

190-26  
OAL Dkt. No. EDU 01286-22  
Agency Dkt. No. 210-11/21

**New Jersey Commissioner of Education**

**Final Decision**

Naseed Gifted,

Petitioner,

v.

Board of Education of the City of Newark, Essex  
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 agrees with the Administrative Law Judge (ALJ) that petitioner knowingly and voluntarily requested a transfer from the position of Principal to Vice Principal, thereby relinquishing his tenure rights associated with the Principal position. Consequently, respondent did not violate petitioner's tenure or seniority rights in effectuating the voluntary transfer. The Commissioner also agrees with the ALJ that petitioner was not constructively discharged from employment as a Principal.

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: June 2, 2026  
Date of Mailing: June 3, 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 01286-22

AGENCY DKT. NO. 210-11/21

**NASEED GIFTED,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY**

**OF NEWARK, ESSEX COUNTY,**

Respondent.

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**Dennis McKeever**, Esq., for petitioner (Chasan, Lamparello, Mallon & Cappuzzo, PC)

**John Burke**, Esq., for respondent (Antonelli, Kantor & Rivera, PC)

Record Closed: February 5, 2026

Decided: March 24, 2026

BEFORE **DANIELLE PASQUALE**, ALJ:

**STATEMENT OF THE CASE**

Respondent, the Board of Education of the City of Newark, transferred Naseed Gifted (“Gifted”), a tenured Principal after he knowingly and voluntarily requested and accepted reassignment to the position of Vice Principal of Science Park High School after he received two partially effective Principal evaluations. Did the Board violate his tenure

and seniority rights when it placed Gifted, at his written request and signed acceptance, even considering he had tenure in the position of Principal? No. Caselaw holds that a school board can transfer or demote someone from principal to vice principal if good cause is found and where, as in this case, the individual knowingly and voluntarily requests and accepts the position of vice principal with its corresponding salary and school placement.

### **PROCEDURAL HISTORY**

Gifted is currently employed by the Newark Board of Education (“the Board”) and is tenured and serving as Vice Principal at Science Park High School (“Science Park”). He has been an employee of the District for twenty-four (24) years as of the time of the hearing. He was formerly employed by the Board as a tenured building Principal, at Malcom X. Shabazz High School (“Shabazz”). He alleges that the Board violated his tenure and seniority rights when they demoted him to vice principal when he accepted the position in August of 2021. As a result, he seeks to have the Board reverse all employment actions taken against him resulting in his demotion to Vice Principal, to have his tenure rights as a Principal recognized, and to restore all benefits that he would have been entitled to as if the move to Vice Principal had not occurred in August 2021.

This dispute comes to the Office of Administrative Law (OAL) as a contested case on February 15, 2022. I held many pre-hearing conferences as both parties maintained resolution would be possible, and thus I granted many adjournments to allow the parties to explore settlement. After those efforts stalled, in an effort to revive the matter, I then set down a peremptory hearing date. After I unilaterally set down the peremptory hearing date, all parties asked to convert the hearing to an in-person settlement conference for even further exploration of settlement. When those efforts were unsuccessful, I held the hearing on July 25, 2025. Post-hearing submissions were filed on September 29 and October 7, 2025. The parties then requested an extension. Once all outstanding documents were received, I closed the record accordingly.

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

The following facts are largely undisputed and thus, I **FIND** them as **FACT**. Gifted has worked for the Newark Board of Education (“Board”) since 2001, or for over 24 years as of the time of this hearing. He started as a substitute teacher and later became a full-time math teacher in 2003. He possesses a standard Teacher of Mathematics certificate issued August 2004, a standard Supervisor certificate issued September 2010, and a standard Principal certificate issued January 2018. He worked in the District as a math teacher from school year 2003-2010, as a Math Department Chair from 2010-2014, and as a Vice Principal from 2014-2018 when he was promoted to Principal effective August 2018. Gifted was notified of the promotion to Principal via a letter from Dr. Yolanda Mendez dated July 17, 2018. Gifted then worked as a Principal of Shabazz High School from school year 2018-2019 through 2020-2021.

