

New Jersey Commissioner of Education
Final Decision

Joseph Armental,

Petitioner,

v.

Board of Education of the City of Englewood,
Bergen County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Englewood Board of Education's (Board) reply thereto, have been reviewed and considered.

Petitioner alleges that the Board involuntarily transferred him from his Principal position to an Athletic Director position effective July 1, 2024, in violation of his tenure rights as set forth in *N.J.S.A. 18A:28-5* and *-6*. The material facts are undisputed. Petitioner has acquired tenure both as a Principal and as an Athletic Director, as he previously worked as the district's Athletic Director. Both positions require an Administrator certificate with a Principal endorsement, which petitioner holds. Petitioner's salary has remained the same despite the 2024 transfer to Athletic Director. The Board hired a non-tenured individual for the Principal position previously held by petitioner.

The parties cross-moved for summary decision. The Administrative Law Judge (ALJ) granted the Board's cross-motion for summary decision upon concluding that "the positions of Principal and Athletic Director are not separately tenurable positions under *N.J.S.A. 18A:28-5*." Initial Decision at

10. She noted that the position of Athletic Director was not specifically enumerated in *N.J.S.A.* 18A:28-5, which provides that teaching staff members

in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent . . . and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause

The ALJ also relied upon *Carpenito v. Bd. of Educ. of Borough of Rumson*, 322 N.J. Super. 522, 529 (App. Div. 1999), which provides that “[a] tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered and the teacher is not singled out for the transfer on a prohibited basis.” The ALJ applied the Appellate Division’s reasoning in *Carpenito* to the present matter and concluded that petitioner’s involuntary transfer from Principal to Athletic Director was not a demotion or dismissal because his salary was not reduced. Initial Decision at 9. Furthermore, the ALJ found that this was “not a case where petitioner was involuntarily transferred from a position in his certificate to a position that required another certificate.” *Id.* at 10.

In his exceptions, petitioner argues that the ALJ erred as a matter of law by misreading *N.J.S.A.* 18A:28-5 and relevant case law, including *Carpenito*, when she concluded that Principal and Athletic Director are not separately tenurable positions. He contends that the Commissioner has held for decades that tenure attaches to a specific position and that, once acquired, the teaching staff member may not be involuntarily removed from a tenured position absent a reduction in force or the filing of tenure charges. He argues that the involuntary transfer which occurred in this case is at odds with the remedial intent of the tenure laws, which is to afford principals and teachers a measure of security in the ranks they hold after years of service.

Petitioner also contends that *Carpenito* is distinguishable and has no bearing upon the instant matter because that case involved a teacher being transferred to another teaching assignment within the scope of his instructional certificate, while this case involves petitioner's transfer to Athletic Director, which is an entirely separate and distinct position from Principal. Finally, he asserts that the ALJ's factual findings are illogical and in conflict because she found as fact that he had been "promoted" from Athletic Director to Acting Principal in 2021, but she also found that his transfer from Principal to Athletic Director in 2024 was not a demotion.

In response, the Board argues that the Commissioner should adopt the ALJ's Initial Decision. At the outset, the Board denies that petitioner's 2021 transfer from Athletic Director to Acting Principal was a promotion, as opposed to a lateral transfer, because the record lacks support for same. The Board likewise denies that petitioner's 2024 transfer from Principal to Athletic Director was a demotion. The Board emphasizes that an athletic director's purview as a district-wide administrator far exceeds that of a high school principal. The Board maintains that the 2024 transfer did not violate petitioner's tenure rights because: (1) he previously obtained tenure as an Athletic Director and therefore cannot be terminated or demoted from that position without formal action; (2) the Athletic Director position is within the same certification and endorsement as the prior position of Principal that he held, and he is qualified to hold both positions; and (3) he was not reduced in salary or rank. The Board asserts that a liberal interpretation of the tenure laws supports its decision to transfer petitioner from Principal to Athletic Director.

