

## New Jersey Commissioner of Education

### Decision

Donnie Harrell,

Petitioner,

v.

Board of Education of the City of Plainfield,  
Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.<sup>1</sup> The parties did not file exceptions.

Petitioner challenges his termination from the Plainfield Board of Education (Board), alleging he had obtained tenure as a teacher in accordance with *N.J.S.A. 18A:28-5(b)*. Petitioner was first employed by the Board as a music teacher on April 16, 2014. He was reassigned to the District's Central Office on March 24, 2016, pending an investigation into allegations of sexual misconduct by petitioner toward a student. Petitioner returned to teaching at the start of the 2017-18 school year, but was again reassigned to the Central Office on March 29, 2018 following a second complaint alleging sexual misconduct by petitioner toward another student. Petitioner remained at the Central Office until his termination on January 11, 2019.

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<sup>1</sup> The Commissioner was not provided with a transcript of the July 11, 2022 hearing at the OAL.

Upon review, the Commissioner agrees with the Administrative Law Judge that petitioner had not acquired tenure prior to his termination. According to *N.J.S.A. 18A:28-5(b)*, teaching staff members employed in the position of teacher, provided they hold a valid certificate, are under tenure after employment by a 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. . . .

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.

The Commissioner is in accord with the ALJ’s determination that petitioner had not obtained tenure because he had not received the annual summative evaluations as required by the statute. The Board was unable to evaluate petitioner because he was not teaching from March 24, 2016 through completion of that school year, for the entire 2016-17 school year, and from March 28, 2018 until his termination on January 11, 2019.<sup>2</sup>

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<sup>2</sup> To the extent that petitioner also argues that the Board failed to follow procedures for termination of non-tenured employees, the Commissioner agrees with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner, or contrary to law, in terminating petitioner.

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>3</sup>

  
ANGELINA ALLEN McMILLAN, J.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2022

Date of Mailing: November 23, 2022

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<sup>3</sup> 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**

OAL DKT. NO. EDU 05348-19

AGENCY DKT. NO. 30-2/19

**DONNIE HARRELL,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY  
OF PLAINFIELD, UNION COUNTY,**

Respondent.

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**Charles J. Uliano**, Esq., for petitioner (Chamlin, Uliano & Walsh, attorneys)

**Michelle M. Schott**, Esq., for respondent (Flanagan, Barone & O'Brien, attorneys)

Record Closed: September 6, 2022

Decided: October 6, 2022

BEFORE **SUSANA E. GUERRERO**, ALJ:

**STATEMENT OF THE CASE**

Petitioner Donnie Harrell (Petitioner or Harrell), a teacher employed by the respondent, Board of Education of the City of Plainfield, Union County (the Board or respondent), asserts that the Board violated his tenure rights by terminating his employment. The Board denies that Harrell had tenure when he was terminated. The

predominant issue to be addressed in this matter is whether Harrell achieved tenure prior to being terminated by the Board in January 2019.

### **PROCEDURAL HISTORY**

On or around February 7, 2019, Harrell filed a Petition with the New Jersey Department of Education (DOE) alleging that respondent Board terminated his position with the Board in violation of his tenure rights. The Petition requests that the termination be vacated, and that he be reinstated to the payroll and benefits plan and reimbursed for all benefits withheld since the day of his termination. Respondent filed an Answer to the Petition on or around April 3, 2019, denying petitioner's claims and asserting that Harrell did not serve in the position of teacher for the requisite time to obtain tenure, and that he never achieved tenure since his performance could not be evaluated while he was suspended. The Department of Education, Bureau of Controversies and Disputes, transmitted petitioner's claim to the Office of Administrative Law (OAL), where it was filed on April 18, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A hearing was initially scheduled for April 24 and April 27, 2020, but adjourned at the request of the parties and rescheduled to October 8, 2021. Due to a scheduling conflict, the hearing was then adjourned to November 10, 2021. That hearing date was adjourned again, at the request of the parties, to April 11, 13 and 14, 2022 but rescheduled as counsel needed more time to serve witnesses. A hearing took place at the Office of Administrative Law on July 11, 2022, and the parties agreed to file post-hearing summations. The record closed on September 6, 2022, upon receipt of all post-hearing summations.

