

164-26  
OAL Dkt. No. EDU 15546-24  
Agency Dkt. No. 308-9/24

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

Joseph Gurcsik,

Petitioner,

v.

Board of Education of the Borough of Collingswood,  
Camden County,

Respondent.

The record of this matter, the hearing transcript, 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) that the involuntary transfer of petitioner from the position of Supervisor of Safety and Student Services to the position of Assistant Principal violated his tenure rights. *N.J.S.A. 18A:28-5; N.J.S.A. 18A:28-6; Armental v. Bd. of Educ. of City of Englewood, Bergen County*, Commissioner Decision No. 75-25 at 8 (Mar. 7, 2025).

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted. Respondent shall reinstate petitioner to a Supervisor position in accordance with his tenure rights.

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



COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2026  
Date of Mailing: May 18, 2026

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



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

**INITIAL DECISION**

OAL DKT. NO. EDU 15546-24

AGENCY DKT. NO. 308-09/24

**JOSEPH GURCSIK,**

Petitioner,

v.

**BOROUGH OF COLLINGSWOOD  
BOARD OF EDUCATION, CAMDEN  
COUNTY,**

Respondent.

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**Andrew L. Schwartz**, Esq., for petitioner (Schwartz Law Group, LLC, attorneys)

**Joseph F. Betley**, Esq., for respondent (Capehart Scatchard, P.A., attorneys)

Record Closed: January 23, 2026

Decided: March 6, 2026

BEFORE **CATHERINE A. TUOHY**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, Joseph Gurcsik, filed a Petition of Appeal with the Commissioner of Education alleging that respondent, the Collingswood Board of Education (Board or District), involuntarily transferred him from supervisor of Safety and Student Services to

assistant principal of Collingswood Middle School in violation of his tenure rights pursuant to N.J.S.A. 18A:28-5 and -6.

### **PROCEDURAL HISTORY**

Petitioner filed a Petition of Appeal dated September 19, 2024. Respondent filed an Answer to Petition of Appeal and Affirmative Defenses on October 22, 2024. The New Jersey Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL), where it was filed on October 23, 2024, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Numerous telephone status conferences were held throughout the course of this case. The parties jointly submitted a Stipulation of Facts prior to the hearing. (J-1.) The hearing was conducted on October 9, 2025, and the record remained open to allow for receipt of transcripts and submission of closing briefs. The record closed following receipt of closing briefs on January 23, 2026.

### **DISCUSSION AND FINDINGS OF FACT**

The parties stipulated the following facts (J-1)

1. The Collingswood Board of Education (“Board” or “District”) is a Type II board of education organized under Title 18A of the New Jersey Statutes. The Board operates the Collingswood School District (“District”), a K-12 public school district serving students residing within Collingswood, Camden County, New Jersey.
2. The Petitioner, Mr. Joseph Gurcsik, currently serves as the Assistant Principal of Collingswood Middle School.
3. Petitioner began his employment with the District in January 2003 as Principal of Collingswood Middle School. A true copy of Petitioner’s 2003 Employment Contract with the Board is attached as Exhibit A.

4. The Principal position requires an Administrative certificate with Principal endorsement, which Petitioner possesses.

5. On or around July 2006, Petitioner was transferred to the position of Principal At the William P. Tatem Elementary School. A true copy of June 7, 2006, correspondence from Mr. James Bathurst, former Superintendent, to Petitioner regarding Petitioner's transfer to Tatem School is attached as Exhibit B.

6. Petitioner served as Principal of William Tatem Elementary School until he transferred to the Principal position at Thomas Sharp School on May 18, 2009. A true copy of May 19, 2009, correspondence from Dr. Scott Oswald, former Superintendent, to Petitioner regarding Petitioner's transfer to Sharp School is attached as Exhibit C.

7. Petitioner served as the Principal of Thomas Sharp Elementary School from May18, 2009, until June 30, 2014.

8. Petitioner acquired tenure as a principal pursuant to N.J.S.A. 18A:28-5 by virtue of his eleven (11) years of service in the principal position.

9. On April 28, 2014, the District transferred Petitioner to the title of Supervisor of Curriculum and Instruction with Petitioner's consent. A true copy of the Board's April 28, 2014 action transferring Petitioner to the District Supervisor position is attached as Exhibit D.

