

DEBORAH M. TRIONFO, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. :
 : DECISION
 BOARD OF EDUCATION OF :
 THE BOROUGH OF GLASSBORO, :
 GLOUCESTER COUNTY, :
 :
 RESPONDENT. :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the Board of Education (Board) and the reply filed by petitioner. Prior to expiration of the statutory due date for agency review of the Initial Decision, the Commissioner requested and received an extension of the time within which to issue a decision in this matter.

In its exceptions, the Board contends that there is no support in the record for two of the Initial Decision’s key factual findings. According to the Board, the Administrative Law Judge (ALJ) erred in stating that the Board’s previously operative Displaced Homemakers program was approved for the 1996-97 school year, since the record shows that the program for which the Board voted to accept funding for 1996-97 was not “Displaced Homemakers” but “New Beginnings,” a different program which did not require its Project Coordinator to hold a teaching certificate. The ALJ further erred, the Board opines, in finding that, from the time of her appointment as coordinator for the New Beginnings program, petitioner remained in similar positions “in adult education”

until her termination in February 2003, since, in fact, petitioner was never employed in “adult basic education” as defined in *N.J.A.C.* 6:30-2.1 but rather in occupational programs of a type that did not require certification pursuant to *Anthony Polo v. Board of Education of the Vocational Schools of the County of Bergen*, 92 *N.J.A.R.2d* (EDU) 230, *aff’d in relevant part* 92 *N.J.A.R.2d* (EDU) 459. In its legal conclusions, the Board contends, the Initial Decision errs in relying on the Board’s purported endowment of petitioner with the emoluments of tenure, when, in fact, the Board’s actions can be of no import if petitioner did not serve the requisite time in tenure-eligible positions so as to meet the requirements of statute. (Board’s Exceptions at 1-3)

In reply, petitioner reiterates that the coordinator position in which she served remained essentially the same throughout the period in question, as did the nature and purpose of the underlying program, regardless of what it may have been named or what changes in specific course content it may have undergone as it evolved over the years. Moreover, according to petitioner, the record is clear that she did not engage in, nor oversee, the type of limited occupational training for which no certificate is required; instead, she coordinated a comprehensive program involving “a whole host of components in addition to job training, including intake, initial assessment, workshops, life skills, remedial education, computer literacy, support groups, mechanical skills training, mentoring and placement,” as well as “self-esteem, nontraditional career exploration, communication skills, ***technical math and study skills, career assessment, basic aptitude and/or basic skills testing***.” Finally, petitioner notes that the ALJ did not conclude she was tenured based upon the Board’s treatment of her, but rather upon her having satisfied the requirements of statute; the ALJ merely offers the Board’s

actions as a further indication of the obviousness of petitioner's tenure status. (Petitioner's Reply at 2-6, quotation at 4)

Upon careful and independent review of this matter, the Commissioner concurs with the ALJ that petitioner long ago attained tenure in the position of teacher. From the time of her part-time employment on February 1, 1992 as Special Populations Coordinator, notwithstanding title changes and some ambiguity with regard to the boundaries of her concurrent part-time assignments once she became employed full-time as a result of additionally being named Coordinator for the Displaced Homemakers Program in September 1993, petitioner served continuously through at least the 1996-97 school year, and arguably for some time thereafter, in positions whose duties required basic educational certification, which she at all times held by virtue of her instructional certificate.

As Special Populations Coordinator, a position for which the need for certification was expressly recognized by the Board in its advertisement for the position (Exhibit D-GBOE 1147), and which petitioner held exclusively from February through June 1992 and for the entire 1992-93 school year, and again as part of her cumulative full-time employment at least through the 1995-96 school year (Exhibit A-Stipulation No. 5; Exhibit D-GBOE 0370-72), petitioner oversaw the Board's Job Training Partnership Act (JPTA) programs for at-risk students (Exhibit D-GBOE 0330-0331, 0332, 0348-49 and 0351 pertaining to 1993-94; GBOE 0354-55 and 0370-71 pertaining to Summer 1994 and 1994-95) and played an integral role in the district's Individual Career and Academic Plan program (Exhibit D-GBOE 0333-34 pertaining to 1993-94; GBOE 0382 and 1073-74 pertaining to 1995-96), both serving the district's K-12 student population. In the

position of Coordinator for the Displaced Homemakers Program and its successors,¹ held from the 1993-94 school year onward, petitioner supervised all activities and staff (Exhibit E-PET 006018, 006038 and 006044 pertaining to 1993-94; Exhibit D-GBOE 0268 pertaining to 1996-97) of a comprehensive project which the record shows to have encompassed, at least through the 1996-97 school year,² career assessment, career/academic/personal counseling, aptitude testing, basic skills instruction (ABE, ESL, GED³) as well as assessment and instruction in communications, computer literacy and math and study skills (Exhibit D-GBOE 0335, 0347 and Exhibit E-PET 006043 pertaining to 1993-94; Exhibit D-GBOE 0355, 0356-57 and 0371 pertaining to 1994-95; Exhibit D-GBOE 0389-90 pertaining to 1995-96; and Exhibit D-GBOE 0243 pertaining to 1996-97) and targeted educational services for children of clients (Exhibit E-PET 006053-54, pertaining to 1993-94). In that same capacity, petitioner was directly responsible, among other duties, to deliver direct training and counseling services to students and their children (Exhibit E-PET 006044 pertaining to 1993-94; Exhibit D-

