

New Jersey Commissioner of Education
Final Decision

John Berenato,

Petitioner,

v.

Board of Education of the Township of
Manchester, Ocean County,

Respondent.

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

On January 19, 2022, petitioner and the Board entered into an employment agreement for petitioner to serve as the Board's superintendent from February 2, 2022, through June 30, 2026. In October 2023, the Board learned that petitioner had a conviction for driving while intoxicated (DWI) and a related suspension of his driver's license that he omitted from his employment application, and on November 7, 2023, the board terminated petitioner's contract, effective immediately. Petitioner appealed.

The Administrative Law Judge (ALJ) concluded that the Board's termination of petitioner without following the provisions of the Tenure Employees Hearing Law (TEHL) was improper. The ALJ reviewed prior Commissioner decisions which held that, upon learning that petitioner had omitted his DWI conviction and license suspension from his employment application, the

Board's options were to nonetheless continue the contract, file tenure charges, or pay petitioner to do nothing for the remainder of his contract while assigning his superintendent duties to someone else. However, the ALJ found that the option the Board chose – unilateral termination of petitioner's contract – was not among the Board's legal options because a superintendent is entitled to the procedural protections of the TEHL prior to his removal. Accordingly, the ALJ ordered that petitioner be restored to the position of superintendent with all back pay, benefits, and emoluments.

The Board's exceptions and petitioner's reply reiterate the arguments made below in their briefs in summary decision. In its exceptions, the Board argues that it was misled by petitioner when he failed to disclose his conviction and license suspension, and contends that but for petitioner's "deceit," he never would have been offered employment as the district's superintendent. According to the Board, this fact makes petitioner's contract voidable rather than being subject to the TEHL. In response, petitioner argues that the ALJ correctly decided that the Board could not terminate him without following the procedures of the TEHL.

Upon review, the Commissioner concurs with the ALJ that the Board violated *N.J.S.A.* 18A:17-20.2 when it terminated petitioner's employment as superintendent. "During the term of any employment contract with the board, a superintendent shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming a superintendent or other just cause and then only in the manner prescribed by [the TEHL]." *N.J.S.A.* 18A:17-20.2. The Commissioner has explained that with this provision, "the Legislature eliminated career tenure for superintendents and instituted a system providing a period of tenure during the

duration of the contract.” *Howard v. Bd. of Educ. of East Orange*, Commissioner Decision No. 176-01 (June 5, 2001).

Tenure rights provide such strong protections that they cannot be overridden by contract. “It is now well settled that public employees and employers may not agree to contractual terms that contravene a specific term or condition of employment set by a statute.” *Spiewark v. Bd. of Educ. of Rutherford*, 90 N.J. 63, 76 (1982). “Tenure is a statutory right . . . It may not be forfeited or waived.” *Id.* at 77 (internal quotation and citations omitted). For this reason, the Commissioner has previously found that even where a superintendent contract expressly contemplates the possibility of unilateral termination, “such provisions cannot take precedence over a statutory requirement for tenured employment. Such precedence would permit terms and conditions of employment to effectively negate a legislative entitlement . . . which is unacceptable as a matter of law [pursuant to] *Spiewak*.” *Harrington v. Bd. of Educ. of Clinton*, 1995 N.J. Agen. LEXIS 370, at *34 (Feb. 16, 1995).

If even express contract terms that contemplate unilateral termination cannot override a superintendent’s statutory right not to be dismissed except pursuant to the TEHL, then common law contract principles certainly cannot do so. The cases cited by the Board regarding voidable contracts are inapplicable to this matter, as none involve an employee who is statutorily entitled to contractual tenure. Indeed, the Board does not point to a single case in which a board of education was permitted to void a superintendent’s contract rather than following the provisions of the TEHL to pursue dismissal.

In *Gualtieri v. Bd. of Educ. of Somerset Hills Regional Sch. Dist.*, Commissioner Decision No. 453-05 (Dec. 16, 2005), Superintendent Gualtieri submitted his resignation in June 2003, with

an effective date of September 2, 2003. However, at a June 30, 2003 meeting, the board adopted a resolution terminating Gualtieri's employment, effective immediately. The board argued that the termination was appropriate because Gualtieri breached his contract by failing to provide the board with 90 days' notice of his intended resignation. The Commissioner found that "unilateral termination of his employment could not be lawfully accomplished in the absence of proceedings pursuant to *N.J.S.A. 18A:6-10*. Simply put, whatever its feelings may have been about the fairness to the district of petitioner's actions, the Board had no authority to do what it did, and petitioner must prevail on his appeal herein as a matter of law." *Id.* at 2. The Commissioner finds that the same outcome is warranted here.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board is ordered to restore petitioner to the position of superintendent, with all back pay, benefits, and emoluments.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2025
Date of Mailing: October 20, 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 02200-24

AGENCY DKT. NO. 19-1/24

JOHN BERENATO,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF MANCHESTER,

OCEAN COUNTY,

Respondent.

