

ANNA PORUCHYNSKY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF HOLMDEL, :
MONMOUTH COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning instructional aide claimed tenure status as a teacher. She charged that the Board failed to renew her as a teacher for the 2000-2001 school year in violation of her tenure and seniority rights. She contended her employment during the 1996-97 school year as an instructional aide was sufficient for tenure acquisition purposes.

The ALJ determined that there was no Board action to appoint petitioner as a teacher, whether full-time or less, for the 1996-97 school year, pursuant to *N.J.S.A.* 18A:27-1. Also, the fact that the Board required petitioner to hold a teaching certificate did not elevate the position of aide to that of teaching staff member within the meaning of *N.J.S.A.* 18A:1-1 so as to confer tenure benefits upon her pursuant to *N.J.S.A.* 18A:28-5 based on her employment in the aide position. The ALJ determined that nothing in the record indicated an estoppel or a clear right to tenure. The ALJ found that petitioner performed the duties of an aide. The petition was dismissed.

The Commissioner adopted the determination in the Initial Decision concluding that petitioner did not acquire tenure in respondent district. 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.

July 8, 2002

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The record, Initial Decision and exceptions on behalf of petitioner, Anna Poruchynsky, have been reviewed. No reply exceptions were filed. Upon review of the record, the Commissioner determines to adopt the determination in the Initial Decision concluding that petitioner did not acquire tenure in the respondent district and hereby dismisses the petition.

This matter involves petitioner's claim to tenure status and, concomitantly, that respondent Board improperly failed to employ her as a teaching staff member for the 2001-2002 school year based on her having obtained such status. Respondent denies that petitioner obtained tenure and, thus, asserts that its determination not to offer her a teaching staff position for the 2001-2002 school year was in accordance with law.

The Administrative Law Judge (ALJ) determined that petitioner never acquired tenure, holding that the duties performed during her service as an instructional aide in the 1996-1997 school year did not constitute service as a teaching staff member so as to confer tenure

upon her when coupled with her service as a teaching staff member in 1997-1998, 1998-1999 and 1999-2000. (Initial Decision at 11) The ALJ specifically rejected petitioner's contention that her duties were akin to those of a teacher, and that respondent improperly changed her title to instructional aide in order to illegally deny her tenure. (*Id.* at 11-12) Likewise, the ALJ determined that the Board did not appoint petitioner as a teacher in 1996-1997, and the fact that it required her to hold a teaching certificate did not elevate her to the status of teaching staff member. (*Id.* at 11) Finally, the ALJ determined that nothing in the record indicated an estoppel or a clear right to tenure, concluding that petitioner performed the duties of an aide, some of which had instructional components, but that performance of some teaching duties "does not translate automatically into a teaching position." (*Id.* at 12)

Petitioner's exceptions reiterate the facts and arguments in her post-hearing brief and generally dispute the ALJ's factual and legal determinations. The Commissioner rejects those arguments for the reasons set forth in the Initial Decision.

In addition, the Commissioner rejects petitioner's remaining contentions on exception, since they fail to set forth a basis for reversing the conclusion of the ALJ that petitioner did not serve as a teacher in 1996-1997 and, thus, is not entitled to tenure in respondent's district. Specifically, the Commissioner rejects the argument that the ALJ erred because he purportedly did not consider the testimony presented to the effect that petitioner satisfied all of the requirements of the job description of the district for a teacher in the 1996-1997 school year and, thus, served as a teacher for the requisite time period and should be awarded tenure. To the contrary, the Initial Decision demonstrates that the ALJ considered all

proffered testimony but concluded, contrary to petitioner's assertion, that petitioner did not serve as a teacher in 1996-1997. Also, petitioner's factual statement in her exceptions avers that she was "team teaching" English, Math and Social Studies in 1996-1997 by helping integrate computer technology as a part of "all academic instruction." Petitioner's Exceptions, at 8, ¶13. The Commissioner concurs with the ALJ that, at most, she assisted in providing a component of courses taught by teaching staff members; *i.e.* she provided assistance with regard to the integration of computer technology as a component of academic instruction. As held by the ALJ, assisting teachers in such a manner does not constitute service as a teacher.

The Commissioner agrees with petitioner's contention that, in unique circumstances such as occurred in *Speiwak, supra*, failure to appoint a person as a teaching staff member as required by *N.J.S.A.* 18A:27-1 may not preclude a person who has in fact served in that position from acquiring tenure. However, the fact remains that petitioner herein did not serve as a teaching staff member in 1996-1997 as set forth above. Thus, petitioner's exception with regard to appointment is of no moment.

Finally, petitioner's insistence that she assisted in grading that portion of pupil assignments involving the use of technology and attended back to school nights, and that this demonstrates functioning as a teacher, does not compel rejection of the ALJ's conclusions. These proffered facts indicate that petitioner assisted teachers (as do all instructional aides), not that she served as a teacher, and they compel instead a decision adopting the determinations of the ALJ.

Based on the foregoing, while the Commissioner recognizes that petitioner was unquestionably a dedicated and competent employee, her service during the year at issue was

that of an aide. Accordingly, the Commissioner adopts the conclusions and order in the Initial Decision, and hereby dismisses the petition.

IT IS SO ORDERED*

COMMISSIONER OF EDUCATION

Date of Decision: July 8, 2002

Date of Mailing: July 9, 2002

* This decision 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 filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.