

## **CALENDAR**

Teacher orientation and team treatment days do not constitute instructional days towards required 180 instructional days per academic year (94 N.J.A.R.2d (EDU) 501, Somerset Hills School, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 1, aff'd App. Div. 95 N.J.A.R.2d (EDU) 487)

## **CALENDAR YEAR**

The term "calendar year" refers to a period of one full year commencing on any date and is not limited to a period from January 1 to December 31 (96 N.J.A.R.2d (EDU) 109, Martucci, rev'd on other grounds St. Bd. 96:Dec. 4)

## **CARPENTER**

(See "Tenure - Acquisition of" this index)

## **CEPA (CONSCIENTIOUS EMPLOYEE PROTECTION ACT) (CEPA)**

(See "Whistleblower Law" this index)

Board was vicariously liable to teacher for compensatory damages under CEPA. Abbamont, 138 N.J. 405 (1994), aff'g 269 N.J. Super. 11 (App. Div. 1993)

Employee's CEPA cause of action accrued on date of actual discharge, and not on date he received written notification of employer's future intent to terminate him. Keelan v. Bell, 289 N.J. Super. 531 (App. Div. 1996)

Filing of CEPA claim constituted waiver of administrative retaliatory discharge claim before the commissioner (96 N.J.A.R.2d (EDU) 784, Lally)

Punitive damages; in an action under the Conscientious Employee Protection Act, a board of education may be liable for punitive damages for the egregious misconduct of the superintendent of schools and other high-level administrators. Abbamont v. Piscataway Twp. Bd. of Ed., 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Punitive damages; Supreme Court's affirmance by an equally divided court constituted the controlling law under the "law of the case" doctrine and was binding on lower courts in this case. Abbamont v. Piscataway Twp. Bd. of Ed., 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Respondeat superior: board may be liable under Conscientious Employee Protection Act for retaliatory actions of superintendent (Abbamont, 138 N.J. 405 (1994), aff'g 269 N.J. Super. 11 (App. Div. 1993)) See 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Teacher reasonably believed that to obey superintendent's order to select and release pupil records to outside contractor would be violation of the law within the meaning of CEPA. Delran Ed. Assn. v. Bd. of Ed., 277 N.J. Super. 538 (App. Div. 1994)

## **CERTIFICATE**

- Appropriate certification for duties performed under unrecognized title of Learning Specialist is LDT/C endorsement on educational services certificate (93 N.J.A.R.2d (EDU) 301, Rubin)
- Automobile Service I course properly taught by holder of various endorsements including teacher of industrial arts. Instructional rather than vocational (96 N.J.A.R.2d (EDU) 657, Clapp)
- Basic Skills Instructor in LEP program dismissed for lack of proper bilingual endorsement (97 N.J.A.R.2d (EDU) 488, Gonzales)
- Basic Skills Instructors for Limited English Proficiency students must hold a valid instructional certificate as well as an endorsement in bilingual education (97 N.J.A.R.2d (EDU) 488, Gonzales)
- 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 (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd & rem'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, decision on remand 94 N.J.A.R.2d (EDU) 484, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU), 166) See also (87:2724, South River, rev'g 85:Sept. 9, aff'd App. Div. unpub. op. (Dkt. No. A-1695-87T8, April 16, 1990))
- Board's decision to withhold Student Personnel Services certification from applicant who had not completed one full year of teaching with the proper certificate was not arbitrary, capricious or unreasonable (96 N.J.A.R.2d (EDU) 1006, Philips)
- Board's requirement of teaching certification in attendance officer job description did not elevate position to teaching staff member status (89:1640, South Plainfield, aff'd St. Bd. 89:1657, aff'd App. Div. unpub. op. (Dkt. No. A-1529-89T3, April 1, 1991))
- Cancellation of teacher's licensing scores by Educational Testing Services upon adequate showing of question of validity not violative of due process (Scott, 252 N.J. Super. 610 (App. Div. 1991), certif. denied, 130 N.J. 13 (1992))
- Chief school administrator who held an administrative certificate with an executive superintendent certification prior to change in regulation on September 1, 1992 may be issued school administrator endorsement to serve as chief school administrator in any district in the State (97 N.J.A.R.2d (EDU) 257, Salley)
- Commissioner will not interfere with agencies (State Board of Examiners) in the management of their missions unless they violate the law, act in bad faith or abuse their discretion in a shocking manner (96 N.J.A.R.2d (EDU) 561, Fisher)

## CERTIFICATE

- Computers: Despite Commissioner guideline stating that teachers with elementary endorsements may teach computers, elementary teacher not qualified for class where computers are used as a tool rather than taught as a substantive area (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)
- County superintendent's determination establishes certification required for position (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd & rem'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, decision on remand 94 N.J.A.R.2d (EDU) 484, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU) 166)
- Denial of application for certification based on single conviction five years ago unreasonable in light of proven reformation (92:Sept. 9, Stoddard)
- Determination of whether additional certification requirements appropriate requires review of particular duties of position (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd & rem'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, decision on remand 94 N.J.A.R.2d (EDU) 484, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU) 166)
- Developmental reading position: Reading endorsement on instructional certificate sufficient; English endorsement not required (90:1156, Bosco)
- District may require an applicant for after-school site program monitor that works with students to have a county substitute certificate (96 N.J.A.R.2d (EDU) 995, Wynne, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256)
- Educational Media Specialist: Person who performed duties of Educational Media Specialist but did not possess appropriate certification, not entitled to tenure or employment in the district. (96 N.J.A.R.2d (EDU) 884, Bjerre, aff'd with clarification St. Bd. 00:July 5)
- Elementary certificate did not qualify teacher to teach high school math class which was more advanced than "common branch" arithmetic (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)
- Elementary certification did not qualify teacher to teach high school communication and computation courses (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)
- Elementary teacher was not entitled to positions held by nontenured teachers when such positions were not covered by her credentials and endorsements (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)

## CERTIFICATE

- Estoppel: Board not estopped from denying tenure even though teacher relied on administrator's comments in failing to obtain certification (Jennings, App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 5, 1991, aff'g St. Bd. 89:1085, rev'g 89:1097)
- Extension of time to serve as acting superintendent (three months) granted (96:June 12, Salley)
- Family life; authorization to teach (90:240, Nazarechuk) See also N.J.A.C. 6:29-7.1(c))
- Instruction for credit in math and science may only be provided by individuals possessing instructional certification in those specific subject fields - not vocational education (96 N.J.A.R.2d (EDU) 731, Smith, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740)
- Issuance: Commissioner has jurisdiction over State Board of Examiner's determination to deny issuance of certification (92:Sept. 2, Stoddard, St. Bd. rev'g 92:May 15)
- Not revoked; no fraud demonstrated in applying for certification as administrator, although he did not satisfy the administrative requirements; Board of Examiner's conclusion that certification should be suspended is reversed (St. Bd. 96:Dec. 4, Williams, Jr.)
- Nursery school certificate issued where teacher met N.J.A.C. 6:11-6.3(d) exception (90:1031, Regenstein)
- Offer of re-employment was void ab initio because of lack of proper certification at time of offer (91:1201, Cooker, aff'd St. Bd. 91:1224, aff'd App. Div. unpub. op. Dkt. No. A-2128-91T1, Nov. 24, 1992)
- Person holding principal endorsement on administrative certificate is authorized to perform duties involved in supervising media center (94 N.J.A.R.2d (EDU) 311, Lippincott, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 430, aff'd App. Div. 95 N.J.A.R.2d (EDU) 304, certif. den. 142 N.J. 518 (1995))
- Position title is starting point for analysis of certification required for position and resultant tenure entitlements (94 N.J.A.R.2d (EDU) 311, Lippincott, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 430, aff'd App. Div. 95 N.J.A.R.2d (EDU) 304, certif. den. 142 N.J. 518 (1995))
- Principal certification; State Board regulations eliminating requirement that principals have teaching experience upheld (New Jersey Ass'n of School Administrators, App. Div., unpub. op. (Dkt. No. A-1207-88T3, February 21, 1990))
- Requirement of two certificates to qualify for single position was not arbitrary or irrational, even if unique (Dennerly, 131 N.J. 626 (1993), rev'g 251 N.J. Super. 144 (App. Div. 1991), rev'g St. Bd. 90:1007, aff'g 90:974)

## **CERTIFICATE**

Revocation of certificate of teacher terminated from tenured position is not time-barred; no statute of limitations governing decertification (Charlton, App. Div. unpub. op. Dkt. No. A-5241-96T2, Feb. 9, 1999)

### **Revocation**

ALJ decision adopted - State Board of Examiners did not act within 45 days N.J.S.A. 52:14B-10 (96:June 5, Pedrick, St. Bd., see also St. Bd. 95:Dec. 6)

Appeal of Board of Examiner's decision to revoke certificate is dismissed for counsel's failure to file a brief due to his claimed difficulty in finding school law cases, the relocation of his office, and allergies (St. Bd. 97:July 2, Bauer)

Board ordered to initiate revocation proceedings where teacher resigned after board filed tenure charges alleging corporal punishment, drug abuse and gross incompetence (90:March 8, Walker)

Certificate properly revoked where, based on State Board of Examiners independent review of tenure hearing record where teacher found to have engaged in inappropriate sexual discussions with students, teacher deemed unsuitable to be a teacher (Roberts, App. Div. unpub. op. Dkt. No. A-420-98T2, Sept. 28, 1999, aff'g St. Bd. of Examiners opinion 97:Dec. 11)

Certificate properly revoked where teacher pled guilty to child abuse and cruelty (90:March 7, St. Bd. Lugara)

Commissioner refers matter to State Board of Examiners after teacher resigns in connection with criminal proceeding (90:May 21, Jirak) (90:Feb. 14, Lewis, dec. on remand 90:March 15)

Conduct did not warrant revocation (96:June 5, Pedrick, St. Bd., see also St. Bd. 95:Dec. 6)

Interlocutory appeal: notice of motion to appeal interlocutory decision of State Board of Examiners to block issuance of an emergency certification was untimely; must be filed within 5 days, not 5 working days (St. Bd. 97:Sept. 3, Ilconich)

No provision for voluntary surrender and settlement agreement may not include provision for such; teacher may agree not to oppose revocation (90:March 8, Shuhula) (90:July 19, Tomassone)

Remanded to ALJ to place upon record the reasons for settlement, racial remarks by teacher may warrant revocation of certification (96:Feb. 1, Montgomery)

Revocation or suspension of certificate is not automatic following dismissal from tenured employment; decision must be based on independent review of record (94:Sept. 7, Sheridan II, dec. on remand 95 N.J.A.R.2d (EDU) 482, dismissed St. Bd. - failure to timely file 96 N.J.A.R.2d (EDU) 142) See also (92 N.J.A.R.2d (EDU) 257, Sheridan I, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393)

## **CERTIFICATE**

Service under emergency certificate which is not succeeded by service under regular certificate in same area must never be counted toward tenure (93 N.J.A.R.2d (EDU) 641, Breitwieser, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 422, aff'd App. Div. 286 N.J. Super. 633 (App. Div. 1996))

State Board of Examiners denial of principal certification upheld. Candidate did not have required masters degree in management of leadership or the substantial equivalent of course work in those areas (96 N.J.A.R.2d (EDU) 561, Fisher)

## **Suspension**

Based on breach of contractual notice clause (94 N.J.A.R.2d (EDU) 405, Leinen)

Board's application for suspension, pursuant to N.J.S.A. 18A:26-10, for breach of 60-day notice requirement denied: board failed to move for suspension within 90 days (95 N.J.A.R.2d (EDU) 375, Elmwood Park)

Revocation or suspension of certificate is not automatic following dismissal from tenured employment; decision must be based on independent review of record (94:Sept. 7, Sheridan II, dec. on remand 95 N.J.A.R.2d (EDU) 482, dismissed St. Bd. - failure to timely file 96 N.J.A.R.2d (EDU) 142)) See also (92 N.J.A.R.2d (EDU) 257, Sheridan I, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393)

Suspension pursuant to N.J.S.A. 18A:26-10 is not automatic, even where there is no dispute that teacher breached 60-day notice requirement (95 N.J.A.R.2d (EDU) 375, Elmwood Park)

Teacher of computers must possess instructional certificate with any endorsement; no specific endorsement for computers (93 N.J.A.R.2d (EDU) 189, Taxman, aff'd in part, rem'd in part St. Bd. 93:Sept. 1)

Tenured carpentry teacher with "skilled trades" and "teacher of industrial arts" certifications not properly certified to teach plumbing or custodial training (93 N.J.A.R.2d (EDU) 498, Polo II, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 36, aff'd App. Div. 95 N.J.A.R.2d (EDU) 105)

## **Types of Certificates**

Elementary endorsement qualifies individual to teach computer education at elementary level (93 N.J.A.R.2d (EDU) 184, Takakjian)

Industrial arts endorsement authorizes teacher to teach graphic arts courses that are not part of vocational program (95 N.J.A.R.2d (EDU) 149, Ackerman, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 610)

"Vocational outreach" position; holder of teacher of handicapped, teacher of industrial arts and teacher of production, personal and service occupations certificates was qualified for vocational outreach position (90:355, Keller)

## **CERTIFICATE**

Vocational-technical-related subject endorsement holder may only teach vo-tech subjects in the area of her state-approved occupational experience, pursuant to interpretation of administrative code provisions (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)

### **Waiver of course requirements**

- Denied; candidate for principal certification did not have required masters degree in management or leadership or substantial equivalent of course work in those areas. Principal experience in another state not sufficient (96 N.J.A.R.2d (EDU) 561, Fisher)
- Denied; experience as school librarian no substitute for statutory requirement of professional education courses (92 N.J.A.R.2d 206, Cairolì)
- Denied; experience in media unrelated to educational process does not meet requirements for endorsement as educational media specialist (93 N.J.A.R.2d (EDU) 351, Zaza)
- Denied; failed to prove experience as auditor general for Newark school system adequate substitute for course work required for school business administrator certification (92 N.J.A.R.2d (EDU) 378, Marshello)
- Denied; holder of instructional certificate with military science endorsement must meet all requirements of N.J.A.C. 6:11-5.1 to N.J.A.C. 6:11-5.5 in order to obtain additional endorsements (93 N.J.A.R.2d (EDU) 338, McLaughlin)
- Denied; school psychologist failed to show her training and experience were appropriate alternative to course requirements (92:Apr. 3, Roth)
- Denied upon application of college counselor for Student Personnel Services endorsement to Educational Service Certificate (92 N.J.A.R.2d (EDU) 599, Miller, St. Bd. dismissed for failure to perfect, 93 N.J.A.R.2d (EDU) 134)
- Denied; work experience coupled with attendance and successful completion of course at accredited institutions which do not lead to Masters Degree or its equivalent in specified field is not sufficient to comply with requirements for provisional certificate as principal (95 N.J.A.R.2d (EDU) 58, Williams)
- State interested in licensing only qualified teachers who have met current licensing requirements primary; cannot be compelled to license teacher given outdated information as to certification requirements (93 N.J.A.R.2d (EDU) 459, LaRosa)

