

New Jersey Commissioner of Education
Final Decision

Joseph Muniz,
Petitioner,
v.
Board of Education of the Hudson County
Schools of Technology, Hudson County,
Respondent.

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

In this matter, petitioner challenges the termination of his employment as Board Secretary. Alternatively, if the termination of his employment was not improper, then he challenges the Board's failure to recognize his tenure rights in the Board Secretary and Assistant School Business Administrator positions and the attendant "bumping rights" he holds over the two, non-tenured persons currently employed by the Board as Assistant School Business Administrators.

¹ The Commissioner did not consider petitioner's sur-reply or the Board's reply to the sur-reply, as those submissions are not permitted under *N.J.A.C. 1:1-18.4*.

The material facts are undisputed. Petitioner, who holds a School Business Administrator certificate, worked as Assistant School Business Administrator for the Board from 2005 to 2014. Later, he became Acting Board Secretary, and then Board Secretary in November 2015. In June 2025, per the recommendation of a professional consultant for cost savings, the Board eliminated several positions including the stand-alone Board Secretary position and combined it with the School Business Administrator position to create a new School Business Administrator/Board Secretary position. Consequently, the Board terminated petitioner's employment as Board Secretary effective July 1, 2025.

The Board filed a motion to dismiss the petition, claiming that the elimination of the Board Secretary position was consistent with N.J.S.A. 18A:28-9; petitioner did not obtain tenure in the Assistant School Business Administrator position because it was not a recognized title when he was appointed; and even if petitioner obtained tenure, under *DiNapoli v. Board of Education of the Township of Verona*, 434 N.J. Super. 233 (App. Div. 2014), administrators only retain tenure rights during their employment in that position.

The ALJ granted the Board's motion to dismiss the petition. Specifically, the ALJ found that the Board's elimination of the Board Secretary position for reasons of economy did not violate any statute or regulation. As for petitioner's tenure rights, the ALJ rejected the Board's contention regarding the unrecognized title but concluded that *DiNapoli* was both persuasive and controlling. The ALJ held that once petitioner left his position as Assistant School Business Administrator for the position of Board Secretary, his tenure rights in the Assistant School Business Administrator position were not retained, and thus no "bumping rights" existed.

In his exceptions, petitioner argues that the ALJ erred when concluding that he relinquished his tenure rights in the Assistant School Business Administrator position upon accepting the Board Secretary position. He asserts that the *DiNapoli* case, which involved a secretary who relinquished her tenure rights when she accepted a promotion to the position of Assistant School Business Administrator, applies only to secretaries who hold non-certificated positions. He asserts that because he moved from one certificated position to another, he maintains the right to “bump back” to the Assistant School Business Administrator position.

In response, the Board agrees with the ALJ that petitioner relinquished his tenure rights in the Assistant School Business Administrator position when he voluntarily accepted the Board Secretary position. Thus, the principles expressed in *DiNapoli* are applicable, and petitioner does not have any bumping rights related to the Assistant School Business Administrator position or the new School Business Administrator/Board Secretary position.

Upon review, the Commissioner concurs with the ALJ and adopts the Initial Decision as the final decision in this matter. Petitions are subject to dismissal by the Commissioner “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true.” N.J.A.C. 6A:3-1.10. This standard also appears in *New Jersey Court Rule 4:6-2(e)*, which permits a motion for judgment on the pleadings for failure to state a claim upon which relief can be granted. *See Jonathan Wadley v. N.J. Dep’t of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 09223-22, Initial Decision at 4-5 (Mar. 10, 2023), adopted, Commissioner Decision No. 110-23 (Apr. 11, 2023) (assessing respondent’s motion to dismiss pursuant to N.J.A.C. 6A:3-1.10 under the standards used by courts when analyzing Rule 4:6-2 motions). Such motions “must be evaluated in light of the legal sufficiency of the facts alleged”

in the petition. *Sickles v. Cabot Corp.*, 379 N.J. Super. 100, 106 (App. Div. 2005) (quoting *Donato v. Moldow*, 374 N.J. Super. 475, 482 (App. Div. 2005)). While petitioner is not expected to prove his case at the pleadings stage, the petition must contain factual “allegations, which, if proven, would constitute a valid cause of action.” *Ibid.* (quoting *Leon v. Rite Aid Corp.*, 340 N.J. Super. 462, 472 (App. Div. 2001)). Ultimately, a petition must be dismissed for failure to state a claim “if it has failed to articulate a legal basis entitling [petitioner] to relief.” *Ibid.*

