

CALENDAR

Adoption of school calendar

Board's authority (71:246) (74:193, aff'd St. Bd. 74:207)
(74:276) (74:387, aff'd St. Bd. 74:395) (74:582) (77:1057,
Freehold Reg. H.S. Ed. Assoc.)

Negotiability of

(See "Collective Negotiations - Scope of Negotiations",
this index)

Statutory holidays

(See "Public Holidays", this index)

Alteration of

Energy crisis, statutory interpretation of L.1974, c. 11
(74:387) (74:582) (74:625) (74:627) (74:629)

Following illegal strike by employees (73:441, aff'd St. Bd.
74:1391, aff'd App. Div. 74:1391, certif. denied 67 N.J. 99)
(74:276)

Following unlawful work stoppage by employees (79:215, Camden
Ed. Assn., aff'd St. Bd. 79:219)

Management prerogative (77:1057, Freehold Reg. H.S. Ed. Assoc.)

CALENDAR YEAR

Appropriations on basis on in Type I districts (73:12)

Definition (66:193)

CARPENTER

(See "Tenure - Acquisition of", this index)

CERTIFICATE

Administrative delay in issuance, no bar to accepting position

(80: October 17, Fulton, aff'd St. Bd. 81: February 4)

Administrative delay in issuance of bilingual certification, claim

for damages against State dismissed for lack of jurisdiction

(87: 2003, Gonzalez)

Alternate route; applicant ineligible to continue in program - not

employed in a State-approved school district, does not possess

valid provisional teaching certificate (89:2863, Todish, aff'd

St. Bd. 90:1816) See also (89: March 27, Todish, dismissed St.

Bd. 89: July 6)

Appeal of State Board of Examiners' decision to accept local board

(PST) recommendation denying certificate to alternate route

teacher dismissed without prejudice to refile properly drafted

appeal: proper procedure is to join local board since it, and

not Board of Examiners, made underlying recommendation (87:1803, Griskey, rev'd St. Bd. 88: August 3)

CERTIFICATE - continued

- Board action ultra vires. Emergency certification together with experience as a guidance counsellor does not make a board's appointment proper where properly certified candidates for the available position could have been appointed (87:1652, Rumson-Fair Haven)
- Board may establish greater certification requirements than are required by law to be considered for employment, however, the additional requirements may not be used to defeat seniority rights (77:1040, Van Os) (87:2724, South River, St. Bd. rev'g 85: September 9)
- Board must require supervisory certificate in order for position to be eligible for tenure status (77:555, Wilson) (77:984, Van Houten)
- Certification required for a position is determined by duties performed, job title is irrelevant (83:1039, Teaneck)
- Elementary teachers may not teach courses which count toward the minimum high school graduation requirements N.J.A.C. 6:8-7.1(c) (87:706, Sontupe, aff'd St. Bd. 87:717, aff'd unpublished opinion App. Div. (Docket No. A-239-87T8 decided May 31, 1988))
- Eligibility for, and not actual possession, of the certificate held sufficient (75:12, Kane) (80: October 17, Fulton, aff'd St. Bd. 81: February 4)
- Eligibility for certificate at time of employment: Tenure and seniority calculated from that date (86:1, Nangle)
- Eligibility for certificate of Teacher of the Handicapped certificate not sufficient for tenure purposes (87:1963, Ledwitz, aff'd w/opinion St. Bd. 88:2497, aff'd App. Div. unreported op. (Dkt. No. A-2861-87T1, February 16, 1989))
- Equitable estoppel; doctrine did not prevent termination of uncertified guidance counselor with five years service where guidance counselor knew of deficiency in certification (83:1240, Hansen) (87:2338, Hughes, aff'd St. Bd. 88:2467, aff'd App. Div. unreported op. (Dkt. No. A-4558-87T1, June 20, 1989))
- Estoppel: Board not estopped from denying tenure even though teacher relied on administrator's comments in failing to obtain certification (89:1097, Jennings, St. Bd. rev'g 89:1085)
- Memo prohibiting elementary certified teachers from teaching secondary level remedial courses used to fulfill graduation requirements, procedurally challenged; matter dismissed with prejudice to declaratory ruling on interpretation of existing certification and graduation requirements (87: August 14, Cancellieri, aff'd

in part, remanded in part St. Bd. 88: December 1)
Most comprehensive certificate will be issued by State
(77:908, Gilbert, aff'd St. Bd. 77:913, decision on motion
St. Bd. 78:1017)
National Teacher Examination required for teaching certification
pursuant to N.J.A.C. 6:11-4.2 and 6:11-5.1 (87:1598, Nealy)

CERTIFICATE - continued

Nursery school certificate not required to teach four year olds in "pre-kindergarten" program (84: December 31, Lundy)

Prerequisite for appointment of teaching staff member and acquisition of tenure, Schultz v. St. Bd. of Ed., 132 N.J.L. 345 (E&A 1944); Shapiro v. Paterson Bd. of Ed., 3 N.J. Misc. 406 (Com. of Ed. 1924); (39-49:43) (39-49:46) (60-61:137) (73:57) (74:723) (75:562, Appel) (75:951, Stoolmacher) (76:113, Sydnor) (76:495, Jones, modified St. Bd. 78:1022) (77:1032, Jersey City Ed. Assoc.) (77:1125, North Bergen Fed. of Teachers) (77:1211, Della Santi)

Remand to State Board of Examiners ordered (89: October 4, Ruddy)

Reorganization of K-12 district to K-8 with 5-8 middle school, district may require new teachers to possess elementary certificates; tenured teachers with secondary certification who taught 7th and 8th grade in high school (7-12) have seniority rights to openings in middle school with "modified self-contained" format (83: June 8, Platukis, aff'd St. Bd. 84: February 1)

Responsibility for obtaining proper certificate primarily that of the teacher (88:757, Arnold and Pappas, aff'd St. Bd. 88:777, aff'd App. Div. unreported op. (Dkt. No. A-2417-88T5, October 30, 1989)) (89:2910, DeSurcy)

Revocation

Administrator's certificate, which was revoked due to false representations of petitioner, was void ab initio, otherwise petitioner would be able to benefit from his wrongdoing (83:1418, Fischbach, aff'd St. Bd. 84:1931) See also (80: April 15, Fischbach) (85:196, Fischbach, aff'd St. Bd. 87: 2608)

Decision of State Board of Examiners to revoke, following dismissal of teacher on tenure charges of unbecoming conduct, must be based on independent review of record and can include additional evidence (87: August 5, Ahern, St. Bd.) (87: August 5, Gwaley, St. Bd. rev'g 87: March 26) (86:668, Hamilton-Moore, aff'd St. Bd. 88: March 4)

Decision of State Board of Examiners to revoke, upheld by State Board (89: March 7, Lugara)

Decision of State Board of Examiners upheld by State Board (89: April 5, Cowan)

Voluntary relinquishment as part of settlement of tenure charges, Commissioner ordered record of matter forwarded to Board of Examiners for formal revocation of certificate (84: January 10, Fischer); Cf. (84: March 30, Lesch-Palmer)

Revocation proper (90: March 7, Lugara)

Revocation or suspension of, based on unprofessional conduct

(60-61:75) (66:201) (70:147) (81: June 10, Gundry)
Revocation rescinded (88: February 3, Pawlak, State Board rev'd and
remanded App. Div. unreported op. (Dkt. No. A-3298-87T7, July 7,
1989))

CERTIFICATE - continued

Seniority counted from date certificate issued (87:2156,
Pezzullo II)

Special education instructor, including a team teacher, must hold
teacher of the handicapped endorsement if, at times, he may be
solely responsible for classroom instruction and supervision
(83:1039, Teaneck)

Standing; media specialist has no standing to contest certification
by State Board of another teacher or specialist (82: May 3,
O'Hara, aff'd St. Bd. 82: September 8)

State Board remands to Board of Examiners for reinstatement of
certificate (St. Bd. 89: October 4, Pawlak)

Suspension

Based on breach of contractual notice clause

(79: April 30, Weithorn, aff'd St. Bd. 80: April 8,
unpublished opinion) (79: April 30, Leopold, unpublished
opinion) (79: November 2, Choplick, unpublished opinion)
(81: February 10, Kenney) (81: December 17, Rossetti) (82:
January 8, Culbert) (82: February 4, Wonski) (82: March 3,
Thermann) (82: March 5, Bibbo) (82: June 15, Bashaw) (82:
June 15, Coppola) (82: July 29, Rutherford) (83: January
24, Cohen) (83: November 21, Fox) (87: June 30, Horter)

Even if 60 day notice of resignation provision had not been
enforced in past board is not estopped from asserting the
provision absent discrimination (83: November 21, Fox)

Notice of resignation; (sixth grade teacher provided Board with
less than 60 days notice, suspension denied, had left
carefully made plans and offered to assist in transition)
(83:183, Burgess); (teacher personally prepared replacement
for transition, suspension denied for early resignation)
(84:810, Black Horse Pike Regional)

One year suspension N.J.S.A. 18A:26-10, 18A:28-8

(87:2016, Drake) (88:904, Zweig) (88: August 10,
Walsh)

Suspension of (77:1235, Verge) (86:2803, Acken, aff'd
St. Bd. 87:2513)

Suspension of, failure to answer petition (81: December 9,
McCabe) (88: October 7, Matthews)

Suspension ordered:

Failure to provide proper notice of resignation (83: July
15, Minnich) (88:904, Zweig)

Settlement of charge of unprofessional conduct partially disallowed by Commissioner as inconsistent with statutory definition (87: July 6, Barnowsky)
Three months rather than 1 year for failure to give 60 day notice; special circumstance (89:1962, Rogers)
Timeliness of petition; board filed more than 90 days after resignation, petition dismissed (86:606, Rehm)
Voluntary suspension of certificate as part of stipulation of settlement between board and teacher held improper, only the Commissioner or State Board of Examiners may suspend a certificate (84: March 30, Lesch-Palmer)

CERTIFICATE - continued

Suspension - continued

Where Commissioner issues Order to Show Cause at Board's request and such cannot be served, application for suspension granted (83:183, Burgess)

Teacher certified as teacher of English and as Reading Specialist eligible for appointment as teacher of reading in compensatory education program (84:2018, Schmidt v. Bd. of Ed. of Weehawken, App. Div. (Docket No. A-4842-82T5, decided February 1, 1984) rev'g and remanding (83:1633, St. Bd. aff'g 82: August 19, decision on remand 84:597)

Types of certificates

Acting administrator without proper certificate may be appointed only on temporary basis in certain instances; board should establish policy concerning certification (74:1280) (76:72, Newark Teachers Union) (77:153, Mesics)
Alternate route teacher is provisionally certified by virtue of participation in alternate program and therefore enjoys due process rights analogous to other non-tenured teachers (87:1803, Griskey, rev'd St. Bd. 88:August 3)
Assistant to the Librarian; to require employees to obtain certificate as an Educational Media Specialist or as an Associate Educational Media Specialist (83:726, Glen Rock Ed. Assn., rev'd St. Bd. 85:1925, aff'd App. Div. unreported opinion (Docket No. A-4576-84T1 decided May 22, 1986))
Duties of position, not title, determine which certificate required for position (81: April 30, Donn)
Emergency certificate (73:636)
Emergency certificate requires a bachelor's degree except with respect to certain vocational fields (89:97, Pineland Learning Center)
English endorsement may authorize teacher to teach reading where assignment made prior to February 1976, employee

entitled to seniority (86:1917, Old Bridge Educ. Assoc.)
Foreign language endorsement does not authorize teacher to
teach career education; may assign to general library
supervision of students (86:1917, Old Bridge Educ. Assoc.)
Guidance counselor; group counselling of career education is
within scope of certificate and subordinate to major
responsibilities (83: January 5, Sayreville Ed. Assn.)
History/government endorsement is appropriate certificate to
teach Isolated Classroom Environment/In-School
Suspension (89: August 22, Merlino)
Professional librarian, waiver of requirement of bachelor's
degree denied (78:937, Babicz, aff'd St. Bd. 79:816)
Provisional certificate (72:638) (75:562, Appel) (76:601, Kuett)
(87:1803, Griskey, rev'd St. Bd. 88: August 3)

CERTIFICATE - continued

Types of certificates - continued

- 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 (87:79, Nolan)
- Rescission request denied (77:908, Gilbert, aff'd St. Bd. 77:913, decision on motion St. Bd. 78:1017)
- Science certificate, comprehensive (77:908, Gilbert, aff'd St. Bd. 77:913, decision on motion St. Bd. 78:1017) (77:1040, Van Os)
- Seniority regulations effective September 1, 1983 did not affect the ability to person with elementary endorsement to teach in departmentalized 7th and 8th grade (85:830, Kornett)
- "Subject Matter" reading classes, e.g. science, social studies, which teach reading skills necessary to successfully complete allied subject matter, may not be taught by teachers who only possess the subject matter endorsement (86:1917, Old Bridge Educ. Assoc.)
- Supervisory certificate, required for "T&E Coordinator" (81: April 30, Donelly)
- Supervisory positions, types of certificates required for (75:562, Appel) (76:773, Martz) (76:892, Vieland) (77:555, Wilson) (77:984, Van Houten)
- Teacher of Reading - Reading Specialist; petitioner who possesses educational services certificate with reading specialist endorsement is eligible for an endorsement as teacher of reading on his instructional certificate, Schmidt v. Bd. of Ed. of Weehawken, App. Div. (Docket No. A-4842-82T5, decided 84:2018 and 84:597) rev'g and remanding (83:1633, St. Bd. aff'g 82: August 19), decision on first remand (84: April 30, decision on second remand 84: July, 13)
- Teachers (38:606) (38:609)
- Teacher-librarian certificate includes possession of regular teaching certificate (77:346, Polaski)
- Teaching principal; standard teaching certificate suffices (72:508, aff'd St. Bd. 73:767)
- Vice-principal, must have principal's certificate (76:72, Newark Teachers Union)
- Unrecognized job titles
- Type of certificate required for the position is determined by the county superintendent (86:340, Olarte)
- When in-school suspension assignment duties constitute teaching staff assignment, submission to county superintendent is required (89:1194, Dowding, aff'd St. Bd. 90:1711) See also

(88:107, Data-Samtak, aff'd St. Bd. 88:123)

CERTIFICATE - continued

Waiver of course requirements

Denied upon application of crisis counselor for certification as social worker (83: January 24, Barretti)

Permitted for school business administrator based on work experience (75:951, Stoolmacher)

Reciprocity, prior to reciprocity agreement, in awarding endorsement relying on same (84: October 29, McCullough)

CHECK-OFF

Union dues, see (65:159), N.J.S.A. 52:14-15.9e, Attorney General Formal Opinion No. 1 (1977)

CHILD CENTERS AND ORPHAN HOMES

(See "Pupils - Residence for school purposes", this index)

CHRISTMAS CAROLS

Singing of, held not a religious exercise (61-62:55)

CLASS ACTIONS

(See "Commissioner - Class actions", this index)

CLASSIFICATION OF SCHOOL DISTRICTS

(See "Boards - Classification of school districts", this index)

CLEAN HANDS DOCTRINE

Applied in case involving deliberate violations of rules by college students (67:14)

CLERKS

Absenteeism excessive, dismissal upheld (86:340, Olarte)

Deduction from salary for illegal absence (72:353)

Duties, enlargement of (38:82)
Election of, prior to organization of board (38:78)
Non-renewal, statement of reasons; employee did not request, no reasons for termination required (86:340, Olarte)

CLERKS - continued

Non-tenured clerk, without contract providing for 60 days' notice of termination, entitled to pay until end of school year (79:29, Jones aff'd St. Bd. 79:29)

Tenure

(See "Tenure - Acquisition of", this index)

Term (38:76) (38:93) (61-62:169)

COACHES

(See "Extracurricular activities - Coaches", this index)

COLLECTIVE NEGOTIATIONS

(See also "Arbitration", "Strikes" and "Unions", this index)

Arbitration

Arbitrator, authority; arbitrator exceeded his authority by interpreting contract provision to include a situation not agreed to by the parties, North Hudson Jointure Commission Ed. Assn. v. North Hudson Jointure Commission Bd. of Ed., unpublished opinion, App. Div. (Docket No. A-3044-82T2, January 25, 1984)

Arbitrator, exceeded his authority by reading a requirement of "progressive discipline" in contract authorizing dismissal for just cause. County College of Morris Staff Association et al. v. County College of Morris, 100 N.J. 383 (1985)

Attorney fees awarded to Teachers Union where injunction was obtained to permit union to use city civic center for candidates night, 42 U.S.C. § 1988. Carlstadt Ed. Assn. v. Mayor and Council, 219 N.J. Super. 164 (App. Div. 1987)

Good faith negotiations

Obligation to negotiate in good faith does not include obligation to make a concession on any given issue or to agree to the proposal of the other party, State v. N.J. Council of State College Locals, 141 N.J. Super. 470 (App. Div. 1976)

PERC

Authority to order back pay, Galloway Twp. Bd. of Ed. v.