Christopher M. Supsie, Esq., for petitioner (Stein, Supsie & Tedeschi, attorneys)

Jeffrey R. Merlino, Esq. for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: July 17, 2025

Decided: August 7, 2025

BEFORE **MARY ANN BOGAN, ALJ:**

STATEMENT OF THE CASE

Petitioner John Berenato (Berenato), Superintendent of Schools for Manchester Township, filed a petition seeking an order finding and declaring that the Board of Education of Manchester Township's (Board or Manchester) action to terminate petitioner

unilaterally violates the laws governing a superintendent's employment consistent with N.J.S.A. 18A:17-20.2 and the Tenure Employees Hearing Law (TEHL). As relief, Berenato seeks an order vacating his termination and requiring Manchester to "resume payments of full salary and other benefits in accordance with the terms of this employment contract as if the termination had never taken place."

PROCEDURAL HISTORY

In January 2024, petitioner filed his appeal with the New Jersey Department of Education, Office of Controversies and Disputes. In his petition of appeal, Berenato alleges that the way in which Manchester terminated his employment violates the laws governing a superintendent's employment, including N.J.S.A. 18A:17-20.2 and the TEHL. In response to petitioner's petition of appeal, an answer was filed on behalf of the Board on February 13, 2024. In its answer Manchester denies any wrongdoing in terminating Berenato's employment. On February 15, 2024, the matter was filed 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 Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. At the July 11, 2024, status conference, the parties jointly requested an order of inactivity for 120 days. An order of inactivity was issued on August 15, 2024, and the matter was stayed. At the February 19, 2025, status conference, the parties agreed to resolve the case by way of summary decision motion. Thereafter, the parties filed cross-motions for summary decision under N.J.A.C. 1:1-12.5 and submitted a joint statement of facts. On June 23, 2025, petitioner filed a letter brief in opposition to the motion filed by the Board. A telephone conference was held on July 16, 2025, and the record closed on July 17, 2025.

DISCUSSION AND FINDINGS OF FACT

Undisputed Facts

The parties have stipulated to the following facts, and I **FIND**:

On January 19, 2022, Manchester and Berenato entered an employment agreement for Berenato to serve as Manchester's superintendent of schools from February 2, 2022, through June 30, 2026. Joint Stipulation of Facts, ¶¶ 1–2. In October 2023, Manchester learned that Berenato had a DWI conviction that he omitted from his employment application. Id. at ¶ 7. On November 7, 2023, Manchester held a special meeting to discuss Berenato's misconduct. Id. at ¶ 10. At that meeting, Manchester passed a resolution to immediately terminate Berenato's employment contract as superintendent, effective November 7, 2023. Id. at ¶¶ 7, 10. Manchester terminated the employment contract, which was not yet set to expire until the end of the 2025–2026 school year. Prior to terminating Berenato's employment, Manchester did not file tenure charges against him for omitting his DWI conviction from his employment application. Id. at ¶¶ 13–18.

By letter dated December 14, 2023, Manchester notified Berenato of his termination. Id. at Ex. B. In the letter, Manchester noted that on his employment application, he untruthfully denied that he had been convicted of a crime, including a traffic violation involving drug or alcohol impairment. Ibid. Manchester also alleged that Berenato had, without Manchester's approval, awarded himself and others leave time to which they were not entitled. Ibid.

Arguments of the Parties

In his petition of appeal, Berenato alleges that the way in which Manchester terminated his employment violates the laws governing a superintendent's employment, including N.J.S.A. 18A:17-20.2 which prohibits a school board from firing a superintendent without following the procedural requirements for removal under the TEHL. As relief, Berenato seeks an order vacating his termination and requiring

Manchester “to resume payments of full salary and other benefits in accordance with the terms of his employment contract as if the termination had never taken place[.]”

By its answer, Manchester denies any wrongdoing in terminating Berenato’s employment. According to the school board, Berenato “should not have been considered for the position as superintendent based upon his clear misrepresentation” on his employment application, and because “[h]is contract with the Board of Education was based upon such misrepresentation, [the contract] is therefore, void ab initio.”

In his motion, Berenato argues that Manchester wrongfully terminated him at the November 7, 2023, meeting, in violation of N.J.S.A. 18A:17-20.2, which prohibits a school board from firing a superintendent without following the procedural requirements for removal under the TEHL.

In its motion, Manchester contends not only that “[b]ased on the fraudulent and material misrepresentations and omissions [on Berenato’s employment application], the Employment Agreement was voidable and [Manchester’s] action to terminate the contract must be upheld,” but also that Berenato’s “deceitful actions require that he repay salary and any other benefits he improperly received” while employed as superintendent.

