

CALVIN J. WILLIAMS, JR.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF FREDON, SUSSEX	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioner, tenured teaching staff member, alleged the Board failed to comply with his demands to make him whole for the actions the Board initiated before the State Board of Examiners that resulted in the revocation of his school administrator's certificate and the suspension of his certificates and endorsements. Petitioner sought back pay, benefits and interest.

Having reviewed the evidence supporting that petitioner was fully vindicated of the wrongdoing which served as the basis for the suspension, the ALJ concluded that petitioner should be restored back pay, less mitigation, for the time period December 15, 1995 through April 30, 1996, the period when the Board argued petitioner did not possess "appropriate certification which would authorize him to teach in the State of New Jersey." Petitioner's motion for summary decision was granted; respondent's motion for summary decision was dismissed.

Given the State Board of Education's reversal of the State Board of Examiners' decision to suspend petitioner's instructional certificates and principal/supervisor's endorsement for two years, together with its unequivocal conclusion as to the dearth of evidence to support a finding of any deliberate wrongdoing on petitioner's part, the Commissioner affirmed the initial decision as his own. Commissioner directed the Board to compensate petitioner for all back pay and emoluments, less mitigation for the period in question.

June 1, 1998

OAL DKT. NO. EDU 3633-97
AGENCY DKT. NO. 48-2/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and petitioner's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the initial decision of the ALJ, finding that equity favors an award of back pay to petitioner under the circumstances herein. In so concluding, the Commissioner rejects the Board's contention that the standard applied by the ALJ in the matter entitled *In the Matter of the Tenure Hearing of Hovington, Board of Education of the City of Camden, Camden County*, decided March 30, 1998, should be applied herein. There, the ALJ declined to award claimant Hovington with back pay pursuant to his suspension without pay following a criminal indictment, notwithstanding his acquittal, inasmuch as the charges, as well as a new allegation, were subsequently proven in a tenure hearing. There, the ALJ distinguished

Hovington's position from the claimant's as he had never been proven to have engaged in inappropriate conduct.¹ (Board's Exceptions at p. 2) In the instant matter, the Board argues

***While it is true that Mr. Williams' ultimate penalty was reduced, he hardly can be viewed as an "innocent" claimant. Neither can he claim that the Petition which was filed and prosecuted by the Office of the Attorney General seeking a remedy against his certificates was unsupported or unproven. Quite to the contrary, the charges were proven in accordance with the civil standard utilized by the State Board of Examiners and it was only as to the nature of the appropriate penalty did reasonable minds differ. (*Id.* at pp. 2, 3)

The Commissioner disagrees. In its decision of December 4, 1996, the State Board of Education found that the State Board of Examiners "failed to demonstrate that respondent committed fraud in attempting to secure a school administrator's endorsement. Nor does the record establish that he intended to mislead the Office of Teacher Certification [OTC] into issuing that endorsement." (*In the Matter of the Revocation of the Teaching Certifications of Calvin J. Williams, Jr., By the State Board of Examiners, State Board of Education, December 4, 1996, slip op. at p. 6*) To the contrary, the State Board of Education found, *inter alia*, that the letters submitted on Williams' behalf by Richard A. Walter constituted "an accurate representation of the time frame during which the respondent had served as his assistant." (*Id.* at p. 8) The State Board continued,

While it is true that Walter's letters do not detail the specific period during which respondent served in such capacity under an administrative certificate, the record is devoid of any evidence that would demonstrate a deliberate effort or specific intent by respondent to deceive the OTC in order to circumvent the certification regulations. (*Id.*)

¹ In his final decision, the Commissioner did not reach to the substantive merits of Hovington's claims for back pay and indemnification, in that Hovington expressly withdrew any objection to entry of the ALJ's order denying said indemnification and back pay based on a resolution between him and the Board of Education of the City of Camden. *Hovington, supra*, slip. op. at p. 14.

The State Board of Education further found that the record did not support the State Board of Examiners' conclusion that Williams was aware that the documents he submitted to the OTC were inaccurate. Rather, it noted that the record supported the conclusion that the OTC, having received Williams' letters, *was aware* of the fact that he did not have the three years of administrative experience under an administrative or supervisor certification, but issued him an endorsement nonetheless. (*Id.* at pp. 8, 9) Moreover, the State Board of Education found nothing "devious or deceptive" about Walter's use of District stationary for his letters of October 10, 1990 and March 12, 1991, where Walter, although on paid sick leave, had not officially retired from his position as superintendent in the District until October 1991. (*Id.* at pp. 10, 11) Although Williams' School Administrator's endorsement was properly revoked, the State Board of Education concluded that

***The fact that a determination was made by the former director of the OTC to issue a school administrator's endorsement to respondent under these circumstances does not evidence misconduct or a deceptive intent by respondent. ***

Nor *** do we find respondent's "neglectful" conduct in failing to familiarize himself with the requirements for a school administrator's endorsement before applying for such certification to warrant suspension of his other administrative and instructional certificates. While it is indisputable that respondent should have taken more care in applying for a school administrator's certification, we find nothing in the school laws or implementing regulations that would justify suspending the other certificates held by an applicant, even a "seasoned educator," for failure to appreciate the certification requirements before submitting an application, in the absence of fraud, intentional submission of false information or a deliberate intent to mislead the OTC. The fact that respondent's application in this particular instance was approved by the OTC does not, under the record before us, transform his actions into unbecoming conduct. (*Id.* at pp. 12, 13)

Given the State Board of Education's reversal of the State Board of Examiners' decision to suspend Williams' instructional certificates and principal/supervisor's endorsement for two years, together with its unequivocal conclusion as to the dearth of evidence to support a finding of any deliberate wrongdoing on Williams' part, the Commissioner determines that respondent's exceptions are without merit. (Board's Exceptions at p. 3)

Accordingly, the Commissioner affirms the initial decision of the ALJ for the reasons expressed therein, and amplified above. The Board is hereby directed to compensate petitioner for all back pay and emoluments, less mitigation, for the time period December 15, 1995 through April 30, 1996.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

June 1, 1998

* This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.