

This document contains a *SUPPLEMENTAL TOPICAL INDEX OF DECISIONS OF THE COMMISSIONER OF EDUCATION*, beginning with decisions filed in July 1998. This index will be continuously updated as new decisions of the Commissioner of Education become available to NJSBA through the Department of Education's website.

The index summaries are intended as guidance in locating cases relating to a particular topic in the area of school law. The summaries should not be relied on as legal advice. The index summaries should not substitute for independent research and review of the actual rulings. Note that while selected decisions may include cites to State Board or other subsequent proceedings, not all decisions include the relevant cite to subsequent history. The actual text of the Commissioner's decisions is available through the NJSBA home page (Go to: Educational Links, School Law, New Jersey Department of Education).

“ABBOTT” DISTRICTS (See STATE AID)

ABOLITION OF POSITION (RIF)

Abolition of position of non-tenured Chief of Center for Safety and Security was not arbitrary and did not violate Law Against Discrimination, or contractual arrangement; however, unused sick and personal that had been agreed to outside of contract must be provided. (00:Dec. 11, Green-Janvier)

Abolition of position of Organizational Development Specialist was not arbitrary, and did not violate Law Against Discrimination because decision motivated by fiscal crisis; may be entitled to compensation for unused sick or personal days if provided by policy or agreement to reimburse for unused vacation days. (01:March 7, Wellins)

Abolition of 12-month position and reassignment of teacher to 10-month position with prorated salary constituted a RIF, not a transfer; board may prorate salary (noting that Avery must be viewed in light of Carpenito) (99:July 30, Buckley, Amended decision 99:Sept. 16)

Although it did not reduce her salary, board violated tenure rights of half-time LDTC/half-time inclusion teacher, by abolishing her part-time LDTC position, transferring her to full-time inclusion teacher position, and contracting with an employee of another school district to perform LDTC duties. (02:July 2, Iraggi)

Athletic Director (AD) serving under an instructional certificate attains tenure as a teacher, as AD is not a separately tenurable position; a board may assign such an AD to any instructional position within the scope of his certificate and not violate tenure rights if salary is not reduced. (01:Jan. 11, Barratt, aff'd on other grounds, St. Bd. 01:June 6)

Athletic Director: Whether board violated tenure rights of Athletic Director by abolishing the position and creating a newly combined position (vice principal/AD), and reassigning him to a lesser salaried teachers' position, would depend on nature of the AD position and whether it was a tenurable position or a stipended extracurricular assignment. Remanded. (01:Jan. 11, Barratt, aff'd St. Bd. 01:June 6)

Board did not act improperly when, during reorganization of its business office, it abolished position of Assistant Board Secretary/Director of Administration, and created comptroller position and hired properly credentialed individual to fill the new role. (00:June 12, Cheloc)

Board did not violate elementary teacher's tenure or seniority rights by transferring her to middle school after a RIF at elementary level; no reduction in salary or benefits. (01:July 2, Zitman, aff'd St. Bd. 01:Nov. 7)

Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (00:Jan. 2, Anders, settlement approved St. Bd. 02:Jan. 2)(02:Dec. 2, Trigani)

ABOLITION OF POSITION (RIF)

- Board may not reduce salary of employee involuntarily transferred from 12-month to 10-month position, in absence of RIF (99:July 30, Buckley, amended decision 99:Sept. 16)
- Board's duty to aggregate assignments for the benefit of the tenured person subject to a RIF, is a general, not absolute, principle of law. (00:Aug. 18, Woodbine)
- Board violated school nurse's tenure and seniority rights when it reduced her to part-time position and assigned her teaching duties to another teaching staff member; she had tenure protection in all the assignments within her tenurable position of school nurse, including teaching health. (00:Aug. 18, Woodbine)
- Budget defeat and city counsel's refusal to restore line item for position, does not effectuate the abolition of that position; rather, position remains in force until board affirmatively abolishes it. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)
- Burden of proving tenure right rests with the teacher. (99:Dec. 3, Duva, aff'd on other grounds, St. Bd. 02:March 6)
- Commissioner will not grant relief that compels a school board to fill a position which, by law, it does not have the authority to fund, such as where the line item for the position is not restored by municipality after a budget defeat. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Decision to abolish

