

New Jersey Commissioner of Education

Final Decision

Willingboro Education Association, individually and on behalf of member Sabrina Austin,

Petitioner,

v.

Board of Education of the Township of
Willingboro, Burlington County,

Respondent.

Synopsis

Petitioner, a tenured teacher employed since 2004 by the Willingboro Board of Education (Board or respondent), asserted that the respondent abolished her position as Reading Specialist, created the substantially similar position of Literary Learning Specialist (LLS), and failed to appoint the petitioner to the newly created position in violation of her tenure and seniority rights. Petitioner holds a Teacher of the Handicapped certificate and earned a Master's degree in Curriculum and Instruction with an emphasis in Reading as well as a Master's degree in Special Education. The Board hired a non-tenured teacher for the LLS position, transferring petitioner to the position of Special Education Pre-K teacher—a transfer that did not result in a reduction of petitioner's salary or benefits. The respondent denied violating the petitioner's rights, contending that she was appropriately transferred when her position was abolished. Respondent further argued that petitioner is not qualified for the LLS position because she does not hold the necessary certifications. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case and the matter is ripe for summary decision; the Board did not violate petitioner's tenure or seniority rights when it abolished the Reading Specialist position, declined to hire her for the substantially similar LLS position, and transferred her to a position within her certification that did not result in any reduction of her salary or benefits; petitioner does not meet the eligibility requirements for the LLS position, as she does not have a Reading Specialist, Teacher of Reading, or Teacher of Supplemental Reading and Math certificate; further, petitioner failed to present evidence that the Board acted in bad faith or for an unlawful purpose. Accordingly, the ALJ granted the Board's cross-motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia*, rejected the ALJ's findings that the LLS position required dual certification, and that petitioner was not qualified for the position. However, the Commissioner noted that school boards have the managerial prerogative to transfer teaching staff members pursuant to *N.J.S.A. 18A:25-1*. Accordingly, the Commissioner adopted the Initial Decision of the OAL as modified and dismissed the petition.

<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>

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Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. Respondent, Board of Education of the Township of Willingboro (Board), did not reply to petitioner's exceptions.

Petitioner, a tenured teacher who holds a Teacher of the Handicapped certificate, began working for the Board in 2004.¹ She earned a Master's degree in Curriculum and Instruction with an emphasis in Reading as well as a Master's degree in Special Education. During the 2021-2022 and 2022-2023 school years, she worked as a Reading Specialist. In April 2023, the Board

¹ More accurately, "Teacher of the Handicapped" is an endorsement issued with an instructional certificate. *See, e.g., Melnyk v. Bd. of Educ. of Delsea Reg'l High Sch. Dist.*, 241 N.J. 31, 36 (2020). An "instructional certificate" is the certificate category that permits an individual to teach in a classroom setting. *N.J.A.C. 6A:9-2.1*. An "endorsement" is an authorization allowing a certificate holder to teach one or more specific subject areas or to serve in one or more specific teaching staff roles. *Ibid.*

abolished the Reading Specialist position effective June 30, 2023, along with ten other positions. The Board then created a new position, Literacy Learning Specialist (LLS), which petitioner applied for but did not obtain. The Board hired a non-tenured teacher for the LLS position and transferred petitioner to a different position, Special Education Pre-K teacher, effective September 1, 2023. The transfer did not result in a reduction of petitioner's salary or benefits, and she has remained continuously employed with the district. However, petitioner alleges that the Board violated her tenure and seniority rights when it hired a non-tenured teacher for the LLS position and bypassed her. She asserts that she was qualified for the LLS position, which is substantially similar to her prior position of Reading Specialist.

The parties cross-moved for summary decision. At oral argument on July 15, 2024, it appears that the ALJ sought clarification regarding the certification requirements for the LLS position, which resulted in the parties' submission of additional information. The Board submitted a certification dated July 22, 2024, from Dr. Malcolm X. Outlaw, Superintendent, stating that the LLS job description stipulated to in the record contained a typographical error. Outlaw's certification explains that the job description incorrectly stated that candidates must possess a "New Jersey Department of Education Permanent Teacher's Certificate," a "New Jersey Special Education Teaching Certificate and/or Reading Specialists Certificate, Teacher of Reading, or Teacher of Supplemental Reading and Math Certificate." According to Outlaw, the LLS position "requires dual certification, therefore possession of a New Jersey Special Education Teaching Certificate and an additional Certification is required," and because petitioner only possesses a Teacher of the Handicapped certificate, she is not qualified for the LLS position.

