**[Cite as *State ex rel. Ruble v. Switzerland of Ohio Local School Dist. Bd. of Edn.*, 2024-Ohio-1542.]**

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

STATE ex rel. JAMES RUBLE et al.,

Relators,

v.

BOARD OF EDUCATION
OF THE
SWITZERLAND OF OHIO LOCAL SCHOOL DISTRICT,

Respondent.

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**OPINION AND JUDGMENT ENTRY**
**Case No. 22 MO 0003**

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Writ of Mandamus

**BEFORE:**
Cheryl L. Waite, Carol Ann Robb, Judges, and William A. Klatt, Judge of the Tenth District Court of Appeals, Sitting by Assignment (Retired).

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**JUDGMENT:**
Dismissed.

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*Atty. Adam C. Miller* and *Atty. Loriann E. Fuhrer,* Kegler, Brown, Hill & Ritter Co., L.P.A., for Relators Cyndi Brill, Linda O'Connor, and Suzanne Holland;

*Atty. Stacy V. Pollock*, Pollock Law, LLC, for Relator James Ruble;

*Atty. J. Michael Fischer*, Ennis Britton Co., L.P.A., for Respondent.

Dated: April 11, 2024

**PER CURIAM**

## I. INTRODUCTION

**{¶1}** This is an original action for a writ of mandamus brought by Cynthia L. Brill, Linda O'Connor, James Ruble, and Suzanne Holland (hereinafter referred to as "Relators") against Respondent Board of Education of the Switzerland of Ohio Local School District (hereinafter referred to as "the Board", or "Respondent"). Relators, formerly employed in various administrative capacities within the school district, challenge the lawfulness of the Board's action to suspend their contracts under its administrative personnel suspension policy adopted pursuant to R.C. 3319.171, the statute that outlines how boards of education can create and implement policies for suspending administrative personnel contracts.

**{¶2}** Relators contend the Board's adoption of its administrative personnel suspension policy was unlawful, as it does not comply with the requirements set forth in R.C. 3319.171. Additionally, they contend that even if the policy was validly adopted by the Board and is compliant with R.C. 3319.171, the Board's suspension of their contracts pursuant to the policy was unlawful because the Board's stated reasons for suspending their contracts were pretextual. Relators seek to compel the Board to reinstate them to their administrative positions and to pay them back pay. Alternatively, they seek a writ of mandamus to compel the Board to recall them to other positions for which they are qualified.

**{¶3}** For the reasons that follow, we conclude that the Board acted lawfully in suspending the Relators' administrative contracts. The evidence does not support the

contention that the policy was invalid or that the Board's actions were pretextual. Therefore, Relators' petition for a writ of mandamus is denied.

A. Facts

**{¶4}** In 2019, the school district underwent significant administrative changes. Following the resignation of Superintendent Jeffrey Greenley in late 2018, a vacancy arose for the superintendent position. Board members Ron Winkler and Jerry Gust expressed a preference for Rob Caldwell, a local candidate, to fill this role. According to depositions from Winkler and Gust, an agreement was reached among Board members: Caldwell would be appointed superintendent, and in return, Relator Cyndi Brill and Relator Linda O'Connor would be employed in administrative support positions.

**{¶5}** This agreement was reflected in the Board's unanimous decision on May 3, 2019, to hire Relator Cyndi Brill as associate superintendent/operations and director of human resources, and Relator Linda O'Connor as business manager. Subsequently, on June 13, 2019, Relator James Ruble was hired as the adult education/career technical education director. A year later, Relator Suzanne Holland was appointed as the nutrition and food service supervisor, effective August 1, 2020. These employment decisions, as described in the depositions, were part of a broader agreement by Board members to ensure support for Caldwell's appointment and to strengthen the administrative team. Each Relator was employed by the district under a contract that was to include the 2021-2022 school year.

**{¶6}** After the Board unanimously agreed to hire the Relators and appoint Caldwell as Superintendent, some Board members became unhappy with the appointments. Board members Winkler and Gust, who initially supported Caldwell's appointment, began to express dissatisfaction with his performance. They were specifically concerned that Caldwell allowed Relator Brill, one of the newly appointed administrators, to exert undue influence over the district's operations. This was raised by Winkler several times, including at Board meetings. In one such public Board meeting in April 2021, tensions came to a head when Winkler vocally expressed his discontent, signaling a strained relationship had developed between Caldwell and the Board.

**{¶7}** During this period in late 2020 and early in 2021, Caldwell experienced some health-related difficulties. Andrew Brooks, an employee of the Ohio Valley

Educational Service Center (hereinafter referred to as "the OVESC"), was appointed interim superintendent. Educational Service Centers, or ESCs, are established to provide shared services to local school districts within their region. These services can range from specialized educational programs, administrative support, and professional development, to fiscal and operational assistance. ESCs are designed to help districts achieve efficiency and effectiveness by pooling resources and expertise.

**{¶8}** Philip Ackerman, another employee of the OVESC, became actively involved in the operations of the school district. Ackerman was formerly employed within the district as an educator and administrator, and had served as superintendent. During the 2020-2021 school year, Ackerman, while at OVESC, was involved in evaluating the Board's various principals and participated in collective bargaining negotiations.

**{¶9}** As the 2020-2021 school year concluded, the position of principal at Powhatan Elementary School became vacant. Caldwell, the beleaguered superintendent, chose to transfer to this position. Thus, the position of superintendent became vacant once again.

**{¶10}** Ackerman was then considered for the position of superintendent. His background and recent involvement through the OVESC meant he was familiar with the school district's challenges and needs. At a special meeting of the Board held on June 30, 2021, the Board approved Winkler's motion to reassign Caldwell to the position of elementary school principal and hire Ackerman as the district's superintendent, with one member voting against the motion.

**{¶11}** Approximately one month later, on July 27, 2021, the Board held another special meeting. Following an executive session, Superintendent Ackerman announced he had recommended to the Board that the employment contracts of administrators Cyndi Brill, Suzanne Holland, Linda O'Connor, and James Ruble be suspended due to the reorganization and consolidation of their respective administrative functions and duties. The Board deferred formal action on this recommendation until those administrative staff members could be provided the statutorily required written 15-day notification of the intended suspension. (Exhibit 18, Deposition of Philip M. Ackerman.)

**{¶12}** The Board held a special meeting on August 19, 2021, for the stated purpose of taking action on a motion to approve the recommended administrative

reduction in force. The minutes from that meeting reflect that Board member Winkler made the following motion, seconded by Board member Gust:

> Motion to move that the board of education approve and accept the superintendent's recommendation that the administrative positions of associate superintendent, director of business operations, adult education director, nutrition & food service supervisor and systems analyst be reduced and the employment contracts of Cyndi Brill, Linda O'Conner, James Ruble, Suzanne Holland and Chad Stevens [also referred to as "Stephens"] be suspended, in order to effect the consolidation of the administrative functions of those positions with the functions of other currently existing administrative positions and to address the financial condition of the school district.