### **FACTUAL DISCUSSION**

The parties submitted a Joint Stipulation of Facts and Joint Exhibits. Harrell testified on his own behalf and Carletta Jones (Jones), the District's Director of Human Resources, testified on behalf of the Board. Based on the documentary and testimonial evidence presented, as well as my assessment of the credibility of the witnesses, I **FIND** the following **FACTS**:

Respondent is a public school in Union County, New Jersey. Prior to joining the Plainfield School District, petitioner taught in other school districts for at least ten years.

Harrell was hired by the Board as a substitute teacher and as a teacher's assistant, and worked part-time in those positions from November 20, 2013 until April 16, 2014. On April 16, 2014 he began to work full-time and was paid his full salary as a full-time music teacher at the Clinton Elementary School. Harrell testified that he received evaluations that academic year, but none were presented at the hearing. He continued to work for Plainfield during the 2015–2016 school year, but was removed from the classroom in March 2016.

On March 23, 2016, student A.R. complained to District personnel of sexual misconduct towards her by petitioner. On March 24, 2016, petitioner was assigned to the District's Central Office pending an investigation of the allegations against him by A.R. When Harrell was assigned to the Central Office, he continued to get paid but he did not teach students, and did not do any work for the District, with the exception of making photocopies once or twice. He remained in Central Office through the end of the 2016–2017 school year.

On June 1, 2017, the Department of Children and Families' Institutional Abuse Investigation Unit (IAIU) found “. . . the investigation could not conclusively determine” if an incident sexual in nature occurred between petitioner and A.R. The Union County Prosecutor's Office investigated the allegations and issued a report on July 26, 2017 in which they determined “. . . there was insufficient evidence to prosecute at this time.”

In September 2017, Harrell was assigned as a full-time music teacher to the District's Barlow Elementary School for the 2017–2018 school year. On March 28, 2018, that same school year, a second complaint against petitioner was reported, alleging sexual misconduct by Harrell towards another student, N.G., which occurred in 2016. On March 29, 2018, Harrell was again assigned to Central Office pending an investigation of the new allegations against him. At this time, the District informed Harrell that he was immediately being placed on administrative leave, with pay, pending the outcome of the

investigation, and that in the meanwhile he was not to have any contact with any students. Carletta Jones testified credibly that the District had a legal obligation to continue to pay Harrell and maintain his benefits when he was placed on administrative leave—i.e., when he was suspended.

Petitioner provided a doctor's note dated May 18, 2017, requesting leave that was granted from May 18, 2017 to June 20, 2017. Also, a Statement of Reasons dated May 11, 2017 was provided to petitioner for non-renewal based upon "Economy and Efficiency."

An investigation by the Union County Prosecutor's Office followed the more recent allegations of sexual misconduct, and criminal charges were filed against Harrell on December 14, 2018 for sexual misconduct involving minors A.R. and N.G. A Grand Jury Hearing took place on June 12, 2019. On December 20, 2019, a superseding incident against petitioner added additional charges to the June 12, 2019 indictment that included Sexual Assault and Endangering – Sexual Conduct with child A.R. and N.G. The additional charges in the Superseding Indictment included two counts of official misconduct towards A.R. and N.G. This criminal matter was still pending at the time of this hearing.

Harrell did not teach during the time he was assigned to Central Office. Specifically, he was assigned to Central Office from March 24, 2016 until September 2017 (i.e., he did not teach the last week plus two days in March, April, May or June 2016 or the 2016–2017 school year, totaling one school year plus three months of not teaching); and again from March 28, 2018 through his termination on January 11, 2019 (totaling seven months of not teaching). Harrell continued to receive this salary through the date of his termination on January 11, 2019.

