

CHRISTINE LOPAC, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
BOROUGH OF MANVILLE, :
SOMERSET COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the respondent Board's decision to terminate her in May 2010 on the grounds that she was not certified to teach the high school courses which she had been assigned. Petitioner asserted, *inter alia*, that she was properly certified; that even if not properly certified by way of her general business studies endorsement she had nevertheless acquired tenure under her elementary education endorsement; and that she was terminated in violation of her tenure rights. During the time that she was employed by the District, petitioner taught for a year and two months in respondent's elementary schools and eight years in the high school. The Board contends that petitioner never earned tenure in its district because she does not hold the technology education endorsement required for the courses she was teaching at the high school, and never served the amount of time required to attain tenure under her elementary education endorsement.

The ALJ found, *inter alia*, that: the issue for determination herein was whether petitioner's general business studies endorsement authorized her to teach any of the high school courses to which she was assigned such that she acquired tenure; petitioner's general business endorsement would have authorized her to teach any "educational technology" course, but not any "technology education" course; the courses petitioner taught that are at issue here are Imaging Technology and Computer Aided Design (CAD), both of which currently require a technology education endorsement; petitioner lacked the appropriate endorsement for authorization to teach these courses; petitioner only taught under her elementary education endorsement during the 2002-2003 school year, and therefore did not serve enough time under that endorsement to acquire tenure; and petitioner had the responsibility to ensure that she held the appropriate instructional certificate for the position(s) she held. Accordingly, the ALJ concluded that the Board did not violate petitioner's tenure rights as she had not acquired tenure under either of her endorsements at the time her contract was non-renewed.

Upon a comprehensive review, the Commissioner concluded that the high school courses petitioner had been assigned to teach during seven of her eight years of her service in respondent's district required a technology education endorsement, which she did not possess, and petitioner had consequently not earned tenure in the district when her contract was non-renewed. The Commissioner also noted that by 2006, petitioner was aware that her credentials may not be adequate for the courses she was teaching, and in 2007 she was advised by the Department of Education that she could not qualify for the technology education endorsement without taking additional coursework. Notwithstanding that it was her responsibility to ensure that she earned the appropriate endorsement(s) for her teaching assignments, petitioner chose not to finish the coursework for the technology education endorsement. In light of the foregoing, 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.

May 27, 2014

OAL DKT. NO. EDU 6149-10
AGENCY DKT. NO. 104-5/10

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Before the Commissioner is petitioner’s claim that respondent’s failure to renew her employment was a violation of the laws concerning tenure. Upon review of the record, the Initial Decision of the Office of Administrative Law (OAL), and the parties’ exceptions, the Commissioner is not persuaded that petitioner had earned tenure in respondent’s district, and cannot, therefore, conclude that a tenure violation occurred when her contract was not renewed.

A teaching staff member is entitled to tenure if (1) she works in a position for which a teaching certificate is required; (2) she holds the appropriate certificate; and (3) she has served the requisite period of time. *Spiewak v. Summit Bd. of Educ.*, 90 N.J. 63, 74 (1982); *N.J.S.A. 18A:28-4; N.J.S.A. 18A:28-5; N.J.S.A. 18A:28-6*. Time towards tenure does not accrue unless a teaching staff member secures the standard, provisional or emergency certificate specifically required for the job being performed. *Spiewack, supra*, 90 N.J. at 74; *N.J.S.A. 8A:28-4; N.J.S.A. 18A:28-5; N.J.S.A. 18A:28-14; N.J.S.A. 18A:26-2*.

It is undisputed that – at the time that her contract was non-renewed – petitioner had worked in respondent’s district for over eight years, in positions for which teaching

certificates are required. The controversy lies in the other requirement of tenure, *i.e.*, that she possess the correct certification for the positions to which she was assigned.

The record indicates that from April 2002 until June 2003, petitioner taught Microsoft Office and general computer skills in grades five through eight under an instructional certificate with an elementary education endorsement. Respondent does not contend that petitioner was ineligible to teach the computer classes in elementary school. However, since the balance of petitioner's employment in respondent's district was at the high school, her service in the elementary school did not continue long enough for her to achieve tenure in an elementary education position.

