

Kate Romeo, :
Petitioner, :
V. : Commissioner of Education
Board of Education of the : Decision
High Point Regional High School District,
Sussex County, :
Respondent. :

Synopsis

The petitioner – a certified student assistance coordinator (SAC) employed in the respondent Board’s school district prior to a Reduction in Force (RIF) – challenged the Board’s decision to abolish her position. The petitioner argued that the Board violated *N.J.S.A.* 18A:40A-18 when it distributed her former duties to other existing staff members and contended that she is entitled to reinstatement as a SAC, with back pay and benefits. Further, petitioner maintained that she is also entitled to reinstatement as a teacher of psychology. The Board contended that its actions were consistent with law and regulations.

The ALJ found, *inter alia*, that: petitioner’s contention that *N.J.S.A.* 18A:40A-18 requires all SAC-related services to be provided only by a certificated SAC whose position is “separate and distinct” from any other positions in the school district is without merit; the legislative history of the statute reveals it was enacted in 1987 as a vehicle through which to pilot the introduction of SAC services to local school districts, and nowhere does the statute preclude a district from providing student assistance services through the use of properly certificated staff; the Board eliminated petitioner’s position for legitimate reasons of economy, and distributed her duties among existing staff in a lawful manner; petitioner did not hold tenure as a teacher of psychology, as the record revealed that she did not deliver instruction to students under her certificate during the time she claims to have taught psychology during the 2011-2012 and 2012-2013 school years; and her claim to reinstatement as a teacher of psychology therefore lacks merit. Accordingly, the ALJ dismissed the petition of appeal.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusions as thoroughly set forth in the Initial Decision. Accordingly, the recommended decision of the OAL was adopted as the final decision in this matter, and the petition of appeal 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>

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, Kate Romeo.¹

The petitioner, a certified student assistance coordinator (SAC), is challenging the High Point Regional Board of Education’s (Board) decision to abolish her position as a result of a reduction in force (RIF).² The petitioner maintains that she is entitled to reinstatement as a SAC because the Board’s decision to distribute the duties she performed as a SAC to other existing staff members violates *N.J.S.A.* 18A:40A-18. Additionally, the petitioner contends that she is also entitled to reinstatement as a teacher of psychology. The Administrative Law Judge (ALJ) found that the Board’s decision to abolish the petitioner’s SAC position and distribute her duties among existing staff was not unlawful. The ALJ also determined that the petitioner has no

¹ The Board submitted reply exceptions beyond the due date without seeking an extension to file late exceptions, therefore, they were not considered.

² The petitioner holds a certificate of eligibility with advance standing as a SAC and a certificate as a teacher of psychology.

right to reinstatement as a teacher of psychology because she did not acquire tenure as a teacher of psychology. As a result, the ALJ dismissed the petition of appeal.

In her exceptions, the petitioner argues that the Initial Decision should be rejected because *N.J.S.A.* 18A:40A-18 mandates that the SAC position must be “separate and distinct from any other employment positions in the District.” Moreover, the SAC’s duties may not be delegated to “the district guidance counselors, school social workers, and school psychologists.” The petitioner stresses that *N.J.A.C.* 6A:9B-14.2 also states that “the SAC position shall be separate and distinct from any other employment position in the school.” Therefore, the Board’s decision to abolish the SAC position violated the relevant statutory and regulatory provisions.

Further, the petitioner contends that in reaching her decision, the ALJ ignored the most salient and material language from the lead case on this issue, *Maren Bristol v. Northern Valley Reg’l. High School District, Bergen County*, EDU 9053-03, Initial Decision, decided July 1, 2004, *modified*, Commissioner Decision No.322-04, decided August 4, 2004. The *Bristol, supra*, decision deals with whether a school district, in the abstract, could subcontract the duties of the SAC to a third-party vendor or whether the duties must be performed in-house by a SAC. The ALJ should not have relied on that case because *Bristol, supra*, did not deal with the issue presented herein, which is whether employees within the District who do not hold a SAC certificate can perform the SAC duties. The Superintendent himself testified that employees who are not certified SACs are performing SAC duties in the District, including the behaviorist and members of the Child Study Team. This contravenes the statutory scheme and deprived the petitioner of the protection afforded her as a tenured teaching staff member under her SAC certificate. Moreover, the ALJ inappropriately relied on a footnote from the *Bristol, supra*,

decision to support her determination that the programs and services required by statute need not be provided exclusively by a SAC.

