

I. TENURE AND SENIORITY

A. To obtain tenure, a teaching staff member must satisfy the requirements of N.J.S.A. 18A:28-5. For academic year employees, this means employment for three (3) consecutive academic years together with employment on the first day of the next consecutive academic year, or employment for the equivalent of more than three (3) academic years within four (4) consecutive academic years. For calendar year employees, employment must be for three (3) consecutive calendar years. Also, an employee eligible for tenure, or under tenure, may obtain tenure in a second position under the terms of N.J.S.A. 18A:28-6 (copy attached).

B. Tenure in part-time positions. Teaching staff members employed on a part-time basis may acquire tenure. Lichtman v. Bd. of Ed. of Ridgewood, 93 N.J. 362 (1983). Seniority credit is accrued on a prorata basis. Teachers who are tenured on a part-time basis, if their positions are reduced or abolished, can bump less senior full-time teachers. Lichtman. However, such teachers cannot insist upon claiming full-time positions, unless their positions are reduced or abolished. Indeed, if a teacher is part-time tenured and is not affected by a rif, i.e., remains employed in a comparable part-time position, the teacher has no claim to full-time employment. See Gainer v. Bd. of Ed. of Wayne, 1991 SLD (decided August 26, 1991). However, once a rif determination is made and the teacher is actually offered a full-time position as a result of that determination, tenure and seniority rights may come into play.

C. Title One, Remedial, and Comp Ed Teachers - These teachers may acquire tenure on the same basis as all other teachers. See Spiewak v. Rutherford Bd. of Ed., 90 N.J. 63 (1982).

D. Effect of leaves of absences

To acquire tenure, a teacher must satisfy the time requirements of N.J.S.A. 18A:28-5, which measures tenure eligibility in terms of consecutive years. Thus a teacher who takes a maternity leave or other leave, and renders no service for a year, cannot acquire tenure credit for that year, and the chain of consecutive years necessary to be satisfied for tenure acquisition is broken Stachelski v. Oaklynn Bd. of Ed. 1981 SLD 1493 (App.Div.). The mathematics of the situation results in such teacher starting as a new employee the following year. However, the rule for leaves of less than one (1) year may differ, and the law in this area may be in a state of flux. In Kletzkin v. Bd. of Ed. of Spottswood State Board of Education, (February 6, 1992), the State Board held that once a teacher has commenced employment during a school year, even if she takes a leave of absence, the service is

credible for tenure purposes. However, Kletzkin involved a leave of absence for workers' compensation related disability. In Kletzkin, the State Board distinguished Stachelski, reasoning that since the teacher there had not begun actual service, employment never commenced. The Appellate Division of Superior Court affirmed Kletzkin, but while not questioning the State Board's rationale, it focused upon the fact that the leave was due to a workers' compensation injury, and relied in part upon the statutory policy requiring payment of full salary under N.J.S.A. 18A:30-2.1 for one (1) calendar year from the date of the accident in such leaves. The New Jersey Supreme Court granted certification in Kletzkin, and has heard oral argument in the case. Therefore, the final word on this subject should be expected in the near future.

E. Effect of substitute service on tenure

Under N.J.S.A. 18A:16-1.1, as interpreted in Sayreville Ed. Assoc. v. Bd. of Ed. of Sayreville, 193 N.J. Super. 424 (App. Div. 1984), time replacing a teacher on leave of absence cannot account for tenure purposes. This rule however, may be modified by another appellate division decision, Paniterri v. Bd. of Ed. of Emerson (App.Div. 1991), which held that when a teacher was treated in all respects as a regular teacher, received a regular contract, and the Board minutes reflected that the teacher was hired as a regular teacher, the teacher could obtain tenure credit. I have serious doubts though whether Paniterri, which is not officially reported, constitutes an accurate reading of the law, and it seems to conflict with the decision in Sayreville.

As to recall rights, when a position is open or vacant due to a leave of absence, there is no vacancy which triggers tenure or seniority recall rights. In such circumstances, a Board is not required to recall or appoint a previously rified tenured teacher. Lammers v. Bd. of Ed. of Point Pleasant _____ NJ _____ (1993). In Lammers, in reaching its decision, the Court approved the Appellate Division's decision in Sayreville. Lammers may also suggest that Paniterri is not good law.

