

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - May 1, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
ANITA R. FLORIO, JJ.

2006-05539

DECISION & ORDER

In the Matter of Patricia Mazzone, appellant, v
Hauppauge Union Free School District, respondent.

(Index No. 18896/05)

Reynold A. Mauro, Commack, N.Y., for appellant.

Lewis Brisbois Bisgaard & Smith LLP, New York, N.Y. (Peter J. Biging and Dirk C. Haarhoff of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent Hauppauge Union Free School District dated June 8, 2005, which terminated the petitioner's services as a teaching assistant, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Werner, J.), entered May 5, 2006, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The determination of the respondent Hauppauge Union Free School District that the petitioner's period of employment as a three-hour-per-day, part-time teaching assistant did not constitute service for the purpose of acquiring tenure was not arbitrary and capricious (*see Matter of Ceparano v Ambach*, 53 NY2d 873; *Matter of Roese v Board of Educ. of S. Country Cent. School Dist.*, 283 AD2d 580; *Matter of Rosenberg v Board of Educ. of Westbury Pub. Schools*, 51 AD2d 551). Accordingly, since the petitioner was terminated during the probationary period in connection with her full-time position, she was not entitled to a hearing under the Education Law and was not terminated in violation of her due process rights (*see Matter of Cohoes City School Dist. v Cohoes Teachers Assn.*, 40 NY2d 774, 777).

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The petitioner's remaining contention is without merit.

MILLER, J.P., RITTER, SANTUCCI and FLORIO, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court