

New Jersey Commissioner of Education

Final Decision

Terrell Gilkey,

Petitioner,

v.

Board of Trustees of the Queen City Academy
Charter School, Union County,

Respondent.

Synopsis

Petitioner appealed the decision of respondent, Board of Trustees of the Queen City Academy Charter School (Board), denying him streamline tenure under *N.J.A.C. 6A:11-6.2*. The Board informed petitioner by letter dated March 26, 2024 that he would not be recommended for streamline tenure and that his employment would be terminated on May 30, 2024—about a month before the end of the 2023-2024 academic year. Petitioner asserted, *inter alia*, that he was employed by the Board for more than the required five consecutive full academic years and therefore had already obtained streamline tenure when the Board terminated him. The Board filed a motion to dismiss which was converted to a motion for summary decision. Petitioner opposed the motion.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; the acquisition of streamline tenure for charter school employees is governed by *N.J.A.C. 6A:11-6.2*, which provides “[a]ll teaching staff members, ... shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment...”; petitioner began his employment with the Board in January 2019, in the middle of the 2018-2019 academic year, and thereafter only worked for the Board for four consecutive full academic years, 2019-2020, 2020-2021, 2021-2022, and 2022-2023. The ALJ concluded that petitioner was not employed for five consecutive academic years with respondent from school year 2018-2019 through 2022-2023, as required under *N.J.A.C. 6A:11-6.2*, and therefore did not acquire streamline tenure. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed petitioner’s appeal.

Upon review, the Commissioner concurred with the ALJ that petitioner did not acquire streamline tenure because he was only employed for part of the 2018-2019 academic year, and for part of 2023-2024 academic year; as such, he could not have acquired streamline tenure prior to his termination on May 30, 2024. In so deciding, the Commissioner found petitioner’s novel “semester theory” of acquisition of streamline tenure to be without merit. Accordingly, the Board’s motion for summary decision was granted, and the petition of appeal was dismissed.

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.

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Petitioner,

v.

Board of Trustees of the Queen City Academy
Charter School, Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner and by respondent Board of Trustees (Board) pursuant to *N.J.A.C. 1:1-18.4*, and the Board's reply to petitioner's exceptions, have been reviewed and considered.

Petitioner challenges the Board's decision to deny him streamline tenure pursuant to *N.J.A.C. 6A:11-6.2* on grounds that he was not employed by the Board for five consecutive full academic years.

That regulation states, in relevant part:

All teaching staff members . . . shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment as determined by the Department-approved educator evaluation system established by each charter school and in accordance with the charter school's uniform policies and procedures.

[*N.J.A.C. 6A:11-6.2(a).*]

The relevant facts are uncontested. Petitioner began his employment with the Board in January 2019, in the middle of the 2018-2019 academic year. Thereafter, he worked for the Board

for four consecutive full academic years: 2019-2020, 2020-2021, 2021-2022, and 2022-2023. Via letter dated March 26, 2024, the Board informed petitioner that he would not be recommended for tenure and that his employment would be terminated on May 30, 2024—about a month before the end of the 2023-2024 academic year.

The Board filed a motion to dismiss the petition, which the Administrative Law Judge (ALJ) appropriately treated as a motion for summary decision. *K.L. v. Bd. of Educ. of Borough of Kinnelon*, Commissioner Decision No. 315-08 at 4 (July 23, 2008). Petitioner cross-moved for summary decision. The ALJ granted the Board’s motion and dismissed the petition upon concluding that petitioner was not employed for five consecutive full academic years, as required by *N.J.A.C. 6A:11-6.2*, and therefore did not acquire streamline tenure.

