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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1446**

Marcia Orcholski,  
Relator,

vs.

Independent School District No. 197,  
West St. Paul-Mendota Heights-Eagan, Minnesota,  
Respondent.

**Filed May 9, 2011  
Affirmed  
Hudson, Judge**

Independent School District No. 197

Jess Anna Glover, Education Minnesota, St. Paul, Minnesota (for relator)

Susan E. Torgerson, Charles E. Long, Kennedy & Graven, Chartered, Minneapolis,  
Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and  
Hudson, Judge.

## UNPUBLISHED OPINION

**HUDSON**, Judge

By certiorari appeal, relator, a probationary teacher, challenges employer school district's decision to non-renew her teaching contract by rescinding its prior approval of her continuing-contract status. Because the school district exercised its statutory right to non-renew relator's contract within the required time period, and because relator has failed to allege facts sufficient to support a determination that the school district intended to waive its right to non-renew, we affirm.

### FACTS

Relator Marcia Orcholski was employed as a third-year probationary teacher by Independent School District No. 197, West St. Paul-Mendota Heights-Eagan, during the 2009–10 school year. On May 3, 2010, the school board of I.S.D. No. 197 passed a resolution to approve continuing-contract status for a number of staff members, including relator, in accordance with Minn. Stat. § 122A.40 (2008). On May 7, the school district's director of human resources wrote to relator that the board had “acted favorably on the recommendation of the administration to place [relator] on continuing contract status . . . beginning with the 2010-2011 school year.” The letter stated that “[b]eginning August 30, 2010, [relator's] contract will be subject to the provisions of the tenure law in the State of Minnesota.”

Within a month after the school board meeting, the school district's director of human resources became aware of complaints regarding relator's professional conduct. After investigating these complaints, the human-resources director concluded that relator

had bullied and intimidated co-workers and behaved unprofessionally, damaging the teaching environment at her assigned school. In mid-June 2010, relator's school principal notified the human-resources director and relator that she would recommend that the board rescind its prior action and instead non-renew relator's teaching contract.

At its June 21 meeting, the school board approved a resolution to rescind its previous action and voted to non-renew relator's contract. On June 22, the human-resources director notified relator that the board had taken action "to rescind the granting of continuing contract status . . . that was to be effective August 30, 2010" and "to non-renew [relator's] teaching contract effective June 14, 2010." This certiorari appeal follows.

## **DECISION**

This court reviews a school board's teacher non-renewal decision by writ of certiorari. *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 673–74 (Minn. 1990) (recognizing limited judicial role and deferential approach to review of decisions regarding teacher discharge). A school board's determination will be reversed only if "it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law." *Id.* at 675 (citation omitted). Determination of a teacher's employment status under the applicable statutes is a question of law, subject to de novo review. *Flaherty v. Indep. Sch. Dist. No. 2144*, 577 N.W.2d 229, 233 (Minn. App. 1998), *review denied* (Minn. June 17, 1998).

Tenure or continuing-contract status may be granted only by statute, and a teacher has no valid claim to that status unless authorized by statute. *Bd. of Educ. of City of*

*Minneapolis v. Sand*, 227 Minn. 202, 211, 34 N.W.2d 689, 695 (1948). Under Minnesota law, “[t]he first three consecutive years of a teacher’s first teaching experience . . . in a single district is deemed to be a probationary period.” Minn. Stat. § 122A.40, subd. 5(a) (2010). With certain exceptions, “during the probationary period any annual contract with any teacher may or may not be renewed as the school board shall see fit.” *Id.*, subd. 5(b) (2010). The school board must notify a teacher in writing of its decision not to renew that teacher’s contract before July 1. *Id.*

If the words of a statute are clear, this court must give effect to its plain meaning. Minn. Stat. § 645.16 (2010); *Emanuel v. Indep. Sch. Dist. No. 273*, 615 N.W.2d 415, 419 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). The plain language of Minn. Stat. § 122.40, subd. 5(b), permits a school district to non-renew a probationary teacher’s contract at any time before the July 1 deadline. Minn. Stat. § 122.40, subd. 5(b). The school district therefore complied with the statute by notifying relator on June 22 that her contract would not be renewed. *See Allen v. Bd. of Educ. of Indep. Sch. Dist. No. 582*, 435 N.W.2d 124, 127 (Minn. App. 1989) (stating that if a district has substantially complied with the statutory provisions for non-renewal, it has complete discretion to non-renew a probationary teacher’s contract), *review denied* (Minn. Apr. 19, 1989).