(Exhibit E, Relators' 04-12-2022 Verified Petition for Writ of Mandamus; Exhibit E, Relators' 06-28-2022 First Amended Petition for Writ of Mandamus.) The motion carried, with Board members Bev Anderson, Jerry Gust, Ron Winkler, and Greg Schumacher voting yes and Board member Sarah Smith voting no.

B. Procedure

**{¶13}** Relators commenced this action by filing a verified petition for a writ of mandamus setting forth two claims for relief based on: (1) invalid policy and (2) improper suspension. They seek reinstatement to their administrative positions and back pay. They claim Respondent's administrative personnel suspension policy does not comply with R.C. 3319.171 which governs such policies and, as a result, the suspension of their contracts was improper. Relators also argue that the two reasons offered by Respondent in support of the suspensions were pretextual.

**{¶14}** After becoming aware that Respondent has other positions for which one or more of them allege they are qualified, Relators filed a motion for leave to file their First Amended Petition for Writ of Mandamus pursuant to Civ.R. 15 in order to raise an additional, third claim for relief: (3) right of restoration. This is because one of the requirements in R.C. 3319.171 is that any personnel suspension policy must include provisions addressing the right to restoration. R.C. 3319.171(B)(3). Relators contend that

while the Board currently has administrative positions vacant for which one or more of them is qualified, the Board has not taken steps to restore them to those administrative positions.

**{¶15}** The Board responded by acknowledging it had entered into an employment contract with each of the Relators, employing them as administrators in the school district consistent with the provisions of R.C. 3319.02. R.C. 3319.02 provides a definition for "other administrators" in Ohio schools. The term includes employees in positions requiring a Department of Education license, nonlicensed employees considered as supervisors or management level employees, and business managers. It explicitly excludes superintendents, assistant superintendents, principals, and assistant principals.

**{¶16}** While the Board did not object to Relators' request to amend their action, it denied each and every allegation contained in their initial request for mandamus and the amended filing.

**{¶17}** This Court issued a case management schedule ordering discovery and cross-motions for summary judgment. Counsel for Relators Cyndi Brill and Linda O'Connor filed six depositions, those of: Philip M. Ackerman, Connie S. Kress, Ronald G. Winkler, Gregory A. Schumacher, Andrew W. Brooks, and Jerry D. Gust. All Relators and the Board filed motions for summary judgment and responses to the motions were filed by the opposing party.

## II. APPLICABLE LAW

### A. Mandamus

**{¶18}** This Court has jurisdiction to hear an original mandamus action pursuant to Article IV, Section 3(B)(1) of the Ohio Constitution and R.C. 2731.02. Mandamus is an extraordinary action. Generally, in order to be entitled to a writ of mandamus, the relator must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) that relator otherwise lacks an adequate remedy in the ordinary course of the law. *State ex rel. King v. Fleegle*, 160 Ohio St.3d 380, 2020-Ohio-3302, 157 N.E.3d 707, ¶ 5. However, the Supreme Court of Ohio has held that where "a duty is based upon both *contract and law,* mandamus is appropriate despite the availability of another action at law." (Emphasis sic.) *State ex rel. Voleck v.*

*Powhatan Point*, 7th Dist. Belmont No. 08-BE-33, 2010-Ohio-615, ¶ 8, *aff'd,* 127 Ohio St.3d 299, 2010-Ohio-5679, 939 N.E.2d 819, quoting *State ex rel. Ms. Parsons Constr., Inc. v. Moyer*, 72 Ohio St.3d 404, 406, 650 N.E.2d 472 (1995).

B. Summary Judgment

**{¶19}** To be entitled to summary judgment, the moving party must demonstrate that (1) no genuine issue of material fact exists, (2) the movant is entitled to judgment as a matter of law, and (3) even construing the evidence most strongly in favor of the nonmovant, reasonable minds could come to but one conclusion, and that conclusion is adverse to the nonmoving party. *State ex rel. Grady v. State Emp. Relations Bd*., 78 Ohio St.3d 181, 183, 677 N.E.2d 343 (1997). The nonmoving party may not merely rest on its allegations. A properly supported motion for summary judgment forces the nonmoving party to produce evidence on any issue for which it bears the burden of proof. *Dresher v. Burt*, 75 Ohio St.3d 280, 293-294, 662 N.E.2d 264 (1996).

C. Limits of Judicial Oversight of School District Boards of Education in Ohio

**{¶20}** A school district board of education is a statutorily created entity composed of individual members responsible for governing a school district. R.C. 3311.055. It is described as "a body politic and corporate." R.C. 3313.17. *Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 122 Ohio St.3d 557, 2009-Ohio-3628, 913 N.E.2d 421, ¶ 17. A court generally will not restrain a board of education from carrying into effect its determination on any question within its discretion, unless there has been an abuse of discretion, fraud, or collusion on the part of the board in the exercise of its statutory authority. *Brannon v. Bd. of Edn.*, 99 Ohio St. 369, 124 N.E. 235 (1919), paragraph two of the syllabus; *In re Suspension of Huffer from Circleville High School*, 47 Ohio St.3d 12, 14-15, 546 N.E.2d 1308 (1989); *accord State v. Smrekar*, 7th Dist. Columbiana No. 99 CO 35, 2000 WL 1726518 (Nov. 17, 2000). Also, as it is an extraordinary writ, "[m]andamus does not lie to control the discretion of a board of education, but mandamus is a proper remedy to compel a board of education to exercise its discretion." *State ex rel. Masters v. Beamer*, 109 Ohio St. 133, 141 N.E. 851 (1923), syllabus.

D. The Ohio Teacher Tenure Act: Distinctions and Protections for Teachers and Administrators in Employment and Tenure

**{¶21}** The Ohio Teacher Tenure Act, R.C. Chapter 3319, governs a board of education's employment of public school teachers and administrators, including superintendents, principals, and other administrators. There are both practical and statutory differences between a teacher and an administrator, *State ex rel. Smith v. Etheridge*, 65 Ohio St.3d 501, 506-507, 605 N.E.2d 59 (1992), particularly in regard to their continued employment. The most notable of these is that the opportunity to acquire continuing contracts of employment or continuing service status, (tenure), is available only to teachers. R.C. 3319.11; *State ex rel. Donah v. Windham Exempted Village School Dist. Bd. of Edn.*, 69 Ohio St.3d 114, 116, 630 N.E.2d 687 (1994).

**{¶22}** The Act protects qualified tenured teachers by preventing their arbitrary dismissal; however, the Act omits administrators from similar protections because administrators generally exercise executive and discretionary power in addition to holding professional qualifications as a teacher. *Id*. As it concerns "other administrators", their contracts are always limited contracts. *Id*. Moreover, in the absence of specific statutory or contractual guarantees, school administrators (and non-tenured teachers) have no expectancy of continued employment or a constitutionally protected property interest in their employment that is subject to due process protections. *Depas v. Highland Local School Dist. Bd. of Ed.*, 52 Ohio St.2d 193, 370 N.E.2d 744 (1977); *Matheny v. Frontier Local Bd. of Ed.*, 62 Ohio St.2d 362, 405 N.E.2d 1041 (1980).

