

BRENDA MILLER, :  
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 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 STATE-OPERATED SCHOOL DISTRICT : DECISION ON REMAND  
 OF THE CITY OF NEWARK, :  
 ESSEX COUNTY, :  
 :  
 RESPONDENT. :

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### SYNOPSIS

In this case on remand, petitioner challenged the District’s decision to terminate her employment in August 2014, contending that she had earned tenure in her secretarial or clerical position in accordance with *N.J.S.A. 18A:17-2*. Petitioner also alleged that the individual who terminated her employment – the “Chief Talent Officer” – had not been appropriately delegated the authority to make personnel determinations on behalf of the State District Superintendent. In an Initial Decision issued by the OAL on December 9, 2015, the ALJ found that the petitioner had earned tenure under *N.J.S.A. 18A:17-2*, and ordered the District to reinstate her to a full-time position; petitioner’s allegation regarding the individual who terminated her employment was not addressed in the December 9, 2015 Initial Decision. The Commissioner rejected this Initial Decision, finding, *inter alia*, that petitioner could not have earned tenure under *N.J.S.A. 18A:17-2* because she did not satisfy the conditions of the statute, as she was employed in her unclassified title for less than the three years required to accrue tenure under Title 18A. The Commissioner remanded the matter to the OAL for a determination regarding whether petitioner’s termination was carried out by an appropriately delegated individual.

On remand, the ALJ found, *inter alia*, that: pursuant to *N.J.S.A.18A:7A-35(d)*, a State-Appointed Superintendent for a school district under full State intervention has the authority to perform duties and possess such powers as are deemed appropriate by the Commissioner; pursuant to *N.J.S.A.18A:7A-42(b)*, a State-Appointed Superintendent “may delegate to subordinate officers or employees in the district any of his powers or duties as he may deem desirable to be exercised under his supervision and direction”; it is inconceivable, in a district as large as Newark, that a superintendent would micro-manage every personnel decision; within the Newark school district, it is evident that the position of Chief Talent Officer not only reports to the Superintendent, but is charged with providing leadership in human resource matters, including recruitment and selection of personnel, workforce planning and vacancy projections, evaluation/performance management, and strategic labor relations; moreover, the District contended that what was delegated to the Chief Talent Officer was the responsibility to communicate with District employees regarding their employment as well as to hire and fire non-civil service employees; as the party seeking relief herein, the petitioner bears the burden of proof; petitioner provided no evidence to sustain her claim that the State-Appointed Superintendent failed to delegate authority to terminate her to the Chief Talent Officer; and all unrefuted evidence supports the District’s claim of proper delegation of authority. The ALJ concluded that petitioner’s termination was not in violation of the statutory provisions regarding the authority of a State-Appointed Superintendent, including the authority to delegate duties; accordingly, the ALJ ordered the petition dismissed.

Upon comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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.

July 28, 2016

OAL DKT. NO. EDU 03970  
(EDU 15475-14 ON REMAND)  
AGENCY DKT. NO. 301-10/14

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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL) dated December 9, 2015, and the subsequent Initial Decision of the OAL dated June 20, 2016 (issued pursuant to the Commissioner’s remand) have been reviewed. The petitioner’s exceptions – filed pursuant to *N.J.A.C. 1:1-18.4* – and the District’s reply thereto were also considered by the Commissioner.

In her exceptions, petitioner essentially recasts and reiterates the arguments made in her submissions at the OAL, arguing that the State District Superintendent never specifically delegated the authority to hire and fire employees to the District’s Chief Talent Officer. Petitioner emphasizes that the job description for the Chief Talent Officer and the Chief Talent Officer’s certification fail to demonstrate that the State District Superintendent ever made such a delegation. Accordingly, the petitioner maintains that the decision to terminate her was invalid.

In reply, the District emphasizes that – as set forth in the certifications submitted by the State-District Superintendent and interim Chief Talent Officer – the Superintendent delegated the authority to make employment determinations to the Chief Talent Officer,

consistent with statutory authority. Further, the District points out that the petitioner did not provide any rebuttal evidence to the District's certifications; as such, the Initial Decision should be adopted.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that the State District Superintendent had the authority to make employment determinations pursuant to *N.J.S.A. 18A:7A-42(a)(1)*, and that she delegated that authority to the Chief Talent Officer in accordance with *N.J.S.A. 18A:7A-42(b)*. Considering the certifications of the interim Chief Talent Officer and State District Superintendent which were submitted by the District – and the lack of evidence by petitioner to refute them – the Commissioner agrees with the ALJ that the petitioner failed to sustain her burden of proving that the Chief Talent Officer lacked authority to make personnel decisions.

Accordingly, the Initial Decision is adopted – for the reasons expressed therein – and the petition is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: July 28, 2016

Date of Mailing: July 29, 2016

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\* Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.