

FLORENCE ADLER, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF SHAMONG, :
 BURLINGTON COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner, tenured teaching staff member holding instructional certification with endorsement as music teacher (K-12), claimed tenure and seniority rights to positions awarded by the Board to other individuals.

ALJ concluded that petitioner did not have the necessary seniority to oust Ms. Tavani from the full-time music teacher position. ALJ noted since the key issue in regard to seniority is not formal appointment but actual service in the particular position for which one is certified (*Lichtman*), Ms. Tavani, who was certified as a music teacher, was entitled to seniority because of her performance of the duties of a music teacher in 1967-68 and 1968-69 school years, when the administrative principal asked her to teach music for classes other than her own. In regard to the computer course position, the ALJ noted that case law has established the principle that in most instances no specific instructional endorsement is required to teach a computer course. Citing *Lewis and Skawinski*, the ALJ concluded that based upon current law, tenured petitioner was entitled to one of the computer teacher positions for the 1997-98 and 1998-99 school years over nontenured teachers and was, therefore, entitled to the difference in salary between what she earned and what she would have earned had she been properly assigned.

Commissioner adopted findings and determination in Initial Decision as his own and directed the Board to compensate petitioner for lost wages and emoluments, including the additional pension credit commensurate with her salary loss. Commissioner clarified that Ms. Tavani had superior seniority as a teacher of music by virtue of her music instruction during the 1967-68 and 1968-69 school years not because he found that Ms. Tavani “brought to her task as teacher of music for these other students some element of educational background which others not so certified cannot be presumed to have,” but because the record supported the conclusion that Ms. Tavani was asked to teach the additional classes since the administrative principal was aware of her dual certification.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Both petitioner's and the Board's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4, as was petitioner's reply.

Although petitioner indicates that she concurs with the Administrative Law Judge's (ALJ) conclusion that she was entitled, by virtue of her tenure and seniority rights, to one of the full-time computer teaching positions for the 1997-98 and 1998-99 school years, she nevertheless contends that the ALJ misinterpreted the law in his analysis of her claim to the full-time teaching position held by Ms. Tavani. That is, petitioner maintains that Tavani did not legally begin to accrue seniority as a music teacher until she was assigned by the Board in September of 1992 to serve under her music teacher endorsement to her instructional certificate. (Petitioner's Post-hearing Brief at p. 10) Petitioner underscores that the testimony confirmed that, during the early years of Ms. Tavani's employment, the Board did not employ teachers for special subjects, such as music, art and physical education. Rather, these subjects were taught by the elementary teachers under their elementary endorsements of their certificates, in accordance

with *N.J.A.C.* 6:11-6.1(b), and Ms. Tavani merely volunteered to accommodate her colleagues and/or the principal by providing music instruction to elementary classes other than her own. (*Id.*) As petitioner observes, there is nothing in the record to demonstrate that Ms. Tavani was assigned by the Board to serve under her music endorsement. To the contrary, the record shows that Ms. Tavani was employed as a “teacher,” not as a “music teacher.” As she argued before the ALJ, petitioner finds it significant that the Board failed to appoint Ms. Tavani as music teacher.

Additionally, although petitioner concurs with the ALJ’s conclusion that she is entitled to back pay equal to the difference in salary between what she earned in her part-time position during the aforementioned school years and what she should have earned if she had been properly placed in a full-time position, petitioner contends that she is also entitled to have the Board make necessary payments to the Division of Pensions to provide her with the additional pension credit which she should have had for that full-time service at the higher salary. (Petitioner’s Exceptions at p. 2)

The Board excepts to that portion of the Initial Decision where the ALJ concludes that petitioner was entitled to hold one of the elementary computer teaching positions, maintaining that petitioner was not qualified to teach such courses. (Board’s Exceptions at p. 2)

Here, the Board renews its argument as raised before the ALJ that:

The curriculum for the district’s elementary school Computers/Technology course is in evidence as J-14. Respondent’s witnesses, Ron Heil an [e]lementary [t]eacher who teach[es] the Computers/Technology course and Eileen Senior, Director of Curriculum, both testified without contradiction as to the extensive integration of the full elementary school core curriculum content into the district’s elementary school Computers/Technology course. The course curriculum, J-14, could not be more explicit in establishing that this course *** is not merely “computers” but has all aspects of the elementary core curriculum subjects fully integrated therein. (Board’s Exceptions at p. 3)

