4* requires that teachers in K-12 hold one of the business endorsements to teach courses in keyboarding or word processing. The Board argues that the ALJ is also using an erroneous standard in applying the CTE definition in determining that an endorsement is not required to teach middle school computer technology. The ALJ found that the middle school computer technology courses do not meet the CTE definition as they do not reflect “rigorous content”, “occupation specific skills”, or “relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions.” (Initial Decision at 21)

However, *N.J.A.C.* 6A:9B-9.4(a) is not limited to approved CTE programs. Instead, the seven business endorsements listed in *N.J.A.C.* 6A:9B-9.4(a) require teachers to be authorized in the subject matters – including keyboarding and word processing – when teaching the subjects in grades K-12. As petitioner is not qualified to teach the computer courses, the Board requests that the Commissioner deny petitioner’s claim of entitlement for the two middle school computer technology classes in the 2016-17 school year.

In reply, petitioner agrees with the ALJ that tenure rights may extend beyond the scope of a teacher’s endorsement and include all courses within a tenured teacher’s instructional certificate when a specific endorsement is not mandated to teach the class. Petitioner cites *Jane Fox v. Board of Education of the Morris School District*, 93 *N.J.R.* 2d (EDU) 139 (January 11, 1993). In that case, the Commissioner held that a tenured teacher was entitled to teach three class periods of academic support over a non-tenured teacher, “insofar as no particular endorsement was required” for the assignment. *Id.* at 143. Accordingly, petitioner maintains that her tenure rights entitle her to teach computer technology over a non-tenured teacher, even though no specific instructional endorsement is required to teach it.

Petitioner argues that nothing in *N.J.A.C.* 6A:9B-9.4 bars the teaching of general computer skills by those without specific computer-related endorsements. Petitioner explains that the endorsements in *N.J.A.C.* 6A:9B-9.4 qualify teachers to teach highly technical subjects; while those technical endorsements may also include rudimentary subjects, it does not preclude teachers with no specific computer endorsement from also teaching those basic subjects, as *N.J.A.C.* 6A:9B-5.17 indicates that an endorsement is not required to deliver instruction in educational technology, computers, and other digital tools. Petitioner points out that the purpose of *N.J.A.C.* 6A:9B-5.17 is to enable more teachers to provide educational technology instruction,

as computer literacy is “crucial to modern learning in all disciplines,” and there are not enough teachers with computer-specific endorsements to meet the need. If the Board’s interpretation were correct, *N.J.A.C. 6A:9B-5.17* would be pointless because every basic computer class – like Computer Technology 6 and 8 – would require a teacher with a Business Keyboarding and Data Entry endorsement. Petitioner further contends that the Board’s argument is disingenuous as it assigned the computer classes to an Art and Design Teacher who did not have a computer-specific endorsement. (Petitioner’s Reply Exceptions at 7).

Petitioner distinguishes the cases cited by the Board by emphasizing that, unlike those cases where regulations required additional qualifications to teach certain classes, there is no such regulation requiring a computer-specific endorsement to teach middle school computer technology. Petitioner contends that the computer classes at issue are basic computer subjects that virtually every middle school student must take – not business courses or technical in nature. The course descriptions make clear that the courses provide an elementary foundation in computers, which is the purpose behind *N.J.A.C. 6A:9B-5.17*. Petitioner further argues that, contrary to the Board’s argument, this case is not about the need for a seniority list. Petitioner explains that this matter involves the rights of a tenured person to be retained over a non-tenured person, so the issue of seniority does not arise. (*Ibid.* at 11-12) As such, petitioner urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner agrees with the ALJ – for the reasons thoroughly explained in the Initial Decision – that the Board violated petitioner’s tenure rights by employing a non-tenured teacher, rather than petitioner, to teach Computer Technology 6 and 8 in the 2016-17 school year. The Commissioner further concurs with the ALJ that, pursuant to *N.J.A.C. 6A:9B-5.17*, no endorsement is required to teach the middle school computer courses as

they cover general, basic computer skills. As such, petitioner's tenure allows her to claim the sixth and eighth grade computer classes over a non-tenured teacher because they fall within the scope of her standard instructional certificate and she taught the courses prior to the reduction in force (RIF).

The Commissioner does not find the Board's exceptions to be persuasive. The Tenure Act, *N.J.S.A.* 18A:28-1 *et seq.*, "should be liberally construed to achieve its beneficent ends." *Spiewak v. Board of Education of Rutherford*, 90 *N.J.* 63, 74 (1982). While seniority comes into play when reductions occur among *tenured* staff members, "[a] tenured teacher, however, is entitled to retention as against a non-tenured teacher under the tenure law. To 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." *Capodilupo v. Board of Education of the Township of West Orange*, 218 *N.J. Super.* 510, 515 (App. Div. 1987). In *Fox, supra*, the Commissioner found that a tenured teacher was entitled to teach three periods of academic support – which only required a valid teaching certificate – over a non-tenured teacher, noting that "Fox, a tenured teacher, was entitled to the position over nontenured Porcelli insofar as no particular endorsement was required for the three periods he was assigned as a teacher on special assignment." 93 *N.J.R.* 2d (EDU) at 143. Here, petitioner was a tenured teacher who taught middle school computer classes and was replaced by a non-tenured teacher. Given the liberal construal of the Tenure Act cited in *Spiewak, supra*, petitioner is entitled to teach these computer courses – which she taught prior to the RIF – as they fall within the scope of her instructional certificate, even though a specific endorsement is not required to teach the classes. Further, contrary to the Board's argument, this matter does not involve the creation of a seniority list;

seniority does not arise in this case, as the issue of entitlement here is not between two tenured teachers, but rather between a tenured teacher and a non-tenured teacher.

