

**IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA**

<b>JODI JOHNSON</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>TTA No. 01-12</b>
	:	
<b>SOUTHEASTERN GREENE SCHOOL</b>	:	
<b>DISTRICT</b>	:	
	:	
<b>Appellee</b>	:	

**OPINION AND ORDER**

On March 5, 2012, Jodi Johnson (“Ms. Johnson”) filed a Petition of Appeal with the Pennsylvania Secretary of Education (“Secretary”), appealing the decision of the Southeastern Greene School District (“Southeastern”) demoting her from her position with the District as the Director of Special Education/Coordinator of Pupil Services to the position of Elementary Emotional Support Teacher. On March 9, 2012, the Secretary appointed a hearing officer to hear the appeal. On March 20, 2012, Southeastern filed its Answer and Notice of Intent to Offer Testimony, alleging that Ms. Johnson is not a professional (tenured) employee but a temporary professional employee and that she consented to the demotion. The hearing officer conducted a pre-hearing conference with counsel for the parties on March 23, 2012. As a result of that pre-hearing conference, it was decided that the issue of whether or not Ms. Johnson is a professional employee must be decided prior to proceeding with a hearing on the merits of the demotion. If Ms. Johnson is not a professional employee, the Secretary does not have jurisdiction to hear her appeal. Both parties filed documents and briefs supporting their respective positions about Ms. Johnson’s status as a professional employee.

## FINDINGS OF FACT

1. At a meeting of Southeastern's Board of School Directors ("Board") on October 23, 2008, the Board voted to place Ms. Johnson on the Professional Substitute List for the 2008-2009 school year. *See*, School Board Minutes of October 23, 2008.

2. At a meeting of Southeastern's Board on May 28, 2009, the Board voted to hire Ms. Johnson as a Special Education teacher for the 2009-2010 school year. *See*, Board minutes of May 28, 2009, attached as Exhibit "F" to the District's Brief.

3. At a meeting of Southeastern's Board on June 22, 2010, which was reconvened on July 1, 2010, the Board voted to hire Ms. Johnson as the Special Education Director/Coordinator of Pupil Services for the 2010-2011 school year, as per the Act 93 Agreement. *See*, Exhibit "G" to District's Brief.

4. By letter dated December 22, 2011, Ms. Johnson was informed by Southeastern's Superintendent, Mr. Henderson, that she was being suspended without pay for five (5) days because of an incident that occurred on December 16, 2011. In addition, she was told that she would receive an unsatisfactory rating for the first semester of the school year. *See*, letter of December 22, 2011, from Mr. Henderson.

5. By email dated January 17, 2012, from Mr. Henderson to Ms. Johnson, Mr. Henderson referenced a conversation he had with Ms. Johnson and her request to be placed back into the classroom. Mr. Henderson asked Ms. Johnson to provide this request in writing so he could act on her request. *See*, January 17, 2012 email from Mr. Henderson to Ms. Johnson.

6. On January 17, 2012, Ms. Johnson wrote to Mr. Henderson asking that he reconsider her unsatisfactory evaluation; but that if the unsatisfactory evaluation could not be

changed, she asked to be returned to the classroom as a special education teacher. *See*, letter of January 17, 2012 from Ms. Johnson.

7. Mr. Henderson advised Ms. Johnson that he would speak to the Board on January 18, 2012, regarding her request. *See*, January 18, 2012 email from Mr. Henderson to Ms. Johnson.

8. At the School Board meeting of January 23, 2012, the Board voted to create the position of Elementary Emotional Support Teacher and directed the administration to post the position. In addition, if no professional employee bid on the position, the administration was authorized to transfer the professional employee of its choice into the position and notify the School Board immediately. *See*, School Board minutes of January 23, 2012.

9. Ms. Johnson was rated unsatisfactory on her Mid-Year Review, dated February 7, 2012. *See*, Mid-Year Review dated February 7, 2012.

10. By letter dated February 7, 2012, Mr. Henderson advised Ms. Johnson that he had forwarded her concerns to the School Board and the School Board agreed to allow her to return to the classroom in a newly created position of Elementary Emotional Support Teacher beginning February 13, 2012. *See*, February 7, 2012 letter from Mr. Henderson to Ms. Johnson.