F. Effect of Resignations

A resignation terminates all tenure and seniority rights. Furthermore, upon return to employment, an employee who has resigned must "reacquire" tenure; she cannot count the period of prior service toward tenure or seniority; Pfeiffer v. Bd. of Ed. of Boro of Bellmawr, 1983 SLD (decided July 25, 1983). Therefore, if faced with the need for a maternity leave or other leave; a teacher should not resign; because resignation will terminate all tenure and seniority rights. In addition, if a teacher fails to return after a maternity leave, a

teacher may be deemed to have constructively abandoned her tenure and seniority rights. See Reimann v. Bd. of Ed. of Edison Twp., 1980 SLD 636. In Riemann, the teacher commenced a leave of absence for maternity leave, then allegedly resigned, but returned to active employment about 10 years later. The Commissioner held that her resignation terminated her tenure and seniority rights, and in dictum stated that a significant breach of teaching duties, even within the context of an ongoing employment relationship and "certainly where it occurs as the result of severing the employment relationship", will preclude the consideration of service preceding the interruption for seniority purposes. However, in Hall v. Bd. of Ed. of Jefferson 125 NJ 299 (1991), the Court held that when a district had a longstanding practice of permitting staff to rescind resignations, the district could not unilaterally deny a tenured secretary's request to rescind her resignation. While Hall had a favorable outcome, it should not be assumed to have broad applicability; rather it may be limited to its particular facts.

G. Scope of Tenure

A tenured teacher, in a rif, is entitled to retention in employment over any non-tenured teachers, based upon tenure status alone. In addition, based upon tenure status, a tenured teacher may assert recall rights if a position becomes vacant or is reestablished in the future, over any non-tenured teacher. Tenure for teachers is acquired under the instructional certificate and extends to all endorsements on the instructional certificate. See Bednar v. Westwood Bd. of Ed., 221 NJ Super. 239 (App.Div. 1988), Cert. Denied 110 N.J. 510 (App.Div. 1988), Capodilupo v. West Orange Bd. of Ed. 218 NJ Super 512 (App.Div. 1987) Cert. Denied 109 NJ 514 (1987). Grosso v. Bd. of Ed. of New Providence, State Bd. of Ed., decided March 7, 1989. See also Dennery v. Passaic County Reg. Sch. Dist. 131 NJ 626 (1993). In addition, the date that the teacher acquires an endorsement is usually irrelevant, so that this rule applies to endorsements acquired after a teacher begins employment in a school district. Grossman v. Bd. of Ed. of Ramsey, (App.Div. 1990). Thus, a tenured teacher who is rified can assert bumping and recall rights over any non-tenured teachers, which right extends to all endorsements on the tenured teacher's instructional certificate. This tenure bumping and recall right does not apply against tenured teachers, and any claims among tenured teachers must be based on seniority. Finally, the Commissioner held in Francey v. Salem Bd. of Ed., Salem County 1992 SLD (decided July 22, 1992) and Johnstone and Heberley v. Bd. of Ed. of Cinnaminson 1992 SLD (decided August 12, 1992) that a teacher's tenure rights are fixed as of the endorsements held at the time of the rif determination, so that a teacher who acquires an endorsement after a rif

determination is made (for example, the determination is made in April, an endorsement acquired in June) has no tenure bumping or recall rights, notwithstanding Grossman. Francey and Johnstone are currently on appeal to the State Board of Education, so perhaps this limitation will be removed.

H. Tenure Under Educational Services Certificate

Teaching staff members serving under educational services certificates (such as guidance counselors, child study team members, etc.) acquire tenure under their educational services certificates, which extends to all endorsements on their educational services certificates. Thus a "teacher" who served under an educational services certificate with endorsements as speech correctionist and LDTC acquired tenure under her educational services certificate, extending to both endorsements. See Ellicott v. Bd. of Ed. Frankford, 251 N.J. Super 342 (App.Div. 1991). But see Dennery v. Passaic County Reg. Sch. Dist. supra. In Dennery, the board required counselors to perform some supervisory duties and required Supervisory Certification, and because both administrative and educational services certificates were required for a new position, and the petitioner had never served under the Supervisory Certificate and thus had not acquired tenured under it, she could not assert a tenure claim to the new position.

