

JENNIFER GERBER, :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE CITY OF :
NEW BRUNSWICK, MIDDLESEX COUNTY, :
RESPONDENT, :
AND : **COMMISSIONER OF EDUCATION**
CARLOS MERCADO, : **DECISION**
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE CITY OF :
NEW BRUNSWICK, MIDDLESEX COUNTY, :
RESPONDENT, :
AND
NANCY K. RODRIGUEZ, :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE CITY OF :
NEW BRUNSWICK, MIDDLESEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning teachers of bilingual/bicultural education, hired on emergency/temporary certificates, contested termination of their employment and contended they had acquired tenure in the district because they held standard or provisional certification in other areas and were employed by the Board as teachers for the requisite period of time.

The ALJ recommended dismissal of the petitions, finding that petitioners did not qualify for tenure because service under emergency/temporary endorsements cannot count toward accrual of tenure in the position of teacher unless full certification is later obtained in the same area of endorsement.

The Commissioner concurred and adopted the ALJ's decision as the final decision in this matter.

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.

March 14, 2008

OAL DKT. NOS. EDU 06337-06, EDU 06406-06 AND EDU 02191-07
AGENCY DKT. NOS. 249-7/06, 248-7/06 AND 39-2/07

JENNIFER GERBER,	:	
PETITIONER,	:	
V.	:	
BOARD OF EDUCATION OF	:	
THE CITY OF NEW BRUNSWICK,	:	
MIDDLESEX COUNTY,	:	
RESPONDENT,	:	
AND		COMMISSIONER OF EDUCATION
CARLOS MERCADO,	:	DECISION
PETITIONER,	:	
V.	:	
BOARD OF EDUCATION OF	:	
THE CITY OF NEW BRUNSWICK,	:	
MIDDLESEX COUNTY,	:	
RESPONDENT,	:	
AND		
NANCY K. RODRIGUEZ,	:	
PETITIONER,	:	
V.	:	
BOARD OF EDUCATION OF	:	
THE CITY OF NEW BRUNSWICK,	:	
MIDDLESEX COUNTY,	:	
RESPONDENT.	:	

The records of these separate but related matters and the “global” Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the

petitioners' exceptions and the New Brunswick Board of Education's (Board) reply, both timely filed in accordance with *N.J.A.C.* 1:1-18.4.

In their exceptions, the petitioners urge rejection of the Initial Decision and reiterate their stance that each of them, by virtue of holding standard or provisional certification and having been employed by the Board for the requisite period of time, has met the statutory conditions for acquisition of tenure as articulated in *Spiewak v. Rutherford Board of Education*, 90 *N.J.* 53 (1982). According to the petitioners, the fact that they were asked to obtain additional emergency/temporary endorsements in order to teach bilingual/bicultural education is of no moment; they are certified teachers whose employment could not be "nonrenewed" by the Board once they served long enough to acquire tenure in the district. (Petitioners' Exceptions at 2-4)

In reply, the Board counters, as it did at the OAL, that each of the petitioners was hired as a teacher of bilingual/bicultural education on the basis of emergency/temporary certification – notwithstanding that they may have held or eventually acquired other endorsements under which they did not teach – and that none of them ever acquired full certification under the bilingual/bicultural endorsement. Thus, according to the Board, because a teacher cannot gain tenure without proper certification in the specific position for which he or she was hired (citing *Breitweiser v. State-Operated School District of the City of Jersey City, Hudson County*, 286 *N.J. Super.* 633 (App. Div. 1996) and *Passaic Board of Education v. Gonzales*, 97 *N.J.A.R.2d* (EDU) 488), the petitioners herein cannot rely on their service as teachers of bilingual/bicultural education to claim tenure in the district. (Reply Exceptions at 1-2)

Upon review, the Commissioner finds that the Administrative Law Judge (ALJ) fully considered the arguments of the parties in light of the undisputed facts and correctly concluded that the petitioners in this matter did not qualify for tenure status, since

the time they served as teachers of bilingual/bicultural education under emergency/temporary endorsements cannot count toward accrual of tenure in the position of teacher without their having subsequently obtained full certification in the same area of endorsement.

Accordingly, for the reasons expressed therein, 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.*

COMMISSIONER OF EDUCATION

Date of Decision: March 14, 2008

Date of Mailing: March 17, 2008

* 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.*