

#324-16 (OAL Decision: Not yet available online)

FREDERICK CHATMAN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – employed by the respondent school district as a vice principal – asserted that his tenure, seniority, and/or preferred eligibility rights were violated when he was not appointed to the position of principal at the Harriet Tubman School after serving as acting principal in an un-appointed capacity from December 2011 to August 2012 and, subsequently served as interim principal from August 2012 to June 2014. The respondent district disputed petitioner’s claim to the tenured position of principal.

The ALJ found, *inter alia*, that: the Tenure Act, *N.J.S.A.* 18A:28-1 to -18, defines the conditions under which teaching staff members are entitled to tenure, and the precise conditions enunciated in the applicable statute must be met; the triggering date for purposes of tenure acquisition is the date the employee begins to perform a service; in the instant matter, that triggering date is November 30, 2011 – the date when petitioner began his position as acting principal, performing the duties of principal in an un-appointed capacity; an employee serving in an interim capacity may tack on the period of time spent as “interim” to the period of time spent in an appointed capacity for purposes of tenure acquisition; here, the petitioner served as an acting principal once the principal position was vacated, effective December 1, 2011; for all intents and purposes, petitioner was continually referred to as “principal” in all communications from school officials; the evidence shows that petitioner functioned as principal for the remainder of the 2011-2012 school year and was then appointed interim principal; and these combined periods of time should be included in determining tenure and seniority rights. Accordingly, the ALJ concluded that *N.J.S.A.* 18A:28-6 applies in this instance since petitioner was promoted to the position of principal from another tenure-eligible position in the district, thereby satisfying the two-year service requirement for the acquisition of tenure as principal. The ALJ ordered that the relief sought by petitioner be granted.

Upon review, the Commissioner concurred with the respondent district that TEACHNJ and its attendant changes in evaluation requirements was adopted in August 2012, before petitioner was officially promoted from vice principal to interim principal, and therefore *N.J.S.A.* 18A:28-6(b) governs this matter rather than *N.J.S.A.* 18A:28-6(a); under Subsection B, petitioner herein does not satisfy the requirements to attain tenure because he received ratings of “partially effective” and “ineffective” for the 2012-2014 school years, when he was required to obtain evaluations of “effective” or “highly effective” in two annual summative evaluations in the first three years of employment. The Commissioner determined that petitioner is ineligible for tenure under the principal title; accordingly, the Initial Decision was rejected 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.

OAL DKT. NO. EDU 15123-14
AGENCY DKT. NO. 283-9/14

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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 Board and the petitioner’s reply thereto.

In its exceptions, the Board argues that the Administrative Law Judge (ALJ) erred in finding that the “triggering date for tenure purposes is November 30, 2011.” (Board’s exceptions at 8) The Board contends that the ALJ ignored that TEACHNJ was adopted on August 6, 2012, which in this context means that *N.J.S.A. 18A:28-6(b)* went into effect on that same day. As such, the Board explains that this matter is governed by *N.J.S.A. 18A:28-6(b)* rather than *N.J.S.A. 18A:28-6(a)*. Under Subsection B, the Board maintains that petitioner does not satisfy the requirements to attain tenure because he received low ratings after being appointed as interim principal – partially effective and ineffective for the 2012-13 school year, and ineffective for the 2013-14 school year.

The Board further contends that the ALJ erred in finding that petitioner achieved tenure in the position of principal. The Board denies that petitioner was ever promoted to the

position of principal from vice principal during the 2011-12 school year. Instead, petitioner first was appointed as interim principal for the 2012-13 school year. Accordingly, he has not served in the position of principal for the requisite amount of time to accrue tenure, pursuant to *N.J.S.A. 18A:28-6(b)*. Moreover, the Board argues that petitioner also could not have earned tenure because he received annual evaluations of partially effective and ineffective – short of the effective or highly effective rating necessary to obtain tenure.