Upon review, the Commissioner rejects the ALJ's Initial Decision as contrary to well-established law for the reasons explained herein. The Commissioner disagrees with the ALJ that that the Board did not violate petitioner's tenure rights when it involuntarily transferred him to a different position without reducing his salary or benefits. Instead, the Commissioner concurs with petitioner

that *Carpenito* is distinguishable as it involved a Board transferring a teacher to another teaching assignment within the scope of his instructional certificate, but the employee remained in the position of teacher. By contrast, this case involves petitioner's involuntary transfer to Athletic Director, which is an entirely separate and distinct position from Principal.

"N.J.S.A. 18A:6-10 provides that no tenured employee of the public school system 'shall be dismissed or reduced in compensation . . . except for inefficiency, incapacity, unbecoming conduct, or other just cause.'" *Sanjuan v. Sch. Dist. of W. New York*, 256 N.J. 369, 379 (2024). The tenure law "protects teachers from dismissal for 'unfounded, flimsy or political reasons.'" *Spiewak v. Bd. of Educ. of Rutherford*, 90 N.J. 63, 73 (1982) (quoting *Zimmerman v. Bd. of Educ. of Newark*, 38 N.J. 65, 71 (1962)).

"According to N.J.S.A. 18A:28-5, tenure is acquired after employment in a given position for the period of time specified in that statute." *Williams v. Bd. of Educ. of Plainfield*, 176 N.J. Super. 154, 160 (App. Div. 1980). See also *Howley v. Ewing Twp. Bd. of Educ.*, 1982 S.L.D. 1328, 1339, *adopted*, 1983 S.L.D. 1554 ("[T]enure protects an employee in a particular position."). "That tenure is acquired in a particular position is made clear by the effect of N.J.S.A. 18A:28-6," which provides that "[a]ny such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter . . . shall not obtain tenure in the new position" until certain statutory requirements are met. *Howley*, 1982 S.L.D. at 1337-40.

Separately tenurable positions are the positions specifically enumerated in N.J.S.A. 18A:28-5, and "principal" is one such position per the statute's plain language. *Nelson v. Bd. of Educ. of Twp. of Old Bridge*, 148 N.J. 358, 368 (1997). As explained by the Supreme Court, separately tenurable positions require service in those positions for the requisite statutory period "before tenure can be

achieved in them.” *Id.* at 368-73 (1997). *See also* N.J.S.A. 18A:28-5(c) (“[T]enure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position.”).

Here, it is undisputed that petitioner holds tenure in the positions of Principal and Athletic Director based upon his service in both positions for the requisite statutory period. The issue in this case is not whether petitioner has acquired tenure as a Principal and Athletic Director. Rather, the issue is whether the Board violated petitioner’s tenure rights by transferring him from a separately tenurable Principal position to an Athletic Director position without his consent.

In *Howley*, the ALJ explained that “a tenured employee may be transferred to another assignment within his position, but may not be transferred involuntarily from one position to another.” 1982 *S.L.D.* at 1340. In so doing, the ALJ illustrated the concept as follows:

The word “transfer” is most often used in tenure related cases in the context of the proposition that teaching staff members may be transferred within the scope of their certificates. As a blanket statement, this is not entirely correct. . . . Since tenure attaches to position, and the position specified in N.J.S.A. 18A:28-5 is “teacher,” a tenured teacher may be “transferred” or reassigned within the scope of the endorsements on his or her Instructional Certificate. Tenure is not acquired in a specific assignment

[*Id.* at 1339-40.]

By contrast, however,

Under the tenure statutes it is clear that a person tenured in a “position” may not be transferred from that position without his or her consent. The specific language of N.J.S.A. 18A:28-6, “who is transferred or promoted *with his consent to another position*” makes that clear. Transfer without such consent constitutes a dismissal from the position and cannot be accomplished without compliance with the tenure hearing law.

[*Id.* at 1340 (emphasis in original).]