I. Tenure as Administrator

If a position is specified under the tenure act, for example principal, assistant principal, etc., tenure is only acquired in that position. See DeCarlo v. Bd. of Ed. of South Plainfield 1988 SLD (decided August 4, 1988). However, administrative tenure is not limited by seniority categories, such as by grade or subject, so that principals acquire tenure and can assert tenure rights on a systemwide basis (in all grades), Schienholtz et al. v. Bd. of Ed. of Ewing Twp., (App.Div. 1991). In Schienholtz, tenured principals who had served only in the elementary category were able to claim a high school principalship over a non-tenured principal. See also Mirandi v. Bd. of Ed. of W. Orange, State Bd. of Ed., decided April 5, 1989. The same rule applies to supervisors, so that although supervisory seniority may be limited by grades or subjects, supervisors acquire tenure under their supervisory endorsements, and can bump non-tenured supervisors in any supervisory positions in the district. See Shaeffer v. Bd. of Ed. of South Orange -Maplewood 1988 SLD (decided March 14, 1988), and Herbert v. Bd. of Ed. of Middletown (App.Div. 1991). This rule may be modified though if the County Superintendent has determined that a position's duties required additional certification which the claimant does not hold. See Timko v. Bridgewater-Raritan School District State

Bd. Decided July 1, 1992. Compare Dennery supra. Otherwise, a supervisor is a supervisor for tenure purposes.

J. Tenure for Custodial and Janitorial Staff

Tenure for custodial and janitorial employees is governed by N.J.S.A. 18A:17-3, and also by negotiations. Under N.J.S.A. 18A:17-3, if a custodian is not appointed for a fixed term, tenure is acquired immediately. Otherwise, tenure is not acquired. However, in Wright v. Bd. of Ed. of City of East Orange 99 NJ 112 (1984), the Court held that consistent with N.J.S.A. 18A:17-3, a negotiated provision providing for acquisition of tenure after a specific time period, in that case three (3) years, was lawful. In addition, under the statute, since tenure can be acquired after appointment for a non-fixed term, where a Board does not appoint for a fixed term, or more to the point, has a policy for tenure after a certain period of time, the mere issuance of annual contracts which are tantamount to statements of salary does not result in the loss of such tenure. See Sterincoski v. Bd. of Ed. of East Brunswick, Middlesex County State Bd. of Ed. Decided November 3, 1993. Further, under N.J.S.A. 18A:17-4, dismissal of custodians must be accomplished by seniority, and recall rights are provided for, so that if positions become available, custodians must be recalled from a preferred eligibility list. Also, the scope of custodial tenure is broad. It extends to the entire janitorial and custodial staff, not just the positions specifically listed in the statute. Thus in Barnes v. Bd. of Ed. of Jersey City 85 Super 42 (App.Div. 1964), the Court held that the positions of assistant janitorial supervisor, utility person, and groundskeeper were covered by the tenure statute. Further, the Commissioner has held that custodians can acquire tenure in these specific positions, for example, as head custodian. See Brunner v. Bd. of Ed. of City of Camden 1960 SLD 155, where the Commissioner suggested that a custodian who had served in the position of head custodian was tenured as such, not just as a custodian.

K. Tenure for Secretaries and Clerks

Under N.J.S.A. 18A:17-2, any person holding a secretarial or clerical position acquires tenure after employment for three consecutive calendar years in a district or such shorter period as may be fixed by the Board or officer employing him, or employment for three consecutive academic years, together with employment at the beginning of the next succeeding academic year. The Commissioner has held that in ascertaining secretarial and clerical tenure rights, secretarial and clerical positions are interchangeable, so that secretaries may assert tenure rights over clerks, and vice versa. See Ramage v. Franklin Bd. of Ed. 1983 SLD (decided April 13,

1983), Aff'd by State Bd. January 4, 1984, Aff'd Superior Court, Appellant Division January 31, 1985. However, there is some doubt as to whether this interpretation of the statute is correct, since the statute lists clerical and secretarial positions separately. The issue was raised by the Appellate Division in Ramage, but not decided, because the Appellant did not pursue the issue.

L. The Range of Positions Covered by the Secretarial and Clerical Tenure Act

The range of such positions, although limited to secretarial and clerical positions, is broad. See Barnes, in which the Court rejected the Board's argument that a clerk is simply one who under direction performs routine, repetitive, noncomplex clerical work of a varied nature as a beginner at the entrance level of employment. See also Kerris v. Glen Ridge Bd. of Ed., 1983 SLD (decided March 31, 1983) (holding tenured secretary could make tenure claim to position as switchboard operator if qualified for the position).

