

**New Jersey Commissioner of Education**

**Final Decision**

David DiPisa,

Petitioner,

v.

Board of Education of the Township of Nutley, Essex  
County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ), for the reasons stated in the Initial Decision, that petitioner did not acquire tenure in the position of school business administrator pursuant to *N.J.S.A. 18A:17-2*.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>



COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2025

Date of Mailing: March 26, 2025

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 15253-24

AGENCY DKT. NO. 302-9/24

**DAVID DIPISA,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE**

**TOWNSHIP OF NUTLEY,**

Respondent.

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**Paul Griggs, Esq.,** for petitioner

**Dennis McKeever, Esq.,** for respondent (Chasan Lamparello Mallon & Cappuzzio, attorneys)

Record Closed: January 21, 2025

Decided: February 7, 2025

BEFORE **ANDREA PERRY VILLANI, ALJ:**

**STATEMENT OF THE CASE**

David DiPisa was the Business Administrator for the Nutley Board of Education for twenty-eight months, then he served as Assistant Superintendent for twenty months. Did DiPisa acquire tenure in his former position as Business Administrator during the time he worked in his new position as Assistant Superintendent? No. School business

administrators may not use employment in a new position to acquire tenure in a former position. See DiNapoli v. Bd. of Educ. of Twp. of Verona, 434 N.J. Super. 233, 240-41 (App. Div. 2014).

### **PROCEDURAL HISTORY**

On September 13, 2024, DiPisa filed a Petition of Appeal with the Commissioner of Education asserting tenure rights and seeking to return to the position of Business Administrator/Board Secretary for the Board of Education of the Township of Nutley (Board).

On October 21, 2024, the Board filed a Notice of Motion to Dismiss in Lieu of an Answer.

On October 22, 2024, the Department of Education transmitted the matter to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On November 19, 2024, I held a prehearing telephone conference. During the conference, the parties agreed that no issues of material fact exist, and DiPisa would file a cross-motion for summary decision. Toward this end, the parties further agreed that they would submit a joint stipulation of facts so I could render a decision as a matter of law.

On December 20, 2024, the parties submitted their Joint Stipulation of Facts, together with Joint Exhibits, and DiPisa filed his Cross-Motion for Summary Decision.

On January 21, 2025, the Board filed its Reply to the Cross-Motion for Summary Decision, and I closed the record.

### **FINDINGS OF FACTS**

Counsel submitted the following Joint Stipulation of Facts, which I **FIND** as **FACT**:

1. Nutley is a public school district with grades preschool through the 12<sup>th</sup> grade.
2. DiPisa possesses a standard administrative certificate with an endorsement as School Business Administrator issued in June 2012.
3. DiPisa was employed by the Board in the position of School Business Administrator/Board Secretary for the following periods:
  - a. July 1, 2020 through June 30, 2021
  - b. July 1, 2021 through June 30, 2022
  - c. July 1, 2022 through October 17, 2022
4. DiPisa was employed by the Board in the position of Assistant Superintendent of Business/Board Secretary for the following periods:
  - a. October 18, 2022 through June 30, 2023
  - b. July 1, 2023 through June 29, 2024
5. On April 29, 2024, DiPisa submitted a written notice of resignation from the position of Assistant Superintendent of Business/Board Secretary effective June 29, 2024.
6. On May 7, 2024, the Board accepted DiPisa's written notice of resignation.
7. On May 20, 2024, the Board approved the abolishment of the position of Assistant Superintendent of Business/Board Secretary.
8. On October 10, 2024, the Division of Pensions and Benefits approved DiPisa's application for Service Retirement effective August 1, 2024.

## **CONCLUSIONS OF LAW**

### **Summary Decision**

Summary decision may be rendered if the papers and discovery, which have been filed, together with any affidavits, show that no genuine issue of material fact exists, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b).

In this case, no genuine issue of material fact exists. The material facts are that DiPisa was employed as Business Administrator for two years, three months, and seventeen days. He then served as Assistant Superintendent for one year, eight months, and thirteen days. He then resigned from his employment with the Board. As I discussed below, these facts demonstrate that DiPisa did not acquire tenure, so the Board is not required to return him to his position as Business Administrator, and the Board is entitled to summary decision as a matter of law.