**{¶23}** The statutory differences between a teacher and an administrator, including "other administrator," are also apparent when it comes to a board of education's implementation of a reduction in force (RIF). The Act contains two reduction-in-force statutes: R.C. 3319.17, which governs the process for reducing the number of teachers, and R.C. 3319.171, which pertains to the reduction of administrators. Entitled "Reduction in number of teachers; restoration", R.C. 3319.17 provides, in pertinent part:

> (B) When, for any of the following reasons that apply to any * * * local * * * school district * * *, the board decides that it will be necessary to reduce the number of teachers it employs, it may make a *reasonable* reduction:

> (1) In the case of any district * * *, return to duty of regular teachers after leaves of absence including suspension of schools, territorial changes affecting the district * * *, or financial reasons;
>
> (2) In the case of any * * * local * * * school district, decreased enrollment of pupils in the district;
>
> * * *
>
> (C) In making any such reduction, any * * * local * * * school board shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who *shall, within each teaching field affected, give preference to teachers on continuing contracts*. The board shall not give preference to any teacher based on seniority, except when making a decision between teachers who have comparable evaluations.
>
> * * *
>
> The teachers whose continuing contracts are suspended by any board pursuant to this section shall have the right of restoration to continuing service status by that board if and when teaching positions become vacant or are created for which any of such teachers are or become qualified. No teacher whose continuing contract has been suspended pursuant to this section shall lose that right of restoration to continuing service status by reason of having declined recall to a position that is less than full-time or, if the teacher was not employed full-time just prior to suspension of the teacher's continuing contract, to a position requiring a lesser percentage of full-time employment than the position the teacher last held while employed in the district or service center. Seniority shall not be the basis for rehiring a teacher, except when making a decision between teachers who have comparable evaluations.

**{¶24}** Thus, a board of education may suspend a teacher's continuing contract pursuant to R.C. 3319.17 only if three requirements are met: first, one of the reasons set

forth in R.C. 3319.17 exists; second, reduction is necessary due to one of those reasons; and third, the reduction itself must be "reasonable." *Phillips v. S. Range Local School Dist. Bd. of Educ.*, 45 Ohio St.3d 66, 68, 543 N.E.2d 492 (1989).

**{¶25}** Entitled "Administrative personnel suspension policy", R.C. 3319.171 provides:

> (A) Notwithstanding section 3319.17 of the Revised Code, the board of education of a * * * local * * * school district * * * may adopt an administrative personnel suspension policy governing the suspension of any contract of employment entered into by a board under section 3319.02 of the Revised Code. If a board adopts a policy under this section, no contract entered into by a board under section 3319.02 of the Revised Code may be suspended except pursuant to the policy. If a board does not adopt such a policy, no such contract may be suspended by a board except pursuant to section 3319.17 of the Revised Code.
>
> (B) The administrative personnel suspension policy shall include, but not be limited to, all of the following:
>
> (1) One or more reasons that a board may consider for suspending any contract of employment entered into under section 3319.02 of the Revised Code. A reason for such suspension may include the financial conditions of the school district * * *.
>
> (2) Procedures for determining the order of suspension of contracts within the employment service areas affected;
>
> (3) Provisions requiring a right of restoration for employees whose contracts of employment are suspended under the policy if and when any positions become vacant or are created for which any of them are or become qualified.
>
> (C) The policy procedures and provisions adopted under divisions (B)(2) and (3) of this section shall be developed by the board of a district *

> * * with input from the superintendent and all assistant superintendents, principals, assistant principals, and other administrators employed by that board under section 3319.02 of the Revised Code.

**{¶26}** Thus, a board of education which does not adopt its own administrative personnel suspension policy under R.C. 3319.171 may only suspend an administrator's employment contract pursuant to the provisions of R.C. 3319.17. If a board of education chooses to adopt its own administrative personnel suspension policy under R.C. 3319.171, the policy must: (1) provide at least one reason for which the board may consider suspending an administrator's contract; (2) contain a procedure for determining the order of suspension; (3) have provisions providing a right of restoration, and (4) be developed with input from the pool of administrators employed by the Board.

## III. ANALYSIS

### A. First Claim for Relief: Invalid Policy

**{¶27}** The Board chose to adopt its own suspension policy, Policy 1540, entitled "SUSPENSION OF ADMINISTRATIVE CONTRACTS" on August 16, 2012. As discussed earlier, Relators were employed as administrators by the Board under a written employment contract when the Board acted to suspend those contracts. R.C. 3319.02 governs a board of education's employment of an assistant superintendent, principal, assistant principal, or other administrator. It is undisputed that the positions for which the Board hired each of the Relators falls within the definition of "other administrator." R.C. 3319.02(A).

**{¶28}** Relators contend that Policy 1540 does not meet the statutory requirements of R.C. 3319.171. Specifically, they argue that the policy at issue contained no suspension order procedure, or right of restoration, and was enacted with no administrator input. They first argue the policy lacks a clear suspension procedure and fails to identify criteria for determining the order of suspension, giving the superintendent unfettered discretion. Second, they argue the policy abrogates their right to restoration because the policy only allows reinstatement to the exact same position. Third, they contend the policy was not developed with input from administrators. Instead, the Board purchased a "form" policy from a company that sells policy and administrative guideline

services to school boards.

**{¶29}** In response, the Board maintains Policy 1540 complies with R.C. 3319.171. It points out that the policy controls the superintendent's discretion by requiring a determination that the order of suspension will be in the best interest of the district. Likewise, the policy adequately addresses the right to restoration. Regarding input from administrators, the Board argues the issue is not properly before this Court because Relators raised the issue for the first time in their motion for summary judgment, and did not raise it in their pleadings. Alternatively, the Board argues that Relators have failed to put forward evidence that the policy was not developed with input from administrators or that its purchase of the policy from an outside source necessarily means there was no administrator input.

**{¶30}** Before we address each of Relators' specific arguments, we note that Policy 1540 does meet R.C. 3319.171's first requirement, contained in division (B)(1), that the policy set forth at least one reason the Board may consider in suspending any contract. The first section of Policy 1540 provides:

> The Board of Education recognizes that no contract entered into with a member of the administrative staff in accordance with Board Policy 1520 may be suspended except in the manner provided herein. Accordingly, this policy was developed with input from the District's administrative staff.
>
> The reasons for which the Board will consider suspending an administrator's contract are:
>
> A. a decrease in the District's enrollment;
>
> B. a return to duty of an administrator after a leave of absence;
>
> C. the suspension of schools or territorial changes affecting the District;
>
> D. financial conditions affecting the District;
>
> E. reorganization and/or consolidation of administrative functions.

