

New Jersey Commissioner of Education

Decision

Crystal Saylor,

Petitioner,

v.

Board of Education of the Town of
West New York, Hudson County,

Respondent.

Synopsis

Petitioner – formerly employed by the respondent Board’s school district, most recently as Administrative Assistant to the Superintendent – appealed her termination from employment, alleging that she was a tenured secretary and entitled to statutory tenure protections. Petitioner began employment with the Board in 2010 as a secretary and was promoted in 2011 to the position of Administrative Assistant to the Assistant Superintendent. In 2015, petitioner was promoted to Administrative Assistant to the Superintendent, the position in which she remained until her termination in June 2018 for conduct unbecoming a public employee. The Board contended that its actions were lawful, as petitioner was employed in a position without union or statutory rights when she was terminated; further, she had never earned tenure in any of her positions with the school district.

The ALJ found, *inter alia*, that: the issue here is whether petitioner was protected from summary termination under the tenure laws, such that she would have the right to be returned to her position with back pay from June 5, 2018; *N.J.S.A.* 18A:17-2 governs the tenure of individuals who are employed by school districts in secretarial or clerical positions; the preponderance of evidence demonstrates that petitioner never acquired tenure rights pursuant to *N.J.S.A.* 18A:17-2 while she served as a secretary in the Business Department, where she worked for less than three years performing basic secretarial and clerical tasks; petitioner’s duties changed significantly in her “confidential” positions as Administrative Assistant to the Assistant Superintendent and Administrative Assistant to the Superintendent; when she was terminated, petitioner was employed in a position without union or statutory rights. The ALJ concluded that petitioner does not have tenure, was never awarded tenure, and was last employed in a position that would not earn tenure. Accordingly, the ALJ affirmed the Board’s action to terminate petitioner’s employment and dismissed the petition.

Upon review, the Commissioner concurred with the determination of the ALJ in this matter and adopted the Initial Decision as the final decision, for the reasons expressed therein. The petition was dismissed.

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| <p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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September 26, 2019

New Jersey Commissioner of Education

Final Decision

Crystal Saylor,

Petitioner,

v.

Board of Education of the Town of
West New York, Hudson County,

Respondent.

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

In this matter, petitioner challenges her termination from respondent's district, alleging that she was a tenured secretary and was entitled to statutory tenure protections. By way of background, petitioner began her employment with the Board on January 16, 2010 as a secretary in the Business Department, in which role she answered phones and typed documents.² She was promoted to the position of Administrative Assistant to the Assistant Superintendent, Clara Herrera, effective November 16, 2011.³ On or about July 15, 2015, after Clara Herrera was promoted to Superintendent of Schools, petitioner was promoted to the position of

¹ The Commissioner was not provided with a transcript of the May 20, 2019 hearing at the OAL.

² Petitioner earned an annual salary of \$33,000.

³ Petitioner's annual salary was \$40,000 during the 2011-12 and 2012-13 schools years and increased to \$41,616 in the 2013-14 school year.

Administrative Assistant to the Superintendent.⁴ In this role, she was given additional responsibilities, including preparing agendas for Board meetings, coordinating professional development for District-wide staff, overseeing the Read Across America program in the District, renewing contracts for the early childhood program, and arranging accommodations for out-of-district seminars. She remained in that position until she was terminated for conduct unbecoming a public employee on June 5, 2018.

Following a hearing on the matter, the Administrative Law Judge (ALJ) found that petitioner does not have tenure, never earned tenure, and was last employed in a position that would not earn tenure. The ALJ explained that petitioner was not employed as a secretary in the Business Department long enough to earn tenure, and could only earn tenure if she maintained a “secretarial or clerical position” without a break to a non-secretarial position. The ALJ found that when petitioner became an Administrative Assistant, she was no longer in a secretarial position and was instead a “confidential” employee, as she had additional job responsibilities beyond that of a secretary. Accordingly, the Board was permitted to terminate petitioner.