The petitioner also alleges that the ALJ erroneously found that she was not entitled to reinstatement as a teacher of psychology. The petitioner acknowledges that she does not have tenure as a teacher of psychology. However, by virtue of the fact that she taught psychology for two years in the District at the alternative program under her teacher of psychology certificate, she has preference to any position that requires a teacher of psychology certificate over a non-tenured employee. The petitioner cites to case law that she contends supports her position and right to reinstatement as a psychology teacher. Therefore, the petitioner states that the Initial Decision should be rejected, and she should be found to have a right to the tenured SAC position and the ability to exercise her rights over a non-tenured teacher of psychology.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that the Board’s decision to abolish the petitioner’s SAC position as part of a RIF did not violate *N.J.S.A.* 18A:40A-18. As the ALJ found, the relevant statutory and regulatory provisions require school districts to provide prevention, intervention and treatment programs and services, but do not require all school districts to employ a SAC. The statutory language requiring that school districts employ a SAC, separate and distinct from other district positions, derived from an optional pilot program that commenced in 1987 to introduce SAC services to local school districts.³ Moreover, *N.J.A.C.* 6A9B-14.1 simply discusses the functions that the SAC endorsement authorizes the holder to perform.

Despite the petitioner’s assertion to the contrary, the Initial Decision is also consistent with *Bristol, supra*. In *Bristol, supra*, the Commissioner found that the board of

³ In the Initial Decision, the ALJ correctly examined the Legislative History of *N.J.S.A.* 18A:40A-18 and explained why the petitioner’s argument that all school districts must employ a SAC, separate and distinct from any other employment position, is a misinterpretation of the statute.

education violated the SAC's tenure rights because the RIF was not for reasons of economy but rather was based on concerns about the petitioner's ability to provide the appropriate counseling services to students. Importantly, in *Bristol, supra*, the Commissioner stated:

Irrespective of whether a local board of education chooses to hire a Substance Awareness Coordinator, *all* local boards are statutorily obligated to offer the prevention, intervention and treatment-referral programs and services required by *N.J.S.A. 18A:40A-1 et seq.* Thus, while a Board may be prudent to employ a Substance Awareness Coordinator to assist it in meeting its broad statutory responsibilities, there is presently no requirement for it to do so. Consequently, the programs and services compelled by the imposition of these mandates need not, as petitioner argues, be provided exclusively by a Substance Awareness Coordinator, or, necessarily, a district employee. [*Id.* at 3]

Here, it is undisputed that the District effectuated a RIF for budgetary concerns and a decline in student enrollment. It is likewise uncontroverted that the employees who are performing the petitioner's prior duties are eligible to provide these services under their respective certificates. Therefore, the Board's decision to abolish the petitioner's SAC position for economic reasons, and to reassign her duties to existing employees, was not a violation of the statutory and regulatory provisions.

The Commissioner is also in accord with the ALJ's determination that the petitioner has no right to reinstatement to a teacher of psychology position.⁴ In her exceptions, the petitioner concedes that she does not have tenure under her instructional certificate, and instead appears to argue that since she has worked in the District under her teacher of psychology certificate, she should be entitled to a position over another non-tenured staff member. First, the ALJ properly found that the work performed by the petitioner in the alternative program was

⁴ The petitioner's tenure status under her substance awareness coordinator certificate does not entitle her to tenure under her teacher of psychology certificate. *See, Dennery v. Passaic City Reg'l High Sch. Dist.*, 131 *N.J.* 626 (1993) (Tenure earned under one certificate does not transfer to another certificate; instead the staff member must serve for the requisite time under the certificate in question.).

actually under her SAC certificate and constituted group counseling rather than curriculum-based instruction in psychology.⁵ Even assuming arguendo, that the petitioner did work in the District under her psychology certificate, her argument that she has a right to a teacher of psychology position is completely inconsistent with the tenets of seniority. “Seniority provides a mechanism for ranking all *tenured teaching staff members* so that reductions among the tenured force can be effected in an equitable fashion and in accord with sound educational policies.” *Capodilupo v. West Orange Bd of Educ.*, 218 N.J. Super. 510, 514 (App Div 1987) *certif. denied*, 109 N.J. 514 (1987). It is well established that seniority rights are not triggered until tenure is acquired, and the petitioner admits that she does not have tenure as a teacher of psychology. Therefore, the petitioner has no right to reinstatement as a teacher of psychology.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: January 29, 2019

Date of Mailing: January 29, 2019

⁵ The ALJ heard testimony from the petitioner and the Board’s Superintendent regarding the nature of the petitioner’s work at the alternative program between 2011 and 2013, and – based on the evidence in the record – determined that the work performed by the petitioner was not under her instructional certificate.

