

LAWRENCE MARTIN, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF :  
THE CITY OF SOUTH AMBOY, :  
MIDDLESEX COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner – a tenured teacher with an instructional certificate in Skilled Trades, Machine Shop – appealed the decision of the respondent Board not to recall him to a reconstituted position of In-House Suspension (IHS) teacher following a reduction in force in which the IHS program was eliminated in 2010. The Board contended that it was under no obligation to recall petitioner once it reconstituted the position in 2012 because they added a physical education component which required that the new instructor possess a physical education certificate – which Martin does not possess.

The ALJ found, *inter alia*, that: petitioner was tenured in respondent’s district, and his last position was that of In-House Suspension Teacher; petitioner holds an instructional certificate with an endorsement for Skilled Trades – Machine Shop; when the Board reconstituted the subject position, it elected to substantially change the position by adding an instructional component in physical education; there is no evidence that this decision was made in bad faith or was arbitrary, capricious or unreasonable; the teacher hired by the Board for the newly reconstituted position possesses the required physical education certificate and does provide physical education instruction during in-school suspensions. Accordingly, the ALJ affirmed the Board’s decision not to recall petitioner to the reconstituted position.

Upon independent review, the Commissioner concurred with the ALJ’s findings and conclusions, and accordingly dismissed the petition.

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.

May 13, 2013

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The controversy before the Commissioner relates to respondent's elimination of the position of in-school suspension teacher and the consequent termination of petitioner's employment. Petitioner alleges that when respondent subsequently restored the position, it violated his tenure rights by not calling him back to serve in same.

However, respondent reconstituted the former in-school suspension teaching position as an in-school suspension/physical education teaching position, requiring that candidates possess physical education endorsements to their teaching certificates. Petitioner does not hold such an endorsement. For this reason, the Administrative Law Judge (ALJ) found that petitioner is not qualified for the subject position and, therefore, can claim no tenure or seniority rights regarding it.

Upon review of the Initial Decision of the Office of Administrative Law and the record,<sup>1</sup> the Commissioner concurs with the ALJ's findings and conclusions. Accordingly, the petition is dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 13, 2013

Date of Mailing: May 14, 2013

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<sup>1</sup> Neither party filed exceptions to the Initial Decision.

<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).