In her exceptions, petitioner argues that she earned tenure as a secretary. Although her duties and responsibilities increased upon her promotion to Administrative Assistant, petitioner maintains that her new duties were not out of the ordinary for a secretary. Petitioner cites *Rita Hibo and Susan Arillo v. Board of Education of the West Essex Regional School District*, EDU 1226-96, Initial Decision (November 12, 1997), *adopted* Commissioner’s Decision No. 659-97, decided December 29, 1997, for the proposition that because her position as Administrative Assistant to the Superintendent did not require any specialized training or skill, and since she simply handled routine work for her supervisor, she was a secretary for purposes of tenure. Petitioner further emphasizes that whether Superintendent Herrera referred to her title as

⁴ Petitioner’s annual salary increased to \$72,500.

a Confidential Secretary is irrelevant because the Board did not present evidence to demonstrate that petitioner was a “confidential” employee pursuant to the PERC definition. Instead, the substance of petitioner’s job duties demonstrate that she was not a confidential employee.

Additionally, petitioner argues that the ALJ misinterpreted *DiNapoli v. Board of Education of the Township of Verona*, 434 N.J. Super. 233 (App. Div. 2014), *certif. denied*, 217 N.J. 589 (2014), as the case actually supports petitioner’s position. In that case, the petitioner did not keep her tenure when she left a tenured secretary position to move to a separately tenurable position as Assistant Business Administrator, which requires a certification. Petitioner maintains that her position did not require a certification and she never transferred out of a secretarial position. Therefore, she contends that she earned tenure by the time she was promoted to Administrative Assistant to the Superintendent, and her tenure rights must transfer with her as the position was inherently the same.

Petitioner also argues that the ALJ ignored *Lisa Salimbene v. Board of Education of the Township of Dennis, Cape May County*, EDU 9322-10, Initial Decision (October 5, 2011), *remanded* Commissioner’s Decision No. 511-11, decided November 10, 2011, which is directly on point. In that matter, the ALJ found the petitioner was the tenured Secretary to the Elementary School Principal and had rights to the position of Administrative Assistant to the Superintendent over a non-tenured secretary, as the job qualifications were very similar.⁵ Petitioner maintains that since she was promoted from Administrative Assistant to the Assistant Superintendent to Administrative Assistant to the Superintendent, she has an even stronger claim

⁵ Although the job qualifications were similar, the Commissioner found that the job descriptions for the positions were quite different. Accordingly, the Commissioner remanded the matter for further fact-finding on the issue of whether the petitioner had the skills required for the position of Administrative Assistant to the Superintendent.

as to why her tenure rights should transfer, as the responsibilities in her positions were more similar than the petitioner's positions in *Salimbene*.

Moreover, petitioner contends that even if she was a confidential employee without statutory tenure rights, her employment contract indicated that she was tenured when she was Administrative Assistant to the Assistant Superintendent, so her tenure should extend to her promotion, as the positions were substantially similar. Accordingly, petitioner contends that she had obtained tenure, and therefore the Board improperly terminated her.

In reply, the Board argues that the ALJ correctly found that petitioner was not a tenured secretary. The Board maintains that petitioner admitted that her duties were well beyond that of a secretary in the Business Department. For example, as Administrative Assistant to the Superintendent, petitioner drafted agendas for Board meetings, coordinated professional development for District-wide staff members, oversaw the Read Across America program, and renewed contracts for the early childhood program, as opposed to her position as a secretary, where she answered phones and sorted mail. The Board points out that the increases in her annual salary – from \$33,000 when she started as a secretary to \$72,500 when she became Administrative Assistant to the Superintendent – further demonstrate her increased responsibilities.

The Board distinguished the cases cited by petitioner in her exceptions. Additionally, the Board contends that regardless of whether petitioner's 2013-14 employment contract used the word "tenured," the contract is irrelevant because tenure is acquired by law and not by contract. The Board maintains that the only secretarial position that petitioner held was secretary to the Business Department, and she was not in that position for the three years required to earn tenure pursuant to *N.J.S.A.* 18A:17-2. The Board points out that *N.J.S.A.*

18A:17-2 does not extend tenure beyond the time that the employee holds the secretarial position, so even if petitioner had earned tenure as a secretary, she would have relinquished her tenure when she transferred to the positions of Administrative Assistant to the Assistant Superintendent and Administrative Assistant to the Superintendent. As such, the Board argues that it acted within its authority when it terminated petitioner.