The Commissioner further disagrees with the Board's argument that *N.J.A.C. 6A:9B-5.17* and *N.J.A.C. 6A:9B-9.4* require a Business: Keyboarding and Data Entry endorsement in order to teach middle school computer technology. When read together, the regulations imply that an endorsement is required to teach computer courses in CTE programs, which are more complex and technical than basic middle school computer technology classes covering introductory Microsoft Office and keyboarding. If a computer-specific endorsement were required to teach middle school computer technology, then *N.J.A.C. 6A:9B-5.17* – which allows teachers to teach “educational technology, computers, and other digital tools” without an endorsement – would be rendered meaningless. The fact that the Board replaced petitioner with an art and graphic design teacher to teach the computer classes further undercuts its argument that a computer-specific endorsement is required.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board is ordered to compensate petitioner for any salary and benefits lost for the 2016-17 school year, and credit petitioner any seniority credit lost for that time period.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: May 13, 2019
Date of Mailing: May 14, 2019

¹ 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 10002-16

AGENCY DKT. NO. 162-6/16

AMANDA HERSH LUTERZO,

Petitioner,

v.

**BOARD OF EDUCATION OF
THE BOROUGH OF CRESSKILL,
BERGEN COUNTY,**

Respondent.

Louis P. Bucceri, Esq., for petitioner (Bucceri and Pincus, attorneys)

Carolyn R. Chaudry, Esq., for respondent (Scarinci & Hollenbeck, attorneys)

Alfred F. Maurice, Esq., for intervenor Amy Grossman (Springstead & Maurice,
attorneys)

Record Closed: December 13, 2018

Decided: February 13, 2019

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner Amanda Hersh Luterzo, a teacher, appeals the determination of respondent, the Board of Education of the Borough of Cresskill, Bergen County (Board), that it would not be offering her employment for the 2016–2017 school year, alleging violation of her tenure and seniority rights, and alleging that failure to adopt a resolution terminating petitioner’s employment by name renders the termination null and void.

PROCEDURAL HISTORY

On or about June 15, 2016, Luterzo filed a Verified Petition with the Commissioner of Education. On or about July 1, 2016, the Board filed an Answer and Affirmative Defenses. On July 7, 2016, the Bureau of Controversies and Disputes (Bureau) of the Department of Education (Department) transmitted the contested case to the Office of Administrative Law (OAL), where it was filed on July 8, 2016. By letter dated February 1, 2017, the Board notified three employees of their right to file motions to intervene by February 28, 2017. On February 6, 2017, and on February 12, 2017, notices of appearance and letter requests to intervene were filed on behalf of Megan Berlamino and Amy Grossman, respectively. Berlamino and Grossman were granted leave to intervene.

On November 22, 2017, with the intention of filing cross-motions for summary decision, the parties submitted a joint Stipulation of Facts. On January 25, 2018, petitioner and respondent filed cross-motions for summary decision accompanied by briefs. On February 8, 2018, respondent filed a brief in opposition to petitioner’s motion. On February 13, 2018, intervenor Grossman filed a brief in support of respondent’s motion. Intervenor Berlamino did not file a brief, and petitioner’s brief reflects that “[a]s a result of the completion of discovery, Petitioner abandoned all claims to the work performed by Intervenor Berlamino and she is no longer participating as an Intervenor in this matter.” On February 14, 2018, petitioner filed a brief in further support of her motion and in opposition to respondent’s motion. Oral argument was held on December 12, 2018.

FACTUAL DISCUSSION AND FINDINGS

Respondent's school district consists of three schools, Bryan School (grades K–5), Merritt Memorial School (grades pre-K–5) and Cresskill Middle/High School (grades 6–12). Petitioner was hired by Board Resolution of May 21, 2012 (J-1) and was continuously employed by respondent as a teacher from September 2012 through June 30, 2016, as follows:

- a) 2012–2013, full-time teacher assigned to teach high school Marketing, Introduction to Business, and Business Law;
- b) 2013–2014, full-time teacher assigned to teach high school Marketing, Introduction to Business, Business Law, and Grade 6 Computer Technology (Computer Tech. 6);
- c) 2014–2015, full-time teacher assigned to teach high school Marketing, Introduction to Business, Business Law, and Grade 7 Computer Technology (Computer Tech. 7); and
- d) 2015–2016, full-time teacher assigned to teach high school Marketing, Introduction to Business, Business Law, and Computer Tech. 6.

Petitioner was issued a New Jersey provisional certificate as a Teacher of Business in September 2012, and a standard New Jersey Instructional Certificate endorsed as a Teacher of Business: Finance/Economics/Law in August 2013, after completion of her mentorship. (J-2.)

By virtue of the date of her hiring resolution (J-1), certification (J-2), and term of service in respondent's employ, petitioner achieved tenure as a teacher in respondent's school district as of the first day of school in September 2015.

On March 21, 2016, petitioner was verbally advised that her position would be eliminated for economic reasons, effective June 30, 2016, and that she would not be employed by the Board thereafter.

By resolution of June 27, 2016 (J-3), the respondent abolished the position of School Testing Coordinator and assigned the person vacating that position to be a high-school business teacher, replacing petitioner for the 2016–2017 school year on the basis of the former testing coordinator’s superior seniority as a secondary teacher of business. That resolution also authorized the termination of petitioner’s employment in the district and her placement on a preferred eligibility list.

For the 2016–2017 school year, the respondent employed the following teacher, among others: Amy Grossman.

Amy Grossman was hired as a teacher by respondent effective September 1, 2014, and continues to be employed to the present. Grossman was a full-time, ten-month teacher from September 1, 2014, through January 31, 2016. Grossman was reduced to an eight-tenths, part-time teacher from February 1, 2016, through June 30, 2016. Grossman returned to full-time status from September 1, 2016, through June 30, 2017. Grossman is not tenured.

Grossman held a provisional certificate as a Teacher of Art (J-4) from February 2013 and received a standard certificate as a Teacher of Art (J-5) in January 2015. Grossman held a provisional certificate as a Teacher of Graphic Design (J-6) from March 2014 and received a standard certificate as a Teacher of Graphic Design (J-7) in January 2015.

