

PENNSVILLE EDUCATION ASSOCIATION, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOWN- : DECISION
 SHIP OF PENNSVILLE, SALEM COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning Education Association contended the Board violated the regulatory provisions at *N.J.A.C. 6:11-11.6*, statutory and regulatory law and decisional law of the Commissioner by operating its school library at the Pennsville Middle School without a properly certified professional librarian in place. It argued the Board replaced the retired librarian at the library with an aide (Ms. Bell), who was performing several professional functions formerly performed by the school’s librarian without the education, experience or educational services certificate with an educational media specialist endorsement as required by law. Ms. Bell held a county substitute certificate; she was neither certificated as a professional librarian nor as an educational media specialist. Board contended the aide performed clerical duties, not professional duties, and aided the principal of the Middle School, who oversaw the operation of the library.

In light of the testimony of witnesses, the ALJ found and concluded that Ms. Bell only coordinated the library services; the building principal was totally responsible for the supervision of the library and the Librarian Aide. Moreover, the County Superintendent was fully aware of the scope of the position of Librarian Aide, the Board’s job specifications and the certificate required (county substitute certificate). ALJ concluded the middle school building principal was responsible for supervision; Ms. Bell neither supervised the library nor conducted instruction while there. ALJ determined Ms. Bell performed clerical and custodian functions under her Board-adopted job description. Citing *Lippincott* Appellate Division decision, the ALJ noted the principal has the authority to develop and coordinate the educational media services of a school. Thus, the ALJ concluded the Board’s action creating and filling the position of Librarian Aide was proper and in accordance with the law. Petition was dismissed.

Upon careful and independent review of the record, and even accepting the ALJ’s credibility assessments, the Commissioner determined to reverse the initial decision. Initially, the Commissioner affirmed that the Board was not compelled to employ the services of an individual with a standard educational services certificate and endorsement in educational media services (EMS) (*N.J.A.C. 6:11-11.17*) or an endorsement as an Associate EMS (*N.J.A.C. 6:11-11.18*). The Board, however, may not assign duties which are professional in nature to a paraprofessional aide. Commissioner found that there was ample evidence to support the conclusion that Ms. Bell, for all practical purposes, operated independently and performed educational media services, which did not involve the genuine, consistent involvement of a properly certified individual. Moreover, the Commissioner found that notwithstanding Ms. Bell’s possession of a substitute certificate, she substituted for no one. Commissioner directed the Board to modify, within 90 days of the issuance of this decision, its job description for Librarian Aide to conform with applicable regulations, as well as the parameters of this decision. A copy of the revised job description should be submitted to the County Superintendent for review and approval in accordance with *N.J.A.C. 6:11-4.6*. Commissioner directed Board to append to its proposed job description for the Librarian Aide the job description for Principal showing the position’s role in the delivery of educational media services in the middle school.

SEPTEMBER 9, 1999

OAL DKT. NO. EDU 6485-98
AGENCY DKT. NO. 141-5/98

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Petitioner excepts to the Administrative Law Judge’s (ALJ) determination that an aide and a principal, who both lack an educational services certificate with an educational media services (EMS) endorsement, may legally run a library, particularly in light of his finding that Ms. Bell “coordinate[s] the library services” (Initial Decision at p. 28) and engages in the selection and removal of books. (*Id.*) Petitioner underscores that Ms. Bell is performing curatorial functions for the library, exercising considerable discretion in so doing (Petitioner’s Exceptions at pp. 3-5), and is independently coordinating the use of library services on a day-to-day basis. (*Id.* at p. 5)

Petitioner also reasserts that *Lippincott, supra*, is distinguishable from the within matter, in that it dealt with questions of a principal’s ability to *supervise* an educational media

specialist and media center staff. Petitioner avers that the decision “does not stand for the proposition for which the Initial Decision cites it,” (*Id.* at p. 7), that is, that educational media service functions may actually be *performed* by a principal or vice-principal without the requisite EMS endorsement. Finally, petitioner argues that the Initial Decision errs in concluding that the County Superintendent may approve a job description in plain contravention of regulations promulgated by the Department of Education. (*Id.*)

In response, the Board affirms that the *Lippincott* decision is dispositive of the matter herein, inasmuch as “the Appellate Division upheld the Commissioner and the State Board that under a principal’s certification, the principal has the authority to develop and coordinate the educational media services of a school.” (Board’s Reply at p. 1) Moreover, the Board argues that petitioner has failed to prove by a preponderance of credible evidence that the educational media services in the middle school are performed illegally. The Board proposes that

[a]s the brief of Respondent suggested, even Mr. Blocksom on cross examination agreed that the job description’s numbers one through four could be clerical.