- Board failed to abolish Social Studies Teacher position as required in resolution; subsequent position was comparable in time and subject matter. Summary judgment granted. (00:March 24, Markowski, aff'd St. Bd. 00:July 5)
- Board's decision to contract with Educational Services Commission to perform the functions of school social worker did not violate Petitioner's tenure or seniority rights; as the board's actions were consistent with a waiver granted by the Commissioner and were further taken for reasons of economy. (97:Nov. 17, O'Neal, aff'd St. Bd. 00:June 7)
- Board violated teacher tenure and seniority rights by failing to offer full-time position that was comparable to position that was abolished. (00:March 24, Markowski, aff'd St. Bd. 00:July 5)
- Entitlement to technology coordinator by art teacher who was reduced from full to part-time cannot be evaluated without remand to determine appropriate endorsement for this position. (00:July 27, Holloway); on remand, determined that position required endorsement in elementary education, which she did not possess at the time of the RIF. (01:Nov. 26)

ABOLITION OF POSITION (RIF)

RIF of Coordinator of Special Services in regional district and resulting transfer of functions and duties to newly created position, created genuine disputes with respect to material facts such as whether RIF accomplished in good faith, whether petitioner was entitled to other positions, and motion to amend; summary judgment denied, remanded. (98:Sept. 24, Williams, aff'd St. Bd. 99:Feb. 5. See also decisions on motion, 98:Nov. 6 and 99:Jan 6)

In school suspension assignment was a teaching staff position requiring teaching certificate; back pay ordered for tenured teacher who, upon RIF, was entitled to position but not appointed. (99:Nov. 29, Lewis, on remand)

Director position is separately tenurable; when Director was subject to RIF he had no entitlement to position of supervisor where he had never served as supervisor although he held appropriate certification. (99:Dec. 3, Duva)

District may not engage in a "sham RIF" by abolishing an instructor's full-time position and then offering that employee a part-time position that requires the employee to work the same or more hours. (00:Dec. 11, Peters)

Entitlement to technology coordinator by art teacher who was reduced from full to part-time cannot be evaluated without remand to determine appropriate endorsement for this position. (00:July 27, Holloway)

Petitioner's recall rights were not violated when Board created a new position which required certification. (St. Bd. 00:July 5, Yucht, aff'g 97:Sept. 17)

Positions of Director and supervisor are each separately tenurable; tenure rights accrued in position of Director cannot be transferred to the separately tenurable position of supervisor. (99:Dec. 3, Duva)

Preferred Eligibility List (recall rights)

Psychologist who had been rified had no tenure entitlement to employment with ESU that was under contract with board to supply child study team services on a case-by-case basis; distinguished from Shelko where county special services school district assumes operation of and responsibility for entire special education program. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

Seniority rights, if at issue, would have simultaneously accrued in categories of foreign languages supervisor and foreign languages teacher where supervisor held both supervisor and instructional certificate and worked under both, teaching on .4 basis. (01:June 22, Barca)

Spanish teacher rified in 1976 was entitled to position of Spanish teacher to which board appointed non-tenured teacher in 1997; fact that teacher remained silent after learning in 1995 that another teacher had been appointed Spanish teacher did not warrant inference that she intended to waive her recall rights; reinstatement with back pay and benefits ordered. (99:March 10, Reider, aff'd St. Bd. 99:July 7)

ABOLITION OF POSITION (RIF)

Where special services school district assumes operation of district's entire special education program, tenure and seniority rights of rified teaching staff must be recognized by special services school district. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

Reassignment

Board could reduce teacher's salary upon abolishment of his 12-month position and reassignment to 10-month position as part of reduction in force (relying on Carpenito)(99:July 8, DiMaggio)

Reassignment of employee from 12-month to 10-month with prorated pay is distinguishable from facts in Carpenito; in Carpenito there was no loss of tangible employment benefit and therefor reassignment was not a RIF but rather a transfer (99:July 30, Buckley, Amended decision 99:Sept. 16)

Reassignment of teacher was treated not as a transfer, but as a RIF (see Carpenito) in institutional setting. (98:July 22, Helm)

Reduction of speech language teacher from full-time to part-time, reducing her compensation but not reducing her workload, was an illegal RIF, notwithstanding commissioner's class size waiver. (00:Dec. 11, Peters)

RIF'd auto body repair teacher not entitled to culinary arts or industrial arts positions. Seniority earned only under endorsement in which he served, auto body repair. No violation of tenure or seniority rights. (03:Jan. 15, Cooke)

RIF'd tenured administrator should have filed her claim within 90 days of learning that a non-tenured individual was appointed to a position to which she was claiming entitlement; dismissed for failure to comply with 90 day rule. (02:July 22, Love)

School Psychologist: abolition invalid where district contracts out basic child study team services to private vendor; such waiver contradicts legislative intent. (St. Bd. 00:May 5, Miller)

