

EDU #6261-00
C # 267-02
SB # 34-02

ANNA PORUCHYNSKY, :
 : STATE BOARD OF EDUCATION
 PETITIONER-APPELLANT, :
 : DECISION
 V. :
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF HOLMDEL, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, July 8, 2002

For the Petitioner-Appellant, Klausner & Hunter (Stephen B. Hunter, Esq.,
of Counsel)

For the Respondent-Respondent Reussille, Mausner, Carotenuto, Barger
& Steel, L.L.C. (Martin M. Barger, Esq., of Counsel)

Anna Poruchynsky (hereinafter "petitioner"), who received her instructional certificate in 1972 with endorsements as a teacher of home economics and nursery school, was employed by the Board of Education of the Township of Holmdel (hereinafter "Board") as an instructional aide during the 1996-97 school year. The Board thereafter employed the petitioner as a teacher for the 1997-98, 1998-99 and 1999-2000 school years. On July 7, 2000, after the Board failed to renew her employment as a teacher for the 2000-01 school year, the petitioner filed a petition of appeal with the Commissioner of Education, contending that she had achieved tenure in

the district as a teacher and that the Board's action in failing to renew that employment had violated her tenure and seniority rights.¹ The petitioner claimed that she had performed teaching duties during the 1996-97 school year and that such service should be credited for tenure achievement purposes.

On April 8, 2002, the Administrative Law Judge ("ALJ") recommended dismissing the petition, finding that "[t]he petitioner performed the duties of an aide [during the 1996-97 school year]. Some of those duties had an instructional component. This does not translate automatically into a teaching position. Aides often give instruction. This does not make them teachers." Initial Decision, slip op. at 12. The ALJ observed that "[t]he testimony as well as the job description (P-5) did not suggest the duties were those exclusively reserved to a certified teacher, although instruction would clearly be required." Id. at 11. Consequently, he concluded that the petitioner "did not perform duties in the 1996-97 school year that were in law or in fact duties that could solely be performed by a teacher." Id. at 12.

On July 8, 2002, the Commissioner adopted the ALJ's conclusions and dismissed the petition. The Commissioner agreed with the ALJ that the petitioner had not served as a teaching staff member during the 1996-97 school year, finding that "at most, [the petitioner] assisted in providing a component of courses taught by teaching staff members; i.e. she provided assistance with regard to the integration of computer technology as a component of academic instruction. As held by the ALJ, assisting teachers in such a manner does not constitute service as a teacher." Commissioner's Decision, slip op. at 21. The Commissioner found that the "proffered facts indicate that

¹ We note that the Board appointed the petitioner as an instructional aide for the 2000-01 school year.

petitioner assisted teachers (as do all instructional aides), not that she served as a teacher....” Id.

The petitioner filed the instant appeal to the State Board.

After a thorough review of the record, we affirm the decision of the Commissioner as clarified herein.

Tenure is a legislatively conferred right, Spiewak v. Rutherford Bd. of Ed., 90 N.J. 63, 72 (1982), and is achieved only upon satisfaction of the precise statutory conditions. Zimmerman v. Board of Educ., 38 N.J. 65, 72 (1962), cert. denied, 371 U.S. 956, 83 S.Ct. 508, 9 L.Ed.2d 502 (1963). In order to be eligible to achieve tenure, the tenure laws, N.J.S.A. 18A:28-1 et seq., require that an individual be a "teaching staff member," i.e., employed in a position of such character that the qualifications therefor require possession of an appropriate certificate, N.J.S.A. 18A:1-1, and serve in such capacity for a specified probationary period, N.J.S.A. 18A:28-5.²

It is undisputed that the petitioner herein served as a teaching staff member for three consecutive academic years, 1997-98, 1998-99 and 1999-2000, prior to the termination of her employment as a teacher. Hence, this case turns on whether her duties during the 1996-97 school year were of such character as to require possession of a certificate in order to be qualified to fulfill such functions. Our review of the record compels us to agree with the ALJ and the Commissioner that the duties performed by

² N.J.S.A. 18A:28-5 provides that tenure is achieved after employment in a position for:

- (a) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or
- (b) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (c) The equivalent of more than three academic years within a period of any four consecutive academic years.

the petitioner during 1996-97 were not of such character. We clarify in that regard that, although the petitioner indicates that she was responsible, in part, for the grading of students' multimedia presentations, she did not have the ultimate responsibility for grades. Rather, her responsibilities were limited to providing the students' subject area teachers with input regarding a component of the students' final grades. The actual grades were determined by the teacher and not by the petitioner. Tr. 9/20/01, at 97-99; tr. 12/3/01, at 17, 30.

Accordingly, we concur with the Commissioner's conclusion that the petitioner was not serving as a teaching staff member during the 1996-97 school year. Since she did not satisfy the precise statutory conditions for the achievement of tenure in the district under N.J.S.A. 18A:28-5, we affirm the decision of the Commissioner to dismiss the petition.

June 4, 2003

Date of mailing _____