10. Supervisor of Curriculum and Instruction is a District-wide position.

11. The District Supervisor of Curriculum and Instruction position requires an Administrative certificate with a Principal endorsement, which Petitioner possesses.

12. Petitioner did not waive his tenure rights when accepting the District-wide Supervisor of Curriculum and Instruction position and therefore retained his tenure rights as, and continued to be paid as a principal.

13. Petitioner served as Supervisor of Curriculum and Instruction until June 30, 2021.

14. On July 1, 2021, the District transferred Petitioner to the role of Supervisor of Special Education, a position he

held until February 28, 2022. A true copy of June 22, 2021, correspondence from Dr. Fredrick McDowell, Superintendent, to Petitioner regarding his transfer to the role of Supervisor Special Education is attached as Exhibit E.

15. Petitioner acquired tenure as a Supervisor pursuant to N.J.S.A. 18A:28-6 by virtue of his ten (10) years of service and effective evaluations as District-wide Supervisor.

16. On March 1, 2022, the District transferred Petitioner to the role of Supervisor of Safety and Student Services. A true copy of March 1, 2022, correspondence from Dr. Fredrick McDowell, Superintendent, to Petitioner regarding Petitioner's transfer to the title of Supervisor of Safety and Student Services is attached as Exhibit F.

17. The Supervisor of Safety and Student Services position requires an Administrative certificate with a Principal endorsement, which Petitioner possesses.

18. Petitioner did not waive any of his previously acquired tenure rights when accepting the Supervisor of Safety and Student Services position.

19. Although effective April 28, 2014, Petitioner's assignment changed to the role of Supervisor, the District continued to pay him as a principal.

20. Petitioner underwent spinal fusion surgery on April 1, 2024. A true and correct copy of Petitioner's surgery note from Rothman Orthopedics is attached as Exhibit G.

21. On April 29, 2024, the Board approved Petitioner's paid medical leave from April 8, 2024, through May 10, 2024, pending medical clearance to return. A true copy of the April 30, 2024, letter to Petitioner from Dr. McDowell is attached as Exhibit H.

22. On May 6, 2024, Petitioner submitted the April 29, 2024 doctor's note to Bonnie Weightman, Human Resources Specialist, and Nicole Costello, Administrative Assistant for Attendance, stating that he can return to work on May 15, 2024. A true copy of Petitioner's May 6, 2024, email is attached as Exhibit I.

23. On May 20, 2024, Petitioner followed up with Ms. Anita Genca, the Executive Administrative Assistant to the Superintendent, who forwarded Petitioner's May 6, 2024

email attaching the April 29, 2024 doctor's note stating that Petitioner was able to begin work from home starting May 15, 2024 to Ms. Beth Ann Coleman, the Assistant Superintendent for Business and Operations. A true copy of Petitioner's May 20, 2024 email is attached as Exhibit J.

24. Ms. Coleman received and reviewed Petitioner's remote work request on May 20, 2024. On May 21, 2024, Ms. Coleman advised Petitioner that his position requires him to be present in the school district and he could not fulfill his job duties working from home. A true copy of Petitioner's email exchange with Ms. Coleman is attached as Exhibit K.

25. On June 17, 2024, Petitioner notified the District that his physician advised he could return to in-person work with accommodations that restricted him from lifting anything greater than thirty (30) pounds, breaking up fights, and restraining students. A true copy of Petitioner's June 17, 2024, email and doctor's note is attached as Exhibit L.

26. Dr. Frederick McDowell, Superintendent, scheduled a conference call with Petitioner to discuss Petitioner's return to the District and his physical restrictions post-surgery. A true copy of Dr. McDowell's May 23, 2024, email reaching out to Petitioner to set up a time to discuss is attached as Exhibit M.

27. On June 18, 2024, Petitioner returned to work as the Supervisor of Safety and Student Services.

28. On August 26, 2024, the Board approved Petitioner's transfer from Supervisor of Safety and Student Services to Assistant Principal of Collingswood Middle School. A true copy of the August 26, 2024 Board Meeting Minutes are attached as Exhibit N.