Petitioner taught at the District: from April 16 to June, 2014 (about three months); the entire 2014–2015 school year (totaling one school year); September to March 23, 2016 (totaling seven months); and September 2017 to March 27, 2018 (totaling seven months).

Harrell never submitted a request for a Donaldson hearing or Statement of Reason related to his termination on January 11, 2019.

While petitioner was employed by the District, it had in place a mentorship program for new, novice teachers' first year of teaching in the District. Harrell did not participate in a mentorship program in the District, and there is insufficient evidence that he was ever evaluated by the District.

Petitioner alleges that he acquired tenure on April 16, 2018, four years after being hired by the District on April 16, 2014, because he "worked continuously" and was paid for four years and a day.

### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

The purpose of teaching-staff tenure laws is "to aid in the establishment of a competent and efficient school system by affording teaching staff members 'a measure of security in the ranks they hold after years of service.'" Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 528–29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949)). In order to acquire tenure, a teaching staff member "must comply with the precise conditions articulated in the [tenure] statute." Zimmerman v. Bd. of Educ. of Newark, 38 N.J. 65, 72 (1962).

Acquisition and effect of tenure are statutorily defined by the Teacher Effectiveness and Accountability for the Children of New Jersey Act, or the TEACHNJ Act, N.J.S.A. 18A:28-5 (TEACHNJ). The purpose of TEACHNJ is to "raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions." N.J.S.A. 18A:6-118. Through TEACHNJ, in 2012, New Jersey not only increased the length of time required to obtain tenure from three to four years, it also requires school district to adopt and use an evaluation process to measure teacher effectiveness, and it requires the teacher to achieve a rating of "effective" or "highly effective" pursuant to the evaluation in order to accrue tenure.



Specifically, “teaching staff members”<sup>1</sup> employed on or after August 6, 2012, including those employed in the position of teacher, who hold appropriate certificates, “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.”

[N.J.S.A. 18A:28-5 (b).]

In order to achieve tenure, TEACHNJ also requires teaching staff members to:

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 . . . . “[E]ffective” or “highly effective” means the employee has received an annual summative evaluation rating of “effective” or “highly effective” based on the performance standards for this position established through the evaluation rubric adopted by the board of education and approved by the commissioner.<sup>2</sup>

[N.J.S.A. 18A:28-5(b).]

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<sup>1</sup> A “teaching staff member” is defined as: a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer. [N.J.S.A. 18A:6-119.]

<sup>2</sup> “Evaluation” is defined as “a process based on the individual’s job description, professional standards and Statewide evaluation criteria that incorporates analysis of multiple measures of student progress and multiple data sources. Such evaluation shall include formal observations, as well as post conferences, conducted and prepared by an individual employed in the district in a supervisory role . . . .” [N.J.S.A. 18A:6-119.]

A school district may terminate a teacher prior to the teacher obtaining tenure for service time except for arbitrary and capricious reasons; the district is not required to provide a reason for termination. See Donaldson v. Bd. Of Educ. of N. Wildwood, 65 N.J. 236, 240 (1974); Dore v. Bd. Of Educ. Of the Twp. of Bedminster, Somerset County, 185 N.J. Super. 447, 453 (App. Div. 1982).

Here, Harrell argues that he acquired tenure with the District because he completed four consecutive calendar years of employment, and received his full salary as a full-time teacher from April 16, 2014 through the date of his termination on January 11, 2019. He asserts that the Board had the responsibility of evaluating him, even though he was suspended from his classroom for several months during that time, and of having him complete a mentorship program, which was not done. Harrell argues that the Board had an affirmative duty under the statute to conduct evaluations and provide a mentorship program, and that they should not be permitted to deny him tenure as a result of the District's own failure.