## CHAPTER 192,193

School district in which nonpublic school is located is responsible for identification, evaluation and classification of handicapped pupils and for providing remedial and auxiliary services to nonpublic students. Chapter 192, 193 obligations limited to state aid received (96 N.J.A.R.2d (EDU) 811, Clifton, aff'd State Board 96 N.J.A.R.2d (EDU) 815, aff'd App. Div. 97 N.J.A.R.2d (EDU) 553)

## CHARTER SCHOOLS

- Application denied; budget detail missing, cash flow not problems, funding too dependent on donations (St. Bd. 97:March 26, Gloucester County)
- Application denied; insufficient information in many areas (St. Bd. 97:March 26, East Orange Headstart) (St. Bd. 97:March 26, New Horizon) (St. Bd. 97:March 26, Trenton International)
- Application denied; private school was not eligible for charter school status (St. Bd. 97:March 26, Jarrets Run)
- Application denied, where many areas were inadequate, more than de minimus. (St. Bd. 97:March 26, Greater Brunswick, stay denied St. Bd. 97:April 2, appeal denied App. Div. 97:May 1, appeal withdrawn 97:May 16, motion for reconsideration denied St. Bd. 97:June 4)
- Charter School Application: Where appeal is sought after 30 days, appeal will be denied. (98:Jan. 21, International Charter School, motion denied, appeal dismissed St. Bd. 98:April 1)
- Charter School Application: Where substance of application is sound, process can move forward pending review of racial composition pending final approval. (98:Jan. 21, Academy Charter High School, aff'd St. Bd. 98:April 1) (98:Jan. 21, Englewood on Palisades, aff'd St. Bd. 98:April 1, stay denied St. Bd. 98: June 3, aff'd 320 N.J.Super. 174 (App. Div. 1999), certif. granted 162 N.J. 481 (1999), aff'd and modified 164 N.J. 316 (2000) (modified as to Commissioner's responsibility for reviewing financial and racial impact of charter approval on public school; See also, Englewood on Palisades, 98: Dec. 2 St. Bd. remanding 98: Sept. 16 Commissioner decision granting final approval of charter for determination of whether all classroom teachers possess appropriate certification) (98:Jan. 21, Red Bank Charter School, aff'd St. Bd. 98:April 1, stay denied St. Bd. 98:June 3)
- Charter School Application: Where substance of application is sound, process can move forward. Racial composition of school to be examined pending final approval. (98:Jan. 21, Patrick Douglass Charter School, stay denied, St. Bd. 98:June 3)



## CHARTER SCHOOLS

- Charter School Application: Where substance application is sound, process toward final approval will continue. (98:Jan. 21, Classical Academy Charter School, aff'd St. Bd. 98:April 1, motion for stay denied St. Bd. 98:June 3) (98:Jan. 21, Pleasantech Charter School, aff'd St. Bd. 98:April 1)
- Charter school may continue application process but Commissioner directed to review whether eighth grade class should be included as well as conduct review of admissions/promotions policy. (St. Bd. 98:April 1, Ocean City Charter School, aff'd App. Div. unpub. op. Dkt. No. A-5646-97T1, July 8, 1999)
- Contingent Approval: Where new facts presented decision to give contingent approval will be reconsidered. (98:Jan. 21, Pleasantville Charter School, motion granted and remanded St. Bd. 98:April 1)
- Denial of Charter: Charter denied where educational program is weak, no alignment to Core Curriculum Content Standards, discriminatory admissions policy and financial plan incomplete. (98:Jan. 21, Vistas Charter School, aff'd St. Bd. 98:April 1)
- Denial of Charter: Charter denied where goals and objectives not innovative, possesses discriminatory admissions policy, no link to Core Curriculum content standards, excessive non-instructional costs. (98:Jan. 21, Ernest L. Boyer Charter School, aff'd St. Bd. 98:March 4)
- Emergent relief in the form of stay of Commissioner's grant of charter denied where school board failed to show irreparable harm in the form of community unrest or potential budget defeat. (97 N.J.A.R.2d (EDU) 404, In the Matter of the Application of the Red Bank Charter School, rev'd St. Bd. 97:March 26, see also App. Div. unpub. op. Dkt. No. A-5067-96T2, April 8, 1998 (appeal of 5/7/97 State Board denial of motion for reconsideration of vote to revise grant of charter dismissed as moot because charter subsequently approved) for discussion of conflict of interest and recusal from voting on charter application by Senator Bennett's wife during Senator Bennett's re-election campaign)
- Region of Residence: Amendment to regional charter of school exempting local district invalid. (98:March 4, Greater Brunswick Charter School, reversed St. Bd. 98:June 3) (See also, 98: April 1, St. Bd. aff'g 98: Jan. 21 Commissioner decision)
- Religion, See also In the Matter of Grant of Application of Red Bank Charter School, unpublished App. Div. opinion, Dkt. No. A-4725-97T1 (May 17, 1999) for discussion of challenge to charter school application on freedom of religion and establishment grounds.

## **CHARTER SCHOOLS**

School board seeking emergent relief must show unreparable harm and likelihood of seriousness on the merits. Must show proof of community interest, budget shortfalls or failure to comply with statutory requirement to overturn Commissioner charter school approval (97 N.J.A.R.2d (EDU) 404, Red Bank)

Where Commissioner has given contingent approval for charter school, application can move forward absent concerns of such a character as to preclude grant of charter or circumstances which must be addressed before the proposed school can become operational. (St. Bd. 98:April 1, Teaneck Community Charter School, motion for stay denied St. Bd. 98:June 3; See also, Teaneck Community Charter School St. Bd. 98: Nov. 4 remanding 98: Sept. 11 Commissioner decision granting final approval of charter for further review of suitability of proposed permanent educational facility and to verify building deficiencies have been corrected) (St. Bd. 98:April 1, Franklin Charter School, aff'd 320 N.J. Super. 174 (App. Div. 1999), aff'd with modif. 164 N.J. 316 (2000). See also, App. Div. unpub. op. Dkt. No. A-4662-97T1/A-4435-98T1, Dec. 27, 1999) (St. Bd. 98:April 1, Greater Brunswick Charter School, motion for stay denied St. Bd. 98:May 6, aff'd 332 N.J. Super. 409 (App. Div. 1999), aff'd 164 N.J. 314 (2000) for reasons stated in 320 N.J. Super. 174 (App. Div. 1999) and as modified by 164 N.J. 316 (2000)) See also, Greater Brunswick Charter School 98: April 1 (St. Bd. aff'g 98: Jan. 21 Commissioner decision) (St. Bd. 98:April 1, East Orange Community Charter School, aff'd App. Div. unpub. op. Dkt. No. A-4727-97T1, May 17, 1999) (See also, 98: June 3, East Orange Community Charter School, motion for stay denied by St. Bd.) (St. Bd. 98:April 1, Patrick Douglass Charter School)

Where desegregation order in effect, charter school may continue application for final approval. Commissioner directed to review racial composition prior to grant of final approval to insure compliance with that order. (St. Bd. 98:April 1, Patrick Douglass Charter School, aff'd App. Div. unpub. op. Dkt. No. 4713-97T1, May 17, 1999, "Matawan-Aberdeen appeal")

## **CHILD CENTERS AND ORPHAN HOMES**

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

## **CHILD STUDY TEAMS**

A local board cannot subcontract the services of its child study team to outside individuals. A board may supplement such services, but this situation presupposes an existing team with members who are employed by the district. Outside contractors are permitted in limited circumstances and only to supplement services provided by existing team members (96 N.J.A.R.2d (EDU) 229, Elson)

## **CHILD STUDY TEAMS**

Boards of education may in good faith eliminate CSTs for reasons of economy and join with one or more boards of education or state agencies for basic CST services. Vicenzino v. Bedminster Bd. of Ed., 312 N.J. Super. 243 (App. Div. 1998), aff'g St. Bd. 1997 S.L.D. (July 7), aff'g 97 N.J.A.R.2d (EDU) 356.

Child Study Teams are intended to represent a multidisciplinary approach to identifying, evaluation and planning suitable educational programs for children with learning difficulties (96 N.J.A.R.2d (EDU) 229, Elson)

If a board decides not to employ its own child study team, it may enter into an agreement with other public entities, such as Educational Services Commissions, jointure commissions or other school districts, to provide those services (97:Aug. 20, Auerbach, aff'd St. Bd. 98:Feb. 4)

If a board of education establishes a CST, each CST shall be an employee of the board of education. Single positions may not be abolished. Vicenzino v. Bedminster Bd. of Ed., 312 N.J. Super. 243 (App. Div. 1998), aff'g St. Bd. 1997 S.L.D. (July 7), aff'g 97 N.J.A.R.2d (EDU) 356.

Immunity under Tort Claims Act for liability for discretionary decision placing child in day school rather than more restrictive residential facility. Ludlow v. City of Clifton, 305 N.J. Super. 308 (App. Div. 1997), certif. den. 153 N.J. 51 (1998)

## **CHRISTMAS CAROLS**

(See "Religion" this index)

## **CIVIL SERVICE**

Commissioner lacks subject matter jurisdiction to determine disputes which are governed by Title 11 (eleven), Civil Service Laws (97 N.J.A.R.2d (EDU) 505, State Operated School District of the City of Jersey City)

## **CLASS ACTIONS**

(See "Commissioner of Education" this index)

## **CLASSIFICATION OF SCHOOL DISTRICTS**

(See "Boards of Education - Classification" this index)

## **CLEAN HANDS DOCTRINE**

## CLERKS AND SECRETARIES

- AV library technician entitled to tenure protection as clerk based on job duties (96 N.J.A.R.2d (EDU) 370, Roach)
- Clerical aide acquired tenure under N.J.S.A. 18A:17-2 and was not non-tenured paraprofessional under N.J.A.C. 6:11-4.9 (95 N.J.A.R.2d (EDU) 239, Berardi)
- Clerical employees; seniority rights do not accrue (95 N.J.A.R.2d (EDU) 66, Effenberger, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 203, aff'd App. Div. 96 N.J.A.R.2d (EDU) 690)
- Clerk: Duties performed, not title of position, is controlling in determining whether tenure acquired; employee who performed clerical job duties for only one year out of 15 years employment did not acquire tenure as clerk (95 N.J.A.R.2d (EDU) 66, Effenberger, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 203, aff'd App. Div. 96 N.J.A.R.2d (EDU) 690)
- Clerk's tenure dispute governed by civil service, not tenure laws (94:Aug. 23, Harp) (97 N.J.A.R.2d (EDU) 65, Anderson, aff'd St. Bd. 95:Sept. 6)
- Commissioner has no jurisdiction over removal of clerk secretary in district that has adopted civil service law (95:April 10, Anderson, aff'd St. Bd. 95:Sept. 6)
- Executive secretary terminated for cause entitled to payment for vacation accrued during employment (Lowe, App. Div. 95 N.J.A.R.2d (EDU) 139, aff'g St. Bd. 93 N.J.A.R.2d (EDU) 89, rev'g 92 N.J.A.R.2d (EDU) 393)
- Non-professional staff protected under Title 11 in school districts which have adopted Civil Service do not acquire additional rights under Title 18A (97 N.J.A.R.2d (EDU) 65, Anderson, aff'd St. Bd. 95:Sept. 6)
- Non-tenured paraprofessional has no tenure rights (97 N.J.A.R.2d (EDU) 99, Marbut, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 256)
- Reduction in salary of tenured CST secretary violative of tenure statute where CST secretary continued performing duties of that position despite board's change of job title (97 N.J.A.R.2d (EDU) 523, Bove)
- Secretary's tenure charges of insubordination and unbecoming conduct (refusal to complete a work assignment and use of foul language to assistant superintendent) did not warrant dismissal. 120 day suspension and loss of two increments penalty (97 N.J.A.R.2d (EDU) 390, Bohannon)
- Tenured clerical aide could not be dismissed without filing tenure charges (95 N.J.A.R.2d (EDU) 239, Berardi)
- Transfer of tenured clerk resulting from good faith abolition of former position to position with lower monthly pay constitutes impermissible reduction in salary under N.J.S.A. 18A:17-2 (95 N.J.A.R.2d (EDU) 585, Casey, rev'g 94 N.J.A.R.2d (EDU) 187)

## COACHES

(See "Extracurricular Activities - Staffing" this index)

## COLLECTIVE NEGOTIATIONS

### Arbitration

- An arbitrator may consider state education law when resolving labor disputes - had to consider whether board gave full credit under N.J.S.A. 18A:28-6.1 to transferred teachers for service in prior district. Board of Ed. of Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)
- Arbitrator exceeded his authority in ignoring language in collective bargaining agreement and relying solely on past practice. State operated school districts have strong powers to modify and amend practices of previously ineffective or failed local school districts. City Assn. of Supervisors v. State Operated School District of the City of Newark, 311 N.J. Super. 300 (App. Div. 1998)
- Arbitrator was bound by PERC determination that board's action was taken for disciplinary, rather than educational reasons. Scotch Plains, 139 N.J. 141 (1995), rev'g 270 N.J. Super. 444 (App. Div. 1994)
- Arbitrator's decision is entitled to presumption of validity. Party opposing the award has burden of establishing that award be vacated. Delran Ed. Assn. v. Bd. of Ed., 277 N.J. Super. 538 (App. Div. 1994)
- Disciplinary increment withholding: record amply supported arbitrator's conclusion that board lacked just cause to withhold increment based on number of absences, where legitimacy thereof was not questioned (Scotch Plains, 139 N.J. 141 (1995), rev'g 275 N.J. Super. 444 (App. Div. 1994))
- Disciplinary increment withholding: where parties' agreement failed to provide standard for reviewing such, arbitrator could properly apply a just-cause standard (Scotch Plains, 139 N.J. 141 (1995), rev'g 275 N.J. Super. 444 (App. Div. 1994))
- Dismissal for just cause; arbitrator's conclusion that; if unclassified employee with six or more years of service can prove state fired him for misconduct then employee has right to arbitrate dismissal, was reasonable interpretation of collective bargaining agreement. State v. Communications Workers of America, 154 N.J. 98 (1998)
- Enhanced level of review of arbitration award where clear mandate of public policy involved. Weiss v. Carpenter, Bennett and Morrissey, 143 N.J. 420 (1996), aff'g 275 N.J. Super. 395 (App. Div. 1994)

## **COLLECTIVE NEGOTIATIONS**

Enforcement of a non-binding arbitration order of salary a teaching staff member is to be paid when re-employed after a reduction in force with the courts, not the Commissioner (96 N.J.A.R.2d (EDU) 27, Picot)

Non-renewal not arbitrable under collective bargaining agreement; CBA and board policy expressly indicated that bus driver's employment could be ended without cause. Marlboro Tp. Bd. of Ed. v. Education Ass'n., 299 N.J. Super. 283 (1997)

Salary increment for non-teaching employee that is predominantly disciplinary (excessive absenteeism) must be submitted to binding arbitration - may not be replaced by contract through negotiations. PERC has jurisdiction. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 306 N.J. Super. 207 (App. Div. 1997), certif. denied 153 N.J. 214 (1998) (Randolph I)