29. Although Petitioner's assignment changed to an Assistant Principal, he continued to be paid as a Principal.

### Testimony

**Joseph Gurcsik** testified on his own behalf. During his May 23, 2024, telephone call with the superintendent, Dr. McDowell, he discussed the physical limitations and restraints he would most likely be under for the following school year. The superintendent asked Gurcsik where he saw himself in the upcoming school year, to

which Gurcsik replied that his ultimate career goal was to go back to being an elementary principal again. Gurcsik acknowledged that the superintendent did not commit to anything during the phone call—he merely suggested finding a role for Gurcsik that was more academic in nature. The role of assistant principal never came up, and if it had he would have expressed his objection for two reasons. The first would have been because he was recuperating from spinal-fusion surgery and the role of assistant principal is more disciplinarian in nature, and he would be the first one to be called if there were a need for a restraint or to break up a fight. It is not an instructional position. The second reason was that he would view the position of assistant principal as a demotion, as he was initially hired in the District as the principal and served eleven years as principal in that building. To be moved into the assistant principal position after having been the principal in the building would be seen as a demotion.

Gurcsik first became aware of the Board’s intention to transfer him to assistant principal during a June Board meeting. The Board did not officially approve the transfer until a meeting on August 26, 2024. Gurcsik claims that between the May phone call and the August approval he was never asked whether he wanted to be assistant principal, nor did he reach out to anyone to express his interest.

Sometime in mid-June, the District provided the union with a draft of staff roles and responsibilities for the upcoming school year. (R-2.) The draft listed Gurcsik as supervisor of Student Services at Collingswood Middle School. The draft contained a list of bullet points laying out the role’s responsibilities, none of which involved breaking up fights or restraining students. Gurcsik asked his union representative about the role since it was not a job description previously approved by the Board. It was around this time that Gurcsik was told by his union representative that he would effectively be “flip-flopping positions” with Michael Jefferson, the then-assistant principal at Collingswood Middle School. Though the draft listed Gurcsik as supervisor of Student Services, not assistant principal, it listed Jefferson as director, School Culture. (R-2 at 2.)

Comments attributed to Gurcsik on the Collingswood Principals and Supervisors Association (CPSA) Member Feedback document to the draft Roles and Responsibilities document (R-3) stated: “I feel that we have come a long way with

safety and security since I took over and these new responsibilities could come off as looking punitive. I would be happier with Director of Instruction as my title instead of Student Services.” (R-3 at 2.). Although Gurcsik does not personally recall providing written feedback on the draft, he claims that he communicated the same sentiment to the superintendent and others during a subsequent meeting on July 3. However, it was also during that meeting that the superintendent told Gurcsik that he would be transferred to assistant principal at the suggestion of the union. The union wanted the title of assistant principal, rather than director or supervisor, in the interest of consistency with other staff members. (R-3 at 3.)

The July 3 meeting involved the superintendent, Gurcsik’s union representative, and Jefferson. Gurcsik expressed at this meeting that he was not happy with the decision to transfer him to assistant principal. He did not go into further detail at the time because others were present and because he feared appearing insubordinate.

**Dr. Fredrick McDowell, Jr.**, testified on behalf of the District. He has been the Superintendent of the Collingswood Public Schools since February 2021. Dr. McDowell had a telephone conversation with Mr. Gurcsik on May 24, 2024. Dr. McDowell initially asked Mr. Gurcsik how he was feeling and then advised him that Dr. Jack McMullen, the CPSA president, had told Dr. McDowell that Mr. Gurcsik would need an accommodation upon his return to work. Dr. McDowell advised that they would be considering moving Mr. Gurcsik to a more academic role. Dr. McDowell did not specifically discuss job titles with Mr. Gurcsik during that telephone call on May 24. Dr. McDowell was having parallel conversations with Michael Jefferson, who was the assistant principal at the middle school, and with Dr. McMullen, the CPSA president and principal at the middle school, regarding Mr. Gurcsik and Mr. Jefferson switching roles.

Dr. McDowell drafted a 2024–2025 supervision roles and responsibilities document for PSA members to review. Mr. Gurcsik is listed as a supervisor of Student Services when he had previously been a supervisor of Safety and Student Services. They were removing the safety component and only focusing on student services, which was more academic in nature. (R-2 at 2.) This document was prepared and circulated in advance of their leadership retreat, which was held in mid to late June. Dr. McDowell