After he earned tenure as a Principal at the start of the 2020-2021 school year, he was observed and evaluated in the normal course. His annual summative evaluation was “effective” for the 2018-19 school year. He was then renewed for the 2019-20 school year as Principal of Shabazz where he received another “effective” summative evaluation. He served as Principal for the 2020-21 school year but was out on medical leave for less than 3 months from March 18, 2021 to June 1, 2021.

For his first two years as Principal, Gifted was evaluated by Dr. Mario Santos, then-Assistant Superintendent. Thereafter, for the 2020-21 school year, Gifted was evaluated by Dr. Maria Ortiz, the new Assistant Superintendent overseeing the Newark High Schools. That school year, Dr. Ortiz observed him at least twice, once in November of 2020 and once in February of 2021. In November of 2020, Gifted noted that after discussing various competencies for the Leadership Framework. Ortiz rated him only partially effective. This was because Gifted failed to observe and provide evaluations for the teachers and administrators for which he was responsible. At hearing, Gifted offered no rebuttal about the partially effective rating. In addition, there is no evidence that he made any complaint about that rating prior to filing his appeal. In February of 2021, Dr. Ortiz conducted another observation that also resulted in a partially effective rating. This

observation focused on the Professional Learning Community (“PLC”) but also considered his management of all goings-on in the building, as he was responsible for all of that, even when he was not physically there. This observation also led to a partially effective rating. Dr. Ortiz found minimal evidence that Gifted was monitoring student progress, such as which students needed individualized supports, remediation, or acceleration. Gifted understood that a partially effective rating would lead to a CAP.

These ratings stand in stark contrast to Gifted’s time as vice principal. When Gifted initially served as Vice Principal, he consistently received ratings of “effective.” Since becoming Vice Principal of Science Park, he has continued to receive “effective” and “highly effective” ratings.

#### Dr. Ortiz

Dr. Ortiz testified for the Board and her testimony was extremely helpful in making my determination. She has been the Assistant Superintendent of High Schools for Newark Board of Education for over six (6) years, overseeing eighteen high schools, their principals and the Career Technical Education Department. She started working as Assistant Superintendent effective July 2020; Gifted worked as Principal at Shabazz from 2018-19 through 2020-21. On direct examination, Dr. Ortiz revealed that she has known Gifted since they attended high school together. At trial, she was professional, dispassionate and her testimony was corroborated by the stipulated exhibits making her testimony highly credible.

Dr. Ortiz explained that her job responsibilities as Assistant Superintendent included doing Principal observations. She outlined the evaluation procedure for tenured and non-tenured administrators, which included an Individual Professional Development Plan (“IPDP”) and, if the individual is rated as ‘Partially Effective’ or ‘Ineffective’ then a Corrective Action Plan (“CAP”) would be instituted. She explained that a CAP is similar to an IPDP but entails an additional observation. Dr. Ortiz testified that her mid-year assessment was an observation, as opposed to an evaluation, and is optional. Dr. Ortiz reviewed the observation and evaluation reports, focusing on the perceived deficiencies

in Gifted's performance, and the IPDPs in place for him. Dr. Ortiz testified credibly that she believed Gifted was not a good fit as a Principal.

During her meetings with Gifted, they discussed what would "best match" his talents. Gifted expressed concerns about his placement for the following year and inquired about positions such as Director of Instructional Technology or Principal of the School of Data Science. However, she testified she never told him he was not returning as Principal or not returning to Shabazz for the 2021-2022 school year. When Gifted asked about his placement for the following year, she told him she did not know since she lacks the authority to make those types of unilateral decisions.

There was no credible evidence provided that Gifted would definitely face tenure charges or that his rights would be affected in any other way if he did not accept the transfer to Vice Principal. Dr. Ortiz testified that tenure charges were not even an option since Gifted had only one year of "partially effective" ratings, not the necessary two years. After two years, Dr. Ortiz could choose to make a recommendation, but those are not necessarily followed by the Board. In the past, she has rated principals "partially effective" for several years without those principals being moved.