Standard of Review - whether arbitrator followed the "inherent guidelines" applicable to public sector arbitration and whether interpretation of contract language was "reasonably debatable." Delran Ed. Assn. v. Bd. of Ed., 277 N.J. Super. 538 (App. Div. 1994)

## **PERC**

Increment withholdings for non-teaching staff members may be evaluative or disciplinary. Non-disciplinary withholdings are not subject to mandatory arbitration. PERC has jurisdiction to make the determination. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 328 N.J. Super. 540 (App. Div. 2000), certif. den. 165 N.J. 132 (2000) (Randolph II)

Labor law that precludes a unilateral change of the status quo is preempted by conflicting provisions of N.J.S.A. 18A:29-4.1; a board is prohibited from paying salary increments to teaching staff after the expiration of a three-year collective bargaining agreement. Neptune v. Neptune, 144 N.J. 16 (1996). (Prior history: 93 N.J.A.R.2d (EDU) 178, Neptune Twp. Education Assn., aff'd St. Bd. 93 N.J.A.R.2d (EDU) 791, aff'd App. Div. unpub. op. (Dkt. No. A-1184-93T2, May 15, 1995), aff'd and rev'd in part 144 N.J. 16 (1996))

Maintaining the status quo - static v. dynamic. See discussion. Neptune v. Neptune, 144 N.J. 16 (1996)

## **Representation**

Confidential employee" within meaning of PERC law; PERC determines on case-by-case basis whether employee's responsibilities or knowledge would make membership in union incompatible with official duties, and mere physical access to information without insight about its significance, may be insufficient to warrant exclusion from union. Turnpike Authority, 150 N.J. 331 (1997)

## COLLECTIVE NEGOTIATIONS

Managerial executive" within meaning of PERC law need not both formulate policies and direct policies; one or the other is sufficient. (For schools, term only includes superintendent and assistant superintendent, N.J.S.A. 34:13A-3(f)). Turnpike Authority, 150 N.J. 331 (1997)

### Scope of Negotiations

Commissioner has exclusive statutory authority to establish seniority standards for re-employment lists and consequently the criteria and procedures for re-employment are non-negotiable (96 N.J.A.R.2d (EDU) 27, Picot)

Decision to withhold an increment is a management prerogative which the Legislature has delegated to the local school board (96 N.J.A.R.2d (EDU) 31, Rago)

Full recognition" of prior years service provision of N.J.S.A. 18A:28-12 is limited to seniority for re-employment purposes and does not extend to salary disputes, board may negotiate salary (96 N.J.A.R.2d (EDU) 27, Picot)

Initial placement on the salary guide is not a management prerogative but rather a term and condition of employment within the scope of negotiability (96 N.J.A.R.2d (EDU) 27, Picot)

Negotiations concerning public agency employee's reduction of work week were preempted by statutory and regulatory comprehensive demotional layoff scheme. State v. CWA, 285 N.J. Super. 546 (App. Div. 1995)

N.J.S.A. 18A:28-6.1 requires that teachers transferred to a receiving district upon the closure of sending district's school are entitled to have their prior service in sending district considered in establishing level of compensation, including longevity payments. Union could not bargain away the teachers' statutory rights to full credit for such prior service. Board of Ed. v. Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)

Snow days, board of education not obligated to negotiate over snow day rescheduling. May have to negotiate impact. Remanded to PERC for determination under Woodstown-Pilesgrove standard. Piscataway Ed. Assn. V. Bd. of Ed., 307 N.J. Super. 263 (App. Div. 1998)

### Strikes

Board entitled to attorney's fees, under R. 1:10-5, for costs related to enforcing return-to-work provisions of court order; union not required to pay all legal costs related to strike (Franklin, 274 N.J. Super. 47 (App. Div. 1994))

## **COLLECTIVE NEGOTIATIONS**

Court has no authority under R. 1:10-5 to order union to pay non-legal, strike-related costs; board may seek to recover such, as damages for breach for duty not to strike, in a summary proceeding under R. 4:67-2a(b) (Franklin, 274 N.J. Super. 47 (App. Div. 1994))

Court may impose continuing monetary sanctions under R. 1:10-5 to ensure compliance with court order (Franklin, 274 N.J. Super. 47 (App. Div. 1994) disagreeing with Passaic, 222 N.J. Super. 298 (App. Div. 1987) holding that an adjudication of contempt was required for such an order.

Withholding increment for failing to communicate with child study team regarding her concerns about a student, found to be predominately disciplinary as it was outside of evaluation process; Court reverses PERC's determination that withholding was predominately evaluative; binding arbitration will not be restrained (Mansfield Twp. Bd. of Ed. v. Mansfield Education Assn., unreported App. Div. A-4966-95T1 (March 17, 1997))

## **COMMISSIONER OF EDUCATION**

ALJ decision does not become law until Commissioner reviews decision or 45 day review period elapses (92 N.J.A.R.2d (EDU) 625, T.J.P.)

Exceptions were untimely filed and neither these nor reply exceptions would be considered by Commissioner (97 N.J.A.R.2d (EDU) 16, Demikoff, aff'd St. Bd. 95:July 5, aff'd App. Div. unreported opinion Feb. 3, 1997)

### **Appeal of Findings**

Party challenging determinations of ALJ regarding the weight to be accorded proffered testimony must supply agency head with relevant and necessary portions of hearing transcript (97 N.J.A.R.2d (EDU) 83, J.P.)

### **Appointment of Fiscal Monitor**

Commissioner had power to appoint Fiscal Monitor to oversee and control board's fiscal operations; however, the terms of the order appointing the monitor did not authorize the monitor to abolish staff positions within the board's approval (98:Jan. 7, Wollman, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 20)

Other than a state takeover of a school system which requires State Board approval, the Commissioner has the power to act on his own initiative (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7)

### **Attorney's fees**

Award of legal fees is not within scope of Commissioner's authority (93 N.J.A.R.2d (EDU) 118, Bokey, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 415) (89:2660, Barco, aff'd St. Bd. 90:1687, aff'd App. Div. unpub. op. (Dkt. No. A-3487-89T5, Jan. 11, 1991)) (96 N.J.A.R.2d (EDU) 35, Bellesfield)



## **COMMISSIONER OF EDUCATION**

Commissioner does not have plenary authority to award legal fees in disputes arising under education law (93 N.J.A.R.2d (EDU) 799, Apgar)

Commissioner has no authority to award attorney's fees 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.) (89:2660, Barco, aff'd St. Bd. 90:1687, aff'd App. Div. unpub. op. (Dkt. No. A-3487-89T5, Jan. 11, 1991))

### **Burden of proof**

Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power (State v. Lewis, 67 N.J. 47 (1975))

### **Controlling legal standard**

Petitioner must demonstrate with preponderance of evidence that the Board's action exceeded the reasonable use of its broad discretionary powers. The Board's decision cannot be upset unless it is demonstrated to be patently arbitrary, capricious or unreasonable (96 N.J.A.R.2d (EDU) 193, Barcalow) (98:June 19, J.M., aff'd St. Bd. 98: Nov. 4)

## **Damages**

### **Generally**

A prevailing teacher that contests a RIF is entitled to appointment to an available position, back pay, and other economic emoluments of "employment" including appropriate pension fund adjustments (96 N.J.A.R.2d (EDU) 229, Elson)

Back pay, benefits and interest were due petitioner for period of suspension where State Board reversed Board of Examiners decision to suspend petitioner's certificates and endorsements (98:June 1, Williams)

Commissioner has authority to award (96 N.J.A.R.2d (EDU) 35, Bellesfield)

### **Mitigation**

#### **Generally**

An individual subject to dismissal or suspension has a duty to mitigate his or her damages (96 N.J.A.R.2d (EDU) 229, Elson)

**COMMISSIONER OF EDUCATION**

**Adequate**

Acceptance of accounting clerk position in private industry at similar salary (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

Acceptance of part-time position as resource room and supplemental instruction teacher after 1? years of unsuccessful attempts to find comparable full-time employment (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

Back pay awards for any period in which damages were not mitigated to be reduced by salary that should have been earned in comparable employment (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

**COMMISSIONER OF EDUCATION**

Computation of award

Mitigation requires damages to be reduced by salary which should have been earned; back salaries calculated as average of salaries indicated on appropriate steps reflective of prior teaching experience of Newark and East Orange guides (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

Duty imposed on wrongfully discharged employee is to seek similar employment to reduce amount of damages; no obligation by RIF'd teacher to accept substitute position (93 N.J.A.R.2d (EDU) 766, Siegel, aff'd in part, rev'd in part, St. Bd. 94 N.J.A.R.2d (EDU) 319)

**Inadequate**

Turning down part-time teaching position to pursue part-time employment as a manufacturer's representative and self-employment in unprofitable jewelry business (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

## COMMISSIONER OF EDUCATION

Voluntary relocation and acceptance of significant pay decrease (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

Mitigation includes both what actually was earned from outside employment and what could have been earned with reasonable and diligent efforts (93 N.J.A.R.2d (EDU) 59, Unterberger, appeal dismissed for failure to perfect, 94:Aug. 3)

Question of whether calculation of back pay awards for improper RIF of supplemental teachers should assume existence of valid contract where none existed, remanded (95:August 22, West Orange Supplemental, dec. on remand)

Requires exercise of reasonable and diligent efforts to find comparable employment (92 N.J.A.R.2d (EDU) 288, West Orange Supplemental Instructors, aff'd in part, rev'd & rem'd in part St. Bd. 92 N.J.A.R.2d (EDU) 301, dec. on remand 94 N.J.A.R.2d (EDU) 337, reversed and remanded St. Bd. 94 N.J.A.R.2d (EDU) 341, decision on remand 97 N.J.A.R.2d (EDU) 220, reversed and remanded St. Bd. 97 N.J.A.R.2d (EDU) 235, decision on remand 97 N.J.A.R.2d (EDU) 237, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 421, aff'd App. Div. unpub. op. Dkt. No. A-4864-96T1, May 8, 1998)

### **Declaratory judgments**

Declaratory judgment cannot be used to decide or declare rights based upon a state of facts which are future, contingent and uncertain (St. Bd. 97:Feb. 5, Stagaard, decision on motion)

Interpretation of N.J.S.A. 18A:38-8.1, advising as to issues which sending district board members may discuss treated as application for declaratory judgment, N.J.A.C. 6:24-2.1. Decision reserved as to whether Commissioner will provide ruling (96:Jan. 23, Callowhill)

### **Depositions**

Denial of motion for deposition appropriate where petitioner failed to establish "good cause" pursuant to N.J.A.C. 1:1-10.2c(i) (97:Oct. 2, Union County Voc. Tech. School District)

## COMMISSIONER OF EDUCATION

### Discovery

Formal discovery is not permitted under accelerated proceedings (98:June 19, J.M., aff'd St. Bd. 98: Nov. 4)

### Dismissal

Dismissal with prejudice, failure of pro se petitioner to appear for hearing, which was not excused for a valid reason or provided for under UAPR (96:Jan. 30, Watson)

### Emergent relief

Denied to parent pending issue of whether regional school district must continue to provide transportation to academy of performing arts; no probability of success on issue of whether district provides comparable program, as program is included in DOE publication as vocational (97:Sept. 25, K.B.)

Emergent relief denied and case remanded for expedited plenary hearing to determine whether Gloucester County Institute of Technology Academy of Performing Arts program is comparable to program offered at Rancocas Valley Regional High School (97:Sept. 25, K.B.)

Motions for emergent relief must be filed before Commissioner, not OAL, under N.J.A.C. 6:24-1.5 (93:Nov. 15, DiFalco, aff'd St. Bd. 94:Feb. 2)

Serious due process concerns for revoking graduation privileges warrant granting of emergent relief (98:June 19, S.H.)

Suspension for citation, not arrest, as covered by board discipline policy stayed pending further proceedings on merits of petitioner's claim (98:June 19, S.H.)

### Emergent relief denied

Board may not decline to enroll student whom it believes to constitute a possible threat to student safety. May impose interim suspension for period not to exceed 21 days following preliminary hearing. Home instruction to be provided (96 N.J.A.R.2d (EDU) 594, K.B., aff'd State Board 96 N.J.A.R.2d (EDU) 742)

Crowe standard not met in Pre-K tuition case (94:Oct. 24, Herron)

Crowe standard not met on challenge to Educational Improvement Plans (94:Sept. 8, Litwack)

Crowe standard not met on non-renewal challenge (96 N.J.A.R.2d (EDU) 606, Getz)

Crowe standard not met on placement of student in closed classroom school (94:Sept. 15, S.G.)

Crowe standard not met on senior prom/graduation participation matter (96: May 17, D.O'G.)

Crowe standard not met. Student barred from participation in graduation ceremonies due to insufficient course credits; violated board's truancy policy. Board had provided avenues of appeal and opportunities to modify conduct (96 N.J.A.R.2d (EDU) 697, D.C.)

## COMMISSIONER OF EDUCATION

- Crowe standard not met. Student barred from participation in graduation ceremonies due to assault of teaching staff member (94:June 17, Maurizio)
- Determination by Commissioner regarding whether all criteria for closing a school had been met was premature since Bureau of Facility Planning Services has not completed its review; controversy not ripe for determination (93 N.J.A.R.2d (EDU) 694, Brodie)
- Emergent relief denied and NJSIAA ruling upheld; failed to demonstrate irreparable harm or likelihood of success on merits (94 N.J.A.R.2d (EDU) 106, Elmwood Park)
- Emergent relief denied as petitioners have failed to meet the standard for such relief (97:July 31, S.C.B. and L.A.B.)
- Emergent relief denied as remedies sought by suspended teacher, reinstatement of position and salary, do not constitute irreparable harm (97:Dec. 19, Chambers, aff'd St. Bd. 98:April 1)
- Emergent relief denied. Crowe standard not met. Student barred from participation in graduation ceremonies due to consumption of alcohol before senior prom (94:June 24, Byank) (94:June 24, Usher)
- Emergent relief denied where petitioner's legal rights are unsettled and there does not exist the probability that petitioner will prevail upon the merits of this case (97:March 12, Buena Plumbing)
- Emergent relief request to stay ten day suspension of student denied; board's action was appropriate suspending student for physical altercation with another student (97:Nov. 3, K.W.)
- Emergent relief to reinstate student to hockey team denied as a two month suspension from sport team activities for violation of school smoking policy is appropriate (97:Oct. 22, P.E.)
- Exclusion of student from participation in graduation ceremonies sustained (93:June 21, S.M.)
- Failure to meet Crowe standards in dispute regarding fire alarm contracts (94:April 6, E.P. Reid, Inc.)
- Failure to meet Crowe standards in matter concerning restoration of line items in budget (94:Feb. 7, Edgewater)
- Failure to meet Crowe standards in matter concerning student suspension (94:April 29, J.P.)
- Failure to meet Crowe standards in matter concerning use of a trust for delivery of health insurance (94:Jan. 14, Millstone)
- High school student had insufficient credits to participate in senior events including senior trip and senior prom (96 N.J.A.R.2d (EDU) 695, W.M.B.)