Upon review, the Commissioner agrees with the ALJ that petitioner was not employed as secretary when she held the position of Administrative Assistant to the Superintendent, and therefore did not have tenure rights when she was terminated. When petitioner transferred from a secretary in the Business Department to Administrative Assistant to the Assistant Superintendent and then to Administrative Assistant to the Superintendent, her responsibilities, as well as salary, increased dramatically. She went from answering phones and typing documents to preparing for Board meetings, coordinating District-wide professional development activities, renewing contracts for the early childhood program, and coordinating the Read Across America program. The ALJ appropriately relied upon *Joanne Burger v. Board of Education of the Borough of Maywood, Bergen County*, Commissioner's Decision No. 191-11, decided May 19, 2011, *affirmed* 2012 *N.J. Super. Unpub. LEXIS* 1244 (App Div. 2012), *certif. denied*, 212 *N.J.* 431 (2012), where the ALJ, Commissioner, and Appellate Division all found that a tenured secretary was not entitled to the position of Administrative Assistant to the Superintendent over a non-tenured employee, after the hours of her secretary position were reduced as part of a reduction in force. Just as the Administrative Assistant to the Superintendent in *Burger* was not considered to be a secretary because of her increased responsibilities – including supervising other secretaries in the Superintendent's office, coordinating district-wide administrative activities, overseeing the hiring of substitute teachers,

and preparing for Board meetings – the petitioner’s job responsibilities also extended far beyond her former duties as a secretary, so the positions are not substantially similar.

The Commissioner does not find petitioner’s exceptions, or the cases she cites, to be persuasive. Contrary to petitioner’s assertion, *Hibo, supra*, does not support her position, because her job duties as Administrative Assistant to the Superintendent are far more in depth than the duties of the secretaries in that case, which involved routine tasks such as sorting mail, typing correspondence, and handling phone calls.

In *DiNapoli, supra*, the Appellate Division found that DiNapoli did not retain her tenure when she transferred from a tenured secretary position to Assistant Board Secretary, a certificated position. Petitioner’s argument that since her position as Assistant to the Superintendent did not require a certificate, she did not leave her secretarial position, is of no moment. It is clear that the reasoning in *DiNapoli* applies equally when an employee transfers out of a tenured secretary role and into a non-secretarial position, regardless of whether that new position requires a certificate. Further, the Appellate Division in *DiNapoli* explained that “the language of *N.J.S.A.* 18A:17-2 limits the retention of tenure to the time during which the employee holds a secretarial office, position or employment.” 434 *N.J. Super.* at 239. As such, when petitioner transferred out of her secretarial position, she relinquished any tenure rights that she had earned.

Petitioner relies on *Salimbene, supra*, for the proposition that secretarial tenure rights apply to the position of Administrative Assistant to the Superintendent, because the job qualifications are similar. Petitioner’s reliance is misplaced because the Commissioner remanded that matter to the OAL for further fact-finding as to whether the petitioner could perform the job duties of Administrative Assistant to the Superintendent, because although the

job qualifications were similar, the job descriptions were vastly different. Additionally, *Salimbene* predates *Burger*, which is on point and found that a tenured secretary was not entitled to the position of Administrative Assistant to the Superintendent over a non-tenured employee due to the higher-level, district-wide responsibilities performed by the Administrative Assistant. Here, once again, petitioner held more advanced, district-wide responsibilities that were well beyond the role of a secretary.

Finally, petitioner's 2013-14 employment contract did not provide her with tenure because tenure rights are statutory under *N.J.S.A.* 18A:17-2, and not contractual. *DiNapoli, supra*, 434 *N.J. Super.* at 237. As such, petitioner was not a tenured employee when she held the position of Administrative Assistant to the Superintendent and was terminated by the Board.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein, and the petition is hereby dismissed.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: September 26, 2019
Date of Mailing: September 30, 2019

⁶ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 15592-18

AGENCY DKT. NO. 219-8/18

CRYSTAL SAYLOR,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWN OF
WEST NEW YORK, HUDSON COUNTY,**

Respondent.