Carpenito dealt with the former scenario, *i.e.*, a tenured teacher lawfully transferred to a different teaching assignment by the Board while retaining his position as a teacher. The Appellate Division held that “[a] tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered and the teacher is not singled out for the transfer on a prohibited basis.” *Carpenito*, 322 N.J. Super. at 529. While the Appellate Division used the word “position” to describe Carpenito’s reassignment from a social studies “position” to a computer applications “position,” it is clear from a thorough reading of the opinion that the court recognized he remained in the position of “teacher” despite the transfer and “[h]is employment was continued in other subjects.” *Id.* at 534. The Appellate Division explained that “[a] transfer is not a demotion or a dismissal under such circumstances.” *Id.* at 530.

In this case, however, the circumstances are different. The Board concedes that petitioner was transferred from the Principal position to the Athletic Director position without his consent. This constitutes a dismissal from the Principal position in violation of tenure laws under *Howley*, 1982 S.L.D. at 1340. In 2015, the Commissioner reaffirmed this important distinction when adopting the ALJ’s Initial Decisions in *City Association of Supervisors and Administrators v. State-Operated School District of the City of Newark, Essex County*, EDU 00849-13 (Initial Decision, July 14, 2014) and EDU 00788-15 (Initial Decision, June 16, 2015), *adopted*, Commissioner Decision No. 269-15R (August 13, 2015).

City Association involved the transfer of seven tenured building principals to central office positions. The former principals alleged that their tenure rights had been violated under N.J.S.A. 18A:28-5 and sought reinstatement to their prior positions. In response, the district argued (as the Board argues in the present matter) that the former principals’ tenure rights were not violated because their salaries remained the same and they were transferred to positions within the scope of

their certifications. The ALJ rejected the district's argument and concluded that because the former principals had been involuntarily transferred to new and distinct positions from that of principal, the transfers violated their tenure rights under *N.J.S.A. 18A:28-5*.

Notably, the ALJ in *City Association* recognized that *Carpenito* did not support the district's claim that the transfers did not violate the former principals' tenure rights. *Carpenito* stood for the proposition that "an individual employed as a building principal can be transferred to principal positions other than the one currently held, provided there is no loss in rank or compensation." *City Association*, EDU 00849-13, Initial Decision at 29. But because the former principals in *City Association* were no longer "doing the work of a building principal," the involuntary transfers violated their tenure rights under *N.J.S.A. 18A:28-5*. *Ibid*. The Commissioner agreed and ordered that the single petitioner who had not retired or resigned during the pendency of the proceedings be restored to a building principal position in accordance with his tenure entitlement.

Thus, the Commissioner holds that the Board violated *N.J.S.A. 18A:28-5* and -6 when it involuntarily transferred petitioner from a Principal position to the separate and distinct position of Athletic Director. For the reasons explained herein, the transfer to the Athletic Director position absent petitioner's consent constitutes a dismissal from the Principal position he previously held in violation of tenure laws.

The fact that petitioner also holds tenure in the position of Athletic Director does not provide justification for the Board's actions. Nor does the fact that the Athletic Director position can be held by a person with an Administrative certificate and Principal endorsement. While those circumstances would be relevant if the Board had reassigned petitioner from once Principal position to another, that is not what occurred in this case. Furthermore, the Commissioner finds it unnecessary to determine whether the Athletic Director position is subordinate to the Principal position, or whether the transfer

constitutes a demotion. Simply stated, the tenure laws prohibit a transfer from one separately tenurable position to another absent consent because an involuntary transfer under those circumstances constitutes a dismissal. *N.J.S.A. 18A:28-6; Howley, 1982 S.L.D. at 1347.*

Accordingly, the Initial Decision is rejected for the reasons stated herein, and the petition of appeal is hereby granted. The Board shall restore petitioner to a Principal position in accordance with his tenure and seniority rights.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2025
Date of Mailing: March 7, 2025

¹ 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

SUMMARY DECISION

OAL DKT. NO. EDU 07775-24

AGENCY DKT. 123-5/24

JOSEPH ARMENTAL,

Petitioner,

v.

ENGLEWOOD BOARD OF EDUCATION,

Respondent.