Galloway Twp. Assoc. Ed. Sec., 78 N.J. 1 (1978) rev'g 149 N.J. Super. 346 (App. Div. 1977); see also In re Galloway Twp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978), Salem County Bd. for Vocational Education v. McGonigle, unpublished opinion, Appellate Division, (Decided September 29, 1980, Dkt. No. A-3417-78)

COLLECTIVE NEGOTIATIONS - continued

PERC - continued

Court decisions

- Coffee breaks during class time are non-negotiable and non-arbitrable, East Newark Ed. Assn. v. East Newark Bd. of Ed., unpublished opinion App. Div. (Docket No. A-5504-80T3, July 7, 1982) certif. denied 91 N.J. 571 (1982)
- Conferences; increased number of evening parent conferences held negotiable, Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Ed. Assn., unpublished opinion, App. Div. (Docket No. A-1508-83T2, June 11, 1984)
- Discrimination based on union activity, grievance which alleged non-renewal was motivated by anti-union animus is not arbitrable since PERC has exclusive jurisdiction over such charges, Jefferson Twp. Bd. of Ed. v. Jefferson Twp. Ed. Assn., 188 N.J. Super. 411 (App. Div. 1982)
- Discriminatory intent absent; facially neutral provision in labor contract which adversely impacted upon older employees did not violate ADFA or NJ L.A.D., Giammario v. Trenton Bd. of Ed., 203 N.J. Super. 356 (App. Div. 1985)
- Racial discrimination in hiring of assistant basketball coach not arbitrable, Teaneck Bd. of Ed. v. Teaneck Teachers Assn., rev'd and remanded 185 N.J. Super. 269 (App. Div. 1982), aff'd 94 N.J. 9 (1983)
- Requiring nurses to remain in school during duty-free lunch is non-negotiable, managerial prerogative, Salem City Bd. of Ed. v. Salem Teachers Assn., unpublished opinion, App. Div. (Docket No. A-5137-81T3, June 3, 1983)
- Staffing; determinations of staff level and transfers are policy concerns and therefore non-negotiable. City of Newark v. Newark F.M.B.A. #4, App. Div., unpublished opinion (Docket No. A-1136-81T2, A-1005-81T2, decided June 6, 1983)
- Statutory terms and conditions of employment which are incorporated in the collective agreement held to remain enforceable as contractual terms despite ruling that statute was unconstitutional, Paterson v. Paterson Police PBA, 184 N.J. Super. 591 (App. Div. 1982)
- Transfer of bargaining unit work to employees in another unit is negotiable, Rutgers v. AFSCME, Council 52, unpublished opinion App. Div. (Docket No. A-468-81T1,

May 18, 1983)

COLLECTIVE NEGOTIATIONS - continued

PERC - continued

Court decisions - continued

Transfer of high school principal to elementary school principal, grievance alleging reduction in compensation in violation of labor agreement is non-arbitrable, Plainfield Assn. of School Administrators v. Plainfield Bd. of Ed., 187 N.J. Super. 11 (App. Div. 1982), certif. denied 91 N.J. 550 (1982)

Interim relief powers, In re Englewood Bd. of Ed., 150 N.J. Super. 265 (App. Div. 1977) clarifying 135 N.J. Super. 120 (App. Div. 1975); Asbury Park Bd. of Ed. v. Asbury Park Ed. Assoc., 145 N.J. Super. 495 (Ch. Div. 1976), aff'd in part, dismissed in part, 155 N.J. Super. 346 (App. Div. 1977)

Jurisdiction in allegedly moot issues, Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assoc., 78 N.J. 24 (1978) rev'g 149 N.J. Super. 352 (App. Div. 1977); see also In re Galloway Twp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978)

PERC Act does not annul applicability of Civil Service Law to public sector bargaining process, Local 866 v. Lodi Bd. of Ed., 149 N.J. Super. 147 (Ch. Div. 1977)

Period of limitations in unfair practice cases, Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978)

Primary jurisdiction over scope of negotiations issues, Plainfield Bd. of Ed. v. Plainfield Ed. Assoc., 144 N.J. Super. 521 (App. Div. 1976); In re Hoboken Teachers' Assoc., 147 N.J. Super. 240 (App. Div. 1977); Newark Teachers' Union v. Newark Bd. of Ed., 149 N.J. Super. 367 (Ch. Div. 1977) State v. State Supervisory Employees Assoc., 78 N.J. 54 (1978) Paterson v. Paterson Police P.B.A., 184 N.J. Super. 591 (App. Div. 1982)

Refusal of PERC to issue unfair labor practice charge is reviewable by the courts, State v. Council of N.J. State Col. Locals, 141 N.J. Super. 470 (App. Div. 1976)

Should not decide moot issues, Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assoc., 149 N.J. Super. 352 (App. Div. 1977)

Public employees do not have the right to strike. Passaic Tp. Bd. of Ed. v. Ed. Assn., 222 N.J. Super. 298 (App. Div. 1987)

Representation

Adjunct faculty in their second semester of teaching who are willing to teach in the next academic year certified as bargaining unit. Somerset County College, unreported opinion App. Div. (Docket No. A-4803-86T1, decided February

5, 1988)
Board's right to list of teachers claimed to be represented by
union (65:159) (67:293 rev'd St. Bd. 68:274)

COLLECTIVE NEGOTIATIONS - continued

Representation - continued

- Classification of college faculty apart from other public employees is not a violation of equal protection, Assn. of N.J. State College Facilities v. Bd. of Higher Ed., 112 N.J. Super. 237 (Law Div. 1970)
- Inadequate representation by majority union alleged by school psychologists, Belea v. Woodbridge Twp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976) certif. denied 72 N.J. 458 (1976)
- Organization has right to initiate and process grievance on behalf of employee, Red Bank Reg. Ed. Assoc. v. Red Bank Reg. H.S. Bd. of Ed., 151 N.J. Super. 435 (App. Div. 1977)
- PERC to reevaluate standards for severance of negotiating units on remand. State of New Jersey and NJSFMBA and CWA, unreported opinion App. Div. (Docket No. A-3491-85T6, decided January 27, 1988)
- Supervisory personnel, inclusion in unit, West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971)

Scope of Negotiations

Commissioner's decisions

- Abolition of 3/5 position and creation of 2/5 position not negotiable (81: November 12, Kauffman)
- Arbitration of reprimands of teachers is not negotiable (81: May 26, Haines)
- Board may not bargain away statutory rights; contractual provisions which do so are null and void (74:488) (74:1349) (76:92, Brick Twp. Bd. of Ed.) (77:812, Lane) (77:1080, Parsippany-Troy Hills, aff'd St. Bd. 78:1033, appeal dismissed as moot App. Div. 79:854)
- Calendar (71:246) (74:276) (74:387) (74:582) (77:1057, Freehold Reg. H.S. Ed. Assoc.)
- Changes in class size and teaching load (73:513)
- Criteria for reductions in personnel through non-renewal of contracts is not negotiable (78:827, Wagner) Wyckoff Bd. of Ed. v. Wyckoff Ed. Assn., 168 N.J. Super. 497 (App. Div. 1979)
- Lunchroom duty assignment change (74:1189, aff'd St. Bd. 75:1098, aff'd App. Div. 76:1149) (77:1080, Parsippany-Troy Hills, aff'd St. Bd. 78:1033, appeal dismissed as moot App. Div. 79:854)
- Non-renewal procedures are not negotiable (73:305 remanded 74:1244 on remand 74:1246, aff'd 75:1121) (75:921, Brick Twp. Bd. of Ed.)

Non-salary provisions extending beyond one year are
ultra vires (73:217, aff'd St. Bd. 74:1411) (74:540
remanded St. Bd. 75:301, on remand 75:302)

COLLECTIVE NEGOTIATIONS - continued

Scope of negotiations - continued

Commissioner's decisions - continued

- Past practices, teachers compliance with (81: June 11, Washington, aff'd St. Bd. 81: October 7, aff'd unpublished opinion, App. Div. (Docket No. A-1098-81T1, November 30, 1982))
- Promotions, procedures are negotiable (77:812, Lane)
- Provision allowing board to terminate tenured employee upon his return from an approved leave, before less senior employees, is ultra vires (81: May 21, Philbin)
- Provisions in collective negotiations agreement, to extent not ultra vires, constitute duly adopted policy (74:540, remanded St. Bd. 75:301, on remand 75:302)
- Reduction in force, held nonnegotiable (77:1033, Outslay)
- Salary credit for graduate courses (76:989, Cafarelli)
- Salary credit; part-time service subject to collective negotiation (85:1221, Watchung Hills Regional High School)
- Salary scale for non-degree nurses (75:389, Ascough) (75:425, Passaic Ed. Assn.)
- Seniority rights for secretarial employees, may be proper subject for collective negotiations (81: August 18, Kigerl, aff'd St. Bd. 81: December 2)
- Sick leave policy (71:512)

Court decisions

- Academic freedom and classroom lessons are not negotiable issues, Rockaway Twp. Bd. of Ed. v. Rockaway Twp. Ed. Assn., 120 N.J. Super. 564 (Ch. Div. 1972)
- Additional duties negotiable, West Orange Bd. of Ed. v. West Orange Ed. Assn., 128 N.J. Super. 281 (Ch. Div. 1974); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976)
- Administrative reorganization, Dunellen Bd. of Ed. v. Dunellen Ed. Assn., 64 N.J. 17 (1973)
- Affirmative action hiring plan of school district supersedes contrary provisions of collective bargaining agreement with regard to filling employee vacancies. Jersey City Ed. Ass'n v. Jersey City Board of Education, 218 N.J. Super. 177 (App. Div. 1987)
- Assignment of students to remedial classes is not negotiable, Bd. of Ed. of Twp. of Ocean v. Twp. of Ocean Teachers' Assoc., 165 N.J. Super. 427 (App. Div. 1979)

Calendar of school not negotiable, Burlington County College Fac. Assn. v. Bd. of Trustees, 64 N.J. 10 (1973); Rutgers Coun. v. N.J. Bd. of Higher Ed., 126 N.J. Super. 53 (App. Div. 1973)

COLLECTIVE NEGOTIATIONS - continued

Scope of negotiations - continued

Court decisions - continued

Compensation and salary negotiable, Englewood Bd. of Ed. v. Englewood Teachers Assn., 64 N.J. 1 (1973); Bridgeton Ed. Assn. v. Bridgeton Bd. of Ed., 132 N.J. Super. 554 (Ch. Div. 1975)

Compensation for extracurricular activities negotiable, Manchester Regional Education Association v. Manchester Regional High School District Bd. of Ed., unpublished opinion, App. Div., (Docket No. A-3808-79, March 23, 1981)

Criteria for reductions in personnel through non-renewal of contracts is not negotiable, Union County Reg. H.S. Bd. of Ed. v. Union County Reg. H.S. Teachers' Assoc., 145 N.J. Super. 435 (App. Div. 1976) certif. denied 74 N.J. 248 (1977), but procedures specified on agreement are subject to arbitration, Newark Teachers' Union v. Newark Bd. of Ed., 149 N.J. Super. 367 (Ch. Div. 1977)

Criteria for transfers and reassignments are not negotiable but procedures are, Local 195, IFPTE v. State, 88 N.J. 393 (1982)

Curriculum and course of study decisions non-negotiable, Rockaway Twp. Bd. of Ed. v. Rockaway Twp. Ed. Assn., 120 N.J. Super. 564 (Ch. Div. 1972)

Disciplinary actions are not negotiable, State v. Local 195, IFPTE, 179 N.J. Super. 146 (App. Div. 1981) certif. denied 89 N.J. 433 (1982) but see CWA v. PERC, 193 N.J. 658 (App. Div. 1984). Subsequent to State v. Local 195, N.J.S.A. 34:13A-5.3 was amended to make "disciplinary review" negotiable and proper subject for binding arbitration; untenured, non-civil service school board employees are governed by statute of public employees to organize; amended statute applied retroactively.

Duration of summer school program and teaching positions are not negotiable, Caldwell-West Caldwell Ed. Assn. v. Caldwell-West Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981)

Employee's right to have individual grievances presented through majority representative, Red Bank Reg. Ed.

Assoc. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978)

Evaluation of non-tenured teachers; procedures therefor are mandatorily negotiable, Fairlawn Bd. of Ed. v. Fair Lawn Ed. Assn., 174 N.J. Super. 554 (App. Div. 1980)

Extracurricular activities, Asbury Park Bd. of Ed. v. Asbury Park Ed. Assn., 145 N.J. Super. 495 (Ch. Div. 1976) aff'd in part, dismissed in part, 155 N.J. Super. 76 (App. Div. 1977)

COLLECTIVE NEGOTIATIONS - continued

Scope of negotiations - continued

Court decisions - continued

Extracurricular activities; board's assignment of teachers to supervise is managerial prerogative not negotiable, Mainland Reg. Teachers' Assn. v. Mainland Reg. Bd. of Ed., 176 N.J. Super. 476 (App. Div. 1980)

General provisions in Act relating to negotiable terms and conditions of employment must yield to specific sectors in education laws, Piscataway Bd. of Ed. v. Piscataway Main. & Cust. Assoc., 152 N.J. Super. 235 (App. Div. 1977)

Impact of reduction in force is not negotiable, Maywood Bd. of Ed. v. Maywood Ed. Assoc., 168 N.J. Super. 45 (App. Div. 1979) certif. denied 81 N.J. 292 (1979)

Impact of rescheduling days lost due to inclement weather is nonnegotiable, Edison Twp. Ed. Assn. v. Edison Twp. Bd. of Ed., rev'd App. Div. September 21, 1979 (unpublished opinion) certif. denied 82 N.J. 274 (1979)

Increase in teaching time not negotiable where no increase in school day and no extension of instructional time beyond normal workload range for teachers in unit, Caldwell-West Caldwell Ed. Assn. v. Caldwell-West Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981)

Increase in workday is negotiable; Maywood Bd. of Ed. v. Maywood Ed. Assoc., 168 N.J. Super. 45 (App. Div. 1979) certif. denied 81 N.J. 292 (1979), but see Ramapo Hills Ed. Assn. v. Ramapo Hills Reg. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980)

Increments, withholding of, is statutory right and not negotiable, Clifton Teachers Assn. v. Clifton Bd. of Ed., 136 N.J. Super. 336 (App. Div. 1975)

Job security is negotiable for those employees not covered by statutory tenure provisions, Plumbers and

Steamfitters Local No. 270 v. Woodbridge Bd. of Ed., 159 N.J. Super. 83 (App. Div. 1978)
Length of work day is negotiable, In re Galloway Twp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978), but see Ramapo Hills Ed. Assn. v. Ramapo Hills Reg. Bd. of Ed. 176 N.J. Super. 35 (App. Div. 1980)
Mandatory subjects of negotiations, In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977)
Negotiability of grievance procedure, Twp. of West Windsor v. PERC, 78 N.J. 98 (1978)
N.J.A.C. 6:3-1.21 does not preempt all negotiations on procedures for evaluating tenured teachers, Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Teachers Assn., 91 N.J. 38 (1982)

COLLECTIVE NEGOTIATIONS - continued

Scope of negotiations - continued

Court decisions - continued

No duty to negotiate continuance of past practice during the life of a contract, Manchester Regional Ed. Assn. v. Manchester Regional High School District Bd. of Ed., unpublished opinion, App. Div. (Docket No. A-3808-79, March 23, 1981)
PERC must hold hearing where scope issue turns on disputed facts, Camden Cty. Voc. School Board v. CAM/VOC Teachers, 183 N.J. Super. 206 (App. Div. 1982)
Permissive category of negotiations, held unlawful Ridgefield Park Ed. Assoc. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978)
Primary jurisdiction vested with PERC, Plainfield Bd. of Ed. v. Plainfield Ed. Assoc., 144 N.J. Super. 521 (App. Div. 1976); Asbury Park Bd. of Ed. v. Asbury Park Ed. Assoc., 145 N.J. Super. 495 (Ch. Div. 1976) aff'd in part, dismissed in part, 155 N.J. Super. 76 (App. Div. 1977); Newark Teachers Union v. Newark Bd. of Ed., 149 N.J. Super. 367 (Ch. Div. 1977)
Promotional criteria held non-negotiable, North Bergen Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976)
Promotional procedures are negotiable, Law & Public Safety Department v. State Troopers NCD Assn., 179 N.J. Super. 80 (App. Div. 1981)
Reduction in force is not negotiable, Patrolmen's Benevolent v. Elizabeth, 146 N.J. Super. 257 (App. Div. 1976); In re Englewood Bd. of Ed., 150 N.J. Super. 265 (App. Div.