In his exceptions, petitioner disputes the ALJ’s legal conclusion that he did not acquire streamline tenure. He argues, as he did below, that because employment for 10 semesters is the functional equivalent of employment for five full consecutive academic years, and he was employed by the Board for more than 10 semesters, he achieved streamline tenure status. In response, the Board argues that petitioner’s semester theory is unsupported by the regulation’s plain language and regulatory history. The Board contends that had the Commissioner wanted eligibility for streamline tenure to be measured in semesters, the Commissioner would have stated so in the regulation.¹

¹ Additionally, the Board takes exception to the ALJ’s factual finding that petitioner’s employment was “effective” as the record lacks evidence to support such a finding. The Board also maintains that petitioner’s effectiveness is immaterial as he did not qualify for streamline tenure in the first instance because he was not employed by the Board for five consecutive full academic years. Because the parties did not present evidence to the ALJ regarding petitioner’s “effective employment,” the Commissioner agrees with the Board that the ALJ’s finding is unsupported by the record and rejects it. Accordingly, the Commissioner makes no finding herein as to whether petitioner’s employment was effective or not effective.

Upon review, the Commissioner concurs with the ALJ that petitioner is ineligible for streamline tenure because he was not employed by the Board for five consecutive full academic years as is required by *N.J.A.C. 6A:11-6.2*. Regulations are interpreted in the same manner as statutes, meaning that the paramount goal of determining the drafter's intent is achieved by studying the regulation's plain language. *L.R. v. Camden City Pub. Sch. Dist.*, 238 N.J. 547, 558 (2019). One must not "presume that the drafter intended a meaning other than" that expressed by the regulation's plain language. *U.S. Bank v. Hough*, 210 N.J. 187, 199 (2012). Moreover, when interpreting statutes or regulations governing the same subject matter, they should be interpreted harmoniously. *L.R.*, 238 N.J. at 558.

By way of background, Title 18A instructs that charter school employees acquire streamline tenure "pursuant to guidelines promulgated by the commissioner" *N.J.S.A. 18A:36A-14(e)*. *In re Susp. of Teaching Cert. of Van Pelt*, 414 N.J. Super. 440, 449 (App. Div. 2010). Those guidelines appear in Title 6A, Chapter 11, Subchapter 6 of the Administrative Code. *N.J.A.C. 6A:11-6.2(a)* requires teaching staff members to be employed for "five consecutive full academic years" to acquire streamline tenure. Notably, the phrase "academic year" has a specific meaning in the public education context. Although not defined in Title 6A, Chapter 11, *N.J.S.A. 18A:1-1* defines "academic year" as "the period between the time school opens in any school district or under any board of education after the general summer vacation until the next succeeding summer vacation."

The Commissioner finds that the plain language of *N.J.A.C. 6A:11-6.2(a)* is clear and unambiguous and should be interpreted as written. Applying the definition of "academic year" found at *N.J.S.A. 18A:1-1* to the facts at issue, it is undisputed that petitioner worked for the Board for four consecutive full academic years: 2019-2020, 2020-2021, 2021-2022, and 2022-2023. Because petitioner was only employed for part of academic year 2018-2019, and for part of academic year

2023-2024, he could not have acquired streamline tenure prior to his termination on May 30, 2024. Petitioner's novel semester theory of acquisition of streamline tenure is neither supported by the regulation's plain language, the regulatory history, or case law. The Commissioner is not permitted to disregard the current regulation's plain meaning to align it with petitioner's unique circumstances.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

TERREL GILKEY,

Petitioner,

v.

BOARD OF TRUSTEES OF THE QUEEN

CITY ACADEMY CHARTER SCHOOL,

UNION COUNTY

Respondent

OAL DKT. NO. EDU 06842-24

AGENCY DKT. NO. 112-4/24

Sanford R. Oxfeld, Esq., for petitioner, (Oxfeld Cohen, P.C., attorneys)

Lawrence M. Teijido, Esq., for respondent, (Antonelli, Kantor, Rivera, attorneys)

Record Closed: August 9, 2024

Decided: September 11, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

SUMMARY OF THE CASE

Petitioner, Terrel Gilkey, appeals the decision of respondent, Board of Trustees of the Queen City Academy Charter School, denying him streamline tenure under N.J.A.C. 6A:11-6.2.