M. Other Issues regarding secretarial tenure and seniority.

As to seniority, secretaries and clerks do not acquire seniority under statute, and such seniority must be negotiated. Consequently, in the event of a rif, absent a contractual provision, tenured secretaries and clerks can only bump non tenured staff, and a Board is free to choose amount tenured staff. As to recall rights, no case has addressed the issue of whether Mirandi applies to clerks and secretaries. Although tenure status entitles teaching staff members to assert recall rights, this issue, as of yet, has not been determined for tenured secretaries and clerks. Further, it is unclear precisely what the extent of secretarial and clerical tenure bumping rights are. To date, it has been held that bumping rights apply only if the skills and qualifications of the secretarial position are no more substantial or complex than the position in which the secretary is tenured. See Kerris v. Glen Ridge Bd. of Ed. 1983 SLD (decided March 31, 1983), and Sheridan v. Bd. of Ed. of Ridgefield Park 1976 SLD 985. However, in view of cases involving teachers (such as Bednar, and Capodilupo), a strong argument can be made that the statute provides for tenure in the position of secretary or clerk, and therefore a tenured secretary or clerk who is rified can bump any secretary or clerk, regardless of the required skills or qualifications.

N. Seniority for Teachers

Seniority rights are only triggered when there is a reduction in force. In addition, the teacher must be affected by the reduction in force, or he/she cannot assert seniority rights.

The following cases are illustrative of this basic principle. Ciarcia v. Bd. of Ed. City of Trenton 1991 SLD (decided September 3, 1991). In Ciarcia, there was a district reorganization. An Art teacher with seniority in the secondary category was transferred to a position in the elementary category. The Commissioner rejected his claim that he was entitled to remain in the secondary category on the basis that the number of teachers in the district had not changed. Presumably, this decision should be read to mean that the number of positions within the applicable category had not been reduced. Nevertheless, this case illustrates that in absence of a reduction in force, seniority rights do not apply. In an analogous context, in Gainer v. Bd. of Ed. of Twp. of Wayne, Passaic County 1991 SLD (decided August 26, 1991), a part-time supplemental teacher was rified. She claimed that Board violated her seniority or tenure rights when it hired a nontenured teacher for a full-time position. The Commissioner held that her rights were not violated, because she was restored to an equivalent part-time position before the next school year began. See also previous discussion at page 1, and note that Gainer was never actually offered the full-time position.

O. Effect of Leaves of Absence

The effect of leaves of absence on seniority is controlled by N.J.A.C. 6:3-1.10(B). Under that regulation, leaves of absence at full or partial pay are fully creditable for seniority purposes. Leaves granted for study or research, which includes sabbatical leaves and perhaps more are creditable. Unpaid leaves are not creditable for seniority, except that a teaching staff member can acquire seniority credit, up to a maximum of thirty (30) days, for unpaid leaves of absence in one year. See Cohen v. Bd. of Ed. of Emerson 221 NJ Super 324 (1988). Therefore, a teacher who takes an unpaid leave of absence for an entire school year acquires thirty (30) days seniority credit for that year.

P. Effect of Military Service

Military service is governed by N.J.A.C. 6:3-1.10(D) which provides as follows:

"full recognition shall be given to time of service in or with the military or naval forces of the United States or of this state, pursuant to the provisions of N.J.S.A. 18A:28-12".

N.J.S.A. 18A:28-12 was amended, effective June 29, 1985, to overrule prior caselaw which is no longer relevant. Under the amended statute and the regulation, military service is creditable for seniority, even if rendered before employment

in a particular district. However, the statute limits seniority credit for military service to four years maximum.¹

Q. Service in two categories simultaneously or teaching two subjects simultaneously.

These situations are controlled by N.J.A.C. 6:3-1.10(C). Under that regulation, teachers who serve in two categories simultaneously acquire a full year's seniority in each category. Similarly, teachers who are assigned to teach under two endorsements simultaneously acquire a full year's seniority under each endorsement. See In the Matter of Seniority Rights of Certain Teaching Staff Member Employed by the Old Bridge and Edison Twp. Boards of Ed., Middlesex County, 1984 SLD (decided August 6, 1984), Aff'd State Bd. of Ed. January 2, 1985, Aff'd Superior Court App.Div. June, 1986. In Old Bridge this precise issue was addressed only by the Commissioner, but the issue was not appealed to the State Board of Education or Appellate Division. However, the Commissioner reached the same result in Bartz v. Greenbrook Twp. Bd. of Ed., 1985 SLD (decided May 25, 1985), Aff'd by State of Board of Education November 6, 1985, Aff'd by Superior Court Appellate Division January 28, 1987. In the Bartz appeal, this precise issue was addressed on appeal by the State Board and the Appellate Division.