The District maintains that while Harrell continued to receive a salary and benefits while assigned to the Central Office, he did not actually "hold" a position in the District and was not held to a "valid and effective standard" requiring certification as set forth in the definitions in N.J.S.A. 18A:1-1 for the time he spent in Central Office. Respondent also argues that Harrell did not have the required evaluations for tenure because they could not have been done while he was suspended, and not teaching in the Central Office. The District argues that the fact that evaluations were not done does not alter the statutory requirements for obtaining tenure, and references McDonald v. State-Operated Newark Public Schools, OAL Docket No. EDU 01771-18, Agency Docket No. 2-1/1/18, where the Commissioner of Education concurred with the ALJ that the Board's failure to evaluate McDonald did not prevent the Board's refusal of tenure based on equity principles. The District asserts that the time Harrell spent in Central Office, not teaching and not permitted to be near children, and could not have been evaluated, cannot be considered to secure tenure. Finally, the District asserts that since Harrell did not have tenure, the District appropriately complied with N.J.S.A. 18A:27-10 and N.J.S.A. 18A:4.1(b) when it terminated his employment, and that despite Harrell's assertion, there was no legal

requirement to either provide him with a statement of reason of hearing absent a request for same.

While Harrell was hired by the District as a teacher, and may have been an employee of the District for over four years, the passage of time alone does not guarantee tenure. To acquire tenure under TEACHNJ, the teaching staff member must also achieve a performance rating of “effective” or “highly effective” in two annual summative evaluation within the first three years of employment after completing a mentorship program during the initial year of employment. The evaluation process is based in part on the employee’s job description, measures of student progress, and it includes formal observations. The record is unclear why Harrell did not participate in a mentorship program when he was hired as a full-time teacher, but the District seems to imply that since he had many years of teaching experience in other public school districts before coming to Plainfield, they were not required to provide a mentorship program. While I cannot conclude that the District was not obligated to offer Harrell such a program because this was not his first year teaching, in order to achieve tenure, the clear language of TEACHNJ not only requires the teacher to complete a “district mentorship program,” it also requires that the teacher receive a rating of “effective” or “highly effective” in two annual summative evaluations.

In order for Harrell to have been evaluated as a music teacher pursuant to TEACHNJ and receive a summative evaluation rating of “effective” or “highly effective,” he had to have been teaching since evaluations must include, for example, formal observations and an analysis of student progress, which cannot be accomplished when the teacher is not teaching. The time Harrell spent in the Central Office, and not teaching, amounted to a significant portion of the time he spent in the District—i.e., about three months during the 2015–2016 school year; the entire 2016–2017 school year; three months during the 2017–2018 year; and from September 2018 until his termination in January 2019. During that time, the District could not have effectively evaluated him.

Even assuming *arguendo* that the District could have, and should have, evaluated Harrell during the 2014–2015 school year and the 2015–2016 school year before he was suspended in March 2016, the statutory requirements necessary to award tenure must

still be met and I am not persuaded by the petitioner's argument that the District's failure to evaluate bars its refusal to grant tenure. Harrell cites to no statute, regulation or caselaw to support his position. I, therefore, **CONCLUDE** that Harrell did not acquire tenure at the District because he did not receive the annual summative evaluation ratings of "effective" or "highly effective" required under TEACHNJ; and the District's failure to evaluate Harrell does not warrant the granting of tenure.

Harrell also appears to argue that he was entitled to a statement of reasons and a hearing when he was not renewed by the District. As a non-tenured employee, however, there is no such automatic right to a statement of reasons and hearing, and there is no evidence that Harrell ever requested a Donaldson hearing, or that he made a written request for a statement of reasons for the non-renewal. With respect to non-tenured employees, the District has no legal obligation to provide a statement of reasons absent a written request. See Hubbard v. Springfield Bd. of Educ., 80 Fed. Appx. 757, 761 (2003) and N.J.S.A. 18A:27-3.2. In fact, a district may terminate a teacher prior to the teacher obtaining tenure for service time except for arbitrary and capricious reasons; and the district is not required to provide a reason for termination. See Donaldson v. Bd. of Educ. of N. Wildwood, 65 N.J. 236, 240 (1974); Dore v. Bd. of Educ. of the Twp. of Bedminster, Somerset County, 185 N.J. Super. 447, 453 (App. Div. 1982). School boards have "virtually unlimited discretion in hiring or reviewing the contracts of non-tenured teachers." Dore at 453. Here, the evidence shows that the District complied with the requirements of N.J.S.A. 18A:27-10<sup>3</sup> when it provided Harrell notice of his termination. I **CONCLUDE** that Harrell was appropriately terminated by the District, and that no evidence was presented to suggest that the District's decision to terminate was arbitrary or capricious.