Dr. Ortiz testified that principals receive annual training from the Human Resources Department and Legal Department, which includes a discussion on tenure rights and CAP. She also explained that, as a principal, Gifted would be familiar with tenure rights and the CAP process because he was responsible for administering that process with respect to teachers in his building.

### Gifted

Gifted agreed that he was observed and evaluated by Dr. Ortiz while he was a Principal, and that she rated him as "Partially Effective" after an observation on November 28, 2020; as "Partially Effective" after an observation on February 10, 2021; and as "Ineffective" after an observation on March 13, 2021. Dr. Ortiz rated Gifted as "Partially Effective" for his mid-year evaluation on March 14, 2021, and rated him as "Partially Effective" for his annual evaluation dated May 6, 2021.

In addition, Gifted noted that he was out on medical leave from March 18, 2021 through June 1, 2021 and was not working when the annual evaluation was done on May 6, 2021.

Gifted met with Dr. Ortiz on April 28, 2021 to discuss his March evaluation. He claims Dr. Ortiz informed him he would not be returning to Shabazz. The two discussed a principal position at the School of Data Science and Gifted inquired about the position of Director of Instructional Technology.

Gifted continued that Dr. Ortiz notified him that he would not be re-appointed as Principal during a meeting he had with her on June 7, 2021. Gifted claimed that he was directed by Dr. Ortiz to provide options for appointment as either a Vice Principal or a Department Chair. Gifted testified that the new Principal of Science Park reached out to him via Facebook and asked if he was interested in being Vice Principal since he was looking to build his administrative team. It was Gifted's understanding that the principal had been instructed by Dr. Ortiz to reach out. Gifted advised Dr. Ortiz via email dated July 14, 2021 that his preference was to be placed as a Vice Principal at Science Park High School. Gifted testified that he had conversations and text messages with Dr. Ortiz in July and August 2021 about the transfer to Science Park.

### **CREDIBILITY**

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

At hearing, Gifted was pleasant and deferential. It is undisputed that he was an historically effective Vice Principal who was well liked in the District. Dr. Ortiz testified credibly that she knew Gifted well. In fact, they were classmates from long ago.

I was convinced that Dr. Ortiz had absolutely no animosity for Gifted and, in fact, was likely operating in his best interest when she asked him where he would like to go if his effectiveness ratings led to a CAP. In fact, after his 2020/21 review from Dr. Ortiz, it appeared that a CAP in his role as Principal could be likely. If his negative evaluations continued, tenure charges could be a possibility. However, Dr. Ortiz never had to facilitate that decision, nor did the Board have to make the decision. (See J-1.) Again, Gifted not only accepted the position, but he affirmatively requested the transfer to Vice Principal at Science Park, thereby extinguishing his tenure rights as Principal.

Gifted has a self-interest in making the argument that he was constructively terminated as Principal, but Dr. Ortiz convinced me that she did not have the authority to transfer him, nor to unilaterally bring tenure charges. In short, she did not do either of those things. Rather, he unilaterally decided to get in front of the situation. Gifted knowingly and voluntarily requested the assignment to Vice Principal at Science Park. He then reviewed and signed a contract for that position with a corresponding salary of \$120,000. (See J3.) Thus, Gifted's transfer to Vice Principal was voluntary.

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

### **1. Gifted's transfer was voluntary**

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)). Courts have long recognized 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 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”). At the same time, tenured staff generally 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.

