

261-18

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

SYNOPSIS

Petitioner appealed the decision of the School District of the City of Newark to terminate her as a principal. Petitioner, who holds a New Jersey Principal Certificate, began employment with the respondent school district as a Vice Principal during the 2013-2014 school year, after which she was assigned as a Principal until her termination in October 2017. Petitioner alleged that she had acquired tenure in the District. The respondent filed a motion for summary decision stating that the petitioner never satisfied the mandatory requirements necessary to achieve tenure as set forth in *N.J.S.A.* 18A:28-5.

The ALJ found, *inter alia*, that: there are no material facts in dispute here, and the matter is ripe for summary decision; in particular, there is no dispute as to the issue at the core of this case, i.e., whether petitioner met the requirements of the statute making her eligible to obtain tenure; petitioner did not receive the required summative evaluation ratings necessary to attain tenure; the tenure statutes are meant to protect competent and qualified employees who have completed a probationary period from removal for unfounded or political reasons; to acquire the security of tenure, the precise conditions enunciated in the applicable statute must be met; to achieve tenure pursuant to *N.J.S.A.* 18A:28-5(b)(3), in addition to the length of employment requirement, a principal or vice principal must also receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment, with the first effective rating being received on or after the completion of the second year of employment; petitioner herein never obtained a rating of effective or highly effective during the period she was employed by the District. The ALJ rejected petitioner's arguments regarding tenure by equity or equitable estoppel, and concluded that the petitioner failed to receive the required ratings and therefore failed to meet the requirements for tenure; accordingly, summary decision was granted to the respondent District.

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

August 31, 2018

OAL DKT. NO. EDU 01771-18
AGENCY DKT. NO. 2-1/18

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

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge that the petitioner did not receive the required summative evaluation ratings set forth in *N.J.S.A.* 18A:28-5(b), and therefore did not meet the requirements to earn tenure.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein, and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 31, 2018

Date of Mailing: September 4, 2018

* 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 01771-18

AGENCY DKT. NO. 2-1/18

LISA MCDONALD,

Petitioner,

v.

STATE-OPERATED SCHOOL DISTRICT

OF THE CITY OF NEWARK, ESSEX

COUNTY,

Respondent.

Dennis McKeever, Esq., for petitioner (Sciarrillo, Cornell, Merlino, McKeever & Osborne, attorneys)

Arsen Zartarian, Esq., for respondent

Record Closed: June 18, 2018

Decided: July 18, 2018

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

Petitioner, Lisa McDonald (McDonald), appeals the decision of respondent, School District of the City of Newark (District/Newark), to terminate her as a principal

and the respondent filed a motion for summary decision stating that the petitioner did not satisfy the mandatory requirements necessary to achieve tenure as set forth in N.J.S.A. 18A:28-5.

PROCEDURAL HISTORY

The Department of Education, Bureau of Controversies and Disputes transmitted the matter to the Office of Administrative Law (OAL), where it was filed on February 1, 2018, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A prehearing telephone conference was held on March 9, 2018, wherein the parties agreed that this matter should be addressed by way of dispositive motions. A motion for summary decision with attachments was filed by the respondent on May 11, 2018. The petitioner filed an opposition to the motion on June 8, 2018, and the respondent filed a reply brief to the opposition on June 18, 2018.

FINDINGS OF FACT

Based on the submissions of the parties, I **FIND** the following to be the **FACTS** of this case:

1. Petitioner, Lisa McDonald, was first hired by the respondent as a Vice Principal on August 5, 2013.
2. McDonald currently holds and held, throughout all relevant periods in this matter, a Principal Certificate.
3. During the 2013-2014 school year, McDonald was assigned to Barringer High School.
4. McDonald completed the school year as a Vice Principal on June 26, 2014.
5. In preparation for McDonald's first annual summative evaluation, she was asked to complete an Annual Self-Reflection Form based on her own

evaluation of her performance for the 2013-2014 school year. McDonald rated herself as “Effective.”

6. McDonald received a Mid-year evaluation as a Vice Principal on March 10, 2014, and received an overall “Partially Effective” rating.
7. McDonald reviewed her Mid-year evaluation and found that many of the comments made by her supervisor, Wayne Dennis, “did not apply to her.”
8. As a result of the above, McDonald requested that her annual summative report be reviewed.
9. McDonald’s 2013-2014 annual summative evaluation report received handwritten modifications, not made by McDonald.
10. As a result of these handwritten modifications, McDonald’s annual summative rating was re-scored and resulted in an “Effective” score.
11. McDonald received an Annual Evaluation on June 12, 2014, where she received an overall “Partially Effective” rating.
12. Beginning on August 25, 2014, McDonald served as the Principal of Weequahic High School for the 2014-2015 school year and remained in that position for the 2015-2016 and 2016-2017 school years.
13. In December 2014, McDonald met with her new supervisor, Gary Beidleman, in order to create McDonald’s professional goals for the 2014-2015 school year, incorporated in her Individual Professional Development Plan (IPDP) for that year.
14. On April 7, 2015, McDonald was formally observed by her supervisor so that her performance was reviewed and recorded in a Principal Observation Form where she earned a “Partially Effective” rating.
15. McDonald discussed her performance during the 2014-2015 school year with her supervisor, Brad Haggerty, on two occasions.