PROCEDURAL HISTORY

On April 24, 2024, petitioner, Terrel Gilkey, (petitioner) filed a Petition of Appeal with the Commissioner of the New Jersey Department of Education (Commissioner). The Petition of Appeal challenged the decision of respondent, Board of Trustees of the Queen City Academy Charter School, Union County (respondent), denying petitioner “streamline tenure.”

Specifically, the Petition of Appeal states the following claim and relief sought:

- 1) Respondent did not comply with N.J.A.C. 6A:11-6.2 in denying petitioner tenure under the streamline tenure provision for Charter Schools, as petitioner has been employed by respondent for over five consecutive full academic years, and thus has acquired tenure.
- 2) Any attempt by respondent to terminate petitioner’s employment without complying with the procedures set forth at N.J.A.C. 6A:11-6.2 is null and void and *ultra vires* as a matter of law.
- 3) Respondent’s action in terminating him is motivated solely, not by any problem in his teaching performance or any other legitimate reason, but due his being the duly elected President of the Education Association at the School. ¹
- 4) Respondent’s actions are violative of the PERC Act, and an Unfair Practice Charge is being filed at PERC concomitant with the filing of this Petition.
- 5) Petitioner requests that the Commissioner direct that he be rehired by the respondent forthwith, with tenure, and that he be awarded back pay and all other emoluments of employment for any time he has been wrongfully without pay. Petitioner also requests any other and further relief which the Commissioner deems just and equitable.

¹ The allegations contained in paragraphs 3 and 4 of the Petition of Appeal will not be addressed herein, as petitioner states that he has filed an Unfair Practice Charge with PERC.

On May 9, 2024, respondent filed a Notice of Motion to Dismiss with the Commissioner, as allowed by N.J.A.C. 6A:3-1.5 and N.J.A.C. 6A:3-1.10. Prior to ruling on respondent's motion for dismissal, on May 10, 2024, the Commissioner transmitted this matter to the Office of Administrative Law (OAL) as a contested case. Respondent's Notice of Motion to Dismiss originally filed with the Commissioner was converted to a motion for summary decision under N.J.A.C. 1:1-12.5. As a result of the same, on July 3, 2024, respondent filed an Answer and Affirmative Defenses.

On July 11, 2024, petitioner filed his opposition to respondent's motion, and a cross-motion for summary decision under N.J.A.C. 1:1-12.5. On August 8, 2024, respondent filed a reply to petitioner's opposition and cross-motion for summary decision. On August 9, 2024, the record was closed.

FACTUAL DISCUSSION

The following facts are derived from the motion pleadings submitted herein, which are not in dispute and are therefore deemed **FACT** herein.

Petitioner began employment as a teacher with respondent on January 29, 2019, mid-way through the academic year of 2018-2019, and for the full following academic years: 2019-20, 2020-21, 2021-22, and 2022-23. By letter dated March 26, 2024, respondent notified petitioner that he would not be recommended for tenure and that his last day of work would be May 30, 2024, which was petitioner's last day of employment with respondent. Petitioner provided effective employment during his time of employment as teacher with respondent.

ANALYSIS AND CONCLUSIONS OF LAW

Respondent argues that petitioner has not acquired streamline tenure because he has not been employed by respondent for five full consecutive academic years. Respondent cites to N.J.A.C. 6A:11-6.2, which states that the acquisition of streamline tenure for charter school employees is regulated as follows:

- (a) All teaching staff members, janitors, and secretaries shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment as determined by the Department-approved educator evaluation system established by each charter school and in accordance with the charter school's uniform policies and procedures.

