

## The Massachusetts Appeals Court Holds Whether a Teacher Obtains “Professional Teacher Status” Pursuant to M.G.L. c. 71, § 41, is an Inquiry within the Purview of an Arbitrator

### Notable PDP Victories

#### ***Plymouth Public Schools v. Education Association of Plymouth & Carver & another*, 89 Mass. App. Ct. 643 (2016)**

Kirsten Bilbo worked as a full-time special education teacher at Plymouth North High School for five consecutive years, from March 2008 through June 2013. She took maternity leave during her first and fourth full years (2009 and 2012, respectively). On May 31, 2013, the school district notified her in writing that she would not be reappointed to a teaching position for the 2013-2014 school year, “based upon the recommendations of [her] supervising principal and program manager and the concerns about continuity of instruction and the education of our students.” Believing she possessed professional teacher status, Ms. Bilbo, through her union, petitioned for arbitration. The school district opposed, claiming Ms. Bilbo lacked such status and therefore was not entitled to arbitration. When Ms. Bilbo’s case was forwarded to the American Arbitration Association, the school district filed suit.

The sole issue addressed by the Appeals Court was whether a judge or an arbitrator may properly determine Ms. Bilbo’s professional teacher status. Citing its prior case of *Turner v. School Comm. of Dedham*, 41 Mass. App. Ct. 354 (1996), which the Court characterized as “nearly the mirror image of the case now before [it],” the Court reasoned that such inquiry was exclusively for an arbitrator to decide. Just as an arbitrator is authorized to determine who “shall be considered a teacher” within the meaning of M.G.L. c. 71, § 41, and whether a lengthy break in service deprives a teacher of professional teacher status, so too may (and must) an arbitrator determine whether a person “has served in the public schools of a school district for the three previous consecutive school years.” See M.G.L. c. 71, § 41. The result of this threshold question would then dictate whether Ms. Bilbo was contesting simply a “nonrenewal” under M.G.L. c. 71, § 41, or instead a “dismissal” under M.G.L. c. 71, § 42, which would entitle Ms. Bilbo to the substantive and procedural rights that accompany professional teacher status, including arbitration of the underlying merits of her dismissal.

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