

HELEN CHELOC, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF ELIZABETH, UNION COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner was employed by respondent Board from 1985 until 2006, first in the position of Assistant Board Secretary/Director of Administration and later as Director of Administration. In September 2006, petitioner filed an appeal in which she contended that she was tenured in the position of Director of Administration and was terminated by the Board in violation of her tenure rights in June 2006. The Board asserted that petitioner was not employed in a tenured position and therefore lacked tenure rights.

The ALJ found, *inter alia*, that: tenure is a statutory right with precise statutory requirements, and the staff member claiming tenure rights has the burden of proving her right to tenure; a 2002 State Board of Education decision involving the parties – *Cheloc v. Elizabeth Board of Education* – determined that petitioner did not have tenure rights as an Assistant Secretary, and does not support the contention that petitioner had tenure rights as a Director of Administration; petitioner failed to present any evidence that the Director of Administration position was an approved title for a teaching staff member under *N.J.A.C.* 6A:9-5.5, nor did this position require a certificate; petitioner was not entitled to tenure rights as a teaching staff member under *N.J.S.A.* 18A:28-5; and petitioner was not entitled to tenure rights as a Business Administrator under *N.J.S.A.* 18A:17-2 since the duties performed by the Director of Administration were not the same as or similar to those performed by a business administrator, with the exception of some insurance work; further, petitioner did not at any point during her employment devote full time to the responsibilities of a business administrator, and was therefore ineligible to accrue tenure under *N.J.S.A.* 18A:17-2. Accordingly, the ALJ concluded that: petitioner has failed to sustain her burden of proving that she had earned tenure; petitioner’s employment with the district did not meet the statutory requirements of either *N.J.S.A.* 18A:28-5 or *N.J.S.A.* 18A:17-2; and as such, she was not eligible for tenure. The ALJ recommended dismissal of the petition.

Upon review and consideration, the Commissioner concurred with the ALJ, adopted the Initial Decision as the final decision in this matter, and dismissed the petition.

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.

November 23, 2011

OAL DKT. NO. EDU 10978-06
AGENCY DKT. NO. 331-9/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioner and respondent Board, along with petitioner’s reply exceptions – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.¹

Petitioner’s exceptions – in relevant part – essentially recast and reiterate her arguments advanced below in charging that the Administrative Law Judge’s (ALJ) decision reached the following incorrect conclusions: 1) The earlier State Board of Education decision involving the present parties did not find that petitioner had tenure rights as a Director of Administration; 2) Petitioner is not entitled to tenure rights as a Business Administrator under *N.J.S.A.* 18A:17-2; 3) Petitioner is not entitled to tenure rights as a teaching staff member under

¹ Petitioner appended to her exceptions what she purports are “newly discovered Board Minutes for 1986.” Pursuant to *N.J.A.C.* 1:1-18.4(c), “Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions.” Consequently, petitioner’s appended materials, or any reference to them within the body of her exceptions, were not reviewed or considered.

N.J.S.A. 18A:28-5. As it is determined that all of petitioner's substantive arguments were considered and addressed in the Initial Decision, they will not be revisited here.

Respondent Board's exceptions seek to correct what it perceives are inaccuracies in the Initial Decision. As these are wholly immaterial to the outcome of this matter, they were duly noted but will not be discussed here.

Upon full review and consideration of the entire record,² the Commissioner concurs with the ALJ – for the reasons clearly and comprehensively presented on pages 5-12 of her decision – that petitioner has failed to sustain her burden of establishing that she accrued tenure rights (*Canfield v. Board of Education of the Borough of Pine Hill*, 51 *N.J.* 400 (1968)). As such, the Board's removal of petitioner from her Director of Administration position in June 2006 did not violate any tenure rights, as she never possessed such protection.

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

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 23, 2011

Date of Mailing: November 25, 2011

² It is noted that the record contained transcripts of the hearing conducted on July 22, 2009 and July 14, 2011. The July 14 transcript contains only dialog between the Administrative Law Judge (ALJ) and the parties – no testimony was taken on that date.

³ 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).