

SHARON MILLER, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 BOROUGH OF SOMERVILLE, SOMERSET :  
 COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner, a tenured teacher in the district, alleged that the Board violated her tenure rights when it failed to reinstate her upon the expiration of her child-care leave. The ALJ granted petitioner partial summary decision, holding that petitioner's tenure rights were not waived pursuant to the contractual agreement between the board and petitioner's collective bargaining unit - wherein it was agreed that employees that failed to provide notice of intent to return from child-care leave as set forth in the agreement could be terminated - because termination of a tenured employee is governed by statute, and the statutory requirements for termination of a tenured employee could not properly be usurped by the contractual agreement between the Board and petitioner's bargaining unit.

Prior to hearing on the issue of the amount back pay and emoluments owed petitioner, the parties agreed to a settlement, which agreement was made contingent on the ALJ's partial summary decision order being affirmed upon review by the Commissioner.

The Commissioner affirmed the ALJ's order granting partial summary decision for the reasons set forth therein, and approved the settlement agreement.

Matter was dismissed.

March 25, 2002

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The record, Stipulation of Settlement, and Initial Decision issued by the Office of Administrative Law, pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed.

Upon review of the record, the Commissioner notes that the settlement presented for approval concerns damages and mitigation of monies owing in the matter due to an order of the Administrative Law Judge (ALJ), issued on September 14, 2000, which granted partial summary decision to petitioner based on the ALJ's conclusion that the Board had violated petitioner's tenure rights when it failed to retain her in, or reinstate her to, a teaching position upon completion of a child rearing leave in 1999.<sup>1</sup> It is further noted that the settlement is expressly conditioned upon the Commissioner's adoption and approval of that ruling and order of the ALJ (Settlement Term 5)

Upon review of the record in its entirety, the Commissioner concurs with the ALJ's ruling and order granting partial summary decision to petitioner and approves the

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<sup>1</sup> The Board did not seek interlocutory review of the ALJ's September 14, 2000 ruling at the time it was issued; thus, pursuant to *N.J.A.C.* 1:1-12.5(e), it is being reviewed by the Commissioner at the conclusion of the proceedings in the matter.

settlement terms. Consequently, the ALJ's order of September 14, 2000 and the terms of the settlement presented herein are adopted by the Commissioner as the final decision in this matter.

Accordingly, the matter is no longer deemed to be a controversy before the Commissioner and is hereby dismissed, subject to the parties' compliance with the terms of the settlement.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: 3/25/02

Date of Mailing: 3/27/02

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<sup>2</sup> The decision which grants partial summary judgment to petitioner may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.