The Commissioner agrees with the ALJ that the elimination of the Board Secretary position for reasons of economy did not violate N.J.S.A. 18A:28-9 or any other law or regulation. *See Maywood Bd. of Educ. v. Maywood Educ. Ass'n*, 168 N.J. Super. 45, 55 (App. Div. 1979) (“Reduction in force (RIF), whether of tenured or nontenured teachers, if done for reasons of economy, is entirely within the authority of the board.”); *Impey v. Bd. of Educ. of Borough of Shrewsbury*, 142 N.J. 388, 398 (1995) (“[A] local board of education has the authority to reduce its teaching force as long as that reduction is genuinely ‘for reasons of economy.’”). The petition does not contain allegations which, if proven, would warrant a different conclusion.

As for petitioner’s tenure rights, the Commissioner agrees with the ALJ that petitioner relinquished his tenure rights in the Assistant School Business Administrator position when he voluntarily accepted the Board Secretary position. The petition has not articulated a legal basis entitling petitioner to relief with respect to bumping rights. Tenure rights of school business administrators are governed by N.J.S.A. 18A:17-2, which provides that any school business administrator who has served for three consecutive calendar years “shall hold his office, position or employment under tenure.” Having served for more than three consecutive calendar years, petitioner earned tenure rights as an Assistant School Business Administrator. However, the

Appellate Division held in *DiNapoli* that N.J.S.A. 18A:17-2 limits the retention of tenure to the time during which the staff member holds his office, position, or employment. *DiNapoli*, 434 N.J. Super. at 239. Thus, when petitioner agreed to become Board Secretary, he relinquished the tenure rights he held in the Assistant School Business Administrator position and cannot now claim “bumping rights” related to that position.

The Commissioner does not agree with petitioner’s attempt to distinguish *DiNapoli* on the basis that the court’s holding applies only to secretaries who hold non-certificated positions. Petitioner has not identified any case law that limits the *DiNapoli* holding in that manner. The fact that the staff member in *DiNapoli* was a secretary who was promoted to Assistant School Business Administrator while petitioner was an Assistant School Business Administrator before he became Board Secretary does not require the conclusion that *DiNapoli* is inapplicable here. As discussed by the ALJ, the plain language of N.J.S.A. 18A:17-2—which provided the basis for the court’s holding in *DiNapoli*—pertains to both secretaries and school business administrators alike.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the Board’s motion to dismiss the petition of appeal is granted.

IT IS SO ORDERED.²



COMMISSIONER OF EDUCATION

Date of Decision: January 29, 2026
Date of Mailing: January 30, 2026

² 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

DISMISSAL

OAL DKT. NO. EDU 11637-25

AGENCY DKT. NO. 216-6/25

JOSEPH MUNIZ,

Petitioner,

v.

**HUDSON COUNTY SCHOOLS OF
TECHNOLOGY BOARD OF
EDUCATION, HUDSON COUNTY,**

Respondent.

Stephen J. Edelstein, Esq., for petitioner (Weiner Law Group, LLP, attorneys)

Christopher A. Khatami, Esq., for respondent (Shah Law Group, attorneys)

Record Closed: October 31, 2025

Decided: November 18, 2025

BEFORE: MATTHEW G. MILLER, ALJ

STATEMENT OF THE CASE

Petitioner, Joseph Muniz challenges the termination of his employment as the Secretary of the Board of Education of the Hudson County Schools of Technology ("Board" or "District"), effective July 1, 2025. In the alternative, if it is determined that his

termination was not improper, he challenges the failure of the Board to recognize with attainment of tenure not only as the Board Secretary, but also as an Assistant Business Administrator in the District and the further failure to recognize his “bumping” rights over the two persons currently employed as the Assistant Business Administrator.

PROCEDURAL HISTORY

This dispute is the latest salvo in a barrage of disputes involving these parties. While not necessarily straightforward, for the purposes of this forum, the procedural history is not particularly difficult to decipher.

The petitioner, who had been employed by respondent as the Board Secretary, was suspended with pay from his position on November 24, 2024. Alleging that there was no basis for the suspension, petitioner demanded that he be reinstated, but the respondent refused.

