

DANELE STILL, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF CAMDEN, CAMDEN
COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner alleged that the District violated her tenure rights by terminating her employment, contending that she had acquired tenure while working as a technology coordinator for fourteen years. Petitioner's position as technology coordinator was abolished at the end of the 2013-2014 school year, and she was re-assigned to the position of fifth grade teacher for the 2014-2015 school year. Petitioner was then quickly promoted to the title of lead educator, and she obtained the required provisional principal certificate for this new position. In May 2016, petitioner was notified that her employment as lead educator would be terminated effective June 28, 2016; further, she was told that she had no "bumping rights" or entitlements to other positions in the District. Petitioner filed the within appeal in July 2016. The District filed a motion to dismiss in lieu of an answer, arguing that petitioner did not accrue tenure under her instructional certificate through her service in the technology coordinator position because it was a non-instructional position that required no classroom instruction commensurate with her elementary teaching certificate. Alternatively, the District asserted that petitioner relinquished any alleged tenure rights as an elementary teacher when she accepted the manager of school operations position – a non-tenured, non-teaching position that requires no certification – in August 2016.

The ALJ found, *inter alia*, that: the respondent District's motion to dismiss, which raises a matter outside of the petition – *i.e.*, petitioner's acceptance of a non-tenurable position following her dismissal – has therefore been considered a motion for summary decision, and petitioner's response thereto has been treated as a cross-motion for summary judgment; the issues herein are whether petitioner acquired tenure while serving as a technology coordinator and whether she is entitled to summary decision as a matter of law; petitioner met the requirements for tenure under *N.J.S.A. 18A:28-5* because she worked in a position for which a teaching certificate was required, held the appropriate certificate, and served the requisite period of time; contrary to the District's arguments, *N.J.S.A. 18A:28-5* does not require that a position be instructional or involve classroom instruction in order to be tenurable, but rather the key to tenure is whether the employee's position requires a valid certificate from the Board of Examiners – not the specific duties of the position; petitioner should have been returned to an elementary school teacher position when the District eliminated the lead educator position to which petitioner had been promoted; and petitioner's acceptance of the manager of school operations position after she had filed her appeal did not erase her tenure entitlement. The ALJ concluded that petitioner's tenure rights were violated and ordered the District to return petitioner to an elementary teaching position, together with lost salary and benefits, less mitigation.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition 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>

February 21, 2017

DANELE STILL, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF CAMDEN, CAMDEN :
COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and petitioner’s reply thereto – submitted in accordance with *N.J.A.C. 1:1-18.4* – were also considered by the Commissioner. Upon a comprehensive review of the record in this matter, the Commissioner is in accord with the Administrative Law Judge’s (ALJ) decision.

The ALJ found that the petitioner acquired tenure in the District based on her fourteen years of service as a technology coordinator because the position required petitioner to have a standard teaching certificate;¹ therefore, the Board violated petitioner’s tenure rights when it failed to place her in a position that she was entitled to by virtue of her tenure. The ALJ further found that petitioner did not relinquish her tenure rights when she accepted a non-tenurable position in the District, because she accepted the non-tenurable position after the Board violated her tenure rights and subsequent to the filing of this petition.

The exceptions substantially reiterate the substance of respondent’s submissions at the OAL, recasting the arguments therein to support the Board’s contention that the ALJ

¹ Petitioner holds an instructional teaching certification with an elementary school endorsement.

erroneously concluded that petitioner had acquired tenure in the District. Respondent's exceptions unpersuasively argue that the ALJ erred in granting petitioner's cross-motion for summary decision because there was no evidence in the record that the petitioner earned tenure in an unrecognized position, and the petitioner did not earn tenure as a teaching staff member because she never performed instructional duties. In its exceptions, the Board elaborates on its previous argument that the position is unrecognized, adding that the record in this matter is not clear as to whether the position of technology coordinator – an unrecognized position – was properly approved by the Executive County Superintendent (ECS) pursuant to *N.J.A.C. 6A:9B-5.5*. Furthermore, the Board reiterates that the duties performed in a position, not the position itself, is the controlling factor for accrual of tenure; therefore, petitioner did not acquire tenure as a teacher because she did not perform instructional duties in her position as a technology coordinator.