11. On February 27, 2012, the School Board ratified the transfer of Ms. Johnson to the newly created position of Elementary Emotional Support teacher. *See*, Board Minutes of February 27, 2012.

12. Prior to working for Southeastern, Ms. Johnson worked for the Fayette County Career & Technical Institute (“Fayette County”) from February 1, 1999 to August 30, 2001, as a Learning Facilitator and Perkins Program Coordinator. *See*, Exhibits “1” and “2” of Ms. Johnson’s Brief; Exhibits “D” and “E” of Southeastern’s Brief.

13. Pursuant to a letter from the Executive Director of Fayette County, dated March 23, 2012, Ms. Johnson did not receive tenure while working for Fayette County. *See*, Exhibit “E” of Southeastern’s Brief.

14. On her resume, other than working for Fayette County from 1999-2001, Ms. Johnson only noted one other school district for which she had worked, which was the Wilkinsburg School District from 2001-2002. *See*, Exhibit “D” of Southeastern’s Brief.

15. Ms. Johnson stated in her brief that before working for Southeastern, she had worked as a teacher for private contractors and as a teacher in the Pittsburgh School District, the Wilkinsburg School District and Fayette County but only provided dates of employment for Fayette County.

### DISCUSSION

Section 1131 of the Public School Code provides that if a “professional employee” considers himself or herself aggrieved by the action of the board of school directors, he or she may file an appeal with the Secretary of Education. 24 P.S. § 11-1131. Section 1151 of the Public School Code governs matters related to the demotion of a professional employee:

[T]here shall be no demotion of any professional employe either in salary or type of position without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors.

24 P.S. § 11-1151.

A demotion occurs when a professional employee is reassigned to a position that has less authority, prestige, or salary. *See Walsh v. Sto-Rox School Dist.*, 532 A.2d 547, 548 (Pa. Cmwlth. 1987). In this case, it is agreed that a demotion occurred when Ms. Johnson was transferred from the position of Director of Special Education/Coordinator of Pupil Services to the position of Elementary Emotional Support Teacher. However,

the initial question to be addressed is whether Ms. Johnson is a professional employee; or, in other words, has she obtained tenured status. If Ms. Johnson is not a professional employee, the Secretary does not have jurisdiction to hear her appeal.

Section 1108(b)(2) of the Public School Code provides:

A temporary professional employe initially employed by a school district, on or after June 30, 1996, whose work has been certified by the district superintendent to the secretary of the school district, during the last four (4) months of the third year of such service, as being satisfactory shall thereafter be a "professional employe" within the meaning of this article.

24 P.S. § 11-1108(b)(2) (emphasis added).

In addition, section 1108(b)(3) provides:

The attainment of the status under paragraph (1) or (2) shall be recorded in the records of the board and written notification thereof shall be sent also to the employe. The employe shall then be tendered forthwith a regular contract of employment as provided for professional employes.

24 P.S. 11-1108(b)(3).

There have been few court cases that have interpreted the language of section 1108(b)(2) to determine whether a temporary professional employee must be employed in one school district for a three (3) year period in order to attain the status of a professional (tenured) employee. However, a decision by the Court of Common Pleas of Cambria County and an Attorney General opinion interpreted this language and both concluded that a teacher must work the required period of time in one school district to be eligible for tenure. *See, Acitelli v. Westmont Hilltop School District*, 60 Pa. D. & C.2d 712 (Cambria Cty. 1973); Opinion of the Attorney General, 61 Pa. D. & C.2d 770 (1973).

In 1973, the Attorney General provided an opinion in response to an inquiry by then Secretary of Education, John Pittinger, about whether a temporary professional employee must

serve two (2) years<sup>1</sup> in one particular school district in order to become a professional employee. The Attorney General concluded that the only lawful way for a temporary professional employee to attain status as a professional employee was by serving for two (2) years in one particular school district. The Attorney General cited to a Pennsylvania Supreme Court case as support for his conclusion. *See, Ralston v. Derry Township School District*, 69 A.2d 69 (Pa. 1949).

