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OAL Dkt. No. EDU 02462-21
Agency Dkt. No. 19-2/21

New Jersey Commissioner of Education
Final Decision

Lynda Alfano, Kimberly Dalton, Connie Luna,
Gerardo Molina-Matta, Kerry Raslowsky, and
Leslie Santa¹,

Petitioners,

v.

Board of Education of the City of Perth Amboy,
Middlesex County,

Respondent.

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

The threshold procedural issue in this case is whether the petition should be dismissed as untimely pursuant to the 90-day rule, *N.J.A.C. 6A:3-1.3(i)*; *see also Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 *N.J.* 572 (1993). Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the petition is untimely. As determined by the ALJ, petitioners filed this action on February 5, 2021—162 days after respondent voted to approve

¹ Santa withdrew her petition on July 23, 2021.

their transfers to new positions. Petitioners have not asserted that extraordinary circumstances warrant an extension of the 90-day limitation period, and none can be gleaned from the record.

Accordingly, the Initial Decision is adopted as the final decision in this matter, respondent's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 30, 2025
Date of Mailing: January 31, 2025

² 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

SUMMARY DECISION

OAL DKT. NO. EDU 02462-21

AGENCY DKT. NO. 19-2/21

**LYNDA ALFANO, KIMBERLY DALTON,
CONNIE LUNA, GERARDO MOLINA-MATTA,
KERRY RASLOWSKY AND LESLIE SANTA¹,**

Petitioners,

v.

**BOARD OF EDUCATION OF PERTH AMBOY,
MIDDLESEX COUNTY,**

Respondent.

Justin Schwam, Esq., for petitioners (Weissman & Mintz LLC, attorneys)

Isabel Machado, Esq., for respondent (The Machado Law Group, attorneys)

Record Closed: November 21, 2024

Decided: December 2, 2024

BEFORE **JUDITH LIEBERMAN**, ALJ:

¹ Santa withdrew her petition on July 23, 2021.

STATEMENT OF THE CASE

Petitioners contend respondent Board of Education of Perth Amboy (respondent or Board) improperly abolished their master teacher positions and assigned them to different teaching positions and subsequently appointed younger, less senior and less qualified teachers to master teacher positions. They contend respondent was motivated by age-based discriminatory animus, violated its statutory and regulatory obligations when it abolished the master teacher position and violated their seniority rights. They seek reinstatement to master teacher positions. Respondent filed a motion for summary decision in which it argues that the petition was not filed in a timely manner; it properly exercised its managerial authority to transfer personnel to positions within the scope of their certifications; petitioners do not have seniority rights and are not entitled to tenure protection with respect to the master teacher position; and the master teacher position was not abolished.

PROCEDURAL HISTORY

Petitioners filed their petition on February 5, 2021, and respondent filed its answer on February 25, 2021. The Department of Education (DOE) Office of Controversies and Disputes transmitted the matter to the Office of Administrative Law (OAL), where it was filed on February 26, 2021, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was assigned to me on April 7, 2021, and the first prehearing status conference was conducted on June 2, 2021. During the status conference, the parties advised that discovery was in progress, and respondent sought leave to file a motion to dismiss the petition. Respondent's motion was received on July 19, 2021, and petitioners' opposition brief was received on August 11, 2021, after which the record for the motion closed. On September 23, 2021, the motion was granted with respect to petitioners' allegations of violations of the collective bargaining agreement. The motion was denied with respect to petitioners' remaining claims. On June 28, 2022, an order was issued granting in part petitioners' motion to compel supplemental answers to interrogatories and produce documents.

After several status conferences were conducted, respondent sought leave to file a motion for summary decision, which was received on March 20, 2023. Petitioners sought and received multiple extensions of the deadline for the filing of their opposition brief and also requested an additional extension because the parties were actively engaged in settlement negotiations. The parties represented that good faith negotiations continued through August 2024. However, on September 10, 2024, they advised that they were unable to finalize a settlement agreement. Respondent thus requested that its March 20, 2023, summary decision motion be heard. Petitioners were permitted to file an opposition brief. On September 10, 2024, petitioners advised that they would not oppose the motion. On November 4, 2024, respondent was asked to supplement the record. It did so on November 21, 2024, and the record closed that day.