1977) rev'g 135 N.J. Super. 120 (App. Div. 1975) In re Englewood Bd. of Ed., 135 N.J. Super. 120 (App. Div. 1975) rev'd 150 N.J. Super. 265 (App. Div. 1977) certif. denied 75 N.J. 525; but see In re Piscataway Twp. Bd. of Ed. and Piscataway Twp. Principals Assoc., 164 N.J. Super. 98 (App. Div. 1978); Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Ed. Assoc., 164 N.J. Super. 102 (App. Div. 1978); See Twp. of Old Bridge Bd. of Ed. v. Old Bridge Ed. Assn., 98 N.J. 523 (1985), (upholding negotiability of contract notice provisions for reductions in force)

Reduction of 12 month positions to 10 months held negotiable, In re Piscataway Twp. Bd. of Ed. and Piscataway Twp. Principals Assoc., 164 N.J. Super. 98 (App. Div. 1978); Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Ed. Assoc., 164 N.J. Super. 102 (App. Div. 1978)

COLLECTIVE NEGOTIATIONS - continued

Scope of negotiations - continued

Court decisions - continued

Replacement of tutoring with more formal instruction period constitutes negotiable increase in instructional workload, Dover Bd. of Ed. v. Dover Ed. Assn., App. Div. unpublished opinion (Docket No. A-3380-80, March 15, 1982)

Sabbatical leave is term and condition of employment; dispute may be decided by chancery court, South Orange-Maplewood Ed. Assoc. v. South Orange-Maplewood Bd. of Ed., 146 N.J. Super. 457 (App. Div. 1977)

Scheduling of the day before Thanksgiving as a full school day held a negotiable matter where prior practice had been to terminate classes at 1:00 p.m., Bd. of Ed. of Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Assoc., 164 N.J. Super. 106 (App. Div. 1978), aff'd 81 N.J. 582 (1980)

Sick leave

Method of charging for use of sick days - whether charged first against non-accumulative time - is negotiable, Hoboken Bd. of Ed. v. Hoboken Teacher's Assoc., unpublished opinion, App. Div. (Docket No. A-3379-80T2, April 5, 1982), certif. granted 91 N.J. 242 (1982), appeal dismissed as improvidently granted, 93 N.J. 263 (1983)

Sick leave in excess of 10 day minimum: Parties may negotiable sick leave schedule which accords additional sick leave based on length of service, Hoboken Bd. of Ed. v. Hoboken Teacher's Association, unpublished opinion, App. Div. (Docket No. A-3379-80T2, April 5, 1982), certif. granted 91 N.J. 242 (1982), appeal dismissed as improvidently granted, 93 N.J. 263 (1983)

Sick leave provision allowing use of sick leave for child-rearing prohibited: Statute permits use of sick leave for disability only, In the Matter of Hackensack Bd. of Ed. and Hackensack Ed. Assn., 184 N.J. Super. 311 (App. Div. 1982), certif. denied 91 N.J. 217 (1982)

Sick leave provision calling for teachers employed less than full school year to receive pro-rated amount of sick days was negotiable and enforceable by Board, Schwartz v. Dover Public Schools, 180 N.J. Super. 222 (App. Div. 1981)

Sign-in, sign-out procedure not negotiable or arbitrable, Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 135 N.J. Super. 269 (Ch. Div. 1975) aff'd o.b. 142 N.J. Super. 44 (App. Div. 1976)

COLLECTIVE NEGOTIATIONS - continued

Scope of negotiations - continued

Court decisions - continued

- Statutes and regulations which expressly set terms and conditions of employment may not be contravened by negotiated agreement, State v. State Supervisory Employees Assoc., 78 N.J. 54 (1978)
- Student faculty ratio non-negotiable, Rutgers Council v. N.J. Bd. of Higher Ed., 126 N.J. Super. 53 (App. Div. 1973)
- Subcontracting; decision to subcontract is non-negotiable but procedural aspects of subcontracting are negotiable as are contract provisions requiring discussion of subcontracting contemplated for economic reasons, Local 195, IFPTE v. State, 88 N.J. 393 (1982), State v. State Supervisory Employees Assn., unpublished opinion, App. Div. (Decided December 17, 1980, Dkt. No. A-463-79)
- Teacher transfer is not negotiable, Ridgefield Park Ed. Assoc. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978)
- Testing of students statewide is not negotiable, nor is dissemination of test results, Chappell v. Commissioner of Ed., 135 N.J. Super. 565 (App. Div.) certif. denied 69 N.J. 84 (1975)
- Transfer and reassignment of union stewards is negotiable, Local 195, IFPTE v. State, 88 N.J. 393 (1982)
- Withholding of increment is not mandatorily negotiable or arbitrable, Bd. of Ed. of Bernards Twp. v. Bernards Twp. Ed. Assoc., 79 N.J. 311 (1979), overruling Bd. of Ed. of Edison Twp. v. Edison Twp. Ed. Assoc., 161 N.J. Super. 155 (App. Div. 1978)
- Work week is negotiable, Local 195, IFPTE v. State, 88 N.J. 393 (1982)

Students

Boards may not prohibit teachers from answering students' questions regarding negotiations, River Dell Ed. Assn. v. River Dell Bd. of Ed., 122 N.J. Super. 350 (Law Div. 1973)

Supplemental teachers

Board may negotiate a separate salary schedule for such teachers (83:699, Hyman, rev'd St. Bd. 85:1940, aff'd in

part and remanded App. Div. unreported opinion (Docket No. A-3508-84T7, decided February 26, 1986) certif. denied 104 N.J. 469 (1986) (84: March 19, Bassett, rev'd w/opinion St. Bd. 87:2528, aff'd 223 N.J. Super. 136 (App. Div. 1988))
Negotiated hourly compensation for part-time supplemental teacher was improper reduction in compensation of a tenured teaching staff member in violation of N.J.S.A. 18A:28-5 (84: March 19, Bassett, rev'd St. Bd. with opinion 87:2528, aff'd 223 N.J. Super. 136 (App. Div. 1988))

COLLECTIVE NEGOTIATIONS - continued

Unfair labor practice

Abolition of position not result of anti-union animus
(81: November 12, Kauffman)

Board required to pay increments under expired agreement,
Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assoc., 78 N.J. 25 (1978) rev'g 149 N.J. Super. 352 (App. Div. 1977)

Criticisms in evaluations did not arise from anti-union animus
(81: November 12, Kauffman)

Employee must establish that protected activity was a substantial, motivating factor in decision to terminate, In the Matter of East Orange Public Library, 180 N.J. Super. 155 (App. Div. 1981) In re Bridgewater Twp., 95 N.J. 235 (1984)

Parity clause Willingboro Bd. of Ed. v. Willingboro Ed. Assn., 176 N.J. Super. 548 (App. Div. 1981), certif. denied 87 N.J. 320 (1981)

Subpoena power of PERC, Newark Bd. of Ed. v. Newark Teachers' Assoc., 152 N.J. Super. 51 (App. Div. 1977)

Termination of employment for protected activities under PERC law
Salem County Bd. for Vocational Education v. McGonigle, unpublished opinion, App. Div., decided September 29, 1980, (Dkt. No. A-3417-78)

Unilateral change in terms and conditions of employment,
Galloway Twp. Bd. of Ed. v. Galloway Twp. Assoc. Ed. Sec., 149 N.J. Super. 346 (App. Div. 1977)

Unilateral modification of contract

Board of education's unilateral modification of promotional procedures upheld, where civil disorders presented real threat to proper administration of school system, 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)

COMMISSIONER OF EDUCATION

Administrative practice

Legislature's ten-year acquiescence in administrative interpretation of statute constitutes acceptance thereof, Matawan v. Monmouth County Bd. of Taxation, 51 N.J. 291 (1968)

Long-time administrative practice entitled to great weight (68:12)

Administrative Procedure Act

Applicable to Commissioner and State Board, including requirement of opportunity to file exceptions to hearing examiner report and Law Committee report, Winston v. So. Plainfield Bd. of Ed., 125 N.J. Super. 131 (App. Div. 1973) aff'd 64 N.J. 582 (1974) (C. dec. 72:323, St. Bd. 72:327; C. dec. on remand 74:999)

COMMISSIONER OF EDUCATION - continued

Administrative Procedure Act - continued

Claim that Commissioner's memo constituted a new regulation promulgated without resort to APA, abandoned (87: August 14, Cancellieri, aff'd in part, remanded in part St. Bd. 88: December 1)

Hearsay, admissible if reliable, sensational hearsay by students during tenure hearing is inadmissible (84:143, Michaels)

Hearsay, residuum rule, N.J.A.C. 1:1-15.8, (Colavita v. Hillsborough Bd. of Ed., App. Div. (Docket No. A-4342-83T6, unpublished March 28, 1985), rev'g 83:1205, aff'd St. Bd. 84:1920) (85: June 13, Lopez) (87:1895, Tyler, decision on remand 88:293, aff'd w. modification 88:308, aff'd 236 N.J. Super. 478 (App. Div. 1989))

Hearsay, residuum rule: Hearsay evidence used to sustain underlying facts in support of increment withholding must be supported by a residuum of legally competent evidence (88:196, Dunham)

Regulation can be accomplished through adjudication as well as rule making (82: July 12, Hamlin)

Amicus curiae, tenure hearing, motion to intervene under N.J.A.C. 6:24-1.7 by citizens of district denied by Commissioner citing, Casey v. Wale, 63 N.J. Super. 355 (Cty. Ct. 1960) (83:973, Ziobro)

Answer to Petition

Default judgment granted for board's failure to answer (89: February 2, Godwin)

Petition must be answered within 20 days: If a party unreasonably delays joining issue, ALJ may enter default upon motion of aggrieved party (87:45, G.B.C.)

Attorney's fees, see Jurisdiction of Commissioner - Attorney's Fees
Authority exists to audit private school providing services to
handicapped pupils, and to use standards applied to public
schools (82: February 25, Archway, aff'd St. Bd. 82: June 2,
aff'd App. Div. 83:1493)
Authority of Commissioner includes ability to direct N.J.S.I.A.A. to
realign leagues and conferences (82: May 28, N.J.S.I.A.A., St.
Bd. granted motion to dismiss appeal 82: September 8)
Authority under Thorough and Efficient Education Act
Bond issuance for replacement of roof ordered
In the Matter of the Application of Upper Freehold Regional
High School District, 86 N.J. 265 (1981) (St. Bd. 79:452, C.
dec. 79:443)
Cap waivers, East Windsor Regional Bd. of Ed. v. St. Bd.
of Ed., 172 N.J. Super. 547 (App. Div. 1980)
Construction of school ordered by Commissioner where necessary
to meet T&E requirement and voters had consistently defeated
bond referenda (86:796, Contini)

COMMISSIONER OF EDUCATION - continued

Authority under Thorough and Efficient Education Act - continued

Corrective and remedial actions ordered, including appointment
of monitor general (79:648, Trenton aff'd St. Bd. 79:707,
aff'd 176 N.J. Super. 553 (App. Div. 1980), aff'd 86 N.J.
327 (1981))
School closing ordered, In the Matter of the Closing of Jamesburg
High School, 83 N.J. 540 (1980)
Split sessions are unacceptable except on an emergency basis
where no other alternative is available (86:796, Contini)
Bias
Allegation of conflict where Commissioner is named as a party
respondent has no merit since the Commissioner is bound to
function as an agency head to determine the controversy in a
neutral manner (87:2243, Vogel Bus Co., appeal dismissed by
St. Bd. 88: May 4, aff'd App. Div. unreported op. (Dkt. No.
A-4645-87T1, April 28, 1989))
Of assistant commissioner alleged (67:301)
Of hearing examiner alleged (75:630, Caffrey)
(75:929, Hoffman, aff'd St. Bd. 76:1148, 76:1084)
(76:156, South Amboy)
Burden of proof
Preponderance of evidence (66:107)
Change in case law, application of Corrado (84:933, aff'd St. Bd.
85:1890 and 85:1896, aff'd App. Div. unreported opinion (Docket

No. A-3663-84T7, decided June 27, 1986) Prospective (86: January 8, Marshall, St. Bd. rev'g 85:457, aff'd with opinion App. Div. unreported opinion (Docket No. A-2595-85T1, decided March 10, 1987)

Class action

Denied (83:41, Lukas, aff'd St. Bd. 83:52, rev'd on other grounds App. Div. (Docket No. A-5850-82T3, unpublished June 28, 1984)) (84: January 23, Rush)

Permitted (74:226)

Matter had proceeded for 9 years as class action (88:1089, Lowicki, aff'd St. Bd. 90:1764) Note: OAL has no authority to conduct class actions

Rules of court re: class actions are advisory only and not binding on Commissioner (74:226)

Classification of schools

Commissioner required to classify schools and school districts pursuant to N.J.A.C. 6:8-6.2, Iuppo v. Burke, 162 N.J. Super. 538 (App. Div. 1978), certif. denied 79 N.J. 462 (1978)

COMMISSIONER OF EDUCATION - continued

Collateral estoppel

Collateral estoppel bars petition (83: September 26, Kulik,
aff'd on other grounds St. Bd. 84: February 1) (84:
January 17, Salette)

Doctrine may be used in tenure hearing to estop a teacher
from denying facts which sustained conviction of a
criminal offense; Note, offense in instant
matter occurred prior to effective date of
N.J.S.A. 2C:51-2 Tanelli, 194 N.J. Super. 492
(App. Div. 1984), certif. denied 99 N.J. 181
(1984), aff'g (83:1646, St. Bd. rev'g 82:
September 9)

Doctrine must be applied equitably not mechanically
Tanelli, 194 N.J. Super. 492 (App. Div. 1984), certif.
denied 99 N.J. 181 (1984), aff'g (83:1646, St. Bd. rev'g 82:
September 9)

County superintendents of schools; Commissioner may delegate authority
to (81: July 24, Dexheimer)

Curriculum

Commissioner and State Board have authority to approve
secondary school curriculum, but not elementary school
offerings (74:130)

Graduation, must successfully complete required courses (76:619,
Dooner)

Graduation, transfer of college credits (77:724, Silverman)

Damages

Mitigation

After-school work not to be included in calculation,
auxiliary teachers, post-Spiewak award (83: November
4, Kalisch, aff'd St. Bd. 84: March 7)

Earnings used for mitigation purposes are those received
while school is in session, wrongful tenure dismissal
award (83: November 14, Hogue)