Andrew L. Schwartz, Esq. for petitioner (Schwartz Law Group, P.C., attorneys)

R. Scott Eveland, Esq. for respondent (Inglessino Taylor, attorneys)

Record Closed: November 21, 2024

Decided: December 9, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner filed a motion for summary decision alleging that respondent changing his job from Principal to Athletic Director was a violation of tenure rights. The matter was filed at the OAL on February 7, 2023. Petitioner filed a motion for summary decisions on June 6, 2024. Respondent filed opposition to the motion for summary decision and a cross motion for summary decision on September 17, 2024. Petitioner filed opposition to the cross motion on November 1, 2024. Respondent filed a sur-reply on November 19, 2024. Petitioner submitted a letter of clarification on November 21, 2024.

Having reviewed the motions in support of and in opposition to, I find the following **FACTS**:

Petitioner began his employment with respondent on September 1, 2006, as a Mathematics teacher which required a teacher's certificate which he possessed. Petitioner was appointed to the position of Assistant Principal on or about September 1, 2011. He had the appropriate Vice- Principal certification. On September 1, 2012, in addition to the duties of Vice Principal, petitioner was assigned the duties of Athletic Director for the district. On July 1, 2013, petitioner's position was reclassified to Vice Principal/ Athletic Director. Petitioner's title was reclassified as Vice Principal effective January 1, 2015. Petitioner was Vice Principal at Dwight Morrow High School from January 1, 2015 until June 30, 2018. On May 1, 2018, petitioner received a reduction in force letter from the Superintendent of Schools stating that the Vice Principal /Assistant Principal position will be impacted and for the 2018-2019 school year and petitioner's position would be math teacher. On May 3, 2018, the District abolished the position of Assistant Principal effective July 1, 2018.

Petitioner filed an appeal with the Commissioner on July 24, 2018. The appeal was settled in February 2020 with petitioner being reinstated to the position of Athletic Director retroactive to July 1, 2018. On November 18, 2021, petitioner was promoted to the title of Acting Principal of Dwight Marrow High School effective November 1, 2021. On December 16, 2021, the Board reclassified petitioner's title to permeant position of Principal of Dwight Marrow High School. For the 2021-2022 and 2022-2023 school years petitioner received scores of effective on his annual summative evaluations. Petitioner acquired tenure in the position of Principal. Petitioners hold the requisite certificates for this position.

On March 8, 2024, petitioner received a letter from the District Director of Human Resources stating that the Superintendent would be recommending his involuntary transfer to the position of Athletic Director effective July 1, 2024. Petitioner did not consent to the transfer. The transfer did not change petitioner's salary.

The Englewood Public job description for the position of Vice Principal/Athletic Director includes the qualification that the position requires a valid New Jersey Principal Certificate.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. *Id.* at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial’.

[Brill, *supra*, 142 N.J. at 540 (citations omitted).]

In this matter, there are no material issues of fact. I **CONCLUDE** this matter is ripe for summary disposition.

N.J.S.A. 18A:28-6 provides:

a. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after July 1, 1962, shall not obtain tenure in the new position until after:

(1) the expiration of a period of employment of two consecutive calendar years in the new position unless a shorter period is fixed by the employing board for such purpose; or

(2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

(3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, 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 or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

b. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after the effective date of P.L.2012, c.26 (C.18A:6-117 et al.), shall not obtain tenure in the new position until after:

(1) the expiration of a period of employment of two consecutive calendar years in the new position; or

(2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

(3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, 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 or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

In order to receive tenure pursuant to this subsection, a teacher, principal, assistant principal, and vice-principal shall be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position.

For purposes of this subsection, “effective” or “highly effective” means the employee has received an annual summative evaluation rating of “effective” or “highly effective” based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

N.J.S.A. 18A: 28-5 provides:

a. The services of all teaching staff members employed prior to the effective date of P.L.2012, c.26 (C.18A:6-117 et al.) in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

(1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

(2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of more than three academic years within a period of any four consecutive academic years.

b. The services of all teaching staff members employed on or after the effective date of P.L.2012, c.26 (C.18A:6-117 et al.) in the position of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses, including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect, and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

- (1) Four consecutive calendar years; or
- (2) Four consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (3) The equivalent of more than four academic years within a period of any five consecutive academic years.