### **Tenure**

Tenure rights are statutory and not contractual. Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962). The objective of tenure statutes is to protect competent and qualified employees after a probationary period from being removed for "unfounded, flimsy, or political reasons." Id. at 71. To acquire the security of tenure, the precise conditions enunciated in the applicable statute must be met. See Picogna v. Bd. of Educ. of Twp. of Cherry Hill, 143 N.J. 391, 400 (1996). Tenure "arises only by the passage of time fixed by the statute." Canfield v. Bd. of Educ. of Pine Hill Borough, 97 N.J. Super. 483, 490 (App. Div. 1967). The employee shoulders the burden of establishing entitlement to tenure protection, which ordinarily must be clearly proven. Id. at 493.

N.J.S.A. 18A:17-2 governs tenure for school business administrators. It confers tenure on "[a]ny secretary, assistant secretary, school business administrator or business manager of a board of education" who has served for three years. Id. In this case, DiPisa

served as Business Administrator for two years, three months, and seventeen days. Thus, he did not acquire tenure while he was employed as Business Administrator.

N.J.S.A. 18A:28-5 governs tenure for assistant superintendents. It confers tenure on “teaching staff members...in the positions of teacher, principal...assistant principal, vice principal, assistant superintendent...” after four years. Id. DiPisa served as Assistant Superintendent for one year, eight months, and thirteen days. Thus, he did not acquire tenure while serving as Assistant Superintendent either.

DiPisa argues that he acquired tenure because his total term in both positions was four years. In support of his argument, DiPisa cites N.J.S.A. 18A:28-6b, which states, “the period of employment in [a] new position shall be included in determining the tenure and seniority rights in the former position...and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district...[he] shall be returned to his former position...” Accordingly, DiPisa argues that the term of his recent employment as Assistant Superintendent should be included when calculating the term of his previous employment as Business Administrator.

DiPisa’s argument, however, ignores the language of N.J.S.A. 18A:28-6b that limits its application to certain positions. More specifically, N.J.S.A. 18A:28-6b only applies to teaching staff members that are “eligible to obtain tenure *under this chapter*,” and who are “transferred or promoted...to another position *covered by this chapter*” (emphasis added). Chapter 18A:28 covers teachers, principals, assistant principals, vice principals, and assistant superintendents, among others. N.J.S.A. 18A:28-5. It does *not* cover school business administrators.

Chapter 18A:17 covers school business administrators, but it does not contain a tenure retention provision like the one included in Chapter 18A:28. N.J.S.A. 18A:17-2. The tenure retention provision in Chapter 18A:28 represents the Legislature’s intent to preserve tenure for teaching staff members who transfer or are promoted to a different position prior to achieving tenure in that position. DiNapoli v. Bd. of Educ. of Twp. of Verona, 434 N.J. Super. 233, 240-41 (App. Div. 2014). The omission of this provision from Chapter 18A:17 reflects the Legislature’s decision not to afford such rights to school

secretaries, business administrators, and business managers. See id. "When the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded." Id. (quoting In re Plan for the Abolition of the Council on Affordable Housing, 214 N.J. 444, 470 (2013)).

In this case, DiPisa served as a school business administrator under Chapter 18A:17, which does not contain a tenure retention provision. Therefore, his later employment as Assistant Superintendent may not be included in determining his tenure rights as Business Administrator.

Moreover, an employee who resigns and leaves a district, no matter what the length of time between resignation and re-employment, relinquishes tenure. Commins v. Bd. Of Woodbridge, 1967 S.L.D. 11; Solomon v. Board of Ed. of Princeton Regional School District, 1977 S.L.D. 650, affirmed by the State Board 1977 S.L.D. 657.

In this case, DiPisa resigned. The Board accepted DiPisa's resignation, and DiPisa also applied for retirement, which the Division of Pensions and Benefits approved. Therefore, even if DiPisa was a tenured Business Administrator – which he was not – he relinquished his tenure when he resigned from his employment with the district.

For all of the foregoing reasons, I **CONCLUDE** that DiPisa was not a tenured Business Administrator, and he is not entitled to return to that position.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the Board's Motion to Dismiss is **GRANTED** and DiPisa's Petition of Appeal is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is authorized by law

to make a final decision in this case. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days, and unless such time limit is otherwise extended, this recommended decision shall become a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 7, 2025



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DATE

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**ANDREA PERRY VILLANI, ALJ**

Date Received at Agency

February 7, 2025

Date Mailed to Parties

February 7, 2025

sej