

ADRIENNE F. NELSON, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF :
 THE CITY OF PLAINFIELD, :
 UNION COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner claims tenure as a Supervisor of Science with respondent's district, and asserts that she was improperly terminated from employment in violation of her purported tenure rights. Respondent Board contends that petitioner neither held the requisite certificate for the Supervisor's position nor was employed for the requisite amount of time to achieve tenure.

The ALJ found, *inter alia*, that: petitioner did not possess appropriate certification for her position as Supervisor; her reliance on her possession of a certificate of eligibility for Principal/Supervisor during the period in which she was performing Supervisor duties was misplaced; service performed under an inappropriate certificate or no certificate cannot be credited toward tenure regardless of fault for the defect; and the issue of whether petitioner achieved more than three years of service is moot in view of the absence of proper certification for the position she held. The ALJ recommended that the petition be dismissed.

The Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, with amplification clarifying the nature of supervisory certification.

<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>

April 18, 2008

OAL DKT. NO. EDU 11414-07
AGENCY DKT. NO. 122-5/07

ADRIENNE F. NELSON, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF :
THE CITY OF PLAINFIELD, :
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RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*. The Board of Education (Board) did not reply to the petitioner’s submission.

On exception, the petitioner contends that the Administrative Law Judge (ALJ) erred in determining that she did not obtain tenure in her position as supervisor due to lack of appropriate certification. She reiterates her claim that she was properly certified at the time of her hire – since she held a Certificate of Eligibility (CE) for Principal/Supervisor, the “only certificate issued by the Department of Education authorizing the holder to be a principal, an administrative/vice principal, a director or a supervisor” – and asserts that she should not be blamed for the confusion created by subsequent changes in certification rules or misunderstandings on the part of the Board’s administration, which, she notes, experienced frequent turnover during the time at issue. (Petitioner’s Exceptions at 1-2, 3-5; quotation at 1 -2)

The petitioner further proffers that, in terminating her participation in the New Jersey Leaders to Leaders (“NJ-L2L”) mentoring program because she was not an assistant principal, the Department of Education did not indicate that she was uncertified as a supervisor or remove her from her position in the respondent’s district; moreover, she asserts, current regulations governing both the principal and supervisor endorsements include “grandfathering” provisions which afford her until January 20, 2009 to obtain the standard certificate. (Petitioner’s Exceptions at 2-3, 4-5) Finally, the petitioner reiterates that – having been properly certified as indicated above – she served the requisite period of time to attain tenure; thus, the petitioner urges, the Commissioner should either direct her reinstatement or remand this matter to the OAL to resolve any remaining dispute on this point, which the ALJ declined to address in light of his (erroneous) finding that the petitioner was not properly certified. (*Id.* at 6-7)

Upon review, the Commissioner concurs with the ultimate conclusion of the ALJ that the petitioner – regardless of how long she may have served in her position – cannot be found to have obtained tenure because she lacked the requisite certification to so do. However – although fully concurring with the ALJ’s legal analysis as to the necessary conditions for acquisition of tenure and the effect of service performed in the absence of proper certification – the Commissioner finds it necessary to clarify and amplify the ALJ’s reasoning as applied to the particular facts of this matter, in order to ensure that the Initial Decision is not read so as to perpetuate an apparent misconception as to the nature of supervisory certification.

Throughout this matter, statements are made by both the parties and the ALJ which appear to assume that CEs and provisional certificates are legitimate precursors to acquiring the supervisor endorsement on the administrative certificate or obtaining employment as a supervisor. That, however, was not the case when the petitioner obtained her CE in 2001, and it has not been the case at any time since. To the contrary, *at all times pertinent to this matter (and since), certification rules have specifically required the supervisor endorsement for persons in the position of supervisor of instruction who do not hold the requisite higher level administrative endorsement.* See *N.J.A.C. 6:11-9.3(c)*, now *N.J.A.C. 6A:9-12.3(c)*. *Likewise at all times pertinent and since – in contrast to the rules governing the school administrator and principal endorsements – no mechanism has existed for acquisition of supervisory certification on a CE or provisional basis, nor could the principal endorsement be obtained through provisional employment as a supervisor.* See *N.J.A.C. 6:11-9.4* through *9.6*, now *N.J.A.C. 6A:9-12.4* through *12.6*.¹