School boards can transfer employees without their consent but only if certain conditions are met. An involuntary transfer is only permissible where there is no reduction in salary and the transfer occurs within the employee’s position. Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 529 (App. Div. 1999) (“A tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered and the teacher is not singled out for the transfer on a prohibited basis.”); see also Armental v. Englewood Bd. of Educ., EDU 07775-24, Final Decision (March 7, 2025), <https://www.nj.gov/education/legal/commissioner/2025/75-25.pdf> (finding violation of tenure rights where principal involuntarily transferred to athletic director even though his salary remained the same because “a tenured employee may be transferred to another assignment within his position, but may not be transferred involuntarily from one position to another.” (quoting Howley v. Ewing Bd. of Educ., 6 N.J.A.R. 509, 521 (1982))); 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).

However, the same restrictions do not apply if a transfer was voluntary. This is because the tenure laws are designed to “protect teachers from arbitrary or malicious dismissal,” not “to protect teachers from the consequences of their own acts.” DeFrehn v. Wildwood Crest Bd. of Educ., 1993 N.J. AGEN LEXIS 1680 (Nov. 9, 1993), adopted (Dec. 30, 1993). 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).

For instance, in North Bergen Federation of Teachers v. North Bergen Board of Education, an English high school teacher alleged her tenure rights were violated when she was transferred to the position of elementary media specialist. 1993 N.J. AGEN LEXIS 1674 (Oct. 20, 1993), adopted (Dec. 1, 1993). She complained to her union about the transfer; at the same time, she asked the Board to postpone the date of her transfer and provide her an annual stipend based on her contract. Id. at \*9-10. 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.” Id. at \*10. The ALJ rejected this argument, noting the teacher and the union consistently referred to the transfer as involuntary in communications with the Board. Id. at \*10-11. Moreover, the ALJ found the teacher “was not required to accept a severe disruption and inadequate pay in order to avoid the appearance of consent.” Id. at \*11.

The Supreme Court recently held that “[a]ny waiver of a teacher’s tenure rights must be clear, knowing, and unequivocal.” Parsells v. Somerville Bd. of Educ., 254 N.J. 152, 167 (2023). Parsells concerned a full-time teacher who temporarily transferred to a part-time position to spend time with her newborn son. Id. at 155. However, when she later applied for several full-time teaching positions, the Board hired non-tenured teachers instead and maintained she had waived her tenure rights. Ibid. The Court disagreed, finding she did not knowingly waive her tenured right to a full-time teaching position. Id. at 167. The Court emphasized that when the teacher originally expressed her interest in the part-time position, she made clear her intent to return to a full-time position in the future. Id. at 165. The Court declined to impose a duty on school boards to notify tenured teachers in advance that if they switch to working part-time, they might not have a right to return to a full-time position. Id. at 166.

Here, the Board argues that Gifted waived his tenure rights as a principal and voluntarily transferred to vice principal. Since Gifted received a salary decrease and the roles of principal and vice principal are considered separate positions under N.J.S.A. 18A:28-5, his transfer would constitute a violation of his tenure rights unless the Board could show that it was voluntary. The Board has met its burden.

The evidence shows that Gifted personally initiated the transfer to vice principal when he sent an email to Dr. Ortiz on July 14, 2021 expressing his interest in the position. Dr. Ortiz testified that when Gifted sent the email, a decision had not yet been made regarding his placement for the following school year. She denied ever telling Gifted he would not be reappointed as principal or that he would not be returning to Shabazz. Nor would she have had any authority to do so; at most, she could make a recommendation as to his placement. Dr. Ortiz never told Gifted that she was recommending him for another position.

Dr. Ortiz had genuine concerns about Gifted's performance as principal. For instance, she rated him "partially effective" in his November 2020 evaluation because he failed to submit evaluations of the teachers for which he was responsible. In a February 2021 evaluation, Dr. Ortiz again rated Gifted "partially effective" because there was minimal evidence he was appropriately monitoring student progress. He never formally objected to these ratings. Dr. Ortiz testified that in light of Gifted's "partially effective" rating on his final evaluation, Gifted would have been placed on a CAP. The process for developing a CAP is typically started after the summer break and is done in collaboration with the employee. Gifted knew a CAP was at least possible because he raised the subject during the April meeting with Dr. Ortiz. As for tenure charges or reassignment, neither was imminent. Dr. Ortiz testified that tenure charges were not an option at that point because Gifted had only one year of "partially effective" ratings, rather than the requisite two years. Even after two years, Dr. Ortiz could recommend tenure charges, but she is not required to do so. As for reassignment, Dr. Ortiz testified that she has previously rated principals "partially effective" for several years without those principals being moved. The Board decides what placement is in the students' best interests and can provide principals with additional support as needed.