## COMMISSIONER OF EDUCATION

- Inability to participate in graduation ceremonies is not irreparable harm under Crowe standards (92:June 17, E.M.) (94:June 17, Maurizio)
- Matter is not ripe for decision (93:May 27, J.R.)
- No basis to warrant stay of any rebid contract or resulting work (96 N.J.A.R.2d (EDU) 789, DEC Electric)
- No basis, under Crowe standard, to enjoin board from awarding contract for bus transportation routes (98:May 15, Murphy Bus Services)
- No basis, under Crowe standards, to enjoin board from awarding contract pending decision on validity of bids received (90:Nov. 7, Taranto)
- No basis, under Crowe standard, to enjoin board from proceeding with roof repair despite impact on subsequent year's tax levy (96:July 26, Ewing Twp.)
- No basis, under Crowe standard, to stay Board's decision to suspend student for drug use (98:June 19, K.P.)
- No basis, under Crowe standard, to stay NJSIAA rule prohibiting 19-year olds from participating in interscholastic sports (95:February 9, Mars)
- No indication of reasonable probability of ultimate success on the merits, fails to meet Crowe standards (96 N.J.A.R.2d (EDU) 746, N.O.)
- No indication that irreparable harm would result; fails to meet Crowe standards (93:Jan. 15, Newfield) (96:Nov. 12, M.K.)
- No likelihood of success on the merits on appeal of expulsion for assault of student. Crowe standard not met (96:March 6, D.C.)
- No relief can be granted to petitioner who wishes to change valid nominating petition after deadline (94:April 6, Barrett)
- Prohibition from attending one's senior prom does not constitute irreparable harm (96 N.J.A.R.2d (EDU) 695, W.M.B.)
- Receiving board not required to consider evaluative input from sending district representatives regarding board solicitor evaluation (96 N.J.A.R.2d (EDU) 693, Callowhill)
- School board seeking emergent relief must show irreparable harm and likelihood of success on the merits. Must show proof of community interest, budget shortfalls or failure to comply with statutory requirement to overturn Commissioner charter school approval (97 N.J.A.R.2d (EDU) 404, Red Bank)
- Student seeking order allowing him to graduate notwithstanding his failure of gym failed to meet Crowe standards (92:June 23, C.D.P.)

## COMMISSIONER OF EDUCATION

Suspension of teaching staff member under N.J.S.A. 18A:6-8.3 caused no irreparable harm (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)

Three day suspension will not cause irreparable harm and it is unlikely that student will prevail on merits (93:June 4, T.L.V.P.)

### **Emergent relief granted in part**

Board policy banning back packs, on motion for emergent relief to enforce, motion granted, where pupil simply acted in defiance of policy and refused to accept disciplinary consequences. Policy on its face is not arbitrary or capricious, and board has established probability of success on the merits, pursuant to Crowe (96:Feb. 15, C.M.)

Board required to provide round trip transportation to MAST program for newly resident student. MAST legislation so provides. Commissioner agrees after full hearing (96 N.J.A.R.2d (EDU) 775, K.F.)

Board's request for emergent relief granted. Policy banning backpacks in classrooms, hallways, and cafeteria in the interest of safety rationally based valid exercise of discretion. Upheld after full hearing (96 N.J.A.R.2d (EDU) 762, C.M.)

Commissioner granted a stay of the imposition of penalties and the return of monies already collected (98:June 11, Eagle Rock Bus Co.)

Commissioner ordered that pupil shall be allowed to participate in graduation ceremonies but shall not receive diploma until hearing held to determine merits of claim that pupil improperly mainstreamed (93:June 15, G.L.)

Crowe standard met. Discipline imposed, including loss of eligibility to participate in or attend extracurricular activities stayed. Student allowed to attend senior prom. Student did not receive due process to which she was entitled. Plenary hearing ordered (96: April 26, Hynes)

Emergent relief application granted in part, pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982), to enjoin receiving board meeting without sending members, where members of sending district demonstrated irreparable harm would result if they were excluded from meeting to discuss superintendent's contract. Also, where other members of board received copies of legal opinions, sending members were entitled to receive also (96:Jan. 23, Callowhill)



## COMMISSIONER OF EDUCATION

Emergent relief granted and pupil permitted opportunity to demonstrate that board acted arbitrarily in excluding participation in graduation ceremonies due to alleged failure to provide appropriate medical documentation excusing physical education participation (94:June 28, Ippolito)

Emergent relief granted. Crowe standard met. Student demonstrated irreparable harm; placed on homebound instruction indefinitely without a remedy at law. Student demonstrated likelihood of success on the merits; Board failed to follow statute and controlling case law (96 N.J.A.R.2d (EDU) 619, C.F.)

Emergent relief granted in contested domicile case, applying Crowe, where irreparable harm to pupil would occur if admission to district denied (94:Aug. 30, M.D.)

Emergent relief granted in contested domicile case, applying Crowe, where irreparable harm to pupil would occur in removal from district (96:Feb. 9, N.C.)

Employee ordered to submit to physical and psychiatric evaluations to be scheduled and paid for by the board (96: May 6, Edison)

Receiving board required to consider evaluative input from sending representatives. Inconsistent to allow vote on CSA contract but no participation in evaluation (96 N.J.A.R.2d (EDU) 693, Callowhill)

### **Injunctive relief**

#### **Standard**

Extraordinary remedy; awarded only based upon a showing that irreparable harm will result if not granted and likelihood of success on the merits (96:May 6, Edison, 96 N.J.A.R.2d (EDU) 697)

Stay granted because of potential for irreparable harm to students if it is determined monies reduced were needed for T&E education (92:March 10, Jersey City)

Stay of application of regulation limiting amount of rental costs that can be included in calculating tuition where there is a sale and leaseback agreement denied for failure to meet Crowe standards; determination on merits not required in denying stay (91:226, Coastal Learning Center, aff'd St. Bd. 92:Oct. 8; 96 N.J.A.R.2d (EDU) 406, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740; aff'd App. Div. unpub. op. Dkt. No. A-7571-95T2, Oct. 23, 1997; see also 89:1682, Penta Associates, aff'd w/mod. St. Bd. 90:1784, aff'd App. Div. unpub. op. Dkt. No. A-3631-89T1, July 8, 1991, certif. den. 127 N.J. 546 (1991))

Stay of construction contract pending budget appeal denied; Commissioner's decision on necessity of construction binding unless and until reversed by State Board (92:Aug. 28, New Milford)

## COMMISSIONER OF EDUCATION

Stay of proposed privatization of services by board denied; irreparable harm and likelihood of success on merits not shown in situation where board has not yet acted (92:Aug. 5, Luber)

### Interest

No prejudgment or post judgment interest awarded. Essex County Educational Services Commission, 93 N.J.A.R.2d (EDU) 522, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 117, aff'd App. Div. 95 N.J.A.R.2d (EDU) 106

Prejudgment interest awarded where respondents' actions in refusing to submit documentation of proof of domicile have "been determined to have been taken in deliberate violation of statute or rule (98:May 26, Livingston)

The Commissioner may award prejudgment and/or post-judgment interest in any circumstance in which an individual has sought relief and has successfully established an entitlement to a monetary award (96 N.J.A.R.2d (EDU) 229, Elson)

### Judicial Notice

Commissioner may take official notice of "judicially noticeable facts" if he discloses basis and gives parties reasonable opportunity to contest the material (97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1, see motion for emergent relief denied 97:Sept. 25)

### Jurisdiction of Commissioner

Absentee ballots; Commissioner without jurisdiction to review (92 N.J.A.R.2d (EDU) 396, Pennsauken) (95:November 6, Toms River)

Additional tax levy; Commissioner has authority to order when necessary to ensure a T & E education (91:927, Lindenwold)

Advisory opinions: Commissioner did not abuse discretion in refusing to entertain challenge to two year-old opinion (89:Sept. 12, Choplick, aff'd St. Bd. 90:Feb. 7)

ALJ incorrectly stated issue arose under collective bargaining agreement; Commissioner does not have jurisdiction to decide matters alleging violation of negotiated contract provision (90:1137, Middlesex County Vo-Tech High School Teachers Assoc.)

Any grant of janitorial tenure, including tenure obtained through terms of collectively negotiated contract, is statutorily based and so subject to Tenure Employees Hearing Act and jurisdiction of Commissioner (93:Aug. 4, Old Bridge)

### Attorney's fees

Award of legal fees is not within scope of Commissioner's authority (93 N.J.A.R.2d (EDU) 118, Bokey, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 415) (89:2660, Barco, aff'd St. Bd. 90:1687, aff'd App. Div. unpub. op. (Dkt. No. A-3487-89T5, Jan. 11, 1991)) (96 N.J.A.R.2d (EDU) 35, Bellesfield) (96 N.J.A.R.2d (EDU) 540, Rosenblum, aff'd State Board 96 N.J.A.R.2d (EDU) 743, aff'd App. Div.)

unpub. op. Dkt. No. A-0171-96T3, Oct. 20, 1997, DEC  
Electric, 96 N.J.A.R.2d (EDU) 789)

## COMMISSIONER OF EDUCATION

Commissioner does not have plenary authority to award legal fees in disputes arising under education law (93 N.J.A.R.2d (EDU) 799, Apgar)

Commissioner has no authority to award attorney's fees 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.) (89:2660, Barco, aff'd St. Bd. 90:1687, aff'd App. Div. unpub. op. (Dkt. No. A-3487-89T5, Jan. 11, 1991))

Bidding disputes (91:1431, Sempre Construction)

Budget: The Legislature, pursuant to N.J.S.A. 18A:6-9, 22-14 and 22-37 has authorized the Commissioner of Education to review and decide appeals by boards of education seeking restoration of budgetary reductions imposed by local governmental bodies (96 N.J.A.R.2d (EDU) 95, Long Branch) (96 N.J.A.R.2d (EDU) 111, Lakeland Regional)

Cap waiver; Commissioner has authority and obligation to order cap waiver previously rejected by voters if, when at cap, funds available are insufficient to provide T & E education (91:2426, Fieldsboro, appeal dismissed for failure to perfect, St. Bd. 92:March 4)

Challenge to contract between board and commercial network turns on application of education laws; jurisdiction rests in Commissioner (92 N.J.A.R.2d (EDU) 481, Whittle Communications, St. Bd. aff'd in holding limited to facts of this case (93 N.J.A.R.2d (EDU) 90, aff'd App. Div. unpub. op. (Dkt. No. A-2165-92T5, Aug. 2, 1994), certif. denied, 139 N.J. 184 (1995))

Civil Service: Commissioner has no jurisdiction over removal of clerk secretary in district that has adopted civil service law (97 N.J.A.R.2d (EDU) 65, Anderson, aff'd St. Bd. 95:September 6)

Claim for emergent relief denied for failure to meet Crowe standards (96:Sept. 25, J.S.)

Collective bargained employment contract; Commissioner does not have jurisdiction to interpret or enforce (95 N.J.A.R.2d (EDU) 139, Lowe, App. Div. aff'g St. Bd. 93 N.J.A.R.2d (EDU) 789, rev'g 92 N.J.A.R.2d (EDU) 393) (93 N.J.A.R.2d (EDU) 407, O'Neill, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. unpub. op. (Dkt. No. A-493-93T1, June 16, 1994))

Collective bargaining agreement between board and teacher's association; Commissioner lacks authority to determine validity of (94 N.J.A.R.2d (EDU) 402, Cutro, aff'd w/mod. on other grounds St. Bd. 97:July 2)

## COMMISSIONER OF EDUCATION

- Commissioner has concurrent jurisdiction with Division on Civil Rights to hear allegations under the Law Against Discrimination (97 N.J.A.R.2d (EDU) 55, Bruder, aff'd St. Bd. 95:August 4)
- Commissioner has exclusive jurisdiction to determine petitioner's claim for sick leave under N.J.S.A. 18A:30-2.1 where no workers compensation claim has been filed and it would be futile to force petitioner to file workers' compensation claim as the claim would not satisfy the seven day waiting period required under N.J.S.A. 34:15-14 (97 N.J.A.R.2d (EDU) 512, Dorfman)
- Commissioner has jurisdiction over claim that school board failed to compensate for unused vacation days (96 N.J.A.R.2d (EDU) 817, McCrea, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 820)
- Commissioner has jurisdiction over question of whether board's health insurance policy violates N.J.S.A. 18A:16-13 (94:Nov. 3, Middletown)
- Commissioner has jurisdiction to ascertain whether a former school employee has rehiring rights to a particular position (96 N.J.A.R.2d (EDU) 27, Picot)
- Commissioner had jurisdiction to determine whether increment withholding could be based on failure to meet contractual obligation (92:July 1, River Dell, St. Bd. rev'g & remanding 92:Feb. 18)
- Commissioner has exclusive statutory authority to establish seniority standards for re-employment lists and consequently the criteria and procedures for re-employment are non-negotiable (96 N.J.A.R.2d (EDU) 27, Picot)
- Commissioner has jurisdiction over State Board of Examiner's determination to deny issuance of certification (92:Sept. 2, Stoddard, St. Bd. rev'g 92:May 15)
- Commissioner has jurisdiction to assess tuition reimbursement for students who are domiciled outside school district but have attended public school in district (92 N.J.A.R.2d (EDU) 96, Kintos, dec. on remand, 93 N.J.A.R.2d (EDU) 837, stay den. 93:Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316, aff'd w/mod. App. Div. 96 N.J.A.R.2d (EDU) 1. Reconsideration granted: App. Div. unpub. op. Dkt. No. A-4944-95T5, Nov. 15, 1995 - Board barred for recovery 87-88, 88-89, 89-90)
- Commissioner has statutory authority to delegate inspection of accounts to the Office of Compliance (98:June 3, Middle Twp., aff'd St. Bd. 98: Oct. 7, remanded App. Div. 99:June 4, remanded St. Bd. 00:June 7)

## COMMISSIONER OF EDUCATION

- Commissioner lacks jurisdiction over dispute by a board to compel another board to pay for one-half of special education student's out-of-state residential placement because settlement agreement between petitioning board and student's parent was made in conjunction with idea matter and its enforcement is a matter of contract law (96 N.J.A.R.2d (EDU) 1032, Cherry Hill, aff'd St. Bd. 97:Dec. 3, aff'd App. Div. unpub. op. Dkt. No. A-2518-97T1, March 11, 1999)
- Commissioner lacks jurisdiction over federal civil rights claims but must conduct hearing on alleged violations of state anti-discrimination laws (95 N.J.A.R.2d (EDU) 141, Cirasa, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 149, aff'd App. Div. unpub. op. Dkt. No. A-2408-93T2, Jan. 10, 1995)
- Commissioner lacks jurisdiction over petition filed against school board solely under Right to Know Law (95 N.J.A.R.2d (EDU) 565, Urso)
- Commissioner lacks jurisdiction over school clerk's tenure dispute governed by civil service not tenure laws (94:Aug. 23, Harp) (97 N.J.A.R.2d (EDU) 65, Anderson, aff'd St. Bd. 95:Sept. 6)
- Commissioner lacks jurisdiction to determine whether board's disciplinary action - docking of pay - was proper, because matter was before arbitrator (90:1083, Tammaru)
- Commissioner lacks jurisdiction to enforce smoking ban, which is the responsibility of the Department of Health, enforceable in the municipal courts (96 N.J.A.R.2d (EDU) 488, Bauder)
- Commissioner lacks jurisdiction under criminal forfeiture statute N.J.S.A. 2C:51-2 to order forfeiture of public employment (97 N.J.A.R.2d (EDU) 449, Vitacco)
- Commissioner lacks subject matter jurisdiction to determine disputes which are governed by Title 11 (eleven), Civil Service Laws (97 N.J.A.R.2d (EDU) 505, State Operated School District of the City of Jersey City)
- Commissioner, not Superior Court, had primary jurisdiction in action to recoup salary erroneously paid (90:619, West New York)
- Commissioner of Education has jurisdiction to impose sanction of dismissal for failure to respond to discovery (97:March 19, Paterson)
- Commissioner of Education is without jurisdiction to determine whether the "differential adjustment" payments constituted "creditable salary" pursuant to Teacher's Pension and Annuity Fund (TPAF) (97 N.J.A.R.2d (EDU) 337, Del Grosso and N.T.V.)

