

EDU #12133-99
C # 258-01
SB # 33-01

PASSAIC EDUCATION ASSOCIATION, :
PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY OF :
PASSAIC, PASSAIC COUNTY, :
RESPONDENT-APPELLANT, :
AND :
EDWARD ROWBATHAM, MARYALLYN :
FISHER, MINNIE HILLER AND SHERRI :
GRIER, :
INTERVENORS. :
_____ :

Decided by the Commissioner of Education, August 16, 2001

For the Respondent-Appellant and Intervenors, Sills, Cummis, Radin,
Tischman, Epstein & Gross (Cherie Adams Maxwell, Esq., of
Counsel)

For the Petitioner-Respondent, Zazzali, Fagella, Nowak, Kleinbaum &
Friedman (Richard A. Friedman, Esq. and Kathleen A. Naprstek,
Esq., of Counsel)

The State Board of Education affirms the decision of the Commissioner of
Education substantially for the reasons expressed in his decision. In doing so, we
stress, as did the Commissioner, that pursuant to the statutory framework, an individual
must hold appropriate certification issued by the State Board of Examiners in order to

be employed by a school district as a teaching staff member. As the Commissioner recognized in his decision, whether or not a given assignment constitutes employment as a teaching staff member requires an assessment of whether the employment is of such character that appropriate certification is required in order to be qualified. Such an assessment necessarily dictates an examination of the functions of the position, including the specific duties attached to the assignment.

We find that the Commissioner's decision in this case is grounded in such an assessment, and we fully concur with the conclusions he reached on the basis of his examination of both the function of the assignments at issue and the specific duties attached to them. As set forth in the Commissioner's decision, the functions to be served by these assignments and the duties attached to them are such that there is no question but that the positions at issue are of such character as to require the individuals serving in them to possess appropriate certification in order to be qualified.

We stress that our affirmance of the Commissioner's decision is based on his findings with respect to the job descriptions as they were developed and submitted by the Board of Education of the City of Passaic. That being the case, we decline to speculate as to whether the Board could have developed job descriptions for assignments that would adequately fulfill the functions of the positions at issue here but which would not be of such character as to require certification. We therefore modify the Commissioner's decision to eliminate any suggestion that the Board could now avoid the certification requirements established by the Commissioner's decision merely by revising the job descriptions that were the basis for that decision. Accordingly, as the Commissioner directed and as required by N.J.A.C. 6:11-3.6(b), the Board must submit

the job descriptions that were at issue in this case to the Passaic County Superintendent for determination of the appropriate certification and position titles.

In view of our determination today, we need not pass upon the motion for a stay that was filed in this matter by counsel for the appellant and the intervenors.

December 5, 2001

Date of mailing _____