The Board reasons, therefore, that an elementary teaching endorsement was a necessary credential for teaching the Computers/Technology course in its District. (*Id.* at p. 5) In support of its position, it cites to the State Board of Education's caution that, pursuant to *Morgan v. Board of Education of the Township of Wayne*, 1991 S.L.D. 2578, it has "rejected the broad general principle that the duties attending a course involving computers can never be of such character as to require possession of a particular instructional endorsement***." *Lewis and Skawinski* State Board decision, *supra*, Slip Opinion at p. 5) (emphasis in text) (Board's Exceptions at pp. 8-9) Moreover, the Board finds the circumstances in *Lewis and Skawinski* to be distinguishable, in that matter "there was not a showing of the extensive intertwining of the core curriculum standards and the district's elementary academic curriculum into the district's computer curriculum ***." (*Id.* at p. 9)

In reply to the Board's exceptions, petitioner argues:

Although respondent obviously feels that some special skills should be needed to teach a general computer course and although respondent and others may desire a change in the current state of the law, the fact remains that until such time as the State Board of Education enacts such changes, and possibly creates a specific computer endorsement to the instructional certificate, any holder of an instructional certificate is qualified to teach basic computer courses. (Petitioner's Reply at p. 2)

Additionally, as per the directive of the ALJ in his Initial Decision, petitioner certifies that her gross salary loss for the 1997-98 and 1998-99 school years was \$42,552. (Certification of Florence Adler, September 30, 1999)

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the Initial Decision, with clarification. Initially, the Commissioner notes that he is compelled to concur with the ALJ's conclusion that Ms. Tavani had superior seniority as a teacher of music by virtue of her music instruction during the 1967-68

and 1968-69 school years, not because he finds that Ms. Tavani “brought to her task as teacher of music for these other students some element of educational background which others not so certified cannot be presumed to have,” (Initial Decision at p. 11), but, rather, because the record supports the conclusion that Ms. Tavani was asked to teach the additional classes *because* the administrative principal was aware of her dual certification. Ms. Tavani claims, without dispute or rebuttal by the Board, that:

In September, 1967, I was hired to teach at Indian Mills School. *Since the Principal was aware of my dual certification in both Elementary Education and Music Education*, I was assigned to teach a first grade and also, a third and fourth grade music period. This assignment continued throughout the years from 1967 to 1969. (Statement by Florence Tavani, November 5, 1997, Supplemental Certification of Kathleen A. Naprstek, at Exhibit B, *emphasis supplied*)¹

Although petitioner maintains that Ms. Tavani’s assignment could have no legal effect in that she was never formally appointed by the Board of Education, the Commissioner concurs with the ALJ that, under the particular circumstances operative in this matter, where the administrative principal was the chief school administrator,² and where he was granted complete authority to effectuate assignments of teachers,³ the Commissioner finds petitioner’s position to be unpersuasive.

Additionally, the Commissioner concurs with the ALJ that, based on a review of the record and, in particular, the summary of testimony offered by Mr. Heil and the curriculum for the Computers/Technology course, the actual skills taught by the computer teachers are

¹ Petitioner’s Post-hearing Brief so affirms in its summary of the testimony: “This comports with Ms. Tavani’s testimony at [the] hearing, in which she indicated that because she also held a teacher of music certification, the principal of Indian Mills School asked her to teach music to the 3rd grade students during the 1967-68 school year while the 3rd grade teacher took a lunch break. She stated that she performed a similar task for the 4th grade class during the 1968-69 school year.***” (Petitioner’s Post-hearing Brief at p. 5)

² Board’s Post-hearing Brief at p. 2

³ Exhibit J-6, Board minutes from the meeting where the Board approved the application of Ms. Tavani and her consequent hiring as a teacher state: “Mr. Andalaro reported of the need to shift the teaching staff around in order to fulfill educational needs. The board unanimously agreed that he should take such action as he feels is necessary.”

primarily technical in nature, notwithstanding that these skills are carefully integrated throughout the elementary subject areas, with the cooperation of the classroom teachers.⁴ As such, the Commissioner does not agree with the Board that an elementary endorsement was required to teach the courses in question.

Accordingly, the Initial Decision of the ALJ is affirmed, with clarification. The Board is directed to compensate petitioner for lost wages in the amount of \$42,552, and emoluments, including the additional pension credit commensurate with her salary loss.⁵

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

November 3, 1999

⁴ It is noted that Mr. Heil testified that “The course is initially exploratory and touches upon the keyboard, slide shows, the internet, CD Rom and other applications. In the fifth grade course the approach is in greater depth, including databases and hyperstudio. In sixth grade the course is entirely hyperstudio, involving a multimedia presentation on a particular topic. ***” (Initial Decision at p. 8) The ALJ further noted that “[Mr.] Heil works with teachers and suggests to them things which they can have their students work on with the computers.” (*Id.*)

⁵ 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.