

258-01

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

SYNOPSIS

Petitioning Association sought a determination that the Board violated the tenure and seniority rights of the Association’s members by not filling certain positions, newly created by statute, with staff members holding appropriate certification from the State Board of Examiners.

The ALJ determined that the Passaic positions of dropout prevention officer and health and social services coordinator did not require certification since, in promulgating the *Abbott* regulations, the *Abbott* positions were not included within the certification and endorsement sections of Title 6, nor was any language included within Title 6A requiring certification and endorsement for these positions. Moreover, the ALJ found that the legislative history underlying the *Abbott* regulations directly addresses the issue of certification stating that the Department will provide guidance but it is a local district decision to determine job qualifications because the individuality of the *Abbott* districts must be preserved. Petition was dismissed.

The Commissioner set aside the Initial Decision of the ALJ. The Commissioner concluded that although this Board and other *Abbott* districts may structure the positions of dropout prevention coordinator and coordinator of health and social services, as authorized by *N.J.A.C. 6A:24-1.4(h)*, in accordance with local need, they must nonetheless, when establishing the duties assigned to the positions, be mindful that the duties may be of such a character as to require the individual assigned to the position to hold certification. Thus, in the absence of a revision to the within job descriptions that would eliminate need for certification, the Board was directed to submit within 20 days of the date of this decision, the job descriptions for the positions in dispute to the County Superintendent for review pursuant to *N.J.A.C. 6:11-3.3(b)* and this decision.

August 16, 2001

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 12133-99
AGENCY DKT. NO. 317-10/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were submitted in accordance with *N.J.A.C. 1:1-18.4*.

Petitioner’s exceptions reiterate its argument, as presented before the OAL, that the Board is required to fill both positions in question with individuals holding appropriate certification from the New Jersey State Board of Examiners because the job duties “clearly demand” appropriate certification. (Petitioner’s Exceptions at 2) Notwithstanding that both positions focus solely upon an at-risk student population rather than the general student population, petitioner underscores that the duties assigned to the dropout prevention coordinator are the same as those performed by individuals working as guidance counselors, and the duties assigned to the coordinator of health and social services are the same as those performed by

individuals working as school nurses. (*Id.* at 5-6) Furthermore, the petitioner argues, the absence of certification language in the authorizing regulation is not determinative, since *N.J.A.C.* 6A:24-1.4(g) is similarly silent with respect to certification requirements for the full-time technology coordinator; yet, it is undisputed that certification is required for that position. (*Id.* at 7-8) The petitioner urges the Commissioner to abide by this State’s public policy respecting certification as an essential, minimal criterion for employment as a teaching staff member, and recognize that there is a compelling need for this standard in urban districts with serious educational deficiencies. (*Id.* at 9)

Upon careful and independent review of the record in this matter, the Commissioner determines to set aside the Initial Decision of the Administrative Law Judge (ALJ), for the reasons set forth below.

The Board correctly argues that the resolution to the dispute herein rests on an analysis of the duties assigned to the positions of coordinator of health and social services and dropout prevention officer. That analysis, however, need not proceed, as the parties suggest and the Initial Decision recommends, with a comparison of the duties of the new positions vis-à-vis the duties of existing positions in the District, in order to determine whether the new positions “correspond” with these existing positions so as to require certification (Petitioner’s Exceptions at 5-7), or whether the new positions are sufficiently “separate and distinct” to avoid the certification requirements imposed upon existing positions. (Board’s Letter Brief in Opposition to Cross-Motion for Summary Decision at 2-3)

Rather, as the State Board of Education has directed:

Whether or not an *** assignment is a teaching staff assignment requiring an [appropriate] certificate turns upon the specific duties to be performed in that particular assignment, requiring assessment of whether the employment is of such character as to require that

the individual assigned thereto hold appropriate certification in order to perform such functions.***” *David Dowding v. Board of Education of the Township of Monroe, Middlesex County*, 1990 S.L.D. 1711, 1712. See also, *Guttenberg Education Association v. Leo Klagholz, Commissioner of Education and Board of Education of the Borough of Guttenberg, Hudson County*, State Board decision March 3, 1999, slip. op. at 6.