In *Ralston*, a teacher had been employed by many school districts, in and out of Pennsylvania since 1923. In 1947, the teacher became employed by the Derry Township School District. In 1937, the Teacher Tenure Act had been enacted and provided that school districts should, within thirty (30) days, enter into tenure contracts with all professional employees employed by the school districts. In addition, school districts thereafter were to enter into tenure contracts with professional employees at the time the employee first entered service of the district. *Id.* at 70. However, in 1939, the Teacher Tenure Act was amended to create a class of temporary professional employees who could become regular professional employees by having their work certified as satisfactory by the superintendent of the school district during the last four (4) months of the second year of service. *Id.*

In *Ralston*, although the teacher had taught in many school districts for many years, after 1939, he taught only one year in one Pennsylvania school district and then one year in the Derry Township School District. Thus, he was subject to immediate dismissal when the Derry Township School District rated him unsatisfactory at the end of his one year with that school district. The Supreme Court held that the teacher was only a temporary professional employee

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<sup>1</sup> In 1973, at the time of the Attorney General's opinion, the statute stated that if a temporary professional employee's work was certified as satisfactory by the superintendent during the last four (4) months of the second year of service, the employee shall thereafter be a professional employee. The provision of section 1108 relevant to this case now requires that the employee's work be certified as satisfactory during the last four (4) months of the third year of service.

and not entitled to the protections of the Teacher Tenure Act. The Supreme Court stated that tenure was “. . . not to be granted to a new entrant until he has served a probationary period of two years of satisfactory service in the district . . . .” *Id.* at 62. Therefore, while acknowledging that there were no cases on point, the Attorney General stated that the *Ralston* case indicated that his conclusion that a temporary professional employee must serve two (2) years in one school district in order to attain professional status was correct.

The Court of Common Pleas of Cambria County also interpreted the language in section 1108 in the *Acitelli* case. In *Acitelli*, the teacher worked one year in the Shade-Central School District (Shade-Central) and received a satisfactory rating for that year. The teacher then worked one year in the Westmont Hilltop School District (Westmont) and received a satisfactory rating. In his second year at Westmont the teacher received a satisfactory rating for the first part of the school year. However, at the end of that school year he received an unsatisfactory rating and a letter from the School Board’s president advising that he would not be tendered a regular contract of employment. *Id.* at 713.

The teacher in *Acitelli* argued that he should have been provided a permanent professional employee contract because he had attained that status by cumulating the year of teaching at Shade-Central with the first year of teaching at Westmont. Since he received satisfactory ratings for those two years and from those two school districts, the teacher argued he was entitled to a professional employee contract.

However, the Court of Common Pleas noted that section 1108(b) uses the word “the” when referring to “district superintendent,” “secretary,” “records,” and “board.”<sup>2</sup> “By limiting

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<sup>2</sup> In 1973, section 1108(b) provided, “A temporary professional employee whose work has been certified by the district superintendent to the secretary of the school district, during the last four (4) months of the second year of service, as being satisfactory shall thereafter be a ‘professional

these references with the word ‘the,’ we must conclude the legislature was speaking of one school district.” *Id.* at 715. Otherwise, if the legislature meant that a teacher could attain tenure by receiving satisfactory ratings for two years in more than one school district, we would have to substitute the words, “a” or “any” for “the.” *Id.* And the court determined that it could not make such substitutions. In addition, the court stated that “quality education would best be promoted by the opportunity of a school district to work with a teacher for **two years** before deciding on ‘a permanent contract.’” *Id.* at 716 (emphasis in original).

Regardless of whether the Attorney General’s opinion or the court’s decision in *Acitelli* is binding on the Secretary, the interpretation is both reasonable and persuasive. The Pennsylvania Supreme Court’s decision in *Ralston* provides additional support for the conclusion that a temporary professional employee can only be eligible for tenure after receiving a satisfactory rating in the last four (4) months of his or her third year<sup>3</sup> of employment in one school district.

In the instant case, Ms. Johnson argues that she is a professional employee because she has been an employee of various public schools in Pennsylvania for more than three (3) years. However, Ms. Johnson has not provided any evidence, and she does not argue, that she was a temporary professional employee at one school district for three (3) years and that she received a satisfactory rating during the last four (4) months of the third year at one school district. She states only that before being employed by Southeastern she was employed by the Pittsburgh School District, the Wilksburg School District and Fayette County. She has not provided any

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employe’ within the meaning of this article. The attainment of this status shall be recorded in the records of the board and written notification thereof shall be sent also to the employee.” 24 P.S. § 1108(b)(emphasis added).