Secretary: Having the qualifications and ability to perform duties of three positions held by nontenured secretaries, tenured secretary was entitled any of these positions, the choice of which may be at board's discretion; however, not entitled to position of Clerical Assistant for District Services/Special Programs and Projects, as duties were not secretarial. (01:Feb. 7, Mount)

ABOLITION OF POSITION (RIF)

Seniority

ALJ concluded that school district's RIF of two teachers was wrongful due to the district's failure to credit the teachers' prior military history. ALJ awarded pre-judgment interest to one teacher where the teacher identified the omission to the district in writing prior to his dismissal, finding constructive bad faith in the termination for failure to properly credit the teacher's prior military service. In addition, the ALJ ordered pre-judgment interest in that the district conceded that salary was wrongfully withheld from teacher. ALJ also precluded district from deducting unemployment compensation benefits from teacher's back-pay awards, and Ordered the teachers to file before the Department of Labor to determine compensation for July and August, if any. Finally, ALJ denied the award of consequential damages as exceeding the authority of the commissioner. Commissioner agreed with ALJ, but modified the decision to limit ALJ's award of pre-judgment interest to the difference between back-pay to be received and unemployment compensation received. Commissioner determined that teachers should arrange to reimburse Dept. of Labor, Division of Unemployment Compensation directly, without having the district deduct such amount from the back-pay award. (02:Sept. 30, Scott)

Elementary teacher who also possessed music certification, who was asked (but not formally appointed) to teach music in elementary classes other than her own in 1967, accrued seniority as a music teacher (99:Nov. 3, Adler, rev'd on other grounds St. Bd. 00:July 5)

Institutional setting: Seniority accrued separately in categories of Teacher I and Teacher II since separate endorsements are required; Petitioner should not have been RIF'd as individuals with less seniority held positions in same category of Teacher I; although petitioner retired, matter not dismissed as moot because of likelihood of recurrence. (98:July 22, Helm, 98)

RIF'd auto body repair teacher not entitled to culinary arts or industrial arts positions. Seniority earned only under endorsement in which he served, auto body repair. No violation of seniority rights. (03:Jan. 15, Cooke)

Tenured physical education teacher, whose position was reduced to a 4/5 position, had any tenure and seniority claims cured when she was rehired to a full-time position. Fact that position was reversed from two days in her home district and three days in outside district to three and two days, respectively, had no effect on the claim. (03:May 1, Wood)

ABOLITION OF POSITION (RIF)

Where collective bargaining agreement provided for custodian tenure after three years, statute requires that such tenure extend to all types of custodial assignments including stockroom worker custodian and chief janitor. Tenure status does not attach to particular subcategories of janitor and thus abolition of custodial position requires board to RIF custodial employee based on overall seniority as custodian. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:March 1)

Seniority—tacking on

Service under emergency certificate “tacked on” even where employee did not immediately afterwards acquire standard certificate (relying on Metaxas); fact that 23 years ago district failed to fulfill its obligation to renew her provisional elementary certificate (analogous to today’s emergency certificate) should not serve to deprive her of seniority rights. (98:Oct. 26, McGavin)

Settlement approved following tenure and seniority challenge to abolition of Supervisor of Industrial Arts position. (02:June 26, Comba)

State Operated School District

When a central office supervisory position is abolished pursuant to state takeover, all tenure and seniority rights to and originating from that position are also abolished. (99:June 14, Leong)

Where “at will” employees were terminated by discretionary action of State superintendent rather than abolishment of their positions pursuant to the takeover statute, they were not entitled to relief (99:June 1, Gonzalez, rev'd St. Bd. 00:May 3; remanded App. Div. 00:Dec. 8, remanded to Comm.; St. Bd. 01:Feb. 7, damages calculated 01:Sept. 14, aff'd as modified, St. Bd. 01:Oct. 3)

Tenure entitlement claims

Acquisition of tenure does not differ based on full-time or part-time status. (01:Sept. 17, Alfieri and Mezak, aff'd St. Bd. 03:Jan. 8)

Computer course that was vehicle for teaching core curriculum standards required teacher with elementary certification; while teaching computers usually requires no specific endorsement, what is required in particular case will depend on the nature of the computer course; RIF'd teacher who held only music endorsement not qualified. (00:July 5, Adler, St. Bd. rev'g 99:Nov. 3)

Former Director of Vocational Education whose position was abolished, had no bumping rights to principal position where he had retired prior to filing his petition; moreover, his tenure rights attached only to the positions of Director and Supervisor, but not to the position of principal. (98:Sept. 4, Janik)

