

EDU #1805-04
C # 312-05
SB # 38-05

ENRICO CIAMILLO, JR., :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF RIDGEFIELD, :
BERGEN COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Acting Commissioner of Education, August 31, 2005

For the Petitioner-Appellant, Springstead & Maurice (Harold N.
Springstead, Esq., of Counsel)

For the Respondent-Respondent, Ferrara, Turitz, Harraka & Goldberg
(Stanley Turitz, Esq., of Counsel)

The State Board of Education affirms the Acting Commissioner's determination that the 90-day time limitation of N.J.A.C. 6A:3-1.3 applied to petitioner's claim that the Board of Education of the Borough of Ridgefield had unlawfully reduced his salary in violation of his tenure rights. We further affirm the Acting Commissioner's determination that petitioner's cause of action arose in May 2003 when he received written notice that he was not being reappointed as a "consociate teacher" and, hence, that his petition of appeal filed on December 11, 2003 was untimely. We also agree with the Acting Commissioner that the circumstances do not warrant relaxation of the 90-day rule in this case.

In affirming the Acting Commissioner's determinations, we clarify that the "position" in which tenure is acquired by virtue of service in an unrecognized position

title such as involved here is not limited by the unrecognized title. Rather, it is well established that, pursuant to N.J.S.A. 18A:28-5, the position in which an individual achieves tenure is either one of those specifically enumerated in the statute or other employment for which a certificate is required, either Instructional, Educational Services or Administrative. E.g. Nelson v. Board of Educ. of Old Bridge, 148 N.J. 358 (1997); Capodilupo v. West Orange Bd. of Ed., decided by the State Board of Education, 1986 S.L.D. 3010, aff'd, 218 N.J. Super. 510 (App. Div. 1987), certif. den., 109 N.J. 514 (1987); Howley v. Bd. Of Ed. Of the Township of Ewing, decided by the Commissioner of Education, 1982 S.L.D. 1328, aff'd by the State Board of Education, June 1, 1983. In contrast, pursuant to N.J.A.C. 6A:9-5.5(b), seniority is limited to the unrecognized title. See Capodilupo, supra.

In this regard, we note that the letter dated September 4, 2002 from the Bergen County Superintendent to the Superintendent of the Ridgefield School District, which is included in the appendix to petitioner's appeal brief, incorrectly states that persons employed in the unrecognized position titles he was approving "will accrue seniority upon the attainment of tenure under the legal title." Appendix, at Pa-64. We therefore direct the Commissioner to review the language of the letters currently being sent by the county superintendents to school districts to notify them of approval for the use of unrecognized position titles pursuant to N.J.A.C. 6A:9-5.5 and to ensure that such language correctly describes the scope of tenure and seniority rights based on service in such titles.

January 4, 2006

Date of mailing _____