⁶ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 08261-17

AGENCY DKT. NO. 100-5/17

KATE ROMEO,

Petitioner,

v.

BOARD OF EDUCATION OF THE HIGH POINT

REGIONAL HIGH SCHOOL DISTRICT,

SUSSEX COUNTY,

Respondent.

Sanford Oxfeld, Esq., for petitioner (Oxfeld Cohen, attorneys)

Brent Polhman, Esq., for respondent (Methfessel and Werbel, attorneys)

Record Closed: November 26, 2018

Decided: December 17, 2018

BEFORE **ELLEN S. BASS, ALJ:**

STATEMENT OF THE CASE

Petitioner, Kate Romeo, is a certificated student assistance coordinator (SAC), and teacher of psychology who was formerly employed by the respondent, High Point

Regional Board of Education (the Board).⁷ She appeals the action of the Board terminating her employment effective September 2017, pursuant to a reduction in force (RIF), and asserts that she is entitled to reinstatement and back pay. The Board replies that its actions were consistent with law and regulation.

PROCEDURAL HISTORY

This matter arose with the filing of a petition of appeal by Romeo on May 25, 2017. The Board filed an answer on June 9, 2017, and the matter was transmitted to the Office of Administrative Law as a contested case on June 12, 2017. The case was initially assigned to Judge Joan Bedrin-Murray; upon her elevation to the Tax Court, the matter was reassigned to me on December 15, 2017. A hearing was conducted on August 8, 2018. Post-hearing submissions were filed on November 21 and 26, 2018, at which time the record closed.

Prior to the August hearing, I conferred several times with counsel via telephone conference. I asked whether the outcome of this case, if favorable to Romeo, could implicate the employment of other school district staff. I was repeatedly advised that it was unnecessary to provide notice to potential intervenors, and that the Board did not anticipate that my decision would affect the jobs of other district employees.

I renewed my concern at the hearing. I was again advised that my decision was unlikely to affect other staff members; and that if it did, the Board could not presently advise who might be affected. Counsel urged that the Board was facing additional budget deficits and could not presently predict how it would juggle staffing if Romeo were to prevail. For this reason, no notice was supplied to potential intervenors, as required by N.J.A.C. 1:1-16.4.

ISSUES PRESENTED

The petition raises the following issues for determination:

⁷ Her certificate reads "Substance Awareness Coordinator"; the position's title was changed statutorily, but the work authorized by the certificate remains the same. See: L. 2009, c. 54 §4, eff. May 6, 2009.

1. Whether the duties previously performed by Romeo as an SAC have been distributed among existing staff members, and if so, did the action of the Board in doing so contravene N.J.S.A. 18A:40A-18?
2. If so, is Romeo entitled to reinstatement and back pay?
3. Whether Romeo served during the 2011–2012 and 2012–2013 school years under her Teacher of Psychology certificate, and if so, did she earn tenure and seniority as a teacher of psychology?
4. If so, are there psychology classes presently being taught by less senior teachers to which Romeo should have been assigned?

FINDINGS OF FACT

Stipulated Facts

The parties were able to agree to the following background facts via a joint stipulation. I **FIND**:

1. The Board operates a comprehensive four-year public high school, which educates students in ninth through twelfth grades, for the following constituent Sussex County school districts: Branchville Borough, Frankford Township, Lafayette Township, Sussex Borough, and Wantage Township. Students from Montague Township also attend High Point pursuant to a sending/receiving agreement.
2. Romeo began her employment with the Board on September 1, 2008, as a substance awareness coordinator, and remained in that position until June 30, 2017.

3. She was employed as a SAC for the Livingston School District during the 2017–2018 school year.
4. Romeo is employed as a SAC for the 2018–2019 school by the Vernon public schools.
5. On June 7, 2013, Romeo filed a grievance seeking compensation for teaching one period weekly in an alternative-education program.
6. On June 17, 2013, Dr. Terrance Brennan denied the grievance.
7. The grievance proceeded to the Personnel and Policy Committee of the Board.