received a document entitled “CPSA Member Feedback on June 18 Draft of Roles and Responsibilities” from Dr. Jack McMullen. (R-3.) They had run out of time at their leadership retreat and the PSA executive committee agreed to survey its members, get their direct feedback, and create a response to R-2. R-3 was drafted by Dr. McMullen. Mr. Gurcsik provided the feedback, “I would be happier with Director of Instruction as my title instead of Student Services.” (R-3 at 2.) Mr. Gurcsik was concerned that the change in responsibilities would look punitive. Dr. McDowell stated that they were not dissatisfied with his performance and it was not punitive, but they were attempting to accommodate the request for his health and safety. The General Feedback from the PSA executive committee was that the title “Assistant Principal” versus “Student Services” should be assigned to Mr. Gurcsik and another supervisor. (R-3 at 3.) It was Mr. Gurcsik’s union leadership who wanted him to have the title of assistant principal. As a result of the feedback from the administration team, Dr. McDowell prepared an updated July 1, 2024, “2024–2025 Supervision Responsibilities” document, which listed Mr. Gurcsik as assistant principal at the Collingswood Middle School. (R-4 at 2.) Dr. McDowell explained that the positions of supervisor, director, and assistant principal are all on the same level and lateral to one another, but behind the principal position.

Dr. McDowell vaguely recalled a July 3, 2024, conversation with Mr. Gurcsik and union leadership, which focused primarily on what roles needed to shift and how information was going to transfer between Mr. Jefferson and Mr. Gurcsik. As of July 3, 2024, it was Dr. McDowell’s understanding that Mr. Gurcsik was going to be the assistant principal at the middle school. Dr. McDowell acknowledged that Mr. Gurcsik communicated that he was not happy with this and that Dr. McMullen would follow up with Dr. McDowell after he had a chance to talk with Mr. Gurcsik. They did have a follow-up conversation about the title. Dr. McDowell’s understanding was that Mr. Gurcsik’s move from his position of supervisor of Safety and Student Services to assistant principal at the middle school was based on Mr. Gurcsik’s request for an accommodation due to complications from his surgery.

On cross-examination, Dr. McDowell testified that it was his understanding that Mr. Gurcsik had not waived his tenure rights and had continued to be compensated and

maintained his tenure status as a principal as well as a supervisor in the Collingswood Public Schools.

In their conversation of May 24 when Dr. McDowell and Mr. Gurcsik first discussed Mr. Gurcsik's return after his leave of absence, Dr. McDowell admitted that Mr. Gurcsik told him that he saw himself going forward as an elementary school principal. Dr. McDowell indicated that there were no elementary school principal vacancies. Dr. McDowell did not ask Mr. Gurcsik in the July 3 meeting if he would consent to be the vice principal. Dr. McDowell's position is that Mr. Gurcsik consented to a role that would eliminate the need for him to have to physically restrain students and break up fights.

### Discussion

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.) (citation omitted), certif. denied, 10 N.J. 316 (1952). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

Both Mr. Gurcsik and Dr. McDowell were credible witnesses. Dr. McDowell admits that Mr. Gurcsik expressed his interest in returning as a principal of an elementary school after his leave. He also admits that he never asked Gurcsik if he consented to the transfer to the assistant principal position at the Collingswood Middle School. Mr. Gurcsik also testified credibly in this regard that he was not asked if he consented to the transfer and said that if he had been asked that, he definitely would have said no for two reasons. The first reason was because the assistant principal usually is the disciplinarian and has to break up fights and restrain students, and he was returning from spinal-fusion surgery. The second reason was that he started off in the District as the principal of the Collingswood Middle School and served as principal for over eleven years before consenting to other transfers and retaining his tenure rights. To return to the Collingswood Middle School as an assistant principal after having been the building leader would appear to be a demotion and punitive in the eyes of staff and the public. There was testimony regarding what title Mr. Gurcsik would have to avoid the transfer appearing to be punitive. The feedback notes attributed to Mr. Gurcsik clearly indicate that he was concerned about his new responsibilities coming off as looking punitive and that he would be happier with director of Instruction as his title instead of Student Services. (R-3 at 2.) The feedback notes indicate that it was the union's position that Mr. Gurcsik be designated assistant principal at the Collingswood Middle School. (R-3 at 3.) Dr. McMullen then prepared the July 1, 2024, updated "2024–2025 Supervision Responsibilities" listing Joe Gurcsik as assistant principal of Collingswood Middle School. (R-4.)

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

Gurcsik did not consent to be transferred from his tenured position of supervisor of Safety and Student Services to the position of assistant principal at the Collingswood Middle School.

Mr. Gurcsik requested accommodations upon his return to work due to post-surgical complications and did not waive his tenure rights in requesting said accommodations.