LEGAL ANALYSIS AND CONCLUSION

Under N.J.A.C. 1:1-12.5(a), “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” A motion for summary decision is a common legal ploy to resolve a case without an evidentiary hearing. A motion for summary decision may be granted “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.” N.J.A.C. 1:1-12.5(b). Additionally, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

Summary judgment is analyzed in accordance with the principles established by the Supreme Court in Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995):

[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 factfinder 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.”

[Citation omitted.]

See also Nat’l Transfer, Inc. v. N.J. Dep’t of Env’tl. Prot., 347 N.J. Super. 401, 408–09 (App. Div. 2002).

Having considered the parties’ submissions, I **CONCLUDE** that the evidence at this juncture is sufficient to properly dispose of this matter by way of summary decision, as there are no genuine issues of material fact.

The statutory provisions at N.J.S.A. 18A:17-15 to -24 address the appointment, employment, and dismissal of a superintendent of schools.

Under N.J.S.A. 18A:17-15, a school board may by contract appoint a superintendent for a three-year, four-year, or five-year term of employment. Additionally, N.J.S.A. 18A:17-20.2 provides that, “[d]uring the term of any employment contract with the board, a superintendent shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming a superintendent or other just cause and then only in the manner prescribed by” the TEHL.

Under the TEHL, “[a]ny charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board” and “[t]he board of education shall

forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto.” N.J.S.A. 18A:6-11. Additionally, “[i]n the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing” before an arbitrator who shall render a final decision on the charge(s). Ibid.; see N.J.S.A. 18A:6-9 and N.J.S.A. 18A:6-16.

As a threshold matter, since the Legislature “establish[ed] contractual tenure for superintendents, the Commissioner has consistently exercised his jurisdiction when faced with situations where appointment, contract rescission or modification of a superintendent’s contract relates to questions of a superintendent’s contractual tenure.”¹ Howard v. E. Orange Bd. of Educ., 2001 N.J. AGEN LEXIS 1391, *14 (Jun. 5, 2001) (citing W. Village Civic Club, Inc. v. Manchester Twp. Bd. of Educ., 1996 N.J. AGEN LEXIS 1410 (Jun. 5, 1996); Graham v. Kearney Bd. of Educ., 95 N.J.A.R.2d (EDU) 510, Dunn v. Elizabeth Bd. of Educ., 96 N.J.A.R.2d (EDU) 279; and Harrington v. Clinton Bd. of Educ., 95 N.J.A.R.2d (EDU) 535).

The Commissioner has repeatedly held that a school board must follow N.J.S.A. 18A:17-20.2 and the TEHL before removing a superintendent for inefficiency, incapacity, conduct unbecoming, or other just cause and that a school board cannot unilaterally terminate a superintendent’s contract in contravention of those laws. For example, in Harrington, 95 N.J.A.R.2d (EDU) 535, a school board violated a superintendent’s rights under N.J.S.A. 18A:17-20.2 by “vot[ing] to terminate [his] employment and pay him out what was due and owing for the remainder of the contract term” instead of filing tenure charges against him. Id. at *4.

As the Commissioner explained, the superintendent laws “protect boards by limiting their obligation to continue any given superintendent’s employment to a maximum

¹ In 1991, “the Legislature eliminated *career tenure* for superintendents and instituted a system providing *a period of tenure during the duration of the contract*.” Howard, 2001 N.J. AGEN LEXIS 1391, **9–10 (citing L. 1991, c. 267).

of five years” and “they also protect superintendents by ensuring that employment does in fact continue for the period designated by contract, absent dismissal for cause, resignation, or separation by mutual agreement.” Id. at *33. In this way, “the Legislature created a hybrid position incorporating elements of both contractual and tenured employment” such that, if a school board is dissatisfied with its superintendent, “the law permits a board to choose the best option under all of the circumstances; i.e., whether to tolerate the situation until the expiration of the date of the contract, whether to litigate tenure charges or whether to relieve the superintendent of her obligations under the contract while fulfilling its own.” Id. at **31–32.

However, “[t]here is neither mention of, nor place for, unilateral termination in this scheme, notwithstanding that a sum equivalent to remaining salary may be paid to the ousted superintendent[.]” Id. at *33. Thus, even “where the possibility of unilateral termination is expressly contemplated” by an employment agreement, “such [contractual] provisions cannot take precedence over a statutory requirement for tenured employment” because “[s]uch precedence would permit terms and conditions of employment to effectively negate a legislative entitlement” under N.J.S.A. 18A:17-20.2. Id. at *34. When a school board seeks to remove a superintendent, “contractual tenure protects a superintendent from a board rescinding an existing agreement . . . except as provided for in N.J.S.A. 18A:17-20.2.” Howard, 2001 N.J. AGEN LEXIS 1391, *18.

