

**New Jersey Commissioner of Education**  
**Final Decision**

Diane Melody,

Petitioner,

v.

Board of Education of the City of Long Branch,  
Monmouth 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 thoroughly detailed in the Initial Decision, that the Commissioner of Education does not have jurisdiction over petitioner's request for a title change and salary adjustment; rather, the Public Employment Relations Commission holds primary jurisdiction. The Commissioner further concurs with the ALJ that the Division on Civil Rights has primary jurisdiction over petitioner's complaint under the Allen Act.

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: September 26, 2025

Date of Mailing: September 29, 2025

---

<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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 06002-25

AGENCY DKT. NO. 72-3/25

**DIANE MELODY,**

Petitioner,

v.

**CITY OF LONG BRANCH, BOARD OF EDUCATION**

**MONMOUTH COUNTY,**

Respondent.

---

**Diane Melody**, petitioner, appearing pro se

**Susan L. Swatski**, Esq., for respondent (Hill Wallack, LLP, attorneys)

Record Closed: May 29, 2025

Decided: July 10, 2025

BEFORE **MAMTA PATEL**, ALJ:

**STATEMENT OF THE CASE**

On March 19, 2023, petitioner, Diane Melody, a secretary for respondent, the City of Long Branch Board of Education (Long Branch), petitioned the Commissioner of the Department of

Education to change her title to a “confidential” one. Does the Commissioner of DOE have the authority to do so? No. The Public Employment Relations Commission (PERC) has exclusive statutory authority to determine whether a position can be classified as confidential. N.J. Tpk. Auth. v. AFSCME, Council 73, 150 N.J. 331 (1997).

### **PROCEDURAL HISTORY**

On March 19, 2025, Melody filed a petition with the Department of Education (DOE). In her petition, Melody seeks to change her title from secretary (an affiliated position) to confidential secretary (an unaffiliated position). She also seeks a salary adjustment commensurate with the title.

On April 1, 2025, Long Branch filed a motion for a summary decision instead of an answer.

On April 2, 2025, the DOE transmitted this case 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, for a hearing under the Uniform Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 7, 2025, Melody filed her opposition to the motion, and on April 11, 2025, Long Branch filed its reply.

### **FINDINGS OF FACT**

Based upon papers submitted in support of and in opposition to the motion for summary decision, and in viewing the evidence in the light most favorable to petitioner, I **FIND** the following as **FACT**:

1. Melody works as a secretary in the Facilities Office at Long Branch. Her highest level of education is a high school diploma.

2. Melody reports directly to the assistant school business administrator for facilities.
3. All secretary positions are associated with the Long Branch School Employees Association (LBSEA), unless specifically excluded, and are governed by Long Branch's collective bargaining agreement (CBA) with the LBSEA. (P-J; R-B; R-H.)
4. Melody's salary aligns with the CBA. (R-C.)
5. Melody's 2022–2023 staff contract appoints her to the secretary position at a salary of \$60,963, Step 10, for the term beginning July 1, 2022, and ending June 30, 2023.
6. The contract can only be terminated by Melody or the Long Branch Board of Education.
7. Melody has never filed a grievance regarding her job duties with the LBSEA.
8. In the past six years, Long Branch has posted the position of confidential secretary eleven times.
9. Melody has never applied for any position posted for a confidential secretary. (R-F.)
10. Charles Widdis has served as a confidential secretary since 2011, assigned to the former chief academic officer. Widdis holds a bachelor of science degree in business administration.
11. In July 2021, after the resignation of the previous chief academic officer, Long Branch demoted Widdis to the position of secretary.

12. In September 2021, a new chief academic officer was appointed.
13. In May 2023, after finalizing a new CBA, Long Branch reinstated Widdis to the confidential secretary position for the chief academic officer.
14. In his role as confidential secretary to the chief academic officer, Widdis is responsible for preparing reports for the superintendent that include sensitive data such as Social Security numbers, grievances, litigation, union negotiations, employee evaluations, and reports of harassment, intimidation, or bullying. (R-E.)
15. Currently, Long Branch has sixteen confidential secretaries, of whom fifteen are female.
16. Article I of the Recognition Clause of the CBA governs the positions recognized under the CBA. (P-J; R-B; R-H.)
17. Melody's supervisor's position is not included in the excluded positions listed in the CBA. (P-J; R-B; R-H.)
18. Melody's responsibilities do not include any issues involved in the collective negotiations. (R-D.)
19. On June 22, 2023, Melody emailed the superintendent of Long Branch, Francisco Rodriguez, to request a title change from secretary, an affiliated position, to confidential secretary, a non-affiliated position.
20. On July 13, 2023, Melody was notified that her request for a title change had been denied.
21. On July 16, 2023, Melody filed a complaint of discrimination, alleging that Widdis, a male, was granted a title change.

22. Long Branch referred the investigation of Melody's complaint to Lester Taylor, Esq., of Florio, Perrucci, Steinhardt, Cappelli, Tipton & Taylor, LLC.