In reply, petitioner also restates the positions advanced in her submissions at the OAL. Petitioner adds, however, that respondent's arguments regarding the unrecognized status of the position and whether it was approved by the ECS serve to invalidate the job description for the position, which the Board is relying on to argue that petitioner could not have acquired tenure. Petitioner argues that ECS approval of the position is the Board's responsibility, and therefore, if the position was not approved by ECS, then principles of justifiable reliance and equitable estoppel apply in this matter. Petitioner further contends that the record pertaining to any approval of the unrecognized position is a matter of public record. Finally, petitioner reiterates that the right to tenure is governed by the plain language of *N.J.S.A. 18A:28-5*, not the duties of the position.

Adopting respondent's contention that the ALJ improperly ruled that petitioner earned tenure in an unrecognized position would require the Commissioner to ignore the plain language of *N.J.S.A.* 18A:28-5 and *N.J.A.C.* 6A:9B-5.5. *N.J.S.A.* 18A:28-5 provides in pertinent part, "[t]he services of all teaching staff members employed . . . in the positions of teacher[] . . . and **such other employees as are in positions which require them to hold appropriate certificates** issued by the board of examiners . . . shall be under tenure" (emphasis added). In other words, if a position – even if not specifically enumerated – requires a board issued certificate in order for the employee to serve in that position, then the employee will acquire tenure following passage of the requisite time period. Therefore, petitioner's service as a technology coordinator – which position is not explicitly listed in *N.J.S.A.* 18A:28-5, but requires a standard teaching certificate – will be under tenure.

Whether the unrecognized position of technology coordinator was approved by the ECS is inconsequential to the determination of tenure rights: neither the tenure statute nor *N.J.A.C.* 6A:9B-5.5 indicate that an employee will be deemed not tenured if an unrecognized position is not approved by the ECS.² *See Ciamillo v. Bd. of Educ. of Ridgefield*, OAL Dkt. No. EDU 1805-04, State Board Decision No. 38-05 (January 4, 2006) (clarifying that the position in which tenure is acquired by virtue of service in an unrecognized position title is not limited by the unrecognized title because it is well established that the position in which an individual achieves tenure is either one of those specifically enumerated in the statute or other employment for which a certificate is required); *see also, Manley v. Bd. of Educ. of Old Bridge Twp.*, OAL Dkt. No. EDU 10644-04, Commissioner Decision No. 450-05 (December 19, 2005) (holding, "[i]t is well established that tenure is achieved in a specific position, and the scope of the tenured

² The Commissioner is not persuaded by the Board's reliance on unreported decisional law, from over thirty years ago, in support of their contention that petitioner did not obtain tenure because the position was unrecognized and may not have been approved by the ECS.

position is initially limited by the certificate the teaching staff member must hold to satisfy the prerequisite of qualifications for his or her employment . . ." and finding "the scope of tenure protection for unrecognized positions is also determined by the certifications and endorsements required to serve in that position.") Additionally, it is the board's responsibility to obtain approval from the ECS. Assuming, *arguendo*, that approval was necessary for accrual of tenure in the position and the Board had failed to obtain approval from the ECS, holding petitioner accountable in any way for the Board's administrative failure would contravene the principles of fairness and equity.