The Petition

Petitioners made the following claims in their petition:

1. Respondent improperly abolished the master teacher position, as it is required to fill the position pursuant to N.J.A.C. 6A:13A-4.3. Petition at ¶¶20, 25.
2. Respondent violated N.J.A.C. 6A:32-5, which requires that “whenever an employment category is abolished, the tenured employees shall be given employment in the same category to which he or she is entitled by seniority. The person shall be placed and remain upon the preferred eligible list until a vacancy occurs in the category to which seniority entitled him or her.” Id. at ¶21.
3. Respondent violated N.J.S.A. 18A:28-10, which requires that dismissals or reductions in force shall be based upon seniority and not upon residence, age, sex, marriage, race, religion or political affiliation. Id. at ¶22.
4. The District violated petitioner’s “seniority and non-discrimination rights” when it “transferred them out of a category of employment and permitted

younger teachers with less seniority and experience to remain in their original elementary category.” Id. at ¶28.

5. The District “temporarily abolished the master teacher positions held by the petitioners for the purpose of replacing petitioners with younger and less senior teachers.” Id. at ¶29.
6. Petitioners seek reinstatement to the position of master teacher.

FACTUAL DISCUSSION

The following facts are undisputed and, therefore, I **FIND** the following as **FACT**:

Petitioners are current and former² teachers employed by respondent. Before the 2020–2021 school year, they were assigned to serve as master teachers within the Perth Amboy Public School District (District). Master teachers are teachers whose roles include coaching and classroom support for classroom teachers. They are required to have teacher certifications and are not entitled to additional salary or benefits that are not available to all other teachers employed by respondent. Cert. of Delvis Rodriguez, November 19, 2024, (“Rodriguez Cert.”) at ¶¶11–16.

Prior to the start of the 2020–2021 school year, petitioners’ assignments were changed from master teacher to other positions. Respondent subsequently appointed other teachers to master teacher positions.

At the time the petition was filed, petitioners’ ages were:

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|----|--------|--------------|
| 1. | Alfano | 58 years old |
| 2. | Dalton | 54 years old |
| 3. | Luna | 56 years old |

² Dalton retired on August 31, 2021; Raslowsky and Santa retired from the District on May 1, 2021.

- | | | |
|----|--------------|--------------|
| 4. | Molina-Matta | 49 years old |
| 5. | Raslowsky | 61 years old |
| 6. | Santa | 60 years old |

As of April 16, 2021, the age of the employees who were appointed to the master teacher positions previously held by petitioners ranged from thirty-four to forty-six years old. Rodriguez Cert. at ¶46.

The reassignments were made in response to staffing needs caused by the COVID-19 pandemic. As of July 1, 2020, prior to the start of the 2020–2021 school year, there were approximately 117 open teaching assignments. Rodriguez Cert. at ¶17. To respond to this teacher shortage, the District determined that it must reassign certified staff members to ensure it had certified teachers for each of its classes. *Id.* at ¶¶18–19, ¶24. This included reassigning those staff members who were not teaching in a classroom with students, which included petitioners, to classrooms with students. *Id.* at ¶24. Thus, it was determined that master teachers who were not teaching students in classrooms would be assigned to classroom teaching positions within the scope of their certifications. *Id.* at ¶25. On August 24, 2020, the Board advised petitioners that, during its August 27, 2020, meeting, it would approve their transfers from master teacher positions to new, specified positions for the 2020–2021 school year. Cert. of Isabel Machado, Esq. (“Machado Cert.”), R-E.

On August 27, 2020, the Board voted to approve the transfer and/or changed assignments of approximately 110 staff members, including petitioners. Rodriguez Cert. at ¶20. The meeting minutes include an August 18, 2020, memorandum from Director of Personnel Yolanda Gómez to Superintendent Dr. David Roman in which transfers or changes of assignment are recommended for multiple staff members for the 2020–2021 school year. Machado Cert., R-D. The staff members included:

- Forty-five intervention teachers to classroom teachers.
- Fourteen reading specialists to classroom teachers.
- Five math specialists to classroom teachers.

