

MARY E. MC GAVIN, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF HOBOKEN, HUDSON :

COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning teacher alleged her tenure and seniority rights were violated when the Board terminated her employment pursuant to reduction in force at the end of the 1996-97 school year.

ALJ initially determined that there were no material facts at issue and, thus, summary decision was appropriate. ALJ concluded that in determining her elementary education seniority, petitioner could only count the periods of employment from the time that she got a standard elementary certificate plus the periods that she actually taught as a provisional elementary teacher. Moreover, the ALJ concluded that even if petitioner had possessed a provisional elementary certificate in 1973, petitioner’s elementary seniority was correctly determined by the Board to be significantly less than the teachers who were retained in that category. ALJ further concluded that the Board’s termination of petitioner’s employment at the end of the 1996-97 school year due to a RIF did not violate her tenure or seniority rights. ALJ granted the Board’s Motion for Summary Decision and denied petitioner’s Motion for Summary Decision.

Commissioner reversed the initial decision. Citing *Metaxas*, the Commissioner determined that N.J.A.C. 6:3-5.1(e) may be invoked to “tack on” an employee’s service under her emergency certificate, even where the employee’s acquisition of her standard certificate did not immediately succeed her service under the emergency certificate. When petitioner was issued her standard certificate in elementary education in June 1992, any periods of service under her provisional certificate were to be counted toward her elementary seniority and, further, from the date when she was authorized to tack on the elementary service earned under the provisional certificate, she was also authorized to tack on her secondary English service. Due to an unexplained oversight, the Board did not apply for petitioner’s provisional certificate in the 1973-74 school year, notwithstanding an apparent awareness of its obligation to do so. Thus, the Commissioner declined to apply the seniority regulations in a manner that penalized petitioner for the eight-month period of time in the 1973-74 school year in which she did not have the provisional certificate. Commissioner directed Board to credit petitioner with elementary seniority as calculated, noting specifically that such seniority must include not only petitioner’s service as an English teacher, but also her service under her provisional elementary certificate in the 1969-70 school year, the first month of the 1970-71 school year, and eight months in the 1973-74 school year when she should have had her provisional certificate. Commissioner directed the Board to reinstate petitioner to a position for which she maintained bumping rights as a result of her elementary seniority and, further, to compensate her any back pay, less mitigation, and emoluments due as a result of her improper termination from employment.

OCTOBER 26, 1998

OAL DKT. NO. EDU 9836-97
AGENCY DKT. NO. 317-9/97

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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 and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

In her exceptions, petitioner contends that (1) the initial decision misconstrues the nature of the provisional certificate, in that it relies on the current definition of a provisional certificate rather than the type of provisional certificate held by her in the 1970s, which was analogous to what is today known as the emergency certificate, issued only in the event of a teacher shortage in a particular area (Petitioner's Exceptions at pp. 1, 2); (2) the initial decision misapplies *N.J.A.C.* 6:3-5.1(e) by denying seniority credit because the Board did not renew the provisional certificate each year from 1973-74 through 1992, contrary to the finding in *Metaxas et al. v. Bd. of Ed., City of Hoboken*, 96 *N.J.A.R.* 2d (EDU) 708, aff'd State Board 715, aff'd App. Div. 716 (*Id.* at pp. 2, 3); (3) the Board had an obligation to renew her certificate (*Id.* at p. 4); (4) equitable principles remain valid and apply in this circumstance (*Id.* at pp. 4-9); and

(5) the Board violated her seniority rights in that *N.J.A.C.* 6:3-5.1(e) allows the years of employment under an emergency certificate to count toward seniority under the standard certificate, once that certificate is obtained. Petitioner reasons she is entitled to count her elementary seniority from the 1973-74 school year and should not be deprived of seniority protections due to the Board's knowing inaction. (*Id.* at p. 10) Thus, petitioner concludes that she is entitled to reinstatement to a position of employment in the District; back pay, less mitigation; interest, pursuant to *N.J.A.C.* 6:24-1.16; a full year of seniority credit; and restoration of other benefits and emoluments of employment received by full-time teaching staff members employed by the Board. (*Id.* at p. 12)

In response, the Board asserts that (1) petitioner's seniority was properly calculated and *Metaxas* is distinguishable from the instant matter; (2) it had no reason to apply for provisional or emergency certification for petitioner when, as of 1974-75, she worked as an English teacher for the District and was not then filling a shortage of elementary teachers; and (3) petitioner's equity arguments are without merit in that the law clearly does not entitle her to seniority on the basis of equitable estoppel. (Board's Reply at pp. 1-6)

Upon careful and independent review of the record in this matter, the Commissioner finds that the decision rendered in *Metaxas, et al., supra*, compels a conclusion different from the one reached by the Administrative Law Judge (ALJ). In *Metaxas*, the Commissioner determined, and the State Board and Appellate Division affirmed, that *N.J.A.C.* 6:3-5.1(e) may be invoked to "tack on" an employee's service under her emergency certificate, even where the employee's acquisition of her standard certificate did not immediately succeed her service under the emergency certificate. Specifically, Angela Grimaldi, an intervenor in a seniority dispute, served as a teacher under her emergency elementary certificate from 1966 to