Relator argues that the school district had no authority to approve continuing-contract status and then decide later to non-renew her contract, even if the non-renewal occurred before the July 1 deadline. But in reading a statute, this court may not supply “what the legislature purposely omits or inadvertently overlooks.” *Flaherty*, 577 N.W.2d at 235 (quotation omitted). The statute contains no applicable restriction on a school

district's decision to non-renew a probationary teacher's contract before July 1, and we decline to impose one.

Relator maintains that once the school district approved continuing-contract status, it could only discharge her for cause. *See* Minn. Stat. § 122A.40, subd. 5(b) (stating that “[t]he school board may, after a hearing held upon due notice, discharge a teacher during the probationary period for cause, effective immediately”). But the subdivision allowing termination for cause during the probationary period must be read in conjunction with the provision reciting the district's right to non-renew a contract during that period. *See Flaherty*, 577 N.W.2d at 235 (noting that statutory provisions “must be interpreted in light of one another”) (quotation omitted). When read together, these provisions do not support the conclusion that termination for cause is the exclusive method of terminating a teacher if a school district has rescinded its approval of continuing-contract status before July 1.

Relator also argues that the school district's initial approval of continuing-contract status amounted to a waiver of its right to non-renew her contract. “Waiver is defined as a voluntary relinquishment of a known right. Voluntary choice is the essence of waiver and not mere negligence . . . . It is largely a matter of intention and there can be no waiver without actual or implied intent to waive.” *Cohler v. Smith*, 280 Minn. 181, 189, 158 N.W.2d 574, 579 (1968). An intent to waive may be determined as a matter of law on a showing that “conduct [is] so inconsistent with a purpose to stand upon one's rights as to leave no room for a reasonable inference to the contrary.” *Farnum v. Peterson-Biddick Co.*, 182 Minn. 338, 341, 234 N.W. 646, 647 (1931).

Here, the school district informed relator in May that it had decided to approve her continuing-contract status. But relator has failed to allege facts sufficient to support a determination that by doing so, the school district intentionally relinquished its statutory right to later non-renew that contract after receiving reports of relator's alleged misconduct. We therefore conclude that the district did not waive its right to non-renew relator's contract. In addition, we note that relator has not argued that she accepted, or that the school district breached, any teaching contract issued to her for the 2010–11 school year, and the record does not show the existence of such a contract.<sup>1</sup>

“The purpose of the probationary period is to provide an opportunity for the school district to evaluate the teacher's skills.” *Montplaisir v. Indep. Sch. Dist. No. 23*, 779 N.W.2d 880, 884 (Minn. App. 2010). The statute relating to contract non-renewal during the probationary period promotes this policy by generally affording the school district discretion to non-renew a probationary teacher's contract until July 1. Minn. Stat. § 122.40, subd. 5(b); *see also Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904, 911 (Minn. App. 2010) (concluding that non-renewal of teacher's annual contract does not give rise to protectable property interest warranting due-process protection), *review denied* (Minn. Jun. 29, 2010). The school district did not abuse that discretion by

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<sup>1</sup> The record shows that relator signed an initial contract in August 2007 for the 2007–08 school year and was issued subsequent “Notice[s] of Assignment” for the 2008–09 and 2009–10 school years, after the beginning of those school years. We may presume that relator's performance of her teaching duties during 2008–09 and 2009–10 amounted to her acceptance of contracts for those school years. *See Holt v. Swenson*, 252 Minn. 510, 516, 90 N.W.2d 724, 728 (1958) (stating that “[i]t is well settled that acceptance of an offer may be by conduct”).

rescinding its initial approval of continuing-contract status and non-renewing relator's contract.

**Affirmed.**