

NOELLE JACQUELIN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF DENNIS, CAPE MAY :
COUNTY, CHRISTINE OSTRANDER, :
PRESIDENT OF THE BOARD OF :
EDUCATION, AND GEORGE PAPP, :
SUPERINTENDENT OF SCHOOLS, :
DENNIS TOWNSHIP SCHOOL DISTRICT, :
RESPONDENTS. :

SYNOPSIS

Petitioner – formerly employed by the respondent Board under tenure in the position of Director of Curriculum and Instruction/Principal – asserted that her tenure and seniority rights were violated when the school district failed to employ her in other director-level positions after her job was eliminated in a reduction in force (RIF) on April 30, 2010. Petitioner also alleged that a staff member (the intervenor) who holds the title of Director of Special Education/Child Study Team is unqualified to hold this position; petitioner claimed that she is entitled to this job, and also claimed re-employment rights to the position of principal. The respondent Board contends that petitioner was RIF'd in good faith, that she had no re-employment rights, and that the intervenor was properly qualified to hold the position of Director of Special Education/Child Study Team. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in this case, and the matter is ripe for summary decision; petitioner earned tenure under her administrative certificate in the position of Director of Curriculum and Instruction/Principal in December 2005; petitioner's job description indicates that she was a backup to the building principal when that staff member was absent, but that her primary duties were related to curriculum and instruction; whether petitioner actually performed the duties of principal sufficient to become tenured in that position is not developed in the instant record; the intervenor is qualified to hold the title of Director of Special Education/Child Study Team under her administrative certificate with a principal endorsement and instructional certificate with a Teacher of the Handicapped endorsement; there exists no principal vacancy to which petitioner could claim entitlement at the time the petition was filed, nor can it be determined from the instant record whether petitioner is tenured as a principal; any remaining claims for reemployment rights raised by petitioner are contained in a separate action filed with the Commissioner on July 2, 2012, and are not part of this proceeding. The ALJ concluded that summary decision in favor of respondent is appropriate; he denied petitioner's cross motion for summary decision, and ordered the instant appeal dismissed.

Upon independent review, the Commissioner concurred with the ALJ's findings and conclusions, and 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.

December 21, 2012

OAL DKT. NO. EDU 9335-10
AGENCY DKT. NO. 165-7/10

NOELLE JACQUELIN, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF DENNIS, CAPE MAY :
 COUNTY, CHRISTINE OSTRANDER, :
 PRESIDENT OF THE BOARD OF :
 EDUCATION, AND GEORGE PAPP, :
 SUPERINTENDENT OF SCHOOLS, :
 DENNIS TOWNSHIP SCHOOL DISTRICT, :
 :
 RESPONDENTS. :

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

The petitioner’s exceptions substantially reiterate the substance of her submissions at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously granted summary decision in favor of the Board. First, the petitioner maintains that the ALJ wrongfully determined that the intervenor, Joann Shilinsky, was qualified to hold the position of Director of Special Education/Child Study Team. The petitioner argues that the position of Director of Special Education/Child Study Team involves services at a district level and as a result the position requires an Administrator Endorsement pursuant to *N.J.A.C.* 6A:9-12.3(a). The petitioner emphasizes that since the intervenor does not hold an Administrator Endorsement, she is not qualified for the position. The petitioner maintains that when her position of Director of Curriculum and

Instruction/Principal was eliminated as a result of a reduction in force, she was entitled to the position of Director of Special Education/Child Study Team because she is a tenured director in the district and she holds the required Administrative Certificate with a School Administrator Endorsement.

In addition, the petitioner contends that the ALJ erred in not requiring the intervenor to submit to a deposition or having a hearing to determine the intervenor's level of responsibilities as the Director of Special Education/Child Study Team. The petitioner argues that there are genuine issues of material fact related to the intervenor's job duties, and the ALJ improperly decided the case on a motion for summary decision. Further, the petitioner asserts that the ALJ simply relied upon the May 3, 2000 job description of the position of Supervisor of Special Education/Child Study Team. The petitioner contends that the ALJ should have evaluated each of the job duties in the intervenor's job description to determine whether those duties were performed on a district-wide basis or on behalf of one school. Finally, the petitioner argues that the ALJ erroneously determined that Robert Schwartz was not disqualified from representing the intervenor.

In reply, the Board asserts that the petitioner's exceptions are a reiteration of the multiple filings submitted by the petitioner at the OAL. The Board relies on its submissions below, as well as the April 4, 2012 Order and the Initial Decision of the ALJ in support of its request that the Commissioner adopt the Initial Decision of the ALJ.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ that the position of Director of Special Education/Child Study Team held by the intervenor did not require a School Administrator Endorsement because the position was not a district-wide administrative position. The Commissioner is also in accord with the ALJ's conclusion that no principal vacancy existed at the time of the filing of the petition on

July 20, 2010, and as a result it is not necessary at this juncture to speculate as to whether the petitioner has obtained tenure as a principal.¹

With respect to the position of Director of Special Education/Child Study Team, it is undisputed that an Administrative Certificate is required for the position. The issue in this matter is whether a School Administrator Endorsement is required or whether a Principal's Endorsement is appropriate. The Commissioner finds the objections advanced in the petitioner's exceptions unpersuasive, largely reflecting arguments previously raised before the ALJ and clearly taken into account by him in rendering the April 4, 2012 Order and the Initial Decision.

Under *N.J.A.C.* 6A:9-12.3(a), if the position is a district-level administrative position, a School Administrator Endorsement is required. If the position, however, involves services that are generally provided to a school or other comparable unit within the district, under *N.J.A.C.* 6A:9-12.3(b), only a Principal Endorsement is required. Here, the job description of the Director of Special Education/Child Study Team indicates that the position is primarily a department head position, and there is nothing in the description that suggests it is the type of high level district-wide position that incorporates supervisory authority over high level managers.² Therefore, pursuant to *N.J.A.C.* 6A:9-12.3(b), the Director of Special Education/Child Study Team position requires only a Principal Endorsement. The intervenor has a Principal Endorsement and as such she attained tenure in that position in 2009. As a result, the

¹ Petitioner filed another petition on July 24, 2012 that is currently pending at OAL in the case of *Noelle Jacquelin v. Board of Education of the Township of Dennis, Cape May County*, OAL Dkt. No. EDU 9939-12. That matter involves a dispute related to the petitioner's assertion that she has tenure as a principal and as a result she had re-employment rights when the Board elevated the intervenor to acting principal in April 2012. The cases were not consolidated at the OAL; therefore, this final decision only addresses the scope of the issues raised in the instant matter.

² It should be noted that the Director of Special Education/Child Study Team is an unrecognized title and is subject to the requirements of *N.J.A.C.* 6A:9-5.5. This regulation requires school districts to submit a request for permission to use the proposed title to the county superintendent, along with a detailed job description. If the county superintendent approves of the title, the appropriate certification must be specified as well as the title under which the teaching staff member will accrue tenure and seniority rights.

petitioner was not entitled to the position of Director of Special Education/Child Study Team when her position was eliminated as a result of a reduction in force.

Accordingly, for the reasons expressed therein, the Initial Decision is adopted as the final decision in this matter.³

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2012

Date of Mailing: December 26, 2012

³ The ALJ's determination that Robert Schwartz was not disqualified from representing the intervenor in this matter was appealable only to the Director of Administrative Law and only on an interlocutory basis, not after issuance of the Initial Decision. *See, N.J.A.C. 1:1-14.10(j)5 and (l)*.

⁴ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.