



Electronic Dispatch

# School District Law Information Memo

April 2005

[Go to BS&K School District Law Home Page](#)

## TEACHER PROBATIONARY PERIOD SHORTENED BASED ON TENURE AS A TEACHING ASSISTANT

On February 26, 2005, the New York State Commissioner of Education decided that a teacher who had previously acquired tenure as a *teaching assistant* was entitled to a shortened two-year probationary period as a *teacher*. *Matter of Alexander* (Decision No. 15,172, February 16, 2005).

### Probationary Period Requirements

The Education Law generally provides for a three-year probationary period for teachers. That three-year period may be shortened as a result of service as a "regular substitute" immediately preceding the probationary appointment (so-called "Jarema Credit"). This credit may be applied to shorten the probationary period by up to two years. Also, Section 3012 of the Education Law provides for an automatic one-year reduction in the period if the teacher has acquired tenure in another district or another tenure area. This prior tenure exception of Section 3012 was at issue in *Alexander*.

### The Facts In *Alexander*

In 1996, Lynda Alexander was tenured as a teaching assistant by the Ramapo Central School District. She continued to work in Ramapo until the spring of 2000, when she acquired a second teaching certificate in general special education. The following academic year, Ms. Alexander became a special education teacher for the South Orangetown Central School District. She was appointed to a three-year probationary period, effective September 1, 2001. At the time of her appointment, the South Orangetown board of education was aware of her previous tenure as a teaching assistant, but did not believe that it had any impact on her current appointment as a special education teacher.

Ms. Alexander did not oppose her three-year probationary term and continued to teach until February 2003, when she took a maternity leave. She returned to the District in September 2003, and continued as a special education teacher there until she was terminated on June 30, 2004. Ms. Alexander challenged her termination, arguing that she was entitled to a reduced probationary period as a result of her prior tenure as a teaching assistant, and that she had acquired tenure by estoppel as a result of the shortened probationary period.

### The Commissioner's Holding

The Commissioner held that Section 3012(1)(a) of the Education Law requires school districts to give teachers who had been appointed on tenure in another school district, either as a teacher *or* a teaching assistant, a reduced probationary period of two years.

The Commissioner first noted the absence of any precedent on this question. The Commissioner noted that he was sympathetic to the District's arguments in support of its position that acquiring prior tenure as a teaching assistant should not reduce the probationary term for a teacher. The District had argued that the statute should be construed as being strictly limited to prior tenure as a "teacher" because a person holding prior tenure as a teaching assistant had never been evaluated as a teacher and had not "endured the rigors of the teacher tenure process." The District had further argued that the duties and responsibilities of teaching assistants are different from those of teachers, and that the requirements to obtain a certificate as a teaching assistant are much lower than the requirements to be a teacher.



Nevertheless, relying on a Court of Appeals decision involving the shortening of a teacher's probationary period based on prior tenure *in a different teacher tenure area*, the Commissioner held that Ms. Alexander was entitled to a reduced two-year probationary period. The Commissioner noted that if the Legislature had intended Section 3012 to exclude prior tenure as a teaching assistant, it could have done so. In the absence of such an exclusion, the Commissioner found that the statute, read literally, was applicable to previously tenured teaching assistants and required an automatic one-year reduction in the probationary period for any subsequent teaching appointments. Consequently, Ms. Alexander was found to have acquired tenure by estoppel due to the continuation of her teaching services beyond the two-year probationary period.

### What Should School Districts Do?

In light of this decision, school districts should review the personnel files of all teachers who received probationary appointments in the last three years, to see if any of them received tenure as a teaching assistant, either in the same district or elsewhere in New York. Probationary teachers who have teaching assistant tenure should receive a decision on tenure after their second year of probation, even if their original probationary appointment stated that it was for three years. School districts must also keep in mind that probationary teachers who have teaching assistant tenure and who are also entitled to Jarema Credit should receive a decision on tenure after their first year of probation, regardless of the stated duration of their original probationary appointment. Individuals with prior teaching assistant tenure who have already served the requisite number of years as probationary teachers may have already achieved tenure by estoppel, but if a district is dissatisfied with the performance of any individuals in this situation, it should consult with labor counsel concerning what strategies may be available to keep the district's options open in case *Alexander* is reversed by the courts.

If you have any questions regarding the Commissioner's *Alexander* decision or need assistance evaluating the District's obligations to newly hired teachers, please contact:

In the Capital District, call 518-533-3000 or e-mail:  
Nicholas J. D'Ambrosio ndambrosio@bsk.com

In Central New York, call 315-218-8000 or e-mail:  
R. Daniel Bordoni dbordoni@bsk.com

On Long Island, call 516-267-6300 or e-mail:  
Terry O'Neil toneil@bsk.com

In New York City, call 646-253-2300 or e-mail:  
Louis P. DiLorenzo ldilorenzo@bsk.com

In Western New York, call 716-566-2800 or e-mail:  
Richard C. Heffern rheffern@bsk.com