## COMMISSIONER OF EDUCATION

- Commissioner of Education lacks jurisdiction under N.J.S.A. 18A:30-2.1 until after a final determination by the Division of Workers Compensation has been made (97 N.J.A.R.2d (EDU) 429, Basile, aff'd St. Bd. 97:Aug. 6)
- Commissioner of Education lacks subject matter jurisdiction over controversies arising pursuant to civil service employment, N.J.S.A., Title 11 (97:April 18, LoRusso)
- Commissioner of Education was without jurisdiction to address the necessity/appropriateness of child study team referral (97:Dec. 8, J.H.)
- Commissioner retains jurisdiction, under N.J.S.A. 52:14F-8(b), to hear directly board's request to borrow funds to cover budget deficit (90:Feb. 27, Middletown)
- Commissioner will determine whether payroll deduction crediting method violates constitutional prohibition against advancing monies for work not performed (91:1709, Neptune) See related decisions on merits (95 N.J.A.R.2d (EDU) 208, Neptune, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 602, aff'd 293 N.J. Super. 1 (App. Div. 1996), certif. den. 147 N.J. 259 (1996))
- Confidential employees: Commissioner has jurisdiction to entertain petition regarding salary credit issues (90:543, Migliaccio)
- Conscientious Employee Protection Act: Commissioner had no jurisdiction where petitioner had filed separate action in civil court (90:318, Picogna, aff'd St. Bd. 90:331, aff'd 249 N.J. Super. 332 (App. Div. 1991))

### **Constitutional issues**

- Administrative agencies have the power to pass on constitutional issues only when relevant and necessary to the resolution of a question concedely within their jurisdiction (96 N.J.A.R.2d (EDU) 193, Barcalow)
- No need to explore constitutional issues where Kopera standard met (96 N.J.A.R.2d (EDU) 193, Barcalow)
- Constitutional question of whether student's First Amendment rights were violated by restrictions imposed by school authorities on publication in school newspaper of R-rated movie reviews was one more appropriate for initial review and resolution by Commissioner (Desilets v. Clearview Regional Board of Ed., 266 N.J. Super. 531 (App. Div. 1993), aff'd 137 N.J. 585 (1994))
- Contract dispute over interpretation of termination clause in Superintendent's contract not properly before Commissioner (93:June 17, Pijoux I), see also (94 N.J.A.R.2d (EDU) 345, Pijoux II)

## COMMISSIONER OF EDUCATION

- Contracts: Commissioner has jurisdiction where party seeks neither clarification of terms of contract, nor enforcement of illegal contract, but rather a ruling that contract be nullified as beyond board's statutory powers (95:February 21, DiFalco)
- Contracts: No jurisdiction where the dispute is purely over contract interpretation and not of school law (97 N.J.A.R.2d (EDU) 205, Smith)
- Contractual dispute over salary credit for college credits does not present overriding issues of statutory interpretation or educational policy requiring intervention of Commissioner (93 N.J.A.R.2d (EDU) 784, Canal, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 327)
- Contractual disputes: No jurisdiction (90:318, Picoqna, aff'd St. Bd. 90:331, aff'd 249 N.J. Super. 332 (App. Div. 1991)) (95 N.J.A.R.2d (EDU) 563, Jet Electric, Inc.)
- Contract interpretation and enforcement: no subject matter jurisdiction (97 N.J.A.R.2d (EDU) 370, O'Donnell, dismissed St. Bd. 97:Aug. 6, aff'd App. Div. unreported opinion A-417-97T2, Dec. 18, 1998)
- Contractual issues involving termination of business administrator under 60-days' notice provision was for court, not Commissioner, to decide (97 N.J.A.R.2d (EDU) 16, Demikoff, aff'd St. Bd. 95:July 5, aff'd App. Div. unreported opinion Feb. 3, 1997)
- Damages, Commissioner has no jurisdiction to order other than lost earnings or restoring an increment (96 N.J.A.R.2d (EDU) 35, Bellesfield)
- Decision by PERC that bus driver was improperly dismissed in retaliation for participation in protected union activities is valid because PERC had primary jurisdiction in case (91:586, Inglese)
- Discrimination claim based upon differential treatment remanded to ALJ for determination of whether constitutional claim properly before Commissioner (96 N.J.A.R.2d (EDU) 481, R.D., rev'd St. Bd. 97 N.J.A.R.2d (EDU) 414)
- Discrimination: Commissioner modifies ALJ decision recommending he investigate board's alleged discriminatory employment practices: matter referred to Division of Civil Rights (95 N.J.A.R.2d (EDU) 352, Davis)
- Dismissal appropriate where petitioner failed to respond to numerous requests to make himself available for a hearing (97:March 19, Laufgas)
- Dismissal for failure to provide discovery (92:Jan. 10, Freimark) (97:March 19, State Operated School District of the City of Paterson)



## COMMISSIONER OF EDUCATION

- Dispute over appropriate level of funding for disability retirement plan raises questions of contractual interpretation and is not within Commissioner's jurisdiction (91:1276, Wilson)
- Enforcement of a non-binding arbitration order of salary a teaching staff member is to be paid when re-employed after a reduction in force is with the courts, not the Commissioner (96 N.J.A.R.2d (EDU) 27, Picot)
- Failure to appear constitutes abandonment of position; existing record demonstrates that students were not domiciled in the district, therefore, district is entitled to tuition (97 N.J.A.R.2d (EDU) 303, Spruill)
- Forfeiture: Commissioner of Education does not have jurisdiction to enter order of forfeiture of public employment upon conviction; only the sentencing court can do that Remanded to OAL for further proceedings on tenure charges and increment withholding (98:June 25, Ercolano)
- Interest and costs  
Commissioner cannot award legal costs (96 N.J.A.R.2d (EDU) 35, Bellesfield)  
Criteria for pre-judgment interest not found in matter concerning increment withholding (90:572, McKeon Bass)
- Joinder of indispensable party for purpose of determining available relief appropriate and necessary (91:1637, J.L.)
- Jurisdiction may extend to teachers no longer employed by the district (90:619, West New York)
- Jurisdiction to rule on issue of ALJ's recusal not vested in Commissioner, but rather in Director of Office of Administrative Law (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)
- Legal services; Commissioner, not Law Division, has jurisdiction over suit challenging procedures by which board retained legal services to resist state takeover (Murphy, App. Div. unpub. op. (Dkt. No. A-5366-88T2, Feb. 13, 1990))
- Motion to amend petition raising claims outside of Commissioner's jurisdiction denied without prejudice; more properly brought as new cause of action (93:June 17, Pijeaux I), see also (94 N.J.A.R.2d (EDU) 345, Pijeaux II)
- Negotiated agreement: Commissioner lacks jurisdiction to review validity of provision requiring principals to have license to operate building generator (95 N.J.A.R.2d (EDU) 283, Drucker)

## COMMISSIONER OF EDUCATION

- Neither Commissioner nor State Board has jurisdiction to review ALJ's determination on parents' emergent relief application under special education laws (St. Bd. 97:April 2, I.D.)
- NJMEA (New Jersey Music Educators Ass'n) - Commissioner does not have authority to review NJMEA actions as it is private organization boards cannot join (91:1637, J.L.)
- NJSIAA bylaws do not allow Commissioner to review disqualification of student for unsportsmanlike conduct (90:Nov. 30, G.K.)
- No authority to award relief to candidate who relied to her detriment on administrator's promise of employment (90:852, Vernon)
- No jurisdiction over issues arising under the Rules of Professional Conduct; RPC would govern whether the board attorney had a conflict of interest (97 N.J.A.R.2d (EDU) 34, Montagna)
- No jurisdiction over questions of violations of the School Ethics Act (98:April 27, Chester; denial of request for indemnification of legal expenses aff'd St. Bd. 98: Aug. 5)
- No jurisdiction to decide slander and libel actions (97 N.J.A.R.2d (EDU) 34, Montagna)
- No jurisdiction to determine enforceability of multi-year contract with busing provider in context of budget appeal (96 N.J.A.R.2d (EDU) 39, Township of Ocean)
- No jurisdiction where dispute is a matter of contract and not of school law (96 N.J.A.R.2d (EDU) 1032, Cherry Hill, aff'd St. Bd. 97:Dec. 3, aff'd App. Div. unpub. op. Dkt. No. A-2518-97T1, March 11, 1999)
- No subject matter jurisdiction over petition for adjustment on salary guides for prior service as part-time supplemental teacher where issue does not arise under education laws because no statutory right to guide advancement for such service (97 N.J.A.R.2d (EDU) 365, O'Donnell, aff'd St. Bd. , aff'd App. Div. unpub. op. Dkt. No. A-417-97T2, Dec. 18, 1998)
- OAL lacks jurisdiction to determine whether failure to remove private school for handicapped for conditional approval status was violation of its constitutional equal protection and due process rights (90:1222, Hunterdon Learning Center)

## COMMISSIONER OF EDUCATION

Only Commissioner is empowered to make determination on termination of tenured employee; automatic termination clause of settlement agreement invalid (94 N.J.A.R.2d (EDU) 388, Exum)

Commissioner cannot award punitive damages (96 N.J.A.R.2d (EDU) 35, Bellesfield)

### **Open Public Meetings Act (OPMA)**

Commissioner has jurisdiction to consider OPMA issues as they relate to controversies under school laws (92:Oct. 7, Bond) (90:863, Entwistle)

Commissioner lacks jurisdiction to determine question of public employee's right to privacy under OPMA in case where there is no related controversy involving school law (94 N.J.A.R.2d (EDU) 576, Cheung)

Commissioner lacks jurisdiction to resolve issue of whether public body can prohibit tape recording of closed executive sessions under OPMA (93 N.J.A.R.2d (EDU) 538, Fraleigh)

Commissioner without jurisdiction to adjudicate exclusive allegation of violation of OPMA (93 N.J.A.R.2d (EDU) 313, Rovello)

No authority to assess penalties under OPMA (90:863, Entwistle)

Where Commissioner does not have jurisdiction to hear underlying contractual claims, he has no independent jurisdiction to remediate claims under the OPMA (97 N.J.A.R.2d (EDU) 16, Demikoff, aff'd St. Bd. 95:July 5, aff'd App. Div. unreported opinion Feb. 3, 1997)

Petition for judgment that principals' evaluations were violative of due process rights was an attack on the validity of N.J.A.C. 6:7-2.1, 2.2, properly and exclusively within the jurisdiction of Appellate Division (91:308, Jersey City Administrators)

Pursuant to N.J.S.A. 18A:7A-15, State-operated school districts created to take corrective actions necessary to establish a T & E system of education; board agreed in consent order (91:1079, Mulhern, St. Bd. administrative order 91:July 23)

## COMMISSIONER OF EDUCATION

- Resolution of whether board must pay salary increments of non-teaching staff member according to schedule in expired agreement during negotiations lies within PERC's jurisdiction. N.J.S.A. 18A:29-4.1 prohibits payment of increments to teaching staff members in fourth year after expiration of three year contract (93 N.J.A.R.2d (EDU) 178, Neptune Twp. Education Assoc., aff'd St. Bd. 93 N.J.A.R.2d (EDU) 791, aff'd App. Div. unpub. op. (Dkt. No. A-1184-93T2, May 15, 1995), aff'd in part, rev'd in part 144 N.J. 16 (1996))
- Rulemaking: Commissioner would not create rule summarily designating ability of union members to vote on contracts of employees (95:November 15, Mueller)
- Scope of review of board's decision to close a school limited to determination of whether board exercised its discretion in arbitrary, capricious or unreasonable manner (93 N.J.A.R.2d (EDU) 673, Glynos)
- Settlements of controverted matters are of no force or effect and may not be implemented without Commissioner approval (96: April 1, S.Y.H.L.) (96: May 2, Allen) (96: May 13, B.J.) (96: May 28, I.T.) (96: June 10, Reed) (96: June 19, Lillo)
- Sick leave: A determination regarding whether an injury is work related must be made by the Division of Workers Compensation prior to the Commissioner considering sick leave under N.J.S.A. 18A:30-2.1 (97 N.J.A.R.2d (EDU) 429, Basile, aff'd St. Bd. 97:Aug. 6)
- Sick leave: Only after a determination by the Division of Workers Compensation does the Commissioner have jurisdiction over sick leave benefits under N.J.S.A. 18A:30-2.1 (97:Dec. 3, Rotella-Suarez, St. Bd. decision affirming on other grounds Commissioner decision 96 N.J.A.R.2d (EDU) 940)
- Special education; Commissioner does not have jurisdiction (96 N.J.A.R.2d (EDU) 35, Bellesfield)
- Standard of review of NJSIAA: Commissioner will not substitute his judgment even if he were to decide differently in a de novo hearing, where due process has been provided and there is an adequate basis for the decision (95:February 10, Haddonfield)
- State Board and Commissioner have broad powers and responsibilities to supervise public education and effectuate constitutional and legislative policies concerning it (92 N.J.A.R.2d (EDU) 96, Bd. of Ed. Boro Fort Lee v. Kintos, dec. on remand, 93 N.J.A.R.2d (EDU) 837, stay den., 93 Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316, mod. o.g. App. Div. 96 N.J.A.R.2d (EDU) 1)

## COMMISSIONER OF EDUCATION

Tuition: Commissioner is empowered by N.J.S.A. 18A:38-1 et seq. to assess tuition due to school district (97 N.J.A.R.2d (EDU) 122, R.N., aff'd St. Bd. 97 N.J.A.R.2d (EDU) 553)

