

NANA MANFUL, :
 PETITIONER, :
 v. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF TRENTON, MERCER COUNTY, :
 RESPONDENT. :
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SYNOPSIS

Petitioner – a teaching staff member employed by the respondent Board since the 2012-2013 school year under a standard instructional certificate with an endorsement as a Teacher of the Handicapped, Special Education K-12 – alleged that the Board violated the regulations governing the hiring of employees to work in the district’s interscholastic athletic program when it hired another individual, Darryl Young (Young), as the Head Boys’ Varsity Basketball Coach for the 2015-2016 season, instead of petitioner. Young and petitioner were the only two applicants for the coaching job; Young was hired for the position, but was soon terminated after it was found that his substitute credential had expired. Young was later rehired for the coaching job after his substitute credential was renewed. Petitioner contended that the Board was required to offer him the position after Young was terminated. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the respondent Board conceded that it had improperly hired Young in May 2015, because he did not then hold a valid substitute certificate as required under *N.J.A.C. 6A:9-5.18(b)*, the regulation then in effect; the Board rectified its mistake by terminating Young upon learning that his substitute credential had lapsed, and subsequently complied with the regulation by rehiring him once his substitute credential was renewed, on October 26, 2015; prior to July 2013, the regulation governing the hiring of athletics personnel – *N.J.A.C. 6A:9-5.19(c)* – provided that a school board could only hire the holder of a substitute credential as an athletic coach when there was no qualified and certified applicant, and under that rule, the Board would have been required to hire petitioner over Young because petitioner was qualified and fully certified; however, under the regulation (*N.J.A.C. 6A:9-5.18(b)*) in effect at the time of the Board’s ultimate decision in this matter, on October 26, 2015, the Board could hire a qualified coaching candidate with a substitute credential even though there was another qualified candidate with full certification; so, although the Board improperly hired Young in May 2015 when he did not have a valid substitute credential, the Board terminated him upon discovering its mistake, and only rehired him once Young’s substitute credential had been renewed. The ALJ concluded that *N.J.A.C. 6A:9-5.18(b)* neither placed a time limit on the Board’s decision nor required the Board to hire the petitioner upon terminating Young; instead, the Board reasonably exercised its discretion to rehire Young prior to the start of the basketball season. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the ALJ’s conclusion that the Board is entitled to summary decision. In so doing, the Commissioner found, *inter alia*, that the crux of this case is whether the petitioner had any entitlement to the coaching position under *N.J.A.C. 6A:9B-5.18*, which he did not. The petition was dismissed.

<p>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.</p>

OAL DKT. NO. EDU 15223-15
AGENCY DKT. NO. 231-8/15

NANA MANFUL, :
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 PETITIONER, :
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 v. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF TRENTON, MERCER COUNTY, :
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 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 the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, Nana Manful, and the Trenton Board of Education’s (Board) reply thereto. In this case, the petitioner contends that the Board was required to hire him as the head boys’ basketball coach for the 2015-2016 school year; instead, the Board hired Darryl Young, in violation of *N.J.A.C.* 6A:9B-5.18.¹ *N.J.A.C.* 6A:9B-5.18(b) provides that “[s]chool districts may employ any holder of either a New Jersey teaching certificate or a substitute credential pursuant to *N.J.A.C.* 6A:9B-7 to work in the interscholastic athletic program provided the position has been advertised.” Petitioner and Mr. Young were the only two individuals who applied for the position,² and although the Board thought Mr. Young had his substitute credentials when he was hired in May 26, 2015, it was subsequently determined that Mr. Young’s substitute credential had expired.

The Administrative Law Judge (ALJ) found that there are no material facts in dispute, and granted summary decision in favor of the Board. In so doing, the ALJ found the Board did not violate *N.J.A.C.* 6A:9B-5.18 because, after the Board determined that Mr. Young’s substitute

¹ *N.J.A.C.* 6A:9B-5.18(b) is currently *N.J.A.C.* 6A:9B-5.16(b).

² There was originally a third applicant, but that applicant withdrew his application.

credentials had expired, it terminated Mr. Young and rehired him on October 26, 2015, once his substitute credential had been renewed.