Sanford R. Oxfeld, Esq., on behalf of petitioner Crystal Saylor (Oxfeld Cohen,
attorneys)

Lester E. Taylor, III, Esq., for respondent Board of Education of the Town of
West New York (Florio Perucci Steinhardt & Cappelli, attorneys)

Record Closed: June 21, 2019

Decided: July 8, 2019

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Crystal Saylor (petitioner or Saylor) appeals her termination effective June 5, 2018, from the Board of Education of the Town of West New York (Board) under cover of August 23, 2018. The Board filed its Answer to the Petition on Appeal under cover of October 11, 2018. The matter was transmitted to the Office of Administrative Law (OAL), on October 26, 2018, for hearing as a contested case

pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The central issue is whether petitioner held a tenured position from which she could not be summarily terminated.

On November 28, 2018, and January 10, 2019, I held case management conferences telephonically with the parties in which discovery, potential motion practice, and hearing dates were discussed. A hearing was thereafter scheduled for May 13, 2019, but was adjourned at the request of one or both parties. The plenary hearing was ultimately held on May 20, 2019. Post-hearing briefs were permitted and the record closed on June 21, 2019, with receipt of the written closing statements as the final submissions.

FACTUAL DISCUSSION

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Petitioner commenced employment with the Board on January 16, 2010, as a Secretary assigned to the Business Department at an annual salary of \$33,000. [P-A, B.] She described her responsibilities at that time as clerical, attending to phones, typing documents, etc. Petitioner continued in her position within the Business Department under annual contracts for the next school year, with an increase in her salary to \$34,304 (2010-2011). [P-C.] As set forth in her evaluation in March 2011, Saylor was not tenured at that time.

Petitioner was transferred to the position of Administrative Assistant to the Assistant Superintendent, Clara Herrera, at a salary of \$40,000 during the 2011-2012 school year. The Board Resolution had an effective date of November 16, 2011 (P-G) but the Contract has a date of July 1, 2011. Petitioner remained in the title of Administrative Assistant for the 2012-2013 and 2013-2014 school years. [P-H, I.] For the 2013-2014 school year, her salary increased to \$41,616 (P-J), and the contract stated that she was “tenured.”

On or before July 1, 2015, Herrera was promoted to Superintendent of Schools. [P-L.] On or about July 15, 2015, Saylor was approved for a promotion as her Secretary or Administrative Assistant at a substantially increased salary, recommended by Herrera, of \$72,500. [P-M, N.] Saylor testified that her large salary increase was justified because her duties then included, in addition to answering the phone and making appointments, preparing for meetings and workshops, preparing documents for monthly Board meetings, communicating with parents and resolved concerns/issues, and fulfilling requests for supplies. Saylor further testified that following her promotion to Administrative Assistant to the Superintendent, she was given additional duties, including drafting agendas for the Board meetings, coordinating professional development for staff members District-wide; she was responsible for the Read Across America program in the District, she renewed contracts for the early childhood program(s), and arranged accommodations for out-of-district seminars.

On June 5, 2018, petitioner was relieved of her duties “immediately” for conduct unbecoming a public employee, and given sixty (60) days pay in lieu of notice. [P-O, P.] Under cover of August 1, 2015, counsel for Saylor advised the Board that it was their position that petitioner had tenure rights as someone who held a “secretarial or clerical position” for more than three years, and was thus entitled to a hearing for cause before she could be terminated. [P-Q.]

On cross-examination, petitioner was asked to review the several contracts and resolutions that impacted her positions over the years. She acknowledged that tenure requires “three years and a day.” Petitioner could not recall the conversations that took place as she was transferred with Herrera to be the Superintendent’s Administrative Assistant but it was definitely discussed between them. While petitioner stated that she was not provided the reasons for her termination, she admitted that the termination notice did set forth the reason.