Thereafter, on May 21, 2025, petitioner filed an Emergent Petition [Muniz v. Hudson County Schools of Technology Board of Education (EDU 09176-2025)] with the State Department of Education’s Office of Controversies & Disputes (“OCD”). That petition was forwarded to the OAL and the respondent filed a Motion to Dismiss in Lieu of an Answer in response to same. That case was heard on June 2, 2025, by the Hon. Thomas R. Betancourt, A.L.J. and he issued a decision denying the requested relief, finding that Mr. Muniz did not meet the “irreparable harm” prong of the Crowe v. DeGioia¹ test. Muniz, 2025 N.J. Agen. LEXIS 313 (June 2, 2025), aff’d, Comm'r, Docket No. 304-25E (June 13, 2025). (C-1.)

As the situation continued to evolve, on June 30, 2025, Mr. Muniz filed the subject emergent petition following respondent’s notification to Mr. Muniz that his employment as Board Secretary was to be terminated as a result of the abolishment of that position. In the petition, he alleges that not only is the termination improper, but even if it were legal,

¹ 90 N.J. 126, 132-34 (1982).

he is entitled to “bumping” rights, given his position as holding tenure both as the Board Secretary and as an Assistant Business Administrator.

This petition was forwarded to the OAL for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. In response to the petition, the Board filed a Motion to Dismiss in Lieu of an Answer. Following an initial conference on July 7, 2025, the parties stipulated that this action does not meet the criteria to continue as an emergent petition but would rather continue as a regular petition and a briefing schedule was set. By email dated July 28, 2025, both Dominick Pandolfo and Kerri Sullivan were advised of their right to intervene or participate in the case per N.J.A.C. 1:1-16.4. Neither Mr. Pandolfo, nor Ms. Sullivan contacted the court.

FACTUAL BACKGROUND

While the respondent explicitly denies any relationship between this employment action and the circumstances which led to petitioner’s suspension, to ignore the well-publicized backstory to Mr. Muniz’s history with respondent would fail to provide needed context to the arguments of the parties.

At its most basic, it is alleged by Mr. Muniz that he had an eighteen-year extramarital affair with Amy Lin-Rodriguez. The implications of that affair really began in 2018, when Ms. Lin-Rodriguez was hired as the Board Superintendent and failed to disclose her relationship with the Board Secretary (Mr. Muniz). The affair allegedly ended in April 2024, but following an “explosive” argument in November of that year, the affair became public, leading to their respective suspensions.²

Mr. Muniz’s suspension is what led to the filing of the initial petition. While still under (paid) suspension, he was advised on June 25, 2025, that per “the findings and recommendation of a study conducted by (the) School Business Office”, the position of

² The saga of Ms Lin-Rodriguez’s employment continues and although she never returned to her position as Superintendent, her suspension was lifted on July 1, 2025. (P-C.)

Board Secretary will be combined with the position of School Business Administrator, effective July 1, 2025.

THE STUDY

The study referenced above was performed by SBO Management, L.L.C. and completed on June 17, 2025. (R-E.) The twenty-three-page report is best summarized in the June 20, 2025, Board resolution (RA-8.) SBO had been hired on an unknown date "to provide an economic efficiency analysis of its Business/Board Office, including administrative staffing, organized structure and operation in the areas of a Human Resources and Governance to determine potential cost-savings options".

SBO recommended the following (all effective July 1, 2025);

- a. The Board Secretary position be abolished and combined with the School Business Administrator position to create a new position of School Business Administrator/Board Secretary.
- b. The Administrative Secretary position in the Board Secretary's Office shall be abolished.
- c. The Purchasing Assistant position in the Board Secretary's Office shall be abolished.
- d. One Senior Account Clerk position in the Vouchers Department shall be abolished.

There was then this paragraph in the resolution;

BE IT FURTHER RESOLVED that the Acting Superintendent, with the assistance of the Board Attorney, is directed to notify the affected employees and take all steps necessary to implement the above changes, including but not limited to preparation of a revised Organization Chart, revised job descriptions and reassignments in accordance with any tenure and seniority rights as may be needed.

(emphasis in original.)

The resolution was effectively reproduced in a letter to Mr. Muniz from the Acting Superintendent, which advised him that;

As a result of the findings and recommendations of a study conducted by School Business Office, and to effectuate a cost savings, the Board abolished a number of position, including the position of Board Secretary, which will be combined with the School Business Administrator position, effective July 1, 2025. Accordingly, your employment with HCST will terminate at the close of Business on June 30, 2025.

(RA-8.)

