State of New Hampshire

PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

RESPONSE TO MOTION FOR REHEARING
Department of Education
Classification/Reorganization Appeal

February 26, 1990

The Personnel Appeals Board (Bennett, Johnson and Rule), at its meeting of February 14, 1990, reviewed the January 22, 1990 Motion for Reconsideration filed by Charles Marston, Commissioner of the Department of Education, relative to the Board's January 2, 1990 decision in the above-noted classification/reorganization appeal.

Per-A 204.06 (b) of the Rules of the Personnel Appeals Board requires that, "Such motion for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." The grounds set forth by the appellants are answered as follows:

> "1. The Board is requested to review in detail the 18 factors supporting such request in the belief that this qualifies as an exceptional case."

Appellants' disagreement with the Board's decision that the classification appeals addressed in the Board's January 2, 1990 order is insufficient to warrant a rehearing, or to support an allegation that such ruling was unlawful or unreasonable.

> "2. The Department of Education reorganized in accordance with the provisions of RSA 21-G, organization of Executive Branch... It is the goal of reorganization to improve the coordination and management of state services by establishing clear lines of authority, responsibility and accountability for program implementation within the executive branch. Indication, substantial change in organization, 303.04b creation."/1

1/ "If the director finds that substantial change in organization, creation or change of positions or other pertinent conditions make necessary the establishment of a new class, amendment of an existing class or abolishment of an existing class, [s]he shall make appropriate changes." [per 303.04 (b)]

Of the classifications appealed to this Board, the Director of Personnel had made recommendations for classification title changes in thirteen of the eighteen positions considered, and had recommended changing the salary grade of ten of the eighteen positions, thereby satisfying the requirements of Per 303.04(b). The fact that the appellants disagree with the Personnel Director's recommendations or the findings of this Board does not provide sufficient grounds for rehearing under the provisions of Per-A 204.06.

"3. Without access to specific job duties of positions with which Department positions were compared the burden of proof was impossible."

Per-A 204.02(b) requires that "The requesting party shall set forth those factors which it believes support its request for additional discovery".

The Department of Education's Motion for Discovery provides as its rationale

> "The basis of the appeal by the Appellant is statements made by third parties to the Appellee or the Appellee's agent. In order to challenge the basis of the Appellee's denial of reclassification and promotion, this representative needs to ascertain the source and substance of each and every statement made by third parties in regards to Appellee's inquiries."

When considering a request for additional discovery, the Board must determine first if such discovery is necessary in order for a party to meet his burden of proof.

Ten of Appellants' nineteen discovery requests asked for "any information" used in "formulating the opinion", "validating the understanding", "supporting the opinion" or "relating to" any positions in state service which might have been considered by the Director of Personnel or any of her staff in reviewing the positions under appeal. These requests were, and continue to be, unreasonable. Granting such requests, for all intents and purposes, would have required the Division of Personnel to reconstruct every meeting, discussion or thought process involved in the Department of Education review.

The remainder of the requests were deemed unnecessarily burdensome, as granting same would have required the Director of Personnel to produce:

1) Documents or other information which do not show positions classified as Administrator IV in the Division of Public Health
2) Documents or other information referring to Assistant Director positions at Salary Grade 31
3) Documents or other information relating to positions at Salary Grade 29
4) Documents or other information relating to the Director of Employment Service and Operations

5) Documents or other information relating to the Director of Unemployment Compensation
6) Documents or other information relating to the Administrator of Budget and Finance
7) Records and notes of any discussions with DOT Commissioner Stickney
8) Documents or other information related to the Data Processing Manager II position in DOT
9) Documents or other information related to abolishment of the position of Assistant Deputy Director, Division of Welfare
10) Documents or other information related to positions of Assistant Director, Disease Prevention and Control; Assistant Director for Family and Community Health; Assistant Director for Waste Management; Assistant Director, Community Developnental Services; and Assistant Director for Mental Health Services
11) Documents or other information related to the position of Administrator IV, Department of Resources and Economic Development
12) Documents or other information related to positions of Business Administrator IV at Laconia Developmental Services, New Hampshire Hospital and Division of Public Health
13) Documents or other information related to positions within the business office of the Department of Transportation
14) Documents or other information related to the positions of Assistant Director in the Division of Public Health Services and their relationships to the Office of Health Protection, Bureau of Child Care Standards and Licensing, Bureau of Health Promotion, Bureau of Institutional Health Services, Bureau of Health Facilities Administration, Bureau of Emergency Medical Services, Family and Community Health, Disease Prevention and Control, Bureau of Communicable Disease Control, Bureau of Diagnostic Laboratories and Bureau of Environmental Health
15) Documents or other information related to positions of Administrative Assistant I, particularly in the Division of Public Health Services

Granting Appellants Motion for Discovery would also have required that the Department of Education be allowed to "propound interrogatories with respect to the information received by the Appellee".

