

EDU #9743-94 and #9745-94 (consolidated)
C # 150-97
SB # 40-97

ANITA LEWIS, :

PETITIONER-RESPONDENT, :

V. :

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF PATERSON, PASSAIC :
COUNTY, :

RESPONDENT-APPELLANT, : STATE BOARD OF EDUCATION

AND : DECISION

DEBRA ANN SKAWINSKI, :

PETITIONER-CROSS/APPELLANT, :

V. :

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF PATERSON, PASSAIC :
COUNTY, :

RESPONDENT-APPELLANT. :

Decided by the Commissioner of Education, March 24, 1997

Decided by the State Board of Education, October 1, 1997

For the Petitioner-Respondent, Balk, Oxfeld, Mandell & Cohen (Gail Oxfeld
Kanef, Esq., of Counsel)

For the Respondent-Appellant, Purcell, Ries, Shannon, Mulcahy & O'Neill
(Joseph F. Skinner, Esq., of Counsel)

Anita Lewis (hereinafter “petitioner” or “Lewis”), a tenured teaching staff member, filed a petition of appeal with the Commissioner of Education alleging that the State-operated School District of the City of Paterson (hereinafter “State-operated District”) had violated her tenure rights following the abolishment of her position as a business education teacher during a reduction in force (“RIF”) in May 1994.¹ Petitioner, who does not challenge the validity of that RIF, claimed that the State-operated District had failed to reinstate her to another position for which she was qualified by virtue of seniority pursuant to N.J.S.A. 18A:28-12. Specifically, petitioner, who held an instructional endorsement as a Teacher of Business Education, claimed that she had been entitled to reinstatement as an in-school suspension instructor, which had been held by Robert Salviano until November 1994, or as a teacher of computers, which had been held by Catherine Zehnacker. Petitioner requested back pay for the entire 1994-95 school year and for the 1995-96 school year through March 1, 1996, when she was reinstated to a teaching position.

On January 30, 1997, an Administrative Law Judge (“ALJ”) recommended dismissing the petition. The ALJ concluded that the State-operated District had not violated petitioner’s tenure or seniority rights, finding that petitioner did not possess the required certification for the positions to which she claimed entitlement.

On March 24, 1997, the Commissioner rejected the ALJ’s recommendation. The Commissioner found that Salviano's employment as an in-school suspension teacher

¹ We note that, prior to the hearing in this matter, the Administrative Law Judge consolidated the petition filed by petitioner Lewis with a similar petition filed by Debra Ann Skawinski, another tenured teaching staff member in the district. On October 1, 1997, the State Board approved a proposed settlement resolving the dispute between the State-operated District and Skawinski. Consequently, our decision

constituted “a ‘position’ rather than an ‘assignment.’” Commissioner’s Decision, slip op. at 16. The Commissioner noted that in-school suspension “represented employment which required a valid and effective certificate, notwithstanding that the District has apparently failed to promulgate this requirement in any consistent or responsible manner.” Id. at 17. The Commissioner also observed that “a teacher of computers need only possess an instructional certificate; there is no requirement for a specific endorsement.” Id. at 16. The Commissioner found that, subsequent to the RIF, there were positions to which petitioner could have been assigned by virtue of her tenure and seniority rights. He concluded that petitioner Lewis was entitled to the difference between what she could have earned in either of those positions during the relevant time frame and what she had actually earned as a teacher's aide during that period. However, the Commissioner added that it was unclear whether the in-school suspension “position” continued to exist after November 1994. Stressing that Skawinski had more seniority than Lewis, the Commissioner noted that if the in-school suspension “position” had been abolished after November 1994, “there would be no position remaining after that date to which [Lewis] could claim entitlement and her relief would be so limited.” Id. at 19.²

The State-operated District filed the instant appeal to the State Board.

herein is limited to the petition filed by Anita Lewis, and any references to “petitioner” are intended to refer to Lewis only.

² The State-operated District asserts in its appeal brief that the in-school suspension assignment remained vacant from November 7, 1994 until December 5, 1994, when it was assigned to a staff member with 30 years seniority in the district.

After a careful review of the record, we reverse the decision of the Commissioner with regard to petitioner's entitlement to the in-school suspension assignment and remand this matter for further proceedings in accordance with our decision herein.

In David Dowding v. Board of Education of the Township of Monroe, decided by the State Board of Education, December 5, 1990, we rejected the notion that in-school suspension "is necessarily a teaching staff assignment within the position of 'teacher' requiring possession of a valid certificate in order to be qualified to serve in the assignment." Dowding, supra, slip op. at 2-3 (emphasis in original). We stressed in our decision that:

The cases cited by the Commissioner do not justify a blanket determination that all in-school suspension assignments are instructional. Nor do we find such a blanket determination proper. Whether or not an in-school suspension assignment is a teaching staff assignment requiring an instructional certificate turns upon the specific duties to be performed in that particular assignment, requiring assessment of whether the employment is of such character as to require that the individual assigned thereto hold appropriate certificate in order to perform such functions. See N.J.S.A. 18A:1-1; N.J.A.C. 6:11-3.4.

Id. at 3 (emphasis in original).

In this instance, the Commissioner concluded that the in-school suspension assignment claimed by petitioner was a teaching staff position requiring appropriate certification. However, the Commissioner failed to review the specific duties to be performed in that assignment in order to determine whether they were of such character as to require certification in order to be qualified to perform those functions. See South River Education Association v. Board of Education of the Borough of South River, decided by the State Board of Education, November 4, 1987. Consequently, we

find it necessary to remand this matter to the Commissioner for further proceedings in order to determine whether the particular in-school suspension assignment at issue herein was a teaching staff position requiring possession of an appropriate certificate. If it was not a teaching staff position, then it was not within the scope of entitlement conferred on petitioner by N.J.S.A. 18A:28-12. Driscoll v. Board of Education of the West Essex Regional School District, decided by the State Board of Education, 95 N.J.A.R.2d (EDU) 348.

With respect to the computer course claimed by petitioner, we reject the State-operated District's contention that an endorsement in elementary education was required to teach that course. While we have rejected the broad general principle that the duties attending a course involving computers can never be of such character as to require possession of a particular instructional endorsement, Morgan v. Board of Education of the Township of Wayne, 1991 S.L.D. 2578, we agree with the Commissioner that, on the basis of the facts in the record, the duties of the computer course at issue in this case required only possession of an instructional certificate.

In so doing, however, we reject petitioner's argument that she was necessarily entitled to back pay through March 1996 when she was reinstated to a teaching position. Petitioner does not dispute the fact that Skawinski had greater seniority than she. Consequently, as found by the Commissioner, Skawinski would have been entitled to reinstatement in the position teaching computers. Petitioner's entitlement would therefore have been limited to the in-school suspension assignment, but only if the duties of that assignment were of such character as to require possession of a teaching certificate.

Accordingly, for the reasons stated herein, we set aside the Commissioner's determination that the in-school suspension assignment claimed by petitioner was a teaching staff position requiring possession of an instructional certificate. We remand this matter to the Commissioner for further proceedings in order to determine whether in-school suspension was a teaching staff position and, if so, whether petitioner had any entitlement thereto after November 1994, as well as for a resultant determination of petitioner's claim in accordance with our decision herein.

August 5, 1998

Date of mailing _____