R. Non-Simultaneous service in two categories or subjects.

The first situation is governed by N.J.A.C. 6:3-1.10(H), which provides that whenever a person shall move from or revert to a category, all periods of employment shall be credited towards his or her seniority in any or all categories in which he or she previously held employment. The same rule applies to service under two subject endorsements in the secondary category. See N.J.A.C. 6:30(L)19(ii).

S. Supervisory Seniority

This should not be confused with supervisory tenure. The latter extends under the entire supervisory endorsement. As discussed above, the scope of such tenure is broader than supervisory seniority. As to supervisory seniority, N.J.A.C. 6:3-1:10(L)(10) now governs acquisition of supervisory seniority. That regulation provides that:

"district boards of education shall adopt job

¹This outline does not address military service credit for periods of summer military or other like service in situations where a teacher is already employed, and other teachers in the district would not be acquiring seniority credit.

descriptions for each supervisory position which shall set forth the qualifications and specific endorsements required for such position".

Under this regulation, seniority is no longer acquired in specific supervisory categories. Whether seniority applies to a "new" supervisory position depends upon whether the position is substantially similar to the former one. See Waldov v. Bd. of Ed. of Twp. of East Brunswick, Middlesex County, 1985 SLD (decided May 10, 1985) affirmed by State Bd. of Ed. November 6, 1985, see also Flanagan v. Camden County Regional School District, State Bd. of Ed. decided September 5, 1984. Under these and other cases, seniority claims will be rejected when a new position requires the supervision of subjects not previously supervised by the claimant, or requires supervision in a category (elementary or secondary) not previously supervised by the claimant. See also Natchman v. Middletown Bd. of Ed., State Bd. of Ed. December 5, 1984).

T. Seniority Categories

The secondary category consists of grades 9-12, and at least grades 7 and 8 in schools having departmental instruction. This rule applies regardless of a district's classification of a school, i.e., even it considers and classifies a school as elementary. See Unterberger v. Bd. of Ed. of Metuchen 1992 SLD (decided February 28, 1992). Further, although the regulations appear to suggest that grade 6 departmentalized is in the elementary category, the Commissioner in Unterberger held that 6th grade departmentalized, regardless of a district's classification of it, is in the secondary category for seniority purposes. The Commissioner's decision could even be read to suggest that lower grades which are departmentalized are secondary, but I doubt that his determination goes that far.

U. Specific Applications of Secondary Seniority.

This is governed by N.J.A.C. 6:3-1.10(L)19. Under that regulation, teachers assigned to the secondary category acquire seniority only under the specific endorsements they have served under. As indicated above, if reassigned, a teacher continues to accrue seniority under former endorsements he has served under. The same rule applies to teachers assigned at the secondary level to positions requiring educational services certificates; they acquire seniority only in the secondary category, and only for the period of actual service under their educational services certificates, subject to the tack-on rule.

V. Seniority of Teachers Assigned Under Elementary Certification to Teach in Grades 7 and 8 Departmentalized

1. Teachers assigned under elementary certification to teach in grades 7 and 8 departmentalized.

The seniority acquired by such teachers was determined in Old Bridge. In Old Bridge, the Commissioner held that elementary certified teachers assigned to teach in grades 7 and 8 departmentalized acquire seniority in the elementary category only for all service rendered prior to September 1, 1983. Service after that date is to be classified as in the secondary category. Therefore, such teachers acquire elementary seniority only for all service prior to September 1, 1983, and acquire secondary seniority, which the Commissioner has limited to the specific subjects they have been assigned to teach, for all service rendered September 1, 1983 and after. In addition, such secondary service tacks on to their elementary seniority, so that such teachers have elementary seniority for all their service in their districts, and limited secondary seniority, commencing with service on September 1, 1983, and after, limited to specific subjects they have taught. In this connection, the State Board of Education has amended the regulations to incorporate the Old Bridge holding. See Rebovich v. Edison Twp. Bd. of Ed., 1986 SLD (decided May 8, 1986) (applying amendment to regulations in the same manner as Old Bridge decision). Accord Kornet v. Sayreville Bd. of Ed., 1985 SLD (decided June 14, 1985). Finally, because of the scope of the elementary endorsement, teachers who teach common branch subjects may acquire grade 7-12 seniority (in the specific subjects taught), whereas teachers of other subjects may be limited to grades 7-8 seniority.