16. Both conversations with Haggerty were positive and led McDonald to believe that she would have received an Effective or Highly Effective score.
17. McDonald never received a copy of her annual summative evaluation report nor did she see any documentation with regard to her annual summative evaluation report or rating for the 2014-2015 school year.
18. Respondent provided a "Principal Observation Summary Form," which stated that McDonald was observed by Haggerty on July 4, 2015, and the observation reproduced the comments set forth in the 2014-2015 School Visit Feedback Form given to McDonald in April 2015.
19. In November 2015, McDonald was placed on a Corrective Action Plan (CAP).
20. During the 2016-2017 school year, McDonald continued to work at Weequahic High School and in the beginning of the 2016-2017 school year, McDonald was asked to create a self-reflection of her performance during the 2015-2016 school year.
21. BloomBoard provided a blank IPDP for McDonald for the 2016-2017 school year.
22. McDonald never received a copy of her annual summative evaluation report nor did she see any documentation representing her annual summative evaluation report or rating for the 2016-2017 school year.
23. In the 2017-2018 school year, McDonald worked as the Principal at Weequahic High School.
24. McDonald was terminated from employment on October 6, 2017, having received written notice from the respondent.

LEGAL ANALYSIS AND DISCUSSION

Summary Decision

Summary decision by an Administrative Law Judge is permissible where there is no genuine issue of material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). Summary decision proceedings are subject to the same standard that applies to summary judgment matters in the Superior Court. Contini v. Bd. of Ed. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996). Under this standard, the judge must determine whether the “materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Id. at 122 (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995)). A motion for summary judgment will be granted where the pleadings and certifications do not show the existence of a genuine issue of material fact which would require disposition by a plenary trial. Ziemba v. Riverview Med. Ctr., 275 N.J. Super. 293, 298 (App. Div. 1994).

Petitioner raises factual issues she believes bar a decision by a motion for summary decision. McDonald advocates that there is a dispute as to whether the District followed the statutorily mandated evaluation procedures and a dispute as to the content of the annual summative evaluation report and annual summative ratings earned by McDonald during her employment. These facts, however even if disputed, are not material to the issue as to the core of this case, as discussed herein below.

Petitioner also raises an allegation of a factual dispute as to the annual summative rating earned by McDonald in the 2016-2017 school year. This factual issue also does not bar a disposition on summary decision motion as it does not show that the petitioner is entitled to a granting of tenure in this case.

In the respondent’s reply submission, it states that the Board’s previous concessions negates any attempt to raise the issue that there are material facts in dispute. There appears to be no dispute as to the issue at the core of this case, i.e.,

whether McDonald met the requirements of the statute making her eligible to obtain tenure. There appears no dispute that McDonald did not receive the necessary amount of ratings necessary to obtain tenure.

Respondent points to three areas that the petitioner alleges are material facts in dispute and thus makes the granting of summary decision improper. Petitioner raises these three issues: 1) whether the Board followed statutorily mandated evaluation procedures; 2) a dispute as to the “content” of one of the petitioner’s evaluations; and 3) an alleged dispute as to whether the Board conducted an annual summative evaluation in the school year 2016-2017. Respondent argues that these three issues are not in dispute, and do not change the result that McDonald did not meet the underlying requirements of the tenure acquisition statute.

In the present case, the parties each filed their own proposed Statement of Facts. Based on these facts, the material facts and legal issues in this case are not in dispute, as the respondent conceded the factual issues raised by the petitioner. The issues raised are not material to deciding the ultimate legal issues in this case.

Accordingly, I **CONCLUDE** that it is appropriate to decide this matter by way of summary decision.

Obtaining Tenure

Tenure statutes are “designed to aid in the establishment of a competent and efficient school system by affording to [covered employees] a measure of security in the ranks they hold after years of service.” Viemeister v. Bd. of Educ. of Prospect Park, 5 N.J. Super. 215, 218 (App. Div. 1949). In general, they are meant to protect competent and qualified employees who have completed a probationary period from removal for “unfounded, flimsy, or political reasons.” Zimmerman v. Bd. of Educ. of Newark, 38 N.J. 65, 71 (1962), cert. denied, 371 U.S. 956 (1963).

To acquire the security of tenure, the precise conditions enunciated in the applicable statute must be met. See Picogna v. Bd. of Educ. of Cherry Hill, 143 N.J.

391, 400 (1996); Kletzkin v. Bd. of Educ. of Spotswood, 136 N.J. 275, 278 (1994); Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63, 72 (1982); Zimmerman, 38 N.J. at 72. Tenure “arises only by passage of the time fixed by the statute” Canfield v. Bd. of Educ. of Pine Hill, 97 N.J. Super. 483, 490 (App. Div. 1967) (Gualkin, J., dissenting), rev'd on dissent, 51 N.J. 400 (1968).

