

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SHARON FURROW, DAWN HAGEN,)
DANA RIDEOUT,)
Appellants,)

) C.A. No. 09A-10-005 MJB
)

BOARD OF EDUCATION OF THE)
CHRISTINA SCHOOL DISTRICT,)
CHRISTINA SCHOOL DISTRICT,)
Appellees.)

Submitted: June 23, 2010
Decided: August 6, 2010

Appeal from the Board of Education of Christina School District.
AFFIRMED.

OPINION AND ORDER

Kathleen M. Jennings, Esquire and Rebecca L. Byrd, Esquire; Drinker Biddle & Reath
LLP; Wilmington, Delaware, Attorneys for Appellants.

David H. Williams, Esquire; Morris James LLP; Wilmington, Delaware, Attorney for
Appellees.

BRADY, J.

INTRODUCTION

In this appeal, Sharon Furrow, Dawn Hagen, and Dana Rideout (“Appellants”) appeal the decision of the Board of Education (“Board”) of the Christina School District (“District”) to terminate Appellants’ positions as full-time elementary school counselors. Below is the Court’s decision.

FACTS AND PROCEDURAL HISTORY

Appellants Sharon Furrow, Dawn Hagen, and Dana Rideout were full-time elementary school counselors employed by the Christina School District. Appellants provided services such as supervision during recess or lunch, homeroom duty, and classroom guidance lessons. On May 6, 2009, Appellants received letters notifying them that the Board intended to terminate their services as elementary school counselors at the end of the 2008-2009 school year pursuant to Title 14, Chapter 14 of the Delaware Code.¹ On June 30, 2009, these employees were terminated due to a “decrease in education services.”²

Appellants filed a timely request for a hearing.³ A consolidated termination hearing was held on August 26, 2009 before hearing officer, Noel E. Primos, Esquire. At the hearing, the District presented the testimony of two witnesses,⁴ and two of the Appellants testified.

¹ 14 *Del. C.* § 1411 states, in pertinent part, that “termination at the end of the school year shall be for one or more of the following reasons: . . . decrease in education services.”

² *Id.*

³ 14 *Del. C.* § 1413 states that a teacher must request a hearing within 10 days of the receipt of the Board’s notice to terminate services.

⁴ Appellant Dana Rideout was absent from the August 26, 2009 hearing. The District had no objection to the hearing going forward in her absence.

The District's first witness was Dr. Sharon Denney, Supervisor of Discipline and School Climate for the District.⁵ She testified that, during the 2008-2009 school year, there were more than 13 elementary schools in the District, but each school did not have its own full-time counselor.⁶ She also testified that the needs of the students at the elementary schools for mental health services and therapeutic counseling services had been increasing⁷ and that the District moved toward providing these services by licensed professional counselors.⁸ Dr. Denney stated that the District requested that the vendors had clinical counseling experience and credentials to adequately provide mental health and therapeutic counseling services.⁹ When asked whether the Appellants had the same kind of experience and credentials with respect to the provision of clinical counseling and therapeutic counseling, Dr. Denney answered, "Not to my knowledge."¹⁰

To accommodate the needs of the elementary school students, a proposal was submitted in the spring of 2009 for the District to shift entirely to the provision of counseling for elementary students through contractual services.¹¹ Under this proposal, the counselors provided by vendors would not provide certain services that had previously been provided by the full-time counselors, including: (1) cafeteria coverage for breakfast and lunch, homeroom coverage, and recess supervision; (2) service on committees; and (3) the teaching of classroom guidance lessons.¹²

⁵ Termination Hr'g Tr. 8:21-9:8, August 26, 2009.

⁶ Termination Hr'g Tr. 10:6-13, August 26, 2009.

⁷ Termination Hr'g Tr. 11:15-22, August 26, 2009.

⁸ Termination Hr'g Tr. 13:4-10, August 26, 2009.

⁹ Termination Hr'g Tr. 11:8-22, August 26, 2009.

¹⁰ Termination Hr'g Tr. 11:23-12:4, August 26, 2009.