The principal or even a vice principal has the authority to develop and coordinate the educational media services program.*** (*Id.* at p. 2)

Upon careful and independent review of the record in this matter, and even accepting the ALJ’s credibility assessments, the Commissioner determines to reverse the Initial Decision, for the reasons set forth below.¹ Initially, the Commissioner affirms that the Board is not compelled to employ the services of an individual with a standard educational services

¹ In so doing, the Commissioner specifically disavows the ALJ’s reliance on the County Superintendent’s apparent approval of the aide’s position in this matter. By letter decision dated July 17, 1998, the County Superintendent was severed as a party in this matter, because, to the extent he was involved in the Board’s decision to employ the aide, it was, ultimately, the Commissioner who would determine whether the issues raised in the petition were meritorious.

certificate and endorsement in EMS (*N.J.A.C.* 6:11-11.17) or an endorsement as an Associate EMS (*N.J.A.C.* 6:11-11.18) in order to operate its middle school media center. However, even assuming, *arguendo*, that the *Lippincott* decision stands for the proposition which the Board suggests, the Board may not, in devising an appropriate mechanism to deliver educational media services, and in allocating the functions attendant to that mechanism, assign duties which are professional in nature to a paraprofessional aide. By regulation, the purpose of a school or classroom aide is to *assist* “in the supervision of pupil activities under the direction of a principal, teacher or other designated certified professional personnel***.” *N.J.A.C.* 6:11-4.6. The Commissioner is persuaded by the record before him that petitioner has demonstrated by a preponderance of credible evidence that Ms. Bell is *not* performing as an aide to a properly certified professional, but is acting, instead, in a capacity which calls for independent initiative, (*Glen Rock Education Association, Sarah Brown and N. Miles Leonard v. Glen Rock Board of Education*, State Board of Education May 1, 1985, *aff’d* May 22, 1986, N.J. Superior Court, Appellate Division, A-4576-84T1), thereby effectively nullifying the Board’s plan to develop and coordinate EMS services through its middle school principal, with the auxiliary services of an aide.

On its face, the duties enumerated in the Board’s job description for the Librarian Aide, particularly duties one through four, are not those of an aide, as they describe independent professional functions and there is no indication that Ms. Bell is expected to assist a properly certified person who is ultimately responsible for developing and coordinating educational media services.²

² Distinguish, *Rossi v. Board of Education of the Township of Willingboro*, Agency Dkt. No. 294-8/78 (September 24, 1980), adopted Commissioner of Education November 7, 1980, *aff’d* August 5, 1981 (slip. op. at p. 6) where the job responsibilities of the Learning Resource Center aide provided that, under the supervision of a certified librarian and teachers, the aide’s duties were: “1. To assist with processing books, supplies, materials,

The regulations found at *N.J.A.C. 6:11-11.17* and *6:11-11.18* set forth the requirements for EMS and Associate EMS endorsements. The EMS endorsement

*** is required for any person who is assigned to develop and coordinate educational media services in the public schools. Educational media are defined as all print and nonprint resources and the equipment needed for their use. *** *N.J.A.C. 6:11-11.17*

The Associate EMS endorsement

***is required for any person assigned to perform the educational media services in the public schools under the supervision of a qualified supervisor. Educational media are defined as all print and nonprint resources and the equipment needed for their use. *** *N.J.A.C. 6:11-11.18*.

In *Glen Rock Education Association et al., supra*, the local board therein employed a single, certified Library Media Manager who assumed responsibility for the management of both its junior and high school facilities, with the assistance of two noncertified employees, an Assistant to the Librarian and a Media Technician. In analyzing whether the services performed by the noncertified Assistant to the Librarian could be performed only by an individual certified as an EMS or an Associate EMS, the State Board directed:

While the definition of educational media clearly applies to the library material with which the Assistant to the Librarian is involved, the relevant inquiry is whether she either is *assigned to develop and coordinate* educational media services or *performs* educational media services ... under the supervision of a qualified supervisor. . .”, here the Library Media Manager. Based on her job description and analysis of the duties she performs, the State Board concludes that the Assistant to the Librarian neither is assigned to develop and coordinate educational media services nor does she perform educational media services. (emphasis in text)

magazines, journals, newspapers in the Resource Center. 2. To assist with preparation of displays to motivate student interest and to provide supplementary instructional information. 3. To assist in checking out and retrieving of materials. 4. To assist instructional staff with preparation of special bibliographies and reading lists. 5. To care for the housekeeping duties of the Resource Center. 6. To assist with roll taking. 7. To assist with general typing. 8. To assist with collecting and filing of free materials. 9. To assist with cataloguing and care of audio visual materials in the Resource Center. 10. To assist pupils with locating books and materials applicable to their individual needs.”

According to her job description, ***, and the findings of fact set forth in the initial decision, the position in question requires that the Assistant to the Librarian assist the Library Media Manager in ordering, cataloguing, covering, displaying, lending and collecting books, in preparing the budget, and by suggesting needs for books and equipment. *** The actual acquisition, organization, physical processing, classification and circulation of library materials and preparation of the budget is the responsibility of the Library Media Manager. *** While the Assistant to the Librarian assists teaching staff members in locating and reserving library materials and in preparing bibliographies and reading lists, ***the ultimate responsibility for these tasks lies with the Library Media Manager. *** The Assistant to the Librarian assists in creating exhibits and displays. *** She organizes library materials, maintains the periodical and pamphlet collections for the senior high school library, supervises the circulation desk and maintains a schedule of library use for the senior high school library, although all library scheduling is the ultimate responsibility of the Library Media manager. *** In addition to the tasks specifically enumerated in the job description, the Assistant to the Librarian also checks the books to ascertain balances in the book and periodical accounts. *** While the Assistant to the Librarian may participate in discussions concerning reorganization, long and short term planning, and new programs or projects, any decisions in these areas are made exclusively by the Library Media manager. ***