In his exceptions, the petitioner argues that the ALJ erred in basing his decision on the irrelevant distinction between the former regulation, *N.J.A.C. 6A:9-5.19(c)*, and the regulation's current form, because *N.J.A.C. 6A:5.18(b)* became effective in 2013. The change to the regulation was not relevant to the task that was before the ALJ, as both parties agree that the present regulation allows for the hiring of a candidate with a substitute credential over an applicant who holds a teaching certificate. The petitioner notes that in his submissions at the OAL, he relied on case law that involved an older version of the regulation; however, the ALJ mistakenly focused on the legislative history rather than the substantive and legal determinations at hand in those cases. *See, Rulon v. Board of Educ. of the Borough of Glassboro, Gloucester County*, OAL Dkt. No. EDU 7304-11, decided August 20, 2013, *affirmed*, Commissioner Decision No. 349-13, decided October 7, 2013; *Norcross v. Board of Education of the North Hunterdon School District, Hunterdon County*, OAL Dkt. No. EDU 943-90, decided June 21, 1991, *affirmed with clarification*, Commissioner Decision No. 135-91, *affirmed*, State Board of Education, decided February 5, 1992. Petitioner contends that the issue here is that an applicant must hold and maintain the requisite credential to be qualified the position and, in this case, petitioner was the only qualified applicant at the time of the job posting and hire.

It is undisputed that Mr. Young's substitute credentials had lapsed at the time the Board hired him on May 26, 2015. Without performing due diligence, the Board hired an unqualified applicant; then, after discovering its error, it discharged Mr. Young. Petitioner asserts that the proper rectification would have been for the Board to hire petitioner, who was deprived by the unlawful action, rather than to reappoint Mr. Young once he became qualified. Therefore, the petitioner maintains that the Initial Decision should be rejected and the Commissioner should order

the Board to reimburse the petitioner for the appropriate back pay and benefits as a result of its failure to appoint the petitioner as the head basketball coach.

In reply, the Board contends that the ALJ addressed the development of the regulation in the Initial Decision because the petitioner relies on case law decided prior to the previous regulation. The former version of the regulation only allowed the hiring of an applicant with substitute credentials if there was no otherwise qualified applicant and the district obtained the approval of the county superintendent. Consequently, the cases relied on by the petitioner are clearly distinguishable from this matter. It is not disputed that Mr. Young did not hold a valid substitute certificate at the time of his original appointment to the coaching position on May 26, 2015. However, when the Board learned that Mr. Young's credentials had lapsed, it rescinded the appointment. The Board stresses that when Mr. Young was appointed as the head basketball coach on October 26, 2015, he was the holder of a valid substitute credential and fully qualified for the position pursuant to *N.J.A.C. 6A:9B-5.18*. Therefore, the Initial Decision should be adopted as the final decision in this matter.

Upon a comprehensive review of the record, the Commissioner is in accord with the ALJ's conclusion that the Board is entitled to summary decision. As a threshold matter, there is no doubt that the Board fell short of its obligations throughout the entire hiring process. The Board originally hired Mr. Young when he did not have a valid substitute credential and then, after terminating Mr. Young, the Board did not repost the position. However, the crux of this case is whether the petitioner had any entitlement to the head boys' basketball coach position under *N.J.A.C. 6A:9B-5.18*.³

The current version of the governing regulation affords districts with more flexibility as to whom it may hire for interscholastic athletic positions, e.g. a holder of either a teaching

³ The Commissioner does not agree this case is properly characterized as an error by the Board that was cured after Mr. Young subsequently obtained his substitute credentials. Instead, this case is about the rights of the petitioner.

certificate or a substitute credential. Moreover, there is no longer language that imposes additional obligations on school districts when a certified and qualified applicant is not available. Under the former regulation, if an applicant was qualified as a holder of a teaching certificate, the applicant was automatically entitled to the position if there were no other applicants that held a teaching certification. The current regulation no longer provides for that entitlement.

Here, the Board discovered that Mr. Young's substitute credentials had lapsed, and it terminated him – thereby creating a vacancy for the position of head boys' basketball coach. The Board's decision to terminate Mr. Young did not trigger the petitioner's entitlement to the head coach position under *N.J.A.C. 6A:9B-5.18*. In its current form, *N.J.A.C. 6A:9B-5.18* simply outlines the basic credentials necessary for a district to employ an individual to work in its interscholastic athletics program. Further, the case law that applied the older version of the regulation is not applicable to this case, as those cases involved circumstances where the districts hired an applicant who clearly did not possess a valid certificate over an applicant that did hold a certificate. *See, Rulon, supra; Norcross, supra*. Therefore, the petitioner in the instant matter had no right to the head boys' basketball coach position under *N.J.A.C. 6A:9B-5.18*.

Accordingly, the Board is entitled to summary decision, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: September 12, 2018

Date of Mailing: September 13, 2018

⁴ 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)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 15223-15

AGENCY DKT. NO. 231-8/15

NANA MANFUL,

Petitioner,

v.

**CITY OF TRENTON BOARD OF
EDUCATION, MERCER COUNTY,**

Respondents.