Power of Commissioner to award (74:420) (75:6, Robinson)
(75:191, Rockenstein, aff'd St. Bd. 75:199, aff'd App. Div.
76:1167) (75:236, Winter) (75:461, North Bergen) (77:315,
Lilenfield) (77:692, Watsula) (77:1179, Poole) only lost
earnings, not speculative overtime awarded (77:311, McLean)

Declaratory judgments (77:1080, Parsippany-Troy Hills, aff'd St. Bd.
78:1033, appeal dismissed as moot App. Div. 79:854) (79:
December 21, Hanover Park, remanded St. Bd. 80: May 1) (80:50,
Ramsey) (82: February 2, Shaffer, aff'd St. Bd. 82: July 7)
(85:1976, NJEA in the Matter on Asbestos, St. Bd. aff'g dismissal
of petition by Commissioner on August 2, 1984)
Administrative law judge may not determine whether

Commissioner

will entertain declaratory judgment as determination rests in Commissioner's sole discretion: Petition of appeal dismissed without prejudice to seek declaratory judgment pursuant to N.J.A.C. 6:24-2.1 et seq. (87: August 14, Cancellieri, aff'd in part, remanded in part, 88: December 1)

COMMISSIONER OF EDUCATION - continued

Declaratory judgments - continued

Commissioner may make declaratory ruling regarding proper interpretation of State Board rules so long as Commissioner does not remain as a party (87: August 14, Cancellieri, aff'd in part, remanded in part St. Bd. 88: December 1)

Commissioner will not review reasonableness of adopted policy unless it is challenged by way of petition of appeal (89: March 21, D.J.) (decision on remand)

May be requested in proceedings before Commissioner (72:449) (74:186) (74:9 remanded 74:1430); see also N.J.S.A. 52:14B-8

Request for declaratory judgment with respect to administrator's salary denied (89: September 12, Choplick, aff'd St. Bd. 90: Feb. 7)

Request for declaratory judgment with respect to salary entitlement time barred for failure to timely file claim of improper RIF (87:2156, Pezzullo II)

Disclosure of confidential information, no authority to act (77: 809, Axler, aff'd St. Bd. 77:811)

Disqualification request denied (76:700, Green Village Road School Assoc., stay denied and remanded St. Bd. 76:716, aff'd St. Bd. 76:716)

Emergent relief - denied-failed to meet Crowe v. DeGioia standards (89:2712, Hunterdon Central, aff'd with opinion, St. Bd. 90:1708)

Emergent relief - failed to meet Crowe v. DeGioia standard (89: November 29, Barrington Taxpayers, dismissed St. Bd. 90: March 7)

Emergency relief - standard (89:2643, Irvington)

Equitable estoppel

Doctrine did not prevent termination of uncertified guidance counselor with five years service where guidance counselor knew of deficiency in certification (83:1240, Hansen)

RIF'd elementary teacher has no seniority entitlement to

7th grade English position but Board was not equitably estopped from hiring non-tenured teacher with elementary endorsement who did not possess English endorsement (85: May 24, Geiling-Hurley, decision on remand 86:952, aff'd in part rev'd in part St. Bd. 86:964, aff'd App. Div. unreported opinion (Docket No. A-1959-86T8, decided October 5, 1987))

Superintendent, non-tenured, equitable estoppel bars relief for improper termination based on failure to evaluate three times annually where superintendent recommended board's policy for single annual evaluation of superintendent (83: May 25, McGuchin, aff'd with opinion St. Bd. 83: September 7)

Exceptions to initial decision; where time limit for filing falls on a non-working day they can be filed on next agency work day (86:1016, Buzinky, on remand 86:1034)

COMMISSIONER OF EDUCATION - continued

Exceptions untimely (88:178, Dreher, aff'd St. Bd. 88:190)

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Exhaustion of remedies

(See also "Judicial Review", this index)

Exhaustion before local board required by non-tenured teacher whose contract was not renewed (78:267, Szymanski)

Exhaustion before local board required in appeal from pupil suspension by principal (65:39) (74:380)

Not required in condemnation action. Asbury Park v. Murnick, 224 N.J. Super. 504 (App. Div. 1988), aff'd, rev'd, remanded 87:2098, on remand 89:1569.

Not required when issues are constitutional, not factual, Student Members of the Playcrafters v. Teaneck Bd. of Ed., 177 N.J. Super. 66 (App. Div. 1981), aff'd 88 N.J. 74 (1981)

Required when issues require administrative expertise, Lepis v. Wall Twp. Bd. of Ed., App. Div. unpublished opinion (Docket No. A-4068-79, decided March 12, 1981))

Trial court is vested with discretion to determine whether the "interests of justice" require that the administrative appeal be bypassed, Fallon v. Scotch Plains-Fanwood, 185 N.J. Super. 142 (App. Div. 1982) (82: December 3, Somerville) (83:85, Levitt, aff'd St. Bd. 83:95)

Expungement of records following improperly withheld increment was limited to references to withholding action, not to substantive basis therefore (86:2473, Sutton)

Grant of certificate of approval for private vocational school not arbitrary, capricious or unreasonable (89: September 25, Steno)

Tech, aff'd St. Bd. 90:1703)
Injunctive relief, standard (86: December 2, G.T.B.)
Internal relations between board and superintendent, Commissioner will not intervene in purely local matter absent tenure charges or other appropriate grounds (84:136, Bogolian)
Interpretation, board policy, words are to be given their ordinary meaning (84: March 15, Gattoni)
Intervention
Right of (St. Bd. 74:298, rev'g 74:293)
Judicial rules (e.g. res judicata, collateral estoppel, the single controversy doctrine, stare decisis) are not strictly applicable to administrative actions, although they may be applied if appropriate, dicta contained in initial decision (84: January 17, Newman); but see (84: January 17, Salette)
Jurisdiction of Commissioner
Abolishment of Superintendency (77: August 9, Plumsted Tp.)
Accidents: Commissioner must determine whether work-related and apply, N.J.S.A. 18A:30-2.1; jurisdiction not contingent upon worker's compensation decision (81: July 1, Masino, St. Bd. rev'g 80: November 30)
Accrual of cause of action (81: March 23, Ramapo) (81: April 3, Casazza)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Adequate educational program and facilities (77:488, South Amboy) (77:543, Central Reg.) but see Attorney General Formal Opinion No. 26 (1977)
Advisory opinions: Commissioner did not abuse discretion in refusing to entertain challenge to two year old opinion (89: September 12, Choplick, aff'd St. Bd. 90: February 7)
Anti-union animus issue not within Commissioner's jurisdiction; solely within the purview of PERC (88:196, Dunham)
Arbitration, stay of; no jurisdiction to order (80: September 8, Lower Twp.)

Attorney's fees

Commissioner has no authority to award, Whalen v. Sayreville Bd. of Ed., 192 N.J. Super. 453 (App. Div. 83:1660) aff'g (83:1659, St. Bd. aff'g 82: August 12) (83: February 24, Vicari) (83: November 14, Hoque); (72:266, modified St. Bd. 73:777) (74:372) (74:890) (75:236, Winter) (75:461, No. Bergen) (77:315, Lilenfield) (77:692, Watsula) (81: March 27, Sheary) (81: June 18, Zielinski, aff'd St. Bd. 82: February 3) (81: June 26, Liss) (78:855, Bickford)

(79:522, Coyle) (80: January 10, East Windsor) (80: December 1, Glose) But see (81: March 9, Ross, aff'd St. Bd. 81: October 7) (Gibson v. Bd. of Ed. of Newark, ("I") ("II"), 84:444, (I) aff'd St. Bd. 84:483) (85:70); consolidating and remanding I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'g in part and rev'g in part; on remand St. Bd. 86:3044) (86:1133, E.B., aff'd St. Bd. 86:1160, rev'd and remanded 225 N.J. Super. 221 (App. Div. 1988) rev'd and remanded 117 N.J. 434 (1990) (86:1299, B.C., aff'd 220 N.J. Super. 214 (App. Div. 1987)) (87:641, Edwards, aff'd St. Bd. 87:678) (88:740, Smith) (88:820, German, aff'd St. Bd. 89:3002) (88:1089, Lowicki, aff'd St. Bd. 90:1764) (89:2476, Gerding, dec. on remand 87:2363, aff'd St. Bd. 88:2466, aff'd and remanded App. Div. unreported op. (Dkt. No. A-4761-87T2), December 6, 1988, remanded St. Bd. 89: February 1) (89:2666, Barco, aff'd St. Bd. 90:1687) Attorneys fees, costs of litigation (80:927, K.M., aff'd St. Bd. 80: November 5) (80:1193, Page, aff'd St. Bd. 81: June 3)

Attorneys fees - Discrimination cases

Commissioner has no authority to award under Law Against Discrimination in education-discrimination cases; counsel fee claim must be heard by Division on Civil Rights (Balsley, 117 N.J. 434 (1990), rev'g 225 N.J. Super. 221 (App. Div. 1988), rev'g 86:1160, St. Bd. aff'g 86:1133, E.B.)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Attorneys fees - Discrimination cases - continued

Commissioner may award under Law Against Discrimination (89:2660, Barco, aff'd St. Bd. 90:1687) (relying on reversed App. Div. Balsley decision)

Student entitled to seek award of counsel fees under NJLAD before Division of Civil Rights (Balsley, 117 N.J. 434 (1990), rev'g 225 N.J. Super. 221 (App. Div. 1989), rev'g 86:1160 St. Bd., aff'g 86:1133 E.B.)

Bad faith, sanctions for filing affidavit in, per N.J.A.C. 1:1-13.4, (81: March 27, Sheary)

Bidding disputes, Fisher v. Union Twp. Bd. of Ed., 99 N.J. Super. 18 (App. Div. 1968); (65:94) (71:40)

Board members, actions against as individuals; Commissioner's jurisdiction to hear such actions is limited (e.g. N.J.S.A. 18A:12-3) (84: January 17, Sallette)

Budget appeals
 (See "Budgets", this index)

Bus drivers, employment of (76:630, Coombs) (77:594, Albert)

Cause of action under N.J.S.A. 18A:6-9
 Tenured superintendent, individual board members sought dismissal where no tenure charges certified, petition dismissed for failure to state cause of action (84:136, Bogosian)

Certificate Approval denied - private schools (88: November 15, School of Business Machines)

Certificate rescission (77:908, Gilbert, aff'd St. Bd. 77:913)

Civil Service employees, Commissioner has no jurisdiction, (76:1006, Plessis) (80: February 19, Newark) (80: February 25, DeLuca) (80: May 5, Mohr)

Classification of handicapped students (77:478, Learning Disabilities Assoc.)

Classification of teacher as reading specialist (76:365, Mina)

Clean hands, generally (81: July 9, Trenton)

Collective bargaining agreement
 Tenure-like job security provisions, may not be enforced by Commissioner (83: July 22, Lang)

Commercial matters, compare (67:260) (68:245) (68:263) (71:40) with Fisher v. Union Twp. Bd. of Ed., 99 N.J. Super. 18 (App. Div. 1968)

Compulsory attendance laws
 Whether equivalent education is being received by child not enrolled in public school is for municipal court to determine, not the Commissioner (67:183) but see (81: 275, Oostdyk, St. Bd. aff'g with modif. 81:260)
 Commissioner may order parents to enroll children in school or furnish proof of equivalent instruction but cannot impose fines under N.J.S.A. 18A:38-25

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Compulsory education statute, enforcement of (81:260, Oostdyk) (81: April 16, V.C.)

Constitutional issues (77:197, Sciarrillo)

Constitutional questions, administrative agency may consider where necessary and relevant to issue over which it has jurisdiction (85: October 28, R.M. and N.M.)

Constitutionality of administrative regulations
 Commissioner has no authority to decide (87:2036, Deron School of New Jersey)

Constitutionality of statute

May not be decided by Commissioner (49-50:61, aff'd St. Bd. 50-51:70, aff'd Thorp v. Bd. of Trustees, 6 N.J. 498 (1951); (74:387) (75:258, Giandominico) (83: April 15, ASR) (86:369, S.T., rev'd St. Bd. 86:399)

Contract action, no jurisdiction to decide issues of contractual and quasi-contractual law (83: May 27, Pannetta) (84:1714, Salley) (85: April 15, Grant)

Contract disputes will be decided where sufficiently related to statutory and decisional education law (84: July 23, Love, rev'd in part St. Bd. 85: February 6) (87:399, Hagerty) (88:2093, Love, aff'd St. Bd. 89:3038)

Contractual disputes (77:1179, Poole, vacated St. Bd. 78: October 4)

Contractual disputes: Commissioner has no jurisdiction to decide disputes based on contract interpretation (87:1548, Middletown) (89:87, Sathan)

Controversies and disputes arising under school laws, generally; Jenkins v. Morris Twp. School District, 58 N.J. 483 (1971); East Brunswick Bd. of Ed. v. East Brunswick Twp., 48 N.J. 94 (1966); Elizabeth Bd. of Ed. v. Elizabeth City Council, 55 N.J. 501 (1970); In re Masiello, 25 N.J. 590 (1958); Laba v. Newark Bd. of Ed., 23 N.J. 364 (1957); Fisher v. Union Twp. Bd. of Ed., 99 N.J. Super. 18 (App. Div. 1968); Fox v. Newark Bd. of Ed., 129 N.J.L. 349 (Sup. Ct. 1943); Reilly v. Camden Bd. of Ed., 127 N.J.L. 490 (Sup. Ct. 1941); (56-57:80) (76:365, Mina) (76:944, Bloomingsdale) (76:1013, Marturano) (77:594, Albert) Dore v. Bedminster, 185 N.J. Super. 447 (1982) (82: October 6, Larsen, St. Bd. rev'g 82: February 18) (83: January 3, Booth) (83: May 27, Pannetta) (83: October 6, Woods)

Controversy of justiciable issue arising under school law must be apparent for Commissioner to retain jurisdiction (83: March 17, Lindenbaum)

Corporal punishment, allegation by pupil/parent against district employee (85: December 2, Matters)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Copy of withdrawal forwarded to Board of Examiners; stipulation included admission that petitioner improperly touched students (89:2106, Hansen, aff'd with opinion St. Bd. 90:1755, aff'd St. Bd. reconsideration denied 90: May 2)

Costs: No authority for Commissioner to assess costs against a party pursuant to N.J.A.C. 1:1-14.4(a) or to review ALJ's determination of same (89: May 18, Spizziri)

County Superintendent of Schools, jurisdiction (80: September 2, Somerset)

Court order: Commissioner does not have jurisdiction to enforce court order enjoining children from using a surname other than the natural father (88: July 18, McQuestion)

Court settlement; Commissioner does not have jurisdiction to set aside settlement entered into before the Superior Court (83: August 8, Perrotti, aff'd and remanded St. Bd. 84: February 1, decision on remand 84: June 6)

Declaratory judgments (77:1080, Parsippany-Troy Hills, aff'd St. Bd. 78:1033, appeal dismissed as moot App. Div. 79:854) (83: June 9, Lynch) (87: August 14, Cancellieri)

Designation of area library (76:484, Board of Trustees of East Brunswick Pub. Library)

Discrimination

Concurrent jurisdiction with Division on Civil Rights, in cases involving employment discrimination, Jamison v. Rockaway Twp. Bd. of Ed., 171 N.J. Super. 549 (App. Div. 1979) Gilchrist v. Haddonfield Bd. of Ed., 155 N.J. Super. 358 (App. Div. 1977) (83: August 11, Brown v. Sussex County Vocational Bd. of Ed., rev'd St. Bd. 84: May 2, rev'd and remanded App. Div. (Docket No. A-4854-83T7, decided April 4, 1985), on remand 86:1835, aff'd St. Bd. 86:1846)

Discrimination complaints involving school curriculum should be heard by Commissioner rather than Division on Civil Rights, Hinfey v. Matawan Reg. Bd. of Ed., 71 N.J. 514 (1978)

Exclusive jurisdiction to determine fitness for teaching; fact that tenure charges were based on allegations of sexual harassment and discrimination which had been heard by Division on Civil Rights does not preclude Commissioner's consideration of tenure charges, In the Matter of the Tenure Hearing of Samuel C. Capalbo, App. Div., unpublished opinion (Dkt. No. A-4686-83T6, 1864, 1985); certif. denied 102 N.J. 336 (1985) aff'g St. Bd.