The General Feedback from the CPSA Executive Committee indicated that they believed Mr. Gurcsik should be designated assistant principal for the Collingswood Middle School to provide a clearly defined position. “The designation of ‘Student Services’ lacks specificity and potentially will lead to confusion and misinterpretation by the staff and community, who may be left with the impression that there is no Assistant Principal for the Collingswood Middle School . . . .” The reasoning continues that designating Gurcsik as “Assistant Principal” for the Collingswood Middle School will remove ambiguity about his role, be consistent with his responsibilities, and avoid the appearance that administrative support has been removed from the Collingswood Middle School. (R-3 at 3.)

Dr. McDowell adopted the union’s input/recommendation in recommending the transfer of Mr. Gurcsik to the position of assistant principal at the Collingswood Middle School.

Dr. McDowell did not ask Mr. Gurcsik if he consented to be transferred to assistant principal at the Collingswood Middle School, and when Mr. Gurcsik learned of the transfer he objected to same.

Mr. Gurcsik had never served in the separately tenurable position of assistant principal.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The purpose of New Jersey’s tenure laws is “to aid in the establishment of a competent and efficient school system by affording teaching staff members ‘a measure of security in the ranks they hold after years of service.’” Carpenito v. Bd. of Educ. of Rumson, 322 N.J. Super. 522, 528–29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949)). Generally, tenured

teaching staff cannot be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming—the determination of which must satisfy the procedural safeguards laid out in the Tenure Employees Hearing Law. N.J.S.A. 18A:28-5; N.J.S.A. 18A:6-10. At the same time, school boards retain “the managerial prerogative to transfer teaching staff members by a majority vote of the board.” Carpenito, 322 N.J. at 529 (citing N.J.S.A. 18A:25-1); see also Ridgefield Park Educ. Ass’n v. Ridgefield Park Bd. of Educ., 78 N.J. 144, 156 (1978) (holding that teacher transfers and reassignments were not mandatorily negotiable terms because these terms would significantly interfere with “the Board’s managerial duty to deploy personnel in the manner which it considers most likely to promote the overall goal of providing all students with a thorough and efficient education”).

Respondent District cannot meet its burden that petitioner’s transfer was consensual.

There is no violation of tenure rights when the petitioner has consented to the transfer. In DeFrehn v. Wildwood Crest Board of Education, a tenured teacher consented to a transfer to the position of learning disabilities teacher-consultant. 1993 N.J. AGEN LEXIS 1680, Initial Decision (Nov. 9, 1993), aff’d, Comm’r (Dec. 30, 1993). The teacher claimed her tenure rights were violated when her request to return to a classroom teaching position was denied. Finding for the board, the administrative law judge (ALJ) emphasized that the transfer was voluntary, and that the tenure laws are designed to “protect teachers from arbitrary or malicious dismissal,” not “to protect teachers from the consequences of their own acts.” 1993 N.J. AGEN LEXIS 1680, Initial Decision at \*10. An involuntary transfer, in contrast, is considered a dismissal and a violation of tenure rights. The burden is on the board to prove by a preponderance of the evidence that a transfer was voluntary. See Forte v. Belleville Bd. of Educ., 12 N.J.A.R. 10, 19 (1988).

There are very few cases where the parties contested a transfer’s voluntariness. In one such case, North Bergen Federation of Teachers, Local 1060 v. North Bergen Board of Education, a high school English teacher alleged that her tenure rights were violated when she was transferred to the position of elementary media specialist. 1993

N.J. AGEN LEXIS 1674, Initial Decision (Oct. 20, 1993), adopted, Comm’r (Dec. 1, 1993). While she complained to her union, she asked the board to postpone the date of her transfer and demanded an annual stipend based on her contract. The board argued that the transfer was voluntary because she accepted the position, “subject only to a change in the starting date and the compensation.” 1993 N.J. AGEN LEXIS 1674, Initial Decision at \*10. The ALJ rejected this argument, noting that the teacher and the union consistently referred to the transfer as involuntary in communications with the board. Moreover, the ALJ found that the teacher “was not required to accept a severe disruption and inadequate pay in order to avoid the appearance of consent.” Id. at \*11.

