

#155-15 (OAL Decision: Not Yet Available Online)

MELISSA KOLLAR, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE TOWN :
OF HARRISON, HUDSON COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner – formerly employed by the respondent Board as an athletic trainer – filed an appeal of her non-renewal in May 2013. Petitioner alleged that she attained tenure in September 2010, and was wrongfully terminated as a non-tenured staff member effective June 2013. The Board contended that petitioner was hired to the position of Athletic Trainer in October 2007, but was not issued the standard certificate for this position until January 2013; as such, petitioner had not attained tenure at the time of her non-renewal. Additionally, the Board asserted that the within appeal was late filed pursuant to *N.J.A.C. 6A:3-1.3(i)*, as petitioner became aware that she needed to obtain a standard certificate in November 2012, but did not file her petition until May 2013.

The ALJ found, *inter alia*, that: the petition was timely filed; prior to 1999, the Department of Education did not issue certification for school athletic trainers, who were initially under the purview of the New Jersey Board of Medical Examiners (NJBOME); petitioner began employment as a school athletic trainer before current licensing requirements went into effect in 1999, and had been lawfully working under a certificate issued by the NJBOME; *Breitwieser v. Jersey City*, 286 *N.J. Super.* 633 (App. Div. 1996) is the controlling authority in this case, stating that teaching staff members must hold “proper certificates in full force and effect”, and must have been employed by the board of education for three consecutive years in order to become tenured; further, in *Breitwieser*, service under an emergency certificate may be counted toward the service needed for tenure when that service is followed by the teacher obtaining a certificate in the same field as the emergency certificate; though she did not hold an emergency certificate, petitioner’s situation herein was sufficiently analogous to *Breitwieser* that her period of employment as an athletic trainer before the effective date of the statute requiring the new certificate for athletic trainer must count toward the acquisition of tenure, as specified in *N.J.S.A. 18A:28-4(b)*; and petitioner served in the position of athletic trainer for more than three consecutive years as required in *N.J.S.A. 18A:28-5(a)*. Accordingly, the ALJ concluded that: petitioner acquired tenure on January 11, 2013, the date on which the State Board of Examiners issued her School Athletic Trainer certificate; she was wrongfully terminated on June 30, 2013; and should be reinstated as a tenured staff member effective on January 11, 2013.

Upon comprehensive review, the Commissioner rejected the Initial Decision and dismissed the petition, finding, *inter alia*, that: *N.J.S.A. 18A:26-2.4* is the law that controls this controversy; while petitioner appears to have kept up-to-date with the requirements for maintaining her NJBOME license – which is one requirement for service as an athletic trainer – she appears to have made no attempt to keep current with educational certification requirements; no time toward tenure could begin to accrue to petitioner until January 10, 2013, when she was issued her Educational Services certificate with a School Athletic Trainer endorsement. Accordingly, when she was non-renewed on April 26, 2013, she had no tenure rights.

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.

May 12, 2015

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Before the Commissioner is a dispute regarding the tenure status of petitioner in 2013, at which time she was employed by respondent as an athletic trainer. After careful consideration of the record, including the transcripts of three hearing days in the Office of Administrative Law (OAL), the Initial Decision of the OAL, and respondent's exceptions to same, the Commissioner concludes that petitioner had not earned tenure at that time.

There is little controversy regarding the material facts of this case. Rather, the parties disagree about the significance of those facts, and the application of the relevant law. For example, there is no dispute about the fact that – prior to the 2007 commencement of petitioner's employment with respondent – petitioner had earned New Jersey instructional certificates with endorsements to teach health, physical education and driver education. She had also secured an athletic trainer license from the New Jersey Board of Medical Examiners (NJBOME), and a certification from the National Athletic Trainers Association (NATA).

