

MARK D. BOYLE, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF BAYONNE, HUDSON COUNTY, :
 :
 RESPONDENT. :
 :

SYNOPSIS

Tenured guidance counselor alleged the Board violated his tenure and seniority rights by assigning him to a teaching position while appointing another to a position which included counseling services.

ALJ concluded petitioner was not entitled to placement in the position of Coordinator during the 1996-97 school year, that he did not prove by a preponderance of credible evidence that he was entitled to placement in such position during the subsequent year, or to the subsequent *per diem* summer employment. ALJ dismissed petition.

Commissioner affirmed determination of ALJ and dismissed petition.

December 15, 1997

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and the Board's reply thereto, as well as the Board's cross-exceptions, were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Petitioner excepts to the Administrative Law Judge's (ALJ) dismissal of the instant matter where there remains, as he contends, a justiciable issue which the ALJ decided without the benefit of argument. Petitioner clarifies that he did *not* seek the position of Special Education Transition Coordinator, as stated in the initial decision, but rather sought appointment to any guidance counseling responsibilities that had been assigned to Steinman, the holder of the Coordinator's position, whom petitioner argues has less seniority. Petitioner further contends that

***there was still a justiciable issue because if he was entitled to the counseling responsibilities performed by the Coordinator, he was also entitled to the counseling assignment performed by Steinman during the 1997 summer. Therefore, the matter was not moot because there was a monetary remedy available to him. (Petitioner's Exceptions at p. 3)

In that the only issue raised and briefed by the parties before the OAL was the issue of mootness, petitioner objects to the ALJ's concluding that he was not entitled to the *per diem* summer counseling assignment, without benefit of any argument on that point.

In reply, the Board maintains that petitioner was not entitled to perform the summer work in question, since it is undisputed that Steinman worked in the area of special education and, further, that petitioner had no tenure right, seniority right or other entitlement to said summer employment. (Board's Reply at p. 2) Moreover, the Board asserts that, since petitioner holds no special education endorsement, he did not have any right to the position of Special Education Transition Coordinator. Finally, the Board warrants, as argued before the ALJ, that the current matter is moot, in that petitioner "has failed to establish or even allege any harm that he suffered as a result of a claimed violation of his tenure or seniority rights." (*Id.* at p. 4)

Upon careful and independent review of the record in this matter, the Commissioner initially observes that the specific relief requested by petitioner was not, as noted by Board and the ALJ, appointment to the position of Special Education Transition Coordinator, but rather, *inter alia*, assignment to petitioner of "****any counseling responsibilities assigned to less senior employees," (Petition of Appeal at p. 2) and further recognizes that petitioner specifically disputes the ALJ's finding that "****Steinman was employed on a *per diem* basis at Bayonne High School during the summer of 1997, *in the area of special education*," (Petitioner's Exceptions at p. 2, citing to initial decision at p. 4, emphasis added). However, even granting petitioner's contentions, the Commissioner must still find that the ALJ properly decided this matter notwithstanding that briefing had occurred only on the issue of mootness.

As correctly noted by the ALJ, petitioner suffered no loss of salary or emolument, and it is well established that there is no legal entitlement to summer employment as a matter of tenure and seniority right, notwithstanding that a district's past practice may generally have been to offer such employment to persons in certain types of positions. Under these circumstances, the Commissioner cannot find that there would be any useful purpose served in continuing proceedings in this matter, particularly where petitioner, in arguments on exception, brings forward no authority to counter the ALJ's discussion, so as to suggest to the Commissioner that petitioner's right to hearing was compromised by the ALJ's having brought this matter to closure without benefit of additional proceedings.

Accordingly, the initial decision of the Office of Administrative Law, dismissing the petition of appeal, is affirmed for the reasons expressed therein.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 15, 1997