Put simply, Gifted was rated "partially effective" as a principal on his final evaluation. This meant a CAP for the following school year. There was no imminent threat of tenure charges or reassignment. Yet, before any action could be taken by the Board, Gifted initiated a transfer request. There is little evidence to support Gifted's claim that Dr. Ortiz instructed Gifted directly, or through an intermediary, to draft an email making this request. Instead, on April 28, 2021, Gifted met with Dr. Ortiz to discuss his

most recent evaluation, and Gifted expressed his interest in positions such as Director of Instructional Technology or principal of the School of Data Science. At a June 7, 2021 conference, they discussed Gifted's strengths and areas for growth. Gifted pressed Dr. Ortiz about his placement for the following year, but Dr. Ortiz honestly responded that she did not know. She lacked the authority to make that determination.

Gifted knew his tenure rights. He has been in the district for over 20 years. Dr. Ortiz testified that principals regularly receive training from the Human Resources Department and Legal Department, including on tenure rights and the evaluation process. He also would have been familiar through his experience performing teacher evaluations, which is the same process for principals. Under the standard set forth in Parsells, Gifted clearly, knowingly, and unequivocally waived his tenure rights to a principal position when he requested a transfer to vice principal of Science Park High School. He gave no indication that his transfer was merely temporary or that he was otherwise reserving certain tenure rights. He chose to transfer to vice principal, a position in which he previously received "effective" and "highly effective" ratings. He voluntarily initiated the request before the Board could take action, including making a final decision as to his placement the following year. Gifted's second thoughts about his decision do not render the transfer involuntary. Given this discussion, I **CONCLUDE** that Gifted's transfer was voluntary and that there was no violation of his tenure rights.

## **2. Gifted was not constructively discharged**

The doctrine of constructive discharge generally arises in the context of state or federal anti-discrimination statutes. Cleffi-Miller v. Randolph Twp. Bd. of Educ., 1996 N.J. AGEN LEXIS 1060, \*18-19 (Oct. 17, 1996), adopted (Dec. 5, 1996). A claim of constructive discharge requires "conduct that is so intolerable that a reasonable person would be forced to resign rather than continue to endure it." Shepherd v. Hunterdon Dev. Ctr., 174 N.J. 1, 28 (2002) (applying N.J. Law Against Discrimination, N.J.S.A. 10:5-1 to -49); see also Schafer v. Bd. of Educ., 903 F.2d 243, 249 (3d Cir. 1990) (applying objective standard for constructive discharge in Title VII case, which "requires no more than a finding that the conduct complained of would have the foreseeable result of

creating working conditions that would be so unpleasant or difficult that a reasonable person in the employee's position would resign"). Additionally, "an employee has the obligation to do what is necessary and reasonable in order to remain employed rather than simply quit." Shepherd, 174 N.J. at 28 (quoting Shepherd v. Hunterdon Dev. Ctr., 336 N.J. Super. 395, 420 (App. Div. 2001)).