¹¹ Termination Hr'g Tr. 13:11-15, August 26, 2009.

¹² Termination Hr'g Tr. 14:7-18, August 26, 2009.

On cross-examination, Dr. Denney stated that the District would continue to offer elementary counseling services at the elementary level.¹³ Yet, she also stated that while more clinical and/or therapeutic services were needed, there was not an increased need for full-time counseling services.¹⁴ She further testified that the contractual counselors would not provide classroom guidance services,¹⁵ but that services regarding topics included in classroom guidance services may be provided, “at a deeper level, at a therapeutic level.”¹⁶

The District’s second witness was Josette Tucker, Director of Human Resources for the Christina School District. Ms. Tucker testified that there were four full-time elementary counselors, including the three Appellants during the 2008-2009 school year. The fourth full-time counselor has since retired.¹⁷ Ms. Tucker testified that of the 17 elementary schools in the District, many of the schools had no elementary counselors assigned to them at all.¹⁸ She also stated that 12 to 13 of the schools provided counseling services solely through contracted counselors.¹⁹ She made written recommendations to the Board in 2009 to eliminate the full-time counselor positions and provide counseling services through contracted professionals instead.²⁰ The Board accepted this recommendation. On cross examination, Ms. Tucker testified that the District would continue to provide counseling services for elementary students, but that

¹³ Termination Hr’g Tr. 17:17-20, August 26, 2009.

¹⁴ Termination Hr’g Tr. 18:4-16, August 26, 2009.

¹⁵ Termination Hr’g Tr. 56:1-17, August 26, 2009.

¹⁶ Termination Hr’g Tr. 54:19-55:3, August 26, 2009.

¹⁷ Termination Hr’g Tr. 22:6-9, August 26, 2009.

¹⁸ Termination Hr’g Tr. 22:19-22, August 26, 2009.

¹⁹ Termination Hr’g Tr. 23:4-13, August 26, 2009.

²⁰ Termination Hr’g Tr. 23:14-24, August 26, 2009.

that “these services would be more of a mental health-type service versus that which had been previously provided.”²¹

The hearing officer also heard testimony from the two Appellants in attendance, Sharon Furrow and Dawn Hagen. Appellant Sharon Furrow was the first to testify. Ms. Furrow testified that she had over twenty-five years of counseling experience²² and was employed by the Christina School District from December 2000 to June 2009.²³ She had a Master’s degree in Social Work.²⁴ She worked at various elementary schools during the course of her employment. Her most recent teaching assignment, during the 2008-2009 school year, was with Douglass Elementary School four days a week and with Gallaher Elementary School one day a week.²⁵ Ms. Furrow testified that she performed crisis management and intervention, but that her focus was working individually with children and performing classroom guidance.²⁶ She testified, on cross-examination, that, for example, her schedule might consist of three classroom guidance lessons for two kindergarten classes and a special education first grade class; recess coverage for five classrooms; individual counseling sessions for two students; and homeroom coverage.²⁷ On redirect, she testified that at the beginning of the school year, she performed seven guidance lessons per day at Gallaher.²⁸

Appellant Dawn Hagen testified next. Ms. Hagen testified that she has been an employee of the District for the past five years. Three years prior to her employment with the District, Ms. Hagen was employed through Delaware Guidance Services as a

²¹ Termination Hr’g Tr. 27:15-22, August 26, 2009.

²² Termination Hr’g Tr. 39:6-15, August 26, 2009.

²³ Termination Hr’g Tr. 40:3-4, August 26, 2009.

²⁴ Termination Hr’g Tr. 39:6-12, August 26, 2009.

²⁵ Termination Hr’g Tr. 40:5-19, August 26, 2009.

²⁶ Termination Hr’g Tr. 40:20-41:14, August 26, 2009.

²⁷ Termination Hr’g Tr. 46:2-12, August 26, 2009.

