

KEITH ANDREWS, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
RAMAPO INDIAN HILLS REGIONAL :  
HIGH SCHOOL DISTRICT, :  
BERGEN COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner – who holds a standard instructional certificate with endorsements for Teacher of Students with Disabilities (TOSD) and Elementary School Teacher in Grades K-5 – was employed as a special education teacher at Indian Hills High School from 2005 until 2012; he worked as an in-class support teacher, supporting special education students in the regular classroom setting, and as a teacher in the resource center, where he taught in a variety of subject areas. Petitioner appealed the respondent Board’s decision to terminate him in August 2012 on the grounds that he was not properly certified to teach the high school subject area courses he had been teaching. Petitioner asserted, *inter alia*, that he was properly certified for the job and that the Board violated his tenure and seniority rights by terminating his employment. The Board contended that petitioner never earned tenure in its district because he does not hold the endorsement required for the courses he was teaching at the high school level.

The ALJ found, *inter alia*, that: the critical issue in this matter is whether or not petitioner held the appropriate certification for his position; tenure is achieved only by satisfying precise statutory and regulatory requirements; in November 2005, petitioner was issued standard certificates with endorsements as a TOSD and as an Elementary School Teacher, grades K-5; the TOSD endorsement authorizes teaching students with disabilities, but – unlike the former Teacher of the Handicapped (TOH) endorsement – is not a stand-alone certificate; rather, TOSD teachers must hold an instructional certificate with the corresponding endorsement for the grade level or subject area in which they are assigned to teach; based on stipulated facts and joint exhibits, it appears that the Board believed at the time petitioner was hired that he was in the process of getting his TOH certification, and may not have been aware until a QSAC analysis in 2012 that petitioner obtained the TOSD rather than the TOH; this does not alter the fact that petitioner did not meet the statutory requirements for tenure as a TOH; petitioner was primarily responsible for ensuring that he possessed the certification required for his position. The ALJ concluded that, inasmuch as petitioner was not properly certified to teach the subject matter areas that he taught at the high school level, he did not earn time toward tenure in respondent’s district. The ALJ recommended dismissal of the petition.

Upon a comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision 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.

August 21, 2014

OAL DKT. NO. EDU 16365-12  
AGENCY DKT. NO. 348-11/12

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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 and the Board of Education’s reply thereto. This matter involves a determination as to whether the petitioner, Keith Andrews, achieved tenure with the Ramapo Hills Regional High School District (District). The petitioner holds a standard instructional certificate with endorsements as a Teacher of Students with Disabilities and as an Elementary School Teacher in Grades K-5. The Administrative Law Judge (ALJ) determined that the petitioner did not obtain tenure with the District because he was not properly certified to teach the subject matter areas that he taught at a high school level, and that the District’s decision to terminate the petitioner was not a violation of his tenure/seniority rights.<sup>1</sup>

Upon a comprehensive review of the record in this matter,<sup>2</sup> the Commissioner is in accord with the ALJ’s finding – for the reasons stated in the Initial Decision – that the petitioner did not acquire tenure in the District because he had not satisfied the criteria for

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<sup>1</sup> The petitioner’s exceptions and the District’s reply thereto recited the arguments made below, which were fully addressed by the ALJ in the Initial Decision and do not need to be repeated here.

<sup>2</sup> The file did not include a transcript from the hearing conducted at the Office of Administrative Law on March 19, 2014.

obtaining tenure pursuant to *N.J.S.A.* 18A:28-5. The Commissioner also agrees with the ALJ's determination that the petitioner's reliance upon the District's actions does not excuse his failure to acquire the appropriate certifications.

It is well settled that under *N.J.S.A.* 18A:28-5, "an employee of a board of education is entitled to tenure if (1) she works in a position for which a teaching certificate is required; (2) she holds the appropriate certificate; and (3) she has served the requisite period of time." *Spiewak v. Summit Bd. of Educ.*, 90 *N.J.* 63, 74 (1992). Although the petitioner in this case was employed as a teacher with the District from 2005 until 2012, it is undisputed that he did not possess the content area endorsement necessary to teach the subject matter high school courses that he taught. Therefore, in the absence of holding the appropriate certificate, the petitioner did not meet the statutory requirements for obtaining tenure, and the fact that the District mistakenly assigned the petitioner to teach classes that he was not properly certified to teach does not negate those requirements.

Accordingly the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 21, 2014

Date of Mailing: August 22, 2014

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<sup>3</sup> 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.