The Third Circuit previously found a sales representative was constructively discharged where she was offered a choice of either accepting a reassignment or resigning. Goss v. Exxon Office Sys. Co., 747 F.2d 885, 888 (3d Cir. 1984). The sales representative was a married woman who was attempting to have a child. Ibid. The court found her supervisor was verbally abusive and once questioned her until she cried about her ability to handle a career and motherhood. Ibid. Her supervisor also gave her lucrative sales territory to another employee. Ibid. After several meetings with superiors, she was told to either agree to a new inferior territory or resign. Ibid. In finding the conditions were objectively intolerable, the court emphasized the effective pay cut, the hostility and intimidation tactics exhibited by superiors, and the impact this would have on the "positive mental attitude" necessary "to sell the employer's products . . . to the public with confidence." Id. at 888-89. Cf. Zubrycky v. ASA Apple, Inc., 381 N.J. Super. 162, 166 (App. Div. 2005) (rejecting an employee's constructive discharge claim under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq., where an employer was unlawfully withholding overtime wages and suggested the employee quit after he complained).

In Lovett v. Flemington-Raritan Reg'l Bd. of Educ., a tenured employee raised a constructive discharge claim, alleging her resignation was "coerced by threats of disciplinary action, public humiliation and loss of tenure and benefits." 2013 N.J. Super. Unpub. LEXIS 2683 (Nov. 6, 2013). The teacher let her adult daughter into the school to see her stepdaughter, a student. Id. at \*19. The school had a policy prohibiting the daughter from entering the school because of suspicions she was abusing her stepdaughter and because of a history of aggressive confrontations with school personnel. Ibid. The next day the principal had a "tense and emotional" meeting with the teacher and union representative where the possibility of tenure charges was raised. Id. at \*6. The union representative informed plaintiff that if tenure charges were filed, the

matter would go public. Ibid. By the end of the meeting, the teacher provided the principal with a resignation letter. Id. at \*7. In an unpublished decision, the Appellate Division found “[n]othing in the facts and circumstances surrounding [the] meeting . . . can reasonably be said to constitute conduct so outrageous as to amount to a constructive discharge.” Id. at \*20. The court emphasized that when the teacher submitted her resignation letter she “was faced with neither demotion nor discharge nor other discipline, but simply an investigation into her conduct the day before.” Id. at \*21. The present case is most analogous to Cleffi-Miller v. Randolph Twp. Bd. of Educ., 1996 N.J. AGEN LEXIS 1060 (Oct. 17, 1996), adopted (Dec. 5, 1996). In that case, the petitioner, the tenured coordinator of a child-care program, submitted a resignation letter after failing to negotiate a salary increase that would better reflect her expanding job responsibilities. Id. at \*9-13. The court rejected her constructive discharge claim, finding that the petitioner was simply “endeavoring to avoid the consequences of her voluntary resignation.” Id. at \*18. Her decision was not impulsive, but rather a “deliberate and calculated choice.” Id. at \*21. Furthermore, the court found that while petitioner “may have felt overworked and underpaid,” there were no credible allegations of the type of discriminatory treatment and intolerable conditions required for a constructive discharge claim. Id. at \*19.

In contrast, Gifted made a calculated decision to transfer to vice principal rather than face the potential consequences of poor evaluation ratings. As previously explained, the “partially effective” ratings meant Gifted could have faced a CAP the following year. He had only one year of poor ratings, which meant he was under no immediate threat of tenure charges. In the future, if Gifted received similar ratings, Dr. Ortiz could recommend tenure charges; but there is no guarantee her recommendation would be followed. Similarly, Dr. Ortiz testified that principals have been rated “partially effective” for several years but were never moved. In Lovett, albeit an unpublished decision, the threat of tenure charges was more direct and the circumstances surrounding resignation were more intense, yet still the evidence was insufficient to constitute constructive discharge. Nowhere in his brief or at hearing does Gifted allege the type of objectively intolerable conditions seen in cases like Goss. At most he alleges that Dr. Ortiz instructed him to provide a list of positions because he would not be reappointed to principal. Even if this were true, it would be insufficient to constitute constructive discharge. “An employee has the obligation to do what is necessary and reasonable in order to remain employed rather

than simply quit.” Shepherd, 336 N.J. Super. at 420. Gifted instead requested a transfer to vice principal before the Board could take any formal action. Given this discussion, I **CONCLUDE** that Gifted’s transfer was voluntary and he cannot avoid the consequences of his decision by now claiming it was a constructive discharge.