The Board held Appellants Motion for Discovery in abeyance until it had heard all eighteen classification appeals. In its decision, the Board made reference to "review of the documents submitted, and the wealth of information provided in each of the eighteen hearings conducted for review of these classification decisions". The Board found that "Appellant's suffered no prejudice by being denied the requested discovery, or that denying the Motion would preclude Appellants from meeting their burden of proof established under Per 303.04 (a) and (b)."

Had the Board accepted Appellants' argument that theirs was an exceptional case for the purposes of considering a motion for discovery, the Board "... may [have] grant[ed], in whole or in part, any discovery motion upon such terms as are just and equitable." [Per-A 204.02 (c)]

As discussed above, granting Appellants' motion in whole would not have been just or equitable, but would have been unreasonably burdensome, and would have shifted the burden of proof from the appellants to the Division of Personnel. Further, given the several years involved between the initial filing of the Department's reorganization plan, review and recommendations by the Director, of Personnel, request for reconsideration of the Director's decision, the Director's reconsideration response, and finally appeal to this Board, neither party would have benefited by further delay or the production of additional documents.

Based upon the foregoing, Appellants' Motion for Rehearing is denied.

FOR THE PERSONNEL APPEALS BOARD

Mary Ann Steele

Mary Ann Steele, Executive Secretary

cc: Charles Marston, Commissioner
Department of Education

Virginia A. Vogel
Director of Personnel

David S. Peck, Esq.
Assistant Attorney General

State of New Hampshire

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January 4, 1990

TO: Charles Marston, Commissioner
Department of Education

Virginia A. Vogel, Director
Division of Personnel

David S. Peck, Esq.
Assistant Attorney General

REOM: Mary Ann Steele
Executive Secretary

RE: Department of Education - Clsssification/Reorganization Appeal

The attached segment of the Personnel Appeals Board's decision in the Department of Education's Classification/Reorganization Appeal (concerning the appeal of Richard Deitsch) is provided as an addendum to the Board's January 2, 1990 decision. When the various draft portions of the decision were combined, the segment dealing with Mr. Deitsch's position was inadvertently omitted in the final print order.

I apologize for any confusion or inconvenience this may have caused.

Attachment

POSITION REQUESTING REALLOCATION TO BUSINESS ADMINISTRATOR IV
Salary Grade 28

Richard Deitsch, who is currently classified as a Business Administrator III,, is employed in the Office of Administration, Bureau of Business Management. Appellant's position was upgraded from Business Administrator II in 1979.

Deputy Education Commissioner Charles Marston, testifying on Appellant's behalf, argued that departmental changes over the past ten years more than warranted upgrading Mr. Deitsch's position to the title Business Administrator IV. He further testified that prior to the legislatively mandated reorganization of the Department of Education, all business records had been managed by "hand entry". Deitsch, he argued, "brought them into the 20th century" by computerizing the accounting functions for the department as a whole. He also testified that Deitsch handles the budget aspects for all divisions in the department, including the Social Security functions of the Department, and that his duties include testifying at legislative hearings for the Department.

Mr. Deitsch took issue with six of the nine evaluation factors, arguing that the attributes of Complexity of Duties, Education, Experience, Initiative, Physical Effort and Working Conditions were all undervalued. The Board noted that in his analysis of those attributes, Appellant suggests awarding 85 points to the attribute of Education or an allocation between the 5th and 6th degrees to compensate for the "various seminars" which he believed necessary to understand "the funding requirements imposed by the federal grants and regulations...".

The Board was not persuaded that Mr. Deitsch's position responsibilities warrant the suggested degree allocations. The Board is hard pressed to accept that reorganization under the provisions of RSA 21-N, or an increase in the number of federal grants managed through the Department of Education, changed the complexity of the position duties or increased the level of responsibility to such an extent as to warrant reclassification to Business Administrator IV. Further, the Board concurred with the Division's analysis of Mr. Deitsch's position vis-a-vis that of his supervisor, Chief, Education Business Administration, finding no evidence that Appellant's duty assignments should be evaluated at the highest degree for the attributes of Complexity, Initiative or Personal Relationships.

The Board voted unanimously to deny the appeal, finding Appellant's position more than adequately described by the specification for Business Administrator III, salary grade 26.

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DEPARTMENT OF EDUCATION
Classification/Reorganization Appeal
January 2, 1990

PRELIMINARY MOTIONS

By letter dated December 5, 1988 addressed to former Personnel Appeals Board Chairperson Loretta Platt, John T. MacDonald, Commissioner of Education filed a request for appeal of "...the Director of Personnel's response to [his] request for reconsideration in correspondence dated September 28, 1988..." concerning eighteen (18) positions in the Department of Education. Subsequent to receipt of that initial request, the Board received additional correspondence from both the Department of Education and the Division of Personnel as outlined below.

