

KURT WALTON, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE TOWNSHIP OF NEWTON,
SUSSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner claimed tenure rights to the position of principal in respondent's district. Petitioner had been promoted from vice principal to interim principal for the period from April 14 to June 30, 2004, after the previous principal submitted a letter of resignation that was effective June 30, 2004. Petitioner was subsequently appointed principal for the 2004-2005 and 2005-2006 school years. He was notified in February 2006 that his services as principal would be terminated on June 30, 2006. Respondent Board claimed that petitioner had not served the requisite amount of time to earn tenure in the position of principal.

The ALJ found that summary decision is appropriate in this matter, as there are no material facts in dispute and the only issue to be resolved is whether the time petitioner spent as interim principal may be counted toward acquisition of tenure in the position of principal. The ALJ also found, *inter alia*, that: tenure law requires that a "true vacancy" exist before any time spent working as an interim staff member may be counted toward tenure; tenure did not accrue in the instant matter until the incumbent principal's employment was officially severed on the effective date of his resignation, June 30, 2004; *N.J.S.A. 18A:28-6(a)* requires a minimum of two consecutive years of service to acquire tenure following a promotion, but the employee must be reemployed for at least one day following the required period of service; petitioner was appointed and served in the position of principal for exactly two years; petitioner was not reemployed for at least one day following that period, and therefore did not acquire tenure in the position of principal. The ALJ concluded that the petition should be dismissed.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ that petitioner has no tenure rights in the position of principal, and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that *N.J.S.A. 18A:28-6(a)* does not confer tenure upon reaching the two-year mark, but rather after the completion of the two-year probationary period.

<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>

August 8, 2007

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The record and Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ After full and independent consideration, the Commissioner adopts the Initial Decision as the final decision in this case.

Petitioner served as interim principal of Halsted Middle School (HMS) in respondent's district from April 14, 2004 to June 30, 2004. As the Administrative Law Judge (ALJ) explained, pursuant to *Williams v. Board of Education of the City of Orange*, 1987 S.L.D. 997, 1000 *aff'd* State Board, 1988 S.L.D. 2534, and later cases, petitioner's time served as interim principal before the effective terminus of the resigning principal's employment may not be counted toward tenure.

On May 25, 2004, respondent appointed petitioner principal of HMS for the calendar year of July 1, 2004 to June 30, 2005. Petitioner was reappointed for the next school year, *i.e.*, July 1, 2005 to June 30, 2006, but was provided with notice on February 17, 2006 that his services as HMS principal would be terminated on June 30, 2006, and would not be renewed.

¹ No exceptions to the Initial Decision were filed with the Commissioner.

The issue before the ALJ was whether petitioner had served long enough in the position of principal to have accrued tenure.

The statute governing the controversy is *N.J.S.A.* 18A:28-6. That statute provides, in pertinent part:

Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter . . . shall not obtain tenure in the new position until after: (a) the expiration of a period of employment of two consecutive calendar years in the new position unless a shorter period is fixed by the employing board for such purpose

[Emphasis added.]

As explained above, respondent notified petitioner in February 2006 that his service as principal would end on June 30, 2006, at which time petitioner would have completed no more than two years in the position.² The statute does not confer tenure upon reaching the two-year mark in a position. Tenure is achieved after the completion of the two-year probationary period. If tenure were automatically achieved at the end of the probationary period, the phrase “after (a) the expiration of a period of employment of two consecutive calendar years” would be rendered meaningless, a result that the Commissioner cannot endorse. *See, e.g., State v. Reynolds*, 124 *N.J.* 559, 564 (1991) (A construction that will render any part of a statute inoperative, superfluous, or meaningless, is to be avoided)

Further, as recognized by the New Jersey State Board of Education in *Gregory R. Martucci v. Board of Education of the City of Linden, Union County*, Dkt. No. SB 108-95, decided December 4, 1996, precedent exists establishing that the language of *N.J.S.A.* 18A:28-5(a), which is substantially the same as the language of *N.J.S.A.* 18A:28-6(a), dictates that “a teaching staff member acquires tenure only after employment in a tenure-eligible

² Petitioner does not allege that the respondent board fixed an abbreviated time requirement for petitioner to obtain tenure in the position of principal.

position for the requisite period.” (*Ibid.* at 7) The State Board approved of the precedent, observing that it constituted sound educational policy:

Were we to hold otherwise, district boards would be forced to terminate the contracts of calendar year employees in order to prevent tenure acquisition. We find no justification for the disruption to the school system that such a result would cause. Nor can we justify the additional expense that would be inevitable in those cases where payment must be made to the employee under the employment contract following his termination while, at the same time, the district would be required to pay for his replacement. (*Id.* at 7-8)

Accordingly, the Commissioner adopts the Initial Decision, as supplemented herein, as the final decision in this case. The petition is dismissed.³

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2007

Date of Mailing: August 8, 2007

³ The Commissioner concurs with the ALJ that under *N.J.S.A.* 18A:28-6, petitioner retains tenure rights to his previous position in respondent’s district, at the salary he would have received had he not been promoted, including any increases to which he would have been entitled.

⁴ This decision 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.*