²⁸ Termination Hr’g Tr. 46:23-47:11, August 26, 2009.

private contractor providing mental health counseling services.²⁹ She had two Master's Degrees, one in Process Group Psychotherapy and another in Elementary Guidance Counseling.³⁰ On a typical day as a full-time counselor, she testified that, she conducted a number of individual and group counseling sessions and participated in crisis intervention and family intervention.³¹ She also stated that a majority of her career was spent in the mental health field and in the education field.³² When asked whether she provided or was able to provide therapeutic clinical counseling, she replied, "Yes. And a large part of my career was spent in the mental health field and in the education field."³³ On cross-examination, she testified that she conducted classroom guidance lessons on such subjects as violence prevention, social skills, bullying,³⁴ self-esteem, test-taking, character education, conflict resolution, and grief.³⁵

Appellant Dana Rideout did not testify at the hearing and no information regarding her educational background, experience, or job description was provided to the hearing officer.

At the hearing, an excerpt from the July 14, 2009 Board meeting was presented that related to the recommendation to hire outside vendors and outlined the scope of services to be provided by such vendors.³⁶ Harold Ingram, the former principal of Douglass Elementary School, stated in an email dated August 19, 2009, that two additional counselors would be hired once he received the list from the District.

²⁹ Termination Hr'g Tr. 49:21-50:6, August 26, 2009.

³⁰ Termination Hr'g Tr. 49:10-16, August 26, 2009.

³¹ Termination Hr'g Tr. 50:7-20, August 26, 2009.

³² Termination Hr'g Tr. 51:3-5, August 26, 2009.

³³ Termination Hr'g Tr. 50::3-5, August 26, 2009.

³⁴ Pursuant to the School Crime Reporting Act 14 *Del. C.* § 4112D, each school district is required to have a school-wide bullying prevention program. Each school must implement the program throughout the year.

³⁵ Termination Hr'g Tr. 52:9-53:8, August 26, 2009.

³⁶ This document was prepared by Gaurang P. Pathak, Manager of Financial Services and Internal Controls.

Included in the excerpt, was the following information:

BRIEF DESCRIPTION OF SERVICES

Elementary Counseling Service providers will provide individual and group counseling, consultation with parents and staff, identification and support of students with special needs, crisis intervention/problem solving, and referrals to community agencies.

INTRODUCTION

* * *

Counselors working with the schools provide individual and group counseling, consultation with parents and staff, informational programs and activities, identification and support of students with special needs, crisis intervention/problem solving, and referrals to community agencies. Counselors with other student services professionals meet with students and parents by appointment. And assist when school or individual crisis arise.

SCOPE OF SERVICES

- Work directly with the district and the schools to insure that purposeful, quality counseling services are implemented at each school.
- Provide requesting school with a counselor who blends with the demographic nature of the school and can assist with meeting the needs of those students.
- The vendor will insure that the counselors who are hired to provide services in each school meet the expectations for implementation of quality counseling services.
 - Post graduate degree required (minimum) MSW preferred.
 - License preferred.
 - A minimum of 3 years experience in clinical counseling and working with children.
 - Staff must have knowledge, skills, training to work in the school setting with students who have mental health concerns.
 - Experience in individual, group, and family counseling.
 - A minimum of 3 years experience in working with children in the school setting required.
 - Evidence of criminal background check or evidence of current employment in other State of Delaware public school district is required.
- The vendor must insure coverage in the event that the assigned counselor is absent.³⁷

³⁷ Appellants' Ex. 1.

Appellants were asked, on direct examination, whether the work described in the document from the July 14, 2009 Board meeting compared to the work they did for the district as a full-time employee. Appellant Furrow replied, “It very much speaks to what my job requirements were, to provide counseling services that would have a positive impact on the students’ learning.”³⁸ When asked the same question, on direct examination, Appellant Hagen replied, “Pretty much summarizes what I did.”³⁹

On October 7, 2009, the hearing officer submitted a report with a recommendation to the Board to terminate the Appellants pursuant to 14 *Del. C.* § 1411.⁴⁰ The Board held a hearing on October 13, 2009. The Board adopted the hearing officer’s findings of fact, conclusions of law, and recommendation that there was cause to terminate Appellants. As a result, the Board issued termination letters to the Appellants on October 14, 2009 with its written decision. A notice of appeal was timely filed with this Court on October 23, 2009.