N.J.A.C. 6A:11-6.2 expressly requires "five consecutive full academic years" of employment to acquire streamline tenure. Respondent posits that the Petition of Appeal affirms that petitioner worked four full academic years, 2019-20, 2020-21, 2021-22, and 2022-23, and one-half an academic year commencing January 29, 2019. Consequently, respondent argues, petitioner has not satisfied the requirements of N.J.A.C. 6A:11-6.2, which provides that streamline tenure in a charter school is acquired "after five consecutive full academic years of effective employment". Respondent requests that the Petition of Appeal be dismissed.

Petitioner's principal argument is that N.J.A.C. 6A:11-6.2 does not specifically dictate "how" the five consecutive full academic years are achieved. Petitioner avers that respondent erroneously states there is "only one manner" to achieve the time requirement under the regulations that is necessary to acquire streamline tenure in proclaiming that petitioner failed to complete the time requirement because he began his employment half-way through the school year in 2019. Petitioner offers an alternative example on how to compute the streamline tenure by arguing that five academic years are the "functional equivalent of ten semesters". Therefore, petitioner states the he has satisfied the streamline tenure requirements because he was employed for eleven consecutive semesters (January 29, 2019 through May 30, 2023), which is more than the ten semesters required for five consecutive academic.

In its reply respondent provides an explanation of the legislative history concerning N.J.A.C. 6A:11-6.2, and in so doing, argues that petitioner's "attempt to insert imaginary language" into N.J.A.C. 6A:11-6.2 by advocating for an interpretation of the regulation is simply unsupported by the "clear and unambiguous regulatory text." Respondent further argues that petitioner's attempt to read language referencing the completion of "semesters," instead of the "five consecutive full academic years of effective employment"

contained in N.J.A.C. 6A:11-6.2, is unsupported by the legislative history and actual language of said regulation.

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered 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).

As set forth more fully below, respondent's motion for summary decision and petitioner's cross-motion for summary decision establish no genuine issue of any material fact exists as to respondent's decision to deny petitioner tenure and terminate him on May 30, 2024. This matter is therefore ripe for summary decision.

The acquisition of streamline tenure for charter school employees is governed by N.J.A.C. 6A:11-6.2, as it provides "[a]ll teaching staff members, ... shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment..." Respondent presents a discussion of the legislative history of N.J.A.C. 6A:11-6.2, which will be adopted herein.

The record reveals that petitioner was hired on January 29, 2019, and was terminated on May 30, 2023. Respondent argues that the 2018-2019 academic year does not count for purposes of acquiring streamline tenure because petitioner was not employed for a "full academic year."² Thereafter, petitioner was employed with respondent for full academic years in 2019-20, 2020-21, 2021-22, and 2022-23. As for petitioner providing "effective employment" during his term of employment with respondent, the record reflects that there were no negative evaluations of petitioner, as respondent did not present any evidence to the same, and respondent renewed petitioner's term of employment for the years at issue.

² Petitioner presents no pleadings or argument disputing that he was not employed for a full academic year in 2018-2019.

For the reasons stated herein, I **CONCLUDE** that respondent's motion for summary decision and petitioner's cross-motion for summary decision present no material issue of fact and this matter is ripe for summary decision under N.J.A.C. 1:1-12.5(a). I further **CONCLUDE** that petitioner was not employed for five consecutive academic years with respondent from school year 2018-2019 through 2022-2023, as required under N.J.A.C. 6A:11-6.2, and therefore did not acquire streamline tenure under said regulation. Consequently, I **CONCLUDE** that petitioner's Petition of Appeal is dismissed.

ORDER

IT IS **ORDERED** that respondent's motion for summary decision is **GRANTED** under N.J.A.C. 1:1-12.5(a), and that petitioner's Petition of Appeal is **DISMISSED**.

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.

September 11, 2024

DATE


JULIO C. MOREJON, ALJ

Date Received at Agency:

September 11, 2024

Date E-Mailed to Parties:

September 11, 2024

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APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

Letter brief

For Respondent:

Notice of Motion for Summary Decision, Letter Brief, and Reply Brief