INITIAL FINDINGS OF UNDISPUTED FACT

During the initial pre-hearing conference, it was determined that this was almost exclusively a legal dispute, despite the cumbersome and at times, scandalous factual background. Ultimately, the following **FACTS** of the case are not in dispute:

1. Mr. Muniz holds a Business Administrator's Certificate as issued by the New Jersey Department of Education ("DOE"). That certificate is required for anyone looking to be employed as a Business Administrator or Assistant Business Administrator in a public school system.³
2. In January 2003, Mr. Muniz obtained certification as a Qualified Purchasing Agent. He was hired by respondent as in that position on January 3, 2005. (RA-1.) On or about October 13, 2005, the Board appointed him to the position of Assistant Business Administrator and he held that position through August 31, 2014. (RA-2.) The circumstances of that hiring are important and will be detailed below.
3. Having maintained continuous employment as an Assistant Business Administrator since his appointment, Mr. Muniz was appointed to the position

³ <https://www.nj.gov/education/certification/leaders/slcerts/0109CE.shtml> (last accessed, Sept. 8, 2025).

of Acting Board Secretary effective June 1, 2015. (RA-4.) He assumed the position of Board Secretary effective November 2, 2015. (RA-5.)

4. He continued in that position through November 25, 2024, gaining tenure per N.J.S.A. 18A:17-2(a), when he was suspended with pay following a confrontation with Ms. Lin-Rodriguez. (C-1.)

5. Then, following the performance of the study detailed above, Mr. Muniz's position was eliminated and his employment terminated effective July 1, 2025.

6. At the time of Mr. Muniz's hiring as the Assistant Business Administrator, the position was, per N.J.A.C. 6A:9B-5.5, an "unrecognized title" and its utilization was therefore subject to the approval of the Bergen County Superintendent of Schools.

7. Permission to use that title was granted by the Superintendent via a memorandum dated October 4, 2005. (R-B.)

8. However, continued utilization of that title by the District was subject to yearly approval by the Superintendent.

9. There is no evidence that the District ever sought that approval subsequent to the initial request in 2005.

10. Nonetheless, Mr. Muniz retained that job title through 2014.

11. There are two persons currently employed as Assistant Business Administrators in the District; Dominick Pandolfo and Kerri Sullivan, both of whom have been employed in those positions since June 30, 2023. Neither has attained tenure and neither have accumulated as much service time in that position as Mr. Muniz. (C-5.)

ASSISTANT BUSINESS ADMINISTRATOR POSITION

This is a major part of the story. On October 4, 2005, Robert Osak, the Bergen County Superintendent of Schools directed a memo to Frank J. Garguilo, the District Superintendent. (R-B.) It read, in relevant part:

RE: Use of Unrecognized Title (2005-2006 School Year)

Pursuant to N.J.A.C. 6A:9-5.5, I have reviewed your request to use the following unrecognized title during the 2005-2006 school year. Predicated upon my review of the responsibilities in the respective job description, you have approval to use the respective title with the endorsement required. You are advised that while you may use the unrecognized title listed below, the person employed will accrue seniority upon attainment of tenure under the legal title.

If you plan to use this title in subsequent years, you must renew your application to this office.

<u>Position Title</u>	<u>Authorization Endorsement</u>	<u>Legal Title</u>
Assistant School	School Business Administrator	Business Administrator
School Business Administrator		

Despite that title having been continuously utilized since it was first introduced in 2005, there is no evidence that the District ever renewed its application to use this title in subsequent years.

MOTION

Respondent filed a Motion to Dismiss arguing the following points;

- a. That the elimination of petitioner's Board Secretary position was proper and in accordance with N.J.S.A. 18A:28-9.
- b. That the Assistant Business Administrator position was not a "recognized position title" when Mr. Muniz was appointed and that he therefore could not accrue tenure.

- c. That the Assistant Business Administrator position is not mentioned in N.J.S.A. 18A:17-2(a) and therefore Mr. Muniz could not accrue tenure.
- d. That, unlike teachers or school superintendents, administrators only retain tenure rights during their employment in that position. DiNapoli v. Bd. of Educ. of Verona, 434 N.J. Super. 233 (App. Div. 2014). Compare N.J.S.A. 18A:28-6, N.J.S.A. 18A:7-2 and N.J.S.A. 18A:17-20.4.

It is argued that the Motion to Dismiss is appropriate here since, per N.J.A.C. 6A:3-1.10, even if appellant's factual allegations are all found to be true, there is no legal basis for his appeal.