### Settlements accepted

- Accepted but board admonished that settlements of controverted matters are of no effect and may not be implemented without Commissioner's approval (95:November 6, Francis)
- Accepted but matter referred to State Board of Examiners due to serious nature of charges (92:Dec. 21, Penn) (92:Dec. 28, Jackson)
- Accepted with express understanding that agreed upon procedure for changing busing policy applies only during life of present board (92:Oct. 15, T.C.)
- Affirmed where teacher's statements on record belied his subsequent claims of duress (93:Oct. 6, Woodside, St. Bd. rev'g 93:Apr. 19)
- Agreement called for transfer of teacher, not separation of employment; term limiting response to inquiries regarding personnel history does not violate Executive Order No. 11 (1974) (93:June 2, Hail, St. Bd. rev'g 92:May 18)
- An agreement to settle a lawsuit is a contract which, like all contracts, may be freely entered into and which a court will generally honor and enforce (96 N.J.A.R.2d (EDU) 135, Kish)
- Approved; assistant superintendent, who alleged violation of tenure and seniority rights when position abolished, could accept assistant principal position and agree not to assert tenure and seniority rights unless removed from assistant principal position (90:Sept. 5, Impomeni, St. Bd. rev'g 90:Apr. 20 and 90:Jan. 3)
- Approved on condition that, upon request, public be given full explanation for teacher's resignation (90:Jan. 11, Mapp)
- Approved on remand; teacher cannot voluntarily surrender certificate but can agree not to oppose revocation by State Board of Examiners (90:Feb. 14, Lewis, dec. on remand, 90:March 15)
- Approved; parties admonished that settlement agreements "are of no force and effect and may not be implemented" absent the Commissioner's approval (98:Jan. 29, Getty) (98:Feb. 2, Bauman)
- Settlement approved with admonishment from Commissioner that settlements may not be implemented prior to Commissioner's approval (97:Jan. 13, East Windsor Regional)

## COMMISSIONER OF EDUCATION

Settlement approved with reminder that settlement terms should not be effectuated prior to the Commissioner's approval (97:Jan. 30, Barker Bus Co.) (97:Feb. 18, Vanni)

Settlement setting salary for future years approved with proviso that board retains right to withhold increments (90:Aug. 31, Yassan)

Settlement upheld (96:June 26, P.H.) (96:June 26, L.Y.) (96:June 26, Collier) (96:June 26, Densen)

Settlement upheld. Teacher resigned from tenured teaching position for consideration prior to certification of tenure charges (96: April 22, Rush)

### Settlements rejected

Rejected absent agreement that teacher charged with sexual harassment will not seek employment in any educational setting in future (92:Nov. 18, Robinson)

Rejected; agreement to issue neutral reference letter must state that board will provide information to public consistent with Executive Order No. 11 and the Sunshine Law (90:Aug. 11, Donnelly, dec. on remand, 90:Oct. 1)

Rejected and remanded for clarification as to how settlement amount meets Cardonick standard and for incorporation of acknowledgment that matter will be forwarded to State Board of Examiners (92:Sept. 28, Beatty, settlement approved on remand 93:March, 29)

Rejected and remanded; making overt and offensive racial, sexist, ethnic and sexual comments to numerous students repeatedly over significant period of time is behavior Commissioner cannot tolerate (92:May 7, Lydon)

Rejected and remanded; payment for release of claim sanctions a subversion of public school contract law which violates sound public policy (97 N.J.A.R.2d (EDU) 376, Muirfield Construction Co.)

Rejected and remanded; resignation in good standing with promise not to apply for any position with any institution operated by Dept. of Human Services inadequate to carry out Commissioner's responsibility of safeguarding all children (91:Nov. 13, Wagner, aff'd St. Bd. 94:Oct. 5)

Rejected and remanded; specific terms of the settlement must be spread on the record (94:Sept. 2, Haddon Heights) (94:Sept. 16, Longo Associates) (94:Sept. 16, Wilson)

Rejected; board has no authority to bind future boards to use of specific procedure in revising transportation policy (92:June 22, T.C.)

## COMMISSIONER OF EDUCATION

- Rejected; expulsion information required to be kept as mandated pupil record and cannot be suppressed (92:Aug. 3, S.R., aff'd St. Bd. 92:Dec. 2)
- Rejected for failure to incorporate terms in record (92:March 19, Salem County Vo-Tech) (95:December 28, Lapidus)
- Rejected; no demonstration in record that petitioner is sick and able to call upon sick leave and absence of explanation as to what constitutes board's policy on disclosure of information to prospective employers (92:Apr. 30, Stichman)
- Rejected where agreement calls for sealing of evaluation and asking Commissioner to control access to document (92:Jan. 10, Crincoli)
- Rejected where language of settlement does not contemplate that the settlement document will become a matter of public record (95:November 6, Green) (95:December 6, DiGiovanni)
- Settlement approved with admonishment that settlements should not be effectuated prior to Commissioner's approval (97:Feb. 28, Puzio)
- Settlement of contract dispute rejected; must specify agreement as to outstanding balance owed by board (90:March 22, Hydrusko Bus Service, Inc., dec. on remand, 90:July 11)
- Settlement rejected. Not fully dispositive of all issues in controversy. Board may not have approved. Remand to OAL (96:May 13, Feigenbaum)
- Term according petitioner four years seniority credit rejected because no information provided in record for basis of determining seniority credit (92:Sept. 24, Knowles)

### **Settlement remanded**

- Settlement remanded for supplementation of record consistent with N.J.A.C. 1:1-19.1 (97:Jan. 27, Ford)

### **Settlement of tenure charges**

- Commissioner approves the joint stipulation of settlement as comporting with the Cardonick standard (97:Aug. 21, Bussey)
- Commissioner approves the settlement as comporting with the Cardonick standard (97:April 28, Reed) (97:Aug. 21, Freeman)
- Commissioner approves the settlement terms as they comport with the Cardonick standard (97:July 24, Hopewell) (97:July 24, Pizzella) (97:July 24, Wayne) (97:Sept. 29, Phillips)
- On remand, the Commissioner adopts and approves the settlement terms as it comports with the standard established in Cardonick (97:April 28, Reed)

## COMMISSIONER OF EDUCATION

- Settlement accepted as comporting with the Cardonick standard (97:Feb. 24, Catlin)
- Settlement accepted but Commissioner notes that agreement between parties not to disclose terms of settlement is not binding on Commissioner; terms of settlement are public information (93:Sept. 15, Plotkin)
- Settlement accepted. Cardonick standard met (96:May 28, Moraney) (96:May 8, Barabow) (96:June 17, Lombardi) (96:June 17, Bauer) (96:June 17, Cooke)
- Settlement agreement; Commissioner will not approve settlement which allows teacher charged with inflicting corporal punishment to return to classroom absent provision for psychological evaluation and appropriate counseling (93:Apr. 8, Benson)
- Settlement approved as comporting with the Cardonick standard (97:Feb. 24, State Operated School District of the City of Jersey City) (97:July 10, State Operated School District of the City of Newark)
- Settlement dropping tenure charges alleging use of public school time and facilities for personal business operations without explanation as to why board believes pursuit of charges no longer in public interest rejected (93:Jan. 15, Freed)
- Settlement rejected as it does not comport with the standard for setting aside tenure matters as expressed in Cardonick (97:Nov. 13, Scott, leave to appeal denied St. Bd. 98:June 3)
- Settlement rejected. Cardonick standard not met. Settlement terms do not sufficiently set forth nature of the charges, do not set forth circumstances which justify settlement and no finding that settlement is in the public interest. (96:June 10, Reed)
- Settlement rejected. Cardonick standard not met. Settlement terms give no explanation of why charges can no longer be pursued or why it is in the public interest not to pursue them (96:June 19, Lillo)
- Settlement rejected. Cardonick standard not met. Settlement terms provide no indication that teaching staff member was advised of Commissioner's duty to refer tenure determinations to the State Board of Examiners for possible revocation of certificate (96:June 17, Sabo)



## COMMISSIONER OF EDUCATION

Standard of review for Summary Judgment motion is whether there exists a genuine issue of a challenged material fact that requires the Commissioner to consider whether the competent evidential materials, viewed most favorable to the non-moving party, are sufficient to permit rationale fact finder to find in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995)

Settlement remanded to clarify how payments for accrued vacation days were made and how such payments relate to salaries for pension purposes (90:Feb. 14, Hallenbeck and Lisa, dec. on remand, 90:June 13)

Settlement terms may not be executed until agreement approved by Commissioner (90:Nov. 28, Fowler)

Special education matters; Commissioner has no authority over, decisions of OAL are final (92:Apr. 6, S.B.)

State Board set aside Commissioner's decision and conducted independent de novo review in case where Commissioner relied on document he had authored and opinions of personnel of agency not entered into evidence (94 N.J.A.R.2d (EDU) 301, Edison Twp. Education Assoc., de novo review by St. Bd. 94 N.J.A.R.2d (EDU) 592, aff'd App. Div. 96 N.J.A.R.2d (EDU) 463)

Violations of the collective bargaining agreement are not before the Commissioner (96 N.J.A.R.2d (EDU) 31, Rago)

Workers Compensation - Commissioner has original exclusive jurisdiction to decide sick leave claim under N.J.S.A. 18A:30-2.1 (Hern, App. Div. unpub. op. (Dkt. No. A-339-91T3, Oct. 23, 1992))

### Justiciable

Controversy is justiciable where the litigant's concern with the subject matter evidences a sufficient stake and real adverseness. Future seniority claims constitutes sufficient adverseness (96 N.J.A.R.2d (EDU) 229, Elson)

Where relief sought cannot be granted and where parties are seeking guidance on future state aid allotments, such opinion is merely an advisory opinion (96:July 5, Bayonne, rev'd and remanded St. Bd. 96:Dec. 4)

### Moot issues or questions

Gifted and talented: Matter moot where child transferred to private school; however, County Superintendent is directed to ascertain board's compliance and undertake remedial action if appropriate (94:Nov. 21, Feldman)

Where petitioners fail to state any claim upon which relief may be granted, motion of board to dismiss will be granted (96:Aug. 12, E.W.)

### Period of limitations

Appeal from a State Board of Examiners determination to block issuance of a certificate must be filed within 90 days (97:Dec. 15, Greene)

## COMMISSIONER OF EDUCATION

- Appeal from Commissioner's decision must be filed within 30 days of decision (93 N.J.A.R.2d (EDU) 716, Wallington, appeal dismissed St. Bd. 93 N.J.A.R.2d (EDU) 729) (96:Aug. 8, Ludviksen, aff'd St. Bd. 96:Nov. 6)
- Appeal of board decision must be made within 90 days (96:Aug. 8, Ludviksen, aff'd St. Bd. 96:Nov. 6)
- Appeal to Appellate Division does not toll 90-day period (89:2572, Mt. Pleasant-Blythedale, dismissed for failure to exhaust administrative remedies, App. Div. unpub. op. Dkt. No. A-2180-89T1, Nov. 9, 1990)
- Applies to dispute between New York and New Jersey (89:2572, Mt. Pleasant-Blythedale, dismissed for failure to exhaust administrative remedies, App. Div. unpub. op. (Dkt. No. A-2180-89T1, Nov. 9, 1990))
- Board's counterclaim for reimbursement of tuition untimely filed. Should have been filed within 90 days of attorney notice rejecting board's demand (96 N.J.A.R.2d (EDU) 801, Gilson)
- Computation of salary: Allegation that board paying wrong salary in violation of salary guide dismissed as teacher actually contesting previous increment withholding and lagging behind in salary in future and regulatory time period (90 days) for contesting withholding elapsed (94:Aug. 29, LaMonica)
- Exceptions to the 90-day rule should only be granted where there are justified and compelling circumstances (96 N.J.A.R.2d (EDU) 943, Hoffman, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256, appeal withdrawn App. Div. unpub. op. Dkt. No. A-003596-96T1, July 30, 1997)
- N.J.A.C. 6:24-1.2(c) requires that actions brought before the Commissioner be filed no later than the 90<sup>th</sup> day from the date of receipt of the final notice of order of the board of education (96 N.J.A.R.2d (EDU) 943, Hoffman, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256, appeal withdrawn App. Div. unpub. op. Dkt. No. A-003596-96T1, July 30, 1997)
- Ninety-day rule applies to actions where board is the petitioner, such as application to suspend teacher's certificate for breach of 60-day contractual notice period (95 N.J.A.R.2d (EDU) 375, Elmwood Park)
- Petition dismissed where petitioner failed to file within 90 days of the date of notification by the Board of its position regarding the treatment of the absences in question (97:Dec. 29, Molinari)
- Petition dismissed where petitioner filed more than 180 days after the date on which district provided a detailed list of School Based Planning Team members (97:Dec. 29, Twp. of Neptune)

## COMMISSIONER OF EDUCATION

Petition dismissed where petitioner filed 137 days after receipt of notice of termination due to abolishment of position (94:June 20, Giannantonio)

Petition filed 8/3/94 not time-barred; arose out of RIF 5/11/94. Remand to OAL (96 N.J.A.R.2d (EDU) 576, Figurelli, aff'd State Board 97:Aug. 6)

Petition filed more than 90 days after notice of salary change untimely (97 N.J.A.R.2d (EDU) 33, Breese)

Petition not time barred; no final order, ruling or other action by the board (96 N.J.A.R.2d (EDU) 567, Garrity)

Petition to have student's grade expunged filed almost one year after district's decision was dismissed as untimely and clearly beyond 90-day requirement (97:Jan. 17, D.M.)