With regard to respondent's exception that duties performed in a position – not the position itself – control the accrual of tenure, and that petitioner did not obtain tenure as a teaching staff member because she did not perform instructional duties in her position as a technology coordinator, the Board again expects the Commissioner to disregard the language of the tenure statute. In fact, "a teaching staff member has tenure in all positions for which his instructional certificate qualifies him." *Ellicott v. Bd. of Educ. of Frankford Twp.*, 251 N.J. Super. 342, 349 (App. Div. 1991). Therefore, petitioner – who was employed as a technology coordinator in the District for fourteen years and had the requisite certificate qualifying her for the position – obtained tenure in that position, as well as in the position of an elementary school teacher.

The tenure statute should be "liberally construed to achieve its beneficent ends." *Spiewak v. Bd. of Educ. of Hamilton Twp., et al.*, 90 N.J. 63, 74 (N.J. 1982). Here, petitioner served as a technology coordinator for fourteen years, a position which required a standard teaching certification; therefore, petitioner obtained tenure in the District under her instructional

certification both as a technology coordinator and as an elementary school teacher. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed without prejudice.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 21, 2017

Date of Mailing: February 22, 2017

³ 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

SUMMARY DECISION

OAL DKT. NO. EDU 14246-16

AGENCY DKT. NO. 199-7/16

DANELE STILL,

Petitioner,

v.

**CITY OF CAMDEN STATE-OPERATED
SCHOOL DISTRICT, CAMDEN COUNTY,**

Respondent.

Andrew L. Schwartz, Esq., appearing for petitioner, Danele Still (Schwartz Law Group LLC, attorneys)

Louis R. Lessig, Esq., appearing for respondent, City of Camden State-Operated School District, Camden County (Brown & Connery, LLP, attorneys)

Record Closed: December 5, 2016

Decided: January 4, 2017

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

Petitioner Danele Still alleges that the respondent, the State-Operated School District of the City of Camden (District), violated her tenure rights by terminating her employment. She alleges that she acquired tenure while working for fourteen years as a technology coordinator; she further alleges that she did not relinquish any tenure rights earned as technology coordinator when she accepted the non-tenurable position of manager, school operations, in 2016.

PROCEDURAL HISTORY

On July 21, 2016, petitioner filed a Petition of Appeal (Petition) with the Commissioner of Education. On or about August 9, 2016, petitioner accepted the full-time position of manager, school operations, at the Cream Family School for the 2016–17 academic year, stating that this was without prejudice to her Petition and without waiver or relinquishment of any tenure entitlement.

On September 16, 2016, respondent filed a Motion to Dismiss in Lieu of Answer. On September 20, 2016, the Commissioner transmitted the matter to the Office of Administrative Law as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On October 6, 2016, the petitioner filed a response to the respondent's motion to dismiss in lieu of an answer. The record closed on December 5, 2016.

FACTUAL DISCUSSION

On or about September 1, 1992, petitioner, Danele Still, began her employment for the District. She worked at the Cream Family School as a fourth-grade teacher, and then as a third-grade teacher, until the end of the 1998–99 school term. While serving as a teacher, petitioner held an instructional teaching certificate with an elementary school endorsement.

During the 1999–2000 school year, petitioner served as a K–5 computer teacher in the Mount Laurel School District. Petitioner returned to Camden for the 2000–01

school term to work as a technology coordinator. As technology coordinator, petitioner served “as a liaison between the school and the Technology Department to assist the principal in implementing building and staff technology needs.” As indicated in the job description, the position required a “Standard Teaching Certificate.” Petitioner served as technology coordinator in the District from the 2000–01 school term through the end of the 2013–14 school term, when the position was abolished.

Petitioner remained employed by the District and was assigned to the position of fifth-grade teacher at the Forest Hill Elementary School at the start of the 2014–2015 school year. After only one week in this position, petitioner was promoted to the title of lead educator. Petitioner obtained a provisional principal certificate, as required for the new position. Petitioner remained in the position of lead educator for the rest of the 2014–15 school year and the entire 2015–16 school year. On May 11, 2016, petitioner received a letter indicating that her employment as lead educator would be terminated effective June 28, 2016, and that she had no “bumping rights” or entitlements to any other positions in the District.