On December 15, 1988, Commissioner MacDonald wrote to the Board stating, "Our drafting of the specific individual appeals is being hampered, however, by the failure of the Personnel Division to provide the information I requested specific to materials and/or information used to reach their decisions on our requested upgrades. ... Consequently, I wish to record with the Appeals Board the problem of responding to a decision without being able to react to the data it was based on." Six days later, on December 21st, Commissioner MacDonald filed a Motion for Discovery and a Motion for Extension of Time Frames.

None of the above listed correspondence was provided to the Division of Personnel as a party to the appeal, forming in part the basis for the Personnel Director's April 10, 1989 Motion to Dismiss.. In later hearings, Commissioner MacDonald and Deputy Commissioner Marston, in answer to that Motion, argued that the appeals, motions, and all related correspondence had been provided to the Division of Personnel by delivery to the Appeals Board's secretary, who is also a member of the Personnel Director's staff. The Board, at that time, cautioned the parties concerning the Board's relationship to the Division of Personnel. The Board noted for the record that while its staff and records are housed in the Division of Personnel, its records are entirely separate from those of the division, and that information filed with the Board or the Board's staff would not automatically be delivered to the Division of Personnel.

The Board, at its meeting of Wednesday, August 27, 1989, voted unanimously to deny all motions noted above, ruling on them as follows:

1. Motion for Discovery:

Appellants' Motion for Discovery was filed with the Board under the provisions of Per 204.02(b): "In exceptional cases, either party may request that the Board order formal discovery, including requests for admissions, requests for production, interrogatories and depositions. The requesting party shall set forth those factors which it believes support its request for additional discovery."

Appellants failed to persuade the Board that the instant appeal qualifies as "an exceptional case". In the hearing of classification and evaluation appeals, the appellant bears the burden of proof, and must document "material changes in the duties and responsibilities of the positions occupied" [Per 303.04 (a)]. "If the director finds that substantial change in organization, creation or change of positions or other pertinent conditions make necessary the'establishment of a new class, amendment of an existing class or abolishment of an existing class, he shall make appropriate changes." [Per 303.04 (b)]

The Board's records indicate that the original request for reclassification was filed with the Division of Personnel on May 6, 1988. The Division's initial response was forwarded to the Department of Education on August 19, 1988. By letters dated September 1 and September 8, the Department of Education filed with the Director a request for reconsideration of decisions affecting 18 of 26 positions which had been reviewed. The Division of Personnel responded on November 22, 1988.

Upon review of the documents submitted, and the wealth of information provided in each of the eighteen hearings conducted for review of these classification decisions, the Board determined that Appellants' suffered no prejudice by being denied the requested discovery, or that denying the Motion would preclude Appellants from meeting their burden of proof established under Per 303.04 (a) and (b).

2. Motion for Extension of Timeframes:

In light of the Board's denial of Appellants' Motion for Discovery, the Board believed no purpose would be served in granting the Motion for Extension of Timeframes. Without the additional discovery requested by Appellants, they needed no additional time in which to rebut or respond to the information produced. Therefore, the Board denied the Motion.

3. Motion to Dismiss:

The Board, in essence, concurs with the basis of the Director's Motion to Dismiss. Correspondence between one party to an appeal and the Board, without notice to the other party, constitutes ex parte communication and could subject that party to sanctions as provided in the Rules of the Personnel Appeals Board. The Board believed, however, that no useful purpose would be served by granting this motion. Appellants believed they had properly filed their appeals with the Director of Personnel by hand delivering their correspondence to a member of the Director's staff, who also serves as secretary to the Board. The Board determined that the Division's opportunity to respond to the appeals would not be hampered by a denial of its appeal, and therefore voted to deny the motion to dismiss.

During the course of hearings, the Board took testimony and received evidence on each of the eighteen positions under appeal. The Board intends to answer each of the individual appeals. Before doing so, however, the Board decided to first address the question of the reorganization itself, and whether the enactment of RSA 21-N materially and/or substantially altered the duties and responsibilities of the incumbents, thereby requiring that the Director reclassify or reallocate the positions under appeal.