In another case, Forte v. Belleville Board of Education, the parties disputed whether a tenured elementary school principal’s transfer to the position of high school vice principal was consensual. 12 N.J.A.R. 10, 11–12. Forte was initially transferred to work in the district’s central office while retaining his title as elementary school principal. He filed a petition challenging the transfer, but while the matter was pending, he was transferred to the position of high school vice principal. Forte withdrew the initial petition and filed another challenging the second transfer. The board tried to argue that Forte “indirectly or impliedly consented to a transfer from elementary principal to another administrative assignment” because he expressed a willingness to remain in the central office. The ALJ rejected this argument and found that the transfer was involuntary, highlighting the superintendent’s testimony that when he suggested the transfer to vice principal during a meeting, Forte refused because he felt like the transfer amounted to a demotion. The Commissioner adopted the Initial Decision’s finding on consent, deferring to the ALJ’s credibility determination. Id. at 19–20.

Parsells v. Somerville Board of Education held that the waiver of tenure rights must be clear, unequivocal, and decisive. 254 N.J. 152, 156 (2023). In that case, Parsells was a full-time tenured preschool teacher before temporarily and voluntarily switching to a part-time position to spend more time with her newborn son. It was Parsells’s understanding that she would be able to return to work full-time. However, when she later applied for several full-time teaching positions, the board maintained that Parsells had waived her right to a full-time position and instead hired non-tenured teachers. The Court disagreed, finding that she did not knowingly waive her tenured

right to a full-time teaching position. The Court held that while “[t]he intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference,” the waiver must nevertheless be made “clearly, unequivocally, and decisively.” Id. at 155–56 (citing Knorr v. Smeal, 178 N.J. 169, 177 (2003)). Parsells was ultimately reinstated to a full-time position with “full back pay, benefits, and emoluments, less mitigation.” Id. at 167.

It should be noted that the question in Parsells was not whether Parsells consented to the transfer, but rather whether she consented to the waiver of her tenure rights. There was no question that the transfer in Parsells was voluntary—rather, the issue was what effect that transfer had on Parsells’s tenure rights going forward.

As set forth in the findings of facts, the District has not established that Gurcsik consented to the transfer to the position of assistant principal. In the May phone call, no specific positions are discussed beyond Gurcsik’s expressed preference for elementary school principal. A document is then circulated sometime in late June that shows Gurcsik as supervisor of Student Services. Gurcsik provides written feedback suggesting a different title. At the same time, he expresses confusion over the new role and expresses concern that it may look punitive. Around the same time, Gurcsik’s union representative tells him that the plan is for Gurcsik to essentially switch roles with then-assistant principal Jefferson. Yet the draft shows Gurcsik as a supervisor and Jefferson as a director. These interactions evince an ongoing process for finding a role for Gurcsik.

Gurcsik is not told explicitly about the transfer to assistant principal until the July 3 meeting, at which point he immediately registers his disapproval. A similar meeting between the superintendent and petitioner in Forte was sufficient for the ALJ to find the transfer involuntary. The superintendent claimed that he followed up with Gurcsik’s union representative and was told Gurcsik’s objection was more about the title than the role itself. Even accepting the Board’s argument that Gurcsik’s only objection was to the title, there is no case law to suggest that this is sufficient to establish consent. The ALJ found that the teacher in North Bergen did not impliedly consent to a transfer despite demanding from the board a stipend and a delayed start date. It stands to

reason that Gurcsik did not necessarily consent simply because he expressed an opinion about a different title. Moreover, N.J.S.A. 18A:28-5 identifies assistant principal as a separately tenurable position, making it distinct from a supervisor position.

Gurcsik's request for an accommodation is not implied consent to a transfer or waiver of his tenure rights.

The Board argues that Gurcsik's request for accommodation is evidence of his consent to the transfer to the position of assistant principal. When an employee makes a request for accommodation, the employer is obligated to engage in an "interactive process." Jones v. Aluminum Shapes, 339 N.J. Super. 412, 422 (App. Div. 2001). An employer cannot, for instance, "sit back passively, offer nothing, and then, in post-termination litigation, try to knock down every specific accommodation as too burdensome." Id. at 423 (quoting Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 315 (3d Cir. 1999)). The employer is required to engage in the process in good faith.