Petition to rescind resignation fourteen months after acceptance by Board was out of time (96 N.J.A.R.2d (EDU) 872, Willson)

Petitioner must file petition no later than 90<sup>th</sup> day from the date of receipt of notice of final order, ruling or other action by the district board of education, party, or agency which is the subject of the requested contested case hearing (96 N.J.A.R.2d (EDU) 995, 2d (EDU) 995, Wynne, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256)

Petitioner's claim that school evaluation was arbitrary, capricious or unreasonable dismissed for failure to file within 90 day period (97 N.J.A.R.2d (EDU) 265, Byron)

Rule applies to matters not predicated on a statutory right (90:619, West New York)

The 90 day rule represents a fair and reasonably necessary requirement for the proper and efficient resolution of disputes under the school laws (96 N.J.A.R.2d (EDU) 943, Hoffman, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256; appeal withdrawn App. Div. unpub. op. Dkt. No. A-003596-96T1, July 30, 1997)

### **Date 90 day period begins to run**

Action for credit for part-time service dismissed as untimely (97 N.J.A.R.2d (EDU) 370, O'Donnell, dismissed St. Bd. 97:Aug. 6, aff'd App. Div. unreported opinion A-417-97T2, Dec. 18, 1998)

Action for payment for bedside instruction untimely because initiated more than 90 days after notice of final action of refusal to pay (92 N.J.A.R.2d (EDU) 453, Morris-Union Jointure Commission)

Amendment to petition to allege that title "Director of of Curriculum and Pupil Personnel Services" is unrecognized position title requiring approval of county superintendent is time barred (94 N.J.A.R.2d (EDU) 22, Halpern)

Applied to position for longevity salary credit and degree stipends (90:543, Migliaccio)

## COMMISSIONER OF EDUCATION

- Board misconduct (failure to keep list of RIF'd employees, failure to notify petitioner of available positions and failure to reply to petitioner's request for information) does not invoke doctrine of equitable estoppel that tolls 90 day limitations period (89:2885, Kaprow, aff'd w/modif. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), aff'd 131 N.J. 572 (1993))
- Breach of 60-day notice requirement: board's cause of action for suspension of teacher's certificate accrues on date teacher fails to report to work (95 N.J.A.R.2d (EDU) 375, Elmwood Park)
- Cause of action accrued in dispute over deduction of sick days upon receipt of notice from district that sick days were being deducted (98:May 11, Walter-Morgan)
- Cause of action accrued on date teacher discovered she was not on preferred eligibility list; petition properly filed by fax three days before 90 day period ran (94 N.J.A.R.2d (EDU) 330, Cahn)
- Cause of action in dispute over compensation for earned vacation time accrues upon receipt of final notice of board's determination not to pay benefits or, in absence of specific determination or request for payment, upon petitioner's recognition that she is not receiving benefits as expected (95 N.J.A.R.2d (EDU) 81, Romanoli II)
- Cause of action to recoup back pay withheld during period of suspension occurred upon teacher's restoration to position (90:823, Magliozzi)
- Challenge to contract extension accrues on date extension approved by board; letter by board president never ratified by board and cannot constitute final order, ruling or action by board (92 N.J.A.R.2d (EDU) 251, Syvertsen, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393, aff'd App. Div. unpub. op. (Dkt. No. A-5928-91, June 11, 1993))
- Challenge to State Board of Examiners denial of application for teaching certificate, out of time (97:Dec. 15, Greene)
- Claim for payment of sick leave benefits beyond period for which employee receives Workers Compensation benefits must be filed within 90 days of board action which has effect of denying benefits to employee (91:1725, Verneret, aff'd w/modif. 95 N.J.A.R.2d (EDU) 134)

## COMMISSIONER OF EDUCATION

- Claim for payment of sick leave benefits must be considered under controlling legal authority which existed prior to Verneret, as the State Board held that Verneret was to be applied on a prospective basis only. Date of filing relates back to the date of the workers' compensation judgment rendering the instant petition untimely (97:Sept. 18, Alferi)
- Claim for retroactive additional compensation for achievement of Master's Degree in 1989 grossly out of time when filed in 1996. Ninety day period of limitation began to run with receipt of first paycheck in 1989-1990 school year (97:Dec. 8, City of Perth Amboy)
- Claim that student should skip grade because she repeated grade early in career is barred. Should have challenged decision to repeat grade (96:Sept. 25, J.S.)
- Conversation with board employee was adequate notice of board's action regarding sick leave (96 N.J.A.R.2d (EDU) 502, Conklin)
- Date conflict of interest was learned of, not date on which it arose, triggers 90 day filing requirement (91:1266, Baptist)
- Date of filing with Commissioner relates back to original date of filing with Superior Court (93 N.J.A.R.2d (EDU) 158, Driggins, aff'd on remand 93 N.J.A.R.2d (EDU) 319)
- Entitlement to position upon RIF; runs from date employee became aware that a non-tenured teacher was hired in position for which she held endorsement (90:453, Lynch)
- Ninety day period applicable to claims arising out of RIF; action accrues at time employee receives notice (94 N.J.A.R.2d (EDU) 583, Mullin)
- Ninety day rule did not bar claim by permanent building based substitutes to sick leave and participation in State Health Benefits Plan (94 N.J.A.R.2d (EDU) 364, East Orange Education Association)
- N.J.A.C. 6:24-1.2 applicable to claim arising out of alleged violation of statutory tenure rights (Nissman, 272 N.J. Super. 373 (App. Div. 1994), aff'g 92 N.J.A.R.2d (EDU) 621, rev'g 92 N.J.A.R.2d (EDU) 71)
- Notice of non-renewal based on unsatisfactory evaluations triggered running of 90 day period; not tolled by board failure to respond to teacher's request for additional information (94 N.J.A.R.2d (EDU) 381, Portee)

## COMMISSIONER OF EDUCATION

- 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 (89:1532, Middle Township, aff'd St. Bd. 89:1548, aff'd App. Div. unpub. op. (Dkt. No. A-391-89T3, April 12, 1990)) (89:2522, Cade, aff'd St. Bd. 90:1693, aff'd App. Div. Dkt. No. A-2881-89T5, Nov. 30, 1990)
- Petition filed 105 days following receipt of reassignment dismissed as untimely (97:Feb. 19, Jeffries)
- Petition seeking to invalidate action of Board requiring county substitute certificate for position of site monitor will be dismissed where petition not filed within 90 days of the notice of the requirement (96 N.J.A.R.2d (EDU) 995, Wynne, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256)
- Rule applied to bar recoupment of overpayment of teacher's salary (90:619, West New York)
- Rule applied to counterclaim filed by board of education (90:464, Fox, aff'd St. Bd. 90:473)
- Rule not tolled by arbitration proceedings under contract (94 N.J.A.R.2d (EDU) 203, Raymond, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 431)
- Rule not tolled by board's letter to county superintendent requesting suspension of teacher's certificate for breach of 60-day contract notice period; formal order to show cause must be filed with Commissioner within 90 days of teacher's failure to report to work (95 N.J.A.R.2d (EDU) 375, Elmwood Park)
- Rule not tolled by requests for reconsideration of final board action (90:464, Fox, aff'd St. Bd. 90:473)
- Runs from date teacher receives notice on non-renewal, and not the later date of her "informal appearance" before the board (90:663, LeMee)
- Seniority claim - 90-day period begins to run upon actual notice of hiring (96 N.J.A.R.2d (EDU) 708, Metaxas/Wenger aff'd St. Bd. w/mod. 96 N.J.A.R.2d (EDU) 715, aff'd App. Div. 96 N.J.A.R.2d (EDU) 716)
- Summary decision appropriate where petitioner could have reasonably concluded, on the basis of a job posting, that she might have a claim to teach the courses at issue; no basis to relax 90-day rule (Beshaw, App. Div. unpub. op aff'g St. Bd. decision of 98:Feb. 4, which reversed Commissioner decision of 97 N.J.A.R.2d (EDU) 494; certif. den. 161 N.J. 334 (1999))

## COMMISSIONER OF EDUCATION

- Superintendent's response to requested expulsion of student by teacher triggers running of period (92 N.J.A.R.2d (EDU) 406, Markulin)
- Teacher's challenge to board's refusal to allow rescission of resignation; 90 days counted from Commissioner's rejection of tenure settlement agreement that required teacher's resignation (90:769, Wilburn)
- Teachers who sought retroactive compensation for achievement of Masters Degree were barred by 90-day rule; began to run when they received first paychecks and were put on notice of board's failure to credit them (97:Dec. 8, Arlequin)
- Tenure acquisition claim: 90 days begins to run from date principal notified of board decision not to renew contract and not to grant tenure, not from last day of contract (Nissman, 272 N.J. Super. 373 (App. Div. 1994), aff'g St. Bd. 92 N.J.A.R.2d (EDU) 621, rev'g 92 N.J.A.R.2d (EDU) 71)
- Tolling: Attempts to negotiate with board do not toll 90 day period (89:2885, Kaprow, aff'd St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), certif. granted 130 N.J. 16, aff'd 131 N.J. 572 (1993))
- Transfer from Superior Court on jurisdictional grounds; board not relieved of 90 day rule limitation (90:619, West New York)
- Tuition recoupment petition barred where filed 10 months after failure to submit affidavit and pupil's withdrawal from district; 90 day period does not begin with receipt of new information on non-residency (90:Apr. 6, St. Bd. North Caldwell)
- Unofficial and informal note from board secretary to RIF'd assistant superintendent describing board action of creating and filling two positions for which assistant superintendent claimed tenure rights was sufficient to trigger 90 day limitation period (89:2885, Kaprow, aff'd w/modif. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), aff'd 131 N.J. 572 (1993))
- Untimely: 90 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), aff'd 131 N.J. 572 (1993))
- Untimely; petition filed in April 1996 was time barred under 90 day provisions of N.J.A.C. 6:24-1.2c where cause of action arose in the spring of 1995 (97:Oct. 2, Schoonover)

## COMMISSIONER OF EDUCATION

Violation of tenure/seniority rights to re-employment begins to run on date teacher told newly created position was filled by someone else (92 N.J.A.R.2d (EDU) 614, Davenport)

### Relaxation of 90 day rule

Action seeking enforcement of administrative agency decision initiated in Superior Court not subject to 90 day filing rule (93 N.J.A.R.2d (EDU) 548, Metzger)

Began to run when RIF'd teacher learned that nontenured teachers were performing duties to which he had a claim and not when the board actually filled positions, given absence of correspondence between board and teacher (96 N.J.A.R.2d (EDU) 955, Ressler II, reversed and remanded St. Bd. 98:Feb. 4)

Begins to toll when injured party knows the fact of the injury and the identity of the injurer (96 N.J.A.R.2d (EDU) 955, Ressler II, reversed and remanded St. Bd. 98:Feb. 4)

Continuing violation, such as providing health insurance to board attorney, warranted relation in interests of economy (94:Dec. 12, Van Wagner)

Initiation of negotiations did not toll 90-day rule (96 N.J.A.R.2d (EDU) 502, Conklin)

No relaxation of 90-day rule warranted (96:March 8, J.R. Transportation)

No relaxation of 90-day rule warranted. Unreasonable to conclude CSA did not know board would not pay unused vacation time six months after termination (95 N.J.A.R.2d (EDU) 81, Romanoli II)

Private schools - funds received by private not-for-profit school for early intervention services to disabled children properly expended for 1988-89 school year. Remanded for determination as to 1985-86 through 1987-88. (95 N.J.A.R.2d (EDU) 152, Early Intervention Programs, St. Bd. aff'g in part, remanding in part 92 N.J.A.R.2d (EDU) 68)

Relaxation denied although petitioner is pro se and he believed his appeal was to the Dept. of Personnel (97 N.J.A.R.2d (EDU) 33, Breese)

Relaxation denied; circumstances surrounding denial of admission of four-year-olds to pre-school program were not unusual or compelling (98:Jan. 30, Twp. of Montclair)

Relaxation denied despite allegations of age discrimination, since incident did not arise from district-wide policy (distinguishing D'Alessandro) and where another forum was available to address claim of discrimination (90:663, LeMee)



## COMMISSIONER OF EDUCATION

- Relaxation denied for late challenge to non-renewal of teacher's contract (90:663, LeMee)
- Relaxation denied for overpayment of salary; public interest better served by ending the litigation (90:619, West New York)
- Relaxation denied; ignorance of law governing tenure of attendance officer does not toll time for filing petition before Commissioner (93:Feb. 5, Harshaw, settlement approved, 94:June 1)
- Relaxation denied in board action seeking suspension of teacher's certificate for breach of 60-day notice period: board had counsel available to it and explicit instructions on procedures from county superintendent (95 N.J.A.R.2d (EDU) 375, Elmwood Park)
- Relaxation denied; 90 day rule applies to all claims filed with Commissioner including those alleging violations of Law Against Discrimination (93 N.J.A.R.2d (EDU) 435, Ward)
- Relaxation denied; not appropriate or necessary to serve justice (96 N.J.A.R.2d (EDU) 817, McCrae, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 820)
- Relaxation denied; petition with Commissioner should have been filed simultaneously with filing of grievance and demand for arbitration under contract (94 N.J.A.R.2d (EDU) 203, Raymond, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 431)
- Relaxation denied; petitioner waited 18 months to file claim (92 N.J.A.R.2d (EDU) 339, Sasse)
- Relaxed because of significant public interest in reviewing board decision not to certify tenure charges against accused employee of misappropriating student funds (93 N.J.A.R.2d (EDU) 288, Bey)
- Relaxed for budget appeal filed one day late (92 N.J.A.R.2d (EDU) 651, Fairview)
- Relaxed for counsel's failure to file because of turn over in staff (St. Bd. 91:2568, Krupp) See 95 N.J.A.R.2d (EDU) 451
- Relaxed for pro se in NJSIAA matter (95:April 12, Burkley)
- Relaxed to allow pro se litigants to answer board's complaint alleging that children do not reside in district and to seek payment of tuition (92:Nov. 4, Farrell, rev'g 92:Apr. 10)
- Relaxed where petitioner attempted to raise claims in initial proceedings but was procedurally prevented from doing so (92 N.J.A.R.2d (EDU) 555, Boles, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 135)

## COMMISSIONER OF EDUCATION

- Rule applies to board resolution preventing board member from representing himself before the board (96 N.J.A.R.2d (EDU) 540, Rosenblum, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 743, aff'd App. Div. unpub. op. Dkt. No. A-1071-96T3, Oct. 20, 1997)
- Tenure/seniority cases - 90 day rule strictly applied - no continuing violation (89:2522, Cade, aff'd St. Bd. 90:1693, aff'd App. Div. unpub. op. (Dkt. No. A-2881-89T5, Nov. 30, 1990))
- 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, dismissed for failure to exhaust administrative remedies, App. Div. unpub. op. (Dkt. No. A-2180-89T1, Nov. 9, 1990))
- Will not be relaxed because of reliance on a board member's representations (90:543, Migliaccio)
- Will not be relaxed for hardship (89:2572, Mt. Pleasant-Blythedale, dismissed App. Div. unpub. op. (Dkt. No. A-2180-89T1, Nov. 9, 1990))
- Will not be relaxed for petitioner who was granted intervenor status in related litigation but failed to move to amend pleadings (92 N.J.A.R.2d (EDU) 555, Boles, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 135)
- Will not be relaxed in case where petitioner slept on his rights, failing even to move to intervene in related litigation (92 N.J.A.R.2d (EDU) 555, Boles, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 135)
- Rule applied to board's appeal of Division of Finance determination that incarcerated student was resident of district and district responsible for tuition (93 N.J.A.R.2d (EDU) 667, Atlantic City)
- 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, dismissed App. Div. unpub. op. (Dkt. No. A-2180-89T1, Nov. 9, 1990))
- Untimely: Petition for salary adjustment based on prior service as part-time supplemental teacher dismissed, among other reasons, as untimely, filed nearly 10 years after initial guide placement (97 N.J.A.R.2d (EDU) 365, aff'd St. Bd. , aff'd App. Div. unpub. op. Dkt. No. A-417-97T2, Dec. 18, 1998)

### Petitions

#### Amendments to

- Amendment to petition to allege that title "Director of Curriculum and Pupil Personnel Services" is unrecognized position title requiring approval of county superintendent is time barred (94 N.J.A.R.2d (EDU) 22, Halpern)