84: February 1, aff'g 83: October 31)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Discrimination - continued

Racial (69:14) (78:59, Mason)

Sex, Attorney General Formal Opinion No. 28 (1975)
(80: February 20, Kearny)

Union membership (76:133, Means)

Workers' Compensation; no jurisdiction to hear claims
under N.J.S.A. 34:15-39.1 (82: August 25, Davis)

Division of Youth and Family Services; Commissioner's
jurisdiction to determine claims against (81: January 14,
Somerset Hills)

Educational Services Commissions; not equivalent to division
or bureau of State Department of Education, Commissioner
does not have day to day authority over such entities
allowing him to overturn action of ESC without legal
determination of appropriateness of the action (84:392,
N.J.E.A.)

Elections

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, no
requirement that the underlying vote be set aside (87:
679, Asbury Park, aff'd St. Bd. 87:688)

Election disputes: Commissioner may not delegate final
decision making authority to the Office of Administrative
Law (83: October 26, Hopewell Valley Regional School
District)

Election matters, timelines and standing to file appeal
(74:744) (75:203, Parsippany-Troy Hills) (76: August 3,
Zakutansky, unpublished opinion)

Employment contract; Commissioner does not have authority to
interpret or enforce employment contract between board of
education and school janitor, does not arise under the
school laws (82: October 6, Larsen, St. Bd. rev'g 82:
February 18) (83: October 6, Woods)

Employment contract; interpretation of employment contract
between a board and a non-tenured employee does not come
within Commissioner's jurisdiction to determine
controversies "arising under the school laws (82: October
6, Larsen, St. Bd. rev'g 82: February 18) (83: January 3,
Booth) (84:1714, Salley)

Enforcement action, State Board order, Commissioner has no
enforcement authority (84: January 23, Siedlarczyk)

Entire controversy doctrine bars separate action for back pay
which was not raised in earlier action seeking reinstatement
(86:94, Amato, aff'd St. Bd. 86:105)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Evidence

Choice of witnesses by hearing examiner, if reasonably made, are conclusive on appeal (80: September 26, Oliver)

Credibility of witnesses determined by hearing examiner (80: December 11, Warr, aff'd St. Bd. 81: August 5, aff'd unpublished opinion, App. Div. (Docket, No. A-268-81T1, October 20, 1982)) (81: August 11, Kimless) (81: August 26, Williamson) (81: October 15, Rogers)

Hearsay evidence: Admission of in discretion of hearing examiner (81: March 13, J.B.A., aff'd St. Bd. 81: May 6 and 81: December 2, aff'd App. Div. 83:1573)

State employee may not be required to testify as expert witness but may be called as fact witness (86:1, Nangle)

Executive superintendent, Commissioner lacks jurisdiction to hear contractual dispute involving (84:1714, Salley)

Extended paid sick leave under N.J.S.A. 18A:30-2.1

Commissioner's determination that injury arose in course of employment may be made without regard to Division of Workers' Compensation determination on same issue (83: September 15, Bergmann, aff'd St. Bd. 86: January 8)

Extracurricular activities (77:997, Ferrara)

Graduation credits (77:724, Silverman)

Grant of certificate of approval for private vocational school not arbitrary, capricious or unreasonable (89: September 25, Steno Tech, aff'd St. Bd. 90:1703)

Grievance process (80: January 28, Alder, aff'd St. Bd. 80: May 7) (80:264, Stolte, aff'd St. Bd. 80:271) (80: September 19, Grossman)

Increments (77:952, Shahbazian) (79:371, Albanese)

Interest and costs

Commissioner has authority to award pre- and post-judgment interest. Newark Bd. of Ed. v. Levitt, 197 N.J. Super. 239 (App. Div. 1984) dec. on remand (85: January 31, Levitt) (85:108, Fischbach) The following are overruled to the extent they deny authority to award interest: (66:219) (67:192) (71:163 aff'd St. Bd. 71:166) (72:266 modified 73:777) (74:372) (74:890) (75:236, Winter) (75:461, No. Bergen) (77:315, Lilenfield) (77:311, McLean) (77:692, Watsula) (81: June 18, Zielinski, aff'd St. Bd. 82: February 3) Bassett v. Oakland Board of Education, 223 N.J. Super. 136 (App. Div. 1988,

aff'g with modification St. Bd. 87:2528, aff'g Comm.
84: March 19)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Interest and costs - continued

Interest due based on failure by board to pay interest earned on summer payment plan deductions made by board is subject to scope of negotiations determination by PERC prior to disposition by Commissioner of Education (89:1474, Vineland)

No authority for Commissioner to award Whalen v. Sayreville Bd. of Ed., 192 N.J. Super. 453 (App. Div. 83:1660) aff'g (83:1659, St. Bd. aff'g 82: August 12); Fallon v. Scotch Plains-Fanwood, 185 N.J. Super. 142 (App. Div. 1982); (82: December 3, Somerville); (83:85, Levitt, aff'd St. Bd. 83:95) (83: November 14, Hogue)

Not entitled to pre-judgment interest - no bad faith/improper motive. Bassett v. Oakland Bd. of Ed., 223 N.J. Super. 136 (App. Div. 1988), aff'g with modification St. Bd. (87:2528, aff'g Comm. 84: March 19)

Post-judgment interest awarded where board acted contrary to established law (87:1005, Caporaso, dismissed St. Bd. 87: October 1) (88:1089, Lowicki, aff'd St. Bd. 90:1764) Bassett v. Oakland Bd. of Ed., 223 N.J. Super. 136 (App. Div. 1988), aff'g with modification St. Bd. (87:2528, aff'g Comm. 84: March 19)

Post-judgment interest barred where petitioner failed to file for interest amount upon receiving check or making demand for several months (88:820, German, aff'd St. Bd. 89:3002, w/op.)

Pre-judgment interest will not be awarded absent a finding that the board acted in bad faith in deliberate violation of statute or rule (86: May 27, Augersbach) (87:1147, Tave, aff'd St. Bd. 87:1170) (88:1089, Lowicki, aff'd St. Bd. 90:1764)

Pre-judgment interest awarded against board which was found to have acted in bad faith (87:379, Maresca)

Teacher could recover interest for period during which teacher was deprived of lump sum settlement. Emerick v. Teaneck Bd. of Ed., 221 N.J. Super. 456 (App. Div. 1987)

Justiciability; motion for declaratory judgment denied. Board had not taken any action to remove tenured nurse, lack of real and actual controversy (82: November 17, Hershkowitz)

Labor disputes

(65:159) (74:488) (76:921, Brick Twp. Bd. of Ed.) (76:989,

Cafarelli) (77:594, Albert) (77:603, Mamatz) Newark Teachers' Union v. Newark Bd. of Ed., 149 N.J. Super. 367 (Ch. Div. 1977)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Labor disputes - continued

Allegations of increased workload as a result of reduction of 12 month position to 10 month position must be heard by PERC (86:1519, Swaluk)

Laches, generally (80: August 21, Zielinski) (80: September 11, Richter) (80: September 15, Pfeifer, aff'd St. Bd. 81: June 3) (81: March 16, Lowicki, aff'd St. Bd. 82: May 5, 86:2298, Comm. 88:1089, Comm. aff'd St. Bd. 90:1764) (81: March 23, Ramapo) (81: April 6, Scelba) (81: July 9, Trenton)

Legal surname of student is not an issue for Commissioner but for the courts (88:1688, McQuestion)

Maternity leave (80: June 30, Gallopo)

Membership on local board of education, conflicts of interest, compare (39-49:51) (71:144) (73:361) with (74:595, rev'd on other grounds 74:603) (74:740)

Military leave dispute (77:1200, Whittley)

N.J.S.I.A.A. - Commissioner has jurisdiction to review decisions of N.J.S.I.A.A. officials (85: April 15, Pagliughi)

N.J.S.I.A.A. has authority at the direction of the Commissioner to realign leagues and conferences (82: May 28, N.J.S.I.A.A., St. Bd. granted motion to dismiss appeal 82: September 8)

Office of Administrative Law

ALJ exceeded authority in determining issues not raised in petition (86:266, A.A., aff'd St. Bd. 86:285, aff'd 218 N.J. Super. 32 (App. Div. 1987))

Has no jurisdiction over claim for damages against the Commissioner; Board's cross-claim for indemnification/contribution of Commissioner dismissed (87: August 14, Cancellieri, aff'd in part, remanded in part, St. Bd. 88: December 1)

Office of Administrative Law; (1) may not adopt rules that nullify or frustrate the essential decisional authority of Commissioner; (2) Commissioner has right to review interlocutory order of ALJ to determine if same interferes with decisional process or has substantial effect upon ultimate outcome; (3) rules describing "contested case" valid, In re Uniform Admin. Procedure Rules, 90 N.J. 85 (1982)

Personnel of Department of Education, termination of employment (76: September 9, Singleton, unpublished opinion)

Pornographic materials; no jurisdiction to determine whether

film is pornographic (79:267, Johnson rev'g in part St. Bd. 79:273)
Predominant interest found in PERC re: waiver of salary claims and unit clarification issues (84: December 5, Colannina)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Promotions, procedure of (76:133, Means, aff'd St. Bd. 77:1300)
Punitive damages, Commissioner lacks jurisdiction to award (83: November 14, Hogue) (88:740, Smith)
Regional school districts; implied statutory authority exists for the Commissioner to oversee and authorize, in proper circumstances, a reduction in purpose of or a partial withdrawal from a limited purpose regional school district (88:2392, Berlin, rev'd St. Bd. 89:2996)
Retirement and pension matters, Commissioner not bound by decisions of TPAF (77:422, Laing, aff'd St. Bd. 77:427), nor does he have authority over (74:229, aff'd St. Bd. 74:315, aff'd App. Div. 75: April 2, dismissed as moot 77: March 31) (77:876, Healy, aff'd and modified St. Bd. 78:1019) (80: December 8, Taylor) (81: April 30, Middlesex, aff'd St. Bd. 82: March 24) (81: June 22, Garfield)
Review of ALJ's decision: Commissioner not required to restate the ALJ's findings and conclusions in his decision in order to justify a more severe penalty; nor is he required to consider the transcript. If respondent wants to challenge the ALJ's factual findings before the Commissioner, it is respondent's burden to provide Commissioner with transcript (85:1110, Ferenz, St. Bd. rev'g penalty 87:2602, aff'd App. Div. unreported op. (Dkt. No. A-1309-87-T7, April 18, 1989))
Review of ALJ decision which concluded that no justiciable issue was present resulted in dismissal (83: March 17, Lindenbaum)
Review of county superintendent's certification determination resulting from the commissioner's directive is not precluded by the fact that there is no appeal to the State Board of that determination (87:2156, Pezzullo II)
Review of decisions of State Board of Education; no power to review (80: August 4, Morris, aff'd St. Bd. 81: January 22)
Salary disputes (76:101, Marturano) (82: December 2, Hoboken)
Salary disputes over initial placement are decided by courts, not Commissioner, when they involve interpretation of

provisions in collective agreement on initial placement. (the reasoning in Reilly v. Bd. of Ed. of Kearny, 1985 S.L.D. (April 22) and Shulman v. Bd. of Ed. of Morris School District, 1985 S.L.D. (April 15) is expressly disapproved Belleville Ed. Assn. v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986) (86: July 2, Conti, St. Bd. rev'g 85: June 10, aff'd App. Div. unreported opinion (Docket No. A-77-86T1, decided October 13, 1987))

Salary disputes over initial placement within Commissioner's jurisdiction (85: April 15, Shulman) (85: April 22, Reilly)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Salary schedule issues - jurisdiction limited to teaching staff members (88:2093, Love, aff'd St. Bd. 89:3038)

Sanctions: ALJ, not Commissioner, is the Agency Head for purposes of review of sanctions under N.J.A.C. 1:1-14.4 (88:1905, Laufgas)

School construction - challenge to Department of Education approval; jurisdiction to hear dispute lies with Commissioner; Superior Court Judge, hearing related condemnation proceeding, does not have concurrent jurisdiction, (87:2098, Asbury Park Board of Ed v. Murnick, aff'd in part, rev'd in part, remanded in part, 224 N.J. Super. 504 (App. Div. 1988) on remand (89:1569)

Scope of negotiations proceedings (78: June 22, Willingboro, unpublished opinion) (81: October 19, Maywood)

Sending-receiving
(See "Sending-receiving relationships", this index)

Settlement Agreements
(See also "Tenure - Dismissal or reduction in salary - Settlement Agreement", this index)

Settlement agreement: Agreement rejected held that terms were excessively restrictive on board in the exercise of their discretion to inform a prospective employer of essential information about petitioner's performance (87: January 15, Walker on remanded 87: April 20) (86: December 3, Salsberg, on remand 87: March 12, on second remand 87: October 28) (88: February 25, Smith) (88: April 4, Garbos) (88: August 8, Bedford) (88: August 12, Lattimore)

Settlement agreement: Agreement rejected; agreement may not bind future Boards, new board would have to determine whether petitioner's performance had been satisfactory (88: February 9, Sisto)

Settlement agreement: Board may not agree to delete from personnel record circumstances which lead to dismissal (85: April 2, Sulich)

Settlement agreement: Intervenor should review and approve prior to forwarding to Commissioner (87: September 30, Pinkos)

Settlement agreement: Not approved where petitioner has not signed original stipulation document (88: February 9, Smith)

Settlement agreement: Record does not evidence why settlement reached; gift public funds (86: December 8, Narucki) (88: February 25, Smith)

Settlement agreement: Rejected and remanded; allegation of dishonesty derelicts of public duty, disregard of public trust. Perpetration of fiction that resignation tendered in good standing not in public interest (89: October 4, Shenekji)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

- Settlement agreement: Rejected and remanded; record does not speak to illness calling into question award of extended sick leave by the board. Question of expenditure of public monies (89: November 3, Schurr)
- Settlement agreement: Rejected where all matters not resolved, where executed prior to Commissioner approval and where signatures not under oath; remanded (88: January 27, Beauford)
- Settlement agreement; rejected where board charged corporal punishment and conduct unbecoming (88: May 12, Chestnut)
- Settlement agreement: Rejected where board class cut policy violates state regulation mandate regarding credits awarded for each class (89: July 19, A.M.F.)
- Settlement agreement: Rejected where board precluded from disclosing complete accounting of employee's performance and history (89: March 13, Molyvade)
- Settlement agreement: rejected where charges of dishonesty were sufficiently serious to preclude resolution allowing teacher to resume teaching; remanded for full hearing on the merits (89: August 31, Tomassone)
- Settlement agreement: rejected where included suspension without pay absent certification of tenure charges (89: February 2, Logan, dismissed St. Bd. 89: November 8)
- Settlement agreement: Rejected where settlement did not protect students of other districts from a possibly unfit teacher pending adjudication of criminal charges of drug possession and distribution; remanded (88: September 1, Noll)
- Settlement agreement: Stipulation restricting boards legal authority will not be approved (86: December 4, Belleville Educ. Association)
- Settlement binding once agreed to on record (85: January 17, R.F. on behalf of M.F., aff'd St. Bd. 85: June 7)
- Settlement in non-tenure matter cannot be executed prior to Commissioner approval (85: April 8, Stanton) (87: September 4, Gold)
- Settlement; no settlement if one party files exception to the stipulation (81: August 26, Williamson)
- Settlement null and void where executed prior to Commissioner's approval; also settlement not carried out in conformity with

its terms; remanded (88: January 28, W.C.)