Thus, during the entire time at issue in this matter (and since), *any candidate seeking employment as a public school supervisor but lacking the specified higher-level administrative endorsement was (and is) required by law to hold **standard supervisory certification.*** This is so notwithstanding that the paper CE issued to applicants eligible to seek employment and provisional certification as a principal may read “Principal/Supervisor” – a designation which merely reflects, as a practical matter,

¹ Indeed, the nature of the requirements for supervisory certification would render such a mechanism nonsensical. Then and now, CEs qualify candidates who meet academic and exam requirements to seek employment wherein they may complete, under the provisional certificate then obtained, State-approved residency/training requirements leading to standard certification. The supervisor endorsement has no such requirements, and is acquired solely through completion of specified academic programs and experience under the instructional or educational services certificate. See *N.J.A.C. 6:11-4.2*, *6:11-4.3* and *6:11-9.6*; now *N.J.A.C. 6A:9-6.2*, *9-6.4* and *9-12.6*.

that supervisory duties and positions are included within the scope of authorization of the principal endorsement² and is of no legal significance since, in matters of law governing educational certification, it is the regulations promulgated by the State Board of Education pursuant to the Administrative Procedure Act, not the paper certificate issued by the Department of Education, that control. *Albert Ziegler v. Board of Education of the City of Bayonne, Hudson County*, State Board of Education Decision No. 5-04, decided July 6, 2005.

The within dispute, then, presents a situation where the petitioner – who, apart from a CE authorizing her to seek initial employment so as to obtain provisional certification as a *principal*, holds no certification other than instructional³ – has never been legally qualified to hold the position of supervisor; indeed, she *still* is not, since her application for the standard supervisory certificate remains incomplete. In actuality, the petitioner and the Board in this matter have been violating *N.J.S.A.* 18A:26-2 from the outset and would have continued to do so had the petitioner remained employed in her position. Notwithstanding a regulation clearly stating that the holder of a CE may not assume job responsibilities until issued a provisional certificate, *N.J.A.C.* 6:11-4.4(a), now *N.J.A.C.* 6A:9-6.4(c), the Board and the petitioner entered into an initial contract of employment based solely on the petitioner’s possession of a CE – to make matters worse, one inapplicable to her position – and continued in that manner for nearly three years before compounding their error through the attempted acquisition of a

² See *N.J.A.C.* 6:11-9.3(b), now *N.J.A.C.* 6A:9-12.3(b).

³ The 2006-2008 provisional principal certification said to be held by the petitioner (Initial Decision at 2) was rendered null and void upon the petitioner’s termination from the NJ-L2L program, provisional certification being contingent upon employment in a residency-eligible position.

provisional certificate that did not qualify the petitioner to hold her position and for which she was legally ineligible by the very fact of her employment as a supervisor.

It is, of course, unfortunate that the petitioner was employed under such circumstances for so substantial a period of time, as the result of an apparent misunderstanding in which the Board and she appear equally culpable; however, the fact remains that she could not, as a matter of law, acquire tenure in a position for which she was not certified. Nor is this result altered by the petitioner's attempt to attribute the parties' confusion to 1) changes in the certification rules – which, in any event, remained substantially the same in all material ways throughout the period at issue; or 2) failure on the part of the Department of Education's licensing office, in terminating the petitioner's participation in the principal mentorship program, to pronounce her unqualified as a supervisor or remove her from her position – the former not being under review by the Department in that context and the latter an action reserved by law to the employing board of education. Finally, the Commissioner is unpersuaded by the petitioner's claim that *N.J.A.C. 6A:9-12.5(n)* and/or *N.J.A.C. 6A:9-12.6(b)* afford her until January 20, 2009 to complete requirements for the standard certificate, since these provisions are limited on their face to applicants in possession of a written evaluation completed by the Department's licensing office prior to January 20, 2004 – of which there is not only no evidence on record, but which the petitioner cannot possibly have received in conjunction with applications for certification submitted in 2006 and 2007, respectively.

Accordingly, for the reasons expressed therein as clarified and amplified above, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: April 18, 2008

Date of Mailing: April 21, 2008

⁴ This decision 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.*