Richard A. Friedman, Esq., for petitioner (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys)

John E. Croot, Jr., Esq., for respondent (Adams Gutierrez & Lattiboudere, LLC, attorneys)

Record Closed: March 30, 2017

Decided: June 14, 2018

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

Petitioner Nana Manful (Manful) seeks an order directing respondent, Board of Education of the City of Trenton, Mercer County (Board), to appoint him as Head Boys Varsity Basketball Coach.

PROCEDURAL HISTORY

On September 25, 2015, the matter was filed with the Office of Administrative Law (OAL). On November 8 2016, respondent filed a motion for summary decision seeking dismissal of the petition in this matter. Petitioner filed a cross-motion for summary decision on December 22, 2016. Reply briefs were filed and the record on the motions closed on March 30, 2017.

FACTUAL DISCUSSION AND FINDINGS

Petitioner Nana Manful (Manful) alleges that respondent Trenton Board of Education (Board) violated former N.J.A.C. 6A:9-5.18(b), under which a school board could “employ any holder of either a New Jersey teaching certificate or a substitute credential . . . to work in the interscholastic athletic program provided that the position has been advertised,” by hiring Darryl Young (Young) as the Head Boys’ Varsity Basketball Coach for the 2015-2016 season instead of Manful. Manful asserts that at the time of the Board’s decision on May 26, 2015, Young’s substitute credential had expired, while Manful was qualified for the position and fully certified.⁵

Manful, who at all relevant times held an Instructional Certificate, with an endorsement as a Teacher of the Handicapped, Special Education K-12, has been employed by the Board since the 2012-2013 school year. On April 17, 2015, the Board advertised a coaching vacancy for Head Boys’ Varsity Basketball Coach for the 2015-2016 season. Manful and

⁵ “Fully certified” is a term for someone who holds a “standard certificate,” which is “a permanent certificate issued to a person who has met all certificate requirements” for an instructional, administrative, or educational services certificate. N.J.A.C. 6A:9-2.1. By contrast, a “substitute credential” is “the credential required for persons who do not hold an administrative, educational services, or instructional certificate and who are temporarily serving in replacement of a certified and regularly employed classroom teacher.” Ibid.

Young, who at the time was employed by the Board as a paraprofessional, applied and interviewed for the position.⁶ Manful and Young were the only candidates for the position.

On May 26, 2015, the Board appointed Young to the position upon the recommendation of the chief school administrator.⁷ However, the Board subsequently discovered that Young's substitute credential had expired and, on August 24, 2015, the Assistant Superintendent of Schools, Lissa Johnson, notified Young that, effective immediately, he was terminated as head basketball coach for his failure to maintain proper certification for the position.⁸

On August 24, 2015, Manful filed a petition with the Commissioner of Education, alleging that he was qualified for the coaching job and that the Board violated N.J.A.C. 6A:9-5.18(b) by hiring Young for the position on May 26, 2015. He is seeking an order to compel the Board to hire Manful as the basketball coach for the 2015-2016 season, with any concomitant back pay and emoluments.

On August 31, 2015, the Board voted to affirm Young's termination as head basketball coach. On September 23, 2015, the Board filed an answer to Manful's petition, asserting that the petition should be dismissed because, at the time of Young's appointment on May 26, 2015, the Board "understood that it appointed an individual with a valid substitute credential." One the Board discovered that his credential had expired, it rescinded Young's appointment. Upon receipt of the Board's answer, the Commissioner transmitted the matter to the OAL as a contested case.

On September 25, 2015, Young's substitute teacher's credential was renewed for a five-year period. At its next meeting on October 26, 2015, and prior to the start of the 2015-

⁶ According to the Board's answers to interrogatories, Young's paraprofessional position was abolished on May 13, 2015, but subsequently reinstated, and Young was employed as a paraprofessional throughout the 2015-2016 school year.

⁷ On June 24, 2015, the Trenton Education Association, on behalf of Manful, filed a grievance alleging that the Board violated the collective bargaining agreement by hiring Young instead of Manful. On October 26, 2015, an arbitrator dismissed Manful's grievance, concluding that, while the Board improperly "appointed Mr. Young to the position of Head Boys' Basketball Coach without a valid substitute certificate, that violation was remedied when he was terminated from the position in August of 2015."

⁸ The parties did not specify the date on which Young's credential lapsed.

2016 basketball season, the Board reappointed Young as Head Boys' Varsity Basketball Coach. Young held the position for the entire season.

Before the OAL, the parties have filed cross-motions for summary decision. The parties do not dispute any material facts and agree that the dispositive legal issue is whether the Board was required to hire Manful instead of Young. Accordingly, I **FIND** that the preceding statements are not in dispute and are hereby **FOUND** as **FACT**.