During the 2016–2017 school year, Grossman was assigned to teach Web Design/Animation, Mosaics/Ceramics, Design Studio, Computer Tech. 6, and Computer Tech. 8.

During the 2015–2016 school year, petitioner earned gross wages of \$54,645 from full-time employment with respondent. If petitioner had been employed full time by

respondent for the 2016–2017 school year, she would have earned a gross salary of \$55,935. If petitioner had been employed for the 2016–2017 school year, petitioner would have had twenty days of sick leave and four days of personal leave available for use in 2016–2017.

Petitioner gave birth on September 16, 2016. The school year for teachers began on September 1, 2016. She would have returned to work from her child-rearing leave as of January 2, 2017, if she had been re-employed for the 2016–2017 school year. If petitioner had been employed in the four-tenths position being claimed in this matter, after allowing for paid and unpaid leaves for child birth and child-rearing, she would have earned \$16,448 in salary for the 2016–2017 school year.

The Computer Tech. 6 Course Description is as follows:

This course will develop proper communication and keyboarding skills when using technology. Computers are one of the ways in which people communicate globally. There are many careers which require proper keyboarding skills. MS Word is a universal tool used in personal, professional and educational settings. MS Word applications, commands and features can be used to generate quality documents involving complex formatting. There are tools in MS Word to assist in creating professional documents.
[J-6.]

The Computer Tech 6. Syllabus is as follows:

Course Description:

Computer Technology 6 class is designed to assist students in becoming better Digital Citizens. Each unit throughout this 8-week cycle includes projects/assignments designed for the sixth grade developmental & proficiency levels. Students will be required to practice a minimum of 30 minutes of keyboarding weekly to develop and assess proper keyboarding habits. Class topics covered will include keyboarding and technology basics, introductory word processing skills and internet ethics/safety. Students will also use communication and collaboration tools within class such

as Edmodo.com and Typing.com. Students will create various products using the Microsoft Office Word application.

1. Keyboarding Drills (1–2x weekly)

- Weekly drills on www.typing.com
- Weekly progress on weekly increase of speed/accuracy is assessed
- Educational keyboarding games weekly for additional practice

2. Unit 1: KEYBOARDING (1.5 weeks)

- a. The keyboard and the home row
 - Teacher presentation
 - Individual student activities
- b. Proper keyboarding positioning and techniques
 - Teacher presentation
 - Individual student activities
- c. History of keyboarding
 - Teacher presentation
 - Individual student activities
- d. Keyboarding in Everyday Life
 - Class discussion
 - Group Projects
- e. End of Unit Assessment

3. Unit 2: Technology basics (2 days)

- a. Various skills taught: Navigating through the computer, saving files, saving and inserting images properly, different file formats, citing your sources
 - Teacher-led activities
 - Student activity

4. Unit 3: Introduction to Word Application (4–5 weeks)

- a. *Various skills taught: vocabulary, header, footer, document size, document orientation, columns, margins, formatting (fonts, point size, colors), formatting effects, line spacing, watermarks, page color, tabs, tables, text wrap, hyperlinks, columns, clip art, shapes, drawing, photo editing, drop caps, word art, spelling/grammar, symbols*
 - i. Teacher-led activities
 - ii. Individual student activities
 - iii. Alphabet Hieroglyphics Project**
 - iv. Digital Acrostic Poem Project**
 - v. Seasonal/Holiday Drawing Project**
 - vi. All About Me Poster Project**
 - vii. End of Unit digital assessments

5. Unit 4: Internet Ethics and Safety (2–3 days)

- a. Teacher presentation including example real-life video scenarios
- b. Group discussions on: *Online safety, digital etiquette, cyber bullying, appropriate use, protecting your online reputation, social networking, plagiarism, copyright and fair use, how to conduct effective searches, how to evaluate sites for accuracy*
- c. Group Project

6. Final Projects (1 week)

- a. These projects should showcase students' application skills to be used to create real-world projects.
 - i. Mandatory project (1): Creating your own Restaurant Menu in Word
 - ii. Choice Projects (choose 3 out of 4) Cartoon, timeline, 1-month calendar, seating chart

[J-7.]

The Computer Tech. 8 Course Description is as follows:

Enhancing keyboarding skills is a benefit for life, this course will improve your typing skills by committing to daily typing practice. Correct keyboarding techniques increase the ability to complete tasks efficiently and effectively.

The following programs will be taught:

WORD (Microsoft Office [S]uite)

This is a software program that enables you to perform word processing functions. Word has desktop publishing capabilities and is the most widely used word processing program on the market.

EXCEL (Microsoft Office Suite)

Excel is a spreadsheet application. It features calculation, graphing tools, pivot tables, and a macro programming language called Visual Basic for Applications. It has been a very widely applied spreadsheet for these platforms, since 1993. It is the industry standard for spreadsheets.

POWERPOINT (Microsoft Office Suite)

Power[P]oint is a slide show presentation program. It was officially launched in 1990. PowerPoint is well known for helping develop the slide based presentation format, and is currently one of the most commonly-used presentation programs available.

[J-8.]

The Computer Tech 8. Syllabus is as follows:

Course Description:

Computer Technology 8 class is designed to assist students in becoming better Digital Citizens. Each unit throughout this 8-week cycle includes projects/assignments designed for the eighth grade developmental & proficiency levels. Students will be required to practice a minimum of 30 minutes of keyboarding weekly to develop and assess proper keyboarding habits. Class topics covered will include an advanced level of word processing, spreadsheets, and presentation skills. Students will also use communication and collaboration tools within class such as Edmodo.com and Typing.com. Students will create various products using Microsoft Office, Word, Excel, Power[P]oint applications as well as Google Drive documents, spreadsheets, presentations, drawings, forms, etc. . .

