

JODI ANN BOCCO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF WEST LONG BRANCH,
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

This matter arose out of a decision by the respondent Board to reassign petitioner from her title of school counselor and substance awareness coordinator to the title of health and physical education teacher. Shortly after the reassignment, the school district filed tenure charges against petitioner, and she was ultimately dismissed. In the instant case, petitioner asserted that her reassignment prior to the filing of tenure charges was improper, and that – her subsequent dismissal notwithstanding – the Commissioner must correct the district’s error because of its public importance and because it is a mistake that is “capable of repetition yet might evade review” (*Brady v. Department of Personnel*, 149 N.J. 244 [1997]). The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: petitioner was hired by the Board in 1997 and holds an instructional certificate with endorsement as a teacher of health and physical education, and an educational services certificate with endorsements as a substance awareness coordinator and school counselor; petitioner acquired tenure in both titles; in September 2012, petitioner was reassigned from her post as school counselor and substance awareness coordinator to the position of health and physical education teacher – a position she previously held; tenure charges of unbecoming conduct were filed in November 2012 and subsequently sustained; petitioner’s reliance on *Brady*, *supra*, for her assertion that the Board’s decision to reassign her was improper and must be reviewed is inapposite; tenure and seniority questions tend to be fact-sensitive; the transfer between titles in this case was associated with the subsequent filing of tenure charges; and with petitioner’s removal following the sustainment of tenure charges, further exploration of the issues is moot. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the case.

Upon review, the Commissioner concurred with the ALJ ’s determination that the issues raised by the petitioner are moot. Accordingly, the Initial Decision was adopted as the final decision in this case, and 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.

January 22, 2015

OAL DKT. NO. EDU 14206-12
AGENCY DKT. NO. 242-8/12

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Board of Education’s (Board) reply thereto.

In her exceptions, the petitioner reiterates the arguments that were made below contending that the Administrative Law Judge (ALJ) erroneously determined that the petition should be dismissed as moot. The petitioner asserts that in reaching his decision, the ALJ confuses tenure-seniority issues that involve movement within a certificate with transfers of personnel between different certificates. The petitioner stresses that the Commissioner should decide this matter, despite the fact that the petitioner lost her tenure and was dismissed after the culmination of tenure charges, because the issue raised by the petitioner is of extreme importance and will arise again if it is not properly addressed.

Upon the review of the record, the Commissioner is in accord with the ALJ’s conclusion – for the reasons set forth in the Initial Decision – that the issues raised by the petitioner are moot. Despite the petitioner’s assertion to the contrary, the arguments made by the

petitioner were thoroughly considered and discussed by the ALJ in rendering the specific determinations outlined in the Initial Decision. Accordingly, the petition is hereby dismissed as moot.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2015

Date of Mailing: January 22, 2015

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