Settlement of tenure charges

Board and teacher have no legal authority to carry out settlement, prior to Commissioner approval (82: April 7, Cardonick, aff'd in part and remanded St. Bd. 83: April 6)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Settlement of tenure charges - continued

- Commissioner disapproves settlement between board and employee charged with misappropriation of funds; gravity of charge requires adjudication (82: April 22, Nolan, aff'd St. Bd. 83:1604, aff'd 84:1991 published opinion, (Docket No. 4401-82T2, 384-82T2, decided June 15, 1984))
- Commissioner disapproves settlement where board charged corporal punishment and conduct unbecoming (88: May 12, Chestnut)
- Commissioner will carefully examine tenure settlements which grant lump sum payments to respondents (82: April 7, Cardonick, aff'd in part and remanded St. Bd. 83: April 6)
- Settlement set aside: Board cannot withhold increment as condition of withdrawing tenure charge: Commissioner must determine truth of charge and set penalty (81: August 21, Kennedy) (82: April 6, Calabrese) (88: November 23, Wilburn)
- Rejected; any recommendation must be consistent with total performance in district, not just yearly evaluation (88: October 18, Evans)
- Rejected where settlement contained inaccurate information, typographical errors, awarded damages (not within Commissioner's power) and called for an expenditure of public funds without commensurate services (88: February 25, Smith)
- Settlement; specific terms underlying joint stipulation of dismissal must be incorporated therein (83: February 22, Klein)
- Settlement set aside: Commissioner will not accord seniority rights without proof of entitlement; case should be heard on the merits to determine what endorsement required to teach course; also the basis for military service credit should be determined; remanded (87: June 8, Chanda, remanded 88: March 31, decision on remand 88: November 17, rev'd St. Bd. 89: September 6)
- Settlement terms should not call for payment prior to expiration of time period for Commissioner to make final decision N.J.S.A. 52:14B-10 (87: September 30, Pinkos) (89: November 3, Acerra)
- Settlement terms: stipulations not deemed stipulation of facts for litigation purposes (87: June 8, Chanda, remanded St.

Bd. 88: March 31) decision on remand (88: November 17,
Chanda, rev'd St. Bd. 89: September 6)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Settlement upheld - terms not contrary to law or public policy - reasonable resolution of issues in dispute (87: June 8, Chanda, remanded St. Bd. 88: March 31, decision on remand 88: November 17, Chanda, rev'd St. Bd. 89: September 6) (89: November 3, Acerra)

Sick leave disputes (81: February 4, Headley, aff'd App. Div., unpublished opinion (Docket No. A-2804-80-T1, November 17, 1982))

Special education disputes must be resolved by application of special education regulations; parental request for tuition and transportation expenses cannot be resolved pursuant to N.J.S.A. 18A:6-9 (85: April 18, R.W. & S.W., on behalf of R.L.W. III)

Sunshine Law disputes

When interwoven with school law questions, should be heard first by Commissioner, Sukin v. Northfield Bd. of Ed., 171 N.J. Super. 184 (App. Div. 1979); (79:295, Coulter, aff'g in part, rev'g in part, 79:288), disapproving earlier Commissioner decisions declining jurisdiction (78:451, Committee to Save Bayard School); (78:890, Spring Valley)

Supervision of school facilities (80: June 23, Kampf)

Tenure cases

(See "Tenure - Dismissal or reduction in salary", this index)

Terms and conditions of employment; hours of employment and number of classes, Commissioner lacks jurisdiction over subject matter, petition dismissed (84:384, Solomons)

Transfer of tenured teachers upon closing of school; no authority under N.J.S.A. 18A:28-6.1 to order transfer of tenured teachers unless consensual agreement exists between districts, In re Closing of Jamesburg High School, 83 N.J. 540 (1980)

Transportation, Lepis v. Wall Tp. Bd. of Ed., App. Div., unpublished opinion (Docket No. A-4068-79, decided March 12, 1981)

Transportation of pupils over private property; Commissioner has no authority to order private persons to permit the use of their property for school district purposes (84: January 27, Patrick, aff'd St. Bd. 84: September 5)

Veterans' Tenure Act, N.J.S.A. 38:16-1 (81: May 4, Taylor)

Wage and price controls, Commissioner has no jurisdiction to interpret (74:590) (74:594) (74:657)

Waiver, estoppel (81: March 16, Lowicki, aff'd St. Bd. 82:
May 5, 86:2298, Comm., 88:1089, Comm., aff'd St. Bd.
90:1764)

COMMISSIONER OF EDUCATION - continued

Jurisdiction of Commissioner - continued

Witness fees - awarded as per N.J.A.C. 1:1-11.2 where witnesses subpoenaed but not called (88:740, Smith)

Workers' Compensation (See "Workers Compensation", this index)

Workers' Compensation claims; no jurisdiction (79: May 7, Cook, unpublished opinion) (81: January 29, Wellington, aff'd St. Bd. 81: May 6, aff'd unpublished opinion, App. Div. (Docket No. A-5407-80T1, July 19, 1982)) (82: January 5, Victoria)

Workers' Compensation; no jurisdiction to hear claims under N.J.S.A. 34:15-39.1 (82: August 25, Davis)

Mitigation of damages

Employee's responsibility to find other, equivalent employment even though wrongfully dismissed (81: June 18, Zielinski, aff'd St. Bd. 82: February 3)

Motion for Stay denied where board failed to present any argument which would satisfy criteria for granting stay (88: 1089, Lowicki, aff'd St. Bd. 90:1764)

Unemployment compensation benefits: Commissioner orders mitigation of illegally terminated teacher's back pay by amount of benefits (85: August 26, Ujheny)

Moot

(See also "Moot issues or questions", this index)

Mootness (80: August 11, Lobis, aff'd St. Bd. 80: November 5) (82: January 5, Victoria)

PERC; jurisdiction of, comity with Commissioner's jurisdiction (80: September 15, Loper)

Period of Limitations

Claim dismissed as untimely when raised in post-hearing brief and after 90 day period had run (83: July 18, Swarctz)

Date 90 day period begins to run

Action for additional tuition in sending/receiving relationships accrues on date of audit from Department of Education for the year in question (86:1355, Kinnelon, remanded St. Bd. 86:1369, on remand 86:1370, rev'd St. Bd. 88:2489, aff'd App. Div. unreported op. (Dkt. No. A-2857-87T7, March 22, 1989))

Action for non-renewal of contract - 90 days from written statement of reasons (89:2060, Pacio)

Abolition of position, all district employees in a single position were RIF'd, cause of action accrued upon reemployment of some of those employees (83: September 2, Kautzmann)

Adjustment of tuition rate runs from date sending district receives certified costs per pupil

(88:1207, Little Ferry, aff'd St.
Bd. 88:1219, aff'd App. Div.
unreported op. (Dkt. No. A-1891-
88T5, July 10, 1989))

COMMISSIONER OF EDUCATION - continued

Period of Limitations - continued

Date 90 day period begins to run - continued

- Alleged violation of tenure/seniority rights is not a continuing violation, petition must be filed within 90 days of board action (83:1141, Gordon, rev'd St. Bd. 85:1929, aff'd App. Div. unreported opinion (Docket No. A-3294-84T7, decided May 27, 1986), certif. denied 105 N.J. 534 (1986) (88:787, Caldwell)
- Applied to dispute between New York and New Jersey (89:2572, Mt. Pleasant-Blythedale)
- Continuing violation; 90 day rule did not preclude action where board refused to reinstate tenured teacher after leave of absence due to mental illness (84: January 23, Bybel, rev'd on other grounds 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))
- Continuing violation not demonstrated (89: December 20, Pigut)
- Increment denied, 90 day period began to run upon notification in April that "any possible increment" would be withheld for succeeding school year, not when board actually fixed salary after collective bargaining agreement negotiated (83: November 14, Barry)
- Misconduct charges by teacher against principal, period of limitations began to run as to teacher's claim as of notice of board's rejection of the charges (83: September 26, Kulik, aff'd St. Bd. 84: February 1)
- Reduction in salary, notice ran from date board refused to correct placement, not from date of receipt of first check, Stockton v. Bd. of Ed. of Trenton, 210 N.J. Super. 150 (App. Div. 1986), rev'g and remanding 85:2023, St. Bd. rev'g 84:1802)
- Salary guide placement: Failure to commence action within 90 days bars relief in future years, where placement not a matter of statutory right, North Plainfield Ed. Assn. v. North Plainfield Bd. of Ed., 96 N.J. 583 (1984); (85: January 31, Andreula) (85: April 15, Shulman) (86:849, Bertisch, aff'd St Bd. 86:857, aff'd App. Div. unreported opinion (Docket No. A-2467-86T8, decided June 15, 1987)) (87:1566, Capizola)
- Tolling: Appeal to Appellate Division does not toll 90 day period (89:2572, Mt. Pleasant-Blythedale)

Tolling: Attempts to negotiate with board does not toll 90 day period (89:2885, Kaprow, aff'd w/modif. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), cert. granted, 130 N.J. 16, aff'd 131 N.J. 572 (1993))

COMMISSIONER OF EDUCATION - continued

Period of Limitations - continued

Date 90 day period begins to run - continued

Untimely: Ninety day limit applies to claim arising from RIF; rights resulting from RIF do not constitute statutory entitlement (89:2885, Kaprow, aff'd w/mod. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992)), cert. granted 130 N.J. 16, aff'd 131 N.J. 572 (1993))

Violation of tenure/seniority rights; 90 days did not begin to run until teacher became aware of board's actions (88:107, Data-Samtak, aff'd St. Bd. 88:123)

Petition before Commissioner must be filed within 90 days of receipt of notice by petitioner of the order, ruling, or action for which hearing is requested, per N.J.A.C. 6:24-1.2. Riely v. Hunterdon Central Bd. of Ed., 173 N.J. Super. 109 (App. Div. 1980) (78:214, Smith) (78:919, Shokey, aff'd St. Bd. 79:869); State Board has authority to promulgate N.J.A.C. 6:24-1.2; (80: October 27, Jamesburg, aff'd St. Bd. 81: March 4, aff'd App. Div., unpublished opinion, (Docket No. A-3213-80T2, March 5, 1982) (80: February 25, Miller) (81: September 3, New Milford) (81: November 12, DiRisi) (82: January 4, Mulvey, aff'd St. Bd. 82: May 5) (82: January 26, Hall) (82: April 1, Drummond) (82: June 11, Hyman) (82: June 23, J.C., dismissed by St. Bd. 82: November 3) (83: May 12, Castell) (83: June 3, Siedlarczyk, aff'd St. Bd. 84: May 2) (83: July 28, DeGennaro, aff'd St. Bd. 84: February 1) (83: September 12, Wnek, aff'd St. Bd. 84: January 4) (83: September 26, Kulik, aff'd St. Bd. 84: February 1) (83: September 7, Schwartzkopf, St. Bd. rev'g and remanding 82: August 23) (83: October 31, Sydnor) (84: February 24, Lipartito, aff'd St. Bd. 84: August 8) (84: March 15, Gallagher, aff'd St. Bd. 84: September 5) (84: July 13, Sullivan) (84: July 20, Weir, aff'd St. Bd. 85: March 6, aff'd App. Div. unreported opinion (Docket No. A-3520-84T6, decided April 9, 1986)) (84: September 10, Donohue) (84: October 24, Hoyo) (85: January 11, Martello) (85:1852, Bree, St. Bd. aff'g in part, rev'g in part 84: August 6) (85: February 6, Love, St. Bd. rev'g in part 84: July 23) (86:2159, Markman) (86:1557, Fringuello) (86:2712, Gringeri) (87:1598, Nealy) (88:158, Gringeri) (87:1989, Karabaic) (87:2243, Vogel Bus Co., aff'd St. Bd. 88: May 4, aff'd App. Div. unreported op. (Dkt. No. A-4645-87T1, April 28, 1989)) (88:191, Williams) (88:863, Newton) (88:1233, P.W.M.)

(88: October 14, Luppino, aff'd St. Bd. 89: March 1) (88:
October 27, Williams) (89: February 21, Gordon)

COMMISSIONER OF EDUCATION - continued

Period of Limitations - continued

Petition before Commissioner must be filed within 90 days of receipt of notice by petitioner of the order, ruling or action for which hearing is requested, per N.J.A.C.

6:24-1.2 - continued

(89:1103, CARE, appeal dismissed St. Bd. 90: July 5)
(89:1532, Middle Township, aff'd St. Bd. 89:1548, aff'd App. Div. unpub. op. (Dkt. No. A-391-89T3, April 12, 1990))
(89:1816, Glowacki) (89:1851, Valanzola) (89: June 20, Brown) (89:2522, Cade, aff'd St. Bd. 90:1693)

Relaxation of 90 day rule

Ambiguity in notice of board action (84: January 23, Parisi, rev'd St. Bd. 84: October 24, on remand 86:405, aff'd St. Bd. 86:418, aff'd App. Div. unreported opinion (Docket No. A-5840-85T7, decided May 4, 1987))

Commissioner may relax (81: May 11, Perrotti, aff'd St. Bd. 81: September 2) (82: January 18, Paterson, aff'd St. Bd. 82: May 5), but rule will normally be strictly applied (81: June 26, Contardo, aff'd St. Bd. 82: March 3) (82: January 26, Hall)

Continuing nature of alleged discrimination justified relaxation (86:2496, D'Alessandro)

Relaxation is appropriate where strict adherence would promote premature litigation (84: January 23, Parisi, rev'd St. Bd. 84: October 24, on remand 86:405, aff'd St. Bd. 86:418, aff'd App. Div. unreported opinion (Dkt. No. A-5840-85T7, decided May 4, 1987))

Relaxed where Commissioner's representative affected petitioner's efforts to file on time (Brown v. Sussex County Vocational School, App. Div. (Docket No. A-4854-83T7), unpublished April 4, 1985, reversing St. Bd. 84: May 2, reversing 83: August 11, on remand 86:1807, aff'd St. Bd. 86:1846) (81: December 15, Byram)

Relaxed where notice of disallowance of transportation aid to Level III district not conveyed to district by Department of Education in sufficient and definite manner (90:1781, Paterson, rev'g in part 89:2586 Commr., aff'd, remanded 91:2852)

Relaxed where petitioner tried first to reach an agreement with board (84:1832, Polaha, dismissed by St. Bd. 85:1982, rev'd in part, remanded 212 N.J. Super. 628 (App. Div. 1986) on remand Commissioner opinion

(reinstated Comm. opinion 84:1832) (86: November 20,
rev'd by St. Bd. with opinion 88:2517, aff'd App. Div.
unreported op. (Dkt. No. A-3799-87T8, June 22, 1989))

COMMISSIONER OF EDUCATION - continued

Period of Limitations - continued

Relaxation of 90 day rule - continued

- Voluntary military service will not relax rule (84: July 13, Sullivan)
- Waived for petitioner: Delays attributable to board (81: May 11, Perrotti, aff'd St. Bd. 81: September 2)
- Warranted only where substantial constitutional issue is presented, where judicial review sought of administrative determination, or where matter of significant public interest is involved (89:2572, Mt. Pleasant-Blythedale)
- Will not be relaxed absent compelling circumstances; board action to abolish assistant principal and supervisor of reading and language arts upheld (89:2260, Chammings, aff'd St. Bd. 90:1706)
- Will not be relaxed for Board's claim for repayment of accumulated sick leave or excess Supplemental Disability payment where 4 months have passed since refusal of repayment (87:1911, Pelle, St. Bd. aff'd in part, rev'd in part 88:2463, aff'd App. Div. unreported op. (Dkt. No. A-4415-87T1, March 1, 1989))
- Will not be relaxed for hardship (89:2572, Mt. Pleasant-Blythedale)
- Will not be relaxed for petitioner who proceeds through grievance arbitration (81: December 15, North Plainfield, aff'd St. Bd. 82: May 5), rev'd App. Div. (unpublished opinion) rev'd 96 N.J. 587 (1984)) (81: September 3, Viviani)
- Will not be relaxed for petitioners who waited 11 months after board's initial denial of refund of tuition (86:2159, Markman) (87:2363, Gerding, aff'd by St. Bd. 88:2466, aff'd and remanded App. Div. unreported op. (Dkt. No. A-4761-87T2, December 6, 1988), dec. on remand St. Bd. 89: February 1, remanded to Commissioner as to shared time recovery, dec. on remand 89:2476)
- Will not be relaxed solely because grievance was filed (89:June 20, Brown)
- Will not be relaxed where no compelling reason is offered - petitioner's state of mind not impaired (87:729, Brunnquell, rev'd St. Bd. 87:736; decision on remand 88:347, aff'd St. Bd. 88:351)
- Will not be relaxed where good cause is not shown (87: 204, Lombardi)

Will not be relaxed where Board waited 8 months after
resignation of supplemental teacher to contest alleged
overpayment (87:1989, Karabaic)

COMMISSIONER OF EDUCATION - continued

Period of Limitations - continued

Relaxation of 90 day rule - continued

Will not be relaxed where petitioner waited five years and was familiar with rules for filing (88: October 14, Luppino, aff'd St. Bd. 89: March 1)

Salary guide placement: Failure to commence action within 90 days bars relief in future years, where placement not a matter of statutory right (86:2516, Union Township)

Claim of failure to credit prior service must be filed within 90 days (86:2516, Union Township)

Initial payment; auxiliary experience credit on regular teachers guide not a statutory entitlement; 90-day time bar applied (86:1710, Boguszewski)

Statutory entitlement and effect on period of limitations (85:264, Fallis, aff'd St. Bd. 85:281) (86:2021, Hoboken Teachers Assn.)