Clara Herrera testified for the Board with respect to the hiring and supervision of petitioner as her confidential secretary. Herrera has worked for the district for almost forty years. She has been the Superintendent for the Board since July 1, 2015, prior to

which she was the Assistant Superintendent for Payroll and Personnel, as well as a Principal for over a decade.

Herrera stated that she and petitioner used to work together quite a number of years earlier before petitioner took a long break from Board employment. Herrera recalled petitioner contacting her as soon as it was announced that Herrera was being promoted to the position of Assistant Superintendent. She agreed to have Saylor work as her Administrative Assistant. Herrera explained that this position is sometimes referred to as a Confidential Secretary to a Board Cabinet level position, of which there are five, overseen by the Superintendent. As she understood, persons in those positions did not acquire tenure, although a few have been tenured before they were promoted or transferred into such a position. In this case, petitioner did not have tenure rights before becoming Herrera's assistant.

Herrera explained that, unlike a secretary in the Business Department, petitioner had authority to speak on her behalf, to access confidential documents, and other non-secretarial tasks. When Herrera was being promoted to Superintendent, the Administrative Assistant who had been working for the then-Superintendent was retiring. So Herrera specifically spoke with petitioner about moving her into that position along with her own promotion. She described the increased duties and hours, which she thought might be a burden on petitioner's family, but also told her that she would advocate for a substantial increase in salary.

On cross-examination, Herrera confirmed that she was unaware of any policy on tenure for Administrative Assistants. She elaborated on the "confidential" aspect of positions that assist the Cabinet members and reiterated that they are non-tenured.

LEGAL DISCUSSION

The issue at hand is whether petitioner was protected from summary termination under the tenure laws such that she would have the right to be returned to her position with back pay from June 5, 2018.

Tenure statutes are “designed to aid in the establishment of a competent and efficient school system by affording to [covered employees] a measure of security in the ranks they hold after years of service.” Viemeister v. Bd. of Educ. of Prospect Park, 5 N.J. Super. 215, 218 (App. Div. 1949). In general, they are meant to protect competent and qualified employees who have completed a probationary period from removal for “unfounded, flimsy, or political reasons.” Zimmerman v. Bd. of Educ. of Newark, 38 N.J. 65, 71 (1962), cert. denied, 371 U.S. 956, 83 S. Ct. 508, 9 L. Ed. 2d 502 (1963).

To acquire the security of tenure, the precise conditions enunciated in the applicable statute must be met. See Picogna v. Bd. of Educ. of Cherry Hill, 143 N.J. 391, 400 (1996); Kletzkin v. Bd. of Educ. of Spotswood, 136 N.J. 275, 278 (1994); Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63, 72 (1982); Zimmerman, 38 N.J. at 72. Tenure “arises only by passage of the time fixed by the statute” Canfield v. Bd. of Educ. of Pine Hill, 97 N.J. Super. 483, 490 (App. Div. 1967) (Gualkin, J., dissenting), rev’d on dissent, 51 N.J. 400 (1968).

N.J.S.A. 18A:17-2 specifically governs the tenure of individuals who are employed by school districts in secretarial or clerical positions.

a. Any secretary, assistant secretary, school business administrator or business manager of a board of education of any school district who has or shall have devoted his full time to the duties of his office and has or shall have served therein for three consecutive calendar years, and

b. Any person holding any secretarial or clerical position or employment under a board of education of any school district or under any officer thereof, after

1. The expiration of a period of employment of three consecutive calendar years in the district or such shorter period as may be fixed by the board or officer employing him,

or

2. Employment for three consecutive academic years, together with employment at the beginning of the next succeeding academic year, an academic year being the period between the time when school opens in the district

after the general summer vacation and the beginning of the next succeeding summer vacation, and

c. Any person, who has acquired, or shall hereafter acquire, tenure in any secretarial or clerical office, position or employment under the board of education of a school district and has been appointed district clerk or secretary, or shall hereafter be appointed secretary of said district, as such secretary, shall hold his office, position or employment under tenure during good behavior and efficiency and shall not be dismissed or suspended or reduced in compensation, except for neglect, misbehavior or other offense and only in the manner prescribed by subarticle B of article 2 of chapter 6 of this title.

