

#128-10 (OAL Decision: not yet available online)

BELINDA MENDEZ-AZZOLLINI,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF	:	
THE TOWNSHIP OF IRVINGTON,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	

---

SYNOPSIS

Petitioner, a guidance counselor who was employed by the Board of Education for each year from 2004-05 through 2007-08, contended that she had acquired tenure and that her employment was unlawfully terminated on January 29, 2008. The Board countered that petitioner – owing to leaves of absence, including two granted pursuant to the federal Family and Medical Leave Act (FMLA) – had not provided the thirty-plus months of service required to obtain tenure under *N.J.S.A. 18A:28-5(c)*. The case was originally heard at the OAL in November 2008, and an Initial Decision was issued denying petitioner tenure based upon language contained in the FMLA. The Commissioner found that the FMLA was not dispositive of the petitioner’s claim, and the matter required review pursuant to the standards of applicable education case law, i.e.: *Kletzkin v. Bd. of Ed. of the Borough of Spotswood*; accordingly, the matter was remanded to the OAL for further fact-finding and argument.

On remand, the ALJ found that, based on the principles in *Kletzkin, supra*, and *Blinn v. Board of Trustees of the Public Employees’ Retirement System*, petitioner’s employment relationship with the Board continued during her leaves of absence and that these leaves of absence had no adverse impact on the Board’s ability to evaluate her. The ALJ found that petitioner met the requisite number of months for tenure and is entitled to back pay, less mitigation, from the date of her removal, together with all of the benefits of her tenured position.

The Commissioner concurred with the analysis and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter.

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.

April 23, 2010

OAL DKT. NO. 9947-09  
(EDU 5801-08 ON REMAND)  
AGENCY DKT. NO. 112-4/08

BELINDA MENDEZ-AZZOLLINI, :  
 :  
 PETITIONER, :  
 : COMMISSIONER OF EDUCATION  
 V. :  
 : DECISION ON REMAND  
 BOARD OF EDUCATION OF :  
 THE TOWNSHIP OF IRVINGTON, :  
 ESSEX COUNTY, :  
 :  
 RESPONDENT. :

---

The record of this matter and the Initial Decision on Remand issued by the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review, the Commissioner fully concurs with the analysis and conclusions of the Administrative Law Judge, as thoroughly and clearly set forth in the Initial Decision.

Accordingly, the Initial Decision of the OAL – finding that petitioner has acquired tenure and is entitled to the relief sought, including back pay, less mitigation, from the date of her removal, together with all of the benefits of her tenured position – is adopted as the final decision in this matter.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: April 23, 2010

Date of Mailing: April 23, 2010

---

\* Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.