- 1. Keyboarding Drills (1–2x weekly)**
 - a. Weekly drills
 - b. Weekly progress on speed/accuracy is assessed via www.typing.com
 - c. Educational keyboarding games weekly for additional practice

- 2. Unit 1: Review of Word Applications (1.5 weeks)**
 - a. *Various skills taught: header, footer, document size, document orientation, columns, margins, formatting (fonts, point size, colors), formatting effects, line spacing, watermarks, page color, tabs, tables, text wrap, hyperlinks, columns, clip art, shapes, drawing, photo editing, drop caps, word art, spelling/grammar, symbols*
 - b. Teacher-led activities
 - c. Individual student activities
 - d. **PROJECT: Zodiac Sign Flyer**
 - e. End of Unit digital assessment

- 3. Unit 2: Review of Excel Application (1.5 weeks)**
 - a. Skills taught: *inputting data, adjusting cells, formatting, creating spreadsheets, formulas, charts, pictograms*
 - b. Teacher-led activities
 - c. Individual Student Activities
 - d. **PROJECT: 12 Days of Middle School Group Activity**
 - e. End of Unit digital assessment

4. **Unit 3: Power[P]oint (1.5 weeks)**
 - a. Skills taught: *Basics, Themes, Transitions, Animations*
 - b. Teacher-led activities
 - c. Individual Student Activities
 - d. **PROJECT: Technology Era Presentations**
 - e. End of Unit digital assessment

5. **Google Drive (2 weeks)**
 - a. Basics: *Introduction to GOOGLE DRIVE, editing/collaborating, sharing, etc. . .*
 - b. Google docs activity
 - c. Google Slides activity
 - d. Google Sheets activity
 - e. Google Drawing activity
 - f. Google Forms activity
 - g. Google Survey activity
 - h. **PROJECT: Student CHOICE Google (Subject proposed to teacher)**

6. **Final Projects (1.5 weeks)**
 - a. These projects should showcase students' application skills to be used to create real-world projects.
 - i. 1 mandatory project
 - ii. Choice Projects (choose 2 out of 3)

[J-9.]

Petitioner stipulated that her claims herein are limited to the 2016–2017 school year.²

LEGAL ANALYSIS AND CONCLUSIONS

Tenure and Endorsements

Tenure of educational personnel is authorized by the Tenure Act, N.J.S.A. 18A:28-1 to -18. An employee of a board of education is entitled to tenure if the employee (1) works in a position for which a teaching certificate is required; (2) holds the appropriate certificate; and (3) has served the requisite period of time. N.J.S.A. 18A:28-5; Spiewak v. Bd. of Educ., 90 N.J. 63, 74 (1982). Teaching staff members

² See December 12, 2018, letter from Louis P. Bucceri, Esq.

shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of Title 18A. N.J.S.A. 18A:28-5; Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962).

Tenure is acquired in one of the positions specifically enumerated in N.J.S.A. 18A:28-5 only if the individual has served for the requisite statutorily required period of time in that position. See Nelson v. Old Bridge Bd. of Educ., 148 N.J. 358, 368 (1997). Those positions include, inter alia, “teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses . . . , school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners.” N.J.S.A. 18A:28-5; Nelson, 148 N.J. at 368–69. However, tenure in any of the administrative or supervisory positions so enumerated accrues only by employment in that administrative or supervisory position and does not extend to any other administrative or supervisory position. N.J.S.A. 18A:28-5(c). That however, does not limit or restrict tenure rights which were or may be acquired pursuant to N.J.S.A. 18A:28-6 in a position in which the individual actually served. Ibid.

Pursuant to N.J.S.A. 18A:26-2, any person employed as a teaching staff member by a district board of education must hold a valid and appropriate certificate. N.J.A.C. 6A:9B-5.1(a). “Certificate” means a legal document issued by the Board of Examiners that permits an individual to serve as a teaching staff member. N.J.A.C. 6A:9-2.1. The certificate holder shall obtain any license, certificate, or authorization required by State or federal law, a licensing board, or N.J.A.C. 6A:9B-4.1 and -4.2 for the individual to serve in a position. N.J.A.C. 6A:9B-5.1(b). The employing school district must remove from the position any teaching staff member who fails to maintain the mandated license, certificate, or authorization. N.J.A.C. 6A:9B-5.1(c).

The Board of Examiners issues three categories of educational certificates: Instructional, Administrative, and Educational Services. N.J.A.C. 6A:9B-5.3. “Instructional certificate” means the certificate category that permits an individual to

serve as a teacher in a classroom setting. N.J.A.C. 6A:9-2.1. Except as indicated in N.J.A.C. 6A:9B-8.8, candidates for a standard instructional certificate first shall obtain a certificate of eligibility with advanced standing (CEAS) or a certificate of eligibility (CE), and then shall obtain a provisional certificate. N.J.A.C. 6A:9B-8.1(a). “Standard certificate” means a permanent certificate issued to a person who has met all certificate requirements. N.J.A.C. 6A:9-2.1. A provisional teacher who meets all other standard-certificate requirements pursuant to N.J.A.C. 6A:9B-8.7 will earn a standard certificate upon receipt of at least two summative evaluation ratings of effective or highly effective earned within three consecutive years of teaching. N.J.A.C. 6A:9B-8.6(b).