Thus, in Kohn v. Vineland Bd. of Educ., 2001 N.J. AGEN LEXIS 987, *9 (Sept. 14, 2001), a school board violated a superintendent’s statutory rights by terminating his contract and reassigning him as director of special projects, even though his contract contemplated such an outcome. In ruling in the superintendent’s favor, the Commissioner explained that, “[n]otwithstanding the contract provision that permits the Board to terminate petitioner’s five-year contract as superintendent of schools after three years and reduce petitioner in position and salary[,] there is no statutory authority, absent the sustaining of tenure charges as indicated in N.J.S.A. 18A:17-20.2[,] for the Board to reduce petitioner’s position and salary during the term of his five-year contract.” Id. at *9.

One of the legal options a school board has when dealing with an unwanted superintendent—“to relieve the superintendent of her obligations under the contract while

fulfilling its own”—merits further discussion. As the Commissioner noted in Harrington, 95 N.J.A.R.2d (EDU) 535, the superintendent laws do “not compel a Board to either file tenure charges or continue, for practical purposes, a working relationship it no longer finds satisfactory.” Id. at **33–34. Instead,

as with any other contracted teaching staff member, the board may elect to relieve the superintendent of the performance of his or her duties during any time between the giving of notice pursuant to N.J.S.A. 18A:17-20.1 that employment will not be continued beyond the term of the current contract and the actual termination of employment upon that contract's expiration. N.J.S.A. 18A:27-9. Such a result recognizes both the employment entitlement of the tenured superintendent and the need for a reasonable degree of flexibility on the part of the employing board of education.

[Id. at *34.]

N.J.S.A. 18A:17-20.1 authorizes a school board to notify “the superintendent in writing that he will not be reappointed at the end of the current term, in which event his employment shall cease at the expiration of that term, provided that such notification shall be given prior to the expiration of the first or any subsequent contract by a length of time equal to 30 days for each year in the term of the current contract.”

As such, so long as a school board gives a superintendent timely notice that his contract will not be renewed, the school board can simply pay him to do nothing and assign someone else the superintendent duties until his current contract expires.

In sum, a school board has several legal options when confronted with a superintendent with whom the board is dissatisfied: (1) “tolerate the situation until the expiration of the date of the contract;” (2) “litigate tenure charges;” or (3) “relieve the superintendent of her obligations under the contract while fulfilling its own.” Harrington, 1995 N.J. AGEN LEXIS 535, *32. However, a school board cannot choose to unilaterally terminate an unwanted or misbehaving superintendent’s contract due to the “statutory requirement for tenured employment” under N.J.S.A. 18A:17-20.2, which entitles a

superintendent to the TEHL's procedural protections prior to his removal for inefficiency, incapacity, conduct unbecoming, or other just cause.

When a school board improperly removes a superintendent during his contractual term, the remedy is for the superintendent to "be restored to the position of superintendent with all back pay, benefits and emoluments due him as superintendent of schools." Kohn, 2001 N.J. AGEN LEXIS 987, *10.

I therefore **CONCLUDE** that the school board violated Berenato's rights under N.J.S.A. 18A:17-20.2 and the TEHL by unilaterally terminating his employment contract. When Manchester discovered that Berenato had omitted his DWI conviction from his employment application, the school board had several choices for how to respond: (1) "tolerate the situation until the expiration of the date of the contract;" (2) "litigate tenure charges;" or (3) "relieve the superintendent of [his] obligations under the contract while fulfilling its own." Harrington, 1995 N.J. AGEN LEXIS 535, *32. The unilateral termination of Berenato's contract was not among Manchester's legal options.² Id. at **32–33.

Berenato is contractually tenured as Manchester's superintendent until June 30, 2026. Because, on November 7, 2023, Manchester removed Berenato in violation of his rights under N.J.S.A. 18A:17-20.2 and the TEHL, he is entitled to be restored to the position of superintendent with all back pay, benefits, and emoluments due him as superintendent of schools. Kohn, 2001 N.J. AGEN LEXIS 987, *10.

² The superintendent laws do, however, recognize one situation in which a superintendent's contract shall be automatically terminated. N.J.S.A. 18A:17-15.1 requires that every "employment contract entered into between a board of education and a superintendent of schools shall include a provision that explicitly states that in the event that the certificate of the superintendent is revoked the contract is null and void as of the date of the revocation." That provision is inapplicable to the facts of this case.

ORDER

It is hereby **ORDERED** that petitioner's motion for summary decision is **GRANTED**. Petitioner is restored to the position of superintendent with all back pay, benefits and emoluments due him as superintendent of schools.

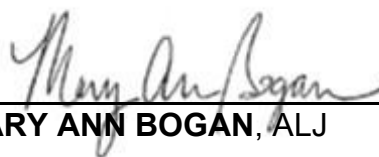
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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**. 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.

August 7, 2025

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

MAB/nn