1970. In 1970, she received a standard instructional certificate with an endorsement to teach English; she served under that certificate through the 1978-79 school year. Starting in the 1979-80 school year, Grimaldi was transferred to an elementary teacher position where she served continuously through the 1991-92 school year; Grimaldi received her elementary endorsement in October of 1979. (*Metaxas et al., supra*, at 713)

Pursuant to *N.J.A.C. 6:3-5.1(l)(18)(iv)*, Grimaldi's service from 1966-70 was in the elementary category. (*Id.*). Although those years of service were under a substandard certificate, pursuant to *N.J.A.C. 6:3-5.1(e)*, they were counted toward her elementary seniority upon acquisition of her standard certificate.¹ As for her intervening years of instruction under her English endorsement, *N.J.A.C. 6:3-5.1(h)* provides that

whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his or her seniority in *any or all categories* in which he or she previously held employment. (emphasis added)

In *Metaxas*, the Appellate Division noted that,

***even though Grimaldi moved from elementary (uncertified) to a (certified) position, secondary, she should also have received credit for her elementary service time once she received her certificate ***. *From the date when she was authorized to tack the elementary seniority earned in 1966-70, she was also authorized to tack the secondary school teaching years pursuant to N.J.A.C. 6:3-5.1(h)*. In Grimaldi's case, this comes to a total of twenty-six years (less two months). (emphasis added)

The ALJ's opinion correctly interpreted the applicable regulation:

[T]he intervening years of Grimaldi's instruction under her teacher of English endorsement count toward her elementary seniority calculation. . . . There is no certification or endorsement requirement in this

¹ Although the *Metaxas* analysis considered the employee's seniority rights under an emergency certificate, rather than a provisional certificate, as in the instant matter, *N.J.A.C. 6:3-5.1(e)* states that "[u]pon acquisition of a standard certificate, any periods of service under a provisional certificate shall also be counted toward seniority."

provision, it deals merely with prior *service* in which seniority accrues. (emphasis in text)

The State Board agreed, interpreting its own regulation in a manner which we cannot say was unreasonable or inconsistent with applicable law) (*Id.* at 718)

Similarly, petitioner in the instant matter was employed from September 1969 until July 1970 under a provisional elementary certificate. Additionally, she worked for the District for the first month of the 1970-71 school year, and was retroactively granted a provisional certificate for that year. Petitioner was on maternity leave from October 1, 1970 until November 1, 1973. After her maternity leave, she returned to work for the District from November 1, 1973 until June 30, 1974 in an elementary position for which she *should have been* provisionally certified. In the 1974-75 school year, petitioner was hired as a secondary English teacher, having acquired her standard certification for same, and continued to teach English through the 1991-92 school year. During this time period, she accrued seniority in the secondary English category. *N.J.A.C.* 6:3-5.1(l)(17)(i).

When petitioner was issued her standard certificate in elementary education in June of 1992, as per the *Metaxas* analysis, “any periods of service under [her] provisional certificate” were to be counted toward her elementary seniority. *N.J.A.C.* 6:3-5.1(e). Further, from the date when petitioner was authorized to tack on the elementary service earned under the provisional certificate, she was *also* authorized to tack on her secondary English service pursuant to *N.J.A.C.* 6:3-5.1(h). *Metaxas* at 718.

In this analysis, the Commissioner is mindful that, due to an unexplained oversight, the Board did not apply for petitioner’s provisional certificate for the 1973-74 school year, notwithstanding an apparent awareness of its obligation to do so. (Exhibit 6) The

applicable regulations in effect during the period in question provided, in pertinent part, that a provisional certificate

***is issued on application of a public school district, submitted after July 1, in which the local board states that the applicant is being offered a contract of employment for which the certificate is required. (*N.J.A.C. 6:11-4.3*)

Under these circumstances, the Commissioner does not find petitioner's reliance upon the Board to secure the provisional certificate for her to be unreasonable, and, as a matter of fundamental fairness, he declines to apply the seniority regulations in a manner that penalizes petitioner for the eight-month period of time in the 1973-74 school year in which she did not have the provisional certificate.

Accordingly, the initial decision of the ALJ is reversed for the reasons set forth above. The Board is hereby directed to credit petitioner with elementary seniority as calculated herein, noting specifically that such seniority must include not only petitioner's service as an English teacher, but also her service under her provisional elementary certificate in the 1969-70 school year, the first month of the 1970-71 school year, and eight months in the 1973-74 school year when she should have had her provisional certificate. The Commissioner directs, therefore, that the Board reinstate petitioner to a position for which she maintains bumping rights as a result of her elementary seniority, and, further, that she be compensated with any back pay, less mitigation, and emoluments due as a result of her improper termination from employment.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

OCTOBER 26, 1998