ABOLITION OF POSITION (RIF)

Principal whose position is abolished has no entitlement to vice principal position where his only service was as principal, because positions are separately tenurable and seniority categories are also separate; his argument that duties of vice principal were subsumed under title of principal before the job of vice principal existed is flawed. (98:Feb. 2, Taylor)

Reduction in hours of a tenured part-time employee does not automatically trigger tenure and seniority rights; here, where part-time teachers' employment was from its inception intended to fluctuate in terms of the precise number of hours to be worked from year to year, there was no RIF; number of part-time teachers was not reduced, nor were positions abolished or transfers effectuated, thus no entitlement to full-time positions held by non-tenured teachers; petition dismissed. (01:Sept. 17, Alfieri and Mezak, aff'd St. Bd. 03:Jan. 8)

RIF'd auto body repair teacher not entitled to culinary arts or industrial arts positions. Seniority earned only under endorsement in which he served, auto body repair. No showing that board retained less senior teachers. No violation of tenure rights. (03:Jan. 15, Cooke)

Supervisors: Area chairperson was not entitled to math supervisor position where teaching math was historically an integral duty of position (although not part of job description) and he was not certified to teach math. (98:Feb. 2, Kendrick)

Tenure rights of teachers: N.J.S.A. 18A:28-6.1 which preserves employment of tenured teachers, is triggered only if a district closes a school and agrees with another district to send its pupils from the closed school to that district; does not apply simply because limited purpose regional district dissolves. (00:Jan. 4, Hammonton)

Tenured assistant principal whose position is abolished is not entitled to vice principal position over non-tenured person; assistant and vice principal positions are separately tenurable. (02:July 22, Love)

Tenured music teacher who served part-time after full-time position was abolished, should not have been offered full-time computer position filled by non-tenured teacher because she did not have the elementary certification required by the position. (00:July 5, Adler, St. Bd. rev'g 99:Nov. 3)

Tenured physical education teacher, whose position was reduced to a 4/5 position, had any tenure and seniority claims cured when she was rehired to a full-time position. Fact that position was reversed from two days in her home district and three days in outside district to three and two days, respectively, had no effect on the claim. (03:May 1, Wood)

ABOLITION OF POSITION (RIF)

Tenured principal was RIF'd; acquiesced to board's desire to retain non-tenured staff member in Director of Special Education position to which he would have been entitled, and accepted vice principal position, upon agreement that he would retain all of his tenure rights; held entitled to principal position subsequently vacant (99:Aug. 12, Donahue)

Tenured teacher who was assigned to teacher/guidance position, accrued tenure in guidance position under her Educational Services Certificate; board's subsequent assignment of her to teacher position violated her tenure rights even though there was no loss in salary, as it was a transfer from one tenured position to another (99:Oct. 1, McAleer)

Unrecognized titles

Where authorizing endorsement for unrecognized position of Director was "supervisor," staff member had no tenure entitlement to principal position and would not have such entitlement unless he had actually served as a principal. (98:Sept. 4, Janik)

Where RIF occurs in unrecognized titles, petitioners cannot assert entitlement to reemployment in other recognized titles approved by county superintendent. (97:Nov. 3, Avery, Dare, Williams, aff'd with modification St. Bd. 01:July 10)

AIDES

Board may not assign duties which are professional in nature and which require independent initiative, such as educational media services, to a paraprofessional aide. (99:Sept. 9, Pennsville)

Even though district required certification for aide position, and her aide duties contained an instructional component, teacher's year of employment as an instructional aide did not count for tenure acquisition purposes; therefore, teacher had no right to reemployment after serving the district for one year as an aide and three years as a teacher. (02:July 8, Poruchynsky, aff'd St. Bd. 03:June 4)

School health aide did not perform duties of certified school nurse. Allegation that board did not provide adequate nursing services not raised in petition. Matter dismissed. (03:Jan. 6, Franklin Lakes)

BIDDING

A public entity may not increase or decrease the number of braches of work specified in the public bidding statute despite good intentions to obtain the best possible bids for its taxpayers. (Building Contractors Association of New Jersey v. Lenape Regional H.S. District Bd. of Ed., unpub. Op. Dkt. No. BUR-L-003482 (Law Div. December 21, 2000)) See also, Bidding Contractors Association of New Jersey v. Board of Chosen Freeholder, County of Bergen, unpub. Op. Dkt. No. BER-L-8812-96 (Law Div. ____)
Board entitled to recovery of legal fees and costs, pursuant to provisions in Instructions to Bidders. (03:June 9, Middletown)