On July 21, 2016, petitioner filed a Petition of Appeal with the Commissioner of Education, arguing that she is a tenured teacher by virtue of her fourteen years of service in the technology coordinator position. Accordingly, petitioner contends that she has a superior claim to any teaching position held by a non-tenured staff member and that respondent’s failure to appoint her to a teaching position violates her tenure rights under N.J.S.A. 18A:28-5. On or about August 9, 2016, petitioner accepted the full-time position of manager, school operations, at the Cream Family School for the 2016–17 academic year. The title is an unrecognized, non-tenured position and does not require a teaching certificate. Petitioner’s counsel sent correspondence to respondent indicating that petitioner accepted the position without prejudice to her Petition and without waiver or relinquishment of any tenure entitlement.

In its Motion to Dismiss in Lieu of Answer, respondent argues that (1) petitioner did not accrue tenure under her instructional certificate due to her service in the technology coordinator position because it was a non-instructional position that required no classroom instruction commensurate with the certificate and, alternatively,

(2) petitioner relinquished any alleged tenure rights as an elementary school teacher when she accepted the manager, school operations, position, “a distinct non-tenured, non-certificated, non-teaching staff position.”

LEGAL ANALYSIS AND CONCLUSION

A. Should the respondent’s motion to dismiss in lieu of answer be converted into a motion for summary decision, and the petitioner’s response to the motion to dismiss be treated as a cross-motion for summary decision?

While the regulations governing controversies and disputes before the Commissioner allow a respondent to file a motion to dismiss in lieu of answer “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true,” N.J.A.C. 6A:3-1.5(g) and N.J.A.C. 6A:3-1.10, respondent’s motion to dismiss may be converted into a motion for summary decision because respondent’s dismissal motion includes a matter outside of the pleadings of the original Petition. In such case, the petitioner’s response to the motion to dismiss may be treated as a cross-motion for summary decision.

Here, the respondent’s motion to dismiss should be converted to a motion for summary decision because respondent therein introduces the fact that petitioner accepted a non-tenurable position following her dismissal, which is not contained in the Petition.⁴ The Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.6, which are designed “to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay,” provide that “[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes.” N.J.A.C. 1:1-1.3(a). According to New Jersey Court Rule 4:6-2, “[i]f, on a motion to dismiss based on the defense [of failure to state a cause of action], matters outside the pleading are presented . . . the motion shall be treated as one for summary judgment.” Thus, this matter can proceed in accordance with R. 4:6-2 because it is compatible with the

⁴ Petitioner accepted the position after she filed her Petition with the Commissioner.

purposes of the UAPR. The respondent's motion to dismiss, which raises a matter outside of the Petition, is therefore considered a motion for summary decision.

Accordingly, the petitioner's response to the motion to dismiss shall be treated as a cross-motion for summary decision because, in line with the standard for summary decision under N.J.A.C. 1:1-12.5, she argues that there is no genuine issue of material fact and that she is therefore entitled to a decision finding that she acquired tenure as technology coordinator.

In a contested case, the standard for a motion for summary decision is "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Here, the issue is whether petitioner acquired tenure while serving as a technology coordinator and whether she is entitled to summary decision as a matter of law.

B. Did the petitioner acquire tenure in all positions for which she was qualified under her instructional certificate, while serving as technology coordinator?

The purpose of the teaching staff tenure laws, N.J.S.A. 18A:28-1 to -18, is "to aid in the establishment of a competent and efficient school system by affording teaching staff members 'a measure of security in the ranks they hold after years of service.'" Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 528–29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949)). In order to acquire tenure, a teaching staff member "must comply with the precise conditions articulated in the [tenure] statute." Zimmerman v. Bd. of Educ. of Newark, 38 N.J. 65, 72 (1962). Thus, a teaching staff member "is entitled to tenure if (1) she works in a position for which a teaching certificate is required; (2) she holds the appropriate certificate; and (3) she has served the requisite period of time." Spiewak v. Summit Bd. of Educ., 90 N.J. 63, 74 (1982); N.J.S.A. 18A:28-2; N.J.S.A. 18A:28-4; N.J.S.A. 18A:26-5; N.J.S.A. 18A:28-6.