The Testimony

The SAC

It is uncontroverted, and I **FIND**, that Romeo holds a Certificate of Eligibility with Advanced Standing as a SAC, and a Standard Certificate as a Teacher of Psychology. She held both certificates at the time she commenced her employment with the Board. As a SAC, Romeo supported anyone in the school community who was in crisis, including students and staff. She counseled students on addiction issues and was available to address concerns about student suicide.

Her full-time employment was terminated effective June 30, 2017. In the spring of 2017, Romeo was the president of the local teachers' association, and had been made aware that staff cuts were anticipated in the school district. She was invited in her capacity as president to discuss the impending cuts with the superintendent; Romeo was completely blindsided when the conversation turned to reducing her job as well. She was presented with a letter dated March 8, 2017, indicating that she would be reduced to a 2/5 position. She would no longer be eligible for health benefits. By the time Romeo attended a Board meeting on April 25, 2017, the agenda reflected that the

recommendation of the superintendent was to only reduce the SAC position to 3/5, which would have permitted Romeo to maintain her health benefits. After a recess, the Board acted on the staff reductions. To her surprise, the Board cut the SAC position entirely; Romeo learned she would be unemployed simultaneously with the public.

Superintendent of schools Scott Ripley explained that the district was struggling with budget constraints and decreasing enrollments.⁸ In 2008, there were 1,469 students in the school district; by 2017 there were only 920. During the intervening years, staff levels had remained static. Ripley and the Board were thus forced to analyze budget figures, enrollments, tax revenues, and staffing needs. A letter from Ripley dated April 28, 2017, appears intended to assuage public concern about the impact the reductions would have on school programs and services. Ripley advised the High Point community that during the 2017–2018 school year, “[a] full-time crisis counselor/behaviorist who has many years of experience working as a counselor, and working with adolescents battling substance abuse,” would be employed by the school district. The district would continue to employ “[f]ive exceptional guidance counselors, one of whom is a certified SAC with experience in this field.” And the district would have other interventions available to assist students, to include an Intervention and Referral Services Team, a special disciplinary approach known as “restorative practices,” and an enhanced Child Study Team that would include two psychologists.

Edward Blevins has been employed by the Board since 1999, in a variety of capacities. For approximately the last three years, he has worked as a behaviorist. He holds certification in Pupil Personnel Services and Elementary Education, and as a Teacher of the Handicapped. Blevins confirmed that some of the duties that were previously performed by Romeo have now fallen on him. He attends monthly County SAC meetings and has referred to himself as a school substance counselor in emails. His business card uses the title “Crisis and Substance Use Counselor”; these clearly, previously, were Romeo’s roles. An email discussing abuse of vapes in schools directs concerned individuals to Blevins. And students and staff in crisis, or who have substance or mental-health concerns, come to him for assistance. Guidance performs

⁸ Ripley has been employed by the district for about twenty-one years, and in a variety of prior roles, to include teacher, assistant principal, and director of curriculum.

the prevention components of drug interventions in the school; this too was previously handled by Romeo. Lisa Frisbie is currently employed as a guidance counselor, but had been previously employed by the school district as a SAC.

Ripley likewise confirmed that although the district no longer employs a full-time SAC, the supportive services typically offered by a SAC remain available in the district. Students or staff can direct crisis or drug and alcohol concerns to case managers, the behaviorist, and five guidance counselors. It is thus uncontroverted, and I **FIND**, that the interventions offered by Romeo were still available during the 2017–2018 school year, having been distributed among existing staff, none of whom worked exclusively as a SAC.

The Alternative School Program

Romeo contends that she provided instruction to students under her Teacher of Psychology certification during the 2011–2012 and 2012–2013 school years at the High School Alternative School Program. Ripley shared that this program was created to serve special-education students at risk of dropping out; it was a self-contained special-education program and instruction was supplied by a special-education teacher. Eventually the program was expanded to include “push-in” services; these are services integrated into the classroom setting that would aid the students in transitioning post-graduation. While Ripley had limited involvement with the Alternative School Program during the 2011–2012 school year, during the next year he served as director of curriculum and was very well versed in the particulars of the program.

