

Legal Alert

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Substitute Service and its Impact on Seniority

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On January 19, 2017, the New York State Commissioner of Education issued a decision in *Appeal of Amanda DeRosa*, Decision No. 17,028 that expands the New York State Education Department's interpretation of how substitute service impacts seniority.

Here, Petitioner, Amanda DeRosa, was appointed to a substitute elementary school teacher position for two (2) months in 2007. She was then appointed to a long-term substitute leave replacement librarian position for the 2007-2008 school year. Thereafter she was appointed to a probationary appointment in the elementary tenure area effective September 1, 2008. Effective June 30, 2010, thirteen (13) elementary tenure area positions were abolished, including Petitioner's, and Petitioner was placed on a Preferred Eligibility List ("PEL").

Effective September 1, 2013, a position in the elementary tenure area became available. Two (2) other individuals who were also excessed were offered the position. Petitioner appealed the Board's decision claiming that she had four (4) years of service in the system, more than either of the two (2) other individuals.

Education Law Sections 2510 and 3013 govern the rights of individuals with regard to a PEL. The Commissioner of Education explained that under these Sections, it is well-settled that for the purposes of determining the recall rights of teachers on a PEL, length of service in the system is used, not length of service within a particular tenure area. *Mahony v. Bd. of Educ. of Mahopac Cent. School Dist.*, 140 A.D.2d 33, (2d Dep't 1988), *appeal denied*, 73 N.Y.2d 703 (1989). Further, full-time substitute service counts for seniority purposes when it did not immediate

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precede the teacher's probationary appointment, when the teacher performed part-time services for the district in the interim. *Kransdorf v. Bd. of Educ. Northport-East Northport UFSD*, 81 N.Y.2d 871 (1993). Lastly, teachers lose seniority rights only when they sever service with the school district, not when they have interrupted service. *Appeal of Lamb*, 42 Ed. Dep't Rep. 406, Decision No. 14,895 (2003).

In this case, the Commissioner held that the calculation of service in the system includes long-term substitute service that did not lead to a probationary appointment in the same tenure area. The Commissioner explained that since, in determining seniority for recall purposes, length of service in the system is used and service in another tenure area may be counted, it follows that all long-term substitute service may be counted, even when it did not lead to a probationary appointment.

Accordingly, all time that an individual is appointed to a position as a professional educator, as defined in Commissioner's Regulation Section 30-1.1(e), must be counted toward seniority for recall purposes, so long as the individual did not sever service with the school district.

Please note that the school district has indicated that it plans to appeal this decision, arguing that long-term substitute service that does not lead to a probationary appointment should not be counted towards seniority for recall purposes.

If you have any questions about transgender student issues, please call any of us in the Education Law Department.

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