Petitioner's first employment as an athletic trainer in a school district was in 1991, when she was hired by the Paterson School District. At that time, the New Jersey Department of

Education (NJDOE) did not issue certification for athletic trainers, and the New Jersey Board of Medical Examiners (NJBOME) only required that athletic trainers be “registered.” At some point subsequent to 1991, the NJBOME changed its policy concerning athletic trainers, and began to require that they obtain licenses, which petitioner did.¹

In 1997, petitioner left her employment with the Paterson school district. Shortly thereafter she had an accident which led to her doctor’s recommendation that she not work as an athletic trainer. The record indicates that petitioner’s next jobs were in the Passaic and Orange School Districts as a health and physical education teacher from 1999 to 2002, and from 2002 to 2007, respectively. (P-8) In 2006 petitioner apparently started *per diem* athletic trainer work at Essex Community College and decided to look for a full time job as an athletic trainer. (1T15)

Petitioner was appointed to the position of Athletic Trainer in respondent’s school district on or about October 15, 2007. (P-1) Petitioner testified that, at that time, respondent’s job description did not require an educational services certificate with an athletic trainer endorsement, and she was not asked to produce one. (P-2; 1T17-18) It is, however, undisputed that in 1999, a law had been enacted requiring school athletic trainers to hold educational services certificates with athletic trainer endorsements. *See, N.J.S.A. 18A:26-2.4; see also N.J.A.C. 6A:9-13.17* (now codified as *N.J.A.C. 6A:9B-12.17*).

It appears that at some point in 2010, the district focused on the certifications of its employees. It distributed forms to all staff members requiring them to update contact information and verifications concerning their certifications. On or about May 3, 2010, and again in September 2010, petitioner was given information update forms which asked for her contact information and her certifications. (R-6; R-10) On the forms, she filled in telephone

¹ The record indicates that petitioner let her NJBOME license lapse in March 2009, but reinstated it in June 2009. (R-23; 1T135-36)

numbers and emergency contact information. She did not correct the sections of the forms that stated that she held athletic trainer certification, because she believed that her NATA certification satisfied the inquiry. (1T60-61)

The Commissioner notes, however, that the update forms were designed to verify New Jersey educational certification. More specifically, they asked that the employees indicate whether their credentials were certificates of eligibility (CE), certificates of eligibility with advanced standing (CEAS), provisional certificates (PROV) or standard certificates (STAND CERT). Petitioner testified that she had not known what the above described certification abbreviations meant, and had never asked for clarification. (1T64) In fact, petitioner disclosed that, prior to 2012, she had never sought to ascertain what the DOE requirements for school athletic trainers were. (1T63) Nonetheless, she certified that what was set forth on the form, *i.e.*, that she held standard certification as an athletic trainer, was true. (1T65)

In May of 2010, petitioner's contract was not renewed, but she reapplied for the athletic trainer position and was rehired. Petitioner points out that in Superintendent Doran's June 25, 2010 letter to her advising her of her reappointment, he wrote that she would achieve tenure in the 2010-2011 school year. (P-3) The record indicates that petitioner served both that year and the following school year, *i.e.*, 2011-2012.

At the beginning of the 2012-2013 school year – on or about September 17, 2012 – petitioner was given and signed another update form. (R-11) This questionnaire had a more detailed format. On the second page it required an employee to designate the kind of certificate he or she held for each assignment. The types of certificates were fully identified at the bottom of the page and each was given a code number. For example, the code number for a certificate of eligibility was “7.” (R-11 at 2) Employees were also asked whether they obtained their

certificates via the traditional route or the alternate route. (*Ibid.*) As regards the position of athletic trainer, petitioner entered a “1,” the numerical code for standard certificate. (*Ibid.*)

Shortly after petitioner submitted the September 17, 2012 update questionnaire she was in an automobile accident, which precipitated workers compensation leave. (1T82-84) While she was on the workers compensation leave, Superintendent Doran advised her *via* certified letter, that respondent had discovered that she did not hold the required educational certificate for athletic trainer. (P-4) Petitioner was given sixty days paid leave to get the certificate and, at her request, respondent sent a letter to the New Jersey Board of Examiners (NJBOE) advising that petitioner would be employed, effective upon the issuance of her School Athletic Trainer certificate. (R-13; 1T92)