In response, petitioner submitted a certification also dated July 22, 2024, from Nadine Tribbett, Interim Superintendent, which was filed on behalf of the Board in a related PERC matter. There, Tribbett certified that the LLS job description was accurate and that candidates for the position must possess a “New Jersey Department of Education Permanent Teacher’s Certificate,” a “New Jersey Special Education Teaching Certificate and/or Reading Specialists Certificate, Teacher of Reading, or Teacher of Supplemental Reading and Math Certificate.” According to Tribbett, petitioner is not qualified for the LLS position because she “does not possess a New Jersey Department of Education Permanent Teacher’s Certificate.”²

Relying primarily upon *Carpenito v. Board of Education of the Borough of Rumson*, 322 N.J. Super. 522, 529 (App. Div. 1999), the Administrative Law Judge (ALJ) concluded that the Board did not violate petitioner’s tenure or seniority rights when it abolished the Reading Specialist position, declined to hire her for the substantially similar LLS position, and transferred her to a position within her certification that did not result in any reduction of her salary or benefits. Citing Outlaw’s certification, the ALJ further concluded that petitioner does not meet the eligibility requirements for the LLS position, as she does not have a Reading Specialist, Teacher of Reading, or Teacher of Supplemental Reading and Math certificate. The ALJ also concluded that petitioner failed to present evidence that the Board acted in bad faith or for an unlawful purpose. Thus, the ALJ granted the Board’s cross-motion for summary decision and dismissed the petition.

² Petitioner disputes this. A “standard certificate” is a permanent certificate issued to a person who has met all certification requirements. N.J.A.C. 6A:9-3.1. “Provisional” and “emergency” certificates are temporary. *Ibid*.

Petitioner takes exception to the ALJ's finding that candidates for the LLS position must hold dual certification—*i.e.*, a Teacher of the Handicapped certificate and a Reading Specialist, Teacher of Reading, or Teacher of Supplemental Reading and Math certificate—to qualify. She notes that the Board did not previously allege a typographical error in the LLS job description. She points out that Tribbett's certification, which is not mentioned in the ALJ's Initial Decision, makes no reference to a typographical error in the LLS job description and confusingly claims that petitioner is not permanently certified as a teacher. She contends that the Board's newly raised argument that she was not qualified further supports the conclusion that she was singled out for a transfer on a prohibited basis. Along those lines, petitioner also takes exception to the ALJ's conclusion that she failed to prove that she was qualified for the LLS position and failed to prove that the Board acted in bad faith, or arbitrarily or capriciously, when it bypassed her for the position.

Teaching staff members who have acquired tenure "shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause" *N.J.S.A.* 18A:28-5. However, "[a] school board has the managerial prerogative to transfer teaching staff members by a majority vote of the board." *N.J.S.A.* 18A:25-1. "Seniority is a by-product of tenure and comes into play only if tenure rights are reduced by way of dismissal or reduction in tangible employment benefits." *Carpenito*, 322 *N.J. Super.* at 531. "[A]bsent allegations of bad faith or unlawful purpose, a tenured teacher's seniority rights are not triggered when a school board abolishes the teacher's position and assigns the teacher to teach different subjects within his or her certification without reducing the

teacher's salary or other employment benefit" so long as "the teacher is not singled out for the transfer on a prohibited basis." *Id.* at 528-29.

