

ALICE H. YUCHT, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 BOROUGH OF MILLTOWN, :  
 MIDDLESEX COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner, media specialist who was rified, alleged the Board wrongfully hired another individual to fill an educational media specialist position in violation of her recall rights.

ALJ found that the individual hired for the new position would serve as both a media specialist/librarian and a teacher of elementary subject matter. ALJ determined that petitioner was certified to teach English in the elementary schools, but she presented no information which suggested that she had the necessary endorsement to teach mathematics. Thus, she was not qualified for the new position that included teaching math. Moreover, the Board did not have to bifurcate the position to suit petitioner's areas of endorsement. Petition was dismissed.

Commissioner concurred with the ALJ that the Board's dual certification requirement was proper. Commissioner agreed with the ALJ that absent a showing that the Board violated state law, administrative code or acted arbitrarily, the Commissioner will not interfere with the Board's decision to combine the library/media and instructional duties into one position. Petition was dismissed.

SEPTEMBER 17, 1997

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the initial decision of the Administrative Law Judge (ALJ). Notwithstanding the significance which petitioner places on the Board's stated "preference" for a candidate who possessed an elementary endorsement to the instructional certificate,\* the Commissioner notes that the advertisement, as posted in the newspaper clearly states that the candidate must hold such an endorsement. Moreover, as petitioner notes in her exception arguments, it is the duties attending the position in question which determine whether the

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\* As contained in the listing of qualifications in the job description. (Initial Decision at p. 3)

elementary endorsement was properly considered to be a requirement. In that the performance responsibilities clearly anticipate the holder of the position to “[develop] lesson plans in order to adapt and teach the curriculum to the needs of pupils including \*\*\* general elementary education as the master schedule permits, in cross curricular and interdisciplinary formats” (Initial Decision at p. 3), the Commissioner cannot find that the Board’s dual certification requirement is improper. As the ALJ correctly notes, that the Board decided to combine the library/media and instructional duties is not a decision in which he will interfere, absent a showing that the Board has violated state law, administrative code or has acted arbitrarily. The Commissioner concurs with the ALJ that such is not the case.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. The within Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 17, 1997