POSITIONS UNDER APPEAL

The Personnel Appeals Board conducted public hearings on the eighteen classification appeals as follows:

Appellant	Personnel Recommendation	Requested Classification
Russell Day, Assistant Education Division Chief (SG 30)	Administrator III (SG 30)	Administrator IV (SG 32)
Donald Day, Assistant Education Division Chief (SG 30)	Administrator III (SG 30)	Administrator IV (SG 32)
Peta Chandler, Chief, Education Business Administration (SG 30)	No change recommended	Administrator IV (SG 32)
Douglas Brown, Education Consultant II (SG 26)	Administrator II (SG 28)	Administrator III (SG 30)
Richard Deitsch, Business Administrator III (SG 26)	No change recommended	Administrator III (SG 30)
*Reconsideration - request upgrade to Business		Administrator IV (SG 28)

Catherine Hadley, Administrative Secretary/Supervisor (SG 13)
No change recommended Admin. Asst. I (SG 15)

Arthur Ellison, Education Consultant III (27)
Administrator I (SG 26) Administrator II (SG 28)

William Ewert, Director, Education Section (SG 32)
Administrator III (SG 30) Administrator IV (SG 32)

Robert Kennedy, Deputy Division Chief (SG 31)
Administrator III (SG 30) Administrator IV (SG 32)

Sharon Kimball, Administrative Secretary/Supervisor (SG 13)
No change recommended Admin. Asst. I (SG 15)

Paul Leather, Vocational Rehabilitation Supervisor (SG 24)
Training Officer (SG 25) Administrator I (SG 26)

Donald Lebrun, Education Consultant III (SG 27)
Administrator II (SG 28) Administrator III (SG 30)

Charles Sawyer, Education Consultant III (SG 27)
Administrator I (SG 26) Administrator II (SG 28)

Position #13181, Assistant Education Division Chief (SG 30)
Administrator III (SG 30) Administrator IV (SG 32)

Lloyd Littlefield, Director of Food and Nutrition Services (SG 27)
Administrator III (SG 30) Administrator IV (SG 32)

Paul Perkins, Training Officer (SG 25)
Administrator III (SG 30) Administrator IV (SG 32)

William Porter, Director, Education Section (SG 31)
Administrator III (SG 30) Administrator IV (SG 32)

Susan Roma, Administrative Secretary/Supervisor (SG 13)
No change recommended Admin. Asst. I (SG 15)

STATUTORY CONSTRUCTION OF AUTHORITY TO ALLOCATE POSITIONS

In his original testimony before the Board on May 10, 1989, John T. MacDonald, Commissioner of Education, outlined his Department's reorganization efforts under the provisions of RSA 21-N, describing the legal mandate for creation of certain divisions and bureaus within those divisions. Commissioner MacDonald testified that the Department's reorganization plan had been approved by the Joint Committee on Implementation of Reorganization. He contended that he and his staff had carefully studied all eighteen positions under appeal by comparing them to positions in the private sector, the public school systems, and other positions in State service. Their recommendations were subsequently approved as part of the over-all reorganization plan for the Department of Education under RSA 21-N. Commissioner MacDonald believed that upon approval of the reorganization by the Joint Committee, there should be no further oversight of the plan or the assignment of classifications and salary grades enumerated in that plan beyond the review and recommendations made by the Department of Education.

In response, Personnel Director Vogel argued that the Director of Personnel has the ultimate responsibility for allocating every position in the State classified service. She contended that the Joint Committee on Implementation of Reorganization essentially approves of the reorganization structure to assure that the organization can carry out its legally mandated responsibilities. That Committee might assign certain positions to the unclassified system, but the Division of Personnel retained the responsibility for allocation of the classified positions. The Board, when considering this argument, referred to RSA 21-I:42 which established the Division of Personnel and listed the Director's responsibilities as:

> Preparing, maintaining and periodically revising a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same classification... (RSA 21-I:42,II); and
>
> Allocating the position of every employee in the classified service to one of the classifications in the classification plan. (RSA 21-I:42,III)

The statutory authority which Commissioner MacDonald believed to exist for reclassification of positions through the process of review by the Joint Committee on Implementation of Reorganization rather than through the Division of Personnel was not apparent to the Board. The Board finds the appropriate statutory authority for the classification of positions in the State classified service to be vested solely in the Director of Personnel under the

provisions of RSA 21-I. The only exception would be found at 21-I:54,I: "Notwithstanding any provision of law to the contrary, no new position in the classified service for employment over one calendar year shall be established except upon approval of the governor and council. ... a request made either to the division of personnel or the governor and council for the reclassification or reallocation of positions to a different class series shall be considered as a request for a new position and shall require the approval of governor and council."