[N.J.S.A. 18A:17-2.]

Petitioner argues that this provision protected her employment with the Board even after she became the confidential secretary to Herrera. A claimant of tenure in situations such as this one imposes upon petitioner the burden of presenting sufficient competent and credible evidence of facts essential to her claim. Here, petitioner must prove by a preponderance of competent and credible evidence that the respondent employed her in a clerical position in order for her claim for tenure to succeed. Wright and E. Orange Personnel Ass'n v. E. Orange Bd. of Educ., 99 N.J. 112, 118-19 (1985). See also DiNapoli v. Bd. of Educ. of Twp. of Verona, 434 N.J. Super. 233, 238 (App. Div. 2014).

As the preponderance of the credible and documentary evidence demonstrates, petitioner never acquired tenure rights while she served as a secretary of the Business Department. With respect to the question whether she could tack on her service to Herrera to her less-than-three years with the Business Department, the DiNapoli court set forth the answer thusly:

Rather, the language of N.J.S.A. 18A:17-2 limits the retention of tenure to the time during which the employee holds her secretarial office, position or employment. The Commissioner's conclusion that secretarial staff maintain tenure upon transfer to nonsecretarial positions is unfounded under the express terms of the statute.

An alternative legal means by which petitioner could have acquired tenure rights is if she earned same as the Administrative Assistant or Confidential Secretary to Herrera.⁷ Yet factually, petitioner was in that position for less than three years also. Accordingly, petitioner can only succeed on her argument herein if she maintained a “secretarial or clerical position” throughout this relevant period with no break for a transfer to a nonsecretarial position. I **CONCLUDE** that she did not so maintain.

The State unclassified service shall not be subject to the provisions of this title unless otherwise specified and shall include the following:

h. One secretary and one confidential assistant to each department head, board, principal executive officer and commission. Each certification and appointment hereunder shall be recorded in the minutes of the Civil Service Commission;

[N.J.S.A. 11A:3-4.]⁸

As our courts have made clear, a “confidential” secretary or assistant is more of a confidante and less of a secretary.

A confidential secretary is privy to the most critical policymaking decisions and has access and exposure to the policymakers as well. It is a position of trust. Those charged with the responsibility of making policy for what they perceive to be the public good cannot have their attention diverted by even a suggestion that those in whom they confide, either directly or indirectly, are not committed to the same view or vision. While this case implicates significant constitutional principles, it resolves itself as a matter of common sense. By assuming a position of confidence such as the secretary to a high-level cabinet officer, an individual assumes a degree of knowledge and access which limits his or her ability to associate freely and without restriction even though such conduct might otherwise be protected by the Federal or State Constitutions.

⁷ Petitioner argues that her employment contract from July 1, 2013, noted that she was tenured. Respondent speculates in its post-hearing submission, although without any evidentiary testimony having been presented on the point, that such contract might have been created or edited by petitioner herself. For other reasons set forth herein, I need not reach this issue. I do take cognizance, however, of the fact that no Board Resolution noted petitioner as tenured.

⁸ In State service, each department head, principal executive officer, board and commission may appoint one unclassified secretary and one unclassified confidential assistant. N.J.A.C. 4A:3-1.4(a).

The job specifications for the position of “confidential secretary” to the Secretary of State (and to the Assistant Secretary of State) confirms that its inherent duties are similar to those of the unprotected “confidential” position of secretary to the mayor in City of North Olmstead, supra, whose inherent duties were summarized as follows: “[The] mayor’s secretary must undertake those functions in relation to the flow of information, whether by writing, speech, or personal visit, to and from the mayor’s office, that the mayor wants the secretary to perform.” 927 F.2d at 913-914. An office holder may legitimately compel the loyalty and commitment necessary for the office holder to effectively fulfill his or her responsibilities. Plaintiff’s position is not protected by the federal or state constitutions as a matter of law.

