

MALVINA KOHN, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF ORANGE, ESSEX COUNTY :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner had been employed under tenure by the respondent Board as a Supervisor of Mathematics for grades 7-12 until her position was abolished in a reorganization effective July 1, 2009. Petitioner holds a Teacher of Mathematics certificate and a Principal/Supervisor certificate. In the instant petition, filed in April 2012, she asserted tenure entitlement to the position of Director of Mathematics and Science with respondent's school district. The Board contended that petitioner has no legal claim to this district-wide administrative position, which requires a school administrator endorsement pursuant to *N.J.A.C. 6A:9-12.3(a)*.

The ALJ found, *inter alia*, that: the petitioner held her former position as a Supervisor of Mathematics under tenure; however, she is not qualified for the position of Director of Mathematics and Science because this is a district-wide position that – pursuant to *N.J.A.C. 6A:9-12.3(a)* – requires a school administrator endorsement, which petitioner does not hold; and petitioner is not entitled by virtue of her tenure status to the Director of Mathematics and Science position, as the job responsibilities of this position are of a qualitatively higher level than those of petitioner's former position as Supervisor of Mathematics. Accordingly, the ALJ concluded that the petition must be dismissed.

Upon thorough and independent review, the Assistant Commissioner, to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34*, 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.

<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>

OAL DKT. NO. EDU 8127-12
AGENCY DKT. NO. 118-4/12

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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 the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Malvina Kohn.¹

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 determined that she was not entitled to the Director of Mathematics and Science K-12 position. The petitioner cites to recent case law to support her argument that an administrator endorsement is not required for the Director of Mathematics and Science K-12 position because it is not a position that involves services as a district level administrative officer. Instead the petitioner maintains that the position is essentially a supervisory position that is primary responsible for the mathematics department. As a result, the petitioner contends that she is qualified for the Director of Mathematics and Science K-12 position because she has a principal and supervisor endorsement. Petitioner further asserts that as a tenured supervisor she has a tenure entitlement to the position over the non-tenured and unqualified staff member who the Board appointed to the position. Therefore, the petitioner requests that the Commissioner reverse the Initial Decision.

¹ The exceptions filed by the Board of Education were not considered because they were untimely filed on October 28, 2013. The exceptions included a letter as well as the envelope indicating that the original exceptions were returned to counsel for the Board because the proper P.O. Box was not placed on the label. In order for exceptions to be considered under such circumstances, however, a party must file a Motion for Leave to File Untimely Exceptions.

Upon a comprehensive review of the record in this matter, the Commissioner² concurs with the ALJ – for the reasons thoroughly stated in the Initial Decision – that the petitioner is not qualified for the Director of Mathematics and Science K-12 position because it is a district-wide administrative position that requires a school administrator endorsement under *N.J.A.C. 6A:9-12.3(a)*.³ It is undisputed that the petitioner does not hold an administrator endorsement, and despite her contentions to the contrary, the Commissioner is not persuaded that her principal or supervisor endorsement qualifies her to hold the Director of Mathematics and Science K-12 position. Moreover, it should be noted that the Initial Decision is consistent with *Noelle Jacquelin v. Board of Education of the Township of Dennis, Cape May County*, Commissioner Decision No. 486-12, decided December 21, 2012, where the Commissioner emphasized that high level district-wide positions that incorporate supervisory authority require a school administrator endorsement.⁴

The Commissioner is also in accord with the ALJ's conclusion that the petitioner is not entitled to the Director of Mathematics and Science K-12 position by virtue of her tenure rights because the Supervisor of Mathematics Grades 7-12 position that she previously held with the Orange District was not substantially similar to the Director of Mathematics and Science K-12 position. Accordingly, for the reasons expressed therein, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.⁵

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2013

Date of Mailing: November 6, 2013

² This matter has been delegated to the undersigned Assistant Commissioner pursuant to *N.J.S.A. 18A:4-34*.

³ It should also be noted that the ALJ included a footnote in the Initial Decision stating that Intervenor Terry Caliste, who held the position of Director of Mathematics and Science, was also unqualified to hold the position because he did not hold an administrator endorsement. Intervenor Caliste withdrew from the matter because – during the pendency of this case – his contract was not renewed by the District.

⁴ There is an exception for the position of Assistant Superintendent for Curriculum and Instruction. *See, N.J.A.C. 6A:9-12.3(b)*.

⁵ 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.