In order to achieve tenure pursuant to this subsection, a teacher shall also complete a district mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial year of employment in which the teacher completes the district mentorship program. In order to achieve tenure pursuant to this subsection, a principal, assistant principal, and vice-principal shall also receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

For purposes of this subsection, “effective” or “highly effective” means the employee has received an annual summative evaluation rating of “effective” or “highly effective” based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

c. For purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position and nothing herein shall limit or restrict tenure rights which were or may be acquired pursuant to N.J.S.18A:28-6 in a position in which the individual actually served.

N.J.A.C. 6A:9B-12.3 provides:

(a) The school administrator endorsement is required for any position that involves services as a district-level administrative officer. Such positions shall include superintendent, assistant superintendent, and director. Holders of this endorsement shall be authorized to:

- 1. Provide educational leadership by directing the formulation of districtwide goals, plans, policies, and budgets, by recommending their approval by the district board of education, and by directing their districtwide implementation;
- 2. Recommend for approval by the district board of education all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of school business administrators;
- 3. Direct school district operations and programs;

4. Supervise and evaluate building administrators and central office staff, including school business administrators;
5. Oversee the administration and supervision of school-level operations, staff, and programs; and
6. Serve as principal or supervisor as provided at (b) and (c) below.

(b) The principal endorsement is required for any position that involves service as an administrative officer of a school or other comparable unit within a school or school district. Such positions shall include assistant superintendent for curriculum and instruction, principal, assistant principal, vice principal, director, and supervisor. Holders of this endorsement shall be authorized to:

1. Provide educational leadership by directing the formulation of goals, plans, policies, budgets, and personnel actions of the school or other comparable unit, by recommending them to the chief district administrator, and by directing their implementation in the school or other comparable unit;
2. Direct and supervise all school operations and programs;
3. Evaluate school staff, including teaching staff members; and
4. Direct the activities of school-level supervisors.

(c) The supervisor endorsement is required for both supervisors of instruction and athletic directors who do not hold a standard principal's endorsement. The supervisor shall have the authority and responsibility for the continuing direction, evaluation, and guidance of teaching staff members.

1. Effective January 1, 2018, the supervisor endorsement no longer shall authorize appointment as an assistant superintendent in charge of curriculum and/or instruction.

i. Holders of the supervisor endorsement issued prior to January 1, 2018, shall continue to be authorized to hold a position as an assistant superintendent in charge of curriculum and/or instruction.

(d) The school business administrator endorsement is required for the chief financial officer of a school district. Such positions shall include assistant superintendent for business, school business administrator, and assistant school business administrator. Holders of this endorsement shall be authorized to:

1. Perform duties at the school district level in the areas of financial budget planning and administration, financial accounting and reporting, insurance/risk administration, and purchasing; and
2. Engage in facilities planning, personnel administration, administration of transportation and food services, and central data-processing management.

In this matter there is no dispute that the position of Athletic Director operates under the principal certificate with the principal endorsement. The issue is whether the positions are separately tenurable in accordance with the regulations. The tenurable positions listed in N.J.S.A. 18A:-28-5 are listed as follows:

teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education.

The position of Athletic Director is not listed in the regulation.

In Carpenito v Board of Education of the Rumson 322 N.J. Super. 522,534 (App. Div. 1999) the Court stated :

A board of education must be permitted to maintain control over the administration of its schools where its conduct is in compliance with the tenor and spirit of the Tenure laws.