The petitioner argues that Mr. Muniz has gained tenure in two separate positions; Board Secretary and Assistant Business Administrator. The fact that the Board did not seek continuing approval for the position of Assistant Business Administrator should not be visited upon Mr. Muniz and respondent should not benefit from its omission. At the very least, the Board should be equitably estopped from asserting this defense.

Mr. Muniz also argues that the Assistant Business Administrator position is now a recognized title (and is included in the HCST Administrators' Collective Bargaining Unit), obviating that aspect of the defense. Petitioner also recommends that the District's arguments concerning bumping rights is completely without basis. First, it argued, pointing to the reappointment of Ms. Lin-Rodriguez as a Principal, having left that tenured position to become Superintendent, which is deemed to be "analogous to Mr. Muniz's position as Assistant Business Administrator".

It is also pointed out that Mr. Muniz's service as an Assistant Business Administrator far exceeds the service time of both Mr. Pandolfo and Ms. Sullivan in the same position.

Finally, as was noted by the respondent, the petitioner, while inferring impropriety concerning the reduction in force (as well as in Ms. Lin-Rodriguez's reappointment), does not make any legal argument concerning the propriety of either. Therefore, any potential argument concerning same is moot and will not be considered here.

LAW AND ANALYSIS

A Motion to Dismiss filed per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a Motion to Dismiss for Failure to State a Claim filed in civil court per R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417 (App Div., Sept. 26, 2017). The Court stated the standard for the granting of same:

When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Ibid.* (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).

Id. at *7.

Much has been made of the "unrecognized title" aspect of the case. More specifically, respondent argues that because the job title of "Assistant Business Administrator" is an "unrecognized title" and since there is no evidence that the District requested permission to use the title in the years subsequent to the County Superintendent's 2005 letter, Mr. Muniz did not acquire tenure in that position.

The concept of unrecognized titles is codified in N.J.A.C. 6A:9B-5.5. This provision reads as follows;

(a) Each district board of education shall assign to teaching staff members position titles that are recognized by the Department. To this end, the Department shall maintain and make available to school districts a list of approved job titles with corresponding authorized certificates.

(b) If a district board of education desires to use an unrecognized position title, or if a previously established unrecognized title exists, the following procedures shall apply:

1. Prior to appointing a candidate, the district board of education shall submit to the executive county superintendent a written request, including a detailed job description, for permission to use the proposed title.

2. The executive county superintendent shall exercise his or her discretion regarding approval of the request and shall determine the appropriate certification and title for the position.

(c) The executive county superintendent shall review annually all previously approved unrecognized position titles and shall determine whether the titles will be continued for the next school year.

(d) Decisions rendered by executive county superintendents regarding titles and certificates for unrecognized positions shall be binding upon future seniority determinations on a case-by-case basis.

Here, the position of “Assistant Business Administrator” was, in 2005, an “unrecognized title” and in compliance with the Code, the District sought approval for its use from the Bergen County Superintendent and that approval was granted by letter dated October 4, 2005. It was also noted that in order to utilize that title in ensuing years, the District “must renew (its) application to this office.” As previously noted, there is no evidence that this ever happened.

This issue is, unsurprisingly, a mite bit more nuanced than it appears on the surface. First, the petitioner argues that the job of Assistant School Business Administrator is now an “approved” position, pointing to its assignment of an “Administrators Position Code”. (P-A.) While the code is listed on a private schools document issued by the DOE, it is clear that this listing is taken directly from the approved list of public school positions. (C-2 and C-3.) A little digging reflects that this position was finally approved for the 2010-11 school year and continues to be an approved position. (C-2, C-3 and C-4). That means that Mr. Muniz worked the 2010-11, 2011-12, 2012-13 and 2013-14 school years in the now-approved position of “Assistant Business Administrator”.

Per N.J.S.A. 18A:17-2(a), a person in the position of “School Business Administrator” must serve three consecutive calendar years in the position in order to become tenured. Here, it appears that irrespective of the approved/unapproved conundrum, Mr. Muniz served a sufficient amount of time in the position after it was approved, to have obtained tenure.