Ripley was quite firm that Romeo’s work was a “push-in” service rather than instruction that required that she utilize her Teacher of Psychology certificate. She went into the transitional classroom one period per week to provide life-skills instruction and offer transitional resources to her students. Ripley pointed out, persuasively, that offering a psychology class to students would have required development of a formal curriculum, and formal approval of that curriculum, none of which took place.

Romeo urged that she was indeed teaching psychology during the 2011–2012 and 2012–2013 school years. Romeo shared the history of a grievance filed in 2013, in which she sought additional compensation under a provision of the collective-negotiations agreement that offered such compensation to a teacher who taught a sixth class.⁹ She sought remuneration for one-fifth of a sixth period, insofar as she met with the students once per week. On May 24, 2013, director of special services Rosalie Haller advised the superintendent of schools that the work done by Romeo in the alternative program was “counseling,” and part of her responsibilities as a SAC. Haller reiterated that view in a June 3, 2013, memorandum. The grievance was denied by the then superintendent of schools, Dr. Terrance Brennan, on June 17, 2013. It was in turn appealed to the Personnel and Policy Committee of the Board, which granted the grievance via letter dated August 28, 2013. Unfortunately, however, that letter offered no insight into the rationale for granting the grievance. But Romeo contends that the grievance result lends clear support to her claims.

She additionally explained that she taught her students about the biology of emotions like sadness or anger and used this as a vehicle for instruction on self-regulation. She taught them about character traits, recalling that the effect of birth order on personality was of interest to the students. She disagreed that the work she performed was counseling. But she also conceded that the work was performed in a rather unstructured environment, and that although she was teaching special-education students she was unaware of any IEP goals related to the instruction she offered. And although Romeo indicated that she prepared lesson plans and was observed and evaluated, she produced copies of neither.

Romeo and Ripley thus offered diametrically opposed viewpoints of the nature of Romeo’s work during the two school years in question. Both were credible and sincere witnesses. But Ripley’s understanding of the parameters of the position simply made more sense. It was compelling that there was no curriculum attached to the position. Equally compelling was the fact that the “class” met only once per week and was part of a self-contained special-education program. Romeo was unaccompanied by any other

⁹ The normal workload for teachers is five instructional periods; if assigned a sixth class, they are entitled to extra compensation.

instructional staff during her time with the students, but does not hold certification as a special-education teacher. For all these reasons, I **FIND** that the work performed by Romeo in the alternative program was under her SAC certification and constituted group counseling rather than curriculum-based instruction in psychology.

Jacqueline McCarthy is a non-tenured teacher who holds certification as a Teacher of Social Studies. She utilizes that certificate to teach a course in behavioral science, and a course in honors behavioral science. Because students in the honors class can sit for the AP Psychology examination, McCarthy was sent for training so that she could structure her class presentation to allow her students to properly prepare. Romeo believes that this is a course that she could teach, and that the Board was required to offer these classes to her. The Board contends that McCarthy teaches under her social studies certification, and that these are not courses in psychology. It is unnecessary that I resolve this factual dispute, as Romeo is not entitled to assignment to the classes in question regardless, as will be more fully explained below.

ANALYSIS AND CONCLUSIONS OF LAW

Romeo's Entitlement to Reinstatement as a SAC

The prerogative of the Board to reduce force is well established. N.J.S.A. 18A:28-9 provides that

[n]othing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article.

Subsequent to a RIF, a teaching staff member's right to recall is governed by N.J.S.A. 18A:28-11 and N.J.A.C. 6A:32-5.1.

Romeo does not contend that the decision to RIF her was grounded in bad faith, or that the Board continues to employ a SAC who holds less seniority in the school district.¹⁰ Rather, she contends that the statute requires that all SAC-related services in a school district be provided only by a certificated SAC whose position is “separate and distinct from any other employment positions in the District.” She thus contends that the action of the Board in redistributing her duties violates the requirements of N.J.S.A. 18A:40A-18 and is ultra vires.

Romeo has misinterpreted the import and meaning of this statute. N.J.S.A. 18A:40-18 was enacted in 1987 as a vehicle through which to pilot the introduction of SAC services in local school districts. The Senate Statement provides that

[u]nder the bill’s provisions, a local school board which wants to participate in the pilot program would submit a proposal to the commissioner which outlines the district’s plan to provide alcohol and drug abuse prevention, intervention and treatment services to students through the employment of a substance awareness coordinator. The Commissioner is to select 120 school districts to participate in the program and the State will pay the salary of the coordinator for a three-year period.

