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Districts Must Rehire Formerly Disabled Teachers

By Jason B. Levoy and James A. Kellar

A recent New Jersey Supreme Court decision held that under *N.J.S.A. 18A:66-40(a)* a school district must return a formerly disabled teacher to the next available opening in the position that he or she held at the time of the disability retirement, so long as the teacher meets the required certificates and endorsements for that position.

Charlotte Klumb was an elementary school teacher in the Manalapan-Englishtown Regional School District. In 1985, she requested, and was granted, leaves of absence to treat her disabilities (alcoholism and mental health issues). Eventually, the District placed her on voluntary sick leave disability, and the Teacher's Pension and Annuity Fund ("TPAF") approved her disability application. In 1998, TPAF found that Klumb's disability had diminished enough that she could resume her duties as a teacher and ordered the District to rehire her. The District refused. The District did interview Klumb for another elementary teaching position in 1999, but decided not to hire her.

In 2002, Klumb filed a complaint in the Law Division demanding reinstatement, damages, attorneys' fees, and interest. The trial judge denied the District's motion for summary judgment and transferred the case to the Commissioner of Education. In 2004, an Administrative Law Judge ("ALJ") ruled in favor of the District, holding that the statute does not require the rehiring of the formerly disabled teacher. The following year the Commissioner rejected the ALJ ruling and ordered Klumb's reinstatement. The State Board of Education subsequently affirmed the Commissioner's ruling, and the Appellate Division affirmed the decision of the State Board. When the District petitioned for certification to the Supreme Court, it agreed to hear the case.

The Court considered the plain language of the statute, its legislative history, and several comparable statutes. Ultimately, the Court concluded that *N.J.S.A. 18A:66-40(a)* does provide for a right of reinstatement. The Court reasoned that the statute was part of "a humane and sensible scheme that allows a worker who has recovered from a disability to be assured gainful employment, (cont'd ➔)

assuming [she] remains qualified therefore.”

However, an employee’s right to reinstatement is not absolute. The district is not required to take any action to create a new position for the employee. Nor is the employee entitled to a different position from which she was retired. Moreover, the teacher’s qualifications and credentials must be current for that position. If no position is immediately available, the reinstated teacher is entitled to the next available opening.

While the Court ordered the reinstatement of Ms. Klumb, it stated that her claims for back pay required further analysis. After being denied reinstatement, Ms. Klumb waited three years before filing her complaint. The Court opined that unless there is a valid explanation for the delay, Ms. Klumb should not be entitled to back pay for those years. Also, to the extent that Ms. Klumb was gainfully employed during this time period, such income could operate as an offset against any damages. The Court remanded the case for a factual investigation into these issues.

For school districts, this means that an employee on disability retirement can become entitled to reinstatement upon a finding that he or she is no longer disabled *without regard for the amount of time that the employee has been on disability leave*. Districts that utilize disability retirement as an alternative resolution to tenure proceedings or other charges should note that employees that leave on disability retirement may subsequently gain a right to reinstatement if it is determined that their disability no longer exists. While districts are not required to create new positions, such employees will be entitled to go to the top of the list in the event that an appropriate position becomes available.

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The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



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