However, that is not the end of the story. Having reviewed the case law, ultimately, this matter boils down to a contest involving two cases. First is Still v. State-Operated Sch. Dist. of Camden, 2018 N.J. Super. Unpub. LEXIS 1580 (App. Div., June 5, 2018), which addresses this approved/unapproved issue as well as the issue of tenure retention in detail. Ms. Still, who held a teaching certificate, served as a third and fourth grade teacher in Camden for seven years before leaving for a job outside the District. She was then rehired as a “technology coordinator”, which was described as a tenured position with duties to provide “instructional support...to staff members”. Id. at *1. She remained in that position for fourteen years before it was abolished and she was reassigned to classroom teaching duties. She was then moved to the position of “lead educator” and obtained the “required provisional principal certificate” required for that job. Two years later, she was advised that this position was also being eliminated and that she was being terminated without bumping rights. Id. at *2.

Ms. Still then filed a petition with the Commissioner and the District moved to dismiss same on two grounds (one of which is irrelevant to this discussion). The relevant argument is that Ms. Still had lost her right to tenure under her teaching certificate because the “technology coordinator” position did not require any “classroom instruction commensurate with this certificate.” Id. at *3.

The matter was referred to the OAL, which ruled in favor of Ms. Still. The District appealed to the Commissioner and, for the first time, raised an argument that Ms. Still could not have acquired tenure in the position of “technology coordinator”, not because it was an unapproved position, but because there was no evidence that the District had requested the required year-to-year approval of the position by the County Superintendent. Id. at *4-5. The Commissioner affirmed the Initial Decision, rejecting all

of the District's arguments. Still v. State-Operated Sch. Dist. of Camden, 2017 N.J. Agen. LEXIS 273 (Jan. 4, 2017)

The Commissioner, despite the issue being raised for the first time, addressed the "unapproved position" argument directly and in detail.

Whether the unrecognized position of technology coordinator was approved by the ECS is inconsequential to the determination of tenure rights: neither the tenure statute nor N.J.A.C. 6A:9B-5.5 indicate that an employee will be deemed not tenured if an unrecognized position is not approved by the ECS...See *Ciamillo v. Bd. of Educ. of Ridgefield*, OAL Dkt. No. EDU1805-04, State Board Decision No. 38-05 (January 4, 2006) (clarifying that the position in which tenure is acquired by virtue of service in an unrecognized position title is not limited by the unrecognized title because it is well established that the position in which an individual achieves tenure is either one of those specifically enumerated in the statute or other employment for which a certificate is required); see also, *Manley v. Bd. of Educ. of Old Bridge Twp.*, OAL Dkt. No. EDU10644-04, Commissioner Decision No. 450-05 (December 19, 2005) (holding, "[i]t is well established that tenure is achieved in a specific position, and the scope of the tenured position is initially limited by the certificate the teaching staff member must hold to satisfy the prerequisite of qualifications for his or her employment . . ." and finding "the scope of tenure protection for unrecognized positions is also determined by the certifications and endorsements required to serve in that position.") Additionally, it is the board's responsibility to obtain approval from the ECS. Assuming, *arguendo*, that approval was necessary for accrual of tenure in the position and the Board had failed to obtain approval from the ECS, holding petitioner accountable in any way for the Board's administrative failure would contravene the principles of fairness and equity.

Id. at *5-6.

The Commissioner also noted the scope of the tenure statute;

The tenure statute should be "liberally construed to achieve its beneficent ends." *Spiewak v. Bd. of Educ. of Hamilton Twp., et al.*, 90 N.J. 63, 74 (N.J. 1982). Here, petitioner served as a technology coordinator for fourteen years, a position which required a standard teaching certification; therefore, petitioner obtained tenure in the District under her instructional certification both as a technology coordinator and

as an elementary school teacher. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed without prejudice.

Id. at *7-8.

The Appellate Division rather succinctly affirmed;

As the ALJ and Commissioner pointed out, the tenure statute is clear. In addition to the enumerated positions, "all teaching staff members employed . . . in the positions of teacher . . . and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners . . . shall be under tenure." N.J.S.A. 18A:28-5(a) (emphasis added). Because it was undisputed that Still held an appropriate certificate for over fourteen years as the technology coordinator, she accrued tenure. Nothing in the statute or the enabling regulations supports the requirement urged by the District that the technology coordinator position must have an instruction component or be approved by the ECS before the holder of the position acquires tenure. The ALJ's and Commissioner's refusal to graft conditions onto the statute was eminently reasonable.

Likewise, there was nothing arbitrary or capricious about the Commissioner's legal conclusion, grounded in fairness and equity, that even if ECS approval was necessary, it was the District's responsibility, not Still's, to obtain it given Still had dutifully worked for over fourteen years as the technology coordinator, described by the District as a tenured position.