<sup>3</sup> The third year of employment is relevant for temporary professional employees who were initially employed by a school district on or after June 30, 1996, which is the case in the instant matter.

evidence that she was employed by any of those entities as a temporary professional employee for a period of three years.

Ms. Johnson relies on the signature of the Executive Director/Superintendent of Fayette County on her evaluation form in 2001 as proof that she is a professional employee. *See*, Exhibit “1” attached to Ms. Johnson’s Brief. On the evaluation form under “Rating: Temporary Professional Employee”, the beginning date of the evaluation period is 8/24/00, the end date of the evaluation period is 5/31/01, and a rating of satisfactory is checked. On the other side of the page, under “Rating: Professional Employee”, there are no dates for the evaluation period but there is the signature of the Executive Director/Superintendent dated 5/10/01 and a rating of satisfactory is checked. Ms. Johnson also signed the form on 5/1/01.

However, the fact that the Executive Director/Superintendent signed the form under the part of the form that says “Rating: Professional Employee” does not confer professional employee status on Ms. Johnson. In the *Ralston* case, the teacher signed a professional employee contract, in the form prescribed by the Teachers’ Tenure Act of 1937, when hired by the Derry Township School District. However, the Supreme Court held that the contract was legally unauthorized because the teacher did not have the necessary qualifications that entitled him to such a contract. Therefore, the contract was a void contract under which he obtained no rights of tenure. *Id.* at 71.

Likewise, Ms. Johnson cannot attain status as a professional employee simply because the Executive Director/Superintendent of Fayette County incorrectly signed her evaluation form under the area of “Rating: Professional Employee”. Ms. Johnson has not provided any evidence that she was employed as a temporary professional employee by one school district for three (3) years and that she received a satisfactory rating from the superintendent during the last four (4)

months of the third year of such service. Thus, she has not met the necessary qualifications to be a professional employee.

Ms. Johnson cites to the case of *Department of Education v. Great Valley School District*, 352 A.2d 252 (Pa. Cmwlth. 1976), as support for her position that she is a professional employee. However, in *Great Valley*, the teacher worked for two (2) years in the same school district as a temporary professional employee and received two (2) satisfactory evaluations in each of the two school years, including within the last four (4) months of her second year of service in that school district. Therefore, she met the requirements in effect at that time to be a professional employee. Thus, *Great Valley* is distinguishable because Ms. Johnson has not worked in the same school district as a temporary professional employee for the statutorily required time, which currently is a three (3) year time period.

Ms. Johnson also argues that the letter signed by the Executive Director of Fayette County and dated March 23, 2012, produced by Southeastern as Exhibit "E" to its brief, should not be considered by the Secretary because it "is stating a legal conclusion as to tenure that is not supported by the facts, is given without full knowledge of the facts, and is contradicted by the 2001 evaluation." However, even if one ignores the statement in the letter that Ms. Johnson did not receive tenure while working for Fayette County, the letter corroborates that Ms. Johnson worked for Fayette County only from February 1999 through August 2001. This is not for a three (3) year period; therefore, she could not have obtained tenure from Fayette County.

Based on all of the above, Ms. Johnson has not been employed by one school district as a temporary professional employee in the Commonwealth for at least a three (3) year period; thus, she has not attained the status of a professional employee.

Accordingly, the following Order is entered:

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COMMONWEALTH OF PENNSYLVANIA

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Appellant, :  
v. : TTA No. 01-12  
SOUTHEASTERN GREENE SCHOOL :  
DISTRICT :  
Appellee :

AND NOW, this 21<sup>st</sup> day of June, 2012, it is hereby ordered and decreed that Jodi Johnson's appeal is DENIED because Jodi Johnson is not a professional employee, and therefore, the Secretary lacks jurisdiction to hear her appeal.

  
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Ronald J. Tomalis  
Secretary of Education

Date Mailed: June 21, 2012