

#430-12 (OAL Decision: Not yet available online)

STEPHANIE PLATIA, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE CITY : DECISION  
OF HAMILTON, MERCER COUNTY, :  
RESPONDENT. :  
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SYNOPSIS

Petitioner appealed the respondent Board’s failure to renew her teaching contract, alleging that she had acquired tenure as a special education teacher in respondent’s school district. Petitioner was originally hired as a Teacher of Special Education by the Board in January 2008, and was rehired under the same title for the 2008-2009 and 2009-2010 school years; she was then re-employed under contract for the 2010-2011 school year as a long-term substitute teacher of special education, replacing an employee who was on a leave of absence. The Board contended that the petitioner’s one-year service as a long-term substitute negated her ability to accrue tenure during the 2010-2011 school year. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there were no material facts in dispute, and the matter was ripe for summary decision; the question in this matter is whether, during the 2010-2011 school year, the petitioner filled a permanently vacant position or one that was temporarily vacated by a teacher who intended to return; it is well-settled in New Jersey that a clear legal distinction exists between an absence and a vacancy; the teacher that petitioner replaced during 2010-2011 was not fired, terminated, and did not resign, but filled a teaching position for a year in the district that was paid with a federal grant; petitioner was employed for that same year under a contract that advised that no tenure credit would accrue to her during the year; the facts in this case fit squarely within the principles of tenure law that create a distinction between a leave of absence and a vacancy; and petitioner failed to provide persuasive credible evidence to establish that a vacancy had occurred in the position she filled for the 2010-2011 school year. The ALJ concluded that petitioner was not entitled to tenure because she filled a leave of absence rather than a permanent vacancy; further, the respondent Board did not violate the petitioner’s tenure rights when it failed to renew her teaching contract. Accordingly, the ALJ granted respondent’s cross motion for summary decision, and dismissed the petition.

Upon a thorough and independent review of the record, the Commissioner concurred that summary decision is appropriately granted to the Board. Accordingly, the Initial Decision of the OAL was adopted as the final decision and the petition 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.

November 2, 2012

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Stephanie Platia and the Board of Education’s (Board) reply thereto.

The petitioner’s exceptions substantially reiterate the substance of her submissions at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously found that the petition should be dismissed. The petitioner maintains that the ALJ wrongfully determined that she did not acquire tenure despite the fact that she was continuously employed by the Board as a special education teacher from January 2008 until June 30, 2011.

In her exceptions, the petitioner contends that the ALJ improperly found that the petitioner was a substitute for Michele Snyder during the 2010-2011 school year, arguing that the factual finding is not supported by the record. Further, the petitioner asserts that she was not filling a position – as a long-term substitute – to which the absent teacher intended to return because there was no evidence to suggest that the Board contemplated Ms. Snyder’s return as a special education teacher for the 2011-2012 school year. Finally, the petitioner stresses that the

language in her substitute contract for the 2010-2011 school year stating that “no tenure credit would issue to Platia during that year” is immaterial because tenure is statutory and not contractual.

In reply, the Board urges the adoption of the Initial Decision, asserting that the ALJ properly determined that the petition should be dismissed. The Board maintains that the petitioner did not acquire tenure because during the 2010-2011 school year she was employed as a long-term substitute for Ms. Snyder who was on a leave of absence; and as a result the petitioner did not obtain tenure credit for the 2010-2011 school year. The Board stresses the fact that Ms. Snyder’s temporary assignment as an intervention teacher paid through federal grant sources resulted in a leave of absence, and she fully intended to return to her tenured position. Finally, the Board argues that the petitioner’s substitute contract is material because it clearly indicates that the petitioner was filling a position that was temporarily unfilled due to another staff member being on leave, and that she would not accrue tenure rights during the 2010-2011 school year.

Upon a comprehensive review of the record in this matter, the Commissioner is in accord with the ALJ’s determination – for the reasons stated in the Initial Decision – that the petitioner has not acquired tenure with the Board. The crux of the dispute in this matter is whether the petitioner was entitled to tenure credit during the 2010-2011 school year.<sup>1</sup> The Commissioner finds petitioner’s exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by her in concluding that the petitioner did not accrue tenure credit during the 2010-2011 school year because she filled a position resulting from a leave of absence, not a permanent vacancy. Moreover, under

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<sup>1</sup> It is undisputed that without tenure credit for the 2010-2011 school year, the petitioner would not have completed the requisite years of service with the Board to obtain tenure under *N.J.S.A.* 18A:28-5.

*N.J.S.A.* 18A:16-1.1, a board of education is fully authorized to designate a person to act in the place of an employee during a leave of absence, but “no person so acting shall acquire tenure in the office or employment in which he acts ...”. Therefore, because the petitioner did not obtain tenure credit during the 2010-2011 school year, she did not complete the requisite years of credit to acquire tenure with the Board pursuant to *N.J.S.A.* 18A:28-5. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

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

COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2012

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1).