In addition to the foregoing, “the State Board has also designated ‘special endorsements’ under each type of certificate, which identify the educational subjects or assignments that share common traits.” Nelson, 148 N.J. at 363. “Endorsement” means an authorization allowing a 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:9-2.1. Each certificate must be issued with at least one endorsement, which shall be considered part of the certificate. N.J.A.C. 6A:9-2.1, “Certificate.” Specifically, N.J.A.C. 6A:9B-9.1(a) requires that

[t]o fulfill the endorsement requirements necessary for instructional certification pursuant to N.J.A.C. 6A:9B-8, the candidate shall:

1. Complete one or more of the following coursework requirements for the subject area in which the candidate is seeking the endorsement:
 - i. Complete an undergraduate major in the subject area as documented by an official transcript from a regionally accredited four-year college or university;
 - ii. Hold a graduate degree in the subject area; or
 - iii. Complete at least 30 credits in a coherent sequence of courses appropriate to the subject area as documented by an official transcript from a regionally accredited college

or university, of which 12 semester-hour credits must be at the advanced level of study, including junior-, senior-, or graduate-level study as documented by the official transcript of a four-year, regionally accredited college or university;

2. Pass the appropriate State test(s) of subject matter knowledge. . . .

[. . .]; and

3. When applicable, complete additional requirements or exceptions pursuant to N.J.A.C. 6A:9B-11.

(b) Except if certified in an experience-based career and technical education endorsement pursuant to N.J.A.C. 6A:9[B]-11.3 or military science pursuant to N.J.A.C. 6A:9[B]-11.8, holders of a CE, CEAS, or standard instructional certificate in one endorsement may obtain the corresponding CE, CEAS, or standard instructional certificate in a different endorsement upon completion of the academic and test requirements listed in (a) above and any additional requirement(s) or exception(s) in N.J.A.C. 6A:9B-10 or 11.

Career and Technical Education (CTE) Endorsements

“Career and technical education” (CTE) means organized educational activities that: offer a sequence of courses that provide individuals with the coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions; provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; may include prerequisite courses (other than a remedial course) that meet the requirements of this definition; and include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry. N.J.A.C. 6A:19-1.2; N.J.A.C. 6A:9-2.1. N.J.A.C. 6A:9B-11.3(a) provides that candidates for the instructional certificate in a CTE endorsement shall complete:

1. CEAS requirements pursuant to N.J.A.C. 6A:9B-8.2;
2. CE requirements pursuant to N.J.A.C. 6A:9B-8.3, except:
 - i. Candidates do not need to complete the basic skills requirement pursuant to N.J.A.C. 6A:9B-8.3(a)5 prior to obtaining a CE; and
 - ii. Candidates shall complete either the experience-based or degree-based requirements pursuant to (b) below;
3. Provisional requirements pursuant to N.J.A.C. 6A:9B-8.4; and
4. Requirements for the renewal of the provisional certificate, pursuant to N.J.A.C. 6A:9B-8.5, and standard certificate requirements, pursuant to N.J.A.C. 6A:9B-8.7. Candidates who have not yet completed the Department-approved basic skills assessment or achieved a minimum score on an alternate assessment listed in N.J.A.C. 6A:9B-8.3(a)5 shall complete the basic skills assessment prior to becoming eligible for a standard certificate.

According to N.J.A.C. 6A:9B-9.4(a), “21st century life and careers, and [CTE] endorsements and authorizations,” the following teaching endorsements “authorize the holder to teach kindergarten through grade 12, including approved [CTE] programs in grades nine through 12 in all public schools”:

1. Business education/business-related technologies: The endorsements authorize the holder to teach business education and business-related technologies in all public schools.
 - i. Comprehensive business: This endorsement authorizes the holder to teach accounting, banking and insurance, business computer applications, business law, business communications, business mathematics, economics and finance, entrepreneurship, international business, keyboarding, business management, business organization, marketing, office administration/office systems technology, and exploration in business-related careers.

ii. Business: accounting: This endorsement authorizes the holder to teach accounting, bookkeeping, finance and investment, business mathematics, and exploration of related careers.

iii. Business: finance/economics/law: This endorsement authorizes the holder to teach finance and investment, economics, law, banking and insurance, business mathematics, business communications, business management, business organization, and exploration of related careers.

iv. Business: keyboarding and data entry: This endorsement authorizes the holder to teach keyboarding, computer data entry, word processing, and exploration of related careers.

v. Business: computer applications and business-related information technology: This endorsement authorizes the holder to teach business-related software applications, safety and security policies pertaining to computer use, emerging hardware and operating systems, file management, legal issues related to computer use, and exploration of related business occupations.

vi. Business: office administration/office systems technology: This endorsement authorizes the holder to teach office organization, word processing, speed writing, business communication, office and administrative support practices and procedures, keyboarding, data entry, and exploration of related business occupations.

vii. Marketing education: This endorsement authorizes the holder to teach marketing occupations including sales, advertising and retailing, global marketing, entrepreneurship, and exploration of related business occupations.

The legislative history of N.J.A.C. 6A:9B-9.4 reflects that it was recodified from N.J.A.C. 6A:9-9.2(a)(9). Initially, N.J.A.C. 6A:9-9.2(a)(9), "Career education and consumer, family and life skills," did not separately list or define the business education/business-related technologies endorsements. It was not until May 15, 2006, that the regulation was amended to add the seven enumerated endorsements.

Specific CTE endorsements are based on a candidate's Department-approved employment or self-employment experience, bachelor's degree, and/or associate degree. N.J.A.C. 6A:9B-9.4(c). Endorsements are organized under career clusters and listed on the Department's website. Ibid. Petitioner's CTE endorsement, "Business: finance/economics/law," is listed on the Department's website under "Business Management and Administration."³ To meet the endorsement requirements in N.J.A.C. 6A:9B-9.1(a)(1)(iii), as part of the minimum thirty credits in the content area, a candidate for the finance, economics, and law endorsement must complete at a two- or four-year regionally accredited college or university:

1. At least six semester-hour credits in economics;
2. At least three semester-hour credits in finance; and
3. At least three semester-hour credits in business law.

[N.J.A.C. 6A:9B-10.13(a).]