Construction

ALJ denied contractor's motion for a stay of the board's contract award to competitor. Contractor asserted that the Department of Labor wrongfully suspended his right to engage in public contract projects during the pendency of his debarment proceedings before that department. (02:Aug. 22, Framan)

Aggregate rating limit: emergent relief denied to unsuccessful bidder who did not properly list total of amount of uncompleted contracts as of bid date; board was reasonably concerned about bidder's responsibility pursuant to N.J.A.C. 17:19-2.11. (99:July 9, Schiavone)

Taxpayer does not meet burden of demonstrating that board's roofing specs were unduly restrictive or inhibited free and open competition, or that failure to draw plans to scale violated any law. (00:Nov. 20, Wicks, aff'd St. Bd. 01:April 4)

Unsuccessful bidder seeks stay of award to bidder who was not a licensed commercial electrical contractor (C-047) as required by specs; stay granted. (01:Jan. 29, Advance Electric)

Contractual provision for counsel fees in a school construction matter may be decided by the Commissioner of Education. (03:June 9, Middletown)

Custodial

Board prevailed on summary judgment in challenge by unsuccessful bidder, to its inclusion in revised specs of a requirement that bidders for custodial services be doing business in a minimum of two public schools of equal or greater volume; fact that only one bidder met the requirement did not render specs void since the revision was directly related to the purpose, function or activity for which the contract was made. (99:Oct. 18, Alaska)

Even if Director of Support Services had represented to current vendor that it would be able to meet the revised bid specifications, the board would not be bound by such a statement. (99:Oct. 18, Alaska)

Revised spec requiring bidder of custodial services to be doing business with a minimum of two public school districts of comparable size, was reasonable and not designed to exclude all but one company. (99:July 2, Alaska)

BIDDING

Emergent relief

Emergent relief denied in construction bidding matter. Crowe v. DeGioia test not met. (02:April 30, McCann Acoustics)

Failure to file a timely stockholder or partnership disclosure statement pursuant to N.J.S.A. 52:25-24.2, was a material defect that could not be waived or cured. Board was correct in rejecting defective bid and awarding to next highest bidder. (03:June 9, Middletown)

Matter dismissed for failure to pursue claim that bid was awarded in violation of statute. (03:Oct. 29, Radar Security)

Transportation

Bidder for bus contract substantially complied with stockholder disclosure requirements; defects in completing statement were minimal. (98:Aug. 28, Murphy Bus)

Busing contract: Board's specs for brand name in joint purchasing project may have violated the statutory "brand name or equivalent" requirements; however, matter remanded for factual findings regarding whether bidder's engine was in fact equivalent to spec's requirement. District's motion to dismiss matter as moot granted on remand as state grant had expired and districts withdrew from joint purchasing agreement. (00:Oct. 20, DeHart, motion on remand St. Bd. 01:Aug. 8)

Deviations from bid specifications concerning maintaining buses at depot or dispatch facility, and the use of multiple dispatchers and base radio/dispatch facility clause were not material or substantial so as to preclude award of transportation contract. (99:March 9, Byram)

Lowest responsible bidder: determination of lowest responsible bidder included determination of whether the specs violated DOE transportation regulations or whether the award violated the specifications themselves. (99:March 9, Byram)

Neither law nor bid specs precluded submission of two bids (all package bid and individual route package bid) by a single bidder, nor was it precluded by administrator's announcement at prebid conference that only one bid per bidder would be accepted. (98:Aug. 28, Murphy Bus)

Petitioner established that it was lowest responsible bidder with respect to certain individual route package bids. (98:Aug. 28, Murphy Bus)

Specifications: Board was within its power to establish bid specification beyond DOE transportation specifications set forth in N.J.A.C. 6:21-13.2. (99:March 9, Byram)

BIDDING

Standing: an unsuccessful bidder has no standing to challenge the specifications post-bid; the time to raise issues of clarity or legality of the specs is before bids are opened; a board may not challenge the validity of specifications post-bid under the “disguised standing” principal, i.e., by arguing that it would have been the lowest responsible bidder had the board correctly interpreted the specs. (99:March 9, Byram)

Transportation: District acted within its authority when, after having taken bids it realized that it would be less expensive to renew existing transportation contract, and thus rejected all bids; lowest bidder’s claims of implied contract and agency based on Jointure Commission’s notice are dismissed. (Note: see ALJ’s detailed discussion of public school transportation contracting and bidding laws). (99:Feb. 24, Taranto Bus)

BOARD SECRETARY

Termination of business manager/board secretary by charter school was reasonable where employee had left work without permission and was uncooperative (99:Nov. 15, Mezzacappa)

BOARDS OF EDUCATION—Actions by

Action of board in not placing child who was possible being retained, in lottery for French immersion program, was not arbitrary or unreasonable. (02:Oct. 25, J.L.D.)