Petitioner testified that prior to Doran’s advisement, she did not know that School Athletic Trainer certification existed. (1T26) After receiving the November 9, 2012 letter from Doran, she did not call anyone at respondent’s school district or at the DOE; she just used the information attached to Doran’s letter to go on the internet and apply for certification. (1T89-91) On December 28, 2012, the NJBOE evaluated petitioner’s credentials and asked for proof of a bachelors degree from a regionally accredited college or university. (P-5) A delay in sending the proper transcripts to the NJBOE was caused by errors made by administrators at Montclair State College, 1T22, but petitioner’s Educational Services certificate with a School Athletic Trainer endorsement was issued on January 10, 2013. (P-6; R-28; R-30)

On Friday, January 11, 2013, petitioner met with Superintendent Doran and Assistant Superintendent Confessore, at which time petitioner was told that she was reinstated and that her tenure would start accruing when she returned to work on Monday, January 14, 2013. (1T99-100) At that meeting they also spoke of respondent’s incumbent job

description for school athletic trainer. Doran asked petitioner to look at other job descriptions that might be useful in improving it. (1T110) Doran wrote petitioner a letter dated January 11, 2013 memorializing the above mentioned meeting discussions, including the advisement that January 14, 2013 marked the onset of her tenure accrual. (P-7)

Petitioner testified that at her meeting with Doran and Confessore on January 11, 2013 she expressed disagreement that her tenure would only begin accruing on January 14, 2013. (1T99-100) She returned to work on January 14, 2013 and did not take any formal action regarding her belief that she was tenured; she did, however, speak with union representatives. (1T101-03) In April, petitioner received a “Rice letter” dated April 22, 2013 advising that her employment would be discussed at the respondent’s April 25, 2013 Board meeting.² (R-15) Subsequently, petitioner received a letter dated April 26, 2013 from Doran advising that her contract had not been renewed. (R-16)

The School Athletic Trainer position was posted on April 26, 2013, with May 3, 2013 as the application deadline. (R-18) A new job description was attached to the posting. (R-17) Petitioner testified that she was not aware of the posting until the deadline or shortly before same. (1T118-21) She told Athletic Director Kim Huaranga that she wished to apply, and Huaranga advised that the deadline had been extended. (1T121; 1T123) Petitioner also acknowledged receiving an email dated May 9, 2013 from Celia Mariano of respondent’s district (R-19) advising that the deadline to apply for the Athletic Trainer position had been extended to May 15, 2013. (1T123-25) Additionally, Doran testified that he had extended the application so that petitioner could apply. (3T89)

² Petitioner testified that she did not attend the meeting because it conflicted with her work schedule, and because a union member had told her that no one would be fired. (1T109)

Petitioner consulted a lawyer in May 2013. Subsequently, on May 14, 2013, petitioner both sent a petition to the Commissioner of Education and sent a letter to Doran stating: “I’m writing to express my interest in discussing the Athletic Training Position at Harrison H.S. for the 2013-2014 school year.” (R-21) Petitioner testified that she sent said letter by regular postal service mail – as opposed to using the district’s mail system. (1T123) Doran did not regard the letter as a bona fide application and did not respond, 3T91, nor did petitioner ever follow up on same. (1T163)

The law which controls this controversy is *N.J.S.A.* 18A:26-2.4, which provides in pertinent part: “To be eligible for appointment by a board of education as a school athletic trainer in any public school, an applicant shall possess an educational services certificate issued by the State Board of Examiners.” [Emphasis added.]³

When the law was enacted, the legislature included language which denoted that, for purposes of tenure eligibility, it did not intend to nullify the years of service which a certificated school athletic trainer may have accumulated prior to the 1999 law: “Notwithstanding the provisions of this section, any person who is employed as a school athletic trainer in a public school prior to the effective date of *P.L. 1999, c. 87 (C.18A:26-2.4 et al.)* may continue to be so employed pursuant to the provisions of *N.J.S.A. 18A:28-4.*”

³ See, also *N.J.A.C.* 6A:9-13.17:

- (a) The athletic trainer endorsement is required for service as a school athletic trainer in grades preschool through 12 pursuant to *N.J.S.A.* 18A:28-4(b).
- (b) To be eligible for the school athletic trainer endorsement, a candidate shall:
 - 1. Hold a bachelor's degree from a regionally accredited college or university; and
 - 2. Satisfactorily complete the requirements established by the State Board of Medical Examiners for registration as an athletic trainer pursuant to *N.J.A.C.* 13:35-10.
- (c) An emergency certificate is not available for this endorsement.
[Emphasis added.]