Additionally, “[p]ursuant to *N.J.S.A.* 18A:26-2, the requirement of certification applies to any person who is employed by a district board of education to perform duties that are regulated through certification rules pursuant to this chapter.***” *N.J.A.C.* 6:11-3.1(a). (See, also, *Edison Township Education Association v. Edison Township Board of Education*, 94 *N.J.A.R.2d* (EDU) 592, 594, wherein the State Board finds, “Whether or not the duties performed by individuals providing services in a school district are of such character as to require certification issued by the State Board of Examiners is determined by the rules that have been adopted by the State Board of Education.”)

The Board acknowledges that “[t]he primary function of the Dropout Prevention Officer is to work with staff, parents, and students to identify those students who are at risk of dropping out of school and to intervene by referring students to appropriate services to prevent their dropping out of school.” (Board’s Letter Brief in Opposition to Cross-Motion for Summary Decision at 7) The position is described in nature and scope as one requiring “active participation and interaction with students and their families, including home visits and referrals to appropriate government and local agencies when necessary.” (*Id.* at Exhibit B, p. 1) Indeed, despite the Board’s claim that the dropout prevention officer is “not directly offering health or guidance services” *id.* at 3, among the functions and responsibilities noted in the job description, the dropout prevention officer is expected to “[c]ounsel students regarding attendance, seeking cooperation, building trust, and identifying any problems that may require intervention by other

school personnel and community agencies.” (*Id.* at Exhibit B, p. 2) The dropout prevention officer is also required, *inter alia*, to:

6. Conduct in-home visits to follow up with individual student progress.

7. Meet with and work with student’s parents/guardians/family to discuss attendance/school problems and seek assistance from community providers.

8. Refer students and family members to appropriate service agencies to help to keep student in school.

12. Maintain contact with parents/guardians/family to follow up with students’ progress. (*Ibid.*)

The Commissioner recognizes that the State Board of Education requires an educational services certificate for persons who counsel “teachers, students, and parents regarding personal, social, educational and vocational plans and programs; and [who develop] cooperative relationships with community agencies in assisting children and families,” *N.J.A.C.* 6:11-11.11(a), as well as for persons fulfilling social service functions in the district, *N.J.A.C.* 6:11-11.8. Thus, notwithstanding that there may be no comparable position in the District, the Commissioner concludes that, based on the job description on record, the duties of the dropout prevention officer are of “such character” as to require that the individual assigned thereto hold an appropriate educational services certificate in order to perform such functions. *Dowding, supra*, at 1712; *Guttenberg, supra*, slip. op. at 6.

Employing a similar analysis, the Board contends that the primary function of the coordinator of health and social services is to ensure “that students are afforded the health and social services that they need in order to benefit from instruction in the Core Curriculum Content Standards and to succeed in school.” (Board’s Letter Brief in Opposition to Cross-Motion for Summary Decision at 7) The nature and scope of the position establish that the coordinator

serves as an advocate for students' health and well-being and interacts with other staff members and with community providers of health and social services to provide students with access to such services. Inherent in the position are the responsibilities for planning, sending students for health screenings, maintenance of health records, protocols for the ill and injured while in school, instruction in sound health practices, coordination of services, program evaluation, personnel management, and financial management. *** (*Id.* at Exhibit A, p. 1)

Again, notwithstanding the Board's claim that the coordinator of health and social services is not directly providing health or guidance services, *id.* at 3, among the functions and responsibilities noted in the job description, the coordinator:

1. Provide[s] programs for student intervention and support services.
2. Refers students to local providers for health and social services.
3. Coordinates the case management of all students referred for health and social services.
4. Visits the students' home(s) when necessary and appropriate to provide the optimum services to the students.
5. Plans and coordinates activities that will increase parental participation in student's lives.
6. At the high school, functions as the high school's liaison for the School Based Youth Services Program. (Board's Letter Brief in Opposition to Cross-Motion for Summary Decision, Exhibit A, p. 2)

The Commissioner recognizes that the State Board of Education requires an educational services certificate for those persons teaching in areas related to health, *N.J.A.C.* 6:11-11.7, performing functions identified in *N.J.A.C.* 6A:16-2.1(e)¹, and fulfilling social service functions in the district, *N.J.A.C.* 6:11-11.8. Thus, the Commissioner concludes that, based on the job description on record, the duties of the coordinator of health and social services are of such character as to require that the individual assigned thereto hold an appropriate educational services certificate in order to perform such functions. *Dowding, supra*, at 1712; *Guttenberg, supra*, slip. op. at 6.