PARTIES’ CONTENTIONS

Appellants’ Contentions⁴¹

Appellants claim first, that the Board erred as a matter of law, and second, even if the Board did not err, there is not substantial evidence in the Record to support the conclusion that there was a reduction in “education services.” Appellants argue that the Board erred as a matter of law because there was an increase, not a reduction, in

³⁸ Termination Hr’g Tr. 44:20-45:9, August 26, 2009.

³⁹ Termination Hr’g Tr. 51:17-22, August 26, 2009.

⁴⁰ 14 *Del. C.* § 1411.

⁴¹ In the Appellants’ Opening Brief, they argue that the hearing officer erred as a matter of law. Pursuant to 14 *Del. C.* § 1414, this Court has the authority to review the decision of the Board, not the decision of the hearing officer. Thus, any such arguments relating to the decision of the hearing officer are not addressed in this decision. The Appellants, however, in their Reply Brief argue that the Board erred as a matter of law and that the Board’s decision is not supported by substantial evidence. These arguments, for purposes of this decision, will be addressed as they are matters upon which this Court has the authority to decide.

education services. In support of this argument, Appellants contend that one aspect of the counseling services was reduced, only to be replaced by a second aspect of counseling services, resulting in a net increase in counseling services.

Appellants also argue that the Board's decision was not supported by sufficient evidence as required by 14 *Del. C.* § 1414,⁴² because there was no evidence indicating that the students were disinterested in the counseling services or that the students will not be offered those services in the future. Appellants further argue that there was no evidence introduced in the Record that Appellants could not have performed the services that the District intended to offer to the contracted professionals.

Appellees' Contentions

Appellees claim that the Board did not err as a matter of law because it had the statutory authority to terminate Appellants. Appellees contend that 14 *Del. C.* §§ 1043, 1049, and 1411 provides the Board the authority to administer, supervise, and determine educational policies of its schools⁴³ and that the Board made a policy decision to increase clinical mental health counseling using licensed contractors because of the decreased need for classroom guidance lessons.

Appellees also contend that there is substantial evidence in the Record to support the conclusion that there was a decrease in education services. First, Appellees refute Appellants' contention that in order for there to be a decrease in education services, there must be evidence that students were disinterested in the counseling services, or that they will not actually be offered those services in the future. Instead, Appellees contend that the standard is statutorily provided and that there was a

⁴² 14 *Del. C.* § 1414.

⁴³ 14 *Del. C.* § 1043; 14 *Del. C.* § 1049(a).

decrease in education services because the classroom guidance program was eliminated. Second, Appellees refute Appellants' claim that they should be given preference to the contracted employees. In support of this argument, Appellees argue that there is no evidence in the Record that Appellants are qualified to do the work of the contractors and that there is no prohibition, in the instant matter, to dismiss a tenured employee due to a decrease in education services.

STANDARD OF REVIEW

On appeal from the Board, this Court must examine the Record and determine whether substantial evidence exists to support the Board's findings.⁴⁴ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴⁵ It is the function and the duty of the Board, as the trier of fact, to weigh the evidence, determine credibility of evidence, determine credibility of witnesses, and resolve issues of fact and to draw reasonable conclusions and inferences.⁴⁶ Where the Board has not committed an error of law, made findings of fact unsupported by substantial evidence, or acted arbitrarily, this Court must affirm the Board's decision.⁴⁷

ANALYSIS

After a thorough review of the Record, the Court finds that the Board did not err as a matter of law in exercising its statutory authority upon finding that there had been a decrease in education services.

⁴⁴ 14 Del. C. § 1414; *Board of Educ., Laurel Special School Dist. v. Shockley*, Del. Super., 155 A.2d 323, reargument denied 156 A.2d 214 (1959).

⁴⁵ *Id.* at 327.

⁴⁶ *Id.*

⁴⁷ *Philips v. Board of Educ. of Smyrna School Dist.*, Del. Super., 330 A.2d 151 (1974).