Further, during the 2003-2004 school year, petitioner taught in the high school, notwithstanding that she possessed – at that time – only an elementary endorsement to her instructional certificate. Thus, neither of the expert witnesses engaged by the parties in this matter contends that her service in 2003-2004 can count toward tenure. The inquiry, therefore, shifts to petitioner's service at the high school after she had earned her general business studies endorsement in August 2004. That high school service covered seven school years, *i.e.*, 2004-2005 through 2009-2010.

It is undisputed that with an endorsement in general business studies,¹ petitioner was qualified to teach educational technology, which is defined in *N.J.A.C.* 6A:9-2.1 as “the implementation of technology as an integral part of the instructional process across all curriculum areas that supports a learner centered environment.” This is so because *N.J.A.C.* 6A:9-9.2(a)(8)(i) instructs that:

¹ The “General Business Studies” endorsement has been replaced by a range of endorsements identified in *N.J.A.C.* 6A:9-9.2(a)(9)(i). Respondent maintains that the subjects taught under the General Business Studies endorsement were advertising, banking and finance technology, banking and insurance principles, business law, business, mathematics, business organization, clerical office practices, economics/economic geography, finance and investment principles, marketing education, marketing/sales, and transportation/travel marketing.

[t]here is no separate endorsement for educational technology and tools or for computer and information literacy except where career and technical endorsements occur for the related career clusters and career education and for consumer, family and life skills (see N.J.A.C. 6A:9-5.19) The CCCS require that teachers integrate the use of computer and information technology into their instruction.

Thus, petitioner was free to teach educational technology so long as she met the following criteria:

1. Demonstrates proficiency in the uses of educational technologies, computers, and other digital tools, and understands their common applications in an educational setting;
2. Demonstrates knowledge and understanding of the integration of such technologies and digital tools into the curriculum;
3. Demonstrates understanding of the legal and ethical issues surrounding the use of educational technologies and digital tools in PK-12 schools; and
4. Holds a CE, CEAS or standard certificate in an instructional field.²

[N.J.A.C. 6A:9-5.20(c).]

However, respondent maintains that petitioner's assignments at the high school consisted of courses which required a "technology education" endorsement, which petitioner does not claim to possess.³

As the Administrative Law Judge (ALJ) explained, in 2004 the Legislature determined that a "technology education" endorsement to the instructional certificate should be created. *See, N.J.S.A. 18A:26-2.6*. "Technology education" is defined in *N.J.A.C. 6A:9-2.1* as:

[i]nstruction by a teacher holding the Technology Education endorsement and covering New Jersey Core Curriculum Content Standard (NJCCCS) 8.2 and the International Technology Education Association (ITEA) standards. The ITEA standards are published in "Standards for Technological Literacy," (C)

² In 2013, *N.J.A.C. 6A:9-5.19* was recodified as *N.J.A.C. 6A:9-5.20*.

³ The requirements for earning a technology education endorsement are set forth in *N.J.A.C. 6A:9-11.13*.

ITEA, incorporated herein by reference, as amended and supplemented and are available at <http://www.iteaconnect.org/TAA/PDFs/xstnd.pdf>. The ITEA standards recognize the increasing reliance of modern society on a range of technologies, stress the incorporation of technological study into all aspects of the curriculum, and promote experiential learning about technology development, use, maintenance, and impact on the individual, environment, economy, and society as a whole. Examples of the topics that can be taught under NJCCCS 8.2 and the ITEA standards include, **but are not limited to**, the nature of technology; technology and society, engineering and technological design; abilities for a technological world; energy and power; information and communication; and transportation, manufacturing and construction technologies. A technology education endorsement does not provide an endorsement to teach educational technology and/or computer and information skills.⁴ (Emphasis added)

To resolve the disagreement about whether petitioner possessed the appropriate endorsement for the courses she taught, each party offered experts who undertook to analyze the respective course contents and measure them against the regulatory definitions of technology education versus educational technology. Since it is undisputed that during petitioner's seven years of service at the high school (excluding the school year during which she possessed only an elementary education endorsement), she was assigned to teach Imaging Technology, Computer Aided Drafting (CAD) I or II, and Mechanical Technology,⁵ it was primarily those three courses that were reviewed by the experts.

