

#109-12R (OAL Decision: Not yet available online>

RAYMOND RUIZ, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF FORT LEE, :
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner in this case on remand – whose position as a substance awareness counselor (SAC) was eliminated in a reduction in force (RIF) at the end of the 2009-2010 school year – asserts that the respondent Board improperly terminated his employment in violation of his tenure rights by failing to re-employ him in one of two school psychologist positions held by non-tenured staff members. At the time of his hire in September 2006, petitioner held a Certificate of Eligibility (CE) which allowed him to seek provisional employment as a SAC. He served for four years under that provisional certification. Petitioner had also earned an educational services certificate with a standard endorsement as a School Psychologist, but had not served in that capacity in respondent’s district. The Board contends that petitioner never earned tenure in its district. An Initial Decision from the Office of Administrative Law (OAL), issued in May 2011, determined that petitioner was not employed under tenure at the time of his RIF because he had not earned a standard certificate as a SAC. The ALJ recommended dismissal of the case. The Commissioner subsequently issued a decision remanding the case to the OAL for additional factual findings concerning whether or not petitioner had satisfied the conditions of provisional certification and the requirements for standard certification.

On remand, the ALJ found, *inter alia*, that: petitioner’s provisional SAC certification has now expired; petitioner did not meet the academic requirements for standard SAC certification prior to his termination by respondent and prior to the expiration of his provisional certificate, nor has he done so to date; petitioner’s claims that he was impeded by the respondent and by the Department of Education in his attempts to earn standard SAC certification were fully adjudicated in a related appeal to the New Jersey State Board of Examiners (NJSBOE) and are barred in the instant matter under the doctrine of collateral estoppel; and it is unnecessary to reach to petitioner’s argument that his tenure rights extend to all endorsements on his educational services certificate, entitling him to positions held by non-tenured school psychologists. The ALJ concluded that petitioner was not employed under tenure at the time of his RIF, and ordered his appeal dismissed.

Upon thorough and independent review, the Commissioner adopted the Initial Decision as the final decision in this case. In so doing, the Commissioner found, *inter alia*, that the NJSBOE previously determined that petitioner had not satisfied the academic requirements for a standard SAC endorsement, and the Commissioner had upheld this determination. The lack of qualifications for a standard SAC endorsement bar the petitioner from claiming tenure in respondent’s district and, in turn, preclude petitioner from any “bumping rights” in the wake of the RIF. Nor does respondent have any jurisdiction to waive the regulatory requirements or disturb the determinations of the NJSBOE. Accordingly, the petition was dismissed.

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 26, 2012

OAL DKT. NO. EDU 9871-11
(EDU 8187-10 on remand)
AGENCY DKT. NO. 153-7/10

RAYMOND RUIZ, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 BOROUGH OF FORT LEE, :
 BERGEN COUNTY, :
 :
 RESPONDENT. :

This matter originally came before the Commissioner when respondent terminated petitioner’s employment as a substance abuse counselor (SAC) – as a result of a reduction in force (RIF). Petitioner maintained that he had achieved tenure in the SAC position and, because he possessed a standard school psychologist endorsement to an educational services certificate, his tenure in the SAC position allowed him “bumping rights” to school psychologist positions in respondent’s district that were held by non-tenured employees. On August 17, 2011, the Commissioner remanded the case to the Office of Administrative Law (OAL) for factual findings as to whether – at the time that he was “RIF’d” – petitioner had satisfied all of the conditional requirements of his provisional certificate, which he would have had to have done in order to claim tenure rights.

Upon review of the record, the OAL’s Initial Decision on remand and petitioner’s exceptions, the Commissioner adopts the Initial Decision as the final decision in this case. The record reveals that the New Jersey State Board of Examiners (NJSBOE) determined on

July 28, 2010 that petitioner had not satisfied the academic requirements for a standard SAC endorsement.¹ Petitioner appealed to the Commissioner, but the Commissioner upheld the NJSBOE's determination in a decision dated December 23, 2011. No appeal of the Commissioner's decision was filed.

In light of the Commissioner's holding that the NJSBOE correctly found petitioner to have fallen short of the academic requirements for a SAC endorsement, the Administrative Law Judge (ALJ) assigned to the remanded action against the Fort Lee Board of Education correctly determined in her Initial Decision that the lack of qualifications for a standard SAC endorsement barred petitioner from claiming tenure in respondent's district. In turn, the lack of tenure precluded petitioner from any "bumping rights" in the wake of the above referenced RIF.

Petitioner's exceptions to the Initial Decision on remand rely heavily upon the respondent district's failure to timely process the paperwork required for the securing of "a provisional educational services certificate with a SAC endorsement." *N.J.A.C. 6A:9-13.2(e)(1)*. However, the provisional SAC endorsement was issued well before the RIF and is not at issue here. Nor is there any allegation that respondent failed to execute its responsibility to provide a six-month school residency program for petitioner – another prerequisite to the issuance of a standard SAC endorsement. *N.J.A.C. 6A:9-13.2(e)(3)*.

Rather, as explained in the Initial Decision, the basis for petitioner's ineligibility for a standard SAC endorsement was his failure to complete the academic requirements set forth in *N.J.A.C. 6A:9-13.2(e)(2)*. Of the three preconditions to standard SAC endorsements that are

¹ The NJSBOE determined that petitioner failed to satisfy *N.J.A.C. 6A:9-13.2(e)(2)*, which requires that he complete a Department-approved graduate curriculum with a range of 21-27 semester-hour credits that include the study areas set forth in *N.J.A.C. 6A:9-13.2(c)(i)* through (ix).

set forth in *N.J.A.C.* 6A:9-13.2(e), the second one – *N.J.A.C.* 6A:9-13.2(e)(2) – calls for full responsibility on the part of the candidate. More specifically, it is the candidate who must ensure that he or she has completed the appropriate courses. It is then the responsibility of the NJSBOE to determine whether the candidate has satisfied the requirements of *N.J.A.C.* 6A:9-13.2(e)(2). Neither petitioner’s lack of diligence in clarifying and, if necessary, supplementing his academic qualifications, nor any alleged delays on the part of the NJSBOE can bestow upon the respondent in this case – *i.e.*, the Fort Lee Board of Education – the jurisdiction to determine that petitioner had satisfied all of the conditional requirements of his provisional certification so as to qualify for the standard SAC endorsement, which is prerequisite to petitioner’s achievement of tenure. Thus, petitioner did not achieve tenure in respondent’s district and holds no bumping rights.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2012

Date of Mailing: March 27, 2012

² 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)