The Board found one reference to the Commissioner's authority to set salaries, but noted that such authority was granted on a temporary basis and only for setting the salaries of certain unclassified positions. Chapter 41:27,I (Laws of '86) "Temporary Authority to Set Salaries" provided that, "The commissioner of education appointed pursuant to this act shall include as part of the implementation plan required by the laws of 1983, 372:4, III recommendations as to the appropriate temporary salary level for the directors of the divisions and the deputy director of the department." Permanent assignment of salary grades for those unclassified employees was to be made by recommendation of the joint fiscal committee, with the temporary salary levels established expiring 10 days after the last session day of the next regular or special session following the effective date for the department of education established pursuant to Chapter 41. (Chapter 41:27,III., Laws of 1986) No reference was made to any authority granted the commissioner relative to establishing salary ranges for classified employees

The Board did not, upon review of the plain language of the law, find evidence of material or substantial changes in the duties and responsibilities of the Department of Education by virtue of the reorganization. Chapter 41:2, I (Laws of 1986) provided that "All of the functions, powers, duties and responsibilities of the state department of education in existence prior to the effective date of this section and all of the functions, powers, duties and responsibilities of the officials of the department of education in existence prior to the effective date of this section are hereby transferred to and vested in the commissioner of education appointed pursuant to this act." Further, 41:5 , eff. July 1, 1986, provided "All realignment of functions, reassignment of personnel, and restructuring of organizational units required by this act shall be accomplished within the existing appropriations transferred from the agencies consolidated by this act to the department of education established by this act." Accordingly, the Board can not accept that all the positions under appeal assumed additional, expanded, or substantially different duties and responsibilities subsequent to or contingent upon enactment of this legislation.

RELEVANCE OF RECRUITMENT TO CLASSIFICATION

Another issue raised through the course of the hearings concerned appropriate salary grades based upon the Department of Education's ability to recruit and retain competent professional staff, and the Department's need to compete for such employees in the market place. The Board found insufficient evidence of recruitment or retention problems to consider them a factor in their decision. Further, the Board determined that the appeals themselves had been filed upon a presumption that the duties and responsibilities exceeded those outlined in the specifications for the positions under appeal, and therefore limited its review of the Director's classification decisions within the parameters set forth in Per 303.04 of the Rules of the Division of Personnel.

EFFECT OF ANTICIPATED CHANGES IN POSITION CONTENT

Finally, the Board noted that much of the testimony included information from the appellants concerning anticipated changes in their positions, or additional duties which they have assumed subsequent to the Director's decision on their requests for classification. The decision from which these appeals arise is the August 19, 1988 decision of the Director of Personnel, and the subsequent response on request for reconsideration dated November 22, 1988. The Board must confine its review to the appellants' duties and responsibilities as they existed on the date of the Director's decision. The Board, therefore, can not and will not address any recent or anticipated changes in position content.

POSITIONS REQUESTING REALLOCATION TO ADMINISTRATOR IV
Salary Grade 32

Of the eighteen positions under appeal as part of the Department of Education's reorganization, the Department had recommended reallocation of the following nine positions to Administrator IV, salary grade 32. In those instances where the position was recommended for downgrading, the incumbent retained his/her previous salary level.

Appellant	Personnel Recommendation	Requested Classification
Russell Day, Assistant Education Division Chief (SG 30) (Division of Vocational Rehabilitation - Bureau of Social Security Disability Determination)	Administrator III (SG 30)	Administrator IV (SG 32)
Donald Day, Assistant Education Division Chief (SG 30) (Division of Standards and Certification - Bureau of Teacher Education and Professional Standards)	Administrator III (SG 30)	Administrator IV (SG 32)
Peta Chandler, Chief, Education Business Administration (SG 30) (Office of Administration - Bureau of Business Management)	No change recommended	Administrator IV (SG 32)
William Ewert, Director, Education Section (SG 32) (Division of Instruction - Bureau of Elementary/Secondary Education)	Administrator III (SG 30)	Administrator IV (SG 32)
Robert Kennedy, Deputy Division Chief (SG 31) (Division of Instructional Services - Special Education Bureau)	Administrator III (SG 30)	Administrator IV (SG 32)
Position 813181, Assistant Education Division Chief (SG 30) - (Ryan, Callanan) (Bureau of Computer and Statistical Services)	Administrator III (SG 30)	Administrator IV (SG 32)
Lloyd Littlefield, Director of Food and Nutrition Services (SG 27) (Division of Standards and Certification - Bureau of Food and Nutrition Services)	Administrator III (SG 30)	Administrator IV (SG 32)
Paul Perkins, Training Officer (SG 25) (Division of Vocational Rehabilitation - Bureau of Vocational Services)	Administrator III (SG 30)	Administrator IV (SG 32)
G. William Porter, Director, Education Section (SG 31) (Division of Instructional Services - Bureau of Vocational Educational Services)	Administrator III (SG 30)	Administrator IV (SG 32)

In each of the appeals at this level, the Department of Education argued that it could not compete in the market place with the salaries offered by school administrative units throughout the state for key administrative personnel. The Board can not accept this assertion on face value, considering that compensation consists of more than simply the salary offered. Without comparing benefits in conjuction with salary, any comparison would be meaningless. Further, even if the Department had presented compelling evidence regarding the comparability of salary and benefits for similar positions in the school districts, the Board is prohibited by statute from using such information in its consideration of classification appeals.