## COMMISSIONER OF EDUCATION

- Amendment to pleadings: unlike the Court Rules, the Rules of Uniform Administrative Procedure permit a party to freely amend pleadings, within certain stated limitations, such as where the amendment is not within the scope of the petition (97 N.J.A.R.2d (EDU) 46, Montagna)
- Motion to amend petition raising claims outside of Commissioner's jurisdiction denied without prejudice; more properly brought as new cause of action (93:June 17, Pijeaux I), See also (94 N.J.A.R.2d (EDU) 345, Pijeaux II)
- Challenge to withholding is dismissed for failure to prosecute (97:Nov. 3, Finch)
- Default judgment  
Granted; respondent ordered to pay nephew's tuition after failing to respond to board's petition alleging affidavit was insufficient (90:May 30, Linden)
- Dismissal based on voluntary mutual stipulation of withdrawal does not require discussion of standing issue (91:74, Belvidere)
- Dismissed. Petitioner failed to appear at hearing and offered no explanation (96:May 13, N.O.)
- Exhaustion of administrative remedies: internal appeal procedure within department cannot be imposed on petitioner where not embodied in regulation (95 N.J.A.R.2d (EDU) 199, Pinelands Learning Center, aff'd St. Bd. with modif. 95 N.J.A.R.2d (EDU) 202)
- Interrogatories; respondent's failure to answer results in judgment in favor of petitioner (95 N.J.A.R.2d (EDU) 222, Brick)
- Mootness (See also "Moot Issues" this index)  
Pupil charges of illegal search, harassment and improper suspension moot where student left district and did not serve suspension (90:Aug. 30, G.A.C.)
- Motion to supplement record denied: Neither receiving board's discussion of curriculum enhancements nor letters concerning special education student at receiving district relevant to termination dispute (90:March 7, Englewood Cliffs)
- Petition dismissed for failure to prosecute where complaints were filed in September 1994, stipulations of fact were requested in December 1995 and counsel for both parties still failed to file stipulations in August of 1997 (97:Nov. 3, Finch, McAlinden, Brownlee)
- Petition dismissed where petitioner fails to appear for hearing (95:November 2, Cavit Electric)
- Petition for removal of Board members based on improper approval of expenditure of public funds dismissed for failure to state a claim upon which relief can be granted (96:July 5, Feldman)

## COMMISSIONER OF EDUCATION

Petition seeking return of goalie pads dismissed - no proof pads were property of board (96 N.J.A.R.2d (EDU) 586, Vickner)

### Recusal/Prejudice

Dismissal of tenure charges not required where prior Commissioner had criticized teacher for conduct which formed basis of tenure charges (95 N.J.A.R.2d (EDU) 164, Clark, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 190)

### Re-open hearing

Hearing will not be re-opened except in "extraordinary circumstances"; perceived oversight by counsel is not basis for re-opening (93 N.J.A.R.2d (EDU) 273, Millstone)

### Standing

Board member's defeat did not render moot her challenge to board policy regarding review of personnel records (90:752, Horner)

Custodians who were also taxpayers in district lack standing to contest board decision to terminate custodians and subcontract for custodial services (94 N.J.A.R.2d (EDU) 172, Angel, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 423)

Media specialist's right to challenge qualifications of others to manage media center questioned, but case decided on other grounds (95 N.J.A.R.2d (EDU) 430, App. Div. aff'g 94 N.J.A.R.2d (EDU) 430, St. Bd. aff'g 94 N.J.A.R.2d (EDU) 311)

New Jersey's historic liberal approach to issue of standing applies to taxpayer suits challenging quasi-legislative actions of local boards of education. Ridgewood Education Association, 284 N.J. Super. 427 (App. Div. 1995) rev'g St. Bd. 94 N.J.A.R.2d (EDU) 141, aff'g 94 N.J.A.R.2d (EDU) 137, remanded to Comm. St. Bd. 96 N.J.A.R.2d (EDU) 463.

Parent had no standing to challenge illegal recruitment charges against coach in NJSIAA matter, as determination regarding coach had no effect on student's eligibility (95:April 12, Burkley)

Parent who does not have classified children lacks standing to raise special education issues (92:Oct. 7, Bond) See also (93 N.J.A.R.2d (EDU) 577, Bond)

## COMMISSIONER OF EDUCATION

Parents do not have standing to challenge appropriateness of disciplinary action taken against someone else's child (93 N.J.A.R. 2d (EDU) 71, D.K.)

Resident lacks standing to challenge board's policies (91:2592, Roche, aff'd App. Div. unpub. op. (Dkt. No. A-4638-90T1, Dec. 8, 1992)) but see Ridgewood, 284 N.J. Super. 427 (App. Div. 1995)

Taxpayer has standing to petition Commissioner to remove Board members (96:July 5, Feldman)

Taxpayers and tenured teachers have standing to challenge board personnel policy. Ridgewood Education Association, 284 N.J. Super. 427 (App. Div. 1995) rev'g St. Bd. 94 N.J.A.R.2d (EDU) 141, aff'g 94 N.J.A.R.2d (EDU) 137, remanded to Comm. St. Bd. 96 N.J.A.R.2d (EDU) 463.

Taxpayers had standing to raise important issue concerning the limits of a board's statutory authority regarding expenditure of public revenues, namely whether the board had the authority to enter into a multi-year buyout of a principal (95:February 21, DiFalco)

Teachers Association has standing to challenge board personnel policy since its prospective members are affected by policy. Ridgewood Education Association, 284 N.J. Super. 427 (App. Div. 1995) rev'g St. Bd. 94 N.J.A.R.2d (EDU) 141, aff'g 94 N.J.A.R.2d (EDU) 137, remanded to Comm. St. Bd. 96 N.J.A.R.2d (EDU) 463.

Teachers' Association may not maintain action against the board without the authority of the primary petitioning teacher who will be affected by the outcome of the case (95:April 17, Lapin)

Township Committee lacks standing to challenge Commissioner's grant of approval for lease purchase agreement (St. Bd. 91:2513, Bedminster)

### Stay of Commissioner's decision

Stay denied; any financial harm to district for its continuation of insurance arrangement ("Siracusa plan") was not established on record, and was of district's own making for failing to explore alternatives; however, board provided time to find alternative plan (95:January 25, Keyport)

Stay denied; board member suspended from board membership for failure to file disclosure forms (93:March 3, St. Bd. School Ethics Commission v. Nardino)

Stay denied; board ordered to remove all fifth grade students from unsafe facilities (97:Nov. 25, City of Atlantic City)

Stay denied; Crowe standards not met (95:January 26, J.D.) (95:June 21, Brick v. Mueller and Pannucci) (95:Jan. 26, M.D.)

## COMMISSIONER OF EDUCATION

- Stay denied; financial hardship not irreparable harm under Crowe standards (92:Jan. 27, Borrelli)
- Stay denied; ordered reinstatement of principal mid-year when no open positions available is not irreparable harm (92:Feb. 20, Nissman)
- Stay denied; reassignments during middle of school year do not constitute irreparable harm (92 N.J.A.R.2d (EDU) 427, Gerdes, aff'g 92 N.J.A.R.2d (EDU) 168)
- Stay of approval of charter denied (98:March 18, Teaneck Community Charter School) See also, Teaneck Community Charter School St. Bd. 98: Nov. 4, remanding 98: Sept. 11 Commissioner decision granting final approval of charter for further review of suitability of proposed permanent educational facility and to verify building deficiencies have been corrected.
- Stay of decision that bid for security services improperly awarded denied (93:Apr. 19, Consec) See also (93 N.J.A.R. 2d (EDU) 228, Consec, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 604)
- Stay of order to re-bid contracts pending appeal to State Board denied (90:March 26, Murphy Bus Service)
- Stay of statewide distribution of educational funds pending resolution of distribution to single district denied (92 N.J.A.R.2d (EDU) 59, Bordentown Regional)

### Summary judgment

A motion for summary judgment should be granted where there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law. (96 N.J.A.R.2d (EDU) 109, Martucci, rev'd on other grounds St. Bd. 96:Dec. 4)

Facts which non-tenured teacher deem to be significant regarding termination were without legal consequence under the circumstances and summary judgment granted to the board (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

"Material fact" means a fact legally consequential to a determination of an issue in the case (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

School board entitled to summary judgment as a matter of law where "reproduction clerk", whose salary increment was withheld, failed to advance a cognizable cause of action (97:Sept. 29, Page)

School board is entitled to summary judgment as a matter of law where non-tenured teacher failed to allege that his termination violated any of his constitutional or legislatively conferred rights (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

## COMMISSIONER OF EDUCATION

Summary decision should be granted if there is no genuine issue of material fact in dispute and moving party is entitled to prevail as a matter of law (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317) (96 N.J.A.R.2d (EDU) 540, Rosenblum, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 743, aff'd App. Div. unpub. op. Dkt. No. A-0171-96T3, Oct. 20, 1997)

Where issues of fact, viewed in the most favorable light, are not sufficient to lead a rational factfinder to find for the plaintiff, summary judgment will be granted for board (96:Aug. 12, E.W.)

## COMMUNISM

## COMPENSATION

Crediting employees' union and tax shelter accounts prior to earning of salary does not violate constitutional prohibition against gift of public funds to private individuals (95 N.J.A.R.2d (EDU) 208, Neptune, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 602, aff'd 293 N.J. Super. 1 (App. Div. 1996), certif. den. 147 N.J. 259 (1996) (NOTE: State Board in Neptune overruled 77:704, Brick, concerning salary payments to teachers at beginning of year)

Suspension/back pay: Tenured custodian who pled guilty to criminal sexual conduct and was dismissed for unbecoming conduct entitled to back pay for period between 121<sup>st</sup> day after suspension and the date of the Commissioner's decision on the tenure dismissal (96:July 22, Efferen)

Tenured vice-principal appointed scheduling administrator and subsequently transferred to another position without scheduling duties entitled to compensation for services rendered as scheduling administrator from date of appointment until notified of transfer (93 N.J.A.R.2d (EDU) 153, Jones)

## CONDEMNATION

## CONFLICTS OF INTEREST

(See also "Ethics Act" and "Boards of Education - Membership on" this index)

Board properly rejected bidder who was an immediate family member of a board member (90:1570, Babcock Computer Corp.)

Employment as school business administrator while holding elected office of mayor in Type I school district is impermissible conflict of interest (95:March 9, Steele, stay denied St. Bd. 95:June 7, aff'd St. Bd. 95:Sept. 6)

## CONTRACTS OF EMPLOYMENT

Board alone has the authority to award contract (90:725, Cutler, aff'd St. Bd. 90:751) (90:852, Vernon)

Board and school administrators never reached agreement on contract; deductions for health insurance co-payments based on proposed contract improper and must be refunded to employees (95 N.J.A.R.2d (EDU) 35, Granaldi)

Contract for employment of teacher who is not properly certified as required by statute is void (93 N.J.A.R.2d (EDU) 744, Delgado)

Executive secretary terminated for cause entitled to payment for vacation accrued during employment (95 N.J.A.R.2d (EDU) 139, Lowe, App. Div. aff'g St. Bd. 93 N.J.A.R.2d (EDU) 798, rev'g 93 N.J.A.R.2d (EDU) 393)

Letter by board president amending contract never ratified by board does not constitute board action and is without legal or binding effect (92 N.J.A.R.2d (EDU) 251, Syvertsen, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393, aff'd App. Div. unpub. op. (Dkt. No. A-5928-91, June 11, 1993))

Modification of superintendent's employment contract must conform with statutory limitation on term of employment; effective six year term following modification is violative of N.J.S.A. 18A:17-15 (95 N.J.A.R.2d (EDU) 115, West Village Civic Club, aff'd w/modification St. Bd. 96:June 5)

Parole evidence as to unwritten agreements between negotiators and board not relevant to determination of whether teacher's tenure rights abridged by collective bargaining agreement's salary provisions (94 N.J.A.R.2d (EDU) 242, Cohen)

Relief is available against a board of education only if a contract of employment has been executed (90:852, Vernon)

Statute of Frauds, requiring that contracts over one year be in writing, was applicable to contracts between boards of education and superintendents (95 N.J.A.R.2d (EDU) 510, Graham)

Teacher RIF'd in October entitled to enforcement of full ten month contract under specific language of contract's cancellation clause (93 N.J.A.R.2d (EDU) 766, Siegel, aff'd in part, rev'd in part St. Bd. 94 N.J.A.R.2d (EDU) 319)

Teacher who is entitled to damages for premature cancellation of contract, need not mitigate damages by accepting board's offer of lower paying employment before exhausting reasonable efforts to find similar, comparably paying work (95:March 27, Siegel, dec. on remand, aff'd St. Bd. 95:July 7)

## CORPORAL PUNISHMENT

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



## **COUNSEL FEES**

(See also "Commissioner of Education - Jurisdiction of Commissioner - Attorney's fees" and "Indemnification" this index)

IDEA: Prevailing party in special education matter may maintain independent action in state court to enforce a right to attorneys fees occurred in the successful defense of administrative proceedings. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)

IDEA: State Courts have concurrent jurisdiction over IDEA claims for counsel fees. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)

Successful completion of Pre-Trial Intervention Program was not "favorable termination of criminal proceeding"; employee not entitled to reimbursement of counsel fees (Cressinger, 256 N.J. Super. 155, (App. Div. 1992), certif. denied, 130 N.J. 394)

## **COUNTY CHILD STUDY TEAMS**

## **COUNTY SPECIAL SERVICES**

Overpayment of state aid for three years; special services district ordered to repay (90:518, Burlington, aff'd St. Bd. 90:525)

## **COUNTY SUPERINTENDENT**

Board ordered to review election statutes with county superintendent because of irregularities at past school election (95 N.J.A.R.2d (EDU) 229, Atlantic City)

Board ordered to submit evidence to county superintendent of its compliance with its own policies concerning personnel, affirmative action, correspondence and meeting agendas: past violations triggered one-year county superintendent review (95 N.J.A.R.2d (EDU) 352, Davis)

County superintendent has the authority to determine appropriate certification for a position (96 N.J.A.R.2d (EDU) 884, Bjerre, aff'd as clarified St. Bd. 00:July 5)

County superintendent need not be joined as a party to challenge certification requirement (St. Bd. 96:Sept. 4, Zachau, aff'g on other grounds 97 N.J.A.R.2d (EDU) 14)

County superintendent was not proper party in election dispute concerning position of candidates on ballot (95:March 28, Mangieri)

Establishing violations of State Corrective Action Plan (CAP) must be done by and through the county superintendent; personnel have no standing to initiate enforcement of CAP (90:47, Page, appeal dismissed for failure to perfect, 91:2580)

**CRIMINAL BACKGROUND CHECKS**

(See Employment Disqualification)

**CURRICULUM**

(See also "Boards of Education - Duties and powers of",  
"Graduation" and "Pupils" this index)

Family life curriculum properly adopted by board after  
consultation and participation of representative members of  
community as required by N.J.A.C. 6:29-4.2; regulation does  
not require board to confer "veto like" authority on members  
of community (94 N.J.A.R.2d (EDU) 532, Lee)

Gifted and talented program found adequate (95 N.J.A.R.2d (EDU)  
454, Kanter)

**CUSTODIAN OF SCHOOL MONIES**

(See "Treasurer of School Monies" this index)

**CUSTODIANS**

(See "Janitors" this index)