2. Elementary teachers assigned to teach grades 9-12 only.

The extent of seniority acquired by such teachers was determined in Old Bridge Ed. Assn. v. Old Bridge Bd. of Ed. (decided August 8, 1985) Aff'd by State Bd. January 7, 1987. In Old Bridge, the Commissioner held that elementary teachers who have been assigned to teach in only grades 9-12 acquire secondary seniority only, since their service has been in what was always classified as the secondary category. Their seniority, similar to that of elementary teachers assigned to teach grades 7 and 8 departmentalized, is limited to specific subjects taught. Therefore, an elementary teacher who taught only ninth grade Comp-Ed. Math would acquire seniority only in secondary common branch math (and perhaps 7th and 8th grade math, since in the secondary category and covered by the elementary endorsement). However, recall that he would have tenure rights over non tenured elementary

teachers.

W. Extent of Seniority under Endorsements

As indicated above, teachers assigned to the secondary category acquire seniority under the specific endorsements they have taught under, and such seniority begins to accrue only when a teacher has taught under an endorsement. This principle is demonstrated by the Commissioner's decision in In the Matter of Seniority Rights of Certain Teaching Staff Member Employed by Edison Township Board of Education, Middlesex County, 1986 SLD (decided June 2, 1986) Aff'd by State Board of Education January 7, 1987. In that case, certain teachers were certified in Health, Physical Education, and Driver Education. They had only taught Driver Education, but Driver Education was considered part of the Health and Physical Education curriculum. Because the endorsement which authorized them to teach Driver Education was Driver Education not Health or Physical Education, the Commissioner held that those teachers acquired seniority only in Driver Education. However, seniority is accrued in all subjects covered by the endorsement a teacher has taught under in the secondary category. Cammilli v. Bd. of Ed. of Northern Highlands Reg. Sch. District., 1985 SLD (decided January 3, 1985), Aff'd State Bd. of Ed. May 1, 1985; Bartz v. Bd. of Ed. of Green Brook, supra.

X. Adult School Seniority

There is some doubt as to whether teachers assigned to adult schools can acquire tenure, and therefore, seniority. See Capella v. Bd. of Ed. of Camden County Vo-Tech School 145 NJ Super 209 (App.Div. 1976). However, in recent years the Commissioner has consistently held that tenure is acquired for service in adult evening schools, at least if credit is given towards graduation and the school provides a high school type of program. The seniority regulations do not explicitly address what category seniority is acquired in for such service. But the Commissioner has reasoned, probably correctly so, that since the curriculum covered is essentially secondary in nature, seniority is acquired in the secondary category. See Williams v. Bd. of Ed. of City of Plainfield Union County, 1987 SLD (decided August 31, 1987) Aff'd by State Bd. of Ed. November 4, 1987, Linfante v. Essex County Vo-Tech District, 1986 SLD (decided May 5, 1986) (holding that transfer of teacher to adult evening school program did not violate tenure or seniority rights, because position was tenureable and in the same seniority category). But see Polo Bergen VoTech Sch. Dist. State Bd. November 3, 1993 discussed infra.

Y. Elementary Seniority and Affect of Elementary

Certification

1. Eligibility to teach in grades 7 and 8 departmentalized under elementary endorsement.

In Kornet, supra, the ALJ held that elementary certified teachers are no longer eligible to teach specific subjects in grades 7 and 8 departmentalized. The ALJ relied upon Old Bridge. The Commissioner reversed the ALJ's decision, holding that Old Bridge did not bar elementary certified teachers from being assigned to teach in grades 7 and 8 departmentalized.

2. Scope of Seniority acquired under elementary endorsement when teacher has been assigned to teach only in elementary category.