LEGAL ANALYSIS AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See, Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.’

[Brill, 142 N.J. at 540 (citations omitted).]

The mere existence of disputed facts is not conclusive. An agency must grant a plenary hearing only if material disputed adjudicative facts exist. Bally Mfg. Corp. v. Casino Control Com'n, 85 N.J. 325, 334, 426 A.2d 1000 (1981), App. Div. 454 U.S. 804, 102 S.Ct.

77, 70 L.Ed.2d 74 (1981); Cunningham v. Dept. of Civil Service, 69 N.J. at 24-25, 350 A.2d 58. N.J.S.A. 52:14B-9. Here, the parties do not dispute any material facts. Accordingly, I **CONCLUDE**, that summary decision as a matter of law is appropriate.

While the Board concedes that it improperly hired Young as the head basketball coach on May 26, 2015, because he did not then hold a substitute credential, as required by N.J.A.C. 6A:9-5.18(b), the Board rectified its unlawful action by terminating Young upon learning that his substitute credential had lapsed, and subsequently complied with N.J.A.C. 6A:9-5.18(b) by rehiring him on October 26, 2015, once his substitute credential had been renewed.

Prior to July 1, 2013, the regulation governing the hiring of athletics personnel, former N.J.A.C. 6A:9-5.19(c), provided that a school board could only hire the holder of a substitute credential as an athletic coach “[i]n the event there [was] no qualified and certified applicant[.]” See, 45 N.J.R. 152(a). However, effective July 1, 2013, the Department of Education deleted this requirement “so school districts may directly hire someone holding a substitute certificate without first documenting to the executive county superintendent that no qualified, fully certificated staff are available” and “amend[ed] N.J.A.C. 6A:9-5.18(b) to clarify that persons holding a substitute credential may be employed to coach interscholastic athletic programs.” 45 N.J.R. 152(a), 45 N.J.R. 1605(a). Thus, under N.J.A.C. 6A:9-5.18(b), which was effective from July 1, 2013, to December 7, 2015, and thus applies to the facts of this case, a school board could “employ any holder of either a New Jersey teaching certificate or a substitute credential pursuant to N.J.A.C. 6A:9-6.5 to work in the interscholastic athletic program provided that the position has been advertised.”⁹

Under former N.J.A.C. 6A:9-5.19(c), the Board would have been required to hire Manful over Young because Manful was qualified and fully certified, while Young was

⁹ The Department of Education recodified N.J.A.C. 6A:9-5.18 as N.J.A.C. 6A:9B-5.16, effective December 7, 2015. 47 N.J.R. 1730(a), 47 N.J.R. 2989(a). N.J.A.C. 6A:9B-5.16(b), which is substantially similar to N.J.A.C. 6A:9-5.18(b), provides that “[s]chool districts may employ any holder of either a New Jersey teaching certificate or a substitute credential pursuant to N.J.A.C. 6A:9B-7 to work in the interscholastic athletic program provided the position has been advertised.”

qualified but not fully certified.¹⁰ However, under the regulation in effect at the time of the Board's ultimate decision on October 26, 2015—N.J.A.C. 6A:9-5.18(b)—the Board could hire a qualified coaching candidate with a substitute credential even though there was another qualified candidate with full certification. Thus, while the Board improperly hired Young on May 26, 2015, when he did not have a valid substitute credential, the Board terminated him upon discovering its hiring mistake and, in accordance with N.J.A.C. 6A:9-5.18(b), rehired him on October 26, 2015, once his substitute credential had been renewed.¹¹

Finally, to the extent that Manful argues that the Board improperly delayed its eventual hire of Young until he obtained a valid substitute credential, it is noted that N.J.A.C. 6A:9-5.18(b) neither placed a time limit on the Board's decision nor required the Board to hire Manful upon terminating Young on August 24, 2015. Instead, the Board reasonably exercised its discretion to hire Young prior to the start of the basketball season.

Considering the foregoing, I **CONCLUDE** that the Board is entitled to summary decision because, when the Board appointed Young as the Head Boys' Varsity Basketball Coach on October 26, 2015, he had a valid substitute teacher's credential, as required by N.J.A.C. 6A:9-5.18(b).

ORDER

The Board's motion for summary decision is **GRANTED**. Petitioner's claim is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

¹⁰ Manful does not dispute that Young was qualified for the position, only that he did not have the proper teaching certification or credential.

¹¹ Manful also does not dispute that the job was properly advertised or that there were no irregularities during the interview process.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 14, 2018

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EAP/nd