N.J.A.C. 6A:19-1.1 to -7.6 governs the CTE programs and standards. The purpose of the State system of CTE is to (1) support developmental career education designed to provide students opportunities to enhance career awareness, exploration, preparation, and decision-making skills necessary for success in the workplace; (2) provide secondary and postsecondary students with CTE programs and programs of study in Department-recognized Career Clusters that fulfill New Jersey Student Learning Standards; (3) support a comprehensive K–12 career education and counseling system; and (4) support the workforce development system by helping to ensure quality postsecondary educational opportunities for adult students. N.J.A.C. 6A:19-1.1(a). Chapter 19 establishes the general provisions governing CTE, and specifies the standards and procedures regarding CTE in the areas of (1) provision of career and technical education; (2) development, approval, and delivery of career and technical education programs and programs of study; (3) provision of structured learning experiences; (4) implementation of the CTE accountability system; (5) development and implementation of safety and health standards; and (6) contracting of services of career and technical training providers. N.J.A.C. 6A:19-1.1(b).

³ Available at <https://nj.gov/education/license/cte/endorsements.htm> (last visited January 30, 2019).

A district board of education may not apply the term “career and technical” to any of its schools, programs, or programs of study unless those schools, programs, or programs of study are approved by the Department and meet the general requirements included in the approved State Plan for CTE. N.J.A.C. 6A:19-2.1(c). A district board of education may establish CTE programs and programs of study approved pursuant to N.J.A.C. 6A:19-3.1 as part of a separate career and technical high school or as part of a comprehensive high-school curriculum. N.J.A.C. 6A:19-2.1(e). A district board of education operating a CTE program or program of study must comply with all requirements pursuant to N.J.A.C. 6A:19-6, Safety and Health Standards, in the administration and operation of the programs. N.J.A.C. 6A:19-2.1(i). N.J.A.C. 6A:19-3.1(a) sets forth, at length, the program requirements for a district board of education intending to offer a CTE program or program of study.

Distinction Between Technology Education and Educational Technology

A “technology education” endorsement authorizes the holder to teach technology education in all public schools with the exception of approved CTE programs. N.J.A.C. 6A:9B-9.3(a)(8)(i). Technology education includes content aligned with the NJSL and the “Standards for Technological Literacy: Content for the Study of Technology” published by the International Technology and Engineering Educators Association (ITEEA), Copyright 2007, incorporated by reference, available at <https://www.iteea.org/File.aspx?id=67767&v=b26b7852>. *Ibid.* Examples of the topics that can be taught under the “technology education” endorsement include: technological literacy; the nature of technology; technology and society; the engineering and technological design process; abilities for a technological world; and understanding the designed world, including selecting and using medical technologies, agricultural and related biotechnologies, energy and power technologies; information and communication technologies; transportation technologies, manufacturing technologies, and/or construction technologies. N.J.A.C. 6A:9B-9.3(a)(8)(i)(1). A technology education endorsement is not required to teach educational technology and/or computer and information skills pursuant to N.J.A.C. 6A:9B-5.18.⁴ N.J.A.C. 6A:9B-9.3(a)(8)(ii).

⁴ It appears the correct citation should be N.J.A.C. 6A:9B-5.17, as 5.18 is reserved.

The legislative history for N.J.A.C. 6A:9B-9.3 reflects that it was previously codified at N.J.A.C. 6A:9-9.2(a)(8). In 2005 and 2006, the regulation reflected a “technology education” paragraph, but was later amended, effective January 5, 2009, to add the “computer and information literacy” paragraph reflecting that there was no separate endorsement for educational technology and tools or for computer and information literacy, except where career and technical endorsements occur. N.J.A.C. 6A:9-9.2(a)(8)(i).

With respect to instruction in “educational technology,” computers, and other digital tools, the legislative history of N.J.A.C. 6A:9B-5.17 reflects that subparagraph (b) was added, effective December 7, 2015, to almost identical language previously codified at N.J.A.C. 6A:9-5.20 (effective January 5, 2009), and later codified at N.J.A.C. 6A:9-5.19 (effective July 1, 2013). The Rule Proposal Summary reflects that the Department was proposing amendments “primarily in four areas that are consistent with both the State Board Strategic Plan and the Department’s mission statement,” including amendments at N.J.A.C. 6A:9-5.20 and elsewhere to address “a more comprehensive authorization for teaching computer literacy, and clarification of the distinction between educational technology and technology education.” 40 N.J.R. 4856(a) (September 2, 2008). More specifically,

N.J.A.C. 6A:9-5.20, Computer literacy, is proposed for repeal and replacement with a new section emphasizing the integration of education technology across the curriculum, per Core Curriculum Content Standard 8.2. The new rule also reflects changes in the Department’s understanding of the educational technology responsibilities of teachers, and distinguishes educational technology from technology education.

[ibid.]

Presently, N.J.A.C. 6A:9B-5.17, “Instruction in educational technology, mputers, and other digital tools,” provides as follows:

(a) Every teacher shall demonstrate knowledge and understanding of computers and other educational technology resources and tools as defined by the Professional Standards for Teachers.

(b) An endorsement shall not be required to deliver instruction in educational technology, computers, and other digital tools, except where career and technical endorsements are required for the related career clusters, career education, and consumer, family, and life skills pursuant to N.J.A.C. 6A:9B-9.4.

(c) Every teacher shall integrate into the classroom appropriate educational technology resources and digital tools related to the content area being taught.

(d) The chief school administrator or his or her designee may assign an individual to provide instruction in the use of educational technologies, computers, and other digital tools if the individual:

1. Demonstrates proficiency in the uses of educational technologies, computers, and other digital tools, and understands their common applications in an educational setting;
2. Demonstrates knowledge and understanding of the integration in the curriculum of such technologies and digital tools;
3. Demonstrates understanding of the legal and ethical issues surrounding the use of educational technologies and digital tools in preschool through grade 12 schools; and
4. Holds a CE, CEAS, or standard certificate in an instructional field.