> "The Personnel Appeals Board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel except those related to: ...(c) Classification decisions of the director of personnel when the reasons for appeal are based on ... (5) the cost of living or related economic factors..." (See RSA 21-I:46 I.)

Each of the above named appellants seeking reallocation to Administrator IV, salary grade 32, provided a description of his/her duties. In reviewing those descriptions, and the testimony of the appellants, the Board found insufficient evidence of material changes in any of the positions to such an extent that would warrant reallocating them to the level of salary grade 32.

In support of all nine appeals requesting upgrade to Administrator IV, Education Commissioner MacDonald testified that classified salary grade 32 positions were lost during the departmental reorganization, leaving a void in the department's management structure. The record as considered by the Board reveals that prior to reorganization, the Division Chiefs were compensated at salary grade 32. Under the provisions of RSA 21-N, those positions were made unclassified. They retained their prior duties and responsibilities as discussed earlier, and continued to report to the Commissioner and Deputy Commissioner of Education as they had prior to implementation of the reorganization plan.

The Board concurs with the Division of Personnel's position that the management positions were not lost, but simply paid from a different salary scale, having been made unclassified as a result of reorganization. Therefore, the Board was not persuaded that transfer of the Division Chiefs from the classified to the unclassified system had any bearing upon the duties and responsibilities of the various bureau administrators reporting to them.

The Department of Education stressed the size of the department's budget and fiscal responsibilities, arguing that a number of positions throughout State service with lesser fiscal responsibilities were compensated at salary grade 32. Budgetary responsibility, organizational size, and service clientele have obvious bearing upon appropriate position classifications within any agency. The Board found, however, that this information had already been taken into

consideration when the Division of Personnel recommended reallocating eight of the positions to Administrator III, salary grade 30, with the ninth position remaining classified as Chief, Education Business Administration, salary grade 30.

The Board found insufficient evidence of substantial and material changes in any of these positions which would warrant their upgrading to Administrator IV, salary grade 32. Based upon the foregoing, the Board unanimously voted to deny all nine of the above appeals.

POSITION REQUESTING REALLOCATION TO ADMINISTRATOR III
Salary Grade 30

Prior to reorganization, Donald LeBrun's position had been classified as Education Consultant III position, salary grade 27. That position was one of two Education Consultants III responsible for management of field and satellite rehabilitation service offices statewide. Subsequent to reorganization, Mr. LeBrun was assigned over-all responsibility for management of the various field offices. He argued, however, that his position was more than simply the merging of two similar positions.

Bruce Archambault, Director of the Division of Vocational Rehabilitation, testified that Mr. LeBrun's assignments involve frequent contact with high level individuals in state government, and that he works with people receiving larger salaries than he. Mr. Archambault also testified that VR programs have "exploded" in recent years, and that with the loss of the former deputy chief positions, Mr. LeBrun must complete his work in the absence of such supervision.

The Division of Personnel advised the Board that Mr. LeBrun's former position of Education Consultant III reported directly to the Education Division Chief. That position has since become an unclassified position, and the Bureau of Rehabilitation Services is headed by a classified Administrator III to whom Mr. LeBrun now reports.

Mr. Perkins, testifying on behalf of Mr. LeBrun, contended that the appellant was underpaid, and that it would be impossible to recruit a person to carry out the required work at a salary grade 28. He argued that the education and experience required of an individual at the level of Administrator II were insufficient for the variety of technical and professional work demanded of Mr. LeBrun. While he concurred that Mr. LeBrun reports to an Administrator III, salary grade 30, he reminded the Board that the classification of that position was also under appeal, and that his Department supported reallocating Mr. LeBrun's supervisor to Administrator IV, salary grade 32.

In light of its findings that the Administrator for the Bureau of

Rehabilitation Services is properly classified as Administrator III, salary grade 30, the Board was not persuaded that Mr. LeBrun's position warranted the same classification and salary grade. Even if the Board were to have found that the Bureau Administrator should have been upgraded to salary grade 32, the Board found insufficient evidence of material changes in the content of Appellant's position to warrant the requested increase in salary grade from grade 27 to grade 30. Finally, while the Board recognizes the increased number of positions reporting to Mr. LeBrun, it also noted that the actual field office supervision is the responsibility of the VR Coordinator/Supervisor positions, salary grade 24, assigned to each office. The Board found that the increase in supervision had keen recognized in the reallocation from salary grade 27 to salary grade 28. The Board did not find sufficient evidence of material change in the position to justify the requested increase to Administrator III, salary grade 30.

Douglas Brown's position in the Bureau of School Approval Construction and Finance had been classified as Education Consultant II, salary grade 26 prior to the request for upgrading to Administrator III. The Division of Personnel subsequently recommended upgrading to Administrator II, salary grade 28. The Department of Education had requested that his position be upgraded to salary grade 30.

Mr. Brown suggested that allocation at salary grade 28 did not give appropriate weight to the education and experience required by his position. The minimum requirements listed by Appellant in his position classification questionnaire (Appellant's exhibit) are consistent with the specification for Administrator II. On page 10 of the questionnaire, Mr. Brown listed the required Education and special training as "At least a master's degree in Education with a major in School Administration". For Experience, he suggested "At least five years experience as a School Administrator", one year less experience than that required in the specification for Administrator II.

Another issue raised by Appellant was the evaluation attribute of Initiative, as Mr. Brown's "unit is responsible for carrying out a major Department program component...". The Board found Appellant's description of his work adequately defined by the 5th degree for Initiative which "Requires outstanding ability to perform complicated work of a high professional level, working independently on broad general assignments that present new and changing problems with responsibility for all planning of work limited only by departmental policy and statute. Makes major decisions without consulting superior unless major changes or new long term programs are involved." The Board found this description consistent with the specification for Administrator II. In light of the absence of inter-divisional responsibilities, or policy-setting at the departmental level, the Board upheld the Division of Personnel's recommendation that his position be reclassified to Administrator II, salary grade 28.

Appellant also presented for the Board's consideration his sixteen years of experience as a classroom teacher, high school principal, assistant superintendent and superintendent. Certainly, the Board found Mr. Brown's credentials to be impressive, and understands the Department's desire to compensate its staff commensurate with the qualifications they bring to their positions. Classification decisions, however, can not be based upon the qualifications of the incumbent when those qualifications appear to exceed the requirements of the position [See RSA 21-I:46 I (c)(1)]

Based upon the foregoing, the Board found that Mr. Brown's position was properly reclassified from Education Consultant II, salary grade 26, to Administrator II, salary grade 28. The evidence and testimony presented can not support reclassification to Administrator III, salary grade 30. Therefore, the Board voted to deny the appeal of Douglas Brown.

POSITIONS REQUESTING REALLOCATION TO ADMINISTRATOR II
Salary Grade 28

Arthur Ellison and Charles Sawyer were classified as Education Consultants III, salary grade 27, prior to the departmental reorganization. Subsequent to reorganization, and following review by the Division of Personnel, both these positions were reclassified and downgraded to Administrator I, salary grade 26. The Department of Education had requested that each of these positions be upgraded to Administrator II, salary grade 28. The Board noted that both incumbents retained their previous salaries despite the downgrading of the positions themselves.

Mr. Sawyer argued that the decision to downgrade his position from Education Consultant III, salary grade 27 to Administrator I, salary grade 26 was arbitrary, and that the Division of Personnel had offered no substantive reasons for its decision. John Meyer, the appellant's supervisor, contended that the departmental reorganization had resulted in the addition of duties to the position and that the incumbent must be capable of directing independent living programs. He testified that the incumbent must understand and have thorough knowledge of statutes and related standards, and have the ability to work and negotiate with grantees. He also indicated that direct supervision of this position was impossible, and that the incumbent must essentially be his own supervisor.

In the case of Mr. Ellison, the Appellant argued that his position within the Office of Adult Basic Education should be classified as Administrator II based principally upon the attribute "Complexity of Duties". In Mr. Ellison's

opinion, this attribute should have been allocated at the 8th, or highest degree, while the Division of Personnel argued this attribute to be properly rated at the 7th degree. Mr. Ellison noted that his position requires contact with agencies at the federal level, including grant and contract negotiations. He argued that the Administrator I specification does not make reference to contact at this high level, while the Administrator II specification does. He further argued that the other office supervisor positions within the department "have similar administrative, programmatic and fiscal responsibilities, but no office combines all three to the level found in the Office of Adult Basic Education".

The Board reviewed the specifications for both Administrator I and II, and found that Mr. Ellison's responsibilities in the Office of Adult Basic Education were properly addressed at the Administrator I level. The Board did not find Mr. Ellison's responsibilities had changed substantially, or that they were of such an inter-divisional nature as to warrant upgrading to Administrator II. Similarly, the Board found that Mr. Sawyer's responsibilities for program development as Administrator of the Independent Living Program, Bureau of Grants Management and Special Projects, Division of Vocational Rehabilitation, were not comparable to the other positions of Administrator II, salary grade 28 within the Department of Education. Based upon the foregoing, the Board voted to deny theses appeals, upholding the decision that both positions be reclassified to Administrator I, salary grade 26.

POSITION REQUESTING REALLOCATION TO ADMINISTRATOR I
Salary grade 26

Paul Leather, Vocational Rehabilitation Supervisor, salary grade 24 had requested that his position in that division be upgraded to Administrator I, salary grade 26. The Division of Personnel instead recommended upgrading the VR Supervisor position to Training Officer, salary grade 25.

In support of his appeal, Mr. Leather argued that his position responsibilities far exceeded those for the classification of Training Officer. According to Mr. Leather's supervisor, the appellant's position is the only planning position in the entire division. Mr. Leather compared his responsibilities to those of the Coordinator of Mental Health Services (salary grade 29) and argued that his duties for developing policies and implementing federal law justified upgrading his position to Administrator I, salary grade 26.

The Division of Personnel argued that Mr. Leather's planning duties comprised about 25% of his position responsibilities, and that the remaining duties primarily included training and personnel management. While Appellant argued that the supervision attribute should be increased to the 5th degree (60 points) under the Administrator I specification, the Division noted that Mr. Leather provides direct supervision to only one classified employee and that this attribute was more appropriately rated at the 4th degree (40 points).

Mr. Leather testified that staff development and training functions were added to his position as a result of the departmental reorganization under RSA 21-N, but that the primary responsibilities of his position were unchanged, requiring that he plan individual goals and objectives for the Division by coordinating the activities of the various administrators in the division's field offices. He therefore requested that the Board order his reclassification to Administrator I, of Planning Development and Training, salary grade 26.

The Board did not find sufficient evidence of material changes in Appellant's position duties and responsibilities to warrant reallocation to Administrator I, salary grade 26. Further, the Board did not find that the duties described by the Appellant's administrative and planning responsibilities on a departmental level which would warrant his reallocation to Administrator I. Finally, the Board found that the "supervisory" activities described by Mr. Leather in his written and oral presentation were more appropriately defined as training and technical assistance consistent with the description for Training Officer. Therefore, Mr. Leather's appeal was denied.

POSITIONS REQUESTING REALLOCATION TO ADMINISTRATIVE ASSISTANT I
Salary Grade 15

Susan Roma, Catherine Hadley, and Sharon Kimball, Administrative Secretary/Supervisors, salary grade 13, had requested that their positions be reallocated to Administrative Assistant I, salary grade 15. The Board first reviewed the specifications, including "Distinguishing Characteristics" and "Examples of Work", for both the current position title and requested title. In each instance, the appellants argued that their administrative and supervisory responsibilities, and the requirement that they facilitate and coordinate the flow of information between offices within the divisions for which they work warranted reclassification to Administrative Assistant I.

Ms. Roma pointed out in her written submission to the Board, of the nine attributes used to evaluate appropriate position classifications and salary grades, the classifications for Administrative Assistant I and Administrative Secretary/Supervisor differ only for the attributes of "Initiative" and "Personal Relationships". Appellants seek increase of the .Initiative

attribute from the 3rd degree (40 points) to the 4th degree (60 points). Under the Personal Relations attribute, Appellants seek increase from the 3rd degree (20 points) to the 4th degree (30 points). The net increase of 30 points would result in reallocation from salary grade 13 to salary grade 15.

For the Initiative attribute, the fourth degree is defined as work performed only under general direction "devising new methods, modifying procedures to meet new conditions, and planning and performing difficult work where general instructions only are available." The Board appreciates the essential functions performed by each of these appellants. Review of the description of duties provided by each in their presentations to the Board, however, did not persuade the Board that these three positions plan, assign and supervise the work of the organizational units for which they are employed. The work as described is more clearly defined by the 3rd degree for Initiative, requiring "the ability to plan and perform operations under direction and established practice. Decisions, however, are usually based on precedent, referring unusual problems to the superiors."

Under the Personal Relationships attribute, Appellants positions are currently rated at the 3rd degree, described as "contacts with persons giving or obtaining information requiring tact to avoid friction. Included would be contacts required in supervising others on closely related work, or frequent contacts with other units or departments in the normal course of performing duties." Appellants contended that because of their "frequent contact with high ranking state and federal administrators concerning clarification of policy and procedures and other directives..." this attribute warranted increase to the 4th degree. The Board disagrees.

The Personal Relationships attribute is defined as the factor related to "the degree of personal contact and relationships in a job. Consideration must be given to the significance and frequency for meeting, dealing with or influencing others". The Board was not persuaded that Appellants were responsible for "considerable discussion of problems, presentation of material, and obtaining cooperation" from state and federal administrators as would be required to justify increasing this attribute to the 4th degree.

Based upon the foregoing, the Board found these three positions to be properly classified as Administrative Secretary/Supervisor, salary grade 13. Accordingly, their appeals for reclassification to Administrative Assistant I were denied.

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