Still, 2018 N.J. Super. Unpub. LEXIS 1580 at *7-8.

Key to the discussion however, at least according to the District, is DiNapoli v. Bd. of Educ. of Tp. of Verona, 434 N.J. Super. 233 (App. Div. 2014). The key difference between DiNapoli and Still is that Ms. DiNapoli had obtained tenure in a non-teaching position. More specifically, in 2006, she had been a tenured secretary. She then left that position to become in 2009 to become the Assistant Business Administrator of the District. That position was then abolished in 2011. Ms. DiNapoli then asserted that since she had obtained tenure in her secretarial job, she was entitled to bump back to that position. Both the ALJ and the Commissioner ruled in her favor. Id. at 234-35.

Even given the limited scope of review of an administrative agency's final determination, the Appellate Division reversed. Essentially, the District argued that once Ms. DiNapoli transferred out of a non-certificated position (secretary) to a certificated one (Assistant Business Administrator), she relinquished her tenure rights as a secretary, citing to N.J.S.A. 18A:17-2.

First, the Court noted that "tenure rights are statutory and not contractual" and that "to acquire the security of tenure, the precise conditions enunciated in the applicable statute must be met". Id. at 237-28, cit. Zimmerman v. Newark Bd. of Educ., 29 N.J. 65 (1962), certif. denied, 371 U.S. 956 (1963) Then, the Court agreed with the District:

Initially, we find the plain language of the statute does not support the Commissioner's determination that DiNapoli retained her tenure rights upon transfer to a certificated position. Nor does N.J.S.A. 18A:17-2 reflect a legislative design to provide secretaries, who have relinquished their positions for non-secretarial certificated employment, the right to retain tenure. Rather, the language of N.J.S.A. 18A:17-2 limits the retention of tenure to the time during which the employee holds her secretarial office, position or employment. The Commissioner's conclusion that secretarial staff maintain tenure upon transfer to non-secretarial positions is unfounded under the express terms of the statute. Once DiNapoli voluntarily transferred to the assistant school business administrator position, she no longer held her "office, position or employment" as a secretary and, absent expressed statutory authority, she relinquished her right to "bump back" into a secretarial position.

DiNapoli, 434 N.J. Super. at 239-40.

The Court opined that if the Legislature had desired the positions mentioned in the statute (including, coincidentally, "assistant school business administrator") to maintain their tenure after transferring to another position, it would have done so. The Court pointed to, as an example, the language contained in the "teaching staff members" statute that Ms. Still relied upon in her case (N.J.S.A. 18A:28-6) and to the "superintendent"

statute, N.J.S.A. 18A:17-20.4. Both of these statutes "afford tenure retention rights to teachers and superintendents notwithstanding promotion or transfer." Id. at 240.

While DiNapoli at times emphasizes the difference between certificated and non-certificated positions (the school business administrator position is certificated, the position of secretary is not), the fact remains that both positions are literally in the title of N.J.S.A. 18A:17-2. While that statute has not been amended since its enactment in 1967, N.J.S.A. 18A:17-20.4 was not enacted until 1991 and N.J.S.A. 18A:18-6 was amended in 2012. DiNapoli then reviewed the standard by which statutes should be read together, concluding:

In determining whether legislative enactments "actually 'concern the same object,'" a court should consider "whether both statutes were included in one enactment, whether the proofs required overlap, and whether they are 'designed to serve the same purpose and objective[.]'" *Marino v. Marino*, 200 N.J. 315, 330, 981 A.2d 855 (2009) (quoting 2B *Sutherland Statutory Construction* § 51:3 (7th ed. 2008)). Both N.J.S.A. 18A:17-2 and 18A:28-6 were enacted at the same time. See L. 1967, c. 271. N.J.S.A. 18A:17-20.4 was enacted subsequently. See L. 1991, c. 267, § 8.

We are satisfied that all three statutes concern the same object, namely, the accrual and retention of tenure by school district employees, and are designed to serve the same purpose and objective. "When the Legislature expressly includes a requirement in one section and excludes that same requirement in other subsections of the same general statute, we need not strain to import that requirement where it is not." *In re Freshwater Wetlands Prot. Act Rules*, 180 N.J. 478, 492, 852 A.2d 1083 (2004). When considered together, it is obvious the Legislature did not intend to afford secretaries tenure preservation upon transfer or promotion from secretarial employment as they did not adopt a provision providing for tenure retention in the legislation.

