

## BIDDING

(Note: Recent statutory changes in Title 40A exempt school districts, and Title 18A:18 has been completely revised as Title 18A:18A.)

### Applicability to

- Buses (89:2438, H.A. DeHart, aff'd St. Bd. 90:1707)
- Bids for food services: lowest bidder is not necessarily bidder with lowest service fee (85: January 24, Educational Food Management Services); Food Service Contract now exempt N.J.S.A. 18A:18A-5a.(7).
- Coal (51-52:39)
- Construction of school, Schwitze v. Newark Bd. of Ed., 79 N.J.L. 342 (Sup. Ct. 1910)
- "Extraordinary unspecifiable services," defined Burlington Tp. v. Middle Dept. Inspection Agency, 175 N.J. Super. 624 (Law Div. 1980)
- Food Supplies, FSD Industries, Inc. v. Paterson Bd. of Ed., 166 N.J. Super. 330 (App. Div. 1979) certif. denied 81 N.J. 263 (1979) (84: December 20, Educational Food Management Services, Inc.) (85: January 24, Educational Food Management Services)
- Fuel Oil (51-52:41) (59-60:85) But see Atty. Gen. Formal Op. No. 4 (1974)
- Furniture, Asbury Park Bd. of Ed. v. Hoek, 38 N.J. 213 (1962); (38:253, 256, 257, 259, 261, 263) (51-52:37)
- Insurance (72:361)
- Lunches (72:479)
- Maintenance services (87:738, Reid, Inc.)
- Milk, Garden State Dairies v. Sills, 53 N.J. 71 (1968); (66:147) (71:40) (71:59) (75:733, Durling Farms)
- Other; even if not required to advertise, board may do so and is not bound thereby, assuming good faith action on part of board in public interest, Coward v. City of Bayonne, 67 N.J.L. 470 (Sup. Ct. 1902), Kraft v. Weehawkin Twp. Bd. of Ed., 67 N.J.L. 512 (Sup. Ct. 1902); (61-62:92, aff'd St. Bd. 61-62:97)
- "Professional services," defined Burlington Tp. v. Middle Dept. Inspection Agency, 175 N.J. Super. 624 (Law Div. 1980)
- Repairs
  - Distinguished from maintenance services (87:738, Reid, Inc.)
- Repairs, Asbury Park Bd. of Ed. v. Hoek, 38 N.J. 213 (1962) (77:817, Keystone Roofing Co.)
- "Supplies" defined, Asbury Park Bd. of Ed. v. Hoek, 38 N.J. 213 (1962)

**BIDDING - continued**

**Applicability to - continued**

- Transportation (38:792, 795, 797, 799) (39-49:17, 206, 209, 221) (52-53:60) (63:218) (69:98) (76:561, A.Z. Transportation Inc.) (76:643, Wall Twp. Bd. of Ed.) (78:416, Coaches of Eight, Inc.) (78:585, Tri-R Bus Service, Inc.) (82: December 13, Gratton Bus Service) (83: March 9, Toms River) (88:1833, Plumsted Township Bus Drivers Association) (89:2438, H.A. Dehart, aff'd St. Bd. 90:1707)
- Yearbooks (77:213, Nicastro), But see N.J.S.A. 18A: 18A-5a.(5).
- Authority to qualify bidders - delegated to Dept. of Treasury (87:738, Reid, Inc.)
- Challenge to award; must be made promptly or review of award will be denied, challenge made after one month determined by ALJ not to be prompt action in dicta contained in initial decision (84: January 26, Bettencourt)
- Challenge by rejected bidder rendered moot by board's rejection of all bids (88:87, Newark Food Service Equipment Co.)
- Challenge by rejected bidder rendered moot by completion of boiler work by successful bidder (87: August 3, Metco Contracting, Inc.)
- Classification of bidders; pre-qualification
- Bidder must qualify before St. Bd. of Ed.; absence of qualification cannot be waived by local board. Begraft v. Franklin Bd. of Ed., 133 N.J. Super. 415 (App. Div. 1975); but see Richardson Engineering Co. v. Rutgers, 51 N.J. 207 (1968); (87:738, Reid, Inc.); but see 87:1238, Struble Air Conditioning Inc. where the Notice of Classification Form had been renewed by the Dept. of Treasury, yet was not received by the contractor due to backlog at D.O.T. Held: Board's refusal to waive requirement was an abuse of discretion.
- Financial statements may be required, Albert F. Ruehl Co. v. Bd. of Trustees, 85 N.J. Super. 4 (Law Div. 1964)
- Guilty plea entered on behalf of corporation in income tax evasion case, effect on pre-qualification (73:576)
- Indictment for income tax evasion, effect on pre-qualification (73:430)
- Notice of Classification Form
- Absence of classification form held to be a material omission which cannot be waived by the board (86:299, High Fidelity Sound Center)
- Absence of classification form held not to be a material omission due to special circumstances (87:1238, Struble)

Air Conditioning, Inc.)

Out-of-state bidder on motor vehicles not required to hold state motor vehicle license per N.J.S.A. 39:10-19 (81: December 15, Byram)

**BIDDING - continued**

**Classification of bidders; pre-qualification - continued**

Previous work record

Effect on bidder (51-52:39)

Poor record justifies restriction of qualification to small contracts (70:36)

Deadline for submission of bids; extension to accommodate late bidder held responsible (81: March 2, Arnold)

Jurisdiction of Commissioner to hear disputes concerning Fischer v. Union Twp. Bd. of Ed., 99 N.J. Super. 18 (App. Div. 1968); compare (71:40)

Non-conforming bid (80: October 8, Rolfe) (87:738, Reid, Inc.)

Minor irregularities will not render bid non-conforming

(85: September 19, Nu-Way, aff'd St. Bd. 86: March 5)

**Procedure**

Award to lowest responsible bidder (39-49:221) (51-52:39) (51-52:41) (55-56:71) (55-56:76) (56-57:35) (56-57:38) (56-57:77) (58-59:93) (59-60:85) (61-62:114) (66:147) (69:72) (71:40) (71:57) (71:59) (71:151) (72:479) (76:561, AZ Transportation Inc.) (77:817, Keystone Roofing Co.)

Burden of proof on challenger to award, Fischer v. Union Twp. Bd. of Ed., 94 N.J. Super. 359 (Ch. Div. 1967) aff'd 99 N.J. Super. 18 (App. Div. 1968) (see also 74:538, aff'd St. Bd. 74:540) (82: December 13, Gratton Bus Service)

Certified check to accompany bid (55-56:138)

Challenge to award must be filed promptly, Richardson Engineering Co. v. Rutgers, 51 N.J. 207 (1968); (39-49:206) (60-61:212) (66:147) (69:72 aff'd St. Bd. 70:460)

Deadline for submission of bids; extension to accommodate late bidder held reasonable (81: March 2, Arnold)

Emergency provisions (76:643, Wall Twp. Bd. of Ed.)

Failure of board to file reasons for rejecting bid does not invalidate award of contract (81: December 15, Byram)

Hearing, low bidder entitled to hearing on responsibility prior to rejection of bid and award to higher bidder, Rose Inc. v. East Orange Bd. of Ed., 39 N.J. Super. 565 (Law Div. 1956); (72:479)

Hearing on responsibility of bidder; not available to bidder whose bid does not meet specifications (81: December 15, Byram)

Injunction against construction sought by unsuccessful bidder,

denied (74:538, aff'd St. Bd. 74:540)  
Laches; applies to actions challenging award of bid (81:  
June 26, O'Rourke)  
Late bid may not be considered (71:59)  
Lowest responsible bidder is determined by comparing overall  
proposals, not just a line by line cost comparison (85:  
September 19, Nu-Way, aff'd St. Bd. 86: March 5)

**BIDDING - continued**

**Procedure - continued**

- Performance bond, bank that advanced money to contractor who defaulted on contract to do school repair work, did not come within protection of performance bonds issued for protection of school districts and to guarantee payment for labor performed or materials consumed in construction, Bayonne Bd. of Ed. v. Kolman, 111 N.J. Super. 585 (Ch. Div. 1970)
- Petition to challenge rejection of bid must be filed within 90 days of board's rejection of bid (81: October 13, Wolfington)
- Rejected bidder may not challenge responsibility of successful bidder (85: July 12, Countryside Disposal)
- Security required (5%)
  - Bid bond sufficient, certified check not required (85: January 7, Hahola)
  - Computation of (55-56:138)
  - Error in advertised specifications (75:733, Durling Farms)
- Separate bids, when authorized, Fisher v. Union Twp. Bd. of Ed., 94 N.J. Super. 359 (Ch. Div. 1967) aff'd 99 N.J. Super. 18 (App. Div. 1968) (69:72) (77:817, Keystone Roofing Co.)
- Standing denied; bus drivers' union lacked standing to assert individual claims for damages unless the individuals were joined as parties (88:1833, Plumsted Township Bus Drivers Association)
- Standing of citizen and taxpayer to attack award, upheld Albert F. Ruehl Co. v. Bd. of Trustees, 85 N.J. Super. 4 (Law Div. 1964)
- Standing to challenge upheld (77:213, Nicastro)
- Surety requirement; board cannot waive consent of surety requirements and other bid limitations (82: September 20, Surray)
- Waiver of irregularities permitted (55-56:71) (71:151) not permitted (63:218)
- Public contractors are presumed to operate with knowledge of relevant laws constraining procedural and substantive discretion and authority of officials with whom they deal. St. Barnabas Medical Center v. Essex County, 111 N.J. 67 (1988)
- Public works defined (87:738, Reid, Inc.)
- Purpose of statute
  - Safeguard public interest by insuring that work performed at lowest cost by responsible bidder and preventing fraud, State v. General Restoration Co., 42 N.J. 366 (1964); Asbury Park Bd. of Ed. v. Hoek, 38 N.J. 213 (1962)

**Specifications**

Award based on prompt payment discount invalidated where  
discount bid not solicited in specifications (85: July 12,  
Countryside Disposal)

**BIDDING - continued**

**Specifications - continued**

- Award must adhere to (55-57:35) (63:218) (65:109) (67:262) (69:98) (76:561, AZ Transportation, Inc.)
- Award of transportation contract, must adhere to (82: September 20, Surray)
- Bid held invalid for uncertainty, Belousofsky v. Linden Bd. of Ed., 54 N.J. Super. 219 (App. Div. 1959)
- Bid invalid; did not contain clear statement that 5 watt output would be raised to 12 watts as per specifications (89:1179, Coskey's Electronic Systems)
- Bids must conform to (81: March 26, Longo) (81: December 15, Byram) (83: March 9, Shore Vans) (84:575, Alaskan Insulation, aff'd St. Bd. 84:592) (85: March 18, Lowenstein) (89:1179, Coskey's Electronic Systems)
- Bids valid where only minor changes made (82: October 28, Orkin)
- Binding nature of (56-57:35) (65:98)
- Board has no legal obligation to grant bidder a hearing with respect to (81: October 13, Wolfington)
- Board may make additional specifications not inconsistent with law (67:262)
- Challenge to, denied (77:817, Keystone Roofing Co.)
- Challenge to, made before bid is submitted; precluded after opening of bids (84: October 4, Educational Food Management Services) (84: October 15, Educational Food Management Services)
- Corrections sufficiently made to uphold award (77:462, Foote, stay denied and aff'd St. Bd. 77:477, jurisdiction released and aff'd St. Bd. 77:477)
- Description of must be sufficient to set up common standard of competition (81: March 26, Longo)
- Emergent relief unavailable to one who lacks standing and cannot prove damages where specifications were changed (82: October 28, Orkin)
- Error in, board may reject all bids and re-advertise (75:733, Durling Farms)
- Exclusion of prospective bidder under N.J.S.A. 18A:18A-15; dealer of particular roofing system had no standing to challenge specifications which precluded use of that system because specifications did not limit bids to only one bidder (84: January 26, Bettencourt)
- Failure to protest (66:147)
- Must be clear, precise, definite, and material to the proposal (81: October 13, Wolfington)

"Or equal," meaning of, Belousofsky v. Linden Bd. of Ed., 54  
N.J. Super. 219 (App. Div. 1959); (66:15) (66:147)  
Penalty clause illegal specification; contract award set aside  
(89:2438, H.A. DeHart, aff'd St. Bd. 90:1707)

## BIDDING - continued

### Specifications - continued

- Rejected bidder may not challenge after award (81: October 13,  
Wolfington) (85: January 24, Educational Food Management  
Services)
  - Requirement for surety bond is not met by supplying personal  
bond (82: March 12, Gratton Bus Service)
  - Specifications inadequate to determine necessary classification.  
Contract invalidated, board to re-bid. Bil-Jim Const., 236  
N.J. Super. 603 (App. Div. 1989)
  - Specifications may allow both lump sum and individual bids  
(85: January 7, Hahola)
  - Statutory requirement that contractor possess electrical  
contractor's permit may not be waived by board (N.J.S.A.  
45:5A-9; -18) (84:602, Reid)
  - Variance from specifications not enough to void award (71:40)  
(71:57) (71:59) (71:151)
  - Volume discount bid properly rejected where specifications  
called only for unit bids (81: November 17, Coast Cities,  
aff'd St. Bd. 82: March 3)
  - Written (39-49:209) (52-53:60)
- Transportation contracts
- Bidding; reduction in state transportation aid proper where  
board violated N.J.S.A. 18A:39-3 by awarding revised new  
contract without competitive bidding (84: March 12,  
Fairfield, aff'd St. Bd. 84: December 5)
  - County Superintendent's approval validated transportation  
contract found illegal for lack of competitive bidding but  
such approval did not qualify the district for  
transportation aid from the state (84: March 12, Fairfield)
  - Damages not awarded; bus drivers' union cannot assert claims for  
individuals unless individuals joined as parties (88:1833,  
Plumsted Township Bus Drivers Association)

## BILINGUAL EDUCATION

- Amendments to N.J.A.C. 6:31-1.1 and 6:31-1.10(b) which substituted  
a single exit criterion from bilingual and ESL programs for  
multiple exit criteria upheld. Fuentes/Union City, et al. v.  
State Dept. of Education, unreported op. App. Div. (Dkt. No. A-



2565-87T1, February 17, 1989).

## BOARDS OF EDUCATION

### Actions by, generally

- Abolition of School Business Administrator position without consent of county superintendent, commissioner and state board deemed ultra vires, N.J.A.C. 6:3-1.18(d). (88:2256 Shenekji, aff'd St. Bd. 89:3078)
- Amendment to motion; board policy not violated (83: October 11, Mulvey)
- Bad faith alleged, but not found (87:2674, Przystup, St. Bd. aff'g in part, rev'g in part 86:1603, aff'd App. Div. unreported op. (Dkt. No. A-0957-87T8, March 15, 1989) See St. Bd. (90: June 6)
- Board is not bound by promises of individual board members or administrators (82: March 24, Dorrington)
- Board's action of setting up self-funded insurance plan held improper (82: October 15, Irvington, aff'd St. Bd. 83:1571), aff'd App. Div., unpublished opinion (Docket No. A-4805-82T5, decided February 9, 1984) but see N.J.S.A. 18A:18B et seq. regarding self-funded joint insurance for groups of boards.
- Board's decision to disapprove a particular play for its annual spring play did not violate First Amendment rights of students, where decision was based upon board's feeling that play depicting child abuse, drug abuse, prostitution, rape and murder was inappropriate for a production intended for an audience of the entire community, including young children. Bell v. U-32 Board of Education, 630 F.Supp. 939, 31 Ed.Law 819 (D.Vt. 1986) [pre-Fraser]
- Board's discretionary powers are broad, e.g. (65:121) (67:35 rev'd on facts 67:45) (67:125) (72:179) must be reasonably exercised (68:1) without discrimination (68:42) (70:149)
- Certification of tenure charges; board must (1) determine whether there is probable cause to credit charges and (2) whether the charges, if sustained, warrant dismissal. As to second requirement, the Commissioner may not substitute his judgment for that of the board. (85: February 6, Ridgefield Park Ed. Assn., St. Bd. rev'g 84: June 25) (87:641, Edwards, aff'd St. Bd. 87:678)
- Commissioner will not interfere with local board decisions unless violative of law, bad faith or abuse of discretion (89:2643, Irvington)
- Evidence; residuum of legal and competent evidence required to support actions (80: October 31, Thies)
- Mere allegation of arbitrary action insufficient to overturn board decision (66:214) (76:761, Cordano aff'd St. Bd. 77:

February 2) (76:767, Marotta) (77:440, Popovich) (77:746, Cardman)

**BOARDS OF EDUCATION - continued**

**Actions by, generally - continued**

- Mistake of law will enable board to recover money erroneously paid out (82: March 12, Williams, aff'd St. Bd. 82: July 7, aff'd 192 N.J. Super. 31 (App. Div. 1983)) See also (83:1664)
- Must be taken at public meeting  
(See "Boards - Meetings of", this index)
- Penalty imposed by board on bus driver who violated policy within board's discretion (86:226, Hemple)
- Presumption of validity attaches to board actions taken within authority, not overturned unless arbitrary, capricious or unreasonable, Thomas v. Morris Twp. Bd. of Ed., 89 N.J. Super. 327 (App. Div. 1965) aff'd o.b. 46 N.J. 581 (1966) (76:630, Coombs) (76:700, Green Village Road School Assoc. stay denied and remanded St. Bd. 76:716, aff'd St. Bd. 76: November 3, aff'd unreported Appellate Division (Docket No. A-1411-76, October 13, 1977)) (76:987, Hornik) (77:508, Johnson) (77:862, Talarsky) (77:997, Ferrara) Kopera v. West Orange Bd. of Ed., 60 N.J. Super. 288 (App. Div. 1960); Boult v. Passaic Bd. of Ed., 39-49:7, aff'd St. Bd. 39-49:15, aff'd 135 N.J.L. 329 (Sup. Ct. 1947), aff'd 136 N.J.L. 521 (E&A 1948); e.g. (67:125) (69:47) (71:260) (72:361) (72:600) (75:168, Klig) (78:24, Macaulay) (78:252, Caputo) (79: November 3, Black Organization United For Education, unpublished opinion) (79:493, Horner, aff'd St. Bd. 79: December 5) (79: August 30, DeFerrari, unpublished opinion) (80: July 28, Baker) (80:857, Lippincott) (80: August 11, Cogsdon) (80: August 11, McCabe) (80: August 27, Marian) (80: September 15, Loper) (80: September 18, Carkhuff) (80: September 26, Israel) (80: September 26, Oliver) (80: December 2, Belvidere) (80: December 15, Molnar, aff'd St. Bd. 81: April 1) (80:1420, Furlong, aff'd St. Bd. 81: March 4) (81: March 19, Buff) (80: December 22, Franklin Tp.) (80: December 30, Belmont) (81: January 19, Toriello) (81: January 26, Humcke) (81: March 6, Kenwood, aff'd St. Bd. 81: June 3) (81: October 15, Rogers) (82: March 2, Campanile) (83: October 11, Mulvey) (86:537, Darden) (86:582, Fullen) (87:1343, Faycik) (88:2118, Donofrio) (89:1335, Reptak) (89:1403, Looking into Education) (89:2643, Irvington)
- Ratifications  
(See "Boards - Meetings of", this index)
- Vote of board to authorize appeal to State Board, taken after time for appeal had run, does not ratify earlier, timely but unauthorized appeal (84:444, Gibson, aff'd

St. Bd. 84:483, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

**BOARDS OF EDUCATION - continued**

**Actions by, generally - continued**

Reasons for actions

Boards need not always formalize a statement of reason for their actions, but when challenged in litigation, they must come forward with evidence that action was not arbitrary, capricious, unreasonable or discriminatory (68:108)

Redistricting plan (76:987, Hornik) (85: August 13, Parents United for Better Learning in the Community) (86:582, Fullen)

Redistricting plan for elementary schools upheld; need not be best of all plans proposed (89:1403, Looking into Education)

Rescission of resolution

(See also "Boards - Duties and powers - Rules and regulations", this index)

Board has authority to rescind earlier resolution which had been based upon misunderstanding (85:359, Vogt)

Board itself must meet a burden of persuasion that its earlier action was improper in order to rescind the action, rescission set aside as arbitrary where board minutes gave no reason therefore (83: September 22, LiMato)

Board may rescind action taken at earlier meeting if no third party's rights involved (59-60:68)

Board may rescind resolution passed earlier at meeting without regard to third parties, but third party's acquired right may not be rescinded at subsequent meeting (39-49:164) (67:297) (73:261) (73:526) (74:1316) (75:243 April 18, Glab)

Board must adhere to its own policy in the appointment of employees to supervisory and administrative positions (82: October 7, Jersey City)

Contract to teach summer school rescinded by board, but damages awarded, (75:688, Marshall remanded St. Bd. 76:1152, on remand 77:1220)

Denial of request for rescission of resignation, upheld (77:416, Pedersen, aff'd St. Bd. 77:421)

Increment rescinded (77:1008, Williams, aff'd St. Bd. 78:1050)

Rescission of cheerleader tryouts found arbitrary, capricious and unreasonable (77:997, Ferrara)

Retroactive adjustment of salaries to reflect full step payment on salary scale entitled board to reimbursement for state aid for remedial/supplemental teachers. (88:410, West Milford Board of Education)

Reversal of prior determination to award increment (77:1008, Williams, aff'd St. Bd. 78:1050)

**BOARDS OF EDUCATION - continued**

**Actions by, generally - continued**

Reversal of prior determination to renew teaching contract  
(76:543, Payne, aff'd St. Bd. 76:554, aff'd App. Div.  
77:1303 certif. denied 75 N.J. 602 (1978))

**Statutes**

Board actions must be consistent with, Trenton Bd. of Ed.  
v. State Bd. of Ed., 125 N.J.L. 611 (Sup. Ct. 1941),  
(76:43, Nowak)

Technical assistant may not speak on behalf of board  
(83: March 9, Shore Vans)

**Bylaws**

Board could not waive bylaw requiring two public meetings -  
purpose was to assure action after due deliberation; public  
rights affected - expectation of two meetings. Matawan  
Teachers Assn. v. Bd. of Ed., 223 N.J. Super. 504 (App. Div.  
1988)

Local bylaw requiring 2/3 vote of full membership of board  
invalid. Statutory silence indicated legislative intent  
that common law rule of majority of quorum apply. Matawan  
Teachers Assn. v. Bd. of Ed., 223 N.J. Super. 504 (App. Div.  
1988).

**Classification of school districts**

Change from Type I to Type II, wording of question on ballot  
held satisfactory under statute (74:186)

Classification of school districts by legislature must  
be rationally related to purpose of statute, Alfred Vail  
Mutual Assn. v. New Shrewsbury, 58 N.J. 40 (1971); (86:  
September 26, Asbury Park, aff'd St. Bd. 87: January 7,  
aff'd App. Div. unreported opinion (Docket No. A-3123-86T1,  
decided October 5, 1987))

**Duties and powers of**

Administrative reorganization of schools within discretionary  
authority, not subject to interference by Commissioner  
unless arbitrary or unreasonable (67:312)  
(See also "Attendance areas", this subtopic)

**Appointments**

(See also particular job titles in this index)

Acting assistant superintendent without proper  
certification may only serve temporarily and in  
accordance with N.J.A.C. 6:3-1.1 (77:153, Mesics) Board  
member who resigns may be appointed vice-principal  
(77:504, Tesi)

Assistant superintendents; must be nominated by  
superintendent prior to appointment per N.J.S.A.

18A:17-16 (81: March 9, Ross, aff'd St. Bd. 81: October 7) (88:221, Napoli, aff'd w. mod. St. Bd. 88:284, stay denied St. Bd. 89:Feb. 1, aff'd App. Div. unpublished op. (Dkt. No. A-2301-88T3, Mar. 2, 1990)

**BOARD OF EDUCATION - continued**

**Duties and powers of - continued**

**Appointments - continued**

Attorney; board has authority to appoint a board attorney and a special counsel in the event its regular attorney is disqualified in a particular proceeding (87:2023, Laufgas, aff'd St. Bd. 88:2494, aff'd App. Div. unpublished op. (Dkt. No. A-3463-87T6, January 19, 1989))

Bad faith in appointment of superintendent not shown (67:105) (88:1361, Paladino, rev'd St. Bd. 89:3063)

Board is bound by rules which it promulgates (82: October 7, Jersey City)

Board may not acquiesce to political interference in the hiring of employees (78:218, North Bergen aff'd in part, rev'd in part St. Bd. 78:250, aff'd App. Div. 80:1522, certif. denied 84 N.J. 444 (1980))

Board may not appoint teacher without superintendent's recommendation (88: August 2, Bettencourt)

Board must adopt job description for classroom aides (80:228, Wyckoff)

Board, not administrator, fixes starting date for employee (81: January 22, Hornich)

Board not required to reinstate teacher who retired on disability but later recovered (82: January 6, Kopel)

Discrimination by gender (81: July 15, Garvin, aff'd St. Bd. 81: December 2)

Employment agreement with superintendent upheld against claim that public funds were misused (74:218, aff'd St. Bd. 74:225)

Equitable estoppel (77:1059, Brennan) (77:1226, Sherwood)

Extracurricular positions, (80: September 18, Carkhuff)

Improper by lame duck board (76:43, Nowak)

Majority vote of full board required (59-60:68) (77:508, Johnson) (77:1059, Brennan)

Selection of Assistant Superintendent presumed valid (88:376, Suggs)

Selection of faculty presumed valid (80: October 17, Fulton, aff'd St. Bd. 81: February 4)

Series of cases involving administrative appointments demonstrate board's use of unrecognized titles and bad



faith actions by board: Commissioner orders county superintendent to review all administration positions in district to ensure compliance with regulations (86:1603, Przystup, aff'd in part, rev'd in part St. Bd. 87:2674, aff'd App. Div. unreported op. (Dkt. No. A-0957-87T8, March 15, 1989)) (See St. Bd. 90: June 6) Solicitation of applications not required (63:70) Spouse of board member may be appointed by board (76:616, Gambatese)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Appointments - continued**

Superintendents, principals and teachers (66:155) (67:1) (75:868, Maffei, aff'd St. Bd. 76:1151) (77:746, Cardman) (77:913, Plumsted Tp.) (77:984, Van Houten) (77:1059, Brennan) (77:1226, Sherwood) (79: August 3, Rey, unpublished opinion) (79: August 30, DeFerrari, unpublished opinion)

Supervisor, if unrecognized in regulations, job description should be submitted to county superintendent prior to appointment to determine appropriate certificate (76:892, Vieland, aff'd St. Bd. 77:1308)

Use of unrecognized job titles must be approved by county superintendent (78:960, Freehold Regional) (87:183, Pezzullo, aff'd St. Bd. 89:3067)

Vice-principal (76:72, Newark Teachers Union) (77:504, Tesi)

Architects, power to hire

(See "Architects", this index)

Attendance areas

Board discretion to determine (38:56) (38:647) (49-50:37) (61-62:144) (61-62:163) (63:129) (63:154) (65:115) (66:73) (70:415) (72:619) (73:406) (73:578) (74:435)

Child not entitled to attend school outside of her zone because of problems at assigned school (86: June 5, E.C.)

Drawing of (80: September 26, Israel)

Attendance Plans

Cannot impose sanctions based solely on number of absences (85:889, Burlington, aff'd St. Bd. 85:912) (89: July 10, Neptune Township)

Failure of board to adopt policy, board refusal to allow use of accumulated leave for elective surgery reversed (86:1855, Cole)

Staff attendance guidelines adopted by board were proper exercise of its authority (84:550, Montville Ed. Assn. v. Bd. of Ed., rev'd St. Bd. 84:559, rev'd and remanded App. Div. (Docket No. A-1178-84T7, decided 85:1972), certif. denied 103 N.J. 500 (1986) opinion on remand St. Bd. 86:3113) (86:2021, Hoboken Teachers' Association)

Staff attendance guidelines: assigning performance rating solely upon number of absences arbitrary, 84:550, Montville Ed. Assn. v. Bd. of Ed., rev'd St. Bd. 84:559, rev'd and remanded App. Div. (Docket No. A-1178-84T7, decided 85:1972) certif. denied 103 N.J. 500 (1986) opinion on remand St. Bd. 86:3113)

BOARDS OF EDUCATION - continued

Duties and powers of - continued

Binding future or successor boards

Generally

No power to bind, Skladzien v. Bayonne Bd. of Ed., 12 N.J. Misc. 603 (Sup. Ct. 1934) aff'd 115 N.J.L. 203 (E&A 1935); (53-54:72) (66:155) (66:207) (71:579) (75:251, Warren) (75:805, Procopio, aff'd St. Bd. 76:1161) (73:351, aff'd St. Bd. 73:360, aff'd App. Div. 75:1087, petition to reopen dismissed 76:573, Karamessinis) (76:886, Feigen) (77:209, River Dell Req.) (77:462, Foote, stay denied and aff'd St. Bd. 77:477, jurisdiction released and aff'd St. Bd. 77:477) (79:94, Bolger, aff'd St. Bd. 79:99, aff'd App. Div. 80:1478) (81: August 10, Elmwood Park) (82: December 30, Blake) (83: February 17, Damon, aff'd St. Bd. 83: June 1) (83: February 25, Mickens, remanded) (83: July 28, DeGennaro, aff'd on other grounds St. Bd. 84: February 1) (84:562, Upperman) (88: February 9, Sisto) (88:1361, Paladino, rev'd St. Bd. 89:3063) (89: March 13, Vagionis) (89: December 13, Yasson)

Equitable estoppel; held that a tenured teacher who was promised continued employment after maternity leave, but whose position was abolished for economic reasons, could not raise principles of equitable estoppel where the legislature has specifically imposed limitation on exercise of the power by a public body (84:562, Upperman)

Non-salary provisions of collective bargaining agreement which extend beyond one year are ultra vires (73:217 aff'd St. Bd. 74:1411) (74:540)

Ultra vires action is nevertheless valid if ratified by successor board (74:218, aff'd St. Bd. 74:225) but see (81: August 10, Elmwood Park, ratification by successor board does not save ultra vires policy)

Ultra vires action held valid since there was no change in membership of successor board (76:43, Nowak)

Ultra vires action is void and unenforceable where the act is utterly beyond the public body's jurisdiction or, though within its general powers, it fails to conform with a statutory condition

(84:562, Upperman)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Binding future or successor boards - continued**

Exceptions provided by statute or implied by law

Hiring architect, Union County Voc. School Bd. of Ed. v. Finne, 88 N.J. Super. 91 (Law Div. 1965)

Negotiations (76:43, Nowak)

Salary schedules are binding for two years

(N.J.S.A. 18A:29-4.1) (68:26) but non-salary provisions of collective bargaining agreement extending beyond one year are ultra vires (73:217 aff'd St. Bd. 74:1411) (74:540)

Sending-receiving contracts (66:207) but not

the amount of tuition (74:692 aff'd St. Bd. 75:1074)

Successor board liable for legal expenses for defense

of previous board members in suit arising out of action in official capacity (82: March 23, Fox)

Superintendent's contracts may exceed one year

but may be issued only if vacancy exists (66:155)

(74:218 aff'd St. Bd. 74:225) see also (71:210)

(71:214) (73:351 aff'd St. Bd. 73:360 aff'd App. Div.

75:1087, petition to reopen dismissed 76:473,

Karamessinis)

Tenure award (65:50) early granting of tenure,

Rall v. Bayonne Bd. of Ed. 54 N.J. 373 (1969) rev'g 104 N.J. Super. 236 (App. Div. 1969) (C. Dec. 67:320, St. Bd. 68:264)

Board action to authorize certain board members and employees

to attend professional and educational conventions on a

flat, per diem allowance did not violate statute, N.J.S.A.

18A:4-14 (88:1905, Laufgas)

Borrowing against appropriations for year, Steck v. Camden Bd.

of Ed., 125 N.J.L. 261 (Sup. Ct. 1940)

Budgets

(See "Budgets", this index)

Bus routes, authority to determine

(See "Transportation", this index)

Charges of illegal action (61-62:137)

Committees (38:54) (38:55)

Communicable disease; Board must require listing of both

employees and students to screen for tuberculosis, a

communicable disease; may not grant exemption from testing

as a conscientious objector (83:775, Grigas)

Conditions

May be imposed in offering position to department head

(60-61:215)  
May not impose conditions beyond those set by  
legislation (66:43)

**BOARD OF EDUCATION - continued**

**Duties and powers of - continued**

**Contracts**

- (See also "Contracts of employment", "Bidding", "Schools and buildings", etc., this index)
- Agreements made contrary to law cannot be enforced (67:301) (76:921, Brick Twp. Bd. of Ed. aff'd St. Bd. 77:1278, aff'd unreported Appellate Division January 11, 1978)
- Authorization for making contracts must come from board (67:4) (69:174)
- Board alone has authority to award contract (77: 1059, Brennan) (77:1226, Sherwood) (85: August 5, Baranowski)
- Board cannot be ordered to renew employment if employee contractual rights were satisfied (77: July 29, Melone)
- Board may not contract with private insurance agency to design and implement self-funded insurance program (82: October 15, Irvington, aff'd St. Bd. 83:1571), aff'd App. Div., unpublished opinion, (Docket No. A-4805-82T5, decided February 9, 1984) (See N.J.S.A. 18A:18B regarding self-funded joint insurance).
- Extra salary for summer work must be approved by board; superintendent ordered to reimburse monies received prior to board approval (85:1042, Block)
- Multi-year employment contract, Director of Plant Services, ultra vires, no statutory authority for such contract, distinguishes Finne, 88 N.J. Super. 91 (App. Div. 1965) (83: July 28, DeGennaro, aff'd on other grounds St. Bd. 84: February 1)
- Must be presented and acted upon at legally constituted meeting (67:251) (69:174)
- Termination (76:726, Finkle)

**Counsel**

- (See also "Tenure - Acquisition of" and "Indemnification", this index)
- Employment of (38:100) (38:106) (49-50:47) (60-61:232) (67:280)

**Curriculum**

- (See also "Graduation - Requirements for", this index)
- Adoption of course of study requires recorded roll call majority of full board (72:219) but teachers retain authority to determine specific method, procedures and evaluation to be used in classroom (74:1103 modified and aff'd St. Bd. 75:1119)
- Board acted reasonably; changed classroom of distractible

child upon study team recommendation (89:1366, K.M.,  
appeal dismissed St. Bd. 89:1393)  
Board has authority to determine (80: June 23,  
Hutchens) (81: June 15, Red Bank)



**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Curriculum - continued**

Board has discretion to assign alternative independent assignment where petitioner's daughter is excused from family life health course, student refusal to complete alternative resulted in failing grade. See N.J.S.A. 18A:35-4.7. (86:2923, S.T. aff'd St. Bd. 87:2689)

Board has exclusive authority to set (77:706, Camp) (77:724, Silverman) (77:1134, J.B. aff'd St. Bd. 78:1021, held moot, App. Div. 79:843)

Credit: Board precluded by law from giving grade point average credit for college algebra course taken in unapproved summer school (87:54, G.B.C., decision on remand)

Credit for courses taken in other schools, board not required to accept (81: June 18, S.S.)

Curriculum and community involvement; board retains exclusive authority and duty to set curriculum (73:741 aff'd St. Bd. 74:1441, aff'd unreported Appellate Division, March 18, 1975) (74:130)

Curriculum and school day length (68:62)

Driver education not mandatory; behind-the-wheel instruction may be offered at night school only, for a fee (81: July 13, Parsippany-Troy Hills, aff'd St. Bd. 81: November 10, aff'd 188 N.J. Super. 161 (App. Div. 1983), certif. denied 94 N.J. 527 (1983))

Duty owed by board is to constituents, not Commissioner (76:43, Nowak)

Elimination of one month of eleven month University High School program held proper due to fiscal restrictions (83: March 2, University)

Gifted and talented pupils (81: January 26, Humcke)

Instrumental music program offered in part during school day must be considered part of curriculum and must be free of charge (84:1320, Bongart)

What constitutes new course of study (71:520)

Defamation action: board of education has no power to institute such against critics, Weymouth Township Bd. of Ed. v. Wolf, et al., 178 N.J. Super. 481 (Law Div. 1981)

**Delegation of authority**

Board is not obligated to follow recommendations of professional staff (67:125) (70:149)

Responsibility for administration of the policy determination of the whole board is delegated to the superintendent (87:172, Onorevole, decision on remand,

aff'd St. Bd. 88:2501)  
To board secretary re-appointment of election officials  
held ultra vires (72:147)  
To community group (81: August 18, South Orange)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Delegation of authority - continued**

To employ teacher, improper (39-49:1)  
To establish salary held improper (72:462)  
To parents, in exempting their children from sex education  
course, held improper (74:130)  
To superintendent, held improper (66:159)  
Dismissal of employees  
(See "Tenure - Dismissal or reduction in salary"  
and "Non-tenured teaching staff members", this index)  
Dual superintendency; application of two boards to share single  
superintendent, denied (81: October 23, Application of  
Leonia and Edgewater, dismissed St. Bd. 81: December 2)  
Duty owed by board is to constituents, not Commissioner (67:312)  
Duty to notify employees of changes in leave of absence policy  
caused by negotiated agreement (78:50, Brewington)

**Fees**

(See "Fees", this index)

Funds, control over (50-51:51)

**Handicapped pupils**

(See "Handicapped Children", this index)

**Hiring Teachers**

(See "Superintendent - Appointment made by", this index)

(See "Teachers - Hiring", this index)

(See N.J.A.C. 6:8-4.3(a)6(vii) regarding Recommendation of  
CSA required)

**Individual members**

Board may designate which individual member is to act as  
representative of the board in specific situations (83:  
December 23, Bogosian)

Board members as individuals seek dismissal of  
superintendent, no tenure charges brought, petition  
dismissed (84:136, Bogosian)

Investigate suspicious employee activities (55-56:128)

Letter of reprimand - Four of six deemed abuse of board's  
discretionary authority, expunged from superintendent's  
personnel file. Two of six deemed valid exercise of board's  
discretionary authority (89:2733, Richel)

**Liability of (See also "Torts" this index)**

Board not liable for injuries to youth participating in city

recreation program held in school gym, Morris v. Jersey City, 179 N.J. Super. 460 (App. Div. 1981)  
Board not liable to adult education student struck by car while crossing road from shopping center to school.  
Ross v. Moore, 221 N.J. Super. 1 (App. Div. 1987)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Liability of - continued**

Delay in issuance of summons (26 months) after filing of complaint justifies dismissal; mere delay without demonstrable prejudice - not enough. Student injured in gymnastics accident. Patterson v. Monmouth Regional H.S., 222 N.J. Super. 448 (App. Div. 1987)

For employee's use of own car (80: August 25, Bernstein) (88:1870, Winters)

Marine Academy of Science Technology, local board cannot require student enrolled in MAST to take academic instruction in local district (85:282, R.H., aff'd St. Bd. 85:298)

**Negotiations**

(See "Collective Negotiations", this index)

Organization of grades; boards need not obtain Commissioner's approval to organize grades as a junior high school under N.J.A.C. 6:27-1.1 et seq. (83:880, Liggett, remanded to ALJ for further determinations, Commissioner's decision on remand 83: March 31)

Parents Right to Conscience Act (N.J.S.A. 18A:35-4.6) permits students to be excused from drug education course. (86:369, S.T. v. Board of Education of City of Millville, rev'd St. Bd. 86:399, appeal dismissed as moot, unreported opinion, App. Div. (Docket No. A-2213-86T7 decided June 22, 1988))

**Personnel records**

Board member may not be denied access by superintendent or by remainder of board (66:159) (70:185) but board member must preserve confidentiality of records, see (75:47, South Plainfield)

Board must provide former custodian access to own personnel file; board may redact names of complainants (89:2902, Grande)

Board's order that personnel records pertaining to superintendent be destroyed upheld (75:243, Glab)

Reading of letter of reprimand at board meeting violates Executive Order No. 11 and spiritual intent of OPMA (89:2700, Toplansky)

**Policy**

(See "Boards - Duties and powers of - Rules and regulations", this index)

Publicity, board has authority to expend funds to inform public as to facts regarding school program and budget, but cannot advocate particular position on election issue,

Citizens to Protect Public Funds v. Parsippany Troy Hills  
Bd. of Ed., 13 N.J. 172 (1953); 69:174 aff'd St. Bd. 70:462)  
(See also "Elections - Literature" this Index)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

Records

Board ordered to maintain National Honor Society selection records until 90 day period for appeal of non-selection elapses (86:1567, Lawnside, aff'd St. Bd. 87: October 1)

Reinstatement after expiration of leave of absence due to psychiatric illness; board has authority to require proof of recovery before granting request for reinstatement (84: January 23, Bybel, rev'd St. Bd. 85: March 6, dismissed App. Div. unreported opinion (Docket No. A-3405-84T7, decided December 3, 1985) certif. denied 103 N.J. 499 (1986))

Reorganization of district upheld; two notices to parents and community during two weeks prior to decision provides adequate opportunity for public input (86:2667, Hussnatter)

Reorganization plan found to have been designed and accomplished in good faith despite some procedural flaws (87:1105, Page, aff'd St. Bd. 87:1139)

**Rules and regulations**

(See also particular topics such as "Leaves of absence", "Schools and buildings", "Pupils", "Teachers - Promotions", "Grading system", etc., this index)

Adoption (formal) not necessary; board may acquiesce in policy or rule (67:267) contra (73:247, aff'd St. Bd. 73:254, appeal dismissed Appellate Division 75:1075, certif. denied 68 N.J. 163 (1975))

Adoption of a policy concerning sabbatical leave, policy must be clear (76:796, Lavin)

Adoption of attendance policy as to specific employees based upon attendance record upheld (83:71, Dunellen Education Association, aff'd with opinion St. Bd. 83:83)

Adoption of emergency personal leave policy; held board action certifying tenure charges against teacher who followed board policy for applying for emergency personal leave, and who was absent from "Back to School Night," was arbitrary and capricious (84:174, Murphy)

Adoption of policy for operation of schools cannot be delegated to principals (77:393, Cieri)

Adoption of policy necessary for cheerleader tryouts (77: 997, Ferrara)

Adoption of policy required for procedures of luncheon recess (77:393, Cieri) (85: January 28, M.H. et al.)

Adoption of policy to avoid interruption in instruction continuity; not discriminatory, Gilchrist v. Haddonfield Bd. of Ed., 155 N.J. Super. 358 (App. Div. 1977)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Rules and regulations - continued**

Adoption of resolutions restricting individual board members from making public statements for the board and limiting board member access to professional consultants was a proper exercise of the board's discretionary authority (83: December 23, Bogosian)

Adoption of rule shortening tenure for superintendents prevails indefinitely until expressly altered, Rall v. Bayonne Bd. of Ed., 54 N.J. 373 (1969) rev'g 104 N.J. Super. 236 (App. Div. 1969) (C. dec. 67:320, St. Bd. 68:264)

Adopt rules to achieve a valid and desired educational objective (67:35) (67:45) (68:225 aff'd St. Bd. 69:188 aff'd App. Div. 69:190). Local board may adopt rules not inconsistent with school laws or rules of the State Board (66:102) (67:125). Inconsistent rules, however, are invalid (66:43) (68:26) (72:10 aff'd St. Bd. 72:15) (74:1308 aff'd St. Bd. 75:1098)

Alteration of rules

(See also "Boards - Actions of - Rescissions", this index)

Local board is not bound by its rules and may alter them as it deems necessary or appropriate (39-49:151 aff'd St. Bd. 39-49:155 aff'd Greenway v. Camden Bd. of Ed., 129 N.J.L. 46 (Sup. Ct. 1942) aff'd 129 N.J.L. 461 (E&A 1943); (63:65) (67:93) (68:183) (68:225, aff'd St. Bd. 69:188, aff'd App. Div. 69:190) (74:1133) (79: November 29, Potkay, unpublished opinion) (80: December 30, Belmont) But see Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional School District Board of Education, 223 N.J. Super. 504 (App. Div. 1988), aff'd St. Bd. 86:2087, 86:2041, Comm. Dec.

Application of policy regarding unapproved summer school course credits: uniform application to all student deemed fair (87:54, G.B.C., decision on remand)

Attendance policy upheld: Policy was not based upon sheer number, but considered reasons for sick leave (86:2021,

Hoboken Teachers' Association)

Board directed to formally adopt dress code for class attendance and field trips (89:1, D.J.)

Board may vary from its grading policy and policy on make up work in certain circumstances (87:1826, Matawan)

Board's action invalidated by failure to follow own procedural rules (84: June 4, Shifrinson) (87:1497, Bergen County Vo-Tech); but see, (38:331)



**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Rules and regulations - continued**

- Board's denial of extended sick leave without a determination of whether petitioner was a "special case" under board's own policy guidelines held improper (83: May 3, Molina, aff'd St. Bd. 83: September 7)
- Board of education was not bound by a bylaw that limited the authority of the majority but the board was bound by a bylaw requiring adoption of a plan only after two public meetings. Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional School District Board of Education, 86:2041, Comm. Dec., aff'd St. Bd. 86:2087, 223 N.J. Super. 504 (App. Div. 1988)
- Board's rule-making power is not unlimited (67:35) must be reasonable (68:1) rule overturned (72:10 aff'd St. Bd. 72:15)
- Board's rule-making power is not unlimited; must be reasonable, consistent with laws and rules of State Board, and directed toward system of thorough and efficient education (76:2, Siegfried)
- Bylaw requiring two public meetings could not be waived; purpose was to assure action only after due deliberation; public had expectation of second meeting; rights affected. Matawan Teachers Assn. v. Bd. of Ed., 223 N.J. Super. 504 (App. Div. 1988)
- Bylaw requiring two-thirds vote of full membership invalid. Legislature had pre-empted the field. Matawan Teachers Assn. v. Bd. of Ed., 223 N.J. Super. 504 (App. Div. 1988)
- Certification, board may require greater certification requirement for a position than minimum standards set by State Board as long as the requirements are reasonable and are not inconsistent with any statute or regulation (83: July 5, Eagan) (83:1039, Teaneck); see (84:86, Tirico), such requirements must be formally adopted by board, not administratively imposed.
- Contest of board policy: Petition was not untimely since the issue dealt with statutory entitlement of sick leave time (86:2021, Hoboken Teachers' Association)
- Covering competitive exams (63:65)
- Covering loss of pay for personal absences are permissible (63:59) (72:196) (73:247) aff'd (73:254) (See also "Salary - Reduction", this index)
- Discipline policy (67:35 rev'd St. Bd. 67:45)

Failure to follow regulations (80: October 31, Thies)  
Governing employment of teachers (61-62:45)

**BOARDS OF EDUCATION - continued**

**Duties and powers of - continued**

**Rules and regulations - continued**

Hospitality suite rented by county school boards association and paid for by public funds served a legitimate educational purpose (82: September 20, Union)

Interpretation, board policy, words are to be given their ordinary meaning (84: March 15, Gattoni)

Medical emergencies, first aid policies (72:232)

Negotiability of  
(See "Collective Negotiations", this index)

Personnel matters (65:78)

Policies must be formally adopted regarding valedictorian residency requirements (89:1978, Shankar)

Policy and Procedure: Held that board had complied with N.J.A.C. 6:3-1.21 in adopting forms for annual evaluation of tenured teachers. Amendments to policies subsequent to adoption shall be distributed within 10 working days (86:2088, Manalapan-Englishtown Ed. Assoc.)

Policy can be established only after a proper motion and recorded affirmative vote (82: March 2, Campanile)

Prohibit department head from becoming member of faculty association (61-62:210)

Promotions  
Criteria for held non-negotiable and non-arbitrable, North Bergen Twp. Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976)

Prescribe rules for (63:65) (63:161) (68:218)

Where Newark Board of Education found a dearth of black staff members, Commissioner held the local board could disregard its rules as to promotions even though it had a contract with the teachers' association and could adopt ex parte new rules against the wishes of the association on its eligibility lists because it felt an overriding obligation to serve the needs of the children and the community, Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969) certif. denied 55 N.J. 310 (1970) (C. dec. 68:218, St. Bd. 69:188)

Proof of Residence (89:1464, Kulak)

Racial considerations to avoid de facto segregation in freedom of choice program upheld (88: June 9, Bernd)

Recession of Memorandum of Understanding regarding salaries

of confidential administrators was proper as it was a board policy, not a salary schedule (88:2093, Love, aff'd St. Bd. 89:3038)

**BOARDS OF EDUCATION** continued

**Duties and powers of** - continued

**Rules and regulations** - continued

Reprimand, Board may place letters of reprimand in teachers personnel files for failure to adhere to rules and regulations, (81: June 11, Washington Ed. Assn., aff'd St. Bd. 81: October 7, aff'd unpublished opinion, App. Div. (Docket No. A-1098-81T1, November 30, 1983))

School visitation policy, board member cannot violate (80: 198, Frenchtown)

Unwritten policy; valid and binding (83: September 22, LiMato) (87:796, Carrato)

Valedictorian residency requirements; policies must be formally adopted (89:1978, Shankar)

Schools, use of

(See "Schools and buildings - Use of", this index)

Secretaries

(See also "Secretary to board", this index)

Appointment (38:89) (39-49:20)

Appropriations, clerical staff of secretary (38:44)

Contract violation by board (38:36)

Dismissal of (59-60:167)

Implied authority to act on behalf of Board (76:876, White)

Removal (38:91)

Split sessions

(See "Schools - Split sessions", this index)

Site selection

(See "Schools - Site selection", this index)

Staff dinners, board may not pay for (67:69)

Student activities program mandated (68:62)

Student monies collected are responsibility of board (72:560)

Summer payment plan deposits, board of education is free to decide disbursement of accumulated interest (St. Bd. 76:671 Dunwoody rev'g 76:667)

Superintendent, relationship with (71:520)

Transfer of staff

(See "Teachers - Transfers" and "Principals - Transfers", this index)

Transportation

(See "Transportation", this index)

Trustees, board members are public officers holding public trust and stand-in fiduciary relationship to persons whom they have been elected or appointed to serve, Cullum v. North Bergen Twp. Bd. of Ed., 15 N.J. 285 (1954)

Witnesses; board has authority to compensate witnesses who  
appear on its behalf (87: October 2, Laufgas, aff'd St.  
Bd. 88: February 3)

**BOARDS OF EDUCATION - continued**

Instrumentality

Board is instrumentality of State, Durgin v. Brown, 37 N.J. 189 (1962)

**Meetings of**

Generally, Attorney General Formal Opinion No. 19 (1976)

Generally, see "Open Public Meetings Act" N.J.S.A. 10:4-6 et seq. (L. 1975, C.231) and N.J.S.A. 18A:10-6. The 1975 act may overrule some of the decisions listed below.

Abstentions (39-49:20) (67:287) but see (59-60:68)

Abstentions - doctrine of necessity. Allen v. Bd. of Ed., 233 N.J. Super. 642 (App. Div. 1989)

Agenda, board actions unlawful when it acted on non-agenda items (82: December 27, Monsees)

Agenda; must be published to extent known, may be added to (80: June 17, Kaniper, aff'd St. Bd. 80: October 1) (82: December 27, Monsees)

Announcement of compliance with Sunshine Law requirements (79:758, Kiamie)

Board action at public meeting violates Sunshine Law when action a direct result of decision at illegal executive session but action may be taken after de novo consideration at later public meeting (81: September 28, Sukin, aff'd St. Bd. 82: February 3 and 82: March 24, aff'd unpublished opinion, App. Div. (Docket No. A-3250-81T2, decided October 13, 1983), certif. denied 96 N.J. 300 (1984))

Caucus sessions (67:23) (68:1) (70:415) see Schultz v. Teaneck Bd. of Ed., 86 N.J. Super. 29 (App. Div. 1964) aff'd 45 N.J. 2 (1965). Formal action not permitted at (75:127, M.W. aff'd St. Bd. 75:137) Woodcock v. Calabrese, 148 N.J. Super. 526 (Dist. Ct. 1977); Houman v. Pompton Lakes, 155 N.J. Super. 129 (Law Div. 1977); Cole v. Woodcliff Lake Bd. of Ed., 155 N.J. Super. 398 (Law Div. 1978); Rice v. Union County Reg. H.S. Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), certif. denied 76 N.J. 238 (1978)

Closed session improper for filling vacancy (80: May 8, Donnelly)

Commencement by 8 p.m. (57-58:53) (76:43, Nowak) (76:103, Kaprow) (77:504, Tesi) (80:980, Whiting, aff'd St. Bd. 81: January 22, aff'd unpublished opinion, App. Div. (Docket No. A-2741-80T1, April 7, 1982))

Committee meeting

Committees; board committee meeting attended by majority of board members must comply with Sunshine Law even if committee is advisory and can take no formal action

(84:444, Gibson, aff'd with opinion St. Bd. 84:483, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

## **BOARDS OF EDUCATION - continued**

### **Meetings of - continued**

Convene board in accordance with law before board can take action (67:23)

Exclusion, board may not exclude any member from meeting (74:650)

Failure of board of school estimate to meet within statutory time frame due to lack of quorum - board must meet as soon as possible thereafter (84: September 6, Orlando)

First Amendment; order that board members state reasons for personnel recommendations, no violation of First Amendment In re Bd. of Ed. of City of Trenton, 176 N.J. Super. 553 (App. Div. 1980)

### **Minutes**

Accuracy (59-60:196)

Inspection, open to public (58-59:104) (59-60:196) (61-62:224)

Must be clear, no conditions attached for inspection (59-60:151) (59-60:196)

Need not be in detail (81: December 21, Bott)

### **Notice requirements**

Adequate notice, definition; hand delivery to municipal clerk satisfies N.J.S.A. 10:4-8(d)(3) (83: July 11, Cortina, aff'd St. Bd. 83: November 2)

Advisory committees, (80: August 18, Coakley, aff'd St. Bd. 81: January 22)

Agenda item contained in notice of meeting violated adequate notice provision where language of agenda item was so vague as to be inadequate to inform the public, all action at meeting concerning that item set aside (84:444, Gibson, aff'd with opinion St. Bd. 84:483, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

Board only may designate place of posting of meeting notice (79:758, Kiamie)

Committee meetings (80:1420, Furlong, aff'd St. Bd. 81: March 4)

Emergency meetings without public notice, requirement of "harm to the public interest", Dunn v. Mayor and



Council of Laurel Springs, 163 N.J. Super. 32 (App. Div. 1978)

**Employees**

Board action will not be voided where no significant discussions concerning employee were held out of public view (84:1297, Figurelli, aff'd St. Bd. 84:1319)

**BOARDS OF EDUCATION - continued**

**Meetings of - continued**

**Notice requirements - continued**

**Employees - continued**

Board action will not be voided in absence of written notice if board can prove that employees acquired by other means advance knowledge of board's intention to hold closed session. Cole v. Woodcliff Lake Bd. of Ed., 155 N.J. Super. 398 (Law Div. 1978), Oliveri v. Carlstadt-E. Rutherford Bd. of Ed., 160 N.J. Super. 131 (App. Div. 1978) (80:1420, Furlong, aff'd St. Bd. 81: March 4) (81: March 19, Buff) (81: April 6, Clark); (81: July 6, Hallowell) (80: June 17, Kaniper, aff'd St. Bd. 80: October 1) Jamison v. Morris School District Bd. of Ed., 198 N.J. Super. 411 (App. Div. 1985)

Entitled to reasonable advance notice of closed session discussion of personnel matters, Rice v. Union County Reg. H.S. Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977) certif. denied 76 N.J. 238 (1978) (84: August 27, O'Halloran, aff'd St. Bd. 84: December 5) (87:1343, Faycik)

Meeting recessed from one day to next may not be resumed without new notice to public, Dunn v. Mayor and Council of Laurel Springs, 163 N.J. Super. 32 (App. Div. 1978) (84: September 6, Orlando)

Newspapers, Plainfield v. Courier News, 72 N.J. 171 (1976) rev'g 146 N.J. Super. 181 (App. Div. 1975), 146 N.J. Super. 188 (Law Div. 1974)

Newspapers, where published, Schultz v. Wanaque Bd. of Ed., 105 N.J. Super. 165 (App. Div. 1968) C. dec. 67:283, St. Bd. 68:273)

Notice to board members (52-53:62) (73:526)

Notice to individual of public meeting affecting his employment not required (80:332, Schwartz, St. Bd. rev'g 80:310, aff'd App. Div. (A-740-80T1, November 2, 1981) (81: August 10, Sherman) (81: October 5, Jarrett) (81: December 21, Bott) (84: June 8, Greene) (84:969, Shafran) But see (84: September 20, Devaney)

Notice to public, see "Open Public Meetings Act"

N.J.S.A. 10:4-6 et seq., Attorney General Formal Opinion No. 29 (1976) (77:1014, Montclair Concerned Citizens Assoc.) Jones v. E. Windsor Reg. Bd. of Ed., 143 N.J. Super. 182 (Law Div. 1976) dismissed as moot

158 N.J. Super. 496 (App. Div. 1977)  
Contents (79:758, Kiamie)

**BOARDS OF EDUCATION - continued**

**Meetings of - continued**

**Notice requirements - continued**

Schedule of regular meetings for the year held properly maintained under N.J.S.A. 10:4-18 (83: July 11, Cortina, aff'd St. Bd. 83: November 2)

Special meetings; official newspapers must be capable of publishing notice 48 hours in advance of meeting, Worts v. Upper Twp., 176 N.J. Super. 78 (Ch. Div. 1980) (83: January 6, Dougherty, aff'd St. Bd. 83: July 6)

Special meetings; personnel matter discussed at public meeting where advance Rice notice was not given was not violative of the Open Public Meetings Act (84: April 9, Strangia, aff'd St. Bd. 84: October 3, aff'd App. Div. unreported opinion (Docket No. A-1121-84T6, decided May 13, 1986))

Statement of adequate notice under N.J.S.A. 10:4-10(a), may be read into minutes by Board Secretary on behalf of Board President (83: July 11, Cortina, aff'd St. Bd. 83: November 2)

**Open Public Meetings Act, violations of**

(See also "Open Public Meetings Act" this index)

Adequate notice, definition; hand delivery to municipal clerk satisfies N.J.S.A. 10:4-8(d)(3) (83: July 11, Cortina, aff'd St. Bd. 83: November 2)

Agenda; item omitted from agenda may be discussed and acted upon so long as not purposely omitted to mislead the public (84:1599, Plainfield)

Agenda item contained in notice of meeting violated adequate notice provision where language of agenda item was so vague as to be inadequate to inform the public, all action at meeting concerning that item set aside (84:444, Gibson, aff'd with opinion St. Bd. 84:483, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

Agenda not required for meeting announced in annual notice (84:1578, Plainfield)

Board action at public meeting violated Sunshine Law where majority of board members had previously discussed in secret the appointment of person to fill vacancy (82: December 27, Monsees)

Board violated Executive Order No. 11 and spirit and intent of OPMA when it read aloud evaluation and letter of reprimand of staff member at public meeting (89:2700,

Toplansky)

BOARDS OF EDUCATION - continued

Meetings of - continued

Open Public Meetings Act, violations of - continued

Closed session

Job applicants may be interviewed in closed session  
(89: March 13, Jayeski)

Personnel exception does not apply where board is  
acting to fill a vacancy on the board, Gannett v.  
Bd. of Ed. of Borough of Manville, 201 N.J. Super.  
65 (Law Div. 1984) but see (89:1550, Shaw)

Personnel exception to Act; filling vacancy  
on board; technical violation when candidates  
interviewed in closed session. No  
violation when discussed  
candidates' qualifications in  
closed session. (89:1550, Shaw)

Personnel exception to Act; Board violated rights of  
employees to request public discussion (84:1578,  
Plainfield)

Personnel exception to Act; maintenance employee who  
was not given proper notice of closed meeting at  
which his employment was terminated, action void  
(83: August 22, Booth, aff'd with opinion St. Bd.  
85: May 1)

Policies of school board affecting reduction in force  
(RIF) procedures must be adopted at a board  
meeting open to the public (87:1506, Mann, aff'd  
St. Bd. 87:1522, aff'd App. Div. unpub. op. (Dkt.  
No. A-2695-87T1, June 7, 1990)

Resolution required under N.J.S.A. 10:4-13, omission of  
certain required contents not a fatal defect  
(83:371, Johnstone, aff'd St. Bd. 83:393, reversed  
on other grounds App. Div. (Docket No. A-1695-83T3  
unpublished October 10, 1984))

"Straw Vote" in closed session permissible (Matter of  
Cole, 194 N.J. Super. 237 (App. Div. 1984)

Withholding of increment, board must give prior notice  
to employee if to be discussed in closed session  
(84: November 19, Woodside, aff'd St. Bd. 85:  
April 3)

Council members and mayor violated spirit and intent of  
Open Public Meetings Act by refusing to attend meeting  
and preventing quorum and meeting to fill vacancy on  
council. Smith v. Ghiqliotti, 219 N.J. Super. 231 (Law  
Div. 1987)

Damages, Commissioner does not have jurisdiction to  
impose penalty (83: January 6, Dougherty, aff'd St.  
Bd. 83: July 6)

**BOARDS OF EDUCATION - continued**

**Meetings of - continued**

**Open Public Meetings Act, violations of - continued**

Issue cannot be litigated before Commissioner where it has already been decided by Court in a different proceeding arising out of same violation (82: March 19, Mauro)

New Jersey State College Governing Boards Association is a public body for purposes of the Sunshine Law; source of Association's funds is dues assessment from State Colleges which are public funds. Council of New Jersey State Colleges Locals, AFT/AFL/CIO v. New Jersey State College Governing Boards Association, rev'd and remanded 226 N.J. Super. 556 (App. Div. 1988)

Petition must be filed within 45 days  
(80:1439, McWilliams, aff'd St. Bd. 81: May 6) (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. (Dkt. No. A-2695-87T1, June 7, 1990)) (89: December 20, Entwistle)

Private remedy: teacher who challenged closed-session adoption of tie-breaking RIF procedures not entitled to back pay; had no entitlement to position (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. (Dkt. No. A-2695-87T1, June 7, 1990))

Provisions of Act require strict and literal compliance and may not be satisfied by substantial compliance, Precision Industrial Design Co. v. Beckwith, 185 N.J. Super. 9 (App. Div. 1982), see (83: June 27, Scott, aff'd St. Bd. 83: November 2)

**Ratification**

Actions declared void due to violation of Sunshine Law can only be cured through compliance with the Act, Serra v. Mountainside, 188 N.J. Super. 134 (Law Div. 1983)

Board action at illegal public meeting may be considered de novo at later public meeting (83: January 6, Dougherty, aff'd St. Bd. 83: July 6) (83: November 17, Blumstein, aff'd St. Bd. 85: August 7, aff'd App. Div. unreported opinion (Docket No. A-309-85T1, decided November 12, 1986)) (84: September 6, Orlando)

Consideration of information obtained during prior meeting not held in compliance with Act did not affect bona fides of "de novo" action (89: March



13, Jayeski)

BOARDS OF EDUCATION - continued

Meetings of - continued

Open Public Meetings Act, violations of - continued

Ratification - continued

De novo action taken at meeting subsequent to April 30th, terminating non-tenured employees, "relates back" to date of original action where board took ratifying action prior to petitioner's commencing suit; Jamison v. Morris School District Bd. of Ed., 198 N.J. Super. 411 (App. Div. 1985) See also Atlantic City v. Atlantic Deauville, 5 N.J. Tax 459 (1983) (Brown v. Sussex County Vocational Board of Education, 83: August 11, rev'd St. Bd. 84:671, rev'd and remanded App. Div. (Docket No. A-4854-83T7, decided April 4, 1985), on remand 86:1807, aff'd St. Bd. 86:1846)

"De novo" corrective action under N.J.S.A. 10:4-15a; defined (83: November 17, Blumstein, aff'd St. Bd. 85: August 7, aff'd App. Div. unreported opinion (Docket No. A-309-85T1, decided November 12, 1986)) (84: September 6, Orlando) (89:1550, Shaw)

Subsequent resolution cured board's departure from Open Public Meetings Act in adopting resolution authorizing lawsuit. Orange Tp. Bd. of Ed. v. Brown, 233 N.J. Super. 242 (App. Div. 1989)

Regular meetings, Crifasi v. Governing Body of Oakland, 156 N.J. Super. 182 (App. Div. 1978) rev'g 151 N.J. Super. 98 (Law Div. 1977); Cole v. Woodcliff Lake Bd. of Ed., 155 N.J. Super. 398 (Law Div. 1978) La Fronz v. Weehawken Bd. of Ed., 164 N.J. Super. 5 (App. Div. 1978) certif. denied 79 N.J. 491 (1979) (80:1420, Furlong, aff'd St. Bd. 81: March 4)

Remedy provision of Open Public Meetings Act did not warrant award of back pay where board action terminating petitioner was voided, under the terms of the employment contract petitioner had to accept reemployment to trigger contractual relief (83: August 22, Booth, aff'd with opinion St. Bd. 85: May 1)

Schedule of regular meetings for the year held properly maintained under N.J.S.A. 10:4-18 (83: July 11, Cortina, aff'd St. Bd. 83: November 2)

Special meetings, In re Application of County of Monmouth, 156 N.J. Super. 188 (App. Div. 1978); Houman v. Pompton Lakes, 155 N.J. Super. 129 (Law Div. 1977) La Fronz v. Weehawken Bd. of Ed., 164 N.J. Super. 5 (App. Div. 1978) certif. denied 79 N.J. 491 (1979)

Special meetings; official newspapers must be capable

of publishing notice 48 hours in advance of meeting  
Worts v. Upper Twp., 176 N.J. Super. 78 (Ch. Div. 1980)  
(83: January 6, Dougherty, aff'd St. Bd. 83: July 6)  
(84: September 6, Orlando)

**BOARDS OF EDUCATION - continued**

**Meetings of - continued**

**Open Public Meetings Act, violations of - continued**

- Special meetings; personnel matter discussed at public meeting where advance Rice notice was not given was not violative of the Open Public Meetings Act (84: April 9, Strangia, aff'd St. Bd. 84: October 3, aff'd App. Div. unreported opinion (Docket No. A-1121-84T6, decided May 13, 1986))
- Statement of adequate notice under N.J.S.A. 10:4-10(a), may be read into minutes by Board Secretary on behalf of Board President (83: July 11, Cortina, aff'd St. Bd. 83: November 2)
- Statute of limitations
  - Challenge not brought within 45 days after action sought to be voided, claim dismissed as untimely (84: January 12, Lucia)
  - Voiding of acts for violation of Open Public Meetings Act; action must be brought before the Commissioner in 90 days, not 45 day limit applicable to Superior Court (86:883, Voll)
- Tape recording of proceeding permitted (Sudol v. North Arlington, 137 N.J. Super. 149 (Ch. Div. 1975))
- Technical violations
  - No bad faith, action by board upheld (83: September 12, Davis)
  - Remedy; violation though technical did not deprive the public and press of proper notice of the meeting or opportunity to attend; action of board would stand (83: June 27, Scott, aff'd 83: November 2)
  - Technical defects do not justify remedy of voiding board action (83: November 17, Blumstein, aff'd St. Bd. 85: August 7, aff'd App. Div. unreported opinion (Docket No. A-309-85T1, decided November 12, 1986)) (84: September 6, Orlando)
- Videotaping public board meeting can be subject to reasonable restrictions but cannot be totally banned, Maurice River Bd. of Ed. v. Maurice River Teachers, 193

N.J. Super. 488 (App. Div. 1984)

Violation of Sunshine Law did not occur when Board discussed in closed session settlement of litigation with prior non-tenured principal without notifying present principal (88:1220, Foster)

Violation of Sunshine Law did not occur when Board took "straw vote" in closed session (Matter of Cole, 194 N.J. Super. 237 (App. Div. 1984))

**BOARDS OF EDUCATION - continued**

**Meetings of - continued**

**Open Public Meetings Act, violations of - continued**

Violation of Sunshine Law did not occur when municipal governing body deliberated in private regarding discipline of police officer despite officer's prior request for public deliberations, Serra v. Mountainside, 188 N.J. Super. 134 (Law Div. 1983), rev'd in part, aff'd in part 196 N.J. Super. 6 (App. Div. 1984), certif. denied 97 N.J. 677 (1984)

**President and vice-president**

Appointment must be at organizational meeting (70:153) (75:1025 Martello, dismissed St. Bd. 76: April 7) (76:845, Wisner, aff'd St. Bd. 77:1314)

County superintendent appoints where board fails to elect either president or vice-president at organizational meeting (76:845, Wisner, aff'd St. Bd. 77:1314)

Plurality of votes sufficient to elect (75:1025, Martello, dismissed St. Bd. 76: April 7)

Private and final action by board is ultra vires (76:886, Feigen)

**Public**

Attendance of members of public at closed session of the board (79:758, Kiamie)

Citizen entitled to tape record proceedings, Sudol v. North Arlington, 137 N.J. Super. 149 (Ch. Div. 1975)

"Public body" and "meeting" under Sunshine Law, defined, Polillo v. Deane, 74 N.J. 562 (1977) rev'g 148 N.J. Super. 43 (App. Div. 1977); Allan-Deane Corp. v. Bedminster Tp., 153 N.J. Super. 114 (App. Div. 1977) certif. denied 74 N.J. 272 (1977); Woodbury Daily Times v. Gloucester County Sewerage Auth., 151 N.J. Super. 160 (Law Div. 1977)

Right of public to be present at meetings where final action is taken, (Jones v. East Windsor Reg. Bd. of Ed., 143 N.J. Super. 182 (Law Div. 1976)) dismissed as moot 558 N.J. Super. 496 (App. Div. 1977) Gannett v. Bd. of Ed. of Borough of Manville, 201 N.J. Super. 65 (Law Div. 1984) (76:886, Feigen) Cullum v. North Bergen Twp. Bd. of Ed., 15 N.J. 285 (1954) (79:434, C.R.)

Right of public to make comments at meetings wholly within discretion of board (67:280, aff'd St. Bd. 68:261) (73:526)

Right of teachers' representative to speak at meeting cannot be denied on grounds of non-resident status,

where board has opened meeting to public comment  
(73:526)

BOARDS OF EDUCATION - continued

Meetings of - continued

Quorum

Defined (73:167) (73:257)

Effect on quorum of board member's departure in middle of meeting (73:167) (87:337, Corda and Gunning)

Public officials cannot refuse to attend a meeting in order to preclude a quorum and to prevent the public body from deciding whether to take action to fill a vacancy on the public body. Smith v. Ghiqliotti, 219 N.J. Super. 231 (Law Div. 1987)

Ratification

Of action taken at prior meeting held proper (67:93) (67:105)

Ratification by full board of earlier action taken by less than quorum held proper (73:257)

Records are public (61-62:224)

Resolutions adopted at meeting going beyond purposes stated in notice of meeting or on matters not related thereto held invalid under prior statute, Stackhouse v. Clark, 52 N.J.L. 291 (Sup. Ct. 1890); Zabriskie v. Trustees, 52 N.J.L. 104 (Sup. Ct. 1889)

Board may act where notice is proper (67:105) (73:351 aff'd 73:360 aff'd App. Div. 75: March 24); see also Cullum v. North Bergen Bd. of Ed., 15 N.J. 285 (1954) (76:672, Roe, aff'd St. Bd. 76:676)

Caucus action confirmed (67:23)

President may make unilateral decision to call a special meeting (76:672, Roe, aff'd St. Bd. 76:676)

Taxpayers action to declare superintendent's contract void was moot where Superior Court already ruled (89: March 15, Syvertsen)

Teaching staff member, right of notice and representation, where required to appear before board (73:351, aff'd 73:360, dismissed St. Bd. 74:323)

Tenure charges should be considered at private meeting despite Sunshine Law, Cirangle v. Maywood Bd. of Ed., 164 N.J. Super. 595 (Law Div. 1979) (79:605, Karsen, aff'd St. Bd. 80:1506) (88:582, Woolard, aff'd St. Bd. 88:601, aff'd App. Div. unreported op. (Dkt. No. A-878-88T1, June 12, 1989))

Violation of Sunshine Law charged, Polillo v. Deane, 74 N.J. 562 (1977) rev'g 148 N.J. Super. 43 (App. Div. 1977); Allan-Deane Corp. v. Bedminster Tp., 153 N.J. Super. 114 (App. Div. 1977) certif. denied 74 N.J. 272 (1977); Houman

v. Pompton Lakes, 155 N.J. Super. 129 (Law Div. 1977);  
Woodbury Daily Times Co. v. Gloucester County Sewerage Auth.  
151 N.J. Super. 160 (Law Div. 1977); Woodcock v. Calabrese,  
148 N.J. Super. 526 (Dist. Ct. 1977)

## BOARD OF EDUCATION - continued

### Meetings of - continued

Void defined (89: March 15, Syvertsen)

Voiding of acts for violation of Open Public Meetings Act; action  
must be brought within 45 days (80:1439, McWilliams, aff'd  
St. Bd. 81: May 6) (81: April 24, Petigrew) (86:883, Voll)

### Voting

(See also "Abstentions", this subtopic)

Doctrine of Necessity - four members of seven member borough  
council with conflicts permitted to participate. Allen  
v. Bd. of Ed., 233 N.J. Super. 642 (App. Div. 1989)

Full membership, what constitutes when vacancy exists  
(73:167)

Local board bylaw requiring 2/3 vote of full membership  
invalid; statutory silence indicated legislative intent  
that common law rule of majority of quorum apply.  
Matawan Teachers Assn. v. Bd. of Ed., 223 N.J. Super.  
504 (App. Div. 1988)

Majority of those voting carries motion; member's  
abstention count for purposes of quorum only (85:  
April 22, Golden)

Roll call votes (72:606) (75:47, South Plainfield)

"Straw Vote" in closed session permissible (Matter of  
Cole, 194 N.J. Super. 237 (App. Div. 1984))

### Membership on

**Appointment to** (38:58) (38:60) (38:67) (67:93) (72:248)

(See also "Boards - Membership on - Vacancies", this index)

By county superintendent (38:58) (67:265) (73:112)

(74:1340) (77:586, Pompton Lakes) (77:695, Helmetta)

By local board where vacancy occurs during official  
life (53-54:72) (67:265)

By mayor, Georgia v. Suruda, 154 N.J. Super. 439 (Law  
Div. 1977)

By mayor, invalid where made outside statutory time period.  
Orange Tp. Bd. of Ed. v. Brown, 233 N.J. Super. 242  
(App. Div. 1989)

By mayor, valid despite lack of certificate of  
appointment (60-61:219)

Appointment to fill vacancy; held board did not act  
discriminatorily in failing to appoint black candidate, who  
came in fourth in recent election of three members, to



vacancy (84: April 19, Asia)

**Conflicts of interest**

Abstention doctrine; board member required to abstain from discussing or voting upon employment of spouse (81: August 25, Salierno)

Board member as officer of corporation with which board contract (70:19) (71:144)

Board member ineligible for appointment to paid office or position filled by board N.J.S.A. 18A:12-1.1

**BOARDS OF EDUCATION - continued**

**Membership on - continued**

**Conflicts of interest - continued**

Board member with pending suit against board ordered barred from closed meetings at which litigation discussed (86:1009, Barrington)

Business transactions with relatives, held illegal (77: 715, Elms)

Claim against board for legal expenses does not automatically disqualify individual from sitting on, or running for, board (82: April 12, Hogan, aff'd w/opinion St. Bd. 82: August 4)

Closing school: held, board member who voted to close school did not have a great interest in the affairs of a local association such as to disqualify vote (83:1124, Edison School PTA) (85: December 9, Fairmount School PTA)

Collective negotiations; board members with spouses in bargaining unit may vote to ratify agreement (85: March 18, Larsen)

Collective negotiations; held board members, who have relatives who are members of employee bargaining units, may negotiate contracts and vote on them (84: April 23, Salerno)

Commissioner has no power to remove member for conflict of interest not covered by N.J.S.A. 18A:12-2; must be done through courts (71:144) (73:361) (but see 74:595, rev'd on other grounds 74:603) (74:740) upholding Commissioner's jurisdiction under N.J.S.A. 18A:12-2

Doctrine of necessity. Allen v. Bd. of Ed., 233 N.J. Super. 642 (App. Div. 1989)

Former board employee receiving health and pension benefits,

not disqualified as candidate (89:1434, Sokolosky)  
Moot, conflict issues dismissed as (72:248) (75:1, Henry)  
Ninety (90) day limitation period held to be applicable  
(86:2041, Matawan Regional Teachers' Association, aff'd  
St. Bd. 86:2087, 223 N.J. Super. 504 (App. Div. 1988))  
Pending lawsuit against board does not disqualify  
candidate (84:671, Newark, aff'd w/o opinion St. Bd.  
84:684)  
Pending lawsuit against former board secretary disqualifies  
him from board membership; seat declared vacant  
(79:353, Woodstown-Pilesgrove, rev'd St. Bd. 80:1563,  
aff'd App. Div. 80:1507)  
Personal interest of board member, held remote (77:59,  
Mountain View Residents Assoc.) (86:2041, Matawan  
Regional Teachers' Association, aff'd St. Bd. 86:2087,  
223 N.J. Super. 504 (App. Div. 1988))

**BOARDS OF EDUCATION - continued**

**Membership on - continued**

**Conflicts of interest - continued**

- Personal interest of board member, when does it exclude him from voting, (75:47, South Plainfield) Jones v. East Windsor Reg. Bd. of Ed., 143 N.J. Super. 182 (Law Div. 1976) (76:616, Gambatese)
- Personal interest of Board members, tainted vote to certify tenure charges; charges dismissed (85:118, Colella) see (84: October 12, Colella)
- Personal interest of Board member; voting violated Oath of Office and Code of Ethics; did not rise to level of dismissal of tenure charges (77:95, Buch) (88:221, Napoli, aff'd w/modification St. Bd. 88:284, stay denied St. Bd. 89: February 1, aff'd App. Div. unpublished op. (Dkt. No. A-2301-88T3, March 2, 1990))
- Personal interest of board member; appointed to administrative position in violation of N.J.S.A. 18A:12-2 (84:999, Roberts, aff'd St. Bd. 84:1026)
- Policy discouraging employment of relatives of board members is valid (78:413, Scola)
- Positions of guidance counselor and governing body member in same municipality/school district are not incompatible, Kaufman v. Pannuccio, 121 N.J. Super. 32 (App. Div. 1972)
- Positions of teacher and board member in same district are incompatible, Visotcky v. City Council of Garfield, 113 N.J. Super. 263 (App. Div. 1971)
- Relative employed by board is permissible under statute (77:715, Elms)
- Resignation of board member, no conflict to appoint as vice-principal (77:504, Tesi)
- Right of board member to vote for indemnification for his own legal expenses upheld (75:47, South Plainfield)
- Spouse employed by board does not, standing by itself, create an intolerable conflict of interest (86: August 18, Matawan Regional Teachers' Association, aff'd St. Bd. 86: November 5, 223 N.J. Super. 504 (App. Div. 1988))

**BOARDS OF EDUCATION - continued**

**Membership on - continued**

**Conflicts of interest - continued**

- Spouse employed by board is permissible under statute

(69-60:57) appropriate remedy to be applied if a conflict of interest arises is for board member to abstain (74:595 rev'd St. Bd. 74:603, In Matter of the Election of Bayless) Under Bayless the doctrine of abstention as it pertains to board members whose spouses are employed by the boards on which they serve is controlling but such conflicts may properly be held up to severe scrutiny and a possible challenge by the public (74:740) (76:616, Gambatese) (77:715, Elms) but policy barring reemployment of employees whose spouses are board members is valid and may not be set aside by Commissioner absent evidence that such policy was administered in a discriminatory manner (75:478, Smiecinski)

Student in district may be member of board (81: April 1, Rancocas Valley)

Teacher/union representative employed in district A may serve on board in district B, if otherwise qualified, Jones v. Kolbeck, 119 N.J. Super. 299 (App. Div. 1972); N.J.S.A. 18A:6-8.4 (74:769) (77:715, Elms)

Treasurer of school monies, elected to board, could not hold both positions (84:1702, Cliffside Park, aff'd with opinion St. Bd. 85:1876)

De facto board member (81: May 4, Taylor) (82: December 27, Monsees)

Election to board

(See also "Elections," this index)

Board member A served until election recount replaced him with B; actions of board while A sat as de facto member are valid (70:153)

Liability of board members

(See "Indemnification," this index)

### **Qualifications**

(See also "Conflicts of interest," this subtopic)

Generally (38:36) (38:38) (49-50:34) (49-50:53) (53-54:76) (53-54:79) (54-55:123) (58-59:85) (60-61:219)

Age, must be old enough to vote, Vittoria v. West Orange Bd. of Ed., 122 N.J. Super. 340 (App. Div. 1973)

Citizenship (77:361, Seastrand)

Criminal conviction, Employees v. N.J. Turnpike Authority, 200 N.J. Super. 48 (App. Div. 1985)

Illegal interest of (38:44) (38:48)

Pending lawsuit against board does not disqualify candidate (84:671, Newark, aff'd St. Bd. 84:684)

**BOARDS OF EDUCATION - continued**

**Membership on - continued**

**Qualifications - continued**

Pending lawsuit against former board secretary disqualifies him from board membership; seat declared vacant (79:353, Woodstown-Pilesgrove, rev'd St. Bd. 80:1563, aff'd App. Div. 80:1507)

**Residence**

Generally (38:17 through 38:31) (58-59:85) (67:198) (67:265) (74:1000) (75:71, Union County Regional) (77:363, Middlesex) (77:591, Fairview) (80: April 30, Woodbine) (82: November 1, Borough of Laurel Springs)

Burden of proof on party challenging residency status (58-59:85)

**Determination of residence or domicile**

(See also "Pupils - Residence," this index)

Removal to another town, removal from board ordered (67:198) but continued membership on board was upheld in (74:1000) on ground that removal was temporary and did not change party's domicile

Election date, must still be resident on (75:307, Mannington)

Held unconstitutional for cities organized under Walsh Act, N.J.S.A. 40:70-1, Matthews v. Atlantic City, 84 N.J. 153 (1980)

Two year period, must be two full years immediately preceding election date (68:133) (75:249, Monroe)

**Removal**

Board may not remove elected candidate, (or refuse to swear in same) on its own authority, but must institute formal proceedings before the Commissioner (84:671, Newark, aff'd St. Bd. 84:684)

For failure to attend three consecutive meetings (81: March 3, Berg)

For failure to attend three consecutive meetings; denial of request for medical leave upheld (85: July 8, Shamong)

For non-residency status is allowed (N.J.S.A. 18A:12-3) (67:198) (75:307, Mannington)

For poor attendance upheld (61-62:182 aff'd St. Bd. 185) (66:176); board reversed for failure to provide a hearing (74:721)

Mere assertion that board member is disqualified to hold elected office without supporting evidence is insufficient to rise to a justiciable controversy

(88:1905, Laufgas)  
Suspension for misconduct; board is without power to do so  
and policy to that effect is null and void (74:650)

**BOARDS OF EDUCATION - continued**

**Membership on - continued**

**Removal - continued**

Undated letter of resignation required by Mayor as  
condition of membership held improper, subsequent  
appointment invalid (82: May 11, Grier)  
Resignation (38:31) (38:60) (38:62) (38:556) (66:172)  
effective only when accepted by vote of board (70:279)  
Georgia v. Surada, 154 N.J. Super. 439 (Law Div. 1977)  
Status, as trustees (53-54:76) (53-54:79); members of  
school board are public officers holding a public trust and  
stand in fiduciary relationship to persons whom they have  
been elected or appointed to serve, Cullum v. North Bergen  
Twp. Bd. of Ed., 15 N.J. 285 (1954)  
Title to office of board, jurisdiction of Commissioner  
(39-49:91)

**Vacancies**

(See also "Boards - Membership on - Appointment  
to," this index)  
After 65 days, county superintendent appoints  
(75:251, Warren)  
Appointment to vacancy by "lame duck" board  
(75:251, Warren); Jones v. East Windsor Reg. Bd. of  
Ed., 143 N.J. Super. 182 (Law Div. 1976)  
Board policy required appointment at next meeting  
following occurrence of vacancy; board nevertheless  
appointed person at same meeting at which vacancy  
occurred; Commissioner upheld appointment, noting board  
is not bound by its own policies and rules when no  
vested rights are involved (74:1133)  
Cannot be filled in closed session (80: May 8, Donnelly)  
Failure to elect  
Tie vote in annual election; county superintendent  
appoints (70:79) (71:230)  
Voided annual election constitutes "failure to  
elect" and county superintendent appoints; no  
procedure for special election permitted (73:112)  
(73:154) (77:586, Pompton Lakes) (77:695,  
Helmetta), but see amendment to N.J.S.A. 18A:12-15  
No Open Public Meetings Act violation when Board met in  
closed session when interviewing applicants for vacancy  
on Board. Jones v. East Windsor Reg. Bd. of Ed., 143

N.J. Super. 182 (Law Div. 1976)  
Open Public Meetings Act violation where applicant for  
vacancy were interviewed in closed session. Gannett  
Satellite Info. Network v. Board of Education, 201 N.J.  
Super. 65 (Law Div. 1984)

**BOARDS OF EDUCATION - continued**

**Membership on - continued**

**Vacancies - continued**

- Personnel exclusion to Act; where board filling vacancy on board, technical violation when interviewed candidates in closed session although no violation when discussed candidates' qualifications in closed session. (89:1550, Shaw)
- Plurality of board votes sufficient to elect member to fill vacancy on board (67:93) (72:248)
- Quorum needed to elect citizen to vacant position (73:167)
- Quorum needed to fill vacancy on board (80:457, Reimer)
- Simple majority of the board sufficient to elect member to fill vacancy on board (87:337, Corda and Gunning)
- Vacancy exists once elected board member ceases to be a bona fide resident of district (67:265)
- Vote for new member may be secret ballot (67:93)

**Minutes**

- Board must make minutes available to public within 2 weeks of meeting; special meetings held sooner than every 2 weeks must be available prior to succeeding meeting. Matawan Regional Teachers Assoc. v. Matawan-Aberdeen Regional Bd. of Ed., 212 N.J. Super. 328 (Law Div. 1986) Cf. (85: May 17, Martello)
- Board policy to transcribe minutes within 15 days is not mandated by law, Commissioner could not compel compliance with policy (85: May 17, Martello)
- Closed session minutes must be disclosed once subjects discussed at session have been publicly acted upon (86: April 14, Voll)
- One month delay in approving minutes unreasonable, board must make available within reasonable time, ordered to make available unapproved minutes as soon as typed (85:645, Lange)
- While the board agenda may provide some clue as to a body's intent, the official board minutes are the only reliable source of information. (88: January 22, Rosania, decision on remand)

**Notice Requirements**

- Adequate notice, fact-to-face communication to newspaper of notice acceptable. Furlong v. Manning, 212 N.J. Super. 240 (Law Div. 1986)
- Advisory body, exempt from notice requirement. South Harrison Township v. Gloucester County, 213 N.J. Super. 179 (Law Div.)



1986)

**BOARDS OF EDUCATION - continued**

**Notice Requirements - continued**

- Employees entitled to reasonable advance notice to closed session discussion of personnel matters. Employment in board office does not give rise to construction notice of closed meeting (85: July 25, Brown, aff'd St. Bd. 87: February 4, aff'd App. Div. unreported opinion (Docket No. A-3426-86T1 decided November 13, 1987))
- Recess distinguished from adjournment South Harrison Township v. Gloucester County, 213 N.J. Super. 179 (Law Div. 1986)
- Adequate notice, face-to-face communication to newspaper of notice acceptable. Furlong v. Manning, 272 N.J. Super. 240 (Law Div. 1986)
- Agenda; item omitted from agenda may be discussed and acted upon so long as not purposely omitted to mislead the public. Citizens for Charter Change v. Essex County, 213 N.J. Super. 173 (App. Div. 1986)
- Board violated spirit and intent of OPMA and Executive Order No. 11 when it read letter of reprimand and evaluation of staff member at public meeting (89: October 13, Toplansky)
- Closed Sessions
- Closed session minutes must be disclosed once subjects discussed at session have been publicly acted upon (86: April 14, Voll)
- May not be held to discuss general reorganization plan; plan invalidated (86: April 14, Voll)
- "Open Work Session" is not public meeting at which valid resolution to go into closed session may be passed (86: April 14, Voll)
- "Straw Vote" in closed session permissible. (Matter of Cole, 194 N.J. Super. 237 (App. Div. 1984))
- Location change which was not properly posted does not violate Open Public Meeting Act (85: June 27, Rood)
- New Jersey State College Governing Boards Association is a public body for purposes of the Sunshine Law; source of Association's funds is dues assessment from State Colleges which are public funds. Council of New Jersey State Colleges Locals, AFT/AFL/CIO v. New Jersey State College Governing Boards Association, rev'd and remanded unreported opinion App. Div. (Docket No. A-1164-87T7, decided July 20, 1988)
- Ratification
- Nature of de novo action (86: April 14, Voll) (South Harrison Twp. v. Gloucester County, 213 N.J. Super. 179 (Law Div. 1986))

**BOARDS OF EDUCATION - continued**

**Notice Requirements - continued**

Voiding of acts for violation of Open Public Meetings Act;  
action must be brought before the Commissioner in 90 days,  
not 45 day limit applicable to Superior Court (86: April  
14, Voll)

**BOARD OF EXAMINERS**

Certification denied

Insufficient credentials (87: June 2, Siefring)

Commissioner will sustain, absent bias (56-57:40) (87: June 2,  
Siefring)

Board properly named as sole respondent in teacher's challenge to  
denial of her certification through alternate route process,  
although Board did not make underlying evaluation. (87:1803,  
Griskey, rev'd St. Bd. 88: August 3)

Copy of withdrawal forwarded to Board of Examiners; petitioner  
admitted improper touching of student, (89: October 16, Hansen,  
aff'd with opposition St. Bd. Mar. 7, 1990, aff'd St. Bd.  
(reconsidered denial) May 2, 1990)

Professional teacher entitled to opportunity to be heard before Board  
of Examiners (87:1803, Griskey, rev'd St. Bd. 88: August 3)

Remand for reconsideration ordered (89: October 4, Ruddy)

Revocation of certificate proper (90: March 7, Lugare)

State Board remands for reinstatement of certificate (89: October 4,  
Pawlak)

Tenure matter rendered moot by guilty plea referred to State Board of  
Examiners for revocation proceedings. (87: November 12, Breece)

**BOARD OF SCHOOL ESTIMATE**

(See also "Budgets," this index)

Amount certified by cannot be changed (38:221)

Transfers limited to specific purpose (38:223)

**BOARD SECRETARY**

(See also "Tenure - Acquisition of - Board secretary" and "Tenure -  
Dismissal - Tenure dismissal cases (listed by position)" this  
index)

Conflict of interest; may be awarded bus contract by board (69:83)

Duty to give notice of voting machine readiness for inspection

(70:156)

**BOARD SECRETARY - continued**

- Implied authority to act on behalf of board (76:876, White)
- Majority roll call vote of full board required to appoint (39-49:20)
- Superintendent who served as board secretary acquired tenure as board secretary after two years; no finding of a conflict (83: December 2, Dwyer)
- Termination: Non-tenured assistant secretary to the board, who was appointed by a fixed term contract, without a termination cause, could not be terminated unless provided notice and an opportunity to be heard on charges for removal for good cause, pursuant to N.J.S.A. 18A:17-1 (Reinstated to position, accruing tenure) (84:792, Schoeler)
- Termination of tenured Board Secretary improper where procedure pursuant to N.J.S.A. 18A:6-10 et seq. not followed. (88:2256, Shenekji, aff'd St. Bd. 89:3078)

**BOND ISSUES**

(See also "Elections - Referenda," this index)

Approval

- Failure of the Commissioner and Local Finance Board to approve the issuance of bonds within 60 days pursuant to N.J.S.A. 18A:24-25, 27 did not prejudice the petitioners nor thwart the will of the electorate and there is no requirement that the underlying vote be set aside (87: March 2, Asbury Park, aff'd St. Bd. 87: July 1)
- Authorization for (38:5) (38:6) (38:10) (38:14)
  - Capital outlay need not be bonded but may be raised by taxation, Gloucester Twp. v. Black Horse Pike Reg. Bd. of Ed., 50 N.J. Super. 437 (Law Div. 1958)
  - Election set aside where ballots found to be alternative, ambiguous and confusing, Cadien v. Cliffside Park Bd. of Ed., 2 N.J. Misc. 109 (Sup. Ct. 1924)
  - "Local share" under School Building Aid Law must be raised by taxation and may not be raised through bond issue, Bayonne v. Marburger, 100 N.J. Super. 87 (App. Div. 1968) (C. dec. 33, St. Bd. 68:33)
  - Referendum upheld where board complied with statutory requirements, regardless of whether letter from State Department concerning necessary changes in construction was made known to voters, Smith v. Demarest Bd. of Ed., 35 N.J. Super. 82 (App. Div. 1955)
- Debt limitation exceeded, special approval required, Schinck v. Westwood Bd. of Ed., 60 N.J. Super. 448 (App. Div. 1960)

**BOND ISSUES - continued**

Formal requirements

All costs associated with particular construction project should be included in single bond issue (67:227)

Execution of bonds by president and clerk upheld, Linbarger v. West New York Bd. of Ed., 83 N.J.L. 446 (E&A 1912)

Public hearings not required (61-62:137)

Modifications based on changed circumstances approved, Silverman v. Millburn Bd. of Ed., 134 N.J. Super. 253 (Law Div. 1975) aff'd o.b. 136 N.J. Super. 435 (App. Div. 1975)

**BUDGETS**

**Generally**

Additional or emergency appropriations

Commissioner has authority to review, if rejected by voters or board of school estimate, and can take corrective action, see Attorney General Formal Opinion No. 26 (1977) (78:304, Upper Freehold) (79:206, Sussex County Vocational, aff'd St. Bd. 79:214, aff'd App. Div. 81:1502) (87: July 16, Borough of East Newark, order of Commissioner) Earlier case stating Commissioner lacked review authority: (70:111) (70:197) (75:750, Little Egg Harbor), (77:543, Central Regional) (84: October 9, Bd. of Ed. of Borough of Fair Lawn)

Refunding bond procedure for financing amount of budget deficit in cooperation with municipal governing body, pursuant to N.J.S.A. 40A:2-51. (87: July 16, Borough of East Newark, order of Commissioner.)

When authorized, Newark Teachers Assn. v. Newark Bd. of Ed., 54 N.J. 100 (1970); Barber v. Elizabeth Bd. of Sch. Est., 71 N.J. Super. 556 (Law Div. 1962) (78:37, Nutley) (78:304, Upper Freehold) (79:214, Sussex County Vocational) (79:316, Keansburg) (79:346, Henry Hudson Regional)

**Adjusted to reflect State resumption** of TPAF costs (77: 15, Morris) (77:19, Parsippany-Troy Hills) (77:17, Bass River) (77:18, Weehawken) (77:20, Oaklyn) (77:21, Pemberton) (77:22, Palisades Park) (77:23, Plumsted) (77:35, Lambertville) (77:1195, Black Horse Pike Reg.) (77:39, National Park) (77:41, Gloucester) (77:42, Elizabeth) (77:43, Magnolia) (77:44, Evesham) (77:58, Hackensack) (77:70, Totowa) (77:69, Milltown) (77:86, Peguannock) (77: February 11, Woodbine, unpublished opinion) (77:110, Oakland)

BUDGETS - continued

Generally - continued

**Adjusted to reflect State resumption - continued**

dismissed St. Bd. 77: July 6) (77:118, Lawnside) (77:130, North Arlington) (77:131, Lodi) (77:136, Long Branch) (77:157, Sterling Reg.) (77:246, East Orange) (77:228, Perth Amboy) (77:195, Red Bank) (77:251, Asbury Park) (77:281, Middletown) (77:293, New Brunswick) (77:305, Ewing aff'd St. Bd. 78:1008) (77:337, Hawthorne) (77:323, Roselle) (77:349, Sparta) (77:213, Garfield) (77:398, Howell) (77:487, Watchung Hills Reg.) (77:631, Dover)

Administrative remedies must be exhausted before seeking judicial review

Type II districts; East Brunswick Bd. of Ed. v. East Brunswick Twp., 48 N.J. 94 (1966)

Type I districts; Elizabeth Bd. of Ed. v. Elizabeth City Council, 55 N.J. 501 (1970)

Aggregate of line item reductions must not exceed the amount by which budget was reduced as certified (78:177, Plainfield) (78:335, East Orange) (79:30, Scotch Plains aff'd St. Bd. 79: March 22)

Amounts restored to budget by Commissioner must be credited to current expense account, not debt service account (80: March 21, Henry Hudson Regional)

Anticipated income and surplus figures are reviewable by governing body and amounts may be increased if under-budgeted, Branchburg Bd. of Ed. v. Branchburg Tp., 187 N.J. Super. 540 (App. Div. 1983), certif. denied 94 N.J. 506 (1983), affirming in part and reversing in part (81: October 26, aff'd St. Bd. 82: June 2); and amounts may be reduced if surplus exceeds that recommended by the state (83: December 23, Bd. of Ed. of Bellmawr)

Appeal of municipal cuts in defeated budget:

Commissioner rejects allegation by teacher's association, in context of challenge of RIF, that failure of board to appeal cuts made provision of T & E impossible (86: June 19, Rahway, aff'd St. Bd. 87: January 7)

Appropriations, State Budget; Governor's line item veto, Karcher v. Kean, 97 N.J. 483 (1984)

Audit (75:858, Union Beach Bd. of Ed. remanded St. Bd. 76:574 on remand 76:575 aff'd St. Bd. 76:577) (77:493, Hoboken)

Board may amend specific line items due to emergency after budget defeated by public, but must not impair ability to operate T & E educational system (84: February 6, Bd. of Ed. of City of Asbury Park)

Board president has no authority to represent board's position

on budget to governing body unless a proper meeting has been held; telephone poll of board member does not constitute a proper meeting (78:261, Belleville)

**BUDGETS - continued**

**Generally - continued**

- Bonds may not be used to finance local share of School Building Act; local tax levy is sole method, Bayonne v. Marburger, 100 N.J. Super. 98 (App. Div. 1968) (C. Dec. 68:33, St. Bd. 68:33)
- Board is bound by budget submitted to voters and cannot seek increases in line items before Commissioner (74:1321)
- Board need not transmit all supporting documents on proposed budget to governing bodies before election (77:209, River Dell Req.)
- Board of estimate, having failed to meet within statutory time frame due to lack of quorum, must meet as soon as possible to carry out its function (84: September 6, Orlando)
- Borough lacks authority to appropriate monies from board's revenues (82: October 29, Keansburg, remanded St. Bd. 83: June 1)
- Burden of proof on board (67:122) (70:285) (78:462, Gloucester) (79: December 26, Lower Township, unpublished opinion) (79: December 27, Woodbine, unpublished opinion)
- Calendar year appropriations in Type I districts, method of making (73:12)
- Cap waiver - cannot provide basis for summary judgment for restoring all cuts in budget by governing body; cap waiver conclusive only as to items for which it was granted (86: November 20, South River)
- Cap waiver; governing body is not precluded from making cuts in items which were not the subject of a previously granted cap waiver (86: March 27, Garfield)
- Cap waiver; governing body may not cut items previously approved by Commissioner in granting cap waiver (81: December 17, Highlands)
- Capital outlay, cut restored (81: December 1, Keansburg)
- Capital outlay funds; board of school estimate had authority to eliminate entire capital amount in budget, where school board failed to adopt a separate resolution and attach a statement explaining the need for capital outlay (86: March 31, Orange)
- Capital outlay monies cannot be transferred to current expense account without express voter approval (77:493, Hoboken); but see amendment to N.J.S.A. 18A:22-8.2 by Quality Education Act which allows this without voter approval.



Capital project monies, Type I district; municipality must appropriate to board, Garfield Bd. of Ed. v. Garfield, 147 N.J. Super. 146 (App. Div. 1977)

City council's application for stay of Commissioner's decision ordering certification of additional sums denied (82: April 30, Paterson, aff'd St. Bd. 82: May 5)

**BUDGETS - continued**

**Generally - continued**

- Commissioner cannot completely ignore municipalities political concerns absent necessity related to T & E mandate.  
Deptford, 116 N.J. 305 (1989), mod. aff'd rem'd 87:966, aff'd St. Bd. 87:974, rev'd rem'd 225 N.J. Super. 76 (App. Div. 1988) rem'd St. Bd. 89:3000, certif. granted 113 N.J. 333 (1989)
- Commissioner may grant cap waiver where necessary for thorough and efficient mandate even though question defeated at polls (83:107, Shore Regional)
- Commissioner's function in budget matters  
Broad powers (76:156, South Amboy)  
County superintendent of schools has a unique and important role in the annual budgetary approval process and his testimony and opinion regarding a budget dispute between a school board and governing body may be essential. (87:2379, Paterson, aff'd St. Bd. 88:2511)(on remand 88:1064, Paterson)  
Proposed budget, approval required (74:1054)  
Standard of review in budget appeals  
In General (88:2511, Paterson)  
Test for allowing expenditure is the need for and not the desirability of the expenditure (78:290, Matawan)  
Type I districts; Elizabeth Bd. of Ed. v. Elizabeth City Council, 55 N.J. 501 (1970)  
Type II districts; East Brunswick Bd. of Ed. v. East Brunswick Twp., 48 N.J. 94 (1966) (78:261, Belleville) (88: June 10, Lacey)
- Commissioner certifies budget to assure adequate funding to provide thorough and efficient system of education (89: October 10, Jersey City)
- Commissioner certifies tax levy in amount equal to cap waiver: (81: August 19, Red Bank, aff'd St. Bd. 82: March 24, aff'd unpublished opinion, App. Div. (Docket No. A-4036-81T3, December 15, 1982)
- Commissioner intervenes on own initiative via Order to Show Cause (89: October 26 Trenton)
- Commissioner may order realignment of budget adopted after cap waiver, to ensure that programs approved in granting the waiver are implemented (81: March 5, Newark)
- Commissioner restores money necessary for T&E (88:1064, Paterson)
- Contractual dispute  
Board may proceed by arbitration of contract, or by appealing governing body's budget determination

(80:457, Sussex County Vocational, aff'd St. Bd. 80:  
July 2)

**BUDGETS - continued**

**Generally - continued**

Cooperation and consultation

Between board and governing body - Governing body's failure to provide reasons for cuts at time made justifies summary judgment for board, all cuts restored (86: November 20, South River) (87:1953, Woodbridge, aff'd St. Bd. 88:2535) (87:2226, Asbury Park, settled on appeal St. Bd. 88:2437, but settlement rejected and matter remanded) (87: November 17, Farmingdale)

Board and governing body must cooperate; board must furnish detailed data and necessary information requested by governing body, and governing body must respond (67:155) (67:227) (67:233) (76:315, Orange) (77:209, River Dell Req.) (77:305, Ewing) (78:170, Lower Cape May) (81: October 26, Branchburg, aff'd St. Bd. 82: June 2, aff'd in part, remanded in part, 187 N.J. Super. 540 (App. Div. 1983))

Board of estimate's refusal to supply line item reduction arbitrary (80: October 20, Bordentown, aff'd St. Bd. 81: May 6)

Conclusory judgments by governing body invalidated its line item reductions (80:801, Garfield, aff'd St. Bd. May 6)

Governing body must consult with board in Type II districts (75:1039, Pt. Pleasant Bd. of Ed.) but governing body of Type I district need not consult with board of school estimate, Elizabeth Bd. of Ed. v. Elizabeth Bd. of Sch. Est., 95 N.J. Super. 284 (App. Div. 1967) (83: December 23, Bd. of Ed. of Bellmawr)

Meeting with budget review committee not compliance with N.J.S.A. 18A:22-37 (88:2230, Hoboken, aff'd St. Bd. 89:3032)

Current expense surplus may not be applied to fund capital outlay (71:444)

Cuts restored in part after settlement between board and governing body (76:71, Holmdel) (76:77, Orange) (76:834, Demarest) (76:874, Central Reg. H.S. Dist.) (77:245, Northvale) (77:227, Laurel Springs) (77:487, Watchung Hills Req.) (77:631, Dover) (77:940, Spotswood) (77:1029, Gloucester) (88: January 13, Plainfield Board of Education) (88: January 29, North Arlington Board of Education) (87: November 5, Point Pleasant, consent order entered on remand 88: February 9) (87: November 19, East Newark) (88: October 27, West Milford) (88: October 31, Boonton)

BUDGETS - continued

Generally - continued

Cuts restored in part - continued

(88: November 18, Lincoln Park) (88: November 23, Manasquan) (88: December 8, Asbury Park) (88: December 12, Fair Lawn) (88: December 22, Paterson) (89: October 4, Hunterdon Central) (89: October 25, Elmwood Park) (89: October 26, Ocean Twp.) (89: October 26, Trenton)

Settlement approved in lieu of ALJ decision (89: December 1, Salem, aff'd St. Bd. w/opinion 90: April 4)

Settlement inconsistent with concurring resolutions rejected and remanded for clarification (88: January 13, Lincoln Park Borough Bd. of Ed.)

Settlement must specify amounts to be restored to each line item and impact on tax levy (85: January 5, Lakewood) (St. Bd. 88: March 2, Asbury Park, rejecting settlement of matter below at 87: November 16)

Settlement rejected; unclear regarding amount of local tax levy after restoration (89: March 8, Union) (89: March 15, Fairview)

Debt service funds may not be used for current expenses under any circumstances (73:438)

Decision by Commissioner should not be on procedural grounds alone but should be premised on whether constitutional mandate is met. Deptford, 116 N.J. 305 (1989), mod aff'g rem'd 87:966, aff'd St. Bd. 87:974, rev'd rem'd 225 N.J. Super. 76 (App. Div. 1988), rem'd St. Bd. 89:3000, certif. granted 113 N.J. 333 (1989)

Deficit, intentional (75:858, Union Beach Bd. of Ed., remanded St. Bd. 76:574, on remand 76:575 aff'd St. Bd. 76:577)

Board must provide a thorough and efficient education within budgetary limits (79: December 13, Garfield, aff'd St. Bd. 80:801, unpublished opinion)

Commissioner may order cap waiver despite defeat by voters at the polls in regional high school district (83:107, Shore Regional)

Commissioner may order remedial plan (79: December 13, Garfield, aff'd St. Bd. 80:801, unpublished opinion) (82: February 9, Middletown)

Precludes further reductions by governing body (81: November 17, Union Beach)

Reductions in force, in anticipation of (81: February 23, Willingboro)

Supplemental tax levy necessary to provide T&E (89: May 18,  
Union City  
Deliberate underbudgeting of teaching staff positions not to be  
condoned (78:405, Garfield)

**BUDGETS** - continued

**Generally** - continued

District withdrawing from regional district had no claim to  
share of regional's funds or assets where question submitted  
to voters specifically stated that no assets or liabilities  
would be removed from regional upon withdrawal, (81: June  
15, Egg Harbor, aff'd St. Bd. 82: January 6, aff'd 188 N.J.  
Super. 92 (App. Div. 1982) certif. denied  
93 N.J. 245 (1983)

Estoppel of board to prosecute budget appeal (78:261,  
Belleville)

Equalization support  
Military pupils to be included in calculating apportionment  
of regional district tax levy (83: October 13,  
Burlington County)

Equalization support, calculation of on district-wide basis for  
regional board, upheld Washington Twp. v. Burke, 178 N.J.  
Super. 325 (App. Div. 1981), certif. den. 87 N.J. 413 (1981)

Failure of board to submit revised budget subsequent to governing  
body's reductions; effect on state aid (78:346, Bloomfield)  
(78:492, Keansburg)

Failure to consider impact of reductions and failure to make  
independent determination deemed substantively arbitrary;  
all cuts restored (88:2230, Hoboken, aff'd St. Bd. 89:3032)

Failure to submit reasons at time cuts are made - Commissioner  
may invoke every presumption against educational validity of  
proposed cuts. Deptford, 116 N.J. 305 (1989), aff'g, mod.  
rem'd 225 N.J. Super. 76 (App. Div. 1988), rev'g remanding  
(87:996, aff'd St. Bd. 87:974)

Fiscal irregularities over a period of years warrants the  
appointment of a fiscal monitor to oversee operations of  
board (84: November 7, McCarroll)

Funding of items restored by Commissioner  
Bond issue may not be utilized to fund restored  
monies; must be raised by taxation (74:1248 aff'd St.  
Bd. 75:1084)

Bond proceeds from another project, board not compelled  
to use (76:101, Willingboro)

Municipality cannot be required to fund restored  
monies in first half of school year through emergency  
appropriations provision of municipal law, where tax

rate for current calendar year had already been struck  
(69:8) see N.J.S.A. 18A:22-25 and 18A:22-44.1  
Government body may not withhold funds from budget fixed by board  
of school estimate in a Type I district (82: June 24,  
Paterson)  
Governing body must link proposed reduction with valid education  
concern (88: June 10, Lacey Township)

**BUDGETS - continued**

**Generally - continued**

Hearings

ALJ dismissal of Board appeal for failure of parties to prosecute: reversed and remanded by Commissioner: substantive issue raised by board cannot be decided by procedural order (82: February 3, Fairview)

Before board of education

Not required for bond issue (61-62:137)

Teachers' representative has right to speak at (66:1) see also (73:526)

Before Commissioner

Evidence need not be oral (74:712)

Constructive notice to municipality of board intention to appeal is sufficient (82: January 18, Paterson, aff'd St. Bd. 82: May 5)

Default judgement granted; Board of School Estimate failed to show why Commissioner should not exercise his budget setting authority (89: October 10, Jersey City)

Failure of governing body to appear (71:368) (76:315, Orange) (78:801, East Newark)

Legislative funding formula which reduced or eliminated minimum state aid to certain districts did not violate federal equal protection or state T & E requirements, Fairfield Tp. Bd. of Ed. v. Kean, 188 N.J. Super. 244 (Ch. Div. 1982)

Line items

Board not required to effect savings within line items as indicated by council (79: November 28, Roselle Park, unpublished opinion) (79: November 28, Bergenfield, unpublished opinion) (79:758, North Haledon) (84: September 6, Orlando) (84: February 6, Asbury Park)

Board of estimate designation of percentage rather than line item reduction unreasonable and arbitrary (80: October 20, Bordentown, aff'd St. Bd. 81: May 6)

Transfers, juggling of accounts (68:139) (70:87) (73:623)

Local boards of education have not only the power but the duty to appeal actions of municipality in reducing school budgets that threaten to deprive districts of ability to provide T & E. Deptford, 116 N.J. 305 (1989), mod. aff'g rem'd 87:966, aff'd St. Bd. 87:974, rev'd rem'd 225 N.J. Super. 76 (App. Div. 1988), rem'd St. Bd. 89:3000, certif. granted 113 N.J. 333 (1989)

Lump sum reduction, without reference to line item economies, is not necessarily arbitrary or capricious (67:227) (67:233) compare (67:66) (75:793, Wayne stay denied 76:1172 aff'd St. Bd. 76:1171) (76:101, Willingboro (76:1055 South Amboy) (82:



January 18, Paterson, aff'd St. Bd. 82: May 5)

**BUDGETS - continued**

**Generally - continued**

- Outgoing board, must resubmit rejected budget items (60-61:147)
- Percentage reduction in teacher staff, proposed by governing body, would impair educational process (80: December 8, Weymouth)
- Percentage reduction of total budget by town council disallowed (85:1684, Old Bridge)
- Post 10 days before election (76:460, East Amwell)
- Reasons for cuts, failure of governing body to state, may result in restoration of funds; compare (70:1) (70:47) (70:70) (70:242) (71:166) (71:368) (73:648) (74:351 aff'd St. Bd. 74:356) (75:72, Pascack Valley Reg.) (78:801, East Newark) (80: May 12, Pompton Lakes) (81: July 9, Union Township) (81: October 23, Lower Alloways Creek) with (73:231) (74:64) (74:104) (76:300, Totowa) (76:315 Orange) (77:349, Sparta) (82: October 29, Keansburg, remanded St. Bd. 83: June 1) (84: October 23, Bd. of Ed. of Twp. of Lyndhurst, aff'd St. Bd. 85: March 6) (86: October 31, Lakehurst) (87: October 14, Middlesex) (87:2127, Irvington, aff'd St. Bd. 88:2480) (87:2226, Asbury Park, settled on appeal but settlement rejected and matter remanded St. Bd. 88:2437) (87: November 17, Farmingdale) (87: December 29, East Orange) (87: December 31, Point Pleasant) (87:1953, Woodbridge, aff'd St. Bd. 88:2535) (88: June 10, Lacey) (88:2222, South Plainfield, aff'd St. Bd. 89: May 3) (88:2230, Hoboken, aff'd St. Bd. 89:3032)
- Reasons for cuts, failure of governing body to submit at time of answer, goes beyond Deptford, App. Div. standard becomes substantively arbitrary - all cuts restored (88:2222, South Plainfield, aff'd St. Bd. 89: May 3) (88:2230, Hoboken, aff'd St. Bd. 89:3032) But see Deptford, 116 N.J. 305 (1989)
- Reasons must accompany cuts by governing body; failure to provide not an absolute condition to municipality's defense to school board appeal; presumption of invalidity (87:966, Deptford, aff'd St. Bd. with opinion, 87:974, rev'd and remanded 225 N.J. Super. 76 (App. Div. 1988), remanded St. Bd. 89:3000, certif. granted 113 N.J. 333 (1988) modified, affirmed and remanded, 116 N.J. 305 (1989) (88: June 10, Lacey Township)
- Reasons must accompany cuts regardless of size of reduction (88:2222, South Plainfield, aff'd St. Bd. 89: May 3)
- Reduction: Flat 3% reduction was arbitrary and contrary to East Brunswick (89: March 15, Morris Hills)
- Reduction of budget below previous year's, held unreasonable (71:347)

Reduction of budget which will directly result in inability  
to meet T & E mandate overturned (83: March 7, Manville)

**BUDGETS - continued**

**Generally - continued**

- Reductions based on actual experience of over-appropriations over 4 years is not arbitrary (89: December 1, Salem, aff'd St. Bd. w/opinion 90: April 4)
- Repairs to buildings, other than major renovations, are current expense items, not capital outlay (86: March 31, Orange) honored, Fair Lawn Bd. of Ed. v. Fair Lawn, 143 N.J. Super. 259 (Law Div. 1976) aff'd 153 N.J. Super. 480 (App. Div. 1977); Garfield Bd. of Ed. v. Garfield, 147 N.J. Super. 146 (App. Div. 1977); (77:36, Pine Hill) (77:105, East Windsor Req.)
- Restoration test: need, not desirability, valid need for new construction shown, restoration ordered (83: January 12, Southern Regional, aff'd St. Bd. 84: July 11)
- Settlement inconsistent with concurring resolutions rejected and remanded for clarification (88: January 13, Lincoln Park Borough Bd. of Ed., approved on remand 88: November 18))
- Settlement must specify amounts to be restored to each line item and impact on tax levy (85: January 9, Lakewood) (St. Bd. 88:2437, Asbury Park, rejecting settlement of matter below at 87:2226)
- Settlement rejected and remanded; specific terms not contained in the record. (89: October 23, Middletown)
- Settlement rejected; unclear regarding amount of local tax levy after restoration (89:March 8, Union) (89:March 15, Fairview)
- "Significant aggregate reduction"; reducing \$7.6 million budget by \$282,000 meets the test of East Brunswick, 48 N.J. 94, 105-06 (1966), and requires governing body to state reasons for reduction (87: October 14, Middlesex)
- Standing of teachers and other persons to appeal budget (74:40) (74:348) (74:351 aff'd St. Bd. 74:356) (89: December 1, Salem, aff'd St. Bd. w/opinion 90: April 4)
- Standing, none for individual to appeal defeated budget (77: 288, Colozzi)
- Standing - None for teachers, parents, taxpayers or Teachers Association to appeal budget (74:40) (74:348) (74:351, aff'd St. Bd. 74:356) (77:288, Colozzi) (88: November 23, Woodbine)
- Stay Denied (88:2483, Irvington St. Bd.)
- Supervisory positions; creation of justified because of state teacher evaluation rules (80: December 22, Jackson)

BUDGETS - continued

Generally - continued

Surplus

- Adequate surplus precludes otherwise deserved restoration of several current expense items (83: November 17, Barnegat Township)
- Budgeted surplus line item to meet unforeseen contingencies may be restored by Commissioner (71:113) (71:325) (73:589) (74:116) (76:92, New Brunswick) (76:101, Willingboro) (76:237, Marlboro) (76:374, Oxford)
- Budget surplus line item will not be restored if excessive (76:27, Lakewood) (76:49, Manalapan Englishtown Reg.) (76:290, East Orange) (77:157, Sterling Reg.) (77:228, Perth Amboy) (77:293, New Brunswick)
- Normal circumstances may cause surplus to be created in various line item accounts and prudent practice is to accumulate these sums in a single unappropriated balance, however, board should not deliberately pad accounts in order to create surplus (83: January 24, South River, on remand 83: April 6)
- Right of board to maintain reasonable surplus to meet unforeseen contingencies, Fair Lawn Bd. of Ed. v. Fair Lawn, 143 N.J. Super. 250 (Law Div. 1976) (77:157, Sterling Reg.) (77:228, Perth Amboy) (77:293, New Brunswick) (78:37, Nutley) (78:261, Belleville) (78:346, Bloomfield) (78:462, Gloucester) (79:30, Scotch Plains aff'd St. Bd. 79: March 22) (79: November 28, Bergenfield, unpublished opinion) (79: December 17, Black Horse Pike Regional, unpublished opinion) (81: October 26, Branchburg, aff'd St. Bd. 82: June 2, aff'd in part, remanded in part, 187 N.J. Super. 540 (App. Div. 1983)) (81: November 30, City of Orange) (82: December 29, Leonia) (83: December 8, Bd. of Ed. of Twp. of Weymouth) (84: December 3, Saddle Brook) (87: December 2, Perth Amboy) (89: December 19, Bound Brook)
- Surplus was adequate to absorb entire reduction; entire reduction upheld (89: March 21, Green Brook)
- Three percent surplus for unforeseen contingencies is not unreasonable, citing N.J.A.C. 6:20-2.14 as persuasive. (87: December 2, Perth Amboy)

BUDGETS - continued

Generally - continued

Surplus - continued

Unappropriated free balance from previous year, if excessive, must first be applied to restore cuts made by governing body (67:155) (67:233) (70:285) (71:325) (71:329) (71:352) (71:357) (71:372) (71:444) (72:93) (72:523) (72:530) (72:645) (73:231) (73:648) (74:59) (74:138) (74:609) (74:1114) (76:39, Perth Amboy) (76:49, Manalapan-Englishtown Req.) (76:1055, South Amboy) (77:114, Island Heights) (77:157, Sterling Req.) (77:248, Hamilton Tp.) (77:293, New Brunswick) (77:332, Princeton Req.) (78:37, Nutley) (78:122, Ocean) (78:462, Gloucester)

Unappropriated free balance; governing body may not order reduction to reduce local tax levy (81: January 26, Bridgeton, aff'd St. Bd. 81: June 3) (81: October 26, Branchburg, aff'd St. Bd. 82: June 2, aff'd in part, remanded in part, 187 N.J. Super. 540 (App. Div. 1983)) (83: March 16, Leonia) (83: December 8, Bd. of Ed. of Twp. of Weymouth)

Underprivileged children, program cuts restored (80: December 22, Lawrence)

Voter rejection forces some austerity on board (80: October 6, Riverdale)

Tie Vote, budget fails (77:607, Union Beach)

Time for governing body to certify amounts (68:128) (71:376)

Voter sentiments may not be considered by governing body; action of ad hoc committee of citizens, which reviewed defeated budget and recommended cuts without consulting with the board, violated N.J.S.A. 18A:22-37 (83: January 13, Jackson)

Voter sentiments, may not be considered by governing body; decision must be independently based on educational considerations (70:70 aff'd St. Bd. 70:75) (71:113) (78:261, Belleville) (79: February 21, Keansburg dismissed St. Bd. 79: May 2, unpublished opinion) (79: November 28, Bergenfield, unpublished opinion) (79: November 28, Roselle Park, unpublished opinion) (79: December 27, Woodbine, unpublished opinion) (80:457, Sussex County Vocational, aff'd St. Bd. 80: July 2) (80: May 12, Pompton Lakes) (86: October 31, Lakehurst)

Deficit

Supplemental tax certification ordered to eliminate deficit; but voter rejection of supplemental appropriation gives city a right to hearing before Commissioner on size of deficit (86:

April 3, Garfield) (87: June 2, East Newark) (89: May 18  
Union City)

**BUDGETS - continued**

Line items

Municipality's failure to specify reasons for cuts at time made results in summary judgment for board; statement of reasons at the time of appeal will not be considered (86: November 20, South River) (87:2226, Asbury Park, settled on appeal but settlement rejected and matter remanded St. Bd. 88:2437) (87: November 17, Farmingdale) But see, (87:966, Deptford, aff'd St. Bd. 87:974, rev'd and rem'd 225 N.J. Super. 76 (App. Div. 1988) remanded St. Bd. 89:3000, certif. granted 113 N.J. 333 (1989) modified, affirmed and rem'd 116 N.J. 305 (1989)

Monitoring considerations

Funds deemed necessary for a school district to complete remedial corrective plan pursuant to Level II monitoring, must be provided unless a specific showing is made otherwise. (87:2379, Paterson) (on remand 88:1064, Paterson, aff'd St. Bd. 88:2511)

Level III report justifies extensive repair and maintenance expenditures (89: September 26, Union City)

**Specific line items**

Administrative staff positions (73:179) (73:710) aff'd St. Bd. 74:1407) (74:913) (74:1216 appeal dismissed 75:1151) (78:34, Verona) (78:177, Plainfield) (78:346, Bloomfield) (78:462, Gloucester) (78:940, Belleville) (79: January 29, Green Twp., unpublished opinion) (79: February 1, Elmwood Park, unpublished opinion) (79: November 28, Bergenfield, unpublished opinion) (79: November 28, Roselle Park, unpublished opinion) (79: December 17, Black Horse Pike Regional, unpublished opinion) (79: December 26, Lower Township, unpublished opinion) (80: October 6, Hillsborough) (80: December 8, Weymouth) (80: December 22, Lawrence) (80: December 22, Jackson) (80: December 22, Gloucester) (80: November 24, Bridgeton, modified on remand 81: January 26, aff'd St. Bd. 81: June 3) (81: May 11, South Orange) (81: December 7, Stafford) (82: February 9, Middletown) (86: March 27, Garfield) (89:62, Delaware Valley, aff'd and rev'd St. Bd. 89:81)

Administrative staff, required attendance at administrative convention (83: February 4, Board of Education Township of Greenwich)

Adult education; amounts restored since cuts would result in loss of state aid (89: September 26, Union City)

Anticipated revenue (79: November 28, Roselle Park, unpublished opinion)

Anticipated revenue on interest income (79: November 28,



Roselle Park, unpublished opinion) (80: December 15,  
Paramus)

**BUDGETS - continued**

**Specific line items - continued**

- Architect's fees (79:758, North Haledon) (81: October 23, North Haledon, aff'd St. Bd. 82: February 3) (81: December 21, Rochelle Park)
- Athletics and student programs (82: February 9, Middletown)
- Audit (79:758, North Haledon) (81: October 23, North Haledon, aff'd St. Bd. 82: February 3)
- Auditorium; necessary for thorough and efficient education (80:457, Sussex County Vocational, aff'd St. Bd. 80: July 2)
- Banking fees (79: November 28, Bergenfield, unpublished opinion)
- Board expense for members, attendance at national and state conventions, restored in full (83: November 17, Barneгат Township)
- Board members (79: November 28, Roselle Park, unpublished opinion) (81: December 21, Rochelle Park)
- Bus replacement, governing body cut sustained (73:438)
- Cafeteria program, surplus in this account should be reduced by cutting lunch prices (74:1292)
- Capital outlay monies, e.g., (67:227) (73:710 (76:49, Manalapan-Englishtown Reg.) (76:101, Willingboro) (76:84, East Brunswick) (76:136, Plainfield) (76:237, Marlboro) (76:259, Oradell) (76:300, Totowa) (76:381, Maywood dismissed St. Bd. 76:388) (77:248, Hamilton Tp.) (77:288, Colozzi) (77:493, Hoboken) (83: January 5, Zippar) (84: January 12, Southern Regional, aff'd St. Bd. 84: July 11) (84: January 30, Matawan-Aberdeen) (84: February 6, Bd. of Ed. of City of Asbury Park) (89:May 1, Lacey)
- Child study team (79: December 27, Woodbine, unpublished opinion) (81: December 7, Stafford)
- Clerical positions and salaries, (79: December 26, Lower Township, unpublished opinion) (83: January 5, Upper Township)
- Community services (81: October 23, North Haledon, aff'd St. Bd. 82: February 3)
- Computer (82: February 9, Middletown)
- Conferences (79:758, North Haledon) (81: October 23, North Haledon, aff'd St. Bd. 82: February 3)
- Consultant service (82: February 9, Middletown)
- Contracted services (81: December 17, Highlands)
- Contracted services and equipment (81: October 23, North Haledon, aff'd St. Bd. 82: February 3) (83: January 24, South River, on remand 83: April 6)

**BUDGETS - continued**

**Specific line items - continued**

Custodians (79: November 28, Roselle Park, unpublished opinion) (79: November 28, Bergenfield, unpublished opinion) (79: December 26, Lower Township, unpublished opinion) (80: December 8, Weymouth) (80: December 22, Jackson) (80: December 26, Gloucester) (81: December 7, Stafford) (83: January 24, South River, on remand 83: April 6) (86: March 27, Garfield)

Curriculum development (82: February 9, Middletown) (81: December 21, Rochelle Park) (82: January 25, Kingsway Regional)

Deficits incurred in previous years (72:542) (73:438) (74:236) (74:351 aff'd St. Bd. 74:356) (75:858, Union Beach Bd. of Ed. remanded St. Bd. 76:577, on remand 76:577 aff'd St. Bd. 76:577)

Deficit spending not permitted (77:372, Garfield) (77: 564, South Orange-Maplewood)

Drayage and freight (79: December 26, Lower Township, unpublished opinion)

Driver education, part of a thorough and efficient education, (79: November 28, Roselle Park, unpublished opinion); but see (79: December 17, Black Horse Pike Regional, unpublished opinion)

Elementary supervisors (82: February 9, Middletown)

Equipment (78:177, Plainfield) (78:462, Gloucester) (78:492, Keansburg) (79: February 21, North Plainfield, unpublished opinion) (79: November 28, Roselle Park, unpublished opinion) (79: December 27, Woodbine, unpublished opinion) (80: October 6, Riverdale) (80: October 6, Hillsborough) (80: December 30, Franklin) (80: November 24, Bridgeton, modified on remand 81: January 26, aff'd St. Bd. 81: June 3) (82: February 9, Middletown) (81: December 17, Highlands) (81: December 21, Rochelle Park)

Equipment replacement deferred (74:77)

Expenses (80: October 6, Riverdale) (81: May 11, South Orange)

Federal aid anticipated (73:623)

Fire detection monies for equipment mandated by St. Bd. restored by Commissioner (68:144)

Fixed charges (79:758, North Haledon)

Fuel costs (80: October 6, Riverdale) (80: December 15, Paramus) (81: May 11, South Orange) (83: January 24, South River, on remand 83: April 6)

Grounds, cars and upkeep of (80: December 22, Gloucester)

Guidance counselor, new position approved (74:116)

Guidance personnel (79: November 28, Bergenfield, unpublished

opinion) (81: May 11, South Orange) (82: January 25,  
Kingsway Regional) (86: March 27, Garfield)

**BUDGETS - continued**

**Specific line items - continued**

- Handicapped pupil tuition monies restored (74:43) (85: November 8, Barnegat) (89: December 19, Bound Brook)
- Health supplies (80: October 6, Riverdale) (89: December 19, Bound Brook)
- Home instruction (79: November 28, Bergenfield, unpublished opinion)
- Hospitalization insurance premiums agreed to by board cannot be deleted by governing body, Cliffside Park Bd. of Ed. v. Mayor and Council of Cliffside Park, 100 N.J. Super. 490 (App. Div. 1968) (C. dec. 67:117, St. Bd. 68:257) (77:45, Trenton) (77:332, Princeton Reg.)
- Industrial arts program, necessary for thorough and efficient education (80: October 9, Roosevelt)
- Inservice training, cuts restored (76:252, South Plainfield)
- Instructional equipment (79: December 26, Lower Township, unpublished opinion) (80: October 6, Riverdale)
- Insurance (78:335, East Orange) (78:346, Bloomfield) (78:405, Garfield) (78:462, Gloucester) (79: February 21, North Plainfield, unpublished opinion) (79: March 1, Rahway, unpublished opinion) (79:30, Scotch Plains aff'd St. Bd. 79: March 22) (80: December 22, Gloucester) (81: October 23, North Haledon, aff'd St. Bd. 82: February 3) (81: November 30, City of Orange) (81: December 17, Highlands) (82: January 25, Kingsway Regional) (89: December 19, Bound Brook)
- Investment programs (76:679, Clark), see also, Fair Lawn of Ed. v. Fair Lawn, 143 N.J. Super. 259 (Law Div. 1976)
- Inservice training, cuts sustained (72:370)
- Items required by law cannot be reduced by governing body (67:129) (67:142)
- Legal expenses, disallowed, probability of reactivation of litigation not established (80: October 10, Deal)
- Legal expenses, item restored (74:1216 appeal dismissed St. Bd. 75:1151) (76:126, North Arlington) (76:156, South Amboy) (76:259, Oradell) (79: February 21, Keansburg dismissed St. Bd. 79: May 2, unpublished opinion) (79:758, North Haledon) (80: December 26, Gloucester)
- Legal expenses; potential judgments - reduction upheld (89: September 25, Union City)
- Librarian (81: October 23, Lower Alloways Creek)
- Librarian, proposal to reduce to part-time rejected (80: October 10, Deal)
- Library books (79: December 26, Lower Township, unpublished opinion) (80: November 24, Bridgeton modified on remand 81:

January 26, aff'd St. Bd. 81: June 3)  
Lunch program (77:114, Island Heights) (81: December  
21, Rochelle Park)

**BUDGETS** - continued

**Specific line items** - continued

Maintenance and repair expenses (72:370) (73:179)  
(73:710 aff'd App. Div. 74:1407) (74:43) (74:77) (74:236)  
(74:1321) (76:136, Plainfield) (76:156, South Amboy)  
(76:300, Totowa) (77:349, Sparta) (78:346, Bloomfield)  
(78:462, Gloucester) (78:492, Keansburg) (78:940,  
Belleville) (79: January 29, Green Twp., unpublished  
opinion) (79:February 21, North Plainfield, unpublished  
opinion) (79: March 1, Rahway, unpublished opinion) (79:  
November 28, Roselle Park, unpublished opinion) (79:758,  
North Haledon) (79: December 26, Lower Township,  
unpublished opinion) (79: December 27, Woodbine,  
unpublished opinion) (80: November 24, Bridgeton modified  
on remand 81: January 26, aff'd St. Bd. 81: June 3) (89:  
September 25, Union City)

Miscellaneous (79: November 28, Roselle Park, unpublished  
opinion) (79: December 17, Black Horse Pike Regional,  
unpublished opinion) (79:758, North Haledon) (79: December  
26, Lower Township, unpublished opinion) (81: December 7,  
Stafford)

Negotiations and arbitration expenses (80: November 24,  
Bridgeton, modified on remand 81: January 26, aff'd St. Bd.  
81: June 3) (81: December 21, Rochelle Park)

Nurse, full-time position restored (74:104)

Nurses' salaries (80: December 22, Gloucester) (81:  
December 21, Rochelle Park)

Office expenses (79: November 28, Roselle Park, unpublished  
opinion) (80: December 22, Gloucester) (81: October 23,  
North Haledon, aff'd St. Bd. 82: February 3)

Pensions (79: November 28, Roselle Park, unpublished opinion)  
(81: December 17, Highlands)

Plant operation and maintenance (81: December 7, Stafford)

Principals' supplies (80: November 24, Bridgeton, modified  
on remand 81: January 26, aff'd St. Bd. 81: June 3)

Printing (79:758, North Haledon) (80:825, Gloucester)  
(83: January 5, Upper Township)

Projection room; necessary for a thorough and efficient  
education (80:457, Sussex County Vocational, aff'd St. Bd.  
80: July 2)

Public relations consultant (79: November 28, Bergenfield,  
unpublished opinion)

Pupil enrollments

Differences between board and governing body projections  
(71:267) (73:623)

Effect of increase in enrollment (71:409) (71:471)

Reimbursement for pupils from other districts placed in group  
homes in the district (80: September 22, Orange)

**BUDGETS - continued**

**Specific line items - continued**

Repair of buildings (79: November 28, Roselle Park, unpublished opinion) (80: October 6, Riverdale) (80: October 6, Hillsborough) (80: December 8, Garfield, aff'd St. Bd. 81: May 6) (80: December 22, Gloucester) (80: December 30, Franklin) (81: December 21, Rochelle Park) (82: January 25, Kingsway Regional) (89: December 19, Bound Brook)

Replacement of equipment (79:758, North Haledon) (80: November 24, Bridgeton modified on remand 81: January 26, aff'd St. Bd. 81: June 3) (80: December 26, Gloucester) (81: December 7, Stafford) (81: December 21, Rochelle Park)

Research (80: December 22, Gloucester)

Revenues

Boards anticipation of federal funds held too conservative (73:623)

Governing body's anticipation of funds held unrealistic (74:236)

Interest income (89: December 19, Bound Brook)

Salaries in general (83: January 24, South River, on remand 83: April 6)

Salary schedule; budget must provide funding for salary schedules previously adopted by board, Newark Teachers Assn. v. Newark Bd. of Ed., 57 N.J. 100 (1970); N.J.S.A. 18A:29-4.1; (68:168) (71:347) (71:471) (72:93) (72:592) (73:589) (74:43) (74:132) (74:712) (76:18, Weehawken aff'd St. Bd. 76:26) (76:92, New Brunswick) (76:300, Totowa) (76:679, Clark) (76:1055, South Amboy) (77:45, Trenton) (77:332, Princeton Reg.) (77:398, Howell) (78:940, Belleville) (79: February 21, Keansburg dismissed St. Bd. 79: May 2, unpublished opinion) (79:30, Scotch Plains aff'd St. Bd. 79: March 22) (79:575, Fort Lee)

Generally (79: November 28, Roselle Park, unpublished opinion)

School elections (79: December 26, Lower Township, unpublished opinion) (79:758, North Haledon) (80: October 6, Riverdale)

School programs (79:758, North Haledon)

Secretarial staff (79: November 28, Bergenfield, unpublished opinion) (80: October 6, Riverdale) (80: October 6, Spotswood) (80: October 10, Deal) (81: May 11, South Orange)

Sick leave (79: November 28, Bergenfield, unpublished opinion)

Social security (79: November 28, Roselle Park, unpublished opinion) (81: October 23, North Haledon, aff'd St. Bd. 82:



February 3)

**BUDGETS - continued**

**Specific line items - continued**

Staffing, number of teaching positions

New positions eliminated (81: November 30, City of Orange)

New school (72:370)

Position eliminated (79: November 28, Roselle Park, unpublished opinion)

Positions restored in full (73:438) (73:589) (74:104)

(76:92, New Brunswick) (77:372, Garfield) (83:

February 4, Board of Education, Township of Greenwich)

(83: November 17, Barneget Township)

Positions restored in part (71:421) (72:370) (72:530)

(72:542) (73:179) (73:623) (74:153) (74:1087) (74:1216)

(74:1292) (74:1216 appeal dismissed St. Bd. 75:1151)

(77:251, Asbury Park) (77:323, Roselle) (77:564, South

Orange-Maplewood) (78:34, Verona) (78:177, Plainfield)

(78:170, Lower Cape May) (78:335, East Orange) (78:346,

Bloomfield) (78:405, Garfield) (78:462, Gloucester)

(78:492, Keansburg) (78:940, Belleville) (79: January

29, Green Twp., unpublished opinion) (79: February 21,

Keansburg dismissed St. Bd. 79: May 2, unpublished

opinion) (79: March 1, Rahway, unpublished opinion)

(80: October 6, Riverdale) (80: October 6,

Hillsborough) (80: October 10, Deal) (80: December

22, Jackson) (81: October 17, Glen Gardner)

Stipends (80: November 24, Bridgeton, modified on remand 81:

January 26, aff'd St. Bd. 81: June 3)

Student activities (81: October 23, North Haledon, aff'd St.

Bd. 82: February 3) (89: February 6, Delaware Valley)

Substitute teachers (80: October 6, Spotswood) (81:

October 26, Branchburg, aff'd St. Bd. 82: June 2, aff'd in

part, remanded in part, 187 N.J. Super. 540 (App. Div.

1983))

Supplies (76:49, Manalapan-Englishtown Reg.) (76:39

Perth Amboy) (76:18, Weehawken aff'd St. Bd. 76:26) (76:101,

Willingboro) (76:84, East Brunswick) (76:126, North

Arlington) (76:136, Plainfield) (76:156, South Amboy)

(76:237, Marlboro) (76:252, South Plainfield) (76:416, East

Windsor Reg. reconsidered and modified 77:105) (77:248,

Hamilton Tp.) (77:349, Sparta) (78:335, East Orange)

(78:492, Keansburg) (78:940, Belleville) (79: February 21,

Keansburg dismissed St. Bd. 79: May 2, unpublished opinion)

(79: November 28, Roselle Park, unpublished opinion)

(79:758, North Haledon) (79: December 26, Lower Township,

unpublished opinion) (80: December 22, Gloucester) (81:

November 30, City of Orange) (81: December 7, Stafford)

(82: February 9, Middletown) (89: December 19, Bound Brook)

**BUDGETS - continued**

**Specific line items - continued**

- Surplus (79: November 28, Bergenfield, unpublished opinion)  
(79: December 17, Black Horse Pike Regional, unpublished  
opinion) (81: October 26, Branchburg, aff'd St. Bd. 82:  
June 2, aff'd in part, remanded in part, 187 N.J. Super. 540  
(App. Div. 1983)) (82: December 29, Leonia) (87: December  
2, Perth Amboy) (89: February 6, Delaware Valley)
- Swimming pool; necessary for thorough and efficient education  
(80: January 11, Sussex County Vocational, aff'd St. Bd.  
80: July 2)
- Teacher aides, (80: October 6, Spotswood) (81: May 11, South  
Orange) (81: December 21, Rochelle Park)
- Teachers - English as second language - needed despite declining  
enrollment because of increase in foreign students (81: May  
11, South Orange)
- Teachers salaries (79:758, North Haledon) (79: December 26,  
Lower Township, unpublished opinion) (79: December 27,  
Woodbine, unpublished opinion) (80: October 6, Riverdale)  
(80: December 8, Weymouth) (80: December 22, Lawrence)  
(80: December 22, Jackson) (80: December 22, Gloucester)  
(81: May 11, South Orange) (81: October 17, Glen Gardner)  
(81: November 30, City of Orange) (82: February 9,  
Middletown) (89: February 6, Delaware Valley)
- Teachers salaries: governing body's cut of 4/5th of budget is  
arbitrary absent specification of what programs will be  
affected or eliminated (81: May 11, South Orange)
- Textbooks (82: February 9, Middletown)
- Transfer of current expense to capital outlay ordered despite  
voter defeat (89: December 19, Bound Brook)
- Transportation (69:78) (70:245) (72:542) (74:43) (78:940,  
Belleville) (79: January 29, Green Twp., unpublished  
opinion) (79: February 1, Elmwood Park, unpublished  
opinion) (79: November 28, Roselle Park, unpublished  
opinion) (79:758, North Haledon) (79: December 26, Lower  
Township, unpublished opinion) (80: October 6,  
Hillsborough) (80: November 24, Bridgeton modified on  
remand 81: January 26, aff'd St. Bd. 81: June 3) (80:  
December 8, Weymouth) (80: December 22, Gloucester) (81:  
December 21, Rochelle Park) (82: December 29, Leonia) (83:  
January 24, South River, on remand 83: April 6) (82:  
December 3, Fredon)
- Transportation aid is forthcoming 2 years after purchase and  
was improperly earmarked to affect new bus purchase (89:  
December 19, Bound Brook)
- Travel expenses (79: December 26, Lower Township, unpublished

opinion) (80: December 15, Paramus) (82: February 9,  
Middletown)

**BUDGETS - continued**

**Specific line items - continued**

Tuition (74:43) (74:236) (74:1216 appeal dismissed St. Bd. 75:1151) (75:858, Union Beach Bd. of Ed. remanded St. Bd. 76:577, on remand 76:577 aff'd St. Bd. 76:577) (76:156, South Amboy)

Unemployment compensation trust fund (81: October 23, North Haledon)

Utilities (78:405, Garfield) (78:462, Gloucester) (78:492, Keansburg) (78:940, Belleville) (79:30, Scotch Plains aff'd St. Bd. 79: March 22) (79: November 28, Roselle Park, unpublished opinion) (79:758, North Haledon) (80: October 6, Riverdale) (81: October 26, Branchburg, aff'd St. Bd. 82: June 2, aff'd in part, remanded in part, 198 N.J. Super. 540 (App. Div. 1983)) (81: December 21, Rochelle Park)

**Summary of cases**

Cuts upheld (67:112) (67:122) (67:136) (67:151) (67:155) (67:159) (67:186) (67:227) (67:233) (69:101) (71:444) (72:523) (72:645) (73:648) (74:59) (76:27, Lakewood) (76:39, Perth Amboy) (77:36, Pine Hill) (77:114, Island Heights) (78:122, Ocean) (78:261, Belleville) (78: March 17, Matawan) (83: January 5, Upper Township) (89: March 21, Green Brook)

**Cuts restored in part** (67:142) (67:172) (67:221) (68:135) (68:139) (68:235) (69:108) (69:137) (69:146 aff'd St. Bd. 70:462) (70:1 aff'd St. Bd. 70:18 aff'd App. Div. 71:687) (70:40) (70:47) (70:61) (70:180) (70:227) (70:242) (70:245) (70:257) (70:263) (70:273) (70:299) (70:367 aff'd App. Div. 71:686) (71:76) (71:113) (71:166) (71:267) (71:273) (71:325) (71:329) (71:347) (71:352) (71:357) (71:372) (71:376) (71:409) (71:421) (71:464) (71:471) (71:559) (71:608 aff'd St. Bd. 72:683) (71:618) (72:93) (72:370) (72:514) (72:530) (72:542) (72:592) (72:653) (73:146) (73:179) (73:231) (73:438) (73:589) (73:623) (73:689) (73:710 aff'd St. Bd. 74:1407) (74:43) (74:70) (74:77) (74:104) (74:116) (74:138) (74:153) (74:236) (74:402) (74:712) (74:913) (74:1087) (74:1216 appeal dismissed St. Bd. 75:1151) (74:1248 aff'd St. Bd. 75:1084) (74:1292) (74:1321) (75:28, Howell Bd. of Ed.) (75:36, New Brunswick Bd. of Ed.) (75:72, Pascack Valley Req. Bd. of Ed.) (75:144, Madison Bd. of Ed.) (75:820, Boonton Bd. of Ed.) (75:793, Wayne Bd. of Ed. stay denied 76:1171 aff'd St. Bd. 76:1172) (75:903, West Milford Bd. of Ed. stay denied 76:1172 aff'd St. Bd. 76:1172) (75:990, Bass River Bd. of Ed.) (75:921, Hazlet Bd. of Ed.) (75:966, Rahway Bd. of Ed.) (75:1045,

BUDGETS - continued

Summary of cases - continued

Cuts restored in part - continued

Berlin Bd. of Ed.) (75:858, Union Beach Bd. of Ed. remanded St. Bd. 76:577, on remand 76:577 aff'd St. Bd. 76:577) (76:49, Manalapan-Englishtown Req.) (81: December 21, Rochelle Park) (76:18, Weehawken aff'd St. Bd. 76:26) (76:92, New Brunswick) (76:101, Willingboro) (76:84, East Brunswick) (76:126, North Arlington) (76:136, Plainfield) (76:148, Asbury Park stay denied 76: April 7 aff'd St. Bd. 76:155) (76:156, South Amboy) (76:237, Marlboro) (76:259, Oradell) (76:252, South Plainfield) (76:290, East Orange) (76:300, Totowa) (76:416, East Windsor Req. reconsidered and modified 77:105) (76:381, Maywood dismissed St. Bd. 77:388) (76:679, Clark) (76:1073, Sea Girt) (77:45, Trenton) (77:110, Oakland dismissed St. Bd. 77: July 6) (77:131, Lodi) (77:251, Asbury Park) (77:281, Middletown) (77:293, New Brunswick) (77:323, Roselle) (77:332, Princeton Req.) (77:349, Sparta) (77:372, Garfield) (77:398, Howell) (77:428, Fairfield) (77:437, Farmingdale) (77:445, Passaic) (77:493, Hoboken) (77:564, South Orange-Maplewood) (78:34, Verona) (78:37, Nutley) (78:177, Plainfield) (78:170, Lower Cape May) (78:304, Upper Freehold) (78:335, East Orange) (78:346, Bloomfield) (78:405, Garfield) (78:462, Gloucester) (78:492, Keansburg) (78:940, Belleville) (79: January 29, Green Twp., unpublished opinion) (79: February 1, Elmwood Park, unpublished opinion) (79: February 21, North Plainfield, unpublished opinion) (79: February 21, Keansburg, dismissed St. Bd. 79: May 2, unpublished opinion) (79: March 1, Rahway, unpublished opinion) (79:30, Scotch Plains, aff'd St. Bd. 79: March 22) (79: November 28, Bergenfield, unpublished opinion) (79: November 28, Roselle Park, unpublished opinion) (79: December 13, Garfield, aff'd St. Bd. 80: May 7, unpublished opinion) (79: December 17, Black Horse Pike Regional, unpublished opinion) (79:758, North Haledon) (79: December 26, Lower Township, unpublished opinion) (79: December 27, Woodbine, unpublished opinion) (80: January 11, Sussex County Vocational, aff'd St. Bd. 80: July 2) (80: October 6, Riverdale) (80: October 6, Spotswood) (80: October 6, Hillsborough) (80: October 10, Deal) (80: November 24, Bridgeton, modified on remand 81: January 26, aff'd St. Bd. 81: June 3) (80: December 22, Jackson) (80: December 22, Lawrence) (80: December 30, Franklin) (81: May 11, South Orange) (81: October 17, Glen Gardner) (81: October 23, North Haledon, aff'd St. Bd. 82: February 3) (81: October

23, Lower Alloways Creek) (81: October 26, Branchburg,  
aff'd St. Bd. 82: June 2, aff'd in part, remanded in part,  
187 N.J. Super. 540 (App. Div. 1983)) (81: December 7,

**BUDGETS - continued**

**Summary of cases - continued**

**Cuts restored in part - continued**

Stafford) (82: January 18, Paterson, aff'd St. Bd. 82: May  
5) (82: February 9, Middletown) (82: December 3, Fredon)  
(83: January 5, Upper Township) (83: January 24, South  
River, on remand 83: April 6) (83: September 16, Asbury  
Park) (83: November 7, Brooklawn) (84: January 12,  
Southern Regional, aff'd St. Bd. 84: July 11) (84:  
February 6, Bd. of Ed. of Borough of Sayreville) (84:  
February 21, Bd. of Ed. of Borough of Bergenfield, aff'd St.  
Bd. 84: September 5) (86: March 27, Garfield) (87:  
December 21, Neptune) (87:2379, Paterson, aff'd St. Bd.  
88:2511, decision on remand 88:1064) (88: June 10, Lacey  
Twp.) (89: February 6, Delaware Valley) (89: September 26,  
Union City)

Cuts restored in full (70:70) (70:105) (70:197) (71:368)  
(74:64) (74:351 aff'd St. Bd. 74:356) (75:536, Oxford Bd. of  
Ed. rehearing 76:374) (75:731, Hoboken Bd. of Ed.) (75:1039,  
Pt. Pleasant) (75:536, Oxford rehearing 76:374) (76:315,  
Orange) (76:1055, South Amboy) (77:118, Lawnside) (77:305,  
Ewing) (78:801, East Newark) (79:575, Fort Lee) (79:  
November 28, Audubon, unpublished opinion) (80: March 21,  
Henry Hudson Regional) (80: May 12, Pompton Lakes) (80:  
October 9, Roosevelt) (80: October 20, Bordentown, aff'd  
St. Bd. 81: May 6) (80: December 8, Garfield, aff'd St.  
Bd. 81: May 6) reconciliation of total amount restored with  
specific line item restorations on remand (81: February 10,  
Garfield, aff'd St. Bd. 81: May 6) (81: July 9, Union  
Township) (81: October 26, Branchburg, aff'd St. Bd. 82:  
June 2, aff'd in part, remanded in part, 187 N.J. Super. 540  
(App. Div. 1983)) (81: November 17, Union Beach) (81:  
November 30, City of Orange) (81: December 1, Keansburg)  
(82: January 18, Paterson) (83: January 13, Jackson) (83:  
March 7, Manville) (83: October 31, Bd. of Ed. of Borough  
of Folsom) (84: January 30, Matawan-Aberdeen) (84:  
February 6, Bd. of Ed. of City of Asbury Park) (87:  
December 29, East Orange) (87:1956, Woodbridge, aff'd St.  
Bd. 88:2535) (87:2226, Asbury Park, settled on appeal but  
settlement rejected and matter remanded St. Bd. 88:2437)  
(89: March 15, Morris Hills) (89: December 19, Bound  
Brook)



## **BUILDINGS**

(See "Schools and buildings," this index)

## **BUS DRIVERS**

(Criminal history check required by statute prior to here).  
Bus drivers hired by board not entitled to pre-termination hearing  
(78:858, Fahnestock) (80: February 25, Brown)  
Defense of qualified municipal immunity available to school bus  
driver, Rivera v. Gerner, 89 N.J. 526 (1982)  
Dismissal for drunkenness upheld (80: April 11, Marshall)  
Non-renewal upheld, found not to be based on retaliation for union  
activity (85: July 8, D'Amato)  
Suspension for violating board policy upheld (86: February 6,  
Hemple)

## **BUSINESS MANAGER AND SCHOOL BUSINESS ADMINISTRATOR**

(See also "Tenure - Acquisition of," this index)  
Abolishment of business administrator, approval of Commissioner  
required (74:1280) (88:2256, Shenekji, aff'd St. Bd. 89:3078)  
Certificate  
Requirement of bachelor's degree for certification under  
N.J.A.C. 6:3-3.11 is applicable to the position of school  
business administrator (87: January 16, Nolan)  
Waiver of courses may be appropriate based on work  
experience (75:951, Stoolmacher)  
Certification required for tenure (81: May 4, Taylor)  
Creation of new position of school business administrator,  
approval required (72:179) (75:58, Barber aff'd App. Div.  
76:1105)  
Dismissal of (53-54:53 aff'd St. Bd. 53-54:66 aff'd App. Div.  
54-55:123) (62:122 aff'd St. Bd. 63:240 aff'd App. Div. 65:177)  
(74:525)  
Refusal of business manager to testify before grand jury  
grounds for dismissal, Hyland v. Smollok, 137 N.J. Super. 456  
(App. Div. 1975)  
Suspension without pay upheld pending disposition of indictment  
for malfeasance in office, Romanowski v. Jersey City Bd. of Ed.,  
89 N.J. Super. 38 (App. Div. 1965)  
Tenure; no tenure for part-time business administrator (81: May 4,  
Taylor)

Vacancy in school business administrator position must be filled  
(74:1280)