[Weisel v. Hooks, 277 N.J. Super. 78, 86-87 (Ch. Div. 1994).]

OAL decisions have concurred and been upheld. Petitioner’s job description for Secretary to the Business Department was consistent with the common understanding of the duties of a secretary. However, the duties of the Administrative Assistant to the Superintendent are significantly different. Her duties as an Administrative Assistant to the Assistant Superintendent are not interchangeable with her duties as Secretary to the Business Department. As an Administrative Assistant to the Assistant Superintendent, Saylor performed work that a secretary would not, including preparation for workshops and Board meetings. Petitioner was a “confidential” employee, who admittedly was responsible to “stand in” for the Superintendent as the supervisor of the office when she was out of the office. Burger v. Borough of Maywood Board of Education, EDU 7616-10 Initial Decision (Apr. 4, 2011), Final Decision Comm’r (May 19, 2011) <http://lawlibrary.rutgers.edu/oal/search.shtml>.

The administrative assistant was a confidential employee and, along with the secretary to the school business administrator, was employed on a twelve month basis under a separate employment contract and excluded from the collective negotiation agreement. The administrative assistant was the sole staff member in the Superintendent’s office.

The responsibilities of an administrative assistant were defined in a job posting issued by the Central Office of Administration, and included: coordinating workflow in the school system; performing secretarial duties including typing scheduling, fielding telephone calls, filing, etc.; supervising the activities of other secretarial and clerical personnel assigned to the Superintendent's office; maintaining district-wide personnel records; facilitating new-student registrations and residency checks; maintaining a filing system; scheduling workshops and conferences for the Superintendent; overseeing the hiring, qualification, and scheduling of substitute teachers; preparing and submitting of all State reports; preparing all Board communications, agendas, and minutes; facilitating background checks for new hires and substitutes; preparing conference and workshop materials and purchases; acting as a liaison and "voice of the district" at all times, with the public, parents, and the district attorney; and performing other duties as assigned by the Superintendent.

[Burger v. Bd. of Educ., 2012 N.J. Super. Unpub. LEXIS 1244, *4-5 (App. Div. June 5, 2012).]

Based on the foregoing facts and applicable law, I **CONCLUDE** that petitioner was employed as an Administrative Assistant to the Superintendent, without union or statutory rights. Therefore, she does not have tenure, was never awarded tenure, and was last employed in a position that would not earn tenure.

ORDER

Accordingly, and for the reasons articulated above, it is **ORDERED** that the termination action of respondent the Board of Education of the Town of West New York is hereby **AFFIRMED**. It is further **ORDERED** that the appeal of petitioner for relief under Title 18A is hereby **DISMISSED** with prejudice consistent with the reasons set forth above.

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 by law is authorized

to make a final decision in this matter. 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 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 **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.

July 8, 2019

DATE



GAIL M. COOKSON, ALJ

Date Received at Agency:

7/8/19

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

Crystal Saylor

For Respondent:

Clara Herrera

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

- P-A Board Resolution, dated December 9, 2009
- P-B Employment Contract, dated January 16, 2010
- P-C Employment Contract, dated July 1, 2010
- P-D Evaluation, dated March 25, 2011
- P-E Board Resolution, dated June 30, 2011
- P-F Employment Contract, dated July 1, 2011
- P-G Board Resolution, dated November 9, 2011
- P-H Board Resolution, dated May 24, 2012
- P-I Board Resolution, dated June 27, 2013
- P-J Employment Contract, dated July 1, 2013
- P-K Employment Agreement, dated May 5, 2014
- P-L Board Resolution, dated May 13, 2015
- P-M Board Resolution, dated July 15, 2015
- P-N Salary Change Form, dated July 16, 2015
- P-O Letter from Cardenas to Saylor, dated June 5, 2018
- P-P Letter from Cardenas to Saylor, dated June 5, 2018
- P-Q Letter from Oxfeld to Cardenas, dated August 1, 2018
- P-R Decision of Appeal Tribunal, dated September 25, 2018

For Respondent:

[Relied On Petitioner's Exhibits]