

180-01R

COTA POSSIEN-KANIA,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	
BOROUGH OF DUNELLEN,	:	DECISION ON REMAND
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner, tenured school social worker and substance awareness coordinator, contended that the Board's assigning her to be an in-class support instructor was violative of law and code since she did not possess certification as a teacher. She sought appointment to one of two positions for which she was qualified. ALJ determined that because the relief requested by petitioner could no longer be granted in this matter due to changed circumstances since petitioner was no longer assigned to the position of in-class support instructor, the case did not present any issue of great public importance compelling a definitive resolution. ALJ granted the Board's motion to dismiss this matter as moot.

Noting that there was clearly a reasonable potential for recurrence of the alleged improper assignment, the Commissioner reversed the ALJ's Initial Decision dismissing the matter as moot. Commissioner remanded the matter to the OAL for a determination on petitioner's underlying claim that the Board's assignment of her to an in-class support instructor position was improper.

On remand, the ALJ found that the Board acted within its authority and utilized petitioner as a highly qualified resource person to assist and complement the Health Department Family Life Program, not to teach. *N.J.A.C. 6:29-4.2(g)*. The ALJ found that a certified teacher was always present with petitioner in the classroom while she was assisting the students. Thus, the ALJ ordered that the Board's assignment of petitioner as an in-class support instructor for the school year 1998-99 was valid. Petition was dismissed.

In light of the record and the transcript of the hearing, the Commissioner affirmed the Initial Decision with modification. The Commissioner concurred with the ALJ that use of petitioner's expertise in the classroom as a resource to the health teachers was not necessarily improper or violative of specific statute or code. The Commissioner, however, concluded that the Board's failure to take sufficient steps at the outset to clearly define petitioner's role as a classroom resource person and to provide her and the teachers with the necessary follow-up and supervision, paved the way for misapprehensions and missteps in performance. Petition was dismissed.

June 7, 2001

OAL DKT. NOS. EDU 8088-99 AND EDU 10342-98 (ON REMAND)  
AGENCY DKT. NO. 471-10/98

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto were considered by the Commissioner in reaching his decision.<sup>1</sup>

Upon careful and independent review of the record in this matter, which included a transcript of the hearing conducted on September 14, 2000, the Commissioner determines to affirm the Initial Decision, with modification. Like the Administrative Law Judge (ALJ), the Commissioner finds that the Board’s design to apply petitioner’s expertise within the classroom as a resource to the health teachers was not necessarily improper or violative of specific statute or code.<sup>2</sup> However, the Commissioner further concludes that the Board’s failure to take sufficient steps *at the outset* to clearly define petitioner’s role as a classroom resource person vis-

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<sup>1</sup> Both the exceptions and reply essentially reiterate arguments that were presented in papers previously submitted to the OAL.

<sup>2</sup> The Board cites as authority for its action, *inter alia*, *Carpenito v. Bd. of Ed. of Rumson*, 322 N.J. Super. 522 (App. Div. 1999), which is erroneously identified as “*Carpenter*” in the Initial Decision at page 16.

à-vis the health teachers, *and* to provide petitioner and the teachers with necessary follow-up and supervision as they implemented what was apparently a unique model for curriculum delivery in the District, no doubt paved the way for misapprehensions and, as the testimony adduced herein substantiates, missteps in performance.

Here, the Commissioner notes that Ms. Del Rosario testified that she was informed that petitioner would be “sort of assisting [her in the] classroom” (Tr. at 49); that she and petitioner were initially “puzzled” about implementing the new arrangement (Tr. at 53); and that she viewed petitioner’s participation in her classroom as similar to that of a school nurse (Tr. at 49, 55-56), notwithstanding that the school nurse is specifically authorized to teach “in areas related to health.” (*N.J.A.C.* 6:11-11.7(a)) Mr. Ulrich testified that he was made aware of petitioner’s participation in his classroom “[b]y word of mouth from Mrs. Kania or some of the other health teachers” (Tr. at 61); that he was not sure whether he was approached by Dr. Burkhardt or vice-versa about the reassignment; and, in any event, he was told petitioner would be in his ninth grade classroom “to help [him] teach,” but he was given no further information. (*Ibid.*)

Dr. Burkhardt indicated that, in his initial discussion with petitioner, he “never went down a list” of what she could or could not do in the classroom (Tr. at 103); indeed, even the written notice of petitioner’s reassignment from the District, dated September 3, 1998, was ambiguous, since she was told she would be used as an “in-class support *instructor*.”<sup>3</sup> (emphasis added) (Exhibit R-2) Moreover, Dr. Burkhardt acknowledged that, other than his initial meeting

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<sup>3</sup> It was not until Dr. Burkhardt’s memorandum dated September 18, 1998 that he clarified, “I meant for this to be generic. I am not assigning you to be an in-class support instructor for special education. Your position is to be a supporting role for the Health teacher in charge of the class. Your role is to assist the teacher and provide technical expertise from your vast background as a Social Worker and [Substance Awareness Coordinator] counselor.” (Exhibit R-3)

with petitioner and the health teachers, he had no subsequent meetings to evaluate petitioner's role, although he did meet with petitioner at the end of each marking period. (Tr. at 107) Recognizing that the Board's purpose in reassigning petitioner was to ensure successful delivery of a new curriculum, it should have taken greater care to avoid confusion, unnecessary duplication and the possibly inappropriate performance of tasks within the classroom, the very setting which was meant to be enhanced by this reassignment.

Accordingly, the Initial Decision is affirmed, with modification, for the reasons expressed by the ALJ.<sup>4</sup> The Petition of Appeal is dismissed.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 7, 2001

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<sup>4</sup> To the extent the Initial Decision also employs the term "instructor" when referring to petitioner's position as a resource person within the classroom, the Commissioner does not adopt it as an appropriate designation.

<sup>5</sup> This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.