23. On July 20, 2023, Melody received an email from Taylor's office asking about her availability for an interview on July 27, 2023, at Long Branch.

24. Melody was represented by Amy C. Blanchfield, Esq., of Mashel Law, LLC, at the July 27, 2023, interview.

25. On August 12, 2023, Melody filed a discrimination complaint with the Division on Civil Rights (DCR), asserting violations of the Diane B. Allen Equal Pay Act (the Allen Act), N.J.S.A. 10:5-12(t).

26. On September 18, 2023, Taylor sent a letter to Melody stating that the investigation did not substantiate her complaint of discrimination.

27. On March 10, 2025, the DCR sent a letter to Melody and Long Branch stating that it had completed its review of Melody's complaint. After examining the initial submissions, it was determined that "the public interest is not served by continuing the investigation or that a continuing investigation is not required given the likelihood of success on the merits," and the case was closed. (R-A.)

### **CONCLUSIONS OF LAW**

A party may move for summary decision on any or all the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion must be served with briefs, with or without affidavits, and may be granted if the filed papers and discovery, along with any affidavits, demonstrate that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). When such a motion is made and supported, an adverse party must submit an affidavit detailing specific facts

that show that a genuine issue of material fact exists, which can only be resolved in an evidentiary proceeding. Ibid.

## PERC

The New Jersey Employer-Employee Relations Act (the Act) charges PERC with making policy and establishing “rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters.” N.J.S.A. 34:13A-5.2. PERC is also authorized to intervene “in matters of recognition and unit definition” in the event of a dispute. N.J. Tpk. Auth. v. AFSCME, Council 73, 150 N.J. 331, 346 (1997) (citing N.J.S.A. 34:13A-5.3).

The Act also authorizes PERC specifically to determine “which unit of employees is appropriate for collective negotiation.” N.J.S.A. 34:13A-6(d).

In this case, Melody’s position as secretary is governed by the CBA. Additionally, the CBA’s Recognition Clause states explicitly that only secretarial and clerical staff assigned to work with certain higher-level positions are confidential and excluded from coverage.

N.J.S.A. 34:13A-3 defines “confidential employees” of a public employer as “employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.” The determination of whether an employee is confidential properly resides with PERC. For example, in In re Greenwich Township Board of Education v. Greenwich Education Association, P.E.R.C. No. 93-27, 18 NJPER P23,224, 1992 NJ PERC LEXIS 238 (1992), PERC determined that a secretary to the business administrator of the Greenwich Township Board of Education is a confidential employee within the meaning of the New Jersey Employer-

Employee Relations Act. Therefore, any dispute regarding Melody's exclusion should be brought before PERC.

Additionally, since the CBA governs Melody's current position, any unilateral change to her position would constitute a violation of the CBA and could lead to the union filing a grievance.

Accordingly, I **CONCLUDE** that PERC has primary jurisdiction to determine Melody's request for a title change and salary adjustment.

#### Division on Civil Rights

The DCR holds primary jurisdiction over cases alleging violations of the Allen Act, N.J.S.A. 10:5-13. In similar cases, the Civil Service Commission, which oversees the New Jersey State Policy Prohibiting Discrimination in the Workplace, has determined that complaints filed under the Allen Act must be filed with the DCR. "[T]he Commission finds that it does not have jurisdiction to review a complaint under the [Allen Act,] as such a complaint must be filed with the [DCR] or with the Superior Court of New Jersey." In re L.J., William Paterson Univ., N.J., 2019 N.J. CSC LEXIS 188, at \*12 (Apr. 18, 2019); see also In re Kowalski, 2020 N.J. CSC LEXIS 665, at \*10 (May 1, 2020) (citing In re L.J. for the same procedural rule). Furthermore, the Allen Act also states that any complainant may file a suit in the Superior Court of New Jersey without first filing a complaint with the DCR or any municipal office. N.J.S.A. 10:5-13(a)(2).

On July 16, 2023, Melody filed an internal complaint of discrimination, alleging that Widdis, a male, was granted a title change, while her request for a title change was denied. Long Branch referred the investigation of Melody's complaint to Lester Taylor, Esq., of Florio, Perrucci, Steinhardt, Cappelli, Tipton & Taylor, LLC. On September 18, 2023, upon completion of the investigation, which included an interview and statement from Melody, Taylor sent a letter to Melody stating that the investigation did not substantiate her complaint of discrimination.



Additionally, on August 12, 2023, Melody filed a discrimination complaint with the DCR, alleging violations of the Allen Act, N.J.S.A. 10:5-12(t). The DCR reviewed Melody's complaint and concluded that a further investigation was unwarranted and closed the case.

Based on the above, I **CONCLUDE** that the DCR has primary jurisdiction over Melody's complaint under the Allen Act.

