

PENNY WEBB,	:	
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PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION ON REMAND
TOWNSHIP OF WILLINGBORO,	:	
BURLINGTON COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioner contested her involuntary transfer with reduction in salary from Supervisor of Pupil Personnel Services to Individualized Education Program (IEP) Facilitator. Petitioner claimed transfer violated her tenure rights as supervisor. ALJ concluded that petitioner did achieve tenure in a supervisory capacity and that the IEP facilitator-teacher duties were not supervisory in nature. Thus, the ALJ concluded that service as an IEP facilitator-teacher did not inure to the service necessary to acquisition of tenure in a supervisory capacity. However, the ALJ determined that absent a showing that petitioner's seniority of two years and five days was superior to the seniority enjoyed by others, particularly by intervenor, there was not enough in the record to support the relief petitioner sought. Petition was dismissed. Commissioner determined to adopt in part and reverse in part the ALJ's decision. Commissioner concurred with ALJ that petitioner acquired supervisory tenure by virtue of her service as Acting Supervisor of Pupil Personnel Services from March 24, 1992 until March 28, 1994. Commissioner also concurred that petitioner's IEP facilitator-teacher duties were not supervisory in nature and, therefore, do not inure to the service necessary to acquire tenure in a supervisory capacity. Pursuant to *N.J.A.C. 6:3-5.1* wherein each supervisory category is considered a separate category for the purpose of calculating seniority, Commissioner found petitioner had seniority in the position of Supervisor of Pupil Personnel Services while intervenor did not have seniority in that position having no service in that role prior to her appointment on March 28, 1994. Board was ordered to restore petitioner to said position with compensation from effective date of her transfer.

State Board reversed Commissioner's decision that petitioner achieved tenure as a supervisor. However, in that the State Board was unable to determine whether petitioner achieved tenure as a supervisor by virtue of her previous employment in the District, the State Board remanded the matter to the Commissioner for further proceedings.

On remand, based on an analysis of her duties, the ALJ determined petitioner failed to show that she achieved tenure as a supervisor by virtue of her service in the District as an IEP Facilitator. Petition was dismissed.

Commissioner adopted findings and determination in initial decision as his own.

AUGUST 21, 1997

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions were timely filed pursuant to *N.J.A.C. 1:1-18.4*.

In petitioner’s exceptions, she renews her assertion that the supervisory nature of the Individualized Education Program (IEP) Facilitator position is evidenced by her undisputed writing of evaluations for the 1981-82 school year, and for her “evaluative responsibilities” for the 1982-83, 1983-84, 1984-85, 1985-86 and 1986-87 school years. (Petitioner’s Exceptions at p. 4) Petitioner reasons that, absent a supervisory endorsement, she could not have participated in the evaluation process, either as the primary evaluator, or by having input into the evaluations written by the principals. (*Id.* at p. 5) Moreover, petitioner claims that the supervisory nature of the IEP Facilitator position is substantiated by the initial job description, as well as correspondence from a former Director of the Division of Field Services to the County Superintendent of Schools recommending that a supervisor’s endorsement was appropriate for this position. (*Id.* at p. 4)

Petitioner contends that, by his decision, the Administrative Law Judge (ALJ) has “collaterally attacked” a decision rendered by the County Office of the Department of Education seventeen years prior. “Petitioner maintains that Judge Campbell is without authority at this juncture to substitute his judgment for that of the Director of Field Services of the County Superintendent of Schools.” (*Id.* at p. 5) Having performed these supervisory functions, and having held a title which required a supervisory endorsement, petitioner reasons that she has met the two-year statutory requirement to acquire tenure as a supervisor. (*Id.* at p. 6)

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ that petitioner has failed to establish by a preponderance of credible evidence that, except for the 1981-82 school year, she performed duties such that she was required to hold a supervisor’s endorsement. Therefore, petitioner could not have met the statutory requirement under *N.J.S.A.* 18A:28-6, as claimed, for acquiring tenure as a supervisor by virtue of her service as the IEP Facilitator.

Moreover, as to petitioner’s contention that a prior certification decision rendered by the county office should be determinative in this matter, the Commissioner emphasizes that

\*\*\*While the county superintendent is charged with responsibility in the first instance for determining the appropriate certification for service in an unrecognized position title based upon the specific duties required to be performed, the State Board of Education has the ultimate administrative authority for determining appropriate certification, *South River Education Association v. Board of Education of the Borough of South River*, decided by the State Board, November 4, 1987, *aff’d*, Docket #A-1695-87T8 (App. Div. 1990); *Pezullo v. Board of Education of the Township of Willingboro*, decided by the State Board, March 1, 1989, *appeal dismissed*, Docket #A-4006-88T1 (App. Div. 1989), \*\*\*. *John Zachau v. Burlington County Vocational and Technical Schools, Burlington County*, 97 *N.J.A.R.* 2d (EDU) 4, decided by the State Board September 4, 1996. (State Board Slip Opinion at p. 3)

Accordingly, the Commissioner affirms the ALJ's conclusion and recommended order that the within Petition of Appeal be dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 21, 1997