

EDU #12133-99
C # 258-01
SB # 33-01

PASSAIC EDUCATION ASSOCIATION, :
PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION
V. : DECISION ON MOTION
BOARD OF EDUCATION OF THE CITY OF :
PASSAIC, PASSAIC COUNTY, :
RESPONDENT-APPELLANT, :
AND :
EDWARD ROWBATHAM, MARYALLYN :
FISHER, MINNIE HILLER AND SHERRI :
GRIER, :
INTERVENORS. :
_____ :

Decided by the Commissioner of Education, August 16, 2001

Decided by the State Board of Education, December 5, 2001

For the Respondent-Appellant and Intervenors, Sills, Cummis, Radin,
Tischman, Epstein & Gross (Cherie Adams Maxwell, Esq., of
Counsel)

For the Petitioner-Respondent, Zazzali, Fagella, Nowak, Kleinbaum &
Friedman (Richard A. Friedman, Esq. and Kathleen A. Naprstek,
Esq., of Counsel)

On December 5, 2001, the State Board of Education affirmed the decision of the
Commissioner of Education, agreeing that in this particular instance the duties attached
to the positions of dropout prevention officer and health and social services coordinator

– which had been mandated for Abbott districts as a result of the N.J. Supreme Court’s decision in Abbott v. Burke, 153 N.J. 480 (1998) – were of such character as to require that the individuals serving in them possess appropriate certification in order to be qualified to perform such functions. Accordingly, we concurred with the Commissioner’s directive that the Passaic Board submit the job descriptions for the positions at issue to the county superintendent for determination of the appropriate certification and position titles.

In so doing, we stressed that our affirmance of the Commissioner’s decision was based on his findings with respect to the job descriptions as they were developed and submitted by the Passaic Board. That being the case, we declined to speculate as to whether the Board could have developed job descriptions for assignments that would have adequately fulfilled the functions of the positions at issue but which would not have been of such character as to require certification. We therefore modified the Commissioner’s decision to eliminate any suggestion that the Passaic Board could now avoid the certification requirements established by the Commissioner’s decision merely by revising the job descriptions that were the basis for that decision.

The Passaic Board filed an appeal to the Appellate Division from that decision. On December 26, 2001, the Board filed a motion with the State Board for a stay of our decision, contending that it is likely to succeed on the merits of its appeal and that it will suffer irreparable harm if a stay is not granted. The Passaic Education Association filed a brief in opposition to that motion.

After a careful review of the parties’ submissions, we find that the Passaic Board’s application fails to meet the standards that would entitle it to relief under Crowe

v. De Gioia, 90 N.J. 126 (1982). In particular, we find that the Board has not demonstrated the likelihood of prevailing on the merits of its claim. In our decision of December 5, 2001, we found that “the functions to be served by these assignments and the duties attached to them are such that there is no question but that the positions at issue are of such character as to require the individuals serving in them to possess appropriate certification in order to be qualified.” State Board’s Decision, slip op. at 2. The Board has not provided anything in its instant motion that would alter our conclusion in that regard.

We therefore deny the Passaic Board’s motion for a stay.

Debra Casha recused herself.

February 6, 2002

Date of mailing _____