Under N.J.S.A. 18A:28-5,

[t]he services of all teaching staff members employed . . . in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer **and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners** . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

- (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or
- (2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (3) The equivalent of more than three academic years within a period of any four consecutive academic years.

[Emphasis added.]

A teaching staff member is defined as

[a] member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.

[N.J.S.A. 18A:1-1.]

Once tenure is earned, “a teaching staff member has tenure in all positions for which his instructional certificate qualifies him.” Ellicott v. Bd. of Educ. of Frankford, 251 N.J. Super. 342, 349 (App. Div. 1991); see also Capodilupo v. Bd. of Educ. of W. Orange, 218 N.J. Super. 510 (App. Div. 1987), certif. denied, 109 N.J. 514 (1987) (holding that a tenured teacher seeking reinstatement within the endorsements on his or her certificate is entitled to preference in a reduction in force as against a non-tenured applicant with the same certification, despite the fact that the tenured teacher had no “demonstrable experience” under the endorsement).

Here, petitioner met the requirements for tenure under N.J.S.A. 18A:28-5 because she worked in a position for which a teaching certificate was required, held the appropriate certificate, and served the requisite period of time. In particular, the job description for the position of technology coordinator explicitly required a Standard New Jersey Teaching Certificate, petitioner held this certificate, and she worked as technology coordinator for approximately fourteen years. Moreover, when petitioner acquired tenure as technology coordinator, she also acquired tenure in all positions for which she was qualified under her instructional certificate. In this case, since petitioner held an elementary school endorsement, she earned tenure in all elementary teaching positions.

Respondent argues that petitioner did not accrue tenure while serving as technology coordinator because it was a “non-instructional position that required no classroom instruction whatsoever commensurate with her teaching certificate.” (Respondent’s Brief at 4.) Respondent points to the technology coordinator job description and notes that the duties of the position were “purely managerial.” (Id. at 7.) Thus, according to respondent, “common sense dictates Petitioner did not accrue tenure under her elementary school teacher certificate due to her service in this position.” (Id. at 4.)

However, N.J.S.A. 18A:28-5 does not require that a position be “instructional” or involve “classroom instruction” in order to be tenurable. Under the statute, the key to tenure is whether the employee’s position requires him or her to hold a valid certificate

from the Board of Examiners, not the specific duties of the position. The job description for the technology coordinator title unambiguously required a “Standard Teaching Certificate.”⁵ As petitioner indicates, “[t]he District cannot have it both ways—it cannot require a certain certificate, and then claim the job functions render that requirement ineffectual.”

Respondent also unpersuasively argues that petitioner did not accrue tenure in the technology coordinator position because the position is not a separately tenurable position enumerated in N.J.S.A. 18A:28-5. The plain language of the statute suggests that it was not intended to provide an exhaustive list of positions that are eligible for tenure. After naming a number of positions, the statute provides that tenure may be accrued by “such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners.” N.J.S.A. 18A:28-5. As technology coordinator, petitioner was required to hold a “Standard Teaching Certificate,” or instructional certificate, and therefore falls into this category. For these reasons, the position of technology coordinator was a tenurable position, and petitioner accrued tenure as a result of her fourteen years working under this title.

C. Is the petitioner entitled to an elementary school teaching position?

When respondent eliminated the lead educator position to which petitioner had been promoted, petitioner should have been returned to an elementary school teacher position for which she was qualified. According to N.J.S.A. 18A:28-6,

in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

[N.J.S.A. 18A:28-6(b).]

⁵ Further, although it is not determinative, the technology coordinator job description explicitly indicates that the position was intended to be a ten-month “tenured position.”