Administrators may exercise discretion in deciding whether to notify parents or seek parental consent prior to questioning students. (99:Aug. 13, M.N.)

Assault: two day suspension for holding student’s head in urinal upheld; board did not act unreasonably. (02:June 12, T.M.)

Authority

Standard of review is whether the school board’s decision was arbitrary, capricious or unreasonable. (03:June 5, T.B.R.)

Board acted reasonably in assigning one bus stop for children who share time between divorced parents (alternate weeks) residing in separate residences in the same school district. Assigning one seat on one bus route was a reasonable policy, neither arbitrary nor capricious. (03:June 5, T.B.R.)

Board impermissibly denied the requests of three administrators (vice principals) to attend the NJEA convention, in violation of statute, N.J.S.A. 18A:31-2. Administrators’ personal days were restored and any salary, benefits and emoluments were retroactively compensated. (03:May 28, Newark)

Board’s decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

BOARDS OF EDUCATION—Actions by

- Board's decision not to change bus stop was not unreasonable or discriminatory; board relied on current practice and its expert's traffic analysis, and children were not treated differently than others similarly situated. (98:Aug. 28, Lemma)
- Board's decision not to grant waiver under tuition policy should have been put to a vote by board; Commissioner orders that board take formal action. (98:Oct. 29, M.M.)
- Board's decision to locate child's bus stop at the bottom of street not arbitrary, capricious or unreasonable. (03:March 5, B.S., appeal dismissed for failure to perfect, St. Bd. 03:June 4)
- Board's policy to restrict valedictorian and salutatorian to those pupils who have competed for all four years, was reasonable. (99:June 16, P.A.)
- Class trip: policy prohibiting students who have been suspended from participating in class trip not unreasonable. (02:June 12, T.M.)
- Commissioner denies the issuance of \$12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)
- Commissioner orders the issuance of \$19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)
- Controversy over board placing superintendent on paid two-week administrative leave was not moot where CSA alleged that such action caused harm to his reputation as it could reasonably be inferred action was taken for disciplinary reasons. (Reversed and remanded St. Bd. 03:May 7, Carrington)
- Emergent relief denied in dispute over transportation contracts. (03:April 3, Seman-Toy, Inc.)
- Emergent relief denied in tuition matter for early childhood education in Abbott district where collective bargaining agreement permitted employees to send children for free but state regulation only allows pupils residing in district to attend program. (03:April 22, S.A.)
- Exclusion from graduation and prom: Decision to exclude student from graduation and prom for lateness and lying about it while being on disciplinary probation for shoplifting was not arbitrary, capricious or unreasonable; emergent relief denied. (02:June 14, Bush)
- Expulsion: removal of student from regular education program constituted expulsion; subsequent hearing and provision of alternative education cured potential due process violation. Emergent relief denied. Decision on motion. (02:June 24, C.L.)
- Graduation: Board policy to deny attendance at graduation to student who fails to satisfactorily complete State and district academic requirements upheld. Emergent relief denied. Decision on motion. (02:June 19, K.Mc.)
- Hit list: Board policy requiring psychological or psychiatric clearance of student after student found with hit list of teachers he was angry at was not arbitrary, unreasonable or capricious. (02:June 13, T.L.)

BOARDS OF EDUCATION—Actions by

Local board cannot require legal guardianship for residency purposes nor delegate its authority to hold hearing and make determination under the residency statute, N.J.S.A. 18A:38-1, to determine eligibility to attend school in the district. (01:Dec. 13, J.M., aff'd St. Bd. 02:April 3)

Local board within proposed charter school's region of residence need not file motion to intervene in appeal of denial of charter school application as party respondent status already conferred through operation of N.J.S.A. 18A:36A-4(c) and (d) as well as N.J.A.C. 6A:11-2.1(a). (02:Jan. 11, Jersey Shore Charter School, St. Bd. Decision on motion, 02:April 3)

Lottery program used to select kindergarten pupils for French immersion program was not arbitrary or done in bad faith, despite district's failure to include in the advertisement that fact that selection would be made from students who appeared at registration; however, Commissioner advises Board to improve communication to avoid misunderstandings with respect to immersion program availability and deadlines. (02:Oct. 24, D.M.L., aff'd St. Bd. 03:April 2) See also, emergency relief denied, expedited hearing ordered. (02:July 30, D.M.L.)