- Three Deans of Students to classroom teachers.
- Four coaches to classroom teachers.
- One bilingual specialist to classroom teacher.
- Two ISS/IDS teachers to classroom teachers.
- Seven master teachers to classroom teachers.

[Ibid., Rodriguez Cert. at ¶22.]

The District did not abolish the master teacher positions. Rodriguez Cert. at ¶23. Petitioners' salaries and benefits were not impacted as a result of their reassignments. Id. at ¶27. Petitioners were transferred within the scope of their tenure category and endorsements. Id. at ¶25.

After the reassignments, State guidance directed the District to fill the master teacher assignments. Id. at ¶26, Machado Cert., R-F. The District concluded that in order to avoid an unnecessary and unwarranted interruption to the continuity of education for its students, it would assign six staff members³ from within the preschool program to serve as master teachers. Id. at ¶28. It was determined that moving teachers from other than preschool classrooms would be more disruptive to the continuity of education of its students. That is because upper-grade teachers taught more complex lessons. Id. at ¶¶29–30. Also, preschool classes could be merged so as to enable the District to assign the preschool teacher to a master teacher position. Id. at ¶42. Neither petitioners' age nor that of the newly assigned master teachers was a factor in making these decisions. Id. at ¶37.

Alfano was serving as an English as a second language (ESL) teacher; Lunda was serving as a Spanish teacher; Santa was serving as a special education teacher. Had they been reassigned to master teacher positions, there would have been an unnecessary and unwarranted interruption to the continuity of education for their students. Id. at ¶¶32–34.

³ Due to lower student enrollment, one less master teacher was required. Rodriguez Cert. at ¶45.

By assigning Sara Stopek to a master teacher position, the District permitted a substitute-certified paraprofessional to remain with the class until a teacher was hired. Id. at ¶36.

By assigning Lauren Carmon to a master teacher position, a certified teacher who was covering a class for a teacher who was on leave could serve as the teacher. Id. at ¶37.

By assigning Renee Sullivan and Mary Gonzalez to master teacher positions, paraprofessionals with substitute certificates could cover their classes. Id. at ¶¶38–39.

By assigning Johanna Roman to a master teacher position, an employee who previously served as a full-year temporary replacement could be assigned to her class. Id. at ¶40.

LEGAL ANALYSIS AND CONCLUSION

Summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Summary decision is appropriate here because none of the material facts are disputed.

A. Timeliness of petitioners’ claims

N.J.A.C. 6A:3-1.3(i) requires that appeals from final decisions of district boards of education must be filed with the Commissioner within ninety days:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of

limitation shorter than 90 days for the filing of a particular type of appeal.

The ninety-day rule has been strictly followed and applied almost without exception. D.Q. o/b/o S.Q. v. Sch. Dist. of Newark, 2009 N.J. AGEN LEXIS 640 (Jan. 21, 2009). In Dreher v. Jersey City Bd. of Educ., a petition filed only two days after the ninety-day period was dismissed as untimely. 1987 S.L.D. 1706, aff'd, 1988 S.L.A. 2439 (State Bd. of Educ. 1988), rev'd on other grounds, A-6120-82 (App. Div. 1989), cert. denied, 117 N.J. 138 (1989). Hendrickson v. Bd. of Educ. of the City of Rahway, Union Cnty. and Ray Lopez, Bd. Member, 2018 N.J. AGEN LEXIS 164, *8 (March 5, 2018), adopted, Comm'r, (April 13, 2018), Commissioner of Education Decision (rutgers.edu).⁴

Relaxation of the rule may be permissible if exceptional circumstances have been demonstrated.

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in the Commissioner's discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

[N.J.A.C. 6A:3-1.16.]

However, this relief has been rarely granted.

