

DEBORAH PERRI, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF BELLEVILLE, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner contends that she was tenured in the position of Director of Student Services, the title under which she was employed from 1998 until 2006. Petitioner alleges that her tenure rights were violated when the Board 1) reassigned her to the title of Supervisor of Pupil Personnel Service/Guidance following a review of certificated staff assignments/titles by the New Jersey Department of Education in the Fall of 2006, and 2) reduced her salary although her duties remained the same.

The ALJ found, *inter alia*, that: the title of Director of Student Services is not a recognized title; “director” is not a position enumerated in *N.J.S.A. 18A:28-5*, and therefore is not separately tenurable; regulations clearly distinguish between the endorsements for director of school counseling services and director of student personnel services – which are endorsements on the educational services certificate – and the separate and distinct endorsements for a school administrator or principal, which are endorsements on the administrative certificate; and petitioner did not (and does not) hold the endorsement required to serve in a director position with district-wide supervisory responsibility over a guidance department while employed as the Director of Student Services. The ALJ concluded that petitioner could not have acquired tenure because tenure protection is limited to staff members who hold the appropriate certificate issued for their position by the State Board of Examiners, and that the Board’s actions – eliminating petitioner’s former unrecognized title, appointing her to a newly created supervisory position for which she was properly certified, and determining her compensation in accordance with the supervisor’s salary guide based on her length of service – were consistent with the tenure/seniority requirements and other applicable law. The ALJ recommended that the petition be dismissed.

The Commissioner adopted the Initial Decision with modification. The Commissioner concurred that the petition should be dismissed for the reasons stated by the ALJ; however, the Commissioner also found that petitioner’s duties in the new position of Supervisor of Student Personnel Services/Guidance continue to fall within the scope of the director of school counseling services endorsement – which petitioner does not hold – and ordered the Board to take action as is necessary to conform its provision of student personnel/guidance services to applicable law governing staff certification, subject to review and approval by the Acting Executive County Superintendent.

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

September 10, 2008

OAL DKT. NO. EDU 01395-07
AGENCY DKT. NO. 416-11/06

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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 timely exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4. The respondent Board of Education (Board) did not reply to petitioner’s exceptions.

In her exceptions, petitioner asserts that the conclusions of the Administrative Law Judge (ALJ) are in error, reiterating her contention that the title of director is a recognized one which she was (and is) qualified to hold by virtue of her initial principal/supervisor and subsequent school administrator certification, so that she attained tenure in the position of director and the Board could not simply change her title from director to supervisor and reduce her salary. Petitioner again contends that the position of director is clearly addressed – and treated as tenurable – in certification and seniority rules, and a director’s specific assignment to “student services” can alter neither the basic scope of the position’s tenure rights (as opposed to seniority rights) nor the certification required to hold it, i.e., the principal or school administrator endorsement on the administrative certificate. Petitioner also objects to the

Initial Decision’s failure to address the fact that she is performing the same duties as supervisor that she did as director, asserting that the “title gamesmanship” at work here enabled the Board to “strip petitioner of the protections afforded by tenure and reduce her salary by \$5,850.00 while requiring her to work the same 12-month contract and perform the same duties that she performed as a director.” (Petitioner’s Exceptions at 1-11, quotation at 10)

Upon review, the Commissioner adopts the Initial Decision of the OAL with modification as set forth below.

Initially – for the reasons set forth at length in the Initial Decision – the Commissioner fully concurs with the ALJ that petitioner’s service as Director of Student Services was in an unrecognized title and that petitioner did not possess the requisite certification for the appropriate recognized title, so that she could not obtain tenure and has no entitlement to the relief she seeks in this matter. The Commissioner further concurs that the Board was required by applicable law to eliminate its unrecognized directorship, and that creating the recognized position of Supervisor of Student Personnel Services/Guidance and assigning petitioner to it was – on its face – a permissible option for the Board in seeking to address the concerns raised by the County Superintendent.

However, the Commissioner cannot ignore that – as observed by petitioner, albeit for different reasons – the duties of the district’s newly created supervisory position (Exhibit J-7) are identical to those of the abolished directorship (Exhibit J-4). Consequently, under the circumstances operative herein, such duties – notwithstanding the title of the position – continue to fall substantially within the scope of the director of school counseling services endorsement and cannot be performed by staff without the requisite certification. Therefore, in order to comply with applicable rules and regulations – as set forth in the Initial Decision at 11-13 – the

Board must either reform the duties of its Supervisor of Student Personnel Services/Guidance position to be consistent with the lesser levels of responsibility appropriate to nonspecialized certification, or – if the Board wishes to maintain a position embodying the higher-level duties previously assigned to the Director of Student Services and now assigned to the Supervisor of Student Personnel Services/Guidance – such position must be appropriately titled and staffed.

Accordingly, for the reasons expressed herein, the Initial Decision of the OAL is adopted, with modification, as the final decision in this matter. The petition of appeal is dismissed, and the Belleville Township Board of Education is directed to take such action as is necessary to conform its provision of student personnel/guidance services to applicable law governing staff certification, subject to review and approval by the Acting Executive County Superintendent.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 10, 2008

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