¹ With exception as noted in *N.J.A.C.* 6A:16-2.1(f).

The Commissioner does not, however, determine herein which is the *appropriate endorsement* on the educational services certificate to require of the candidates holding either the position of dropout officer or coordinator of health and social services. Rather, under these particular circumstances, where newly-authorized positions are at issue and where the record before him was developed pursuant to cross-motions for summary decision, the Commissioner finds that such a determination is better made by the County Superintendent of Schools pursuant to *N.J.A.C. 6:11-3.3(b)*.

Finally, the Commissioner notes that, in deciding the within matter, he rejects the importance placed by the ALJ on the fact that these “*Abbott* positions” were not included within the rules for Professional Licensure and Standards. (Initial Decision at 18) The Commissioner further rejects the Board’s contention that the State Board of Education’s apparent deference to local district need when establishing these positions, or the Department of Education’s guidance relative thereto, is plausibly read as an *unqualified exemption* from certification rules. (Board’s Brief in Support of Cross-Motion for Summary Decision at 7-9; Board’s Letter Brief in Opposition to Cross-Motion for Summary Decision at 5) Such a position, the Commissioner finds, would be inconsistent with the State Board of Education’s steadfast view that:

Certification requirements establish the threshold qualifications for teaching staff members employed in the public school system throughout the state. *N.J.S.A. 18A:1-1; N.J.S.A. 18A:26-2. As such, and under the current statutory framework embodied in Title 18A, the certification process is critical to assuring the provision of a thorough and efficient education. **** Since certification requirements are at the core of the current structure governing the delivery of all education programs under our jurisdiction, setting aside the standards embodied in our certification rules necessarily risks [the compromise of a thorough and efficient education]. (emphasis added) *Phillipsburg Education Association v. Board of Education of Phillipsburg, Warren County et al.*, State Board

decision August 1, 2001, slip. op. at 6, *quoting Guttenburg, supra*, slip. op. at 7, *citing In the Matter of the Waiver Granted to the Board of Education of the Township of Middletown*, State Board of Education decision May 3, 2000, slip. op. at 4)

Neither is the Commissioner persuaded that the decision issued by the *Abbott* Court compels the result urged by the Board and recommended by the ALJ in this matter, particularly where the State Board of Education recently found, in a case involving an *Abbott* district, albeit within the context of an equivalency determination, that the above-cited certification policy of this State

is no less true for positions involving the provision of educational support services than for instructional positions. Not only is the character of positions that involve the provision of educational services such that appropriate certification is required in order to be qualified to provide these services, N.J.S.A. 18A:1-1, but such services are essential to the success of the education programs provided by our public schools. See Abbott v. Burke, 119 N.J. 287 (1990) (subsequent history omitted) (emphasis added) (Phillipsburg, supra, slip. op. at 6)

The Commissioner therefore concludes that although this Board and other “*Abbott* districts” may structure the positions of dropout prevention coordinator and coordinator of health and social services, as authorized by *N.J.A.C. 6A:24-1.4(h)*, in accordance with local need, they must nonetheless, *when establishing the duties assigned to the positions*, be mindful that the duties may be of such character as to require the individual assigned to the position to hold certification.

Accordingly, the Initial Decision of the ALJ is set aside. In the absence of a revision to the within job descriptions that would eliminate the need for certification, the Board is directed to submit, within 20 days of the date of this decision, the job descriptions for the positions in dispute to the County Superintendent of Schools for review pursuant to *N.J.A.C. 6:11-3.3(b)*, consistent with the parameters of this decision. Subsequent to the County

Superintendent's determination as to the appropriate endorsements, the Board is reminded that these are teaching staff positions that are subject to all laws applicable to such positions. A copy of this decision shall be forwarded to the Passaic County Superintendent of Schools.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 16, 2001

Date of Mailing: August 16, 2001

² This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.