“Such authority is rarely invoked unless strict adherence to the rule would be inappropriate, unnecessary or where injustice would occur, or where the Commissioner finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves.” [Snow v. Bd. of Educ. of the Twp. of Moorestown, 2007 N.J. AGEN LEXIS 312 (April 20, 2007).] In

⁴ This decision and other unpublished and administrative decisions cited here are not binding. They are referenced because they provide relevant guidance.

fact, this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties. AAA School LLC v. Passaic Cnty. Educ. Servs. Comm'n, Passaic Cnty, 2014 N.J. AGEN LEXIS 397 (June 18, 2014).

[Hendrickson v. Bd. of Educ., 2018 N.J. AGEN LEXIS at *8.]

Here, the Board advised petitioners of its intent to assign them to new positions on August 24, 2020, and voted to approve the transfers on August 27, 2020. Petitioners filed their petition on February 5, 2021, 162 days after the Board's official action. Petitioners have not asserted that extraordinary circumstances warrant an extension of the ninety-day limitations period, and none can be ascertained from the record. Accordingly, the petition was not filed in compliance with N.J.A.C. 6A:3-1.3(i), and summary decision in favor of respondent with respect to each of petitioner's claims is appropriate.

B. Inadequacy of relief

The only remedy sought by petitioners is reinstatement to the position of master teacher. They did not assert that they lost salary or benefits due to the position transfer. Two petitioners, Dalton and Raslowsky, are no longer employed by the District. Consequently, there is no available remedy that could be awarded to them. For this reason, summary decision is appropriate with respect to petitioners Dalton and Raslowsky.

C. Whether petitioners assert valid violations of the school law.

Respondent argued that petitioners earned tenure in the position of teacher but not of master teacher because the master teacher position is not separately tenurable. It thus argues that it properly exercised its managerial prerogative to reassign petitioners to other assignments within the scope of their endorsements on their certificates.

A teaching staff member "is entitled to tenure if (1) she works in a position for which a teaching certificate is required; (2) she holds the appropriate certificate; and (3) she has

served the requisite period of time.” Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 74 (1982). Under N.J.S.A. 18A:28-5, “all teaching staff members employed . . . in the positions of teacher . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for” enumerated reasons.

“[T]enure is achieved in a specific ‘position,’ and the scope of the tenured position is initially limited by the ‘certificate’ the teaching staff member must hold to satisfy the prerequisite of qualifications for his or her employment.” Ellicott v. Frankford Twp. Bd. of Educ., 251 N.J. Super. 342, 348 (App. Div. 1991). N.J.S.A. 18A:26-2 provides that teaching staff members shall hold a “valid certificate to teach, administer, direct or supervise the teaching, instruction, or educational guidance of, or to render or administer, direct or supervise the rendering of nursing service to, pupils in such public schools and of such other certificate, if any, as may be required by law.” See also N.J.A.C. 6A:9B-5.3 (providing three categories of educational certificates: instructional, administrative, and educational services). The regulations enumerate endorsements under each certificate and identify the categories of positions for which each endorsement is required.

A teacher may be transferred within their tenured position. The Appellate Division explained, “A school board has the managerial prerogative to transfer teacher staff members by a majority vote of the Board. N.J.S.A. 18A:25-1. ‘Transfer’ refers to the right of the school board to assign a teacher to a position within the scope of his or her certification. A tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered and the teacher is not singled out for the transfer on a prohibited basis.” Carpenito v. Bd. of Educ. of the Boro of Rumson, Monmouth Cnty., 322 N.J. Super 522, 529 (App. Div. 1999). “Seniority rights are not triggered when a school board merely transfers or assigns its tenured teaching staff members to other positions within the teachers’ appropriate certification.” Id. at 534. See also Williams v. Plainfield Bd. of Educ., 176 N.J. Super. 154 (App. Div. 1980), certif. denied, 87 N.J. 306 (1981) (transfer within the same tenured position, even without the employee’s consent, is appropriate as long as compensation was not reduced); Rodriguez v. Bd. of Educ. of the City of New Brunswick, Middlesex Cnty., OAL Dkt. No. EDU 11645-15, aff’d, Comm’r, #401-15 (December 9, 2015).

