

MICHAEL SCHAILEY, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 SOUTHERN REGIONAL HIGH SCHOOL :  
 DISTRICT, OCEAN COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner – a former teacher in the respondent Board’s district – challenges the termination of his employment upon the suspension of his teaching certificates without proceedings under the Tenure Employees Hearing Law, *N.J.S.A.* 18A:6-10 to -18.1, and contends that this was in violation of his tenure rights. Petitioner was terminated after he agreed to a two year suspension of his teaching certificates as a consequence of inappropriately enrolling his instructional aide in the Department’s Alternate Route Program for teacher certification by forging his supervisor’s signature on several forms which petitioner filed with the Department on the aide’s behalf. Respondent Board filed a motion to dismiss the appeal.

The ALJ found, *inter alia*, that: petitioner had acquired tenure in accordance with *N.J.S.A.* 18A:28-5, however, tenure protection under this statute does not apply to teaching staff members who are not holders of “proper certificates in full force and effect”; *N.J.S.A.* 18A:28-14 specifically provides that any teaching staff member who is not the holder of an appropriate certificate in full force and effect may be terminated without charge or trial; and the provisions of *N.J.S.A.* 18A:28-14 are clear and controlling. The ALJ concluded that the respondent Board’s actions in terminating petitioner without the filing of tenure charges or a trial were correct, and should be affirmed.

The Commissioner concurred with the ALJ that the respondent Board’s motion to dismiss must be granted, as *N.J.S.A.* 18A:28-14 is clear and controlling in this case. Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is 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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OAL DKT. NO. EDU 2878-08  
AGENCY DKT. NO. 83-3/08

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were considered by the Commissioner in reaching her determination here. The Board did not file reply exceptions.

As exceptions, petitioner submits his Brief in Opposition to the Board’s Motion to Dismiss originally filed with the Administrative Law Judge (ALJ) below. As it is determined that the ALJ fully and fairly addressed and resolved each of the arguments presented in petitioner’s brief, these will not be revisited here.

Upon review, the Commissioner is in full agreement with the ALJ that the Board’s Motion to Dismiss must be granted, as *N.J.S.A.* 18A:28-14 is clear and controlling here. Consequently, the action of the Board terminating petitioner’s employment without the filing of tenure charges or a trial was correct and must be affirmed.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: February 19, 2009

Date of Mailing: February 19, 2009

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\* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.