

MARILYN BROWN, MARLENE ROTH, :  
JUDY HAMILTON, AND NANCY :  
BRAUNSTEIN, : COMMISSIONER OF EDUCATION

PETITIONERS, : DECISION

V. :

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WARREN, :  
SOMERSET COUNTY, :

RESPONDENT. :

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SYNOPSIS

Petitioners, staff members serving as teachers in the Kaleidoscope Program, an extended-day kindergarten program, alleged that the Board violated their tenure and seniority rights when the Board notified them that their service was not tenure-eligible.

The ALJ concluded the matter was one which must be decided on a declaratory judgment basis. The ALJ returned the petition to the Commissioner. The Commissioner determined to entertain the matter as a declaratory judgment request and directed that the matter proceed at the OAL on that basis.

The ALJ found that teachers assigned to the Kaleidoscope Program did not and could not acquire tenure or seniority credit for service in that program since the basic nature of the employment positions at issue herein were related to child care, not to thorough and efficient education. Because any petitioner who requested reassignment to a regular K through 8 assignment was, in fact, reassigned and was eligible for tenure the first school day of the 2002-03 school year, no petitioner suffered any adverse consequence and, accordingly, the amended petition sought only a determination as to the tenure eligibility of the Kaleidoscope positions. The ALJ dismissed the matter, finding that the Kaleidoscope teachers did not acquire tenure status pursuant to *N.J.S.A.* 18A:28-5.

The Commissioner adopted the findings and determination in the Initial Decision as his own.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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OAL DOCKET NO. EDU 4732-01 (PREVIOUSLY EDU 6128-99)  
AGENCY DOCKET NO. 172-6/99

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The record, Initial Decision and exceptions have been reviewed.

Petitioners' exceptions essentially reiterate arguments made before the Administrative Law Judge (ALJ) and considered in the Initial Decision, contending that the ALJ ignored case law setting forth that the duties of a position define its nature, not the title, and that review of the duties of petitioners' positions in the Kaleidoscope Program compels a determination that they were teaching positions eligible for tenure. The Board reiterates its opposition to this contention.

Upon review of the record, Initial Decision and exceptions, the Commissioner determines to adopt the determination of the Initial Decision, for the reasons set forth therein.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: October 24, 2002

Date of Mailing: October 24, 2002