¹ The documentary record amply demonstrates petitioner's contention that, as found by the ALJ, the New Beginnings program, and later the Road to Success program, were direct continuations of the Displaced Homemakers program. It further demonstrates that through at least the 1995-96 school year, neither the nature of the program nor the duties of the Project Coordinator changed substantially as the program evolved in response to shifting need, State policy and funding sources. Beginning in 1996-97 and continuing thereafter, the record suggests that, as the program began to focus increasingly, and ultimately exclusively, on enabling participants to obtain a commercial driver's license, the elements of the coordinator position requiring educational certification progressively diminished. Nonetheless, even assuming, *arguendo*, that the Road to Success Coordinator position eventually reached a point where educational certification was no longer required—as the record suggests may have been the case by 1999-2000—petitioner had by that time achieved tenure.

² See Note 1 above. The Board's position that no certification was required for the 1996-97 New Beginnings Program Coordinator position is belied by the very document it cites as evidence of the ALJ's error in reaching the contrary conclusion. That document, the program management summary of the district's 1996-97 grant application, lists "*certified* social worker" as petitioner's basic qualification (albeit that she is erroneously identified as a social worker rather than a teacher), in contrast to the "*licensed* social worker" qualification listed for a subordinate with less comprehensive responsibilities. (Board's Exceptions at 2; Exhibit D-GBOE 0268, emphasis supplied)

³ Adult Basic Education, English as a Second Language, General Equivalency Diploma.

GBOE 0246 pertaining to 1996-97), conduct individual assessment interviews and review vocational and academic assessment test results (Exhibit D-GBOE 0250, 0252 pertaining to 1996-97), develop career and educational training plans based on student assessments (Exhibit E-PET 006046-48, 006052 pertaining to 1993-94; Exhibit D-GBOE 0252, 0256, 0260 pertaining to 1996-97), identify and arrange for student externships and mentors (Exhibit E-PET 006049-50 pertaining to 1993-94; Exhibit D-GBOE 0262 pertaining to 1996-97), and conduct nontraditional career orientation (Exhibit D-GBOE 0266 pertaining to 1996-97). These are duties that fall squarely within the scope envisioned by State Board regulations requiring certification for persons who coordinate or advise students regarding adult basic education and vocational-technical education, including postsecondary education for special populations such as displaced homemakers. *N.J.A.C. 6:30-2.1 et seq., N.J.A.C. 6:30-3.1 et seq.; N.J.A.C. 6:43-3.1 et seq.*, especially 3.12(a)4iii (now incorporated into *N.J.A.C. 6A:19-2.1 et seq.*) That the programs coordinated by petitioner were multi-dimensional and her duties project-specific alters neither the nature of those duties nor the requirement that she be certified in order to perform them.

Under these circumstances, then, where the record shows petitioner to have been employed, for part of the 1992-93 school year, the entire 1992-93, 1994-95, 1995-96 and 1996-97 school years, and arguably for at least some time thereafter, in positions requiring basic educational certification, petitioner has unequivocally met the requirements of *N.J.S.A. 18A:28-5* for the acquisition of tenure in the position of teacher, notwithstanding that the Board has never employed her as a conventional classroom

instructor.⁴ Her employment, therefore, could not be terminated while a position existed within the scope of her instructional certificate, that is, while a position requiring instructional certification with endorsement in music was held by a nontenured teaching staff member, or while a position requiring instructional certification with no specific endorsement was held by a nontenured or less senior teaching staff member.

Accordingly, the Initial Decision of the OAL, as clarified herein, is adopted as the final decision in this matter. The Board is directed to reinstate petitioner to a position within the scope of her instructional certificate, with back pay and emoluments subject to mitigation, or, if no such position is presently available, to place petitioner on a preferred eligibility list with mitigated back pay and emoluments for any period during which a position to which she was entitled was held by a nontenured or less senior teaching staff member.

IT IS SO ORDERED.^{5 6}

COMMISSIONER OF EDUCATION

Date of Decision: August 19, 2004

Date of Mailing: August 19, 2004

⁴ Petitioner's responsibilities are in contrast to those of the petitioners in *Brown, supra*, which were essentially child care duties and thus not of a nature to require educational certification, notwithstanding the Board's requirement for same. They are also in contrast to those of the teachers at issue in *Polo, supra*, whose duties were limited to instructing adult evening school students in a particular skilled trade. (*See also N.J.A.C. 6A:19-2.3* with regard to postsecondary courses at county vocational schools.)

⁵ The Commissioner expressly notes that, like the ALJ, he did not consider petitioner's affidavit in rendering the within decision. (*See Initial Decision at 2*)

⁶ 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.*