In a case decided under the prior seniority regulations Berl v. Bd. of Ed. of the Borough of Oceanport, Monmouth County, 1984 SLD (decided January 19, 1984) Aff'd State Board of Ed. September 15, 1984, the Commissioner held that an elementary certified teacher assigned to teach reading acquired seniority in the elementary category, not just as a reading teacher. The Commissioner reasoned that the teacher was authorized to teach all subjects in the elementary category, although limited to half-time for certain subjects. Therefore, the teacher's seniority was acquired in the elementary category (not just in reading). Although Berl was decided under the prior seniority regulations, the "law" has not changed. Thus, a similar result was reached by the State Board of Education in South River Education Assn. v. Bd. of South River, State Bd. of Ed., decided November 4, 1987, Aff'd Superior Court, Appellate Division April 7, 1989, holding that since there is no specific endorsement required to teach computer related courses in the elementary category, all tenured elementary teachers could assert tenure and seniority rights to teach a computer related course, and that the Board could not require additional qualifications to claim seniority rights in it. Thus teachers in the elementary category do not acquire seniority in specific grades or subjects, but instead acquire seniority in the elementary category, which includes all positions in grades K-5, and grades 6, 7 and 8 if self contained, (although an argument could be made that a departmentalized 5th grade is secondary; see prior discussion). The same rule applies to Title One, Compensatory Education, and Supplemental Teachers, so that their seniority cannot be limited to Title One, Compensatory Education, or Supplemental, at least when

they have taught in the elementary category. See for example, South River Ed. Assoc. v. Bd. of Ed. of South River, 1984 SLD (decided September 6, 1984) (holding that CompEd teacher had seniority claim to junior high math position under prior regulations).

2. District-wide, Special Subject, and Educational Services Certificate Seniority

1. Extent of seniority when person has never been assigned to teach on both the elementary and secondary level.

Seniority in special subjects and under educational services certificates is acquired in the elementary or secondary category, unless a teacher has served in both categories or on a district-wide basis (which probably means the same thing as serving in both categories simultaneously). Teachers of special subjects or serving under educational service certificates who have only served in the elementary category acquire only elementary seniority. The same is true as to secondary service, i.e., only secondary seniority is obtained. Hill v. Bd. of Ed. of West Orange, Essex County, 1985 SLD (decided January 21, 1985), Aff'd State Bd. of Ed. May 1, 1985, petition for certification denied by New Jersey Supreme Court, June 1986.

2. Persons serving under educational services certificate, or special subject endorsements who have taught both in elementary and secondary categories.

When a person has been employed on a district-wide basis, or in both the elementary and secondary categories, seniority is acquired on a district-wide basis, or in both categories. N.J.A.C. 6:3-1.10(L)15, & 16, see also Cohen v. Bd. of Ed. Elmwood Park, supra. However, when a person has taught under a special subject endorsement or educational service certificate first in the elementary and then in the secondary category, or vice-versa, he begins to acquire seniority in the second category only when first assigned to the second category; he cannot tack on his first assignment to such seniority; Old Bridge, supra. Krueckenberg v. Highland Park of Bd. of Ed., 1985 SLD (decided August 8, 1985). Thus a physical education teacher who serves five years in the elementary category, followed by five years in the secondary category, would have ten years seniority as an elementary physical education teacher, because of the tack on provisions of N.J.A.C. 6:3-1.10(h), but would only have five years seniority as a secondary physical education teacher. Finally, although the State Board and

Appellate Division recognized a district-wide category in Cohen, in a later case (Hart v. Bd. of Ed. Village of Ridgewood, State Bd. of Ed., Decided June 7, 1989), the State Board stated that although such category exists, a teacher who had been employed on a district-wide basis there did not demonstrate that she had been employed in the district-wide category. The State Board offered no reason or analysis for its departure from Cohen, so that it is now unclear precisely when seniority can be asserted to district-wide positions.

AA. Miscellaneous Seniority Problems

1. The Commissioner has consistently held that family living is a subject in which seniority cannot be acquired. See Bartz above, and Johnson v. Bd. of Ed. of Borough of Glen Rock 1984 SLD (decided May 24, 1984). The rationale for these decisions is that there is no specific certificate required to teach family living. However, in Savarese v. Bd. of Ed. of Bernardsville 1989 SLD (decided July 24, 1989) Aff'd by State Bd. January 3, 1990, the Commissioner held that a teacher whose endorsement entitled her to teach family living and had taught family living could claim a position teaching family living, when the teacher who was retained instead of her was not properly certified to teach family living. The Commissioner rejected any claim based upon seniority, and seemed to rely upon the fact that the competing teacher was not properly certified, or on tenure status. Therefore, it would seem that although no seniority has been recognized in family living, and in fact such claims have consistently been rejected, tenure status extends to family living.