#### Commissioner of Education Jurisdiction

New Jersey's Department of Education and the Commissioner have "subject matter interest" and "first-instance jurisdiction 'to hear and determine . . . all controversies and disputes arising under school laws.'" Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 424 (App. Div. 2002) (quoting N.J.S.A. 18A:6-9). The Commissioner's jurisdiction, however, does not extend to all matters involving school boards. Id. at 424–25. For example, the Commissioner does not have jurisdiction over contract claims because they arise from statutory or common law and not from school laws. Id. at 425. More expansively, the Commissioner does not have jurisdiction when a case or controversy involves only alleged violations of independent statutes and not school laws. Id. at 426. Thus, the Commissioner's authority is not exclusive where particular statutes provide alternate routes for issue resolution, or where the matter involves a question of law outside the purview of the school laws. Ibid.

Under N.J.S.A. 18A:27-4.1(b), a board of education (BOE) is authorized to renew the employment contract of a non-tenured employee "only" upon the recommendation of the chief school administrator and by a roll call majority vote of the full membership of the BOE.

In this case, the CBA between Long Branch and the LBSEA controls. Under the CBA, all secretary positions, including Melody's position, are associated with the LBSEA, unless specifically excluded, and are governed by Long Branch's CBA with the LBSEA.

Section A2 of the CBA excludes the following positions, as they are deemed confidential: “All secretaries and clerks employed by the Board, except for the secretaries for the Superintendent of Schools, the Assistant Superintendent of Schools, Assistant Superintendent for Pupil Personnel Services, Chief Academic Officer, School Business Administrator/Board Secretary, Assistant School Business Administrator/Assistant Board Secretary, and other confidential secretaries who are specifically excluded, including the personnel certification secretary and the benefits secretary.” (R-B; R-H.)

Melody works as a secretary in the Facilities Office at Long Branch and reports directly to the assistant school business administrator for facilities.

The CBA only excludes secretaries who work directly for the titles listed in the Recognition Clause of the CBA. Melody’s supervisor’s title is not among the listed positions. Therefore, Melody is not eligible for a title change to confidential secretary under the CBA.

Therefore, only Long Branch has authority over personnel actions, including title changes, not the Commissioner, since the Commissioner does not have jurisdiction over contract claims.

Based on the above, I **CONCLUDE** that the Commissioner of Education does not have jurisdiction over Melody’s request for a title change and salary adjustment.

### **ORDER**

For the reasons set forth above, I **ORDER** that Long Branch’s motion for summary decision is **GRANTED**, and Melody’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 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 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**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto:ControversiesDisputesFilings@doe.nj.gov) or by mail to the **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.

July 10, 2025

Date



MAMTA PATEL, ALJ

Date Received at Agency:

Date Mailed to Parties:

**APPENDIX**

**Witnesses**

**For Petitioner:**

None

**For Respondent:**

None

**Exhibits**

**For Petitioner:**

Petition of Appeal

Attachments P-1 – P-4

Opposition Brief

P-A Email to Melody from Hill Wallack, LLP, sending Reply Brief, dated April 11, 2025.

P-B Email from Melody to Long Branch BOE member Brown, and reply, dated July 12, 2023.

P-C Text messages between Melody and Union.

P-D Letter from Lester E. Taylor, Esq. to Melody, dated September 18, 2023, and Letter from Lester E. Taylor, Esq. to Melody, dated September 26, 2023.

P-E Copy of Long Branch BOE's Reply Brief, dated April 11, 2025.

P-F Long Branch BOE, Personnel Actions.

P-G Long Branch BOE, Personnel Actions.

P-H Copy of Long Branch BOE's Position Statement to the Division on Civil Rights, dated November 7, 2023.

- P-I Information concerning Long Branch BOE's Office of Technology
- P-J Recognition Clause in Collective Bargaining Agreement Between Long Branch BOE and LBSEA.
- P-K Copy of Long Branch BOE's Motion for Summary Decision, dated April 1, 2025.
- P-L OPRA Response Letter from Long Branch to Melody, dated December 5, 2023.
- P-M Text Messages between Melody and Union.

For Respondent:

Motion for Summary Decision

- R-A Letter from Division on Civil Rights to Melody, dated March 10, 2025
- R-B Collective Bargaining Agreement Between Long Branch BOE and LBSEA, from 2020-2023
- R-C Schedule I -Salary Guides Secretary, from 2023-2026
- R-D Secretary Position Description
- R-E Confidential Secretary Position Description
- R-F List of Postings for Confidential Secretary and Applicants
- R-G List of Confidential Secretaries and Years of Experience
- R-H Collective Bargaining Agreement Between Long Branch BOE and LBSEA, from July 1, 2023-June 30, 2026

Reply Brief

- RR-A Email from Melody to Hill Wallack, LLC, dated April 7, 2025
- RR-B Signed Declination of offer from Long Branch to Melody to change title to Confidential Secretary, dated May 20, 2024
- RR-C Recognition Clause in Collective Bargaining Agreement Between Long Branch BOE and LBSEA, from 2020-2023
- RR-D Recognition Clause in Collective Bargaining Agreement Between Long Branch BOE and LBSEA, from July 1, 2023-June 30, 2026

RR-E Confidential Secretary Position Description

RR-F Secretary Position Description