Upon review, the Commissioner adopts the ALJ's Initial Decision, as modified. The Commissioner concurs with the ALJ that Board did not violate petitioner's tenure or seniority rights when it abolished the Reading Specialist position, declined to hire her for the LLS position, and transferred her to a position within the scope of her certification that did not result in any reduction of her salary or benefits. Like the appellant in *Carpenito*, petitioner has not suffered a loss of employment. The Board was within its rights to transfer her to a different position, so long as it did not reduce her salary or benefits. Petitioner admits that she has remained continuously employed by the district and her salary and benefits have not decreased. The Commissioner also concurs with the ALJ that petitioner failed to demonstrate that the Board acted in bad faith or for an unlawful purpose. The record reflects that the Board eliminated ten other positions when it abolished the Reading Specialist position. Thus, the Board's apparent reorganization did not solely affect petitioner, and the evidence fails to establish that she was singled out for a transfer on a prohibited basis.

However, the Commissioner rejects the ALJ's finding that the LLS position requires dual certification, and that petitioner was not qualified for the LLS position. As petitioner explains in her exceptions, the current record contains conflicting evidence regarding the certification requirements for the LLS position. Tribbett's certification—which does not appear to have been considered by the ALJ—makes no reference to a typographical error and recites the certificate requirements for the LLS position exactly as they appear in the job description. Furthermore, Tribbett's certification and Outlaw's certification are both dated July 22, 2024, yet proffer two

different reasons as to why petitioner is not qualified. In any event, the Commissioner holds that it is unnecessary to make findings regarding whether the LLS position requires dual certification, or whether petitioner was qualified for the LLS position, because petitioner's tenure and seniority rights were not violated by the Board. Although she may prefer the LLS position over a Pre-K position, an employee's desires for a particular position cannot "subvert a school board's managerial authority to lawfully assign and transfer its staff within the scope of their certification, absent disciplinary reasons or bad faith." *Carpenito*, 322 N.J. Super. at 534.

Additionally, the Commissioner rejects the ALJ's conclusion that the Reading Specialist and LLS positions are substantially similar because the ALJ did not render any findings regarding the duties of either position, whether they overlap, or whether they differ. Moreover, since petitioner's tenure and seniority rights were not violated, the Commissioner holds that it is unnecessary to determine whether the Reading Specialist and LLS positions are substantially similar and, therefore, makes no findings on that issue. This matter is distinguishable from *Dennery v. Board of Education of Passaic County Regional High School District #1*, 131 N.J. 626 (1993), where the Court analyzed whether the terminated employee's abolished position was substantially similar to a newly created position she sought. There, the employee's termination triggered the protections afforded by her tenure and seniority rights. See *Dennery*, 131 N.J. at 639-40 (holding that "[w]hen the duties of the position in which a teaching-staff member has acquired tenure are substantially identical to those of the position that the person seeks, a local school board may not sidestep an educator's tenure rights by simply renaming the position or taking on additional meaningless requirements" but "[i]f a newly-created position is similar to a tenure holder's abolished position but also requires additional duties or different responsibilities,

then the newly-created position is not considered to be substantially similar to the former position”). In contrast, here, petitioner was not terminated and did not suffer a reduction in salary or compensation. Therefore, the “substantially similar” analysis is unnecessary.

Accordingly, the Initial Decision is adopted, as modified, the Board’s motion for summary decision is granted, and the petition of appeal is dismissed.

IT IS SO ORDERED.³


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2024
Date of Mailing: October 28, 2024

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 08364-23

AGENCY DKT. NO. 210-8/23

**WILLINGBORO EDUCATION ASSOCIATION,
INDIVIDUALLY AND ON BEHALF OF MEMBER
SABRINA AUSTIN,**

Petitioner,

v.

**TOWNSHIP OF WILLINGBORO,
BOARD OF EDUCATION,**

Respondent.

Amy L. Gillette, Esq., for petitioner (Zeller & Wieliczko, LLP, attorneys)

Patrick Carrigg, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Lang,
Carrigg & Casey, LLC, attorneys)

Record Closed: July 29, 2024

Decided: September 12, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF THE CASE

The petitioner, Sabrina Austin (Austin or petitioner), a tenured teacher employed by the respondent, Township of Willingboro Board of Education (respondent), asserts that the respondent abolished her position, created a substantially similar and newly titled position, and failed to appoint the petitioner to the newly created position in violation of her tenure and seniority rights. The respondent denies violating the petitioner's tenure or seniority rights, contending that after the petitioner's position was abolished, she was appropriately transferred with no reduction in salary or benefits. Additionally, the respondent argues that the petitioner is not qualified for the Literacy Learning Specialist position because she does not hold the necessary certifications.

