

SOUNDARAM RAMASWAMI, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE CITY :  
OF PLAINFIELD, UNION COUNTY, :  
RESPONDENT. :  
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SYNOPSIS

Petitioner was hired by the Board as Supervisor, Testing and Assessment, in February 2004. Prior to her hiring, the Board amended the job description for the position to read that New Jersey certification was “preferred”, but not mandatory. In July 2007, petitioner was notified that she was being terminated from her employment for lack of appropriate certification. Petitioner contends that she was employed in a non-teaching position, that she was tenured, and that it was a violation of the school laws to terminate her without bringing charges against her. Respondent Board maintains that petitioner was a teaching staff member; that without an appropriate certificate, she was subject to termination of her contract and removal from her position; and that petitioner did not attain tenure because she did not hold the necessary certificate.

The ALJ found, *inter alia*, that: the petitioner was a teaching staff member within the meaning of *N.J.S.A.* 18A:1-1, and as such was required to hold a valid and appropriate certificate for her position in accordance with *N.J.S.A.* 18A:26-2 and *N.J.A.C.* 6A9-5.1(a); petitioner did not meet the requirements for tenure under *N.J.S.A.* 18A:28-5 and did not attain tenure because she did not hold the appropriate certificate; petitioner’s contract ceased and terminated when respondent received written notice that petitioner was not the holder of an appropriate certificate for her position; and respondent properly removed petitioner from her position pursuant to *N.J.A.C.* 6A:9-5.1(c) because she did not have the mandated certificate. Accordingly, the ALJ concluded that the petition must be dismissed.

Upon thorough and independent review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter.

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.

May 1, 2009

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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 petitioner’s exceptions and the Board of Education’s reply, both duly filed pursuant to *N.J.A.C.* 1:1-18.4.

In her exceptions, petitioner reiterates the arguments of her OAL briefs and contends that the Administrative Law Judge (ALJ) erred in concluding that she performed as a supervisor within the meaning of *N.J.A.C.* 6A:9-12.3(c) and thus was required to possess the appropriate certificate, and that the Board was not equitably estopped from denying she is tenured in her position; the ALJ also erred, petitioner asserts, in ignoring her argument that – even if she is assumed, *arguendo*, to be nontenured – she still had an enforceable one-year contract entitling her to employment through June 1, 2008. (Petitioner’s Exceptions at 1-19) According to petitioner, the ALJ: 1) selected one or two job duties and concluded from these that petitioner provided guidance to instructional personnel within the meaning of the referenced certification rule, while ignoring the fact that petitioner’s position was a unique one centered on assisting and training staff in the understanding and use of test data (*Id.* at 12-13); 2) rejected her more than ten unrefuted reasons why the Board should be estopped from denying her tenure, ignoring that the facts presented met the standards for estoppel outlined in prevailing case law (*Id.* at 13-14); and 3) neither considered nor decided her contractual argument in the Initial Decision, notwithstanding that it was identified as an issue to be addressed (*Id.* at 17).

In reply, the Board counters that: 1) petitioner's training of teachers was for the express purpose of enabling them to identify student strengths and weaknesses and provide them with strategies to modify their instruction accordingly – a responsibility requiring knowledge of both test data and curriculum, and one clearly falling within the purview of a supervisor of instruction (Board's Reply at 9-10); 2) petitioner had primary responsibility for possession of appropriate certification and cannot, pursuant to established decisional law, claim retroactive acquisition of tenure based on the Board's improper action in assigning her to a position for which she was not certified (*Id.* at 16-17); and 3) petitioner cannot claim contractual entitlement to a full year's salary where the Board had no alternative but to dismiss her upon realizing that she did not hold the appropriate certification for her position, and where it provided notice of termination immediately upon such realization (*Id.* at 18-20).<sup>1</sup>

Upon review, the Commissioner finds the ALJ to have fully and fairly analyzed the issues in this matter in light of the operative facts and positions of the parties, correctly concluding that petitioner could neither obtain tenure nor continue in her contracted employment because she was serving in a position requiring a certificate which she did not possess. The Commissioner further concurs, for the reasons stated by the ALJ, that the Board should not be estopped from asserting the position's certification requirement or denying that petitioner had acquired tenure.<sup>2</sup>

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 1, 2009

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<sup>1</sup> On the first of these issues, the Board substantially reiterates the arguments of its brief in support of summary decision.

<sup>2</sup> Contrary to petitioner's assertion, the ALJ did address her contractual claim in the Initial Decision (at 16).

<sup>3</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36.