Motion for stay denied in dispute over change in district policy requiring payment of tuition by non-resident employees for their children to attend in-district preschool program. (St. Bd. 03:July 2, S.A.)

CEPA (Conscientious Employee Protection Act)

Retaliation can be established by adverse employment decisions; criticism of employees and their exclusion from a meeting and school management team did not constitute reprisal. (00:July 10, Wooley)

Code of Ethics

SEC determined that board member violated N.J.S.A. 18A:12-24.1(g) by failing to provide accurate information and failing to act in concert with fellow board members when she sent a letter to the county superintendent alleging that a classroom was substandard, despite DOE approval of the district's use of the classroom.

Commissioner agreed with recommended penalty of reprimand. (03:Aug. 21, Zimmerman)

SEC determined that board member violated N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board when she sent a letter to the county superintendent regarding the adequacy of a classroom. Commissioner agreed with recommended penalty of reprimand. (03:Aug. 21, Zimmerman)

SEC determined that board member violated N.J.S.A. 18A:12-24.1(j) when, in a letter to the superintendent requesting the demotion of the assistant superintendent, he copied the subordinates of the assistant superintendent. Commissioner agreed with recommended penalty of reprimand. (03:Aug. 19, Santiago)

BOARDS OF EDUCATION—Actions by

- SEC found that board of education president administered the schools, in violation of N.J.S.A. 18A:12-24.1(d) when she nominated, interviewed and recommended the hiring of candidates for employment. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)
- SEC found that board of education president failed to confine her board actions to policy-making, planning and appraisal in violation of N.J.S.A. 18A:12-24.1(c), and administered the schools in violation of N.J.S.A. 18A:12-24.1(d), when she gave direction to district employees without consulting with the superintendent. Commissioner agreed with Commission's removal recommendation. (03:Aug. 14, Hankerson)
- SEC found that board of education president failed to confine her board actions to policy-making, planning and appraisal in violation of N.J.S.A. 18A:12-24.1(c), when she proposed the termination of two employees without a recommendation from the superintendent. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)
- SEC found that board of education president failed to consider recommendation of the superintendent, in violation of N.J.S.A. 18A:12-24.1(h), when she had applicants come before the board for appointment without the superintendent's recommendation. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)
- SEC found that board of education president failed to hold confidential all matters pertaining to the schools which if disclosed, would needlessly injure individuals or the schools, in violation of N.J.S.A. 18A:12-24.1(g), when she discussed the superintendent's nonrenewal with a subordinate. Commissioner adopted SEC's removal recommendation. (03:Aug. 14, Hankerson)
- SEC found that board of education president took private action, in violation of N.J.S.A. 18A:12-24.1(e), when she precluded the superintendent from making opening remarks during staff orientation on the first day of school. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)

Conflicts of interest

- Board member who filed petition with Commissioner for indemnification was not thereby disqualified from board membership, even where the board member was seeking indemnification which is discretionary, not statutory; the primary purpose of the claim for which indemnification was sought served important public objectives, namely the board member's ability to attend board meetings in safety. (99:Feb. 16, Walsh)

BOARDS OF EDUCATION—Actions by

Board member's pending claim in a worker's compensation matter against the board was an inconsistent interest pursuant to N.J.S.A. 18A:12-2 necessitating removal from office. (99:April 26, Tullo)

Conflict of interest statute applies to board membership, not candidacy. (02:June 14, Berlin)

Ethics Commission found that first board member violated the Ethics Act by presenting a vendor's employee to a second board member who was running for borough council and who, in the presence of the first member, solicited a donation from the employee for his campaign for borough council. Employee perceived the solicitation as a threat against the vendor's existing contract with the school district. Commissioner agreed with the Ethics Commission that the first board member should be censured for attempting to use her office to secure unwarranted privileges for herself or others. (02:Sept. 23, Ferraro)

Newly elected board member ordered to decide whether to drop her employment claim against the district or not be seated as board member at reorganization. ALJ suggests, but Commissioner does not specifically adopt, that conflict of interest applies to candidacy as well as membership. (Decision on motion, 03:April 25, Margadonna)

Notice of Tort Claim sufficient to be a disqualifying interest under N.J.S.A. 18A:12-2. (02:June 14, Berlin)