PROCEDURAL HISTORY

On August 2, 2023, Austin filed a petition with the Department of Education, Office of Controversies and Disputes (DOE), alleging that the respondent violated her tenure and seniority rights by bypassing her for the newly created Literacy Learning Specialist position. The DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed on August 29, 2023, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A prehearing conference was held on November 11, 2023; however, the respondent failed to appear. The parties appeared for prehearing conferences on December 11, 2023, and January 23, 2024. On April 22, 2024, the parties filed individual motions for summary decision. On May 6, 2024, the respondent filed a letter brief responding to the petitioner's motion for summary decision. On June 7, 2024, the parties appeared via Zoom for an oral argument on the motion. On July 23, 2024, the respondent submitted supplemental documentation; on July 29, 2024, the petitioner also submitted supplemental documentation. Upon receipt of all further submissions, the record closed on July 29, 2024.

FINDINGS OF FACT

The parties submitted a Joint Stipulation of Facts and Joint Exhibits. Based upon a review of the documentary evidence presented, I **FIND** the following undisputed **FACTS**:

The petitioner began employment with the respondent in April 2004. Petitioner holds a Special Education Teacher of the Handicapped Certification. Petitioner has a master's degree in curriculum and instruction with an emphasis in reading, a master's degree in special education, and is certified in the Wilson Reading Program. She obtained tenure with the respondent under her special education certification. Joint Stipulation of Facts and Exhibits (March 8, 2024) (Joint Stip) at 1.

During the 2021–2022 and 2022–2023 school years, the petitioner held the position of Reading Specialist. This position integrated all reading instructional programs. Ibid.

On or about April 24, 2023, the respondent abolished the petitioner's Reading Specialist position as of June 30, 2023. Ibid.

The petitioner was directed to apply for and interview for the newly created and substantially similar position of Literacy Learning Specialist. Joint Stip at 2. To be qualified for this position, the candidate must hold dual certification—a New Jersey Special Education Teaching Certificate **and** a Reading Specialist Certificate, Teacher of Reading Certificate, or Teacher of Supplemental Reading and Math Certificate. Respondent's July 23, 2024, Letter Br. in opposition of motion for summary decision, Certification of Dr. Malcolm X. Outlaw (Outlaw Cert.) at ¶ 4.

On June 22, 2023, the petitioner received a letter notifying her of the transfer from her current position as a Reading Specialist at the Country Club Administrative Building to the role of Special Education Pre-K teacher at J. Cresswell Stuart Early Childhood Development Center (ECDC), effective September 1, 2023. Joint Stip at 2.

Petitioner's transfer did not result in any change in salary or benefits, and she has remained continuously employed with the respondent. Ibid.

The respondent hired a non-tenured staff member subjected to a reduction in force to the newly created Literacy Learning Specialist position. Ibid.

Under the Willingboro Educational Association Collective Bargaining Agreement Article XII, section D, 1–2, the petitioner met with Ca'Meshia L. Mitchell, director of Human Resources, to discuss the involuntary transfer on Monday, June 26, 2023. Ms. Mitchell told the petitioner she was new to the director of Human Resources position and following directives. The petitioner received no further information regarding why she was not entitled to the newly entitled position. Ibid.

On July 10, 2023, the Board approved the petitioner's transfer from Pre-K–K Teacher at ECDC to Special Education Science Teacher at Memorial Middle School, effective September 1, 2023. Ibid.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Summary decision may be granted when “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.” N.J.A.C. 1:1-12.5(b). The rule further provides that an adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue which can only be determined at an evidentiary hearing. Ibid. The OAL rule is modeled on New Jersey Court Rule 4:46-2. The New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

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

factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).]

Accordingly, the undisputed facts will determine whether the petitioner has met her burden of proving that the respondent's decision to bypass her for the Literary Learning Specialist position violated her tenure rights and was arbitrary, unreasonable, or capricious. The petitioner has the burden of proving a tenure right. Canfield v. Bd. of Educ. of Pine Hill, 51 N.J. 400 (1968).

