

## **CLIENT ALERT: Massachusetts Appeals Court Defers Teacher Tenure Status to Arbitration - By James M. Pender**

On June 30, 2016, the Massachusetts Appeals Court declined to make a determination on the calculation of service required for a teacher to be afforded “professional teacher status” (tenure), holding instead that the issue should be resolved by an arbitrator.

In *Plymouth Public Schools v. Education Association of Plymouth & Carver*, a special education teacher worked for the Plymouth school district for five (5) consecutive years. However, she went on maternity leave during her first and fourth years of teaching. At the end of her fifth year of teaching, the school district provided her a notice of non-renewal. The teacher claimed that she had earned professional teacher status, which provides statutory job protections, including the right to challenge a dismissal through arbitration. G.L. c. 71, §41 grants professional teacher status to a teacher after three (3) consecutive school years of service.

In response to the teacher’s petition for arbitration, the school district filed an action in Superior Court, claiming that the teacher, as a result of her maternity leaves, did not have the requisite three consecutive years of service. The Superior Court agreed, holding that the teacher did not have professional teacher status at the time of her notice of non-renewal and, accordingly, no right to arbitration. The Superior Court also held that her non-renewal did not violate the Family Medical Leave Act (FMLA) or the Massachusetts parental leave statute, G.L. c. 149, §105D.

On appeal, the Appeals Court, overturning the Superior Court, did not resolve the issue of whether maternity leave constitutes a break in service for the purpose of calculating professional teacher status, holding instead that the issue should be decided by an arbitrator. The Appeals Court noted that teacher dismissal should not be subject to review in two different forums – arbitration and court – given that the Education Reform Act of 1993 established arbitration as the sole remedy for all teacher dismissals. The Appeal Court held that an arbitrator has the authority to decide whether a teacher has earned professional teacher status pursuant to c. 71, §41, including whether a lengthy break in service caused by maternity leave adversely affects that status.

This decision emphasizes the primacy of arbitration in resolving not only teacher dismissals but also the threshold issue of whether the teacher has professional teacher status, which previously had frequently been resolved in court.

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