**ORDER**


Given my findings of fact and conclusions of law, I **ORDER** that Gifted’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 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, P.O. 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.

March 24, 2026  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**DANIELLE PASQUALE, ALJ**

Date Received at Agency:

March 24, 2026  
\_\_\_\_\_

Date Mailed to Parties:

March 24, 2026  
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**APPENDIX**

**Witnesses**

**For Petitioner:**

Naseed Gifted, Petitioner

**For Respondent:**

Dr. Maria Ortiz, Assistant Superintendent of High Schools

**Exhibits**

**Joint Exhibits:**

- J-1 NPS 001 Letter of Interest in Vice Principal position at Science Park High School
- J-2 NPS 0038-0049 Evaluation 20-21-Annual Observation of Principal Naseed Gifted by Dr. Maria Ortiz, May 6, 2021
- J-3 NPS 102 Letter Recommending Naseed Gifted for Vice Principal of Science Park High School, 2021-22 School Year
- J-4 Petitioner's Response to Respondent's Initial Interrogatories
- J-5 Petitioner's Response to Respondent's First Notice to Produce Respondent

**For Petitioner:**

- P-1 NG0001-03 CASA Member Information Sheets and tenure status as Principal
- P-2 NG0004-18 2020-21 Annual Evaluation as Principal by Dr. Maria Ortiz, dated May 6, 2021
- P-3 NG00019 List of Certificates held by Naseed Gifted

- P-4 NG00020-21 July 14, 2021 email from Gifted to Dr. Maria Ortiz (letter of interest and response)
- P-5 NG00022 August 1, 2021 emails between Naseed Gifted and Dr. Maria Ortiz
- P-6 Admitted as J3
- P-7 Respondent's Answers to Petitioner's First Set of Interrogatories including NPS-0001 through NPS-0055
- P-8 NPS-056 through NPS-332 provided by Respondent
- P-9 NG00024-29 2022-23 Annual Evaluation performed by Darleen Gearhart
- P-10 NG00030-39 Salary date from May 22, 2021 through October 8, 2021
- P-11 Petitioner's Response to Respondent's Initial Interrogatories
- P-12 Petitioner's Response to Respondent's First Notice to Produce to Respondent

For Respondent:

- R-1 NPS 0002 Employment Contract for 2018-19 as Principal of Malcolm X Shabazz
- R-2 NPS 0003 Renewal of Employment Contract for 2019-20 School Year as Principal
- R-3 NPS 0004 Recommendation for Principal at Malcolm X Shabazz 2018-19 School Year
- R-4 NPS 0005-0019 FMLA Information (3/18- 6/1/21)
- R-5 NPS 0050-0055 Evaluation-Annual Observation of Naseed Gifted by Keyied Zahir (June 13, 2022)
- R-6 Not admitted
- R-7 NPS 127-138 Individual Professional Development Plan 2020-21 with Dr. Maria Ortiz, and notes August 17, 2020
- R-8 NPS 139-143 Leadership Framework Observation by Dr. Maria Ortiz, November 28, 2020
- R-9 NPS 159-167 Leadership Framework Observation by Dr. Maria Ortiz, February 10, 2021, with notes
- R-10 NPS 169-174 Leadership Framework Observation by Dr. Maria Ortiz, March 13, 2021, with notes
- R-11 NPS 175-188 Leadership Framework Observation by Dr. Maria Ortiz, Post Observation, April 1, 2021

- R-12 NPS 189-196 Leadership Framework Observation by Dr. Maria Ortiz, March 14, 2021
- R-13 NPS 212-226 Post Observation Annual, June 7, 2012, by Dr. Maria Ortiz in response to May 6, 2021, evaluation with notes
- R-14 NPS 227 Letter Regarding Incomplete Data Reporting
- R-15 NPS 228-236 Individual Professional Development Plan-Goal Setting by Dr. Maria Ortiz, October 19, 2020
- R-16 Not Admitted