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<sup>3</sup> N.J.S.A. 18A:27-10 requires that: "On or before May 15 in each year, each non-tenured teaching staff member continuously employed . . . since the preceding September 30 shall receive either:  
a. A written offer of a contract for employment from the board of education for the next succeeding year . . . , or  
b. A written notice from the chief school administrator that such employment will not be offered."

**ORDER**

It is, therefore, **ORDERED** that the petitioner’s Due Process Petition be **DENIED** in its entirety for the reasons stated herein.

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, 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.

October 6, 2022  
DATE

  
**SUSANA E. GUERRERO, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

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**APPENDIX**

**Witnesses**

For Petitioner:

Donnie Harrell

For Respondent:

Carletta Jones

**Exhibits**

Joint:

- J-1 Petition
- J-2 Plainfield School District Online Application
- J-3 New Hire Enrollment Plan
- J-4 Plainfield Pay Records (December 13, 2018 to January 19, 2019)
- J-5 Union County Prosecutor's Office Investigation Report dated July 26, 2017
- J-6 Letter to petitioner re Assigned to Central Office dated March 23, 2016
- J-7 Letter to petitioner re Assigned to Central Office dated April 1, 2016
- J-8 Letter to petitioner re Assigned to Central Office dated May 5, 2016
- J-9 Prosecutor's Investigation Interview transcript cover pages of March 23, 2016 events: March 30, 2016 (A.R.), April 12, 2016 (G., Z. and P.), April 15, 2016 (E.L., D.R. and R.P.)
- J-10 Prosecutor's transcript of petitioner on February 1, 2017
- J-11 Institutional Abuse Investigative Unit Report dated June 1, 2017
- J-12 DeWitt D. Barlow Elementary School Staff Roster 2017–2018 school year
- J-13 Letter to petitioner re placed on administrative leave dated March 28, 2018
- J-14 Prosecutor's Investigation Report of second student re March 27, 2018 allegations referenced from Division of Child Protection and Permanency
- J-15 Not in evidence
- J-16 Doctor's note dated May 18, 2017

- J-17 Statement of Reasons for Non-Renewal for Economy and Efficiency 2017–2018 school year
- J-18 Prosecutor’s Investigation Interviews transcript and cover pages: May 15, 2018 (P.A. and N.G.), June 14, 2018 (V.C., S.G and N.G.) and November 25, 2019 (N.T.)
- J-19 Prosecutor’s Investigation Interview transcript of P.A.
- J-20 Letter to petitioner dated November 8, 2018 regarding recommendation for termination at the November 20, 2018 Board meeting
- J-21 Board Resolution dated November 20, 2018 terminating petitioner on January 11, 2019
- J-22 Criminal charges filed dated December 14, 2018
- J-23 Letter to District from State of New Jersey Criminal History Review Unit re petitioner date of arrest dated January 4, 2019
- J-24 District Response to State of New Jersey Criminal History Review Unit dated January 10, 2019
- J-25 Excerpt of Decision and Order dated November 24, 2020
- J-26 Superseding Indictment including additional counts to June 12, 2019 Indictment
- J-27 Prosecutor’s Investigation transcript of P.A. dated May 15, 2018
- J-28 Board meeting minutes dated April 15, 2014