[Senate Bill No. 2684, October 23, 1986.]

Consistent with the Senate Statement, the statutory language offers districts the option to participate in this program; if they do so, the statute stipulates that a funded SAC position must be separate and distinct from other district positions. The statute reads:

The Commissioner of Education, in consultation with the Commissioner of Health, shall develop and administer a program which provides for the employment of student assistance coordinators in certain school districts.

- a. Within 90 days of the effective date of this act, the Commissioner of Education shall forward to each local

¹⁰ The parties appear to agree that Romeo was tenured as a SAC, notwithstanding the fact that she did not hold standard certification. In any event, this issue was not raised before me. The focus of Romeo’s claim is her interpretation of the Board’s obligations under N.J.S.A. 18A:40-18.

school board a request for a proposal for the employment of a student assistance coordinator. A board which wants to participate in the program shall submit a proposal to the commissioner which outlines the district's plan to provide substance abuse prevention, intervention, and treatment referral services to students through the employment of a student assistance coordinator. Nothing shall preclude a district which employs a student assistance coordinator at the time of the effective date of this act from participating in this program. The commissioner shall select school districts to participate in the program through a competitive grant process. The participating districts shall include urban, suburban, and rural districts from the north, central, and southern geographic regions of the State with at least one school district per county. In addition to all other State aid to which the local district is entitled under the provisions of other pertinent statutes, each board of education participating in the program shall receive from the State, for a three-year period, the amount necessary to pay the salary of its student assistance coordinator.

b. The position of student assistance coordinator shall be separate and distinct from any other employment position in the district, including, but not limited to district guidance counselors, school social workers, and school psychologists. The State Board of Education shall approve the education and experience criteria necessary for employment as a student assistance coordinator. The criteria shall include a requirement for certification by the State Board of Examiners. In addition to the criteria established by the State board, the Department of Education and the Department of Health shall jointly conduct orientation and training programs for student assistance coordinators and shall also provide for continuing education programs for coordinators.

The statute nowhere precludes a district from providing student-assistance services by using other properly certificated staff. Consistent with the plain statutory language, the Commissioner has held that

[i]rrespective of whether a local board of education chooses to hire a Substance Awareness Coordinator, *all* local boards are statutorily obligated to offer the prevention, intervention and treatment-referral programs and services required by N.J.S.A. 18A:40A-1 et seq. Thus, while a Board may be prudent to employ a Substance Awareness Coordinator to

assist it in meeting its broad statutory responsibilities, there is presently no requirement for it to do so. Consequently, the programs and services compelled by the imposition of these mandates need not, as petitioner argues, be provided exclusively by a Substance Awareness Coordinator, or, necessarily, a district employee.

[Maren Bristol v. N. Valley Bd. of Educ., EDU 09053-03, Initial Decision, (July 1, 2004), modified, Comm'r (August 4, 2004), <http://njlaw.rutgers.edu/collections/oal/>.]

Accordingly, I **CONCLUDE** that this record reveals nothing improper or illegal about the action of the Board in abolishing Romeo's SAC position. The Board eliminated Romeo's position for legitimate reasons of economy and distributed her duties among existing staff. Its action in doing so was compliant with N.J.S.A. 18A:28-9.¹¹

Romeo's Entitlement to Reinstatement as a Teacher of Psychology

Romeo seeks reinstatement to a position as a teacher of psychology. But I **CONCLUDE** that Romeo did not hold tenure as a teacher of psychology; for this reason, she has no viable claim to reinstatement.¹² N.J.S.A. 18A:28-1 to -18 defines the conditions under which teaching staff members are entitled to the security of tenure. Tenure is a "statutory right imposed upon a teacher's contractual employment status." Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962), cert. den., 371 U.S. 956 (1963). These statutory provisions supersede contractual terms. Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 72 (1982). They are "designed to aid in the establishment of a competent and efficient school system by affording to principals and teachers a measure of security in the ranks they hold after years of service." Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949).

¹¹ The prerogative of the Board to reassign a "riffed" employee's duties to existing staff is well established. See, e.g., Polaha v. Buena Reg. Bd. of Educ., 85 S.L.D. 1982; Cinnaminson Teachers' Ass'n v Cinnaminson Bd. of Educ., 83 S.L.D. 758, aff'd 84 S.L.D. 1915; Lippincott v. Watchung Hills Reg. Bd. of Educ., 80 S.L.D. 857.