I. The Board Did Not Err As A Matter Of Law By Exercising Authority Under 14 Del. C. §§ 1043, 1049, And 1411 To Terminate the Appellants' Positions.

The first issue for consideration is whether the Board erred as a matter of law in exercising its statutory authority to terminate the Appellants' positions. Under 14 *Del. C.* §§ 1043 and 1049(a), the Board has broad authority to administer and to supervise its schools, including the authority to determine policy and adopt rules and regulations for the general administration and supervision of its schools.

In the instant matter, the Board made several policy decisions. First, the Board determined that there was an increased need for clinical mental health counseling and, as a result, determined that it was appropriate to provide more clinical and therapeutic services and eliminate classroom guidance services. Second, the Board determined that it was in the District's best interest to use vendors to provide licensed professional counselors capable of providing clinical and therapeutic counseling. Appellants' main job duty, aside from recess, lunch, and homeroom duty, was to provide classroom guidance lessons.⁴⁸ Since those services were being eliminated across the District, the Board properly exercised its authority under 14 *Del. C.* § 1411.⁴⁹ This Court finds that the intent of 14 *Del. C.* § 1411 is to permit termination at the end of the school year, satisfying an employee's contract, if the Board is decreasing a category of education services.⁵⁰ In this case, a decrease in classroom guidance lessons and related services constituted a decrease in education services.

⁴⁸ Upon reviewing the submissions and the testimony provided on August 26, 2009 at the Consolidated Termination Hearing, it is apparent to this Court that the Appellants did not include their full job descriptions. This Court has determined, upon reviewing the Record, that classroom guidance lessons were a major component of Appellants' job duties.

⁴⁹ 14 *Del. C.* § 1411.

⁵⁰ *Id.*

The Court rejects Appellants' argument that the hearing officer concluded, as a matter of law, that there was a distinction between counseling services and education services.⁵¹ Instead, the hearing officer made a legal finding that, "in their submissions in this case, the Employees have focused upon whether there has been a decrease in the 'counseling services' provided by the District. This is not the proper inquiry. Rather the issue is whether 'education services provided by the District have decreased.'"⁵² The hearing officer also determined, as a matter of law, that "specifically, the Employees performed cafeteria duty, recess supervision, homeroom supervision, committee service, and classroom instruction."⁵³ The hearing officer found that all of these services qualify as 'education services' as referenced in the statute."⁵⁴ The hearing officer then determined that ". . . classroom instruction or 'classroom guidance' services – will no longer be provided by District mandate but instead only at the discretion of individual school administrators."⁵⁵ Thus, upon reading the hearing officer's report, this Court finds that the hearing officer did not make a distinction between "counseling services" and "education services," but rather determined that education services encompassed counseling services after he equated the terms "classroom guidance instruction" and "classroom guidance" services.⁵⁶

The Court also rejects the Appellants' argument that their positions must be reinstated because counseling services were increasing, not decreasing. The counseling services that increased were those concerning mental health issues and

⁵¹ Hearing Officer's Report of October 7, 2009.

⁵² 14 *Del. C.* § 1411.

⁵³ Hearing Officer's Report of October 7, 2009.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ For purposes of this appeal, the Court assumes that such education services do include counseling services. There was no argument proffered by the Board or District to the contrary.

therapeutic treatment. The counseling services that decreased were classroom guidance services, the primary services that the Appellants provided on a daily basis to the students in the District. Based on the Court's limited standard of review, this Court finds that the Board did not err as a matter of law.

II. Even If This Court Did Not Find That The Board Erred As A Matter Of Law, There Is Substantial Evidence That Supports the Conclusion That There Was A Reduction in "Education Services" When Classroom Guidance Lessons Would No Longer Be Generally Provided In the District.