At the same time, employers have broad discretion in how to comply with such requests. "Courts have uniformly concluded that the employer's duty to offer a reasonable accommodation does not cloak the disabled employee with the right to demand a particular accommodation." Victor v. State, 203 N.J. 383, 423 (2010). Transfers are a form of accommodation. Ponsi v. Cliffside Park Bd. of Educ., CRT 10536-06, Initial Decision (March 17, 2008), modified, Comm'r (July 30, 2008), <https://njlaw.rutgers.edu/OAL/>.

There are no cases examining the intersection of accommodation law and tenure law. The Board may very well have satisfied the former—there were multiple communications over the remote work, the physical restrictions, and later the transfer. At the same time, the job description of assistant principal does not appear to be disciplinary in nature and certainly has less of an emphasis on safety compared to supervisor of Safety and Student Services, although Gurcsik testified that in practice, assistant principal tends to be disciplinary in nature. Furthermore, employers have significant discretion when complying with accommodation requests—employees do not

have the right to demand a particular accommodation, and the accommodation need only be reasonable. However, Gurcsik is not raising a disability-discrimination claim.

As a matter of public policy, accommodation law should not be used to get around the protections afforded teaching staff under tenure law. When asked on cross-examination whether Gurcsik consented to a transfer to the position of assistant principal, the superintendent responded, "It is my position that Mr. Gurcsik consented to a role that would eliminate the need for him to have to physically restrain students and break up fights." (Tr. 193.) Gurcsik's attorney asked whether the role could have been a principal role, to which the superintendent responded, "It could have been a secretary role." Ibid. He claimed this would not have violated Gurcsik's tenure rights provided he retained the same salary. Ibid. If this were true, it would undermine tenure law's purpose of providing job security and protection against arbitrary board actions. A request for accommodation cannot mean that a tenured individual consents to *any* transfer that would satisfy an accommodation request.

As his transfer was involuntary, the Board violated Gurcsik's tenure rights.

An involuntary transfer is considered a violation of tenure rights except in very limited circumstances that do not apply in this case. The Appellate Division in Carpenito v. Rumson Board of Education 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." 322 N.J. Super. 522, 529 (App. Div. 1999). Carpenito concerned the involuntary transfer of a social studies teacher to the role of computer applications teacher. The court concluded that the computer applications role was within the scope of his certification, and thus, because there was no loss in tangible employment benefits, the board could transfer him without his consent. Cf. Basile v. Fairview Bd. of Educ., EDU 11837-17, Initial Decision (June 21, 2018) ("Once tenure is gained in a particular area, an employee may not be transferred to a position outside the scope of his or her tenure protections. A transfer from guidance counselor or speech therapist (Educational Services Certificate) to teacher (Instructional Certificate)

is a blatant violation of tenure rights.”), adopted, Comm’r (July 26, 2018), <https://njlaw.rutgers.edu/OAL/>.

The Commissioner of Education recently clarified how Carpenito applies to administrative or supervisory positions. Armental v. Englewood Bd. of Educ., 2025 N.J. AGEN LEXIS 690, Final Decision (March 7, 2025). In Armental v. Board of Education of Englewood, Armental was a tenured principal who was transferred to athletic director without any reduction in salary. Both positions required an Administrative Certificate with Principal Endorsements. The ALJ relied on Carpenito and held that the board did not violate Armental’s tenure rights because Armental was not “involuntarily transferred from a position in his certificate to a position that required another certificate.” 2025 N.J. AGEN LEXIS 690 at 2. The Commissioner rejected the ALJ’s Initial Decision “as contrary to well-established law,” Id. at 4, and held that the board violated Armental’s tenure rights and ordered that he be reinstated as a principal. The Commissioner 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.” Id. at 6 (quoting Howley v. Ewing Bd. of Educ., 1982 S.L.D. 1328, 1340); cf. Williams v. Plainfield Bd. of Educ., 176 N.J. Super. 154 (App. Div. 1980) (finding no violation of tenure rights where high school principal was involuntarily transferred to elementary school principal with no reduction in salary); Webb v. Willingboro Bd. of Educ., 1996 N.J. AGEN LEXIS 95 (Dec. 8, 1995), at \*19–20 (“Reassigning a tenured supervisor to a non-supervisory position, a position that does not even require a supervisory endorsement, is as much as tenure violation as the reassignment of any teaching staff member from one separately tenurable position to another.”), rev’d in part, Comm’r (Jan. 25 1996).