According to N.J.S.A. 18A:28-1 to -18, tenure laws define the conditions under which teaching staff members are entitled to job security. Tenure has been described as a "statutory right" imposed upon a teaching staff member's contractual employment status. Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962), cert. denied, 371 U.S. 956 (1963). The tenure laws create exceptions to the protections afforded to tenured teaching staff members. A school board has the managerial prerogative to transfer teaching staff members by a majority vote of the board. N.J.S.A. 18A:25-1.

A transfer refers to a school board's right to assign a teacher to a position within their certification scope. A tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered, and the teacher is not singled out for the transfer on a prohibited basis. Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 529 (App. Div. 1999). In Carpenito, a tenured teacher was transferred after his position was eliminated, but he did not suffer any pay discrepancy or loss of benefits. Several years later, when his previous position reopened, he applied for it, but it was given to a non-tenured teacher. He alleged that the school acted improperly and violated his seniority rights. Id. at 526. However, the court agreed with the board, ruling that his seniority rights were not violated when the board transferred its tenured staff to other positions within their certification. Id. at 534. The Appellate Division agreed that the board could transfer a teaching staff member between appropriate assignments if the transfer aligns with the teacher's instructional

certificate and subject-area endorsements unless allegations of bad faith or unlawful purpose exist. Id. at 533–34.

When a school board deems it necessary to eliminate a position, “seniority” is a right afforded to tenured employees entitling the employee to either continue in an existing job opening based on their longevity of employment or be placed on an eligible list for reemployment when a new position becomes available. Id. at 531. Seniority is a by-product of tenure and comes into play only if tenure rights are reduced by way of dismissal or reduction in tangible employment benefits. Ibid.

The petitioner claims that her seniority and tenure rights were violated when a non-tenured teacher was appointed to the Literacy Learning Specialist position instead of her, despite her being qualified for the position and its substantial similarity to a position she previously held. The petitioner alleges that the respondent bypassed her tenure rights by renaming the position, appointing a non-tenured employee, and moving her to different positions.

On the other hand, the respondent argues that it had the authority to transfer teaching staff members and that the petitioner was appropriately transferred. It claims that her seniority and tenure rights were not violated, so she had no entitlement to the Literacy Learning Specialist position.

First, like the petitioner in Carpenito, the petitioner was neither dismissed, nor was her salary reduced due to the respondent’s decision to assign her to a different position; she suffered no loss of employment. Her employment was continued within the scope of her certification. Her seniority relative to non-tenured or tenured employees is irrelevant. Seniority rights are not triggered when a school board merely transfers or assigns a tenured teaching staff member to another position within the teacher’s appropriate certification.

Second, the evidence presented establishes that the petitioner is not qualified for the Literacy Learning Specialist position. She does not possess a Reading Specialist

Certificate, a Teacher of Reading Certificate, or a Teacher of Supplemental Reading and Math Certificate—a requirement for the position.

Last, the petitioner did not present evidence that the respondent's actions were motivated by bad faith or an unlawful purpose.

Based on the above, I **CONCLUDE** that the respondent's action in abolishing the petitioner's Reading Specialist position and transferring her to a position within her certification did not violate the petitioner's tenure or seniority rights and that it was not arbitrary, unreasonable, or capricious.

I further **CONCLUDE** that the petitioner has failed to prove, by a preponderance of the evidence, that she was qualified for and entitled to the Literary Learning Specialist position and that the respondent acted in bad faith or was arbitrary and capricious in bypassing her for the position.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petitioner's motion for summary decision is **DENIED**. I further **ORDER** that the respondent's motion for summary decision is **GRANTED**, and the petitioner's appeal is **DISMISSED**.

I hereby **FILE** this Initial Decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

September 12, 2024

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/dw

APPENDIX

Witnesses

For petitioner:

None

For respondent:

None

Exhibits

Joint:

Stipulated Facts and Exhibits

For petitioner:

April 22, 2024, Motion for Summary Decision

July 29, 2024, letter

For respondent:

May 6, 2024, Opposition to Summary Decision

July 23, 2024, letter attaching the July 22, 2024, certification of Dr. Malcolm X.

Outlaw