In Carpentino, the Court also stated, "A tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered and the teacher is not singled out for the transfer on a prohibited basis." See, e.g., Greenway v. Board of Educ. City of Camden, 129 N.J.L. 46, 28 A.2d 99 (Sup.1942), aff'd, 129 N.J.L. 461, 29 A.2d 890 (1943) (finding that transfer of tenured teacher from high school to junior high school without reduction of salary and without impacting tenure rights gave teacher no cause of action); Williams v. Plainfield Bd. of Educ., 176 N.J. Super. 154, 162-64, 422 A.2d 461 (App.Div.1980) (holding that transfer of high school principal to position of elementary principal without any immediate reduction in compensation nor a reduction in rank did not violate principal's tenure rights), certif. denied, 87 N.J. 306, 434 A.2d 62 (1981); Lascari v. Board of Educ. of Borough of Lodi, 36 N.J. Super. 426, 430, 116 A.2d 209 (App.Div.1955) (concluding that transfer of vice principal to regular teaching duties without reduction in salary was not a demotion or dismissal); Moore v. Cherry Hill Township Bd. of Educ., 92 N.J.A.R.2d (Vol.4) 585 (Div. on Educ.), aff'd, 93 N.J.A.R.2d (Vol.4) 173 (Div. on [**543] Educ.) (determining that involuntary transfer of tenured teacher from position teaching reading in departmentalized junior high school to a position as third grade elementary teacher in connection with a district reorganization

was not improper and teacher was not entitled to be returned to position); Ciarcia v. Trenton City Bd. of Educ., 1991 S.L.D. 1422 (rejecting seniority claim of art teacher, who was reassigned from secondary to elementary level as part of district reorganization, where teacher suffered no loss of employment or salary reduction as a result of the transfer); Stranzl v. Paterson Bd. of Educ., 2 N.J.A.R. 16 (Div. on Educ.1980) (holding that tenure rights of elementary school principal were not violated when board involuntarily transferred principal from his position to the position of secondary school principal in the same district).

A transfer is not a demotion or a dismissal under such circumstances. Indeed, transfers of teaching staff members are often advisable in the administration of schools for a variety of reasons. Id at 542-543.

The case of Lascari v Board of Education 36 N.J. 426 (App. Div. 1955) was decided prior to the position of Vice Principal being a tenured position. At that time the only tenured positions were Teacher, Principal, Assistant Superintendent and Superintendent. Lascardi was a vice principal who was transferred to the position of teacher.

In Sanchez v Board of Education of Camden 2003 N.J. Agen Lexis 1388, Sanchez was a tenured principal who was reassigned to serve as Acting Principal at a second school. When the second school closed in the middle of the school year, Sanchez was transferred to the position of Acting Vice Principal in a third school. The Commissioner determined:

In this instance, the requirements of those statutes are clear. N.J.S.A. 18A:28-6 prohibits the transfer of a tenured teaching staff member to another position without his consent. The express language of N.J.S.A. 18A:28-5 is clear that the positions of "principal" and "vice-principal" are separately tenurable positions. Nelson v. Board of Educ. of Old Bridge, 148 N.J. 358 (1997).

In Nelson v. Board of Education 148 N.J. 358 (1996) the Court stated, "Whether or not it was a proper interpretation of the Statute, the State Board had consistently held that positions listed in N.J.S.A. 18A:28-5 were separately tenurable." Id at 372. It also

stated, "N.J.S.A. 18A:28-5 has consistently been interpreted by the State Board as requiring service in the separately listed positions before tenure can be achieved in them. That rule conforms to the Legislature's intent and represents a proper interpretation of the Statute and sound educational policy. Id at 373-374."

In this matter, the position of principal and the position of athletic director require a principal certificate. However, a person with a supervisor certificate can become an Athletic Director if he does not have a principal certificate. This is not a case where petitioner was involuntarily transferred from a position in his certificate to a position that required another certificate. N.J.S.A.18A: 28-5 does not enumerate the position of Athletic Director as a tenurable position.

Although petitioner argues the move from Principal to Athletic Director is a demotion, he has provided law or legal argument to substantiate this position. I **CONCLUDE** that the positions of Principal and Athletic Director are not separately tenurable positions under N.J.S.A `18A: 28-5.

ORDER

Petitioners' motion for summary decision and respondent's cross motion for summary decision are hereby **DENIED** and respondent's cross motion for summary decision is **GRANTED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 in accordance with 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

December 9, 2024



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

December 9, 2024

Date Mailed to Parties:

December 9, 2024

ljb