The second issue for consideration is whether there is substantial evidence in the Record that supports the conclusion that there was a reduction in education services. Pursuant to 14 *Del. C.* § 1411, the Board has the authority to terminate an employee because of a decrease in education services.⁵⁷ The Board, in making its decision, relied upon the review of the hearing officer's report, the transcripts, and all exhibits.⁵⁸ The hearing officer made the following findings of fact, and the Board relied upon such facts, which are binding on appeal:⁵⁹

- A. The Appellants have been employed as full-time counselors by the District, either working in a single elementary school or working in multiple elementary schools.
- B. In recent years, the District has begun to provide elementary counseling services through contracts with private agencies, while continuing to provide counseling services as well as through full-time employee.
- C. In the spring of 2009, the District decided to end the provision of counseling services through full-time employees and instead provide those services completely through contracted counselors.
- D. The decision was due to a decrease in enrollment and/or a decrease in education services. The decision was also motivated in part by a desire to change the focus of the elementary counseling services provided by it. Specifically, due to the mental health needs of the students, the District desired to provide more clinical and therapeutic services by licensed professional counselors.

⁵⁷ 14 *Del. C.* § 1411.

⁵⁸ October 14, 2009 Decision of the Board.

⁵⁹ 14 *Del. C.* § 1414.

- E. Responsibilities such as cafeteria duty, recess supervision, homeroom duty, committee service, and classroom guidance services, which were performed by the full-time counselors would not be provided by the contracted counselors. Classroom guidance services would no longer be provided by District mandate, but instead would be provided by other District employees (i.e. non-counselors) at the discretion of the individual building administrators.
- F. As a result of these changes, the remaining full-time elementary counseling positions, some of which were held by the Appellants, would be eliminated.⁶⁰

The Court's review for substantial evidence looks *only* for "such relevant evidence as a reasonable mind might accept as adequate" to support the Board's conclusion.⁶¹ (emphasis added). The Record indicates that classroom counseling lessons and related services were eliminated because of the increased need for clinical mental health counseling in the elementary schools, as well as some therapeutic counseling services. After a careful review of the entire Record, the Court finds that there is substantial evidence to sustain the Board's finding that eliminating the classroom guidance counseling lessons and related services resulted in a decrease in educational services; therefore, the Board had the authority to terminate Appellants pursuant to 14 *Del. C.* § 1411.⁶²

The evidence shows that the classroom guidance lessons were eliminated due to an increased need for mental health and clinical therapeutic counseling services. Dr. Denney testified that the District "found out such information over the past two years."⁶³ Dr. Denney also testified that she identified the increasing need for intense clinical and therapeutic services as a result of her observation and experience.⁶⁴ When asked

⁶⁰ Hearing Officer's Report of October 7, 2009.

⁶¹ *Board of Educ., Laurel Special Sch. Dist. v. Shockley*, Del. Super., 155 A.2d 323, 327 (1959).

⁶² 14 *Del. C.* § 1411.

⁶³ Termination Hr'g Tr. 11:15-22, August 26, 2009.

⁶⁴ Termination Hr'g Tr. 12:21-13:3, August 26, 2009.

whether the decision to hire counselors provided by vendors was an economic issue, Dr. Denny responded, “From my position, it was not economic at all. It’s totally a programmatic decision.”⁶⁵

Appellants assert that in order for there to be a decrease in education services, there must be evidence that students were either “disinterested in the counseling services” or that “they will not actually be offered those services in the future.”⁶⁶ In support of this argument, Appellants cite *Board of Trustees of the Gunning Bedford Jr. School No. 53 v. O’Brien*⁶⁷ and distinguish *Atkinson v. Sussex County Vocational Technical Sch. Dist.*,⁶⁸ a case cited by the Appellees. However, *Atkinson* and *O’Brien* do not stand for the principle that there must be evidence that students were either disinterested in such services or that the services would not be offered in the future. Furthermore, the fact that some of the social skills which were taught by the guidance counselors will continue to be taught in the other courses or by other staff members does not alter the conclusion that there was a decrease in education services.

In *Atkinson*, the court held that there had been a reduction in education services after the district determined that eliminating a Personal Services Occupation (“PSO”) course of study was in the best interest of the students and consequently terminated the appellant based on that reduction in education services.⁶⁹ The court reached this conclusion despite the fact that some aspects of the PSO course continued to be taught in other courses.⁷⁰ Like the Board’s decision in the *Atkinson* case, the Board in the

⁶⁵ Termination Hr’g Tr. 16:18-17:4, August 26, 2009.