Analysis

In Dennery v. Passaic County Regional High School District #1 Board of Education, 131 N.J. 626, 634 (1993), the Supreme Court opined that a tenured staff member may not be subject to a reduction in force if a nontenured person has been retained in a position within the scope of the tenured staff member's certificate:

To acquire a particular certificate and endorsement, an educator is also required to fulfill certain academic requirements. N.J.A.C. 6:11-5.1 to 5.2. Those most often include the completion of coursework or the acquisition of a relevant higher degree. On the satisfactory completion of all

requirements, the Division of Teacher Preparation and Certification will certify the educator. N.J.A.C. 6:11-3.19.

An educator who has attained tenure by virtue of the requisite service in a specific position will have tenure with respect to all positions under the particular certificate. Ellicott v. Board of Educ., 251 N.J. Super. 342, 349, 598 A.2d 237 (App. Div. 1991). Tenure under any one endorsement entitles an educator to tenure under all endorsements obtained under his or her certificate. Id. at 350, 598 A.2d 237; Bednar v. Westwood Bd. of Educ., 221 N.J. Super. 239, 534 A.2d 93 (App. Div. 1987) (holding that tenured teacher with instructional certificate and endorsement in art also entitled to tenured post requiring secondary art endorsement), certif. denied, 110 N.J. 512, 541 A.2d 1371 (1988); Capodilupo v. West Orange Township Bd. of Ed., 218 N.J. Super. 510, 528 A.2d 73 (App. Div.) (holding that teacher with both elementary and secondary physical education endorsements was tenured under both endorsements), certif. denied, 109 N.J. 514, 537 A.2d 1300 (1987); Grosso v. Board of Educ., 1990 S.L.D. 1750.

In Bednar, the court opined that seniority does not purport to create employment rights for nontenured employees, and that Chapter 28 surely does not contemplate use of the concept of seniority to justify retaining a nontenured teacher in a position within the certificate of a dismissed tenured teacher. Bednar, 221 N.J. Super. at 242 (citing Capodilupo, 218 N.J. Super. 510). The court continued that N.J.S.A. 18A:28-10 declares only the rights inter sese of tenured teachers in a reduction in force, among whom seniority is determinative, but the statute does not authorize regulatory dilution of tenure rights by affording a nontenured teacher “seniority.” Id. at 243.

In Capodilupo, the Appellate Division opined that the “State Board was within its delegated authority when it ruled that a tenured teacher seeking reinstatement within the endorsements on his or her certificate is entitled to preference in a [reduction in force] as against a non-tenured applicant with the same certification.” Capodilupo, 218 N.J. Super. at 515. Similarly, in Grosso v. Board of Education, 1990 S.L.D. 1750 (State Board of Education), appeal dismissed, Nos. A-4359-89T5 and A-4360-89T5 (App. Div. 1990), the Commissioner of Education agreed that the petitioner had achieved tenure as a “teacher” by virtue of his service teaching business education for the requisite

period of time under N.J.S.A. 10A:28-6, and that the scope of his tenure protection extended to all of the endorsements on his instructional certification. The Commissioner concluded that since the petitioner was authorized and qualified to serve as an elementary teacher by virtue of his elementary education certification, under N.J.A.C. 6:11-6.2(a)(6), he had entitlement as a result of his tenure status to employment as an elementary teacher as against nontenured individuals, regardless of whether he had previously served under that endorsement.

The standards for determining seniority are set forth in N.J.A.C. 6A:32-5.1. Seniority, pursuant to N.J.S.A. 18A:28-13 et seq., is determined according to the number of academic or calendar years of employment, or fraction thereof, as the case may be, in the school district, in specific categories. N.J.A.C. 6A:32-5.1(b). The categories are enumerated in N.J.A.C. 6A:32-5.1(l) and include secondary, elementary and “[a]dditional categories of specific educational service endorsements issued by the State Board of Examiners and listed in N.J.A.C. 6A:9B.” N.J.A.C. 6A:32-5.1(l)(17)–(19).

Petitioner holds a standard instruction certification with a Business: Finance/Economics/Law endorsement. She was employed as full-time teacher assigned to teach high school Marketing, Introduction to Business, and Business Law for the 2012–2013 through 2015–2016 school years. By virtue of the date of her hiring resolution (J-1), certification (J-2), and term of service in respondent’s employ, petitioner achieved tenure as a teacher in respondent’s district as of the first day of school in September 2015 pursuant to N.J.S.A. 18A:28-5(a)(2) with seniority rights pursuant to N.J.A.C. 6A:32-5.1, et seq. Petitioner does not dispute that she did not have sufficient seniority to claim the Marketing, Introduction to Business, and Business Law classes, which were assigned to another tenured teacher. However, petitioner argues that her tenure rights extend to the computer technology courses that were assigned to a non-tenured teacher and required her employment in a part-time position for the 2016–2017 school year; that her “tenure rights extend beyond the Business Education classes . . . to include all subjects which can be taught within the scope of her instructional certificate and are being taught by non-tenured teachers”; that she is properly certified to teach the computer technology courses; and that respondent does not have an educational prerogative to ignore tenure laws. Conversely, the Board argues that it

properly conducted a reduction in force and that petitioner “is not entitled to restoration to a .040 Full-Time Equivalent (FTE) position solely because she taught miscellaneous computer classes for a few years”; that petitioner did not, and does not, have the appropriate endorsement to teach Computer Tech. 6 or Computer Tech. 8 in the 2016–2017 school year; that even if petitioner could teach the computer technology courses, her tenure and seniority rights do not extend to Computer Tech. 6 or Computer Tech. 8; and that even if petitioner’s tenure rights extend to Computer Tech. 6 or Computer Tech. 8, the Board properly exercised its discretion to “efficiently operate its school program by assigning those classes to [Grossman] in order to retain one full-time teacher of graphic design.”