Seniority in Vocational and Technical Subjects

2. As set forth above, seniority is acquired only under the endorsements that teachers have actually taught under. In the vocational technical area this has been narrowly construed. For example, in Tote v. Mercer County Co. Tech. School District, 1987 SLD (decided January 6, 1987), the Commissioner held that a teacher who had served under an endorsement as teacher of skilled trades-auto mechanics could not assert a seniority claim to a position which required an endorsement as teacher of production and personnel occupations-service station attendant. This conclusion resulted despite the fact that the content taught under each endorsement in the district was very similar. A similar result was reached in Hudson County Area Vocational Technical Educ. Assoc. and Terrlizzi v. Bd. of Ed. of Hudson County Area Vocational-Technical Schools, 1986 SLD (decided January

27, 1986) Aff'd by State Bd. of Ed. June 4, 1986. In that case, the Commissioner held that a teacher who had taught under an endorsement as teacher of fashion design could not assert seniority rights to a position of teacher of powersewing or dressmaking/tailoring. Considering these cases, it appears that the Commissioner has taken a very narrow view of the extent of seniority acquired under vocational-technical endorsements, irrespective of similarity or overlap with subjects taught under similar endorsements.

A different wrinkle arose in the case of Polo v. Bd. of Ed. of Voc. Sch. of Bergen County supra. In Polo, the Petitioner held an endorsement as a teacher of skilled trades, but the endorsement was issued in August 1972. At that time the Administrative Code did not list skilled trades by specific areas. However, the regulation did require six (6) years of approved full-time experience in a skilled trade to acquire the endorsement. The State Board held that based upon that requirement, the endorsement is limited to the area in which the individual demonstrated the six (6) years experience. Presumably a situation like Polo will not arise in the future. However, to the extent that individuals possess this certificate, their rights will be limited in the manner set forth in Polo.

3. Seniority Claims When No Specific Certificate Required For a Position

In such circumstances, it appears that all tenured teachers can assert tenure and seniority claims. See Rogan v. Bd. of Ed. of Twp. of Edison, Middlesex County 1985 SLD (decided September 17, 1985), (involving claim to position of in school suspension teacher), Lewis and Barksdale v. Bd. of Ed. of City of Trenton 1991 SLD (decided December 20, 1991) (involving claim to positions as teacher-specialist for business and industry liaison and teacher-job training partnership act), and Unterberger v. Bd. of Ed. of Boro of Metuchen 1992 SLD (decided February 28, 1992) (involving claim to position as teacher of Tools for Life). Accord, South River Education Assn. v. Bd. of Ed. of South River (cited above, involving position of elementary teacher of computer related courses). However, there is some authority for the contrary proposition, for example the cases involving family living cited above, and Fitzpatrick, et al v. Bd. of Ed. of Weehawken, Hudson

County, 1980 SLD (decided June 13, 1980). Aff'd State Bd. of Ed. March 4, 1981, Aff'd and modified by Superior Court, Appellate Division, Dkt. No. A-3278-80T3 (decided June 16, 1982), (holding that seniority rights could not be asserted to psychology classes since the State Department of Education had not required a specific certificate to teach that subject).

4. Seniority as Teacher of Computer Related Courses.

The Department of Education has consistently taken the position that there is no specific certificate required to teach computer related subjects. Thus in the elementary category any teacher holding an elementary endorsement can claim entitlement to teach computer related courses, at least through grade 5. See South River Ed. Assn. v. Bd. of Ed. of South River above. On the secondary level, the picture is murkier. Although State Department of Education has taken the above position, there are at least some endorsements which appear to be appropriate to teach computer related subjects; for example, the data processing endorsement. Indeed, in the recent case of Morgan v. Bd. of Ed. of Wayne, State Board of Education, decided August 4, 1991, the State Board of Education reversed the Commissioner's decision, which had held that a teacher who claimed that she was improperly assigned to computer related courses, without appropriate endorsement, failed to state a legal claim. The State Board remanded the matter for further proceedings. Thereafter however, in Taxman v. Bd. of Ed. of Piscataway 1993 SLD (decided March 18, 1993), the Commissioner held that there is no specific endorsement required to teach computer-related subjects. He reached this conclusion despite arguments that a Data Processing endorsement was the appropriate endorsement, and that since the Petitioner held a comprehensive business endorsement, it encompassed a Data Processing endorsement. The Commissioner held that there is no specific endorsement required, and the State Board of Education (on September 1, 1993) recently affirmed the Commissioner's decision. Thus, it appears that the State Board of Education continues to adhere to the position that there is no particular endorsement required to teach computers, but due to the language of the regulations, the question may still be a murky one, and not definitively resolved.