⁶⁶ Appellants’ Op. Br. at 10.

⁶⁷ *Board of School Trustees of the Gunning Bedford Jr. School District No. 53 v. O’Brien*, 190 A.2d 23 (Del. 1963).

⁶⁸ *Atkinson v. Sussex County Vocational Technical Sch. Dist.*, 1997 WL 127976 (Del. Super. 1997).

⁶⁹ *Id.*

⁷⁰ *Id.*

instant matter determined that the elimination of the classroom guidance lessons was in the best interest of the elementary school students. Furthermore, the Board determined that there is a possibility that classroom guidance lessons would continue to be taught, but that they would be offered at the discretion of the principal on an ad hoc basis. The Board, under its broad statutory authority in Title 14, Chapter 14 of the Delaware Code, is authorized to make such decisions.

In *O'Brien*, a tenured music teacher was terminated when the instrumental music program was discontinued because of decreased enrollment. In that case, the court held that the board could not properly dismiss O'Brien, a tenured teacher, while at the same time, retain a non-tenured teacher as director of the music department in the subject of the tenured teacher's principal area of competence, certified training and interest.⁷¹

In the instant matter, however, the testimony of Dr. Denney supports the Board's findings that the Appellants, to the best of her knowledge, did not have the requisite credentials and experience to provide mental health *and* therapeutic counseling services⁷² (emphasis added). Furthermore, upon a thorough review of the Record and the submissions, this Court finds that the Appellants did not proffer their full job descriptions and individual detailed qualifications for this Court's consideration.⁷³ While the Court is sympathetic to the loss of the Appellants' positions in the District, this Court's decision is based on its limited standard of review – whether substantial

⁷¹ *O'Brien*, 190 A.2d 23 (Del. 1963).

⁷² Termination Hr'g Tr. 11:8-12:4, August 26, 2009.

⁷³ There is evidence that Appellant Hagen provided mental health counseling in the past with her employment through Delaware Guidance Services as a private contractor. However, there is no evidence in the Record that any of the Appellants were trained or were qualified to perform therapeutic counseling services. Furthermore, the Record is devoid of any evidence that Appellant Furrow and Rideout were qualified to perform mental health services or therapeutic counseling.

evidence exists to support the Board's findings⁷⁴ as a reasonable mind might accept as adequate to support a conclusion.⁷⁵ Thus, this Court refrains from expressing any opinion and will not speculate upon the subject of the qualifications of the Appellants in their counseling positions beyond the submissions provided to the Court and the Record.

Under 14 *Del. C.* §§ 1043 and 1049, the District has the statutory authority to administer and supervise its schools and determine the educational policies of the District, including the ability to provide clinical mental health and therapeutic counseling services. The District determined that eliminating the need for classroom guidance lessons and providing clinical and therapeutic counseling was in the best interest of the District's students. Consequently, Appellants were terminated based on a reduction of classroom guidance lessons and other related services, pursuant to 14 *Del. C.* § 1411. The intent of 14 *Del. C.* § 1411 is to permit termination at the end of the school year if the Board is decreasing, or eliminating, a particular category of educational services provided through teachers employed by the Board.⁷⁶

Although some counseling services will continue to be provided, there has been a decrease in the education services that Appellants previously provided. Thus, this Court finds that there is substantial evidence to support the Board's decision that the elimination of classroom guidance counseling lessons and related services constituted a decrease in education services justifying termination under 14 *Del. C.* § 1411.⁷⁷

⁷⁴ *Board of Educ., Laurel Special School Dist. v. Shockley*, Del. Super., 155 A.2d 323, reargument denied 156 A.2d 214 (1959).

⁷⁵ *Id.*

⁷⁶ 14 *Del. C.* § 1411.

⁷⁷ *Id.*

CONCLUSION

Based on the foregoing, the Court finds that the Board of Education did not err as a matter of law, and the Board of Education's decision to terminate Appellants based on a reduction in education services is supported by substantial evidence. Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/

M. Jane Brady
Superior Court Judge