

WILLIAM FELDMAN, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF BRANCHBURG, :
 SOMERSET COUNTY, :
 :
 RESPONDENT, :
 :
 AND :
 :
 REBECCA GENSEL, :
 :
 RESPONDENT-INTERVENOR. :

SYNOPSIS

Petitioner – a tenured principal in respondent’s school district – appealed the determination of the Board that other principals in the district had greater seniority than petitioner when he was terminated as part of a reduction in force (RIF) at the end of the 2010-2011 school year. Petitioner was hired by the district as a principal effective in March 2005. At that time, he possessed a certificate of eligibility as a principal, but had not obtained the provisional certificate required in order to legally serve as a principal in New Jersey. Petitioner did not obtain the provisional certificate until July 2005. One of the principals deemed by the Board to have seniority over petitioner filed a motion to intervene, and the Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; the central issues are 1) whether respondent Board is entitled to summary judgment on the basis that a principal cannot accrue seniority under a certificate of eligibility, and 2) the fact that – although a principal may accrue seniority under a provisional certificate – petitioner did not obtain his provisional certificate until July 2005, which would not give him enough seniority to reclaim a principal position. The ALJ found, *inter alia*, that petitioner was somehow allowed to work as a principal with only a certificate of eligibility, even though this is prohibited by law; petitioner’s provisional certificate was issued and became effective in July 2005; and petitioner therefore had less seniority than any other principal retained by respondent Board. Accordingly, the ALJ granted summary decision to respondent, and dismissed the petition.

The Commissioner concurred with the ALJ, and 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.
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OAL DKT. NO. EDU 6078-11
AGENCY DKT. NO. 131-5/11

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The record of this matter, the Administrative Law Judge's (ALJ) Order on Motion to Intervene and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.

On exception, petitioner continues to maintain – as he did below – that certain exhibits in the record amply evidence that his provisional certificate became effective April 1, 2005. As this contention and his additional proffered arguments – that 1) the Department of Education (DOE) entered into a binding contractual agreement by executing a standard residency agreement which provided that the provisional certificate was valid for a one year period beginning on April 1, 2005, and 2) petitioner relied, to his detriment, on information from, and actions of, the DOE and the District – were essentially analyzed, discussed and

resolved by the Administrative Law Judge (ALJ) in his decision, it is determined that further elaboration here is unnecessary.

Upon full review and consideration, the Commissioner concludes that summary decision is appropriately granted to the Board. In so determining, the Commissioner recognizes that – notwithstanding a regulation clearly stating that the holder of a certificate of eligibility may not assume job responsibilities until issued a provisional certificate (*N.J.A.C. 6A:9-6.4(c)*), and that seniority is not accrued under a certificate of eligibility (*See Davis v. Board of Education of the City of Englewood*, Commissioner’s decision #442-06, decided December 8, 2006)¹ – on March 14, 2005, the Board and petitioner entered into a contract of employment based solely on the petitioner’s possession of a certificate of eligibility. The crux of the issue in this matter – where petitioner is claiming entitlement to a position of another principal in the District based on “seniority,” – is the point in time at which petitioner acquired a provisional certificate. The Commissioner finds and concludes that – notwithstanding that there are documents in the record which include conflicting information with respect to the date on which a provisional certificate was issued to petitioner – he is in full accord with the ALJ’s conclusion in this regard. Specifically:

Most troublesome to Feldman’s position is that his provisional certificate states on its face that it was issued in July 2005. Further, a document entitled “Application Status Check-Results,” downloaded from the Department’s website, indicates more specifically that Feldman’s provisional certificate was issued on July 26, 2005. These dates would be consistent with the date of July 5, 2005 when Feldman, Hrevnack, and Tait signed the residency agreement. *Feldman also admits in his petition of appeal that “[i]n or about July of 2005 a provisional certificate was issued to the petitioner by the State Board of Examiners.*

...[moreover] the best evidence to establish when the provisional certificate was issued to Feldman is the original certificate in his possession. *N.J.R.E. 1002.* This certificate, as a New Jersey public document, is self authenticating.

¹ In contrast, *N.J.A.C. 6A:9-5.1(e)* provides that periods of service under a provisional certificate shall be counted toward seniority upon acquisition of a standard certificate.

N.J.R.E. 902(b). Therefore, I CONCLUDE that the effective date of Feldman's provisional certificate is that date on which it was issued, that being July 2005. In view of the fact that periods of service under a provisional certificate shall be counted toward seniority upon acquisition of a standard certificate, *N.J.A.C.* 6A:9-5.1(e), I CONCLUDE that Feldman commenced accruing seniority in the position of principal as of July 2005. Therefore, I CONCLUDE that Feldman has less seniority than any other principal retained by the respondent and that the respondent is entitled to summary decision.
(Initial Decision at 11-12, emphasis added)

The Commissioner is not persuaded by petitioner's argument that actions or inactions of the DOE and the District were responsible for the confusion with respect to his acquisition of a provisional certificate. It is by now well established that a board's improper action in assigning petitioner duties without the appropriate certification or actions/inactions of other individuals/entities cannot be used to excuse petitioner's failure to acquire the requisite certificate. As found by the State Board in *Stephen Jennings v. Board of Education of the Borough of Highland Park, Middlesex County*, 1989 *S.L.D.* 1097, 1101 (decided February 28, 1989), "petitioner's reliance upon such actions in the face of clear regulations to the contrary cannot be regarded as reasonable. Petitioner had primary responsibility to apply for and possess appropriate certification during his employment." As such, it was incumbent upon petitioner here to have taken appropriate steps to monitor the course of the provisional certification process himself, or to postpone his start date until that certification was in hand. Therefore, irrespective of any responsibility the Board may have had in allowing him to improperly commence work when he did or any perceived actions or inactions of the DOE, petitioner is presumed to be aware that his time served without a provisional certificate could not accrue toward seniority.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons stated therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 23, 2011

Date of Mailing: December 23, 2011

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).