**{¶31}** Turning to Relators' first argument regarding the suspension order procedure, R.C. 3319.171(B)(2) requires that the administrative personnel suspension

policy include "[p]rocedures for determining the order of suspension of contracts within the employment service areas affected." The second section of Policy 1540 does address this requirement:

> The following procedures will be followed in the event that the Board determines it is necessary to reduce its administrative staff through a suspension of contracts:
>
> A. If it is necessary to achieve a reduction in the administrative staff, the Board may proceed to suspend contracts in accordance with the recommendation of the Superintendent. Given that administrative positions are not interchangeable, the primary factor in any reduction of administrators will be the best interest of the District.
>
> B. Any administrator whose contract is to be suspended as the result of a reduction in the administrative staff shall be notified, in writing, of his/her intended suspension at least fifteen (15) calendar days prior to the Board meeting at which the action is to be taken.
>
> C. The suspension shall not become effective sooner than thirty (30) days after said action.

**{¶32}** Caselaw addressing the adoption of a suspension policy for administrative personnel by a board of education, as well as the application of such policies to administrators, is scant. The Second District Court of Appeals had occasion to address the issue in some depth in *Martin v. Vandalia-Butler City School Dist. Bd. of Edn.*, 2d Dist. Montgomery No. 21663, 2007-Ohio-1050. In that case, over half way into a two-year administrative contract with its human resources director, Mr. Martin, the Vandalia-Butler City School District Board of Education suspended the contract on the recommendation of its superintendent, who cited financial reasons for the recommendation. Unlike the Relators herein, Martin filed a breach-of-contract action against the Board premised on its violation of R.C. 3319.171. On cross motions for summary judgment, the trial court awarded summary judgment in favor of the Board, finding it had a policy for the

suspension of administrators in accordance with R.C. 3319.171, and that such policy complied with the requirements of R.C. 3319.171(B)(2) and (B)(3) regarding the order of suspension of contracts and the restoration of suspended employees. Martin appealed and the Second District affirmed.

**{¶33}** The section of Vandalia-Butler's administrative personnel suspension policy that addresses the suspension order procedure stated:

> When it becomes necessary to reduce administrators pursuant to Board Policy GCPA, the following guidelines will be in effect.
>
> 1. The Superintendent will determine whether resignations or retirements can accomplish the necessary reduction [sic]
>
> 2. If additional reductions are necessary, or if reductions in positions other than those where resignations or retirements have occurred, the Superintendent will recommend job abolishment and/or contract suspension of employees to the Board of Education, taking into consideration the following matters:
>
> A. The needs of the District;
>
> B. Administrator certification;
>
> C. Demonstrated proficiency in duty assignments;
>
> D. Length of administrative experience in the District[;]
>
> E. Length of continuous service in the District.

**{¶34}** Martin argued that the superintendent's discretion in recommending contract suspensions, as outlined in the board's policy, was overly subjective compared to the requirements of R.C. 3319.171(B)(2). While the policy allowed the superintendent and the school board to make suspension decisions on an individual basis, the statute demanded a more objective approach, designed to ensure uniform outcomes in every application. Martin also contended the policy was non-compliant with

R.C. 3319.171(B)(2) because it did not specify service areas, which he deemed crucial for establishing an appropriate order of suspension.

**{¶35}** The Second District examined Wilson's arguments against the legislative intent behind the statute as revealed by the statutory language and purpose:

> By permitting boards of education to enact their own administrative personnel suspension policy, R.C. 3319.171 provides boards with greater flexibility to exercise their professional judgment when making necessary adjustments concerning the administrative personnel in their district. Part of this flexibility is encompassed in section (B)(1), where the statute authorizes school boards to suspend administrators when they determine that the financial conditions of their district deem it necessary. Likewise, section (B)(2) allows for professional judgment and flexibility by requiring that each board's suspension policy includes *procedures for determining the order* of suspension of contracts as opposed to an actual order of suspension. (Emphasis sic.)

*Martin* at ¶ 42.

**{¶36}** Additionally, while R.C. 3319.171(B)(2) references the employment service areas affected by the suspension of contracts, it in no way requires that a board's administrative suspension policy must delineate employment service areas. *Martin* at ¶ 43. In other words, the *Martin* court held that R.C. 3319.171(B)(2) does not mandate "*separate* procedures for determining administrative suspensions within *each* employment service area affected." *Id*.

**{¶37}** Relators in this case similarly argue that Policy 1540 does not comport with R.C. 3319.171(B)(2), claiming the policy lacks a clear procedure and fails to identify criteria for determining the order of suspension, giving the superintendent unfettered discretion. Although Policy 1540 does not contain the five specific criteria found in the *Martin* suspension policy for consideration by the superintendent, the "primary" factor controlling the *Martin* board's discretion in carrying out suspension of contracts was the best interest of the school district. This is the primary criteria set forth in the policy at issue in this case.

**{¶38}** While Relators argue that the discretion given to the Superintendent in Policy 1540 is excessive, R.C. 3319.171(B)(2) does not prohibit such discretion. The statute requires a procedure to be set forth in determining the order of suspension, but it does not mandate that this procedure be devoid of subjective elements. The primary factor in Policy 1540, the best interest of the district, is a legitimate and justifiable criterion. This comports with the purpose of the statute, which is to allow school boards the flexibility to adjust their administrative staff according to the school district's needs.

**{¶39}** While Policy 1540 might not be as detailed as the Relators would like, this does not mean it fails to comply with R.C. 3319.171(B)(2). The statute requires only that the Board enact a procedure, and does not require a detailed list of criteria. The intent behind R.C. 3319.171 is to allow school boards the discretion to manage their administrative personnel according to the unique needs of their district. The policy at issue in this matter complies with the statutory requirements in this regard.

B. R.C. 3319.171(B)(3) – Restoration Right

**{¶40}** Relators' second argument addresses the right of restoration. R.C. 3319.171(B)(3) requires that the administrative personnel suspension policy include "[p]rovisions requiring a right of restoration for employees whose contracts of employment are suspended under the policy if and when any positions become vacant or are created for which any of them are or become qualified." The third section of Policy 1540 addresses this requirement as follows:

> Administrators whose contracts are suspended shall be on the administrative recall list for a period of two (2) years from the last day of active employment by the District, unless the administrator has accepted, prior to such time, other employment.
>
> Administrators who are on the administrative recall list shall have the right of recall only to their prior position (i.e., Assistant Building Administrator at the Middle School) and only if the Board re-institutes that position. However, the Board will consider such administrators for openings occurring in any other administrative position for which the administrator is qualified and holds the appropriate certification/licensure. The primary

> factor in filling administrative positions will be the best interests of the District.
>
> An administrator shall be notified of a recall by certified mail and must accept, in writing, the employment within fifteen (15) days of service of the recall notice. It is the administrator's responsibility to maintain a current mailing address with the Board. Failure to accept recall within fifteen (15) days shall be interpreted as an indication that the administrator does not wish to return to active employment in the District and shall result in the removal of the administrator from the recall list. If the recall occurs after August 1st, the administrator must respond in writing within five (5) days or s/he will be removed from the recall list.

**{¶41}** As with R.C. 3319.171(B)(2)'s requirement that the Board policy contain a suspension order procedure, the *Martin* case also addressed R.C. 3319.171(B)(3)'s restoration-right requirement. The Vandalia-Butler City School District Board of Education's administrative personnel suspension policy included the following provisions addressing an administrator's right of restoration:

> 3. If an administrator whose contract is suspended or non-renewed as the result of a reduction in force holds a continuing teaching contract in the District, the Superintendent will assign administrator to a teaching position, in accordance with the administrator's certification.
>
> 4. Administrators whose contracts are suspended as the result of a reduction in force will have recall rights for up to two (2) years from the date of the reduction.
>
> A. If during such two (2) year period, the administrator's prior position is re-established, or if a vacancy occurs in such position, the administrator will be recalled. Recalls will be made in the reverse order of reduction.

> B. If a vacancy occurs during such two (2) year period in a position for which the administrator holds the appropriate certification/licensure, but in which the administrator has not worked in the District, the administrator will be considered, along with other applicants, for the vacancy.

**{¶42}** Martin complained that the Vandalia-Butler City School District Board of Education's administrative personnel suspension policy did not address administrators who held jobs where a certificate or license was not required. Again, explaining the language of the statute, the Second District held that the policy did comply with R.C. 3319.171(B)(3):

> R.C. 3319.171(B)(3) states that a school board's suspension policy must include provisions requiring a right of restoration "if and when any positions become vacant or are created for which any of them are or become qualified." (Emphasis added.) The trial court reasonably concluded from the evidence that the Board's policy included automatic recall of a suspended administrator in two instances: (1) where the administrator holds a teaching certificate, he or she will be assigned to a teaching position; and (2) where the administrator's former position is re-established or becomes vacant, he or she will be recalled in reverse order of reduction. The statute calls for recall when any positions become available in which the administrator is qualified or becomes qualified. Thus, regardless of whether an administrator holds a certificate or license, the Board's policy provides for automatic recall if that administrator's former position becomes available. Additionally, if the administrator is licensed to teach, this qualifies him or her for another means of automatic recall should a teaching position become vacant or be created. Therefore, reasonable minds could come to but one conclusion, and that conclusion is that these two circumstances for automatic recall in the Board's policy satisfy the statute's requirements. Thus, the trial court correctly found that the Board's administrative personnel suspension policy complies with R.C. 3319.171(B)(3).

*Martin v. Vandalia-Butler City School Dist. Bd. of Edn.*, 2d Dist. Montgomery No. 21663, 2007-Ohio-1050, ¶ 53.

**{¶43}** Our review of Policy 1540's right of restoration likewise reveals that it complies with R.C. 3319.171(B)(3). Policy 1540 states that administrators on the recall list have the right of recall to their previous position within two years if and when the Board reinstitutes that position. Policy 1540 further provides that administrators on the recall list will be considered for any other administrative openings for which they are qualified and hold the appropriate certification or licensure within a two-year period. Hence, the Relators are inaccurate in contending that the policy limits restoration only to the positions they held when they were suspended. It acknowledges that suspended administrators may be qualified for other positions within the school district, thereby complying with the statute's provision that employees should be restored to positions for which they are or become qualified.

**{¶44}** Policy 1540 emphasizes that the primary factor in filling administrative positions is the best interests of the school district. This clause comports with the general discretion afforded to school boards in making employment decisions. While R.C. 3319.171(B)(3) requires a right of restoration be provided, it does not preclude the Board from considering the overall needs and interests of the district when making staffing decisions.

C. R.C. 3319.171(C) – Administrator Input

**{¶45}** R.C. 3319.171(C) requires only that [t]he policy procedures and provisions adopted under divisions (B)(2) and (3) of this section shall be developed by the board of a district * * * with input from the superintendent and all assistant superintendents, principals, assistant principals, and other administrators * * *."

**{¶46}** Relators argue the Board failed to develop Policy 1540 with the input of administrators as required by R.C. 3319.171(C). They contend that the statute requires the involvement of all administrators employed by a board in the policy's development. They claim this was not the case, here. The Board, in response to Relators' interrogatories, admitted that the policy was sourced from an entity known as NEOLA, a third-party provider, rather than being solely developed by the Board. This suggests to Relators that the Board did not actively participate in formulating the policy.

**{¶47}** Relators complain that there is a lack of clarity about the method NEOLA used to develop the policy specifically for the Board. Deposition testimony from Superintendent Ackerman and Board president Winkler did not shed light on this process. Superintendent Ackerman's statement that NEOLA would typically supply policies to the school district indicates the Board may not have taken an active role in creation of the policy at issue.

**{¶48}** Based on these observations, Relators argue that the Board did not comply with the statutory directive outlined in R.C. 3319.171. Thus, they contend Policy 1540 was invalid and cannot be used to support a reduction in force, making their suspensions unlawful. The Board responds that this allegation, concerning non-compliance with R.C. 3319.171(C) for lack of administrative input, was not included in either the original or the amended Petition for a Writ of Mandamus. Further, Relators provided no evidentiary support for this claim in their summary judgment motion.

**{¶49}** The Board contends that since Relators did not raise this issue in their initial pleadings and in fact, failed to raise it until the discovery period had expired when they first raised it in their motion for summary judgment, the Court should not consider this argument. They point out that the burden of proof rests with Relators to demonstrate NEOLA did not involve the Board's administrators in developing the policy, as in a mandamus action, the party seeking the writ must establish their entitlement by clear and convincing evidence. The Board contends Relators have not met this burden, as there is no evidence in the record showing NEOLA failed to involve the Board's administrators in developing the policy when it was adopted in 2012.

**{¶50}** Civ.R. 8(A) requires that "[a] pleading that sets forth a claim for relief * * * shall contain * * * a short and plain statement of the claim showing that the party is entitled to relief * * *." Civ.R. 8(F) further provides that "[a]ll pleadings shall be so construed as to do substantial justice." This liberal pleading rule merely requires sufficient operative facts which give fair notice of the nature of the action, and permits as many claims for relief to which a party may be entitled under the operative facts. *DeVore v. Mut. of Omaha*, 32 Ohio App.2d 36, 38, 288 N.E.2d 202 (7th Dist.1972). However, "the complaint must contain either direct allegations on every material point necessary to sustain a recovery or contain allegations from which an inference fairly may be drawn that evidence on these

material points will be introduced at trial." *Strahler v. Vessels*, 4th Dist. Washington No. 11CA24, 2012-Ohio-4170, ¶ 10.

**{¶51}** Our review of Relators' initial petition in mandamus and their First Amended Petition for Writ of Mandamus fails to reveal an allegation that the Board, on or before August 16, 2012, when Policy 1540 was adopted, developed this policy without obtaining input from the superintendent and other administrators as required by R.C. 3319.171(C). Relators' belated attempt to assert, for the first time in its motion for summary judgment, that the Board did not develop Policy 1540 with input from the district's administrators when they did not raise this in either petition for Mandamus forecloses this Court's consideration of the claim.