Id. at 241-42.

So, where does that leave us? Per N.J.S.A. 18A:28-9, a District is permitted to implement a reduction of force, including tenured employees and "to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of

change in the administrative or supervisory organization of the district or for other good cause."

There is certainly a history between the parties and there is no question that a study was commissioned and recommended not only the elimination of Mr. Muniz's position, but also other administrative positions. However, while Mr. Muniz infers that there may be an impure motive behind the elimination of his position, he has not presented any specific evidence of same (although he does point to the curious re-hiring of Ms. Lin-Rodriguez, effective July 1, 2025). (P-C.) Petitioner's sole legal argument is that of his tenure as an Assistant Business Administrator and his seniority/bumping rights over the two persons currently employed by the District in that position.

Unfortunately for Mr. Muniz, I find that DiNapoli is both persuasive and controlling and that, unlike teachers or superintendents, once he left his tenured position as the Assistant Business Administrator to become the Board Secretary, he forsook those tenure rights. If, as in Still, the petitioner had been a certificated teacher or superintendent, we would have proceeded to address the issue of bumping. However, the Court in DiNapoli was very clear as to the limitations of N.J.S.A. 18A:17-2 and all references to DiNapoli since its publication have either been tangential to this specific issue or approving of its conclusions. See eg, Saylor v. Bd. of Educ. of W.N.Y., 2021 N.J. Super. Unpub. LEXIS 873 (App. Div. May 12, 2021).

In fact, Still, in an extensive footnote, recognizes the distinction between the applicable statutes, and distinguishes her position as a lead educator versus Ms. DiNapoli's position as a secretary. Id. at 2018 N.J. Super. Unpub. LEXIS 1580 at *10, n.2.

Given the above, I **CONCLUDE** that when Mr. Muniz left his position as Assistant Business Administrator to accept the position of Board Secretary, his tenure rights in the Assistant Business Administrator position disappeared. I further **CONCLUDE** that given his loss of tenure rights, there is no need to address petitioner's claim of bumping rights back to the Assistant Business Administrator position. I further **CONCLUDE** that no evidence has been presented to demonstrate that the RIF recommended by the SBO

study and implemented by respondent was improper or violated of any statutory or Administrative Code provision.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is further **ORDERED** that Mr. Muniz's appeal be and is hereby **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, PO Box 500, Trenton, New Jersey 08625-0500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 18, 2025

DATE



MATTHEW G. MILLER, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/sej/cb

APPENDIX

EXHIBITS

For Court:

- C-1 Muniz v. Hudson County Schools of Technology Board of Education, 2025 N.J. Agen. LEXIS 313 (June 2, 2025), aff'd, Comm'r, Docket No. 304-25E (June 13, 2025)
- C-2 2010 - 2011 Listing of Recognized Position Titles
- C-3 Recognized Position Titles Memorandum (June 21, 2010)
- C-4 2025 – 2026 Listing of Recognized Position Titles
- C-5 Hudson County Schools of Technology Board of Education Meeting Agenda (February 16, 2023)

For Respondent:

- R-A Board resolutions (Muniz hiring)⁴
 - RA-1 January 3, 2005 (Purchasing Agent)
 - RA-2 October 13, 2005 (Assistant School Business Administrator)
 - RA-3 September 1, 2014 (Acting Board Secretary)
 - RA-4 June 1, 2015 – June 30, 2018 (Acting Board Secretary)
 - RA-5 November 16, 2015 (Board Secretary)
 - RA-6 September 1, 2018 – August 31, 2023 (Board Secretary)
 - RA-7 July 1, 2020 – June 30, 2025 (Board Secretary)
 - RA-8 Board resolution 6.18/letter to petitioner (June 20, 2025)
- R-B “Unrecognized Title” memorandum (October 4, 2005)
- R-C Letter from petitioner counsel to Board attorney (June 29, 2025)
- R-D Letter from Board attorney to petitioner counsel (June 30, 2025)
- R-E Business Office Economic Efficiency Analysis (June 17, 2025)
- R-F Certification of Jonathan Busch, Esq. (July 6, 2025)

⁴ All date are the “effective dates” of the job appointment.

For petitioner:

- P-A New Jersey Department of Education “Listing of Recognized Position Titles” (2022-2023)
- P-B Administrative Members Contract
- P-C District Board Meeting – Superintendent’s Agenda (June 19, 2025)