School Ethics Commission found probable cause to credit allegations of board member's violation of the School Ethics Act, N.J.S.A. 18A:12-24(b) and (e). In the presence of the accused member, a second member, who was campaigning for election to borough council, solicited a campaign donation from a vendor's employee and implicitly threatened non-renewal of the vendor's service contract with the district. Members subsequent conversation with the employee pertaining to the donation contributed to the SEC finding of a violation of the Act in the member's attempt to use his position to secure unwarranted privileges for others and in soliciting a campaign contribution with knowledge that it was given with the knowledge that it would affect him in his official duties. Commissioner accepted SEC's recommendation of censure. (02:Nov. 4, Gallagher, SEC Decision, Commissioner Decision)

BOARDS OF EDUCATION—Actions by Drug Policy

Board acted reasonably when, pursuant to policy adopted pursuant to N.J.S.A. 18A:40A-8 through -21, it required a high school student who was at a “senior cut day” party where extensive drinking had taken place, to be referred to SAC Core Team for further investigation into possible chemical dependency, even though there was no evidence that she consumed any alcohol. (00:June 12, D.B.)

Board was directed to revise its policies to reflect proper responsibilities under law governing pupils suspected of drug/alcohol use. (00:Sept. 21, Graceffo, aff’d with modification St. Bd. 01:Dec. 5, aff’d unpub. Op. Dkt. No. A-2402-01T5, April 8, 2003)

Duties and Powers

Access to personnel materials: Board must ensure that individual board member’s access to personnel information is confined to that necessary for the performance of essential board member duties; however, Commissioner has no jurisdiction over teacher’s invasion of privacy claim for sanctions against individual board member who accessed her personnel records. (01:May 7, Ciambrone)

Access to personnel materials: Emergent relief granted to board member seeking access to resumes and applications of all employment candidates; board may not limit access to only those considered by personnel committee; however, board has full authority to place reasonable restrictions on times and places for review of materials. (99:August 31, Beatty, underlying matter settled 99:Dec. 6)

Admissions policy – requiring pupil to attain certain age by October 1 cutoff date as condition for admission to first grade lawful exercise of board’s discretionary authority. (00:July 13, N.R., aff’d St. Bd. 00:Nov. 1)

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Board of education and planning board disagreed over whether planning board had authority to preclude board of education’s land acquisition. Commissioner dismissed without prejudice due to expiration of statute of limitations and rejected ALJ’s determination that ministerial decisions of the Office of School Facilities Financing must meet the same standards for quasi-judicial determinations as state agencies. (02:Aug. 29, Eastampton Twp., settlement approved, motions granted and matter remanded, St. Bd. 03:Jan. 8, on remand, approval of boards application to construct athletic fields still valid, 03:April 14)

BOARDS OF EDUCATION—Actions by

- Censure: Board member appealed board's censure of him for violating board policy when he spoke to media after closed session discussing potential ethics complaints against him. Policy that required five-day notice to board prior to releasing board information did not violate First Amendment rights. (00:Jan. 18, Crystal)
- Censure of board member: board did not act arbitrarily or capriciously when it censured board member for speaking to the media about ethical complaints discussed in closed session, without providing advance notice required by board's policy. (00:Jan. 18, Crystal)
- Coach's determination not to award petitioner MVP award for cross-country track was not unreasonable. (00:Sept. 11, J.M., aff'd St. Bd. 01:Jan. 3)
- Commissioner adopted ALJ's summary judgment dismissal, pursuant to N.J.A.C. 1:1-1.3(a), of consolidated complaints alleging the board acted arbitrarily, capriciously and unreasonably in adopting a redistricting plan. (03:Aug. 14, Marlboro)
- Free speech: Fair public comment by board members concerning other public figures and on matters of public concern involving the operation of the schools is protected speech. (00:July 10, Wooley)
- Kindergarten Program – Denial of admission to special French immersion kindergarten program was not arbitrary, capricious or unreasonable where student did not meet criteria for admission and criteria developed and applied in fair and reasonable manner. (03:March 14, C.C.L.)
- Matter remanded to Commissioner for determination of local board's total annual per pupil cost after petitioner fails to demonstrate domicile in district. (St. Bd. 02:Jan. 2, K.D.)
- NJSBA dues: all boards are required by the clear, unequivocal language of N.J.S.A. 18A:6-50 to pay dues to the New Jersey School Boards Association; board ordered to pay back dues for 7 years. (00:Feb. 3, Wyckoff)
- Process chosen by board with respect to core curriculum changes, including elimination of woodshop, was proper. (99:June 1, Pequannock)
- Representations of administrator to indicted assistant principal that he would be entitled to indemnification and back pay if he were to resