

MELANIA SUCHANEK, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 RAMAPO INDIAN HILLS REGIONAL :
 HIGH SCHOOL DISTRICT, :
 BERGEN COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a tenured teacher holding an instructional certificate with an endorsement in Russian, and a vocational certificate in Personal or Service Occupations: Food Production – was employed by the respondent Board from the 2002-2003 through the 2006-2007 school years as a part-time teacher of Russian. From February through June of 2005, petitioner was also assigned to teach two food-services classes in the Family and Consumer Science program as a long-term substitute for the permanent teacher, who was out on disability. This assignment was made based on petitioner’s possession of a substitute certificate; because she had been substituting for other courses; and because she had some food background – though not the required instructional certificate. Petitioner’s position as a Russian instructor ended when the district eliminated its Russian language program for the 2007-2008 school year. Petitioner contends that she was improperly terminated in June 2007 in violation of tenure laws.

The ALJ found that: entitlement to tenure is based on working in a position for which a certificate is required, for the requisite period of time, and under the appropriate certificate; petitioner’s endorsement of Teacher of Production, Personal or Service Occupations: Food Production does not qualify her to teach in the Family and Consumer Science position to which she claims tenure. Accordingly, the ALJ recommended dismissal of the appeal.

The Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

November 19, 2008

OAL DKT. NO. EDU 11576-07
AGENCY DKT. NO. 263-9/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner’s exceptions and the reply thereto by the Board of Education (Board), both duly filed pursuant to *N.J.A.C. 1:1-18.4*.

In her exceptions, petitioner reiterates the arguments of her post-hearing brief (at 11-14), contending that her certification: 1) is, in fact, appropriate because it encompasses the subject matter of food and its preparation; and 2) was, furthermore, deemed sufficient by the Board to have her teach the courses at issue during the 2004-05 school year. Therefore, according to petitioner, an overly rigid application of certification rules – as was rejected by the court in *Robert Schmidt v. Board of Education of Weehawken, Hudson County, 1984 S.L.D. 2018* – cannot be permitted to thwart her tenure rights herein. (Petitioner’s Exceptions at 1-3)

In reply, the Board reiterates that petitioner’s assignment in 2004-05 represented an attempt to provide, from among district teaching staff, a long-term substitute with at least some background in food preparation to replace the regularly assigned teacher during an

extended illness, and that such service cannot now be used as a basis for petitioner to claim a position for which she does not hold the requisite certificate. The Board further posits that, to the extent petitioner is challenging the Department of Education's determination that home economics courses cannot be taught by persons holding solely vocational certification – a determination the Board was obliged to follow – such challenge is appropriately directed against the Department, which should have been named as a necessary party. (Board's Reply at 1-3)

Upon review, the Commissioner is satisfied that the Administrative Law Judge (ALJ) fully and fairly considered the arguments of the parties in light of the facts and law of this matter, and correctly concluded based on this analysis – as set forth at length in the Initial Decision at 6-12 – that petitioner is not entitled to the position she seeks because she lacks appropriate certification for it.¹

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2008

Date of Mailing: November 19, 2008

¹ In so holding, the Commissioner notes and rejects the Board's contention – raised for the first time in reply exceptions – that it was necessary for petitioner to have named the Department of Education as a party in this matter. Rather, the Commissioner has the ultimate administrative authority – as did the State Board of Education prior to enactment of *P.L. 2008, c. 36* – to determine appropriate certification, so that joining of the Department or any office thereof is neither necessary nor appropriate in a matter of this type. See, *John Zachau v. Burlington County Vocational and Technical Schools, Burlington County*, State Board Decision No. 7-95, decided September 4, 1996.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.