At the OAL hearing, there was agreement that petitioner did not have the appropriate endorsement to teach Mechanical Technology. However, there was no concurrence about her qualifications to teach the other two courses, *i.e.*, CAD and Imaging Technology. Since the regulatory definition for technology education identifies New Jersey Core Curriculum Content Standard (NJCCCS) 8.2 and ITEA standards as paradigms for technical education

⁴ The technology education endorsement is similarly described in *N.J.A.C.* 6A:9-9.2(a)(8)(ii).

⁵ Additionally, in 2004-2005 and 2007-2008 petitioner taught Computer Science at the high school. The parties appear to agree that petitioner's business studies endorsement allowed her to teach Computer Science, however, two years was not a sufficient amount of time for petitioner to earn tenure as a teacher of Computer Science.

courses, a comparison of the course descriptions for CAD and Imaging Technology with NJCCCS 8.2 and the ITEA standards is in order.⁶

Respondent's syllabus for Computer Aided Drafting (CAD) I and II identifies four units. The first unit is an introduction to CAD and AutoCAD; the second is CAD and AutoCAD concepts and techniques; the third is CAD and AutoCAD design and editing; and the fourth unit is an introduction to 3-dimensional concepts and techniques. While the design descriptions for each unit cite to both NJCCCS 8.2 and NJCCCS 8.1 (the standard associated with educational technology), the Commissioner sees little in the CAD course content that aligns with the regulatory definition of educational technology set forth in *N.J.A.C. 6A:9-2.1, i.e., "the implementation of technology as an integral part of the instructional process across all curriculum areas that supports a learner centered environment."* (Emphasis added)

More specifically, analysis of the CAD syllabus – beginning with Unit One, which describes CAD and its uses in various careers, continuing through the second and third units which teach the skills required for 2-dimensional CAD, and ending with the fourth unit which introduces 3-dimensional drafting – leads to the conclusion that CAD is not a tool used in the classroom to enhance learning across all subject areas. Rather, it is a design technology which is its own discipline within the field of engineering and technology – as is, or was, the discipline of manual drafting. This conclusion is buttressed by a comparison of the CAD syllabus with NJCCCS 8.2, in particular NJCCCS 8.2.12.B.2, NJCCCS 8.2.12.E.1, NJCCCS 8.2.12.F.3 and NJCCCS 8.2.12.G.1.

Further, the CAD syllabus reflects the ITEA standards referenced in the definition of technical education, in that it promotes experiential learning about technology development,

⁶ It appears undisputed that NJCCCS 8.2 has been the standard for technology education at all times relevant to this case.

use and maintenance. *N.J.A.C. 6A:9-2.1*. Consequently, the Commissioner is persuaded that the technology education endorsement is the required endorsement for teachers of CAD. Since petitioner has never possessed the technology education endorsement, she cannot have acquired tenure as a CAD instructor.

Ascertaining the appropriate endorsement for instructors of imaging technology is more nuanced than identifying the correct endorsement for teachers of computer aided drafting. Respondent's 2004 imaging technology course syllabus repeatedly referred to NJCCCS 8.2 in the Student Proficiencies section, and described goals and tasks that comported with the NJCCCS for technical education. Thus, for at least the time period covered by the 2004 syllabus, a technical education endorsement was required to teach the class. Accordingly, during school years 2004-2005 through 2008-2009, petitioner could not have acquired tenure credit.

Further, while respondent's 2009 imaging technology syllabus does not expressly cite to NJCCCS 8.2, the unit descriptions can be understood to treat photography as a discipline unto itself. Unit one discusses the history of photography, including inventions and technological and cultural changes. Unit two addresses composition, angles and perspective, as well as such technical concepts as lighting, aperture size and shutter speed. The third unit covers editing and copyright issues, and the fourth unit imparts the more multifaceted tasks necessary to produce videography. In the Commissioner's view, the foregoing unit descriptions depict a course that is meant to reach substantially beyond training in photoshop editing software. Were the imaging technology class solely intended to impart a medium for instructional support in other subject curricula, there would be little need for an entire unit on the history of photography. While photography can most likely be employed for the enhancement of learning in a variety of subjects, the depth of respondent's imaging technology syllabus suggests an intention to provide

students with a firm foundation in the discipline of photography and videography *per se*. A general business studies endorsement would not appear to be adequate preparation for teaching the course described in respondent's syllabus.

