

#326-09 (OAL Decision: Not available online)

CAROLYN MACCHIA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 BAYONNE, HUDSON COUNTY AND :
 DR. TIMOTHY BRENNAN, ACTING :
 EXECUTIVE COUNTY SUPERINTENDENT :
 FOR HUDSON COUNTY, NEW JERSEY :
 STATE DEPARTMENT OF EDUCATION, :
 :
 RESPONDENTS. :
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SYNOPSIS

Petitioner – formerly a tenured teacher of television technology in respondent’s district, whose position was abolished due to a reduction in force – claimed that the decision of the respondent Board to appoint a non-tenured individual to an in-school suspension monitor position for the 2007-2008 school year, instead of appointing petitioner to this position, violated her tenure rights. Additionally, petitioner challenged the determination of the Interim Executive County Superintendent of Schools for Hudson County (Interim ECS) that the position of in-school suspension monitor is not an instructional position and that the County Substitute Certificate is appropriate for the position. Respondents contend that the petition should be dismissed because the Interim ECS’s determination was not arbitrary, capricious or unreasonable.

The ALJ found that: there are no genuine issues of material fact at issue here, and the matter is ripe for summary decision; the Interim ECS reviewed the duties of the in-school suspension position as an “unrecognized title” pursuant to *N.J.A.C. 6A:9-5.5(b)* and concluded that it is not an instructional position, but one of a monitor; petitioner’s contention that, as a matter of law, the position as created by the Board requires an instructional certificate is misplaced; the determination of the Interim ECS was based on a thorough review of the facts and was not arbitrary, capricious or unreasonable; and petitioner’s tenure rights have not been implicated. Accordingly, the ALJ granted summary decision to the Board, and dismissed the petition.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter.

<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>

October 8, 2009

OAL DKT. NO. EDU 5776-09
AGENCY DKT. NO. 85-4/09

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	:	
RESPONDENTS.	:	
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and replies of both respondents – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein.

Petitioner’s exceptions essentially replicate her brief in opposition to the Board’s Motion to Dismiss filed below. In that it is determined that all of petitioner’s allegations and arguments were fully considered and addressed in the Administrative Law Judge’s (ALJ) Initial Decision, they will not be revisited here.

Upon full consideration, the Commissioner concurs with the ALJ – for the reasons comprehensively presented in his decision – that summary decision is appropriately granted to the Board.

Accordingly the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2009

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* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).