

EDU # 23-03
C's #107-03
SB # 8-03

DOLORES SANCHEZ, :
 :
 PETITIONER-RESPONDENT, :
 :
 V. : STATE BOARD OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF CAMDEN, CAMDEN :
 COUNTY, :
 :
 RESPONDENT-APPELLANT. :
 :

Decided by the Commissioner of Education, March 6, 2003

Decision on motion by the Commissioner of Education, April 9, 2003

For the Petitioner-Respondent, Jennings Sigmond (Mary Crangle, Esq., of Counsel)

For the Respondent-Appellant, The Murray Law Firm, L.L.C. (Karen A. Murray, Esq., of Counsel)

Dolores Sanchez (hereinafter "petitioner") is a tenured principal employed by the Board of Education of the City of Camden (hereinafter "Board"), one of the school districts entitled to relief under the New Jersey Supreme Court's decision in Abbott v. Burke, 153 N.J. 480 (1998). From July 1999 to August 1, 2002, petitioner was the principal at the Parkside Elementary School. At that time, she was reassigned to the Challenge Square Academy to serve in the position title of "Acting Principal." After the start of the 2002-03 school year, the Challenge Square Academy was closed, and, on

November 26, 2002, petitioner was notified by the district superintendent that she was being transferred to serve in the position title of “Acting Vice Principal” in order to fill an unexpected vacancy. Petitioner challenged her transfer by filing a petition of appeal with the Commissioner of Education accompanied by an application for emergent relief, claiming that the transfer was in violation of her tenure rights.

On February 28, 2003, an Administrative Law Judge (“ALJ”) recommended that the Commissioner deny petitioner’s application for emergent relief. In making this recommendation, the ALJ found that the issue presented was whether an Abbott district was required to appoint a tenured principal whose school had been closed mid-year to another principal title immediately when the district was in the midst of reorganizing. Concluding that on balance the district was not required to do so, the ALJ reasoned that it appeared precipitous to conclude in the context of petitioner’s application for emergent relief that the tenure laws could not be defeated by the regulations applicable to Abbott districts that specify the process for selecting principals in those districts.

The Commissioner rejected the ALJ’s recommendation, concluding that petitioner had met the standard for granting emergent relief established by Crowe v. De Gioia, 90 N.J. 126 (1982). In so concluding, the Commissioner found that the material facts were not in dispute and that the legal right underlying petitioner’s tenure claim was well-settled. Stressing that there was no disagreement between the parties that petitioner was entitled under the tenure laws to be placed in an assignment within her tenured position of “principal,” the Commissioner rejected the Board’s claim that the regulations implementing the New Jersey Supreme Court’s decision in Abbott v. Burke altered the Board’s obligation to assign petitioner as required by the tenure statutes. In

this respect, the Commissioner stressed that it was axiomatic that, as creatures of the Legislature, both the Department of Education and district boards must act within the authority delegated to them by that body. Accordingly, in the absence of legislative action that altered the application of the tenure laws in Abbott districts, the tenure rights set forth in statute are controlling in such districts with respect to the employment rights of tenured teaching staff members. That being the case, and because the matter did not present any issues requiring a plenary hearing, the Commissioner held that his decision granting relief to petitioner constituted his final decision in the case.

On appeal, the Board argues that the Commissioner improperly granted emergent relief to petitioner because she did not establish that she would suffer irreparable harm if she was not afforded relief. The Board also argues that there is not a clear legal entitlement underlying petitioner's claim in that there have been no decisions rendered with respect to the effect of the Abbott regulations on a tenured principal claiming the right to a permanent appointment as a principal. Finally, the Board contends that the Commissioner erred in concluding that there were no material facts in dispute, arguing in this respect that whether petitioner had suffered any loss of reputation was in dispute and that there were factual issues as to the effect of petitioner's appointment so late in the school year on the continuity of services to the students.

After careful consideration of this matter, we reject the Board's arguments as being entirely without merit and, without hesitancy, affirm the decision of the Commissioner. Like the Commissioner, we find that there are no material facts in dispute and that summary decision was the appropriate disposition for this case. In so

concluding we reiterate that, as the Commissioner stressed, in the absence of legislative action, the Abbott regulations cannot be read to alter the operation of the education statutes in the school districts to which those regulations apply. In this instance, the requirements of those statutes are clear. N.J.S.A. 18A:28-6 prohibits the transfer of a tenured teaching staff member to a another position without his consent. The express language of N.J.S.A. 18A:28-5 is clear that the positions of “principal” and “vice-principal” are separately tenurable positions. Nelson v. Board of Educ. of Old Bridge, 148 N.J. 358 (1997). Moreover, N.J.S.A. 18A:28-10 requires that any dismissal resulting from a reduction in staff necessitated by a reorganization of the district must be based on seniority, and it is well established that a tenured teaching staff member must be retained in his position in preference to any non-tenured individual serving in such position. Capodilupo v. West Orange Bd. of Ed., decided by the State Board of Education, 1986 S.L.D. 3010, aff’d, 218 N.J. Super. 510 (App. Div. 1987), certif. den., 109 N.J. 514 (1987). That being the case, the Board was required to reassign petitioner to another principalship when the Challenge Square Academy was closed and its staff reassigned in November 2002. Therefore, for the reasons expressed herein as well as those expressed by the Commissioner, we affirm the Commissioner’s directive requiring the Board to immediately assign petitioner to a principalship.

June 4, 2003

Date of mailing _____