In reply, petitioner argues that the ALJ's decision should be adopted because petitioner worked as principal for more than the two years required by *N.J.S.A. 18A:28-6(a)*, from December 2011 to June 30, 2014. Petitioner contends that the ALJ properly found that petitioner assumed the role of principal in an un-appointed capacity during a vacancy in the position from December 2011 through June 30, 2012, after he was verbally told by an Assistant Superintendent that he was the acting principal. Thereafter, he was officially appointed as interim principal (and later principal) for the 2012-13 and 2013-14 school years.

Petitioner contends that it is well-settled that a principal is able to earn tenure credit when serving as an acting or interim principal during a vacancy, but not during periods serving in that capacity during the principal's temporary absence. Petitioner argues that the ALJ properly found that he assumed the role of principal during the actual vacancy that was created when the prior principal retired. Petitioner maintains that as he was the only administrator in the building, he adopted the duties of the principal position and, therefore, the time from December 2011 until he was appointed as interim principal in August 2012 should count toward earning tenure. As such, the ALJ appropriately found that – counting the time served in an un-appointed capacity, plus the two school years when he was appointed as interim principal – petitioner served the necessary amount of time to earn tenure as a principal.

Upon review, the Commissioner agrees with the District that *N.J.S.A. 18A:28-6(b)* – rather than *N.J.S.A. 18A:28-6(a)* – applies to this case. TEACHNJ went into effect on August 6, 2012. *See Teacher Effectiveness and Accountability for the Children of New Jersey Act*, P.L. 2012, Ch. 26, *N.J.S.A. 18A:6-117*, et seq. *N.J.S.A. 18A:28-6(b)* indicates that “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 on or after the effective date of [TEACHNJ], shall not obtain tenure in the new position until after” certain conditions are met. The Department has explained this to mean that the date upon which a teaching staff member is approved by the board is the relevant date for determining whether new tenure rules established pursuant to TEACHNJ, or previous tenure rules, apply. *See Guide to TEACHNJ Act*, at 4, <http://www.state.nj.us/education/AchieveNJ/intro/TeachNJGuide.pdf> (“Any teaching staff member hired (board approved) after the August 6, 2012 signing of TEACHNJ is eligible to earn tenure after four years. There is no longer board discretion for earlier tenure. Teaching staff members hired prior to August 6, 2012 are grandfathered into the previous three-year tenure eligibility process.”). In the instant matter, petitioner was officially promoted from vice principal to interim principal on August 22, 2012, which is after August 6, 2012. As such, *N.J.S.A. 18A:28-6(b)* applies because petitioner was promoted subsequent to the effective date of TEACHNJ.

N.J.S.A. 18A:28-6(b) provides that a teaching staff member who is promoted after the effective date of TEACHNJ shall not obtain tenure until after:

- (1) the expiration of a period of employment of two consecutive calendar years in the new position; or
- (2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

(3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

In order to receive tenure pursuant to this subsection, a teacher, principal, assistant principal, and vice-principal shall be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position.

For purposes of this subsection, “effective” or “highly effective” means the employee has received an annual summative evaluation rating of “effective” or “highly effective” based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

With respect to this matter, petitioner is unable to earn tenure in the position of principal because he received annual ratings of “partially effective” and “ineffective” for the 2012-13 and 2013-14 school years. Petitioner was required to obtain evaluations of “effective” or “highly effective” in two annual summative evaluations in the first three years of employment, and his evaluation scores fell short of those required by *N.J.S.A. 18A:28-6(b)*. The Commissioner need not reach the issue of whether petitioner assumed the duties and responsibilities of the principal and served as acting principal in an un-appointed capacity because – even if petitioner could tack on the time served as acting principal in an un-appointed

capacity toward the time required to earn tenure – he is ineligible for tenure due to his evaluations falling below the required ratings.

Accordingly, the Initial Decision of the rejected and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 12, 2016

Date of Mailing: September 12, 2016

* 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*).