Master teachers⁵ are only required to hold teacher certifications. N.J.A.C. 6A:13A-4.2. There is not a separate tenure category for master teachers. Consistent with the cases and law cited above, they may be involuntarily transferred within the scope of their tenure category and endorsements. Dennery v. Bd. of Educ. of the Passaic Cnty. Reg'l High Sch. Dist. #1, 131 N.J. 626, 634 (1993). It is undisputed that petitioners were transferred within the scope of their tenure category and endorsements.

With respect to petitioners' claim that respondent violated the law governing dismissals and reductions of force (RIF), it is undisputed that they were neither dismissed nor subject to a RIF. A RIF occurs when a board of education determines that "it is advisable to abolish . . . positions for reasons of economy or because a reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause[.]" N.J.S.A. 18A:28-9. Had there been a RIF that impacted petitioners' positions, their seniority would have been relevant. N.J.S.A. 18A:28-12. However, the protections afforded teaching staff who have been adversely impacted by a RIF are inapplicable here because the master teacher positions were not abolished. Rather, it is undisputed that petitioners were reassigned within their positions to respond to a teacher shortage and that they did not lose their employment or their employment benefits.

With respect to petitioners' claim that respondent violated their "seniority and non-discrimination rights" when it "transferred them out of a category of employment and permitted younger teachers with less seniority and experience to remain in their original elementary category[.]" they have not cited a statute or regulation that addresses "non-discrimination" rights in the context of transfers.⁶ Moreover, as noted, they were not transferred out of their category of employment for which they were tenured, and, as there was not a RIF, seniority is not relevant.

⁵ The term "master teacher" was replaced by "preschool instructional coach." See 53 N.J.R. 1421(a), 54 N.J.R. 1595(b). "Master teacher" is used here to be consistent with the language used in the pleadings and summary decision motion.

⁶ And they did not plead violations of the New Jersey Law Against Discrimination or related statutes. N.J.S.A. 10:5-1 to -49.

Petitioners also asserted that respondent improperly abolished the master teacher position, as it is required to fill the position pursuant to N.J.A.C. 6A:13A-4.3. This section does not impose this requirement. Rather, it requires that, for preschool programs, there “shall be one appropriately certified teacher and one appropriately qualified teacher assistant[.]” Assistants are not master teachers, as they are only required to have a high school diploma or equivalent. N.J.A.C. 6A:13A-4.3(e). To the extent N.J.A.C. 6A:13A-4.2 requires master teachers in preschool classrooms,⁷ it does not mandate or suggest the remedy petitioners seek: reinstatement to the position of master teacher.

As it is undisputed that the transfers at issue were necessitated by staffing shortages, petitioners have presented no evidence of improper motive, and petitioners’ seniority rights were not triggered because there was not a RIF, summary decision in favor of respondent, with respect to each of petitioners’ claims, is appropriate.

⁷ This subchapter also permits alternative methods for the provision of these services under certain circumstances. N.J.A.C. 6A:13A-4.2(a)1-3.

ORDER

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

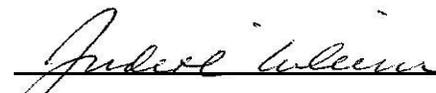
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

December 2, 2024 _____

DATE

 _____

JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JL/mg

APPENDIX

List of Exhibits

For petitioner:

None

For respondent:

March 13, 2023, Brief

March 13, 2023, Certification of Isabel Machado, Esq.

November 19, 2024, Certification of Delvis Rodriguez

R-A June 14, 2019, Memorandum of Agreement

R-B February 3, 2022, supplemental discovery responses

R-C January 19, 2023, supplemental discovery responses

R-D August 27, 2020, Board of Education minutes

R-E Letters to petitioners

R-F October 8, 2020, letter from Carry A. Booker

R-G July 14, 2021, Certification of Delvis Rodriguez

R-H April 16, 2021, letter

R-I through R-K Unpublished decisions