The Assistant to the Librarian assists the Library Media Manager in the annual library orientation of ninth grade students by advising each class as to available materials, library hours and overdue policies. *** However, the instructional component of the orientation -- teaching students research skills -- is the responsibility of the Library Media Manager. *** In fact, when students are present, the senior high school library is never attended by the Assistant to the Librarian alone, without the presence of the Library Media Manager or a certified teacher. *** Further, the Assistant to the Librarian has no responsibility for the instruction of pupils nor does she teach pupils. *** Such instruction is the sole province of the Library Media Manager *** whose ultimate responsibility is to formulate and implement library policy and to operate the library program in the junior and senior high school. ***

We find that in virtually every area in which she performs, the Assistant to the Librarian merely assists the Library Media Manager in the performance of her duties or performs tasks at the manager's direction. To borrow the language of the County

*Superintendent, “there is nothing self-generating by way of initiative” involved in the position of Assistant to the Librarian. *** Thus, both in theory and in practice, the Assistant to the Librarian does not perform educational media services, but merely aids in the delivery of such services. Since she merely aids in the delivery of educational media service, the Assistant to the Librarian clearly is not charged with the greater responsibility of developing media services. We conclude that a position such as this, which requires that the employee merely aids in the delivery of media services, does not require either an Educational Media Specialist Certificate or an Associate Educational Media Specialist Certificate. (emphasis added) (Glen Rock, supra, slip op. at pp. 4-7)*

In the present matter, even looking beyond the four corners of the job description to the credible testimony adduced herein, there is little dispute about what Ms. Bell is actually *doing*; it is the *characterization* of her work that is in dispute. Moreover, the dispute arises within a context where crucial functions can, as recognized by all parties herein, legitimately involve both professional and clerical aspects. In examining the work performed by Ms. Bell, the Commissioner finds that, in each of the four central functions at issue in this matter, Ms. Bell is clearly performing at least some duties which cannot be considered clerical. With regard to instruction, it is clear that she is not acting merely as a study hall monitor, but is providing some minimal level of assistance to students; indeed, it is for this very reason that the Board required her to hold a county substitute certificate. With regard to selection and removal of materials, notwithstanding that she generally applies “rules of thumb” of unspecified origin rather than making case-by-case judgments, the fact remains that Ms. Bell is making the ultimate determinations in these critical curatorial processes; the record is devoid of even a claim that there is any meaningful review or oversight of her determinations. Finally, with regard to cataloging, it is clear that Ms. Bell retains the discretion, if a book is not pre-catalogued, to engage a cataloging service or dispose of the book by arranging for its use elsewhere, as in the

collection of an individual classroom teacher. Thus, there is ample evidence to support the conclusion that Ms. Bell is, for all practical purposes, operating independently, undertaking self-generating tasks and performing educational media services which do not involve the genuine, consistent involvement of a properly certified individual, contrary to *Glen Rock, supra*.³ Concomitantly, there is a dearth of evidence on the record to support the Board's contention that Ms. Bell is merely assisting the principal who is primarily responsible for developing and coordinating the educational media services.⁴

Finally, the Commissioner finds, as petitioner correctly observes, that notwithstanding her possession of a substitute certificate, Ms. Bell substitutes for no one. Contrary to the Board's urging, persons who hold substitute certificates *are* to be employed only in the manner prescribed by *N.J.A.C. 6:11-4.5*. The Board may not simply employ a paraprofessional holding a substitute certificate and then assign to her tasks which are reserved for professional staff.

Accordingly, the initial decision of the ALJ is reversed, as set forth above. The Board is hereby directed to modify, within 90 days of the issuance of this decision, its job description for "Librarian Aide" to conform with applicable regulations, as well as the parameters of this decision. A copy of the revised job description shall be submitted to the county superintendent for review and approval in accordance with *N.J.A.C. 6:11-4.6*. Additionally, the Board is directed to append to its proposed job description for the Librarian Aide the job description for the position of Principal which shall appropriately evidence that

³ The Commissioner herein notes that, although the within record does not include transcripts of the hearing conducted at OAL, the Board does not rebut petitioner's summary of the testimony provided by Ms. Bell and Mr. Blocksom in its exceptions.

⁴ Moreover, the Commissioner notes that to the extent the Board repeatedly attests that the aide's duties are, in fact, "clerical" in nature rather than plainly supportive of, and supplemental to, a certified professional, it invites an ambiguity in job assignment which may later give rise, *inter alia*, to a tenure claim. (*See Roach v. South Orange-Maplewood School District*, 96 *N.J.A.R.* 2d (EDU) 370.)

position's role in the delivery of educational media services in the middle school. A copy of this decision shall be forwarded to the Salem County Superintendent of Schools.⁵

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION.

SEPTEMBER 9, 1999

⁵ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.