

EDU #5877-02
C # 646-03
SB # 1-04

KATHLEEN DONVITO, :
 :
 PETITIONER-RESPONDENT, :
 :
 V. :
 :
 BOARD OF EDUCATION OF THE : STATE BOARD OF EDUCATION
 NORTHERN VALLEY REGIONAL :
 HIGH SCHOOL DISTRICT, BERGEN : DECISION ON MOTION
 COUNTY, :
 :
 RESPONDENT-APPELLANT, :
 :
 AND :
 :
 LOUISE RYAN, :
 :
 INTERVENOR. :
 _____ :

Decided by the Commissioner of Education, December 4, 2003

Decided by the State Board of Education, March 3, 2004

For the Petitioner-Respondent, Bucceri and Pincus (Louis P. Bucceri,
Esq., of Counsel)

For the Respondent-Appellant, Sills, Cummis, Radin, Tischman, Epstein
and Gross (Cherie L. Adams, Esq., of Counsel)

For the Intervenor, Springstead & Maurice (Harold N. Springstead, Esq.,
of Counsel)

In his decision of December 4, 2003, the Commissioner determined that
petitioner had achieved tenure pursuant to N.J.S.A. 18A:28-5(c) by virtue of her service

as a teaching staff member for the equivalent of more than three academic years within four consecutive academic years. The petitioner had served as a Home Instructor for five months during the 1996-1997 academic year and for nine months during the 1997-1998 academic year. During the 1998-1999 academic year, she served as a Home Instructor and HSPT/SRA Tutor, and during the 1999-2000 academic year, she served as a Home Instructor, 2/5 Special Education Teacher, and SRA Tutor. Because these assignments required certification in order to be qualified to serve in them and because petitioner possessed certification as an Elementary School Teacher, Teacher of English, Nursery School Teacher, Learning Disabilities Teacher Consultant, and Teacher of the Handicapped, the Commissioner, relying on Spiewak v. Rutherford Bd. of Ed., 90 N.J. 63 (1982), found that she had acquired tenure. Consequently, the Commissioner determined that the Northern Valley Regional High School District Board of Education had violated petitioner's tenure rights when, following her service as a full-time Special Education Teacher in the 2000-2001 and 2001-2002 school years, it did not renew her contract for the 2002-2003 school year while at the same time employing 22 nontenured teaching staff members in assignments for which the petitioner's certification qualified her. Given this conclusion, the Commissioner granted summary decision to the petitioner and directed her reinstatement to a full-time position for which she was qualified by virtue of her certification that was held by any nontenured or less senior teacher, along with full back salary and benefits.

On December 31, 2003, the Board appealed the Commissioner's decision to the State Board and, on February 18, 2004, it sought a stay of that decision pending the outcome of the appeal. The Board contends that it will suffer irreparable harm if a stay

is not granted in that it will have to remove a contracted teacher in the middle of the school year in order to comply with the Commissioner's decision and will have to expend public funds to provide petitioner with back pay. It argues that the petitioner, in contrast, will not suffer any harm because she is working full-time in another school district. The Board further contends that the legal right underlying its claim is settled and, therefore, that it has a strong likelihood of prevailing on the merits of its appeal. In support of this contention, the Board points to the Commissioner's decision in Hyman et al. v. Board of Education of the Township of Teaneck, 1983 S.L.D. 699, rev'd on other grounds by the State Board of Education, 1985 S.L.D. 1940, aff'd, Docket #A-3508-84T7 (App. Div. 1986), certif. denied, 104 N.J. 469 (1983).¹

After careful consideration, we find that the Board has not demonstrated that it will suffer irreparable harm by complying with the Commissioner's decision in this matter. Nor has it shown that there is a likelihood that it will prevail on the merits of its appeal. Hence, the Board has failed to meet the standards that would entitle it to relief under Crowe v. De Gioia, 90 N.J. 126 (1982), and we deny its application for a stay of the Commissioner's decision.

Arnold G. Hyndman abstained.

April 7, 2004

Date of mailing _____

¹ In contrast to his determination in the case now on appeal, the Commissioner in his decision in Hyman sustained the Administrative Law Judge's finding that home instructors were not teaching staff members.