**{¶52}** Civ.R. 56(A) permits a party to move for summary judgment "upon a claim, counterclaim, or cross-claim." Civ.R. 56 generally does not permit a party to seek summary judgment based on a new claim for relief. Although a party may not generally move for summary judgment on a claim for relief not previously raised in the pleadings, the parties may expressly or impliedly consent to resolve a new claim for relief. *See* Civ.R. 15(B). Civ.R. 15(B) applies not only to cases that actually proceed to a trial in the traditional sense, it also applies to summary judgment proceedings. *See generally Austintown Local School Dist. Bd. of Edn. v. Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities*, 66 Ohio St.3d 355, 365, 613 N.E.2d 167 (1993); *Musa v. St. Vincent Mercy Medical Center*, 6th Dist. Lucas App. No. L-00-1283, 2001 WL 366275, *2 (Apr. 13, 2001). Civ.R. 15(B) permits the trial court to allow amendment of the pleadings if "issues not raised by the pleadings are tried by express or implied consent of the parties." Civ.R. 15(B) provides:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow

> the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

**{¶53}** While Civ.R. 15 expresses a preference for trial courts to liberally allow pleadings to be amended, any amendment must be made by motion. *See In re Election Contest of Democratic Primary Held May 4, 1999 for Clerk, Youngstown Mun. Court*, 88 Ohio St.3d 258, 264, 725 N.E.2d 271 (2000); *State ex rel. Evans v. Bainbridge Twp. Trustees*, 5 Ohio St.3d 41, 44, 448 N.E.2d 1159 (1983). Relators did, in fact, avail themselves of this relief once, when the Court granted Relators' Motion for Leave to File Instanter First Amended Petition for Writ of Mandamus. (07-07-2022 J.E.) However, the claim at issue here was not included in the amendment.

**{¶54}** During summary judgment proceedings, if a party raises a new issue not fairly encompassed within the pleadings, if the opposing party addresses the merits of the new issue and the trial court considers it, Civ.R. 15(B) allows the pleadings to be amended to reflect this new issue. *McGinnis, Inc. v. Lawrence Economic Dev. Corp.*, 4th Dist. Lawrence No. 02CA33, 2003-Ohio-6552, ¶ 25; *see Musa* (concluding that because the new issue "was included by appellees in their motion for summary judgment, argued by both appellants and appellees and addressed by the trial court in its decision," the issue was tried by implied consent).

**{¶55}** In this case, Relators did seek to amend their petition and the Court granted their motion. Relators sought to assert a claim for relief regarding R.C. 3319.171(B)(3)'s requirement that an administrative personnel suspension policy include "[p]rovisions requiring a right of restoration for employees whose contracts of employment are suspended under the policy if and when any positions become vacant or are created for which any of them are or become qualified." They never at any time sought to add a claim that the Board failed to develop Policy 1540 with input from the district's administrators as required by R.C. 3319.171(C). They never filed another Civ.R. 15(A) motion seeking leave to raise another claim. The Board did not expressly or impliedly consent to try the new claim Relators now allege in summary judgment. Instead, the

Board specifically raised the procedural impropriety in its response to Relators' motion for summary judgment. (10-24-2022 Response of Respondent, Switzerland of Ohio Local School District, to Petitioners-Relators' Motion for Summary Judgment and Respondent's Cross Motion for Summary Judgment, p. 27.) Further, as the Board points out, Relators have provided no evidence on this issue. Therefore, we conclude that Relators did not properly raise or plead a claim that the Board failed to develop Policy 1540 with input from the school district's administrators as required by R.C. 3319.171(C).

D. Second Claim for Relief: Improper Suspension

1. "Shifting Purported Reasons" & Pretext

**{¶56}** Relators argue that even if Policy 1540 is deemed to comply with R.C. 3319.171, they are entitled to a writ of mandamus because the suspension of their contracts was based on pretext and not on any of the potentially valid reasons set forth in Policy 1540. Relators claim that the Board's stated reasons shifted, and that there was no reference to the district's financial condition when superintendent Ackerman first recommended the reduction in force at the Board's July 27, 2021 special meeting. Following an executive session, superintendent Ackerman's recommendation that a reduction in force was mandatory also did not mention the school district's financial condition:

> It is my recommendation that the employment contracts of Cyndi Brill, Suzanne Holland, Linda O'Connor, James Ruble and Chad Stephens employment as Administrators be suspended due to the reorganization and consolidation of their respective administrative functions and duties. Board policy requires that any Administrator whose contract is to be suspended as a result of reduction of the administrative staff be notified in writing of the intended suspension at least 15 calendar days prior to the Board meeting at which the suspension action is to be taken. For this reason, the Board cannot act on the Superintendents' [sic] suspension recommendations at this meeting. Our next regular meeting is August 12 which is too soon to ensure that the 15 notice [sic] requirement can be met.

(Exhibit 18, Deposition of Philip M. Ackerman.)

**{¶57}** The Board convened another special meeting approximately three weeks later on August 19, 2021 where the Board was to take formal action on superintendent Ackerman's recommendation. This time, however, the financial condition of the school district was added as a reason for the reduction in force:

> Motion to move that the board of education approve and accept the superintendent's recommendation that the administrative positions of associate superintendent, director of business operations, adult education director, nutrition & food service supervisor and systems analyst be reduced and the employment contracts of Cyndi Brill, Linda O'Conner [sic], James Ruble, Suzanne Holland and Chad Stevens be suspended, in order to effect the consolidation of the administrative functions of those positions with the functions of other currently existing administrative positions *and to address the financial condition of the school district*. (Emphasis added.)

(Exhibit 19, Deposition of Philip M. Ackerman.)

**{¶58}** Relators contend that the addition of the school district's financial condition as a stated reason for their contract suspensions at the August 19 meeting which was absent at the July 27 meeting shows the Board's reasons were pretextual. Relators insist that the real reason for their contract suspensions was their "county of upbringing". Relators cite to deposition testimony where Relators were referred to as the "Fabulous Columbus Ones" or "the Columbus Five", imputing these labels to the Board. However, an examination of that testimony does not support Relators' contentions and, regardless, does not amount to a showing of pretext.

**{¶59}** At his deposition, Board member Winkler testified about the origin of Relators' "outsiders" labels. While he said he was hesitant to "name names" of persons he knew had used this term in referring to Relators, he did say it was commonly used by members of the public. The District's treasurer, Connie Kress, testified she overheard Winkler say the phrase "fabulous Columbus ones". But her testimony on this topic was equivocal and did not supply context for Winkler's reference. Board member Gust's recollection of the phrase labeling Relators as outsiders to the District was similar to

Winkler's; that members of the public seemed suspicious of the Relators' status as "outsiders" and had labeled them.