Here, petitioner earned tenure as technology coordinator and, once the position was abolished, she briefly worked as a fifth-grade teacher before she was promoted to lead educator.⁶ Since petitioner held the lead educator title for only two years before the position was eliminated, she did not acquire tenure by virtue of her service in said position. However, because she had previously acquired tenure in the District, she should have, in accordance with N.J.S.A. 18A:28-6(b), been “returned to [her] former position at the salary which [she] would have received had the transfer or promotion not occurred together with any increase to which [she] would have been entitled during the period of such transfer or promotion.” Thus, petitioner should have been returned to an elementary school teacher position for which she was qualified.⁷

The fact that petitioner accepted the manager, school operations, position should not alter this conclusion. Upon the voluntary acceptance of a non-tenurable position, a school-district employee typically relinquishes any protections associated with her previously tenured title. See, e.g., Colon-Serrano v. Plainfield Bd. of Educ., EDU 11588-06, Comm’r (January 28, 2008), <<http://njlaw.rutgers.edu/collections/oal/>> (finding that an employee who had earned tenure as an attendance aide lost the protections associated with the position when she accepted the non-tenurable position of classroom aide); see also DiNapoli v. Bd. of Educ. of Verona, 434 N.J. Super. 233, 240 (App. Div. 2014) (holding that a secretary relinquished her tenure rights when she voluntarily transferred to the position of assistant school business administrator, thus giving up her right to “bump” a non-tenured secretarial employee when the administrator position was eliminated).

Here, however, petitioner accepted the manager position after respondent violated her tenure rights and failed to place her in a position to which her tenure entitled her. Indeed, petitioner explains that she accepted the non-tenurable manager, school operations, position because she had an obligation to mitigate damages.

⁶ Neither party explicitly addresses whether the lead educator position was a tenurable title. However, petitioner notes that the position required a principal certificate. (Petition of Appeal, ¶13.) Such a requirement suggests that the position was tenurable under N.J.S.A. 18A:28-5. Respondent does not appear to challenge this conclusion.

⁷ Petitioner requests a hearing exclusively to determine to which elementary teaching position(s) she is entitled. However, such a hearing is unnecessary.

Further, in the event that her Petition was unsuccessful, acceptance of the job “ensured some form of continued employment.” (Petitioner’s Response to Respondent’s Motion to Dismiss at 9.) Petitioner should not be penalized for seeking gainful employment during a time when respondent refused to honor her tenure rights by failing to follow the procedure set forth in N.J.S.A. 18A:28-6, and in her effort to mitigate damages if she were successful. Accordingly, petitioner’s acceptance of the manager position did not erase her tenure entitlement as respondent argues.

Conclusion

For the reasons set forth above, the respondent’s motion to dismiss in lieu of answer is converted into a motion for summary decision; the petitioner’s response to the motion to dismiss is converted into a cross-motion for summary decision. The respondent’s motion for summary decision is denied and the petitioner’s cross-motion for summary decision is granted. In accordance with N.J.S.A. 18A:28-6, the respondent shall return the petitioner to an elementary school teacher position for which she is qualified, together with lost salary and benefits, less mitigation, from the date of petitioner’s termination as lead educator to her reinstatement.

ORDER

I hereby **ORDER** that the respondent’s motion for summary decision is **DENIED** and the petitioner’s cross-motion for summary decision is **GRANTED**. The respondent, the State-Operated School District of the City of Camden, shall return the petitioner, Danele Still, to an elementary school teacher position for which she is qualified, together with lost salary and benefits, less mitigation, from the date of petitioner’s termination as lead educator to her reinstatement.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

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, PO 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.

January 4, 2017
DATE



SUSAN M. SCAROLA, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/cb

WITNESSES

For petitioner:

None

For respondent:

None

EXHIBITS

For petitioner:

Brief

For respondent:

Brief