

JONNA CALVANICO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CARLSTADT-EAST RUTHERFORD REGIONAL :
SCHOOL DISTRICT, BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – who has been employed since 1986 in various teaching and guidance positions within the respondent Board’s school district – appealed the Board’s determination not to appoint her to the position of Supervisor of Guidance, alleging that this action violated her tenure and seniority rights. Petitioner had been employed as the Supervisor of Guidance and Special Education from 2006 to 2009, when the position was eliminated and she was reassigned as the Pupil Personnel Service/Testing Coordinator. In 2015, the Board created a new position – with expanded duties – under the Supervisor of Guidance title; the new, district-wide position required applicants to hold educational services certificates with both a Supervisor endorsement and a Director of School Counseling Services endorsement. The Board contended that it properly denied petitioner the new position because she did not hold the proper certificate, nor did she have experience in the expanded duties which now fall under the reconstituted Supervisor of Guidance position.

The ALJ found, *inter alia*, that: the issue herein is whether petitioner’s tenure rights were violated when the Board selected another candidate for the position of Supervisor of Guidance; petitioner holds certificates as a Teacher of English, Guidance Counselor (Student/Pupil Personnel Services), and Supervisor; petitioner had applied for a Director of School Counseling certificate, but did not receive it; when the Board re-established the Supervisor of Guidance position, the posting initially stated that a Director certificate was preferred but not required; the job description was then revised to state that the Director certificate was a requirement for the position; it is undisputed that petitioner does not have a Director certificate; and petitioner’s experience in a former position which was entitled Supervisor of Guidance did not give her tenure in the Board’s re-established position bearing the same title because the revised position has significant additional duties that petitioner does not have experience with. The ALJ concluded that petitioner’s prior position as department chairperson for guidance and special education was not substantially similar to the re-established, district-wide position of Supervisor of Guidance; further, the Board’s requirement of a Director certificate for the re-established position of Supervisor of Guidance was not arbitrary or capricious. Accordingly, the ALJ dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusions. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and 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.

OAL DKT. NO. EDU 17631-15
AGENCY DKT. NO. 271-9/15

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 _____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ), for the reasons thoroughly set forth in the Initial Decision, that the Board did not violate petitioner’s tenure rights when it created the Supervisor of Guidance position and required a Director of School Counseling certificate for the position – which petitioner does not possess – because the re-established Supervisor of Guidance position is not substantially similar to petitioner’s prior position, as it includes additional duties and responsibilities previously not required of, or performed by, the petitioner. Furthermore, the Board’s requirement of a Director certificate was not arbitrary or capricious because it complied with the regulation in effect at the time of the hiring.

¹ Petitioner’s name has also been listed as “Joanna” on various documents in the record, including the Initial Decision. It appears, however, that petitioner’s correct name is as reflected in this caption.

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

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2016

Date of Mailing: December 21, 2016

* 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.