

New Jersey Commissioner of Education
Decision

Audrey Diaz Irby,

Petitioner,

v.

Hackensack Board of Education, Bergen 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.

Petitioner began her employment with respondent Hackensack Board of Education (Board) as a Secretary in 2016, and she acquired tenure pursuant to *N.J.S.A. 18A:17-2*. According to the petition, at some point thereafter, she began working as a School Monitor for the Board. In 2026, the Board eliminated the School Monitor position due to a reduction in force and terminated petitioner's employment. Petitioner alleges that her tenure and seniority rights have been violated because the Board continues to employ non-tenured, less senior secretaries.

The Board filed a motion to dismiss the petition, claiming that petitioner failed to state a claim upon which relief may be granted. Citing *DiNapoli v. Board of Education of the Township of Verona*, 434 N.J. Super. 233, 245 (App. Div. 2014), the Board argued that petitioner relinquished her secretarial tenure rights when she accepted the position of School Monitor, which they contend is neither a secretarial nor a clerical position. Petitioner opposed the motion

to dismiss and argued that because the School Monitor position is a clerical position, she did not relinquish her tenure rights. Petitioner attached job descriptions for the positions of Administrative Assistant and School Monitor to her opposition brief. The Board objected to petitioner's reliance upon extrinsic documents and asked that the Administrative Law Judge (ALJ) consider only the allegations in the petition.

The ALJ granted the Board's motion to dismiss the petition and concluded that petitioner relinquished her secretarial tenure rights under *N.J.S.A. 18A:17-2* when she accepted the position of School Monitor. The ALJ did not make findings regarding the nature of the School Monitor position or the duties petitioner performed in that position, and she did not consider the job descriptions supplied by petitioner.

Upon review, the Commissioner is constrained to remand this matter because its resolution requires factual findings to be made regarding the nature of the School Monitor position and the duties petitioner performed in that position. If the ALJ finds the School Monitor position is neither a secretarial nor a clerical position as argued by the Board, then petitioner has relinquished her secretarial tenure rights pursuant to *N.J.S.A. 18A:17-2* and the Appellate Division's holding in *DiNapoli*.

Accordingly, the matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.



COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2026
Date of Mailing: October 15, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 06013-26

AGENCY DKT. NO. 095-03-26

AUDREY DIAZ IRBY,

Petitioner,

v.

HACKENSACK BOARD

OF EDUCATION,

Respondent.

Alfred Maurice, Esq., for petitioner (Springstead & Maurice)

John C. Hegarty, Esq., for respondent (Jasinski, P.C., attorneys)

Record Closed: July 6, 2026

Decided: August 10, 2026

BEFORE **MARIANNE B. ORTEGA, ALJ:**

STATEMENT OF THE CASE

On April 25, 2025, Audrey Diaz Irby (Diaz) voluntarily left her secretarial tenured position at the Hackensack Board of Education and accepted the appointment of School Monitor. Did Diaz relinquish tenure as a secretary? Yes. Voluntarily accepting another position relinquishes the tenure attached to the former position. See DiNapoli v. Bd. of Educ. of Twp. of Verona, 434 N.J. Super. 233, 240-41 (App. Div. 2014).

PROCEDURAL HISTORY

On March 17, 2026, Diaz filed a Petition of Appeal with the Commissioner of Education asserting tenure rights and seeking to return to the position of secretary for the Hackensack Board of Education.

On April 14, 2026, the Hackensack Board of Education filed a Notice of Motion to Dismiss in Lieu of an Answer.

On April 16, 2026, the Department of Education transmitted this case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On May 18, 2026, I held a prehearing telephone conference and established a briefing schedule.

On June 10, 2026, Diaz submitted her opposition to the motion; on July 2, 2026, the Board filed its reply; and on July 6, 2026, I closed the record.

FINDINGS OF FACTS

After reviewing the papers submitted in support of and in opposition to the motion to dismiss, and assuming the allegations in the petition of appeal as true, I **FIND** the following as **FACT** for purposes of this motion only:

1. On January 13, 2016, Diaz accepted employment in the position of secretary for the Hackensack Board of Education.
2. On April 25, 2025, Diaz voluntarily accepted employment in the position of school monitor for the Board.
3. On January 29, 2026, the Board eliminated the position of school monitor as part of a reduction-in-force, effective May 27, 2026.

CONCLUSIONS OF LAW

A motion to dismiss under the administrative rule governing education cases, N.J.A.C. 6A:3-1.5(g), is the functional equivalent of a motion to dismiss for failure to state a claim in the New Jersey Superior Court under R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417. In ruling on a motion to dismiss under R. 4:6-2(e), the judge must determine the adequacy of the pleading, assuming the facts pled as true, and decide whether a cause of action is "suggested" by the facts. *Id.* at *7.

N.J.S.A. 18A:17-2 governs tenure for school secretaries. It confers tenure on "[a]ny secretary, assistant secretary, school business administrator or business manager of a board of education" who has served for three years. *Id.* Voluntarily accepting another position relinquishes the tenure attached to the former position. See DiNapoli v. Bd. of Educ. of Twp. of Verona, 434 N.J. Super. 233, 240-41 (App. Div. 2014).

In this case, Diaz served as a secretary with the Hackensack Board of Education from January 13, 2016, until she voluntarily accepted her appointment to school monitor on April 25, 2025. During that time, Diaz acquired tenure. Yet once Diaz voluntarily accepted her appointment to school monitor, she relinquished that tenure. Meanwhile, not enough time had passed for Diaz to obtain tenure in her new position as school monitor. As a result, she was subject to the reduction-in-force.

Diaz claims that she was told that her tenure was preserved in her new position and if the position was reduced or eliminated, she could return to her tenured position as secretary, but no proof exists that this was promised, and no authority exists that this is permissible. Although Diaz cites N.J.S.A. 18A:28-12 in support of her claim, which states that school districts are to place any teaching staff member dismissed through a reduction-in-force onto a preferred eligible recall list in order of seniority, such a provision neither preserves tenure nor shields dismissal through a reduction-in-force. Accordingly, I **CONCLUDE** that Diaz relinquished her tenured position when she accepted the new appointment as school monitor, and she is not entitled to return to her prior position.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Hackensack Board of Education's Motion to Dismiss is **GRANTED** and that this case 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 is authorized by law to make a final decision in this case. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days, and unless such time limit is otherwise extended, this recommended decision shall become a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, 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.

August 10, 2026



DATE

MARIANNE B. ORTEGA, ALJ

Date Received at Agency

August 10, 2026

Date Mailed to Parties

August 10, 2026

ljb