N.J.A.C. 6A:9B-5.17 allows every teacher to deliver instruction in educational technology, computers, and other digital tools, “except where career and technical endorsements are required.” N.J.A.C. 6A:9B-5.17(b). In part, this regulation was proposed as “a more comprehensive authorization for teaching computer literacy,” 40 N.J.R. 4856(a) (September 2, 2008), and section (c) confirms that computers and educational technology are to be incorporated by “every teacher” into the classroom, as appropriate. However, section (d), which allows the chief school administrator or designee to “assign an individual” to provide instruction in the use of educational technologies, computers, and other digital tools if that individual demonstrates the requisite proficiency, knowledge, and understanding of educational technology and computers, makes it evident that such individual is not “every teacher.” Additionally, there was no evidence that the District’s computer technology courses meet the CTE definition. The course descriptions and syllabi do not reflect “rigorous content,” “occupation specific skills,” or “relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions.” N.J.A.C. 6A:19-1.2, “Career and technical education.” Inasmuch as Microsoft Office Suite has become ubiquitous in school, home, and work environments, the Computer Tech. 6, Computer Tech. 7, and Computer Tech. 8 courses appear to be general-computer-skills classes.

The District’s argument that an endorsement is required to teach the computer technology classes is unavailing. N.J.A.C. 6A:9B-9.4(a) states that “the teaching

endorsements . . . authorize the holder to teach “kindergarten through grade 12, including approved [CTE] programs in grades nine through 12.” Emphasis added. Further, N.J.A.C. 6A:9B-9.4(b) states: “[CTE] endorsements authorize the holder to teach approved [CTE] programs in grades nine through 12 in all public schools in accordance with N.J.A.C. 6A:9B-11.3.” Emphasis added. The teaching endorsements referred to are the various business education/business-related technologies endorsements, family and consumer sciences, and agriculture, food, and natural resources. The Department of Education website makes clear that the “approved CTE programs” are, at a minimum, for secondary students, and its CTE program approval process is for secondary programs.⁵ The District presented no evidence to establish that any of the computer technology classes in question complied with or were approved in accordance with N.J.A.C. 6A:19-3.1. Petitioner was not teaching secondary computer technology classes. Rather, the classes were grades six, seven, and eight, and the business education/business-related technologies endorsements identified at N.J.A.C. 6A:9B-9.4(a)(1) require the appropriate endorsement to teach an approved CTE computer technology class in grades nine through twelve only.

There is no dispute that Hersh-Luterzo acquired tenure as to her standard instructional certificate, and the protections afforded thereby encompass not only those classes she is authorized to teach within the scope of her Business: Finance/Economics/Law endorsement, but also those classes she is authorized to teach within the scope of her standard instructional certificate. Although the District argues that it properly exercised its discretion to “efficiently operate its school program” by assigning the computer technology courses to a non-tenured, full-time graphic design teacher, the cases relied upon are distinguishable from this case and insufficient to trump petitioner’s tenure rights.

In sum, I **CONCLUDE** as follows:

The District’s Computer Tech. 6, Computer Tech. 7, and Computer Tech. 8 courses are not approved CTE courses. No endorsement is required to teach the District’s Computer Tech. 6, Computer Tech. 7, and Computer Tech. 8 courses.

⁵ Available at <https://www.nj.gov/education/cte/> (last visited January 30, 2019).

Petitioner's standard instructional certificate tenure extends to the Computer Tech. 6, Computer Tech. 7, and Computer Tech. 8 courses under N.J.A.C. 6A:9B-5.17. Petitioner's tenure allows her to claim the sixth, seventh, and eighth-grade computer technology classes of a non-tenured teacher.

Termination

The Verified Petition, filed on June 15, 2016, alleged that the failure to adopt a resolution terminating petitioner's employment "by name" rendered the termination null and void. However, petitioner's brief states that "[t]he second count of the petition was later mooted by the Board's adoption of a resolution terminating petitioner on June 27, 2016." Accordingly, the second count of the Verified Petition is not considered herein.

Summary Decision

Applications for summary decision after a matter has been transmitted to the Office of Administrative Law shall be filed with the administrative law judge (ALJ) in accordance with applicable rules of the OAL. N.J.A.C. 6A:3-1.12(b). A contested case before the Office of Administrative Law "can be summarily disposed of before an ALJ without a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law." In re Robros Recycling Corp., 226 N.J. Super. 343, 350 (App. Div.), certif. denied, 113 N.J. 63 (1988).

N.J.A.C. 1:1-12.5(b) provides, in pertinent part:

The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.

The parties cross-moved for summary decision. Inasmuch as there is no genuine issue as to any material fact challenged, I **CONCLUDE** that this matter is appropriate for summary decision. Based upon the totality of the facts and circumstances, I **CONCLUDE** that the Board's failure to employ petitioner for the 2016–2017 school year to teach Computer Tech. 6 and Computer Tech. 8 courses violated petitioner's tenure rights. I further **CONCLUDE** that the Board should compensate petitioner for any salary and benefits lost and credit petitioner any seniority credit lost for the 2016–2017 school year.

ORDER

I **ORDER** that petitioner's motion for summary decision be and hereby is **GRANTED** and respondent's cross-motion for summary decision be and hereby is **DENIED**. I further **ORDER** that the Board compensate petitioner for any salary and benefits lost and credit petitioner any seniority credit lost for the 2016–2017 school year.

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, PO 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.

February 13, 2019

DATE



KELLY J. KIRK, ALJ

Date Received at Agency: February 13, 2019

Date Mailed to Parties:

EXHIBITS

Joint:

- J-1 Board Resolution (May 21, 2012)
- J-2 Standard Certificate and Endorsement
- J-3 Board Resolution (June 27, 2016)
- J-4 Provisional Certificate (Amy Grossman)
- J-5 Standard Certificate (Amy Grossman)
- J-6 Computer Tech. 6 Course Description
- J-7 Computer Tech. 6 Syllabus
- J-8 Computer Tech. 8 Course Description
- J-9 Computer Tech. 8 Syllabus