Pursuant to N.J.S.A. 18A:28-5(b), the necessary criteria needed for acquisition of tenure for employees hired after 2012 is as follows:

The services of all teaching staff members employed . . . in the position of teacher, principal, other than administrative principal, assistant principal, vice principal . . . serving in any school district or under any board of education, excepting those who are not holders of proper certificates in full force and effect . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause . . . after employment in such district or by such board for:

- (1) Four consecutive calendar years; or
- (2) Four consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (3) The equivalent of more than four academic years within a period of any five consecutive academic years.

In order to achieve tenure pursuant to this subsection, a teacher shall also complete a district mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial year of employment in which the teacher completes the district mentorship program. In order to achieve tenure pursuant to this subsection, a principal, assistant principal, and vice principal shall also receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

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.

In this case, in order for McDonald to obtain tenure, she is required to satisfy all of the mandatory requirements set forth in the statute herein above. Especially critical in this case is the fact that McDonald is required to obtain a rating of “Highly Effective” or “Effective.” I hereby **FIND** that McDonald never obtained a rating of “Highly Effective” or “Effective” and thus cannot be found to have met the requirements of the applicable statute. It is apparent, as argued by the respondent, that McDonald never received an evaluation of “Effective” or “Highly Effective” during her employment history. In fact, McDonald’s ratings of “Partially Effective” is a bar to her obtaining tenure pursuant to the statute. The clear fact herein supports the fact that McDonald did not receive the necessary and required minimum two (2) annual summative evaluation ratings of at least either “Effective” or “Highly Effective” in the period that she was employed by the Board.

Tenure by Equity or Equitable Estoppel

Petitioner has also argued that it would be unfair to deny McDonald tenure because her failure to satisfy the statutory requirements for tenure under the law was not under her exclusive control. McDonald’s argument states that the Board’s failure to evaluate her should not be held against her as a matter of equity.

Respondent, in its reply submission, argues that such theories of equity have been previously rejected by the courts. Respondent further states that it is well-established that “matters of public interest and legislative will . . . should not be easily compromised by freely applying the doctrine of estoppel to irregular municipal conduct.” County of Morris v. Fauver, 153 N.J. 80, 104 (1998). The New Jersey Supreme Court has emphasized that equitable estoppel may not be invoked if it will “interfere with essential governmental functions.” O’Malley v. Dep’t of Energy, 109 N.J. 309, 316.

The New Jersey Supreme Court has acknowledged the concern of applying this principle to a board of education in a tenure acquisition and rejected it in the case, Bridgewater-Raritan Educ. Ass'n v. Bd. of Educ. of Bridgewater-Raritan Sch. Dist., 221 N.J. 349 (2015). In this case, three non-tenured teachers appealed their non-renewals claiming, among other things, that they detrimentally relied upon a statement made by the superintendent that a portion of their service time would count toward tenure accrual when, under the law, the time would not. The Supreme Court rejected the argument for the reasons cited by the New Jersey Appellate Division:

Again, the nature of tenure weighs heavily in our decision to require the Board to grant tenure through equitable estoppel forces it to grant tenure protection to a teacher whom it chose not to hire after a probationary period . . . moreover, it could compel the Board to have more tenured teachers than positions, and to pay two sets of salaries and benefits for the same tenured position. Because granting tenure by equitable estoppel would interfere with the essential government function governed by the tenure statutes, we decline to do so. See Casamasino v. City of Jersey City, 158 N.J. 333, 354 (1999), (rejecting “plaintiff’s contention that he is entitled to tenure as tax assessor based on the doctrine of estoppel”); Cutler v. Borough of Westwood, 295 N.J. Super. 344, 352 (App. Div. 1996) (concluding that estoppel does not “justify a grant of tenure”), certif. denied, 149 N.J. 143 (1997).

[Bridgewater-Raritan Educ. Ass'n, 2014 WL 66873 (Jan. 9, 2014), remanded on other grounds, 221 N.J. 349 (2015).]

Based on the above case, it is clear that the New Jersey Supreme Court rejected the argument that tenure may be obtained by equity or equitable estoppel. The Bridgewater-Raritan Court confirmed that the doctrine of equitable estoppel is rarely invoked against the government and requires a “knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment.” Bridgewater-Raritan Educ. Ass'n, 221 N.J. at 364. The Supreme Court went on to find that any misrepresentations cannot bind the Board or serve to supersede the statute’s requirements. Id. at 364-65. The statute requirements are clear and there is no doubt that the petitioner in this case has failed to

meet those requirements. The argument of the petitioner based on equity fails to support an award of tenure.

In addition, there is no support for the petitioner's argument to introduce non-binding arbitration decisions with regard to tenure dismissal and thus the petitioner should acquire de facto tenure. The citing of these decisions has no relevance to the issues presented in this case. The fact is that the statutory framework with regard to obtaining tenure and tenure removal are completely different and thus any attempt by the petitioner to compare the two is misplaced and without any merit. I therefore reject such analysis as not being relevant to this case.

Based upon the above analysis, I **CONCLUDE** that the petitioner failed to receive the required ratings and thus failed to meet the requirements of tenure.

ORDER

Accordingly, I **ORDER** that respondent's motion for summary decision is hereby **GRANTED**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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, P.O. 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.

July 18, 2018

DATE


MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency:

Date Mailed to Parties:

jb