¹² And it is for this reason that the factual question of whether Jacqueline McCarthy teaches psychology, as opposed to social studies, is of no moment. Nor does it matter whether, as the Board contends, it presently offers no classes in the area of psychology. Without tenure, Romeo has no claim regardless.

The “position” in which a teaching staff member achieves tenure is either one of the specifically designated positions in N.J.S.A. 18A:28-5 or other employment for which an appropriate certificate is required. Ellicott v. Frankford Twp. Bd. of Educ., 251 N.J. Super. 342, 347 (App. Div. 1991); Howley v. Ewing Bd. of Educ., 1982 S.L.D. 1328, 1339, aff’d, 1983 S.L.D. 1554; Capodilupo v. W. Orange Bd. of Educ., 218 N.J. Super. 510, 514 (App. Div.), certif. den., 109 N.J. 514 (1987). The system of educational certificates established by the New Jersey Department of Education provides for three distinct types of certificates: the Instructional Certificate, the Educational Services Certificate, and the Administrative Certificate. N.J.A.C. 6A:9B-5.2 et seq. Endorsements on these certificates specify the categories within which an individual is authorized to provide service in a public school. Romeo’s service as a SAC was under an Educational Services Certificate. Romeo’s Teacher of Psychology credential is an endorsement to an Instructional Certificate.

Our Supreme Court has held that tenure earned under one certificate does not transfer to another; the staff member must serve for the requisite time under the certificate in question. Dennery v. Passaic Cty. Reg’l High Sch. Dist., 131 N.J. 626 (1993). The Court confirmed that tenure protection is earned only if a staff member “works in a position for which a teaching certificate is required; . . . holds the appropriate certificate; and . . . has served the requisite period of time.” Id. at 638.

Romeo claims to have taught psychology during the 2011–2012 and 2012–2013 school years only. The record reveals that she did not deliver instruction to students using her instructional certificate during the years in question. I thus **CONCLUDE** that she could not have earned tenure under her Instructional Certificate, and that her claim to reinstatement lacks merit. But even assuming, for argument’s sake, that Romeo did teach psychology at the Alternative School Program, she simply did not serve long enough in that role to earn tenure. The Board correctly points out that her right to tenure would be governed by N.J.S.A. 18A:28-6, which provides that, where a tenured staff member is transferred to another position, tenure is earned after “employment for two academic years in the new position together with employment in the new position at

the beginning of the next succeeding academic year.”¹³ She was not reemployed in the controverted alternative school position for the 2013–2014 year. I thus **CONCLUDE** that Romeo did not earn tenure in that position, even if it was a Teacher of Psychology position. See King v. Keansburg Bd. of Educ., 84 S.L.D. 922, 927. I moreover **CONCLUDE** that even if, for argument’s sake, the Board is offering its students classes in psychology, Romeo could have no possible claim to assignment to those classes.

ORDER

Based on the foregoing, the petition of appeal is **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

¹³ If Romeo was not tenured as a SAC, the time frame for tenure acquisition would have been even longer. See N.J.S.A. 18A:28-5.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 17, 2018



DATE

ELLEN S. BASS, ALJ

Date Received at Agency:

December 17, 2018

Date Mailed to Parties:

sej

APPENDIX

WITNESSES

For Petitioner:

Kate Romeo
Jacqueline McCarthy
Edward Blevins

For Respondent:

Scott Ripley

EXHIBITS

For Petitioner:

- P-1 Certificates
- P-2 Letter dated March 8, 2017
- P-3 Board agenda
- P-4 Letter dated April 28, 2017
- P-5 Emails dated January 22, 2018
- P-6 Board policies
- P-7 Grievance packet from 2013
- P-8 High Point Employee List
- P-9 Professional development activities for Board agenda
- P-10 Email to staff
- P-11 Business card
- P-12 Clarification of P-8

For Respondent:

- R-1 Request for Answers to Interrogatories
- R-2 Answers to Interrogatories
- R-3 Coordinator records

- R-4 Memorandum dated April 4, 2017
- R-5 Reemployment letter
- R-6 Revision to reemployment letter
- R-7 Collective Negotiations Agreement