More importantly, the Department of Education (Department), which is the State Agency charged with establishing standards and regulations relating to education, and whose expertise deserves deference, has published guidance concerning "educational technology" and "technology education." One such guidance explains that "educational technology is a using technology in conjunction with specific teaching strategies within an instructional setting to support students and teachers in a learning process . . . ," whereas "technology education is the study of technology, and its effects on individuals, society and the environment. It is much more than learning about various pieces of hardware and software. It is a study of a body of knowledge, and the systematic application of resources to produce outcomes in response to human desires and needs." Fall 2007 Newsletter jointly issued by the New Jersey State Department of Education's Office of Educational and Informational Technology and Office of Educational Standards and Programs, at 1. (Emphasis added.) (Respondent's Exhibit R-19)⁷

Further, on pages 3-4 of the above referenced newsletter, the goals for instruction in educational technology versus the standards for technology education courses are set forth. (Respondent's Exhibit R-19 at 3-4) Comparison of the technical education standards in the Department newsletter with the syllabi discussed above lead to the conclusion that the CAD and Imaging Technology classes offered by respondent constitute technical education and require teachers who possess technology education endorsements. This conclusion, in fact,

⁷ Petitioner dismisses the Department's 2007 guidance. She offers her expert's proposition, grounded in no discernible authority, that the difference between educational technology classes and technical education courses turns on whether the software being taught "is available in the mass market" or whether it is "very career specific technological software." The Commissioner is not inclined to accept this unsupported criterium.

was communicated by the Department's Beverly Hetrick to respondent's superintendent Johanna Ruberto via a memorandum dated March 3, 2010. (Respondent's Exhibit R-7)

The record does not reveal why respondent assigned petitioner to teach CAD, Imaging Technology and Mechanical Technology. However, when the new superintendent learned – during the 2009-2010 school year – that a technical education endorsement was required for those positions,⁸ it was incumbent upon respondent to staff them with properly credentialed teachers. Moreover, correspondence in the record indicates that as early as 2006, petitioner was aware that she might need a technical education endorsement to teach the courses. She took some steps to earn the endorsement, but ultimately abandoned the attempt.⁹

While respondent clearly erred in its placement of petitioner in the technical education positions, it is “well established that a teaching staff member is charged with the responsibility to ensure that he or she has earned the appropriate certification for the position which he or she seeks or holds. This is so even where a district has improperly assigned the employee duties for which the employee is not certificated.” *Perna v. State-Operated Sch. Dist. of the City of Paterson*, Commissioner Decision No. 2-12, decided January 4, 2012, at 8, citing *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 regulations to the contrary cannot be regarded as reasonable)

It is not possible to ascertain from this record whether petitioner's performance teaching the CAD and Imaging Technology courses did, in fact, meet the appropriate curriculum

⁸ See, Respondent's Exhibit R-7.

⁹ In September 2006, petitioner applied for a Technical Education endorsement and registered for the PRAXIS examination. In May 2007, the Department advised petitioner that she needed more coursework to qualify for the Technical Education endorsement, but she chose not to pursue it – and advised her principal of same. Respondent's Exhibits R-1, R-2, and R-3; 1T19-20.

standards. However, even if her service met the standards, petitioner did not possess the proper endorsement. She was therefore precluded from accruing tenure credit. It is unfortunate that, even though as far back as 2006, petitioner had had reason to question the adequacy of her credentials, she did not take the steps necessary to ensure that her employment could continue.

In sum, for the reasons articulated *infra*, the Commissioner finds that petitioner did not earn tenure in respondent's district. Accordingly, the petition is dismissed.

IT IS SO ORDERED.¹⁰

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 27, 2014

Date of Mailing: May 29, 2014

¹⁰ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).