Throughout his various transfers, Gurcsik has retained the same salary. There is no evidence that Gurcsik was singled out for transfer on a prohibited basis or that he suffered any reduction in hours. The question then is whether Gurcsik was “transferred to another assignment within his position” or to another position entirely. Armental, 2025 N.J. AGEN LEXIS 690 at 6 (quoting Howley v. Ewing Bd. of Educ., 1982 S.L.D. 1328, 1340). The fact that supervisor of Safety and Student Services and assistant principal have the same certificate requirements makes no difference. Gurcsik acquired

tenure as a supervisor. He does not have tenure as an assistant principal since he has not previously served in that role. Because assistant principal is a distinct position from supervisor pursuant to N.J.S.A. 18A:28-5, Gurcsik's tenure rights were violated when he was transferred without his consent.

Gurcsik's seniority rights were not violated.

To the extent that Gurcsik also claims that his seniority rights were violated because the individual appointed as principal of Collingswood Middle School had less seniority, this argument should fail.<sup>1</sup> The Appellate Division held in Carpenito:

When a school board deems it necessary to eliminate a position, "seniority" is a right afforded to tenured employees entitling the employee to either continue in an existing job opening based upon their longevity of employment or to be placed upon an eligible list for reemployment when a new position becomes available.

[Carpenito, 322 N.J. Super. at 531.]

Seniority rights are most often triggered because of a reduction in force (RIF). See N.J.S.A. 18A:28-9 to -14; see also Carpenito, 322 N.J. Super. at 532 ("The 'reduction-of-force' statute on its face contemplates a reduction in the number of teaching staff members employed in the district."); Klinger v. Cranbury Bd. of Educ., 190 N.J. Super. 354, 357 (App. Div. 1982), certif. denied, 93 N.J. 277 (1983) ("Reduction in hours of employment is considered a reduction in force."). However, the Appellate Division in Carpenito held that seniority rights are also triggered where a tenured staff member is "transferred to another position *and* suffers a loss of tangible employment benefits, such as a loss of salary or reduction in work hours." Carpenito, 322 N.J. Super. at 533.

The parties are not claiming that Gurcsik was removed from the supervisor of Safety and Student Services position because of a RIF. Instead, Gurcsik was

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<sup>1</sup> In his original petition, Gurcsik noted that at least two non-tenured individuals were currently serving in principal roles in the district. Seniority rights also came up during the hearing. However, Gurcsik does not mention seniority rights anywhere in his final brief and thus appears to have abandoned that argument.

transferred to another position because of an accommodation request. Whether this was a violation of tenure rights is a separate question from whether his seniority rights were triggered. Pursuant to the court's ruling in Carpenito, the transfer did not trigger Gurcsik's seniority rights because he did not suffer a loss of tangible employment benefits—the parties have stipulated that Gurcsik continues to hold a full-time position at a principal salary.

### **CONCLUSION**

Therefore, based on the foregoing, I **CONCLUDE** that respondent District's involuntary transfer of petitioner from supervisor of Safety and Student Services to assistant principal violated his tenure rights.

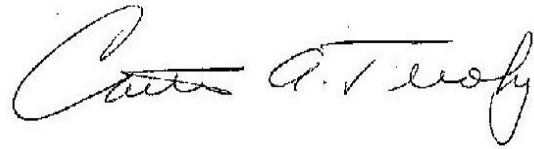
### **ORDER**

It is hereby **ORDERED** that petitioner be reinstated as a supervisor in accordance with his tenure rights.

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](mailto: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.



March 6, 2026

DATE

CATHERINE A TUOHY, ALJ

Date Received at Agency:

March 6, 2026

Date Mailed to Parties:

March 6, 2026

CAT/cab

**APPENDIX**

**Witnesses**

**For petitioner**

Joseph Gurcsik

**For respondent**

Fredrick McDowell, Jr.

**Exhibits**

**Joint**

J-1 Joint Stipulation of Facts, with Exhibits A through N

**Petitioner**

P-1 List of Certificates issued by NJDOE to Joseph Gurcsik

**Respondent**

- R-1 Email chain between Andrew Schwartz, Esq., and Joseph Betley, Esq., dated May 22, 2024
- R-2 Collingswood and Oaklyn Public School 2024–2025 Supervision Responsibilities (Draft—updated: May 2024)
- R-3 CPSA Member Feedback on June 18 Draft of Roles and Responsibilities
- R-4 Collingswood and Oaklyn Public School 2024–2025 Supervision Responsibilities (updated: July 1, 2024)