Thus, for example, if a school athletic trainer had begun employment in a district in 1990 and continued that employment beyond the August 1999 effective date of *N.J.S.A. 18A: 26-2.4*, all of his or her years of employment would count toward tenure – so long as the employee obtained an educational services certificate with a school athletic trainer endorsement.

The tenure statute, *N.J.S.A. 18A:28-4*, is not to the contrary. It provides that:

No teaching staff member shall acquire tenure in any position in the public schools in any school district or under any board of education, who is not the holder of an appropriate certificate for such position, issued by the State Board of Examiners, in full force and effect, except that no board of education shall terminate the employment or refuse to continue the employment or reemployment of ...

. . . b. a school athletic trainer appointed prior to the effective date of *P.L. 1999, c.87 (C.18A:26-2.4 et al.)* for the reason that the school athletic trainer is not the holder of a certificate, provided that the person is registered with or licensed by the New Jersey State Board of Medical Examiners, as applicable, as an athletic trainer. That person shall be issued the new certificate without being required to meet any additional qualifications, and any periods of employment as an athletic trainer prior to the effective date of that act shall count toward the acquisition of tenure to the same extent as employment after he effective date of that act.

[Emphasis added.]

The foregoing statute reiterates the requirement that each teaching staff member must hold the proper certificate/endorsement. A provision added in 1999 also ordained that:

1) school athletic trainers who began service prior to 1999 and held the appropriate license from the NJBOME could not be terminated simply because they did not hold an educational services certificate with a school athletic trainer endorsement, and 2) their service prior to 1999 could be counted toward tenure. The new provision permitted the NJBOE to issue new endorsements to such school athletic trainers without requiring any additional qualifications.

What the new provision did not do was allow uncertificated employees to serve as school athletic trainers. The prohibition against penalizing school athletic trainers for not being

certificated prior to 1999 – by terminating their employment or extinguishing their tenure – did not and does not bestow upon them a waiver from their responsibility to obtain the appropriate certificate/endorsement. Each teaching staff member has "primary responsibility" for obtaining appropriate certification. *William Feldman v. Board of Education of the Township of Branchburg, Somerset County and Rebecca Gensel*, Docket No. A-2736-11T3 (App. Div., February 27, 2013) at 19-20. School officials share responsibility for verifying proper certification, but it is each individual educator's obligation to obtain any necessary **certificates**. *Sydnor v. Englewood Bd. of Ed.*, 1976 S.L.D. 113, 117 (Comm'r 1976). While petitioner appears to have kept up-to-date with the requirements for maintaining her NJBOME license – which is one of the requirements for service as a school athletic trainer – she appears to have made no attempt to keep up with educational certification requirements, even when she was asked to fill out "update forms" which used terminology which should have, at minimum, alerted her to the possibility that additional qualifications were necessary for her position and prompted further inquiry.

The present case has nothing to do with the 'tacking' of service under emergency or provisional certificates. Petitioner held no certificate at all until January 10, 2013. Only then could tenure begin to accrue. The Commissioner also notes that petitioner could have reapplied for the athletic trainer position in respondent's district. The record indicates, in fact, that the application deadline was extended to May 15, 2013 for her benefit. Yet petitioner did not apply. The only communication from her was a three sentence letter expressing her "interest in discussing" the position, which letter was dated one day before the application deadline.⁴

⁴ As it was sent by regular mail, the Commissioner cannot conclude that respondent received it by the application deadline.

Accordingly, the Commissioner rejects the Initial Decision of the Office of Administrative Law and dismisses the petition.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2015

Date of Mailing: May 12, 2015

⁵ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).