

59-15 (OAL Decision: Not yet available online)

SHANE HUNSICKER, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 HIGH POINT REGIONAL HIGH :
 SCHOOL, SUSSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – who had been employed by the respondent Board under tenure as an athletic trainer – challenged the termination of his employment in September 2013, contending that he should have been afforded a tenure hearing and the protections associated therewith prior to his removal. The Board argued that petitioner’s immediate removal was mandatory because his license as an athletic trainer – which was required by state law as a term of his employment – had expired in January 2009. Further, the Board contended that once the petitioner was lawfully removed from the athletic trainer position for failure to maintain the required license, his tenure rights ceased and the Board was under no obligation to rehire him.

The ALJ found, *inter alia*, that: in order to hold the position of school athletic trainer, an individual must hold the appropriate certificate from the Department of Education – pursuant to *N.J.S.A.* 18A:26-2.4 and *N.J.A.C.* 6A:9-13.17 – and complete requirements established by the State Board of Medical Examiners (SBME) for registration as an athletic trainer – pursuant to *N.J.S.A.* 45:9-37.37 and *N.J.A.C.* 13:35-10; licenses are issued by the SBME for a two-year period, and must be renewed following the expiration of each two year license; a license not renewed within 30 days of the expiration date is automatically suspended; if an employee fails to maintain the required licenses for the position, the employing district shall remove the employee; and there is no statute that details circumstances under which a person removed from a teaching position because of failure to maintain the required license will be entitled to reinstatement to their position. The ALJ concluded that the Board proved by a preponderance of evidence that the decision to remove the petitioner, as well as the decision to not re-appoint him after renewal of the license in question, was not arbitrary, capricious, or unreasonable. Accordingly, the ALJ affirmed the termination of petitioner’s employment as an athletic trainer at High Point Regional High School.

Upon a comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

<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>

February 12, 2015

SHANE HUNSICKER, :
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Petitioner, Shane Hunsicker, challenges the respondent Board of Education’s termination of his employment as an athletic trainer. He maintains that before respondent removed him from his position it should have afforded him a tenure hearing and the protections associated therewith. After a June 30, 2014 hearing in the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) assigned to the case found that the basis for respondent’s decision not to retain petitioner lay outside the laws concerning tenure, and that respondent properly followed regulations pertaining to athletic trainers when it terminated petitioner’s employment. Having considered the record,¹ Initial Decision of the OAL, petitioner’s exceptions and respondent’s replies thereto, the Commissioner agrees with the ALJ.

N.J.S.A. 45:9-37.37 and *N.J.A.C. 13:35-10* preclude an individual from working anywhere in New Jersey as an athletic trainer without an up-to-date license issued by the State Board of Medical Examiners. It is undisputed that petitioner’s athletic trainer license expired on January 31, 2009. *N.J.A.C. 6A:9-5.1(b)* and (c), regulations which were operative on

¹ The record presented to the Commissioner did not include a transcript of the June 30, 2014 hearing

September 4, 2013 – the date on which respondent terminated petitioner – require employing school districts to refrain from hiring and, respectively, to remove any teaching staff members who fail to obtain or maintain **any license**, certificate or authorization that may be **mandated by State or Federal law or by a licensing board** for the individual to serve in a position. *See, N.J.A.C. 6A:9-5.1(c)* [Now recodified at *N.J.A.C. 6A:9B-5.1(c)*], which provides: “[t]he employing school district **shall** remove from the position any teaching staff member who fails to maintain the mandated license” Accordingly, when respondent learned – on or about August 28, 2013 – that petitioner’s license had expired, it was required to remove petitioner from his position.

The Administrative Law Judge found that at the time of petitioner’s removal from service “there [was] no statutory exemption that provide[d] a tenured licensee with protection from [the] removal [mandated by *N.J.A.C. 6A:9-5.1(c)*].” The Commissioner concurs. It was respondent’s duty under the above referenced statutes and regulations – which must be seen as safeguards for the welfare of student athletes – to remove petitioner from a position for which he did not hold the required license. The tenure statutes allow teaching staff members to remain employed pending hearings about their fitness to teach, administer or provide special education services under certificates issued by the New Jersey Board of Examiners. However, there is no statutory authority which allows a local Board of Education or the Commissioner of Education to retain an individual whose work is also governed by the Board of Medical Examiners, and who has failed to conform to that Board’s practice requirements.² Further, as the ALJ found, there is

² Less on point, but nonetheless supportive of respondent’s position is the holding in *Michael Schailey v. Board of Education of the Southern Regional High School District, Ocean County*, Commissioner Decision No. 73-09 (February 19, 2009), wherein the Commissioner adopted the determination in the Initial Decision that a tenured physical education teacher whose teaching certificates were suspended by the Board of Examiners could be terminated from his school employment without a tenure hearing.

no authority which would have required respondent to rehire petitioner once his employment had been terminated.

The Commissioner is mindful that petitioner experienced a tragedy in 2010 which greatly affected his subsequent personal life. However, petitioner had let his license lapse over a year before the tragic event, and had continued to work without a license for five years. Those circumstances would not present a case for circumventing the mandate of *N.J.A.C. 6A:9-5.1(c)*, even if the Commissioner had the discretion to do so.

Accordingly, the Initial Decision is adopted and the petition is dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: February 12, 2015

Date of Mailing: February 13, 2015

³ This decision, as the final decision of the State administrative agency, may be appealed to the Superior Court, Appellate Division pursuant to *N.J.S.A. 18A:11-3* and *N.J.A.C. 6A:3-7.6*.