Tenure/Seniority cases - 90 day rule strictly applied - no continuing violation (87:1943, Caldwell-West Caldwell) (89:2522, Cade, aff'd St. Bd. 90:1693)

Untimely: (87:391, Rendell) (86:2271, Gibson) (86:2370, Juris)

90 day time limit applies

to a petition asserting janitor tenure (85: December 5, Rizzo)

Untimely: 90 day time limit applies to a petition for improper transfer (87:204, Lombardi)

Untimely: 90 day time limit applies to a petition for a refund of pupil tuition by the parents (86:2159, Markman)

Untimely: 90 day limit applies to violation of tenure/seniority rights even though rights are a statutory entitlement (86:1479, Arena)

Untimely: 90 day limit applies to claim arising under statute granting workers compensation rights to staff (87:2273, Northey)

Untimely: 90 day rule applies not only to final action of board of education, but to any activity under N.J.S.A. 18A:6-9 (89:2572, Mt. Pleasant-Blythedale)

Petitions

Amendments to, permitted with liberality (66:219)

Collateral estoppel bars petition (83: September 26, Kulik, aff'd on other grounds St. Bd. 84: February 1) (84: January 17, Salette)

Default judgment:

Failure to file answer in timely fashion may result in

default judgment; however, in the interest of securing a just result-the decision impacted on other pupils in class regarding class standing - the Commissioner remanded the case for a decision on the merits (87:45 G.B.C.)

COMMISSIONER OF EDUCATION - continued

Petitions - continued

Default judgment - continued

Granted - Respondent failed to answer - tenure dismissal
(88: April 6, Sodora) (89: February 2, Hajduczek)

Opening a default judgment requires a showing that the
neglect to answer was excusable under the circumstances
and that there is a meritorious defense (87:45, G.B.C.)

Where board fails to file answer to petition in timely
fashion teacher must be restored to supervisory status
(82: September 9, Jersey City)

Defective (73:701)

Discovery

Board cannot be ordered to produce documents under a
discovery order where such documents are generally
available under the "Right to Know Law" pursuant to
N.J.A.C. 1:1-10.1(d), without good reason (87:2442,
Laufgas - discovery order of Commissioner, aff'd by St.
Bd. 88:2496)

Failure of petitioner to comply with discovery order is
basis for dismissal (87:2442, Laufgas, aff'd by St. Bd.
88:2496)

Dismissal; failure to prosecute (81: May 28, Sheehan)
(85:1426, Lydon, aff'd St. Bd. 86:3085)

Dismissal; no dismissal for failure to timely answer
interrogatories; Division on Civil Rights had deferred to
Commissioner's jurisdiction and dismissal would foreclose
petitioner's redress (89: September 12, Foster)

Dismissed (61-62:76) (76:851, Ubelhart) (77: May 23, Schulman,
unpublished opinion) (77:809, Axler, aff'd St. Bd. 77:811)
(77: July 29, Miller, unpublished opinion) (77: August 25,
Pickover, unpublished opinion) (77: September 23,
Sciancalepore, unpublished opinion)

Dismissed; advisory arbitration does not toll N.J.A.C. 6:24-1.19
(81: April 22, Scott)

Dismissed as moot (80: June 23, Dziedzic) (80: November 24,
Green) (81: February 11, Willingboro) (81: June 3, M.R.)
(81: November 13, Princeton Regional) (82: January 5,
Victoria) (87: September 23, Yorke) (88: February 22,
Behavior Research Institute Inc.) (88: November 23, J.B.
and P.B.)

Dismissed as procedurally defective (80: April 21, Spadafino)
(80: August 11, Lobis aff'd St. Bd. 80: November 5)

Dismissed; failure to certify the existence of action based
upon same set of facts before another administrative agency

arbitration proceeding or court - sufficient causes for
dismissal (87:1943, Caldwell-West Caldwell)

COMMISSIONER OF EDUCATION - continued

Petitions - continued

- Dismissed; failure of party to press claim in timely fashion, (81: October 5, Princeton Regional) (81: November 12, DiRisi) (81: November 19, Donaldson)
- Dismissed; failure of petitioner to appear (81: April 10, Urethane) (81: November 25, Williams) (82: January 29, Hanover Park) (82: August 17, Asbury Park School Election) (88: December 2, Dickson) (89: January 19, S.P.J.) (89: February 2, Hajduczek)
- Dismissed; failure of petitioner's counsel to comply with pre-hearing order (83: May 13, Gateway Regional)
- Dismissed; failure to charge wrong doing against local board in back pay claim (87:2003, Gonzalez)
- Dismissed; failure to prosecute (81: May 28, Sheehan)
- Dismissed; failure to provide affidavits, briefs or supporting documents of allegations that Board violated its own adopted qualification for Asst. Superintendent N.J.A.C. 1:1-12.4 (88:376, Suggs)
- Dismissed; failure to provide discovery (81: January 8, Morris Hills)
- Dismissed for failure to allege factual dispute on manner an adverse party in suit for declaratory judgment (85:1976, NJEA in the Matter on Asbestos, St. Bd. aff'g dismissal of petition by Commissioner 84: August 2)
- Dismissed for failure to allege violation of education laws (81: November 12, Ianni)
- Dismissed; inactivity of parties (81: April 20, Glen Rock)
- Dismissed; lack of jurisdiction in claim against the State (87:2003, Gonzalez)
- Dismissed; motion granted where respondent failed to answer in a timely fashion (88:661, Cipollini, aff'd St. Bd. 88:678)
- Dismissed; petition was premature (89: October 18 - Hunterdon Central aff'd w/op. St. Bd. March 7, 1990)
- Dismissed; statute of limitations (81: March 16, Lowicki, aff'd St. Bd. 82: May 5, 86:2298 Comm., 88:1089 Comm., aff'd St. Bd. 90:1764)
- Dismissed; taxpayer has no standing to challenge transfers of teaching staff (79: November 16, Ricciardelli, unpublished opinion); or of principals (81: December 21, Bott)
- Exceptions filed with Commissioner may not be used to raise an affirmative defense not identified in the pre-hearing order (85:1403, Romanoli, rev'd by St. Bd. with opinion 87:2678, aff'd App. Div. unreported opinion (Docket No. A-3900-86T8,

decided February 4, 1988))
Failure to petition within 90 days of oral notification of
reassignment results in dismissal of position (82: October
28, Benedict)

COMMISSIONER OF EDUCATION - continued

Petitions - continued

Failure to petition within 90 days of receipt of first paycheck
at "incorrect" salary does not result in dismissal (85:2023,
Stockton, St. Bd. rev'g 84:1802, rev'd and remanded 210 N.J.
Super. 150 (App. Div. 1986)

Failure to prosecute (74:343) (74:644, aff'd St. Bd.
75:1100) (74:1132)

Failure to state a cause of action upon which relief may be
granted (84: October 24, Fazan) (88:376, Suggs) (89:
October 10, Basco, aff'd St. Bd. February 7, 1990) 89:
October 18, Hunterdon Central, aff'd with opinion, St. Bd.
March 7, 1990)

Hearing: Party's presence not required if represented by
counsel and party's testimony is not required (89: January
19, Spizziri)

Laches, generally (80: August 21, Zielinski) (81: July 15,
Garvin, aff'd St. Bd. 81: December 2) (81: July 22,
Walker, aff'd St. Bd. 82: February 3) (82: July 20, Fair
Lawn, aff'd St. Bd. 82: December 1)

Mootness
Claim moot, petition dismissed (84: January 23, Boyle)
(88:November 23, J.B. and P.B.)
Defined (89:March 5, Syvertsen)

Reconsidered (77:11, Hochman, aff'd St. Bd. 77:15)

Relaxation of rules for pro se litigant (81: March 6, Kenwood,
aff'd St. Bd. 81: June 3) (81: April 3, Casazza) but see
(81: February 23, Mucci, aff'd St. Bd. 81: August 5)

Stipulation of dismissal set aside by Commissioner for
inspecificity (81: June 11, DiNicolantonio) (81: June 15,
Charleroy) (81: July 6, Clinton, aff'd St. Bd. 81: October
7) (81: August 4, Bove, remanded second time by
Commissioner 82: June 1; undisturbed by tie vote St. Bd.
82: September 8; motion for reconsideration denied St. Bd.
82: December 1) (81: October 15, Euell)

Timeliness; when cause of action accrues (81: June 9, Rizzolo)

Untimely (74:617) (80:264, Stolte, aff'd St. Bd. 80:
271) (80: March 20, Rappaport) (80: March 24,
Booth) (80: April 10, Watchung Hills,
rev'd St. Bd. 81: February 4) (81:

February 2, Baley, St. Bd. rev'g 80:
June 19) (80: July 17, Vaz) (80:
August 6, Nadeau) (80: September 19,
Scotch Plains-Fanwood) (80: September
25, Kullimanis, aff'd St. Bd. 81: March
4) (80: October 10, Barco, aff'd St.
Bd. 81: February 4, aff'd unpublished
opinion, App. Div. (Docket No.
A-3019-80T3, October 5, 1982)) (80:
October 27, Jamesburg, aff'd St. Bd. 81:
March 4, aff'd App. Div., unpublished
opinion (Docket No. A-3213-80-T2, March
5, 1982))

COMMISSIONER OF EDUCATION - continued

Petitions - continued

Untimely - continued

(80: November 24, R.S.) (80: November 24, Moreland) (80: December 18, McAtee) (80: December 22, Sheary) (81: January 23, Wright, aff'd St. Bd. 81: July 1) (81: February 11, Grossman) (81: March 23, Ramapo) (81: April 6, Scelba) (81: May 4, Foster) (81: May 18, Bergenfield, aff'd St. Bd. 82: January 6, remanded App. Div. 83:1499) (81: June 3, Alexander) (81: June 24, Santo, aff'd St. Bd. 81: November 10) (81: June 26, Contardo, aff'd St. Bd. 82: March 3) (81: June 26, O'Rourke) (81: July 6, Kelly) (81: July 17, Wisnewski, aff'd St. Bd. 82: February 3) (81: October 5, Ellis) (81: October 13, Burgos) (81: December 15, North Plainfield, aff'd St. Bd. 82: May 5) (83: June 3, Siedlarczyk, aff'd St. Bd. 84: May 2) (83: July 28, DeGennaro, aff'd St. Bd. 84: February 1) (83: September 12, Wnek, aff'd St. Bd. 84: January 1) (83: September 26, Kulik, aff'd St. Bd. 84: February 1) (83: November 14, Barry) (84: January 17, Newman) (84: January 17, Hobson) (84: March 15, Gallagher, aff'd St. Bd. 84: September 5) (84:769, Bosner (rescind resignation)) (85:1394, Yrigoyen) (85: December 6, Turner) (88:191, Williams)

Untimely; deadline for filing not relaxed for pro se litigant (81: February 23, Mucci, aff'd St. Bd. 81: August 5) (81: May 4, Foster)

Untimely; request to county superintendent to review board's decision does not affect 90 day deadline for filing (81: October 5, Ellis)

Untimely; settlement discussions do not affect 90 day deadline for filing (81: June 26, McCarthy)

Withdrawal

Order approving is procedural (82: March 5, Monroe)
Permitted where no evidence had been placed in record
(82: March 5, Monroe)

Precedent; policy decision of former Commissioner is not strictly binding upon future policy decisions of that or any other Commissioner, dicta in initial decision (84: January 17, Newman)

Preliminary relief

Denied (73:197) expulsion case (73:341) unsuccessful bidder sought to enjoin construction (74:538 stay denied St. Bd. 74:540)

Denied, conscientious objector (89: March 28, J.G.M.)

Denied where no showing of imminent, irreparable harm could be made (87:2243, Vogel Bus Co., appeal dismissed by St. Bd.)

88: May 4, aff'd App. Div. unreported op. (Dkt. No. A-4645-87T1, April 28, 1989))

COMMISSIONER OF EDUCATION - continued

Preliminary relief - continued

Denied, printing and distributing election materials (77: March 21, Gormley, unpublished opinion)
Denied, pupil redistricting plan (76:987, Hornik)
Granted (73:200) (73:254) (73:301) (73:578, stayed St. Bd. 74:1414) (75:212, Jacobs) (75:211, W.B.)
Prospective relief, no authority to grant (79:420, Matrick)
Reopen hearing:

Commissioner has the right to reopen a tenure matter where there is good and sufficient reason and there is a likelihood that the reason will materially affect the final decision in the matter (87:539, McClelland)
Motion denied (84: July 23, Love, rev'd in part St. Bd. 85: February 6)
Res Judicata; generally (85:1221, Watchung Hills Regional High School) (81: October 5, Wyckoff, aff'd St. Bd. 82: May 5)
Bars separate action for back pay which was not raised in earlier action seeking reinstatement (86:94, Amato, aff'd St. Bd. 86:105)
Does not bar litigation over back pay after decision dismissing tenure charges and reinstating teacher (82: February 5, Siedlarczyk, aff'd St. Bd. 82: August 4)
Does not bar workers compensation judge from considering claim for benefits for injuries which Commissioner determined were not work-related. Forqash v. Lower Camden County School District, 208 N.J. Super. 461 (App. Div. 1985)

Review of administrative law judge

ALJ may not refuse to comply with an agency's remand order In re Kallen, 92 N.J. 14 (1983)
Commissioner, as agency head, is charged with the responsibility of making the final decision; Commissioner's review of initial opinion is not one of appellate review. Caporaso, Tenure Matter of, App. Div. unreported opinion (Docket No. A-4558-85T6, decided March 19, 1987) rev'g (85:1524, aff'd with opinion St. Bd. 86:3024, on remand 87:1664, aff'd St. Bd. 87:1668, aff'd App. Div. unreported op. (Dkt. No. A-2498-87T7, November 15, 1988)) (87:170, Onorevole, St. Bd. rev'g and remanding 87:96) (87:599, Eberly, St. Bd. rev'g and remanding 87:553, decision on remand: 87:601, St. Bd. dec. on motion 88:2441, aff'd St. Bd. 88:2447)
Commissioner is not authorized by statute or regulation to grant request that matter be held in abeyance while transcripts are ordered (89:53, Guyet, appeal dismissed St. Bd. 89: August 2, reaffirmed St. Bd. 89: October 4)
Commissioner is not required to review the transcript of

hearings held before the ALJ but is required to consider and appraise a personal understanding of the evidence contained in the record (86:1299, B.C., aff'd 220 N.J. Super. 214 (App. Div. 1987))