**{¶60}** Regardless, Relators' argument regarding alleged "shifting purported reasons" and alleging pretext on the part of the Board in deciding to suspend their contracts is without merit. The addition of raising a financial concern in the Board's rationale for suspending Relators' contracts does not reflect inconsistency or pretext, and Relators have not cited any caselaw to support an opposite conclusion. The addition of another valid reason at the meeting where the recommendation was to be voted on does not show that the Board's reasons were not genuine. Decisions in complex organizations like school districts can evolve due to new information, changing circumstances, or a deeper understanding of the situation. Reasons for organizational decisions often shift as leaders reassess situations, receive new data, or respond to external factors. At the August meeting, the Board reiterated its decision to reorganize and consolidate positions and duties, and also stated a concern for the district's financial health. We cannot agree with Relators that this additional reason given for the Board's action reflects pretext.

**{¶61}** The deposition testimony relied upon by Relators intended to show some personal bias against them does not establish a genuine issue of material fact regarding the Board's motivations for suspending the Relators' contracts. The depositions reveal that while the labels "fabulous Columbus ones" or "the Columbus five" were used somewhat pejoratively by certain individuals, there is no evidence that the Board's decision to suspend their contract was based on their former county of residence and that the Board's stated reasons for their suspension were mere pretext.

2. Financial Condition of the District

**{¶62}** Aside from their argument that the District's financial condition was raised merely as a pretext to end their employment based on the perception of them as outsiders to the school district, Relators also challenge the rationale that the District's financial condition necessitated the suspension of their contracts. Superintendent Ackerman, in his statement, cited the District's financial health as part of the reason for the suspensions, surmising that future reductions in oil and gas revenues would negatively impact the district financially. He did admit uncertainty about exactly when this reduction would occur. Relators seize upon this uncertainty as proof that no emergency financial situation

exited, citing *Phillips v. South Range Local School Dist. Bd. of Educ.*, 45 Ohio St.3d 66, 543 N.E.2d 492 (1989).

**{¶63}** *Phillips* is wholly inapplicable to the case before us. *Phillips* was a reduction-in-force case involving a teacher, not an administrator, and was governed by R.C. 3319.17. The early termination or suspension of teachers (prior to expiration of a contract) is governed by R.C. 3319.16 and R.C. 3319.17, respectively. R.C. 3319.16 specifies that a teacher contract "may not be terminated except for good and just cause." The section sets forth procedures that must be followed in a contract termination, including notice, hearings, and the right to appeal to a court of common pleas. R.C. 3319.17 mandates that a teacher contract may be suspended for one of several specified reasons, all of which relate to the need to reduce the number of teachers employed in the district.

**{¶64}** In *Phillips*, the Court observed that R.C. 3319.17 was enacted to allow boards of education to reduce the number of teachers in emergency situations such as a current decline in student enrollment, which is totally unrelated to the teachers' performance but due to circumstances beyond the boards' and the teachers' control. *Phillips*, 45 Ohio St.3d at 67, 70, 543 N.E.2d 492. It reasoned that the purpose of the Teachers' Tenure Act, R.C. Chapter 3319, was to provide teachers with some degree of job security. Therefore, R.C. 3319.17 was intended to be construed narrowly against boards of education due to the fact that certain due-process requirements contained in R.C. 3319.16 were relaxed. *Id*. at 68, 543 N.E.2d 492.

**{¶65}** Clearly, *Phillips* does not apply to these administrators. Relators incorrectly attempt to extend R.C. 3319.17's scope and related caselaw that addresses tenured teachers' property rights to their contracts. They attempt to conflate this reasoning to include administrators like themselves who do not have tenure. This case unequivocally involves administrators and the application of R.C. 3319.171, which does not require any sort of district emergency prior to a reduction in force.

**{¶66}** Again, administrator's contracts, unlike those of tenured teachers, do not enjoy the same statutory protections. The General Assembly has deliberately differentiated between these two groups, acknowledging the distinct roles and expectations associated with each. While tenured teachers have a statutory right to continued employment barring specific circumstances, administrators operate under

fixed-term contracts that offer far less protection. This distinction is crucial in illustrating why the premise of Relators' argument, that their suspensions must be necessitated by some sort of emergency, is inherently flawed. No emergency, financial or otherwise, was required.

**{¶67}** Relators also assert that what they perceive as the financial stability of the school district negates the need for any contract suspensions. Again, the reductions at issue needed only to be supported by some valid policy reason. The stated reasons provided by the Board were consolidation of job duties and reorganization, and secondarily, the financial future of the school district. Relators are incorrect that a financial emergency was required in order to support their suspensions. Certainly, a school district's current financial health does not preclude the necessity for proactive and prudent fiscal measures, especially in anticipation of potential future economic challenges. The elimination of unnecessary jobs would clearly serve to protect the district's finances, both current and future.

3. Effectiveness of Reduction

**{¶68}** Relators argue that the suspension of their contracts failed to achieve the stated objective of reducing the number of administrators. They contend that between June 2021 and September 18, 2021, the effective date of their suspensions, five new administrative personnel were added to the District: Andrew Brooks, Ky Davis, Teresa Harshbarger, Amanda Rex, and Richard Ferguson. However, a closer examination of the status of these individuals and their underlying employment relationship with the Board reveals that Relators' argument in this regard is also without merit.

**{¶69}** Andrew Brooks and Ky Davis are not employees of the school district. Instead, they are both employees of the OVESC. Davis trains the school district's teachers in the best practices for teaching math. Brooks, previously engaged during the 2020-2021 school year, was re-engaged for the following school year so that he could complete certain projects he was working on the previous year: the development of an administrative salary schedule, the evaluation of principals, and the development of job descriptions.

**{¶70}** The Board's contractual engagement of Brooks and Davis, both employees of the OVESC, to provide services to the school district does not impact the effectiveness

of suspending the Relators' contracts to reduce the number of administrators. Personnel provided by the ESC are not direct employees of the Board. As such, Relators' attempt to paint them as Board administrators is incorrect.

**{¶71}** Turning to the other Board hires raised by Relators, their employment situations likewise do not support Relators' contention. Teresa Harshbarger was hired as a curriculum specialist, a position created to assist in improving the district's educational programs, particularly focusing on enhancing Ohio Department of Education (ODE) test scores. However, the cost of the services provided by Harshbarger is not borne by the District, as her services are subsidized entirely from ESSER funds. ESSER stands for Elementary and Secondary School Emergency Relief fund, which was created by Congress to address the educational deficiencies resulting from the COVID-19 pandemic. The funds were designated to address educational challenges arising from the COVID-19 pandemic and are a separate and specific funding source, independent of the school district's general budget. Harshbarger's employment does not impact the district's regular financial resources or its administrative budget. She was not hired to supplant any Relator.

**{¶72}** Amanda Rex was hired to address a specific need in the treasurer's office, clearly unrelated to the administrative restructuring that led to the suspension of the Relators' contracts. At the same special meeting held on August 19, 2021, where the Board took formal action on superintendent Ackerman's recommendations regarding the suspension of Relators' administrator contracts, the Board took formal action on the employment of Rex by approving a one-year contract for her to serve as assistant treasurer.

