

JANET CARLSON GIARDINA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF WINSLOW, CAMDEN COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner, formerly the Director of Guidance and Counseling for the respondent Board’s school district, alleged that the Board violated her tenure rights when it created the position of Director of Pupil Personnel Services, approved a job description for the position that required a “Principal Certificate,” and subsequently eliminated petitioner’s position and reduced her salary. At a prehearing conference, the parties agreed that no genuine issues of fact existed, and filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact and the matter can be decided by summary decision; the Board acted arbitrarily in creating the new position of Director of Pupil Personnel Services (PPS), which is not a recognized title in the regulations, was not approved by the County superintendent, and required a “Principal Certificate” – a certificate which does not exist in regulations; pursuant to regulations, the Board should have required an Administrative Certificate with an appropriate endorsement for the new position, which includes in its duties district-wide oversight of the administration of special education; neither tenure nor seniority applies across certificates; and accordingly, the petitioner was not entitled to hold the position of Director of PPS as it currently exists. The ALJ ordered that: the respondent Board is required to conform the job description for the Director of PPS pursuant to *N.J.A.C. 6A:9-13.7*; the unrecognized title be submitted to the County superintendent for approval; and petitioner’s motion for summary decision is denied and respondent’s motion is granted.

Upon a thorough and independent review of the record, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, with clarification.

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.

August 19, 2011

OAL DKT. NO. EDU 2374-09
AGENCY DKT. NO. 5-1/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner sought and was granted a significant extension of time within which to file exceptions to the Initial Decision.¹ However, ultimately, no exceptions were filed by petitioner.

Upon his full consideration, the Commissioner initially concurs with the Administrative Law Judge (ALJ) as to the first issue in this matter, *i.e.*, that the Board acted arbitrarily in creating the new position of Director of Pupil Personnel Services in that 1) it created a position with an unrecognized title which was not approved by the County Superintendent and 2) such position had inappropriate certification requirements for the duties set forth in its job description. As to 1), when the Board approved the creation of the position of Director of Pupil Personnel Services, it created an unrecognized title. Pursuant to *N.J.A.C. 6A:9-5.5*, a board of education is required either to assign position titles that are recognized in the regulations or – if it chooses to assign an alternative position title – it must

¹ It is noted that the extended due date for petitioner’s exceptions was two days before the Commissioner’s decision in this case was due. Because subsequent to the filing of petitioner’s exceptions the Board is accorded a regulatory period of time to file a reply, the Commissioner was required to seek an extension for the issuance of his decision.

request approval from the county superintendent for this unrecognized title, which admittedly was not done here. As to 2), the Commissioner notes that this position, as it currently exists, entails district-wide responsibility for special education, guidance and health services and, as such, requires dual certification. Those duties in the job description of this particular position which call for district-wide oversight of guidance and counseling require that the incumbent possess an Educational Services Certificate with a Director of School Counseling Services endorsement (*N.J.A.C. 6A:9-13.7*). Those duties under this position which require district-wide oversight of the administration of special education require that the incumbent possess an Administrative Certificate with an endorsement or certificate of eligibility as a School Administrator (*N.J.A.C. 6A:9-12.3(a)*).^{2 3}

As to the second issue in this case, whether petitioner's tenure rights were violated by the Board's not placing her in the newly created position, the Commissioner again agrees with the ALJ that they were not. Notwithstanding that petitioner had tenure status under her Educational Services Certificate, she cannot claim entitlement to a position which, as part of its stated duties, oversees the administration of special education because she does not have an Administrative Certificate. As correctly recognized by the ALJ, "[s]ince neither tenure nor

² Pursuant to *N.J.A.C. 6A:9-12.3(a)*, a School Administrator endorsement is required for any position that involves services as a *district-level* administrative officer. (Such positions include Director-titled positions.) Pursuant to *N.J.A.C. 6A:9-12.3(b)*, a Principal's endorsement is required for any position that involves service as an administrative officer *of a school or other comparable unit within a school district*. (Such positions include Director-titled positions.)

³ The Commissioner is compelled to clarify that the *Director* of Pupil Personnel Services is not one of the separately tenurable positions enumerated in *N.J.S.A. 18A:28-5*, as stated by the ALJ on page 10 of her decision.

seniority applies across certificates...petitioner was not entitled to hold the position of Director of Pupil Personnel Services as it currently exists.”⁴ (Initial Decision at 11)

Accordingly, the recommended decision of the OAL – as expounded upon above – is adopted as the final decision in this matter. It is hereby ordered that the Board conform the job description for the Director of Pupil Personnel Services to reflect the certification requirements stated above and that this unrecognized title be submitted to the County Superintendent for approval. The instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 19, 2011

Date of Mailing: August 19, 2011

⁴ Additionally, it is also evident that this position – which effectively combines the duties of two positions – is not substantially similar to petitioner’s Director of Guidance and Counseling position so as to provide her any entitlement claim.

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).