COMMISSIONER OF EDUCATION - continued

Review of administrative law judge - continued

Commissioner is not required to restate the ALJ's findings and conclusions in his decision in order to justify a more severe penalty nor is Commissioner required to consider the transcript. Should respondent challenge the ALJ's factual findings before the Commissioner, it is incumbent upon the respondent to provide the Commissioner with transcript (85:1110, Ferenz, St. Bd. rev'g penalty 87:2602, aff'd App. Div. unreported op. (Dkt. No. A-1309-87T7, April 18, 1989))

Commissioner will defer to ALJ on questions of credibility where there is conflicting evidence and the findings are reasonably supported (82: March 2, Campanile) (82: March 2, Driscoll, aff'd St. Bd. 82: September 8, aff'd unpublished opinion, App. Div. (Docket No. A-798-82T2, decided October 28, 1983)) (86:117, McKnight) (86:1372, Onulak)

Sequestration of witnesses at hearing - if witnesses are ordered not to discuss case but violation occurs, entire testimony of witness need not be discounted (83: April 18, Mauro)

Standard of review of local board actions

(See "Boards - Actions by, generally", this index)

Standing

Citizen's standing to file petition appealing board's refusal to investigate Superintendent for misconduct discussed by ALJ but not reached by Commissioner (88:158, Gringeri)

Contractor seeking stay of award of a roofing contract does not have standing, brought action as a taxpayer residing outside the school district (87: April 2, Bettencourt)

Interested person (80: August 11, Lobis, aff'd St. Bd. 80: November 5)

Media specialist has no standing to contest certification by State Board of another teacher or specialist (82: May 3, O'Hara, aff'd St. Bd. 82: September 8)

Of foster parents, where legal guardian is state agency, denied (76:264, Orr, dismissed 76: July 26)

Of parent, denied, to determine qualifications of board employees (77:622, Goore)

Of professional association to represent members before Commissioner (81: October 5, Wyckoff, aff'd St. Bd. 82:

May 5)
Of taxpayer to challenge staff appointments denied
(80: January 31, Delaney)
Of taxpayer to challenge staff transfers denied
(79: November 17, Ricciardelli, unpublished
opinion)
Of teacher to challenge board's allowing minority recruitment
(89: December 20, Pigut)
Of teachers' organization denied (76:748, Kochman)

COMMISSIONER OF EDUCATION - continued

Standing - continued

- Of teachers' organization upheld, Winston v. South Plainfield Bd. of Ed., 125 N.J. Super. 131 (App. Div. 1973) aff'd 64 N.J. 582 (1974) (C. dec. 72:323, St. Bd. 72:327, C. on remand 74:999) (77:706, Camp) (77:1096, DeOld) (84:1045, Newark Teachers Union and Smith)
- Of voter challenging budget reductions denied (76: August 3, Zakutansky, unpublished opinion)
- Parent of graduated student (85: June 17, Connolly) (86:2248, Huettemann)
- "Participant" Education Association has no standing to appeal as would an intervenor (89: December 1, Salem, aff'd St. Bd. w/opinion 90: April 4)
- Potential bidder failed to show an interest in the assignment of a busing contract which would be sufficient to establish standing before the Commissioner (87:2243, Vogel Bus Co., appeal dismissed by St. Bd. 88: May 4, aff'd App. Div. unreported op. Dkt. No. A-4645-87T1, April 28, 1989)
- Power of attorney from parent to lay person did not confer standing on lay person to sue on behalf of student (82: June 11, Hyman)
- Private citizen who fails to allege harm from a board's attendance policy lacks standing (82: June 14, Kenwood; appeal dismissed St. Bd. 82: September 8)
- Public school contracts; dealer of particular roofing system had no standing to challenge specifications which precluded use of the system, under N.J.S.A. 18A:18A:15, where specifications did not preclude all but one bidder (84: January 26, Bettencourt)
- Taxpayers determined to be "interested persons" under N.J.A.C. 6:24-1.1 for purposes of bringing action against board as an entity (84: January 17, Sallette)
- Taxpayers residing in district have standing to challenge proposed lease purchase (89: March 2, C.A.R.E., appeal dismissed St. Bd. 90: July 5)
- Teachers Association does have standing to represent the interests of its membership as a whole (86:2021, Hoboken Teachers Association)
- Teachers' Association may challenge legality of contract entered into by educational services commission to provide services to non-public school students (81: September 9, Essex County Educational Services Commission)
- Withholding of funds (80: August 11, Tri-City)
- State aid

Commissioner's withholding of portion of state aid for illegal board action held proper (84: February 1, Belvidere, St. Bd., aff'g order of Commissioner 83: September 9)

COMMISSIONER OF EDUCATION - continued

Stay of Commissioner's decision

- "Bumping" resulting from reinstatement of department chairperson does not justify stay (87: February 10, Hunterdon Central H.S. Ed. Assoc.)
- Stay denied - fails to meet Crowe v. De Gioia standard (88:1613, Englewood Cliffs) See also (88:1501, intervention granted St. Bd. 88:1625, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (App. Div. 1992) aff'd 132 N.J. 327 (1993) cert. denied 114 S.Ct. 547 (1994))
- Stay denied - law is settled that teaching staff member's tenure rights are preeminent and may not be deleted by board policy (89:Aug. 3, Schienholz, App. Div. unpub. op. (Dkt. No. A-2905-89T3, Nov. 19, 1990), aff'g 90:1809, St. Bd. rev'g in part 89:1860 Commr., certif. denied March 7, 1991)
- Stay denied where board failed to present any arguments which would satisfy criteria for granting stay (88:1089, Lowicki, aff'd St. Bd. 90:1764)
- Stay denied where local board not joined in petition: No irreparable harm or likelihood of success shown by petitioner (87: September 18, Griskey)
- Stay denied where no imminent and irreparable harm shown. Board's failure to apply for Stay for three months subjected petitioner to financial and professional hardship (88: February 26, Pezzullo)
- Stay of Commissioner's decision pending appeal; board has no standing to move for such relief unless it has filed previously an appeal of the decision with the State Board (84: March 7, Zorfass) See 83:1310, Zorfass, aff'd St. Bd. 84:2048)
- Stay of decision as to the disqualification of 165 write-in votes, pending appeal, denied (87: June 22, Matawan-Aberdeen)
- Stay of order to reinstate teacher pending State Board appeal on retirement issue, denied; no likelihood of success nor greater harm to board than community (89: January 10, Hall)
- Stay of remand of tenure matter pending State Board appeal denied: no compelling reasons, no likelihood of success, no irreparable harm if stay not granted (86: June 11, Martin) (88:553, Schaeffer, aff'd St. Bd. 89:3077) (88:221, Napoli, aff'd with 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))
- Stay pending State Board appeal denied absent clear and compelling reasons (86: September 10, Matawan Regional)

Teachers Assoc.) (85: October 31, Walldov)
Stay regarding acquisition of tenure denied absent clear and
compelling reasons (87: March 25, Smith)

COMMISSIONER OF EDUCATION - continued

- Stay of Commissioner's opinion pending appeal (85: May 21, Fischbach, (motion for stay)) (85: October 31, Walldov) (87:621, Eberly, on remand)
- Stay of Commissioner's decision pending appeal; board has no standing to move for such relief unless it has filed previously an appeal of the decision with the State Board (84: March 7, Zorfass,) See 83:1310, Zorfass, aff'd St. Bd. 84:2048)
- Stay of decision pending appeal to St. Bd. denied in absence of clear and compelling reasons (82: March 24, Siedlarczyk, aff'd St. Bd. 82: August 4) (82: March 25, Archway School, aff'd St. Bd. 82: June 2, aff'd App. Div. 83: 1493) (83: April 7, Colella) (84: April 4, Hyman)
- Stay of decision regarding withholding of transportation aid granted because of potential harm to students in Level III district (90: March 7, Passaic, State Board (motion))
- Stay of decision reinstating principal denied for failure to meet Crowe v. DeGioia criteria (89:3079, Sitek)
- Stay of tenure decision ordering forfeiture of salary rather than dismissal denied; no irreparable harm to board pending appeal (82: April 12, Tiefenbacher)
- Summary judgment
Can be granted only where findings of fact are made in reliance on competent evidence (87:399, Hagerty)
Commissioner has 45 days within which to review order granting (82: March 3, Coppola, St. Bd. aff'g 82: January 21, ALJ decision)
Granted (66:214) (74:677) (77:518, Barnarr) (77:513, Guasconi, aff'd St. Bd. 77:517) (77:706, Camp) (77:812, Lane) (77:1114, Makulinski, dismissed St. Bd. 78: April 5) (87:1633, Spizzirri)
Should not be granted where substantial fact question exists (Reimer v. Newark Bd. of Ed., App. Div. unpub. opinion (Docket No. A-4774-83T7, May 31, 1985), rev'g 83: June 3, aff'd St. Bd. 84: June 6) (87:523, Creed)
Standard for deciding summary judgment motion (69:27)
Standard for granting (81: October 5, Wyckoff, aff'd St. Bd. 82: May 5) (87:1633, Spizzirri)
- Withdrawal
Order approving is procedural (82: March 5, Monroe)
Permitted where no evidence had been placed in record (82: March 5, Monroe)

COMPENSATION

Definition; term means "earnings", does not include interest, fees, or other damages (67:192)
Includes contracted salary but excludes overtime payments (77:311, McLean)

COMMUNISM

Board's power to investigate employee's activities or their refusal to testify, Laba v. Newark Bd. of Ed., 23 N.J. 364 (1957); Lowenstein v. Newark, 35 N.J. 94 (1961) and 33 N.J. 277 (1960) (C. dec. 55-56:128, 58-59:117 and 60-61:84)

CONDEMNATION

Damages, State v. Elizabeth Bd. of Ed., 116 N.J. Super. 305 (Law Div. 1971)
Jurisdiction, (87:2098, Murnick, aff'd in part, rev'd in part, remanded in part, 224 N.J. Super. 504 (App. Div. 1988) on remand 89:1569)

CONFLICTS OF INTEREST

(See same heading under "Boards - Membership on", "Teacher", "Superintendent" and "Secretary to board", this index)
Department of Education, violation of Code of Ethics, employee terminated (76: September 9, Singleton, unpublished opinion)
Superintendent serving as mayor of sending district (73:18 aff'd St. Bd. 73:28, 74:1415 remanded App. Div. 75:1115 remanded St. Bd. 75:1115 on remand 75: December 26 aff'd St. Bd. 76:1152)

CONTRACTS OF EMPLOYMENT

Board alone has authority to award contract (77:1059, Brennan) (77:746, Cardman) (77:832, Salowe) (77:1226, Sherwood) (85:1136, Baranoski)
Board member (38:48)
Bus driver not entitled to contract for succeeding year, despite absence of board action to terminate services, where employment contract was specifically conditioned on continued need for her assigned bus route, which had been eliminated (85: January 2, Hess, aff'd St. Bd. 84: September 27)
Chauffeur (38:145)
Clerk (38:76) (38:78) (38:82) in superintendent's office may only be dismissed by superintendent, not by board (61-62:169)

Contract not found but board liable for expenses incurred by relying party (77:1179, Poole, vacated St. Bd. 78: October 4)
Date employment begins is date when services rendered, not date of contract (81: April 24, Petigrew)
Employment at will: Employment manual; absent a clear disclaimer, an implicit promise contained in an employment manual that an employee will be fired only for cause is enforceable, Woolley v. Hoffman-La Roche, Inc., 99 N.J. 284 (1985), Supreme Court modifies prior decision as to scope of remand, 101 N.J. 10 (1985)

CONTRACTS OF EMPLOYMENT - continued

Fixed term contract: Termination for cause; board is not liable for balance of contract time, even absent termination clause (83: January 3, Booth)
Form of
Requirement of N.J.S.A. 18A:27-5 that board president sign contract is directive, not mandatory (73:526)
Guidance counselors, method of payment for summer work (76:865, Bowers)
Jurisdiction
Commissioner: Contract was not executed by board; board ordered to comply with termination clause (85:1136, Baranoski)
Commissioner does not have authority to interpret or enforce employment contract between board of education and school janitor, does not arise under the school laws (82: October 6, Larsen, St. Bd. rev'g 82: February 18) (83: October 6, Woods)
Malicious interference with
Board not liable, since public body cannot entertain malice and is not vicariously liable for personal malice of members performing public duties, O'Connor v. Harms, 111 N.J. Super. 22 (App. Div. 1970)
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 adopted by board to be valid (79:94, Bolger, aff'd St. Bd. 79:99, aff'd App. Div. 80:1478) (85:1136, Baranoski)
Notice of termination; non-tenured supervisor who was transferred to social worker by court order entitled to contractual notice or in alternative equivalent salary of supervisor (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)
Psychologist, acceptance of offer of employment was under same terms as in prior years (77:315, Lilenfield)

Rescission of

(See "Boards - Actions by - Rescission of resolution",
this index)

Secretary (38:84) (38:86) (38:89) (38:91) (38:93)

Short term contract not illegal; board need only invoke 60-day
termination clause to non-renew non-tenured employee (88:2041,
Coman)

Substitute school bus driver, no contract required (76:630, Coombs)
Tenured employees

No requirement that they be issued a contract (66:43) (72:577)

Termination clause; absent termination clause in bus driver's contract
board liable for payment for balance of contract term (81: April
30, Jungblut) (73:526) (73:496, aff'd St. Bd. 74:1412) (79:169,
Kyler)

CONTRACTS OF EMPLOYMENT - continued

Termination clause; board is not liable for payment of balance of
contract term upon termination for cause, even absent termination
clause (83: January 3, Booth)

Written (38:377)

CORPORAL PUNISHMENT

(See "Tenure - Dismissal - Grounds", this index)

Commissioner has jurisdiction to hear complaint of corporal
punishment by pupil/parent against district employee (86:
December 2, Matters)

COUNSEL FEES

(See "Indemnification" and "Commissioner - Attorneys fees", and
"Teachers - Legal fees," - this index)

COUNTY CHILD STUDY TEAMS

(See "Handicapped Children", this index)

COUNTY SPECIAL SERVICES SCHOOL DISTRICTS

(See "Tenure - Acquisition of", this index)

COUNTY SUPERINTENDENT

Contract approval by county superintendent under N.J.S.A.
18A:18-7 does not guarantee state aid, although it is a
prerequisite (89:212, North Arlington)

Matter remanded to county superintendent for determination of whether
field trip is an instructional program in order to determine the
reasonableness of the board's dress code policy (89:1, D.J.)

Must exercise his/her discretion regarding approval to use
unrecognized title, and must review annually all previously
unrecognized position titles (89:1194, Dowding, aff'd St. Bd.
90:1711)

CRIMINAL BACKGROUND CHECKS

Bus Driver disqualified from employment; prior arrest and conviction history, no evidence of rehabilitation. N.J.S.A. 18A:39-19 (89: May 4, Wilson, appeal dismissed State Board 89: August 2, rev'd App. Div. 90: August 10 unreported opinion (Dkt. No. A-536-89T5), aff'd State Board 90: December 5)

Clear and convincing evidence of rehabilitation must be shown (89: May 4, Wilson, appeal dismissed State Board 89: August 2, rev'd App. Div. 90: August 10 unreported opinion (Dkt. No. A-536-89T5), aff'd State Board 90: December 5)

Standard of Review, Bus Drivers N.J.S.A. 18A:39-19 (89: May 4, Wilson, appeal dismissed State Board 89: August 2, rev'd App. Div. 90: August 10 unreported opinion (Dkt. No. A-536-89T5), aff'd State Board 90: December 5)

CURRICULUM

(See "Boards - Duties and powers - Curriculum", and "Graduation - Requirements for", and "Pupils - Curriculum", this index)

CUSTODIAN OF SCHOOL MONEYS

(See also "Treasurer of School Moneys", this index)

Bonding (38:96)

Orders, refusal to pay (38:98)

Tenure
(See "Tenure - Acquisition of", this index)

CUSTODIANS

(See "Janitors" and "Tenure", this index)