**{¶73}** The assistant treasurer position had been open due to the retirement of the previous assistant treasurer. Rex's employment was a replacement hire, rather than a new or additional position in the Board's administrative structure. The interviews for the position occurred shortly after superintendent Ackerman began his role as superintendent and before he first presented his recommendation concerning suspending Relators' contracts to the Board. Her appointment also fails to support Relators' claims.

**{¶74}** As to Richard Ferguson, his employment also bears no relation to the Board's suspension of the Relators' contracts. Ferguson was first employed by the Board at the start of the 2017-2018 school year as a two hour a day custodian. At the start of

the 2018-2019 school year, Ferguson was still classified as a two hour a day custodian, but in addition to his custodian duties he worked 19 hours a week in the district's central office answering the phone, taking messages, and generally providing support services for the administrators working in the office. Ferguson's office duties did not have a specific title. He continued these duties during the 2019-2020 and 2020-2021 school years. At its June 10, 2021 meeting, the Board formalized his position by classifying him as an employee relations specialist with a one-year contract beginning July 1, 2021 and ending June 30, 2022. His duties did not change thereafter, he simply continued to perform the same duties he performed during the preceding school years.

**{¶75}** As Relators do not show that the Board engaged in some sort of subterfuge by suspending their contracts and hiring a like member of replacements, their attack on the Board's decision to terminate them fails in this regard, also.

E. Third Claim for Relief: Right of Restoration

**{¶76}** Relators argue they are entitled to mandamus on their third claim for relief concerning the right of restoration, specifically asserting the Board failed to recall them to two vacant administrator positions, director of facilities and Swiss Hills Career Center director. Also, Relator Cyndi Brill also contends there were two vacant teacher positions for which she was qualified and applied but was not considered, including one filled by superintendent Ackerman's son.

**{¶77}** Relator Cyndi Brill and Relator Linda O'Connor maintain they were qualified for the position of director of facilities. A review and comparison of the list of requirements for this position and the qualifications of Brill and O'Connor demonstrates they were not qualified for that position. The second requirement for director of facilities is: "Job related experience with a minimum of five years of full-time professional experience in two or more of the following fields: building & grounds, facilities maintenance, HVAC or construction." Review of cover letters, resumes, and job applications submitted both by Brill and O'Connor for this position show that neither possessed this experience.

**{¶78}** Brill and O'Connor also maintain they were qualified for the position of career center director. The second requirement for that position states: "Possesses an appropriate valid Ohio Principal License or Supervisor License of Career and Technical

Education." Neither Brill nor O'Connor possess the required license. Relator James Ruble, who holds a principal's license, was recalled to the position but declined to accept.

**{¶79}** Lastly, Brill contends there were two vacant teacher positions for which she was qualified and applied but was not considered. As explained earlier, the Ohio Teacher Tenure Act, outlined in R.C. Chapter 3319, establishes separate and distinct guidelines for the employment of public school teachers and administrators, including superintendents, principals, and others. The Act highlights practical and statutory differences between teachers and administrators, particularly regarding their job security and employment continuity, or tenure.

**{¶80}** The differences between teachers and administrators, including those classified as "other administrators," become particularly evident in the context of a reduction in force. The Act contains two reduction-in-force statutes: R.C. 3319.17, which governs the process for reducing the number of teachers, and R.C. 3319.171, which pertains to the reduction of administrators.

**{¶81}** R.C. 3319.171(B)(3) requires that an administrative personnel suspension policy include "[p]rovisions requiring a right of restoration for employees whose contracts of employment are suspended under the policy if and when *any positions* become vacant or are created for which any of them are or become qualified." (Emphasis added.) Brill interprets "any positions" to include teaching positions. However, when considering the clear distinction between teachers and administrators in R.C. 3319.17 and R.C. 3319.171, we conclude the mandate in R.C. 3319.171 refers, and is applicable, solely to administrator positions.

**{¶82}** This distinction is recognized in the section of Policy 1540 addressing the right of restoration. The first paragraph provides:

> Administrators whose contracts are suspended pursuant to this policy and who were employed by the District previously under a continuing contract as a teacher or who had a continuing contract as a teacher elsewhere prior to being employed by the District as an administrator and who has served the District for at least two (2) years, shall be offered a position in the District as a classroom teacher in his/her area of certification/licensure, subject to the provisions of Policy 3131.

**{¶83}** Thus, in addition to acknowledging the Act's different treatment of teachers and administrators, Policy 1540 preserves the distinction, specifying that administrators with suspended contracts who previously held a continuing teaching contract either in the district or elsewhere are eligible for a teaching position in their area of certification or licensure, provided, however, they have served the district for at least two years. Under this policy, Brill had no right of restoration to a teaching position.

## IV. CONCLUSION

**{¶84}** The Court, having reviewed the pleadings, the briefs of the parties, the evidence and record in this case, hereby finds there are no genuine issues of material fact and the Board is entitled to judgment as a matter of law. Construing the evidence most strongly in favor of Relators, reasonable minds can only conclude that the Board acted within its statutory authority and in compliance with its duly adopted administrative personnel suspension policy.

**{¶85}** Regarding Relators' claim that the suspension policy is invalid, while Policy 1540 may not represent the ideal of a well-crafted and comprehensive administrative personnel suspension policy, the policy does comply, at minimum, with the statutory requirements of R.C. 3319.171.

**{¶86}** Concerning the claim that Relators were improperly suspended, Relators' arguments alleging pretextual motivations for their suspensions are unsupported by evidence and fail to create a genuine issue of material fact. The evolution in the Board's rationale for suspending the contracts, as evidenced through depositions and Board meeting minutes, does not show inconsistency or pretext. Moreover, the testimony cited by Relators fails to establish a material link between community perceptions or alleged bias and the Board's decision-making process.

**{¶87}** Regarding the Relators' claims as to the right of restoration, Relators do not demonstrate the Board failed to comply with the right of restoration as mandated by R.C. 3319.171(B)(3). The specific qualifications and licensure required for the positions sought by Relators were not met. As such, they were not entitled to the positions they sought.

**{¶88}** Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that Relators' Motion for Summary Judgment is DENIED, Respondent's Cross-Motion for Summary Judgment is GRANTED, and this original action in mandamus is DISMISSED.

Writ DENIED. Any and all pending motions and unresolved filings are hereby dismissed as moot.

**{¶89}** IT IS FURTHER ORDERED, pursuant to Civ.R. 58, that the Clerk of the Monroe County Court of Appeals shall immediately serve notice of this judgment upon all parties, including unrepresented or self-represented parties, and make a note of it on the docket. Costs assessed to Relators.

**JUDGE CHERYL L. WAITE**

**JUDGE CAROL ANN ROBB**

**JUDGE WILLIAM A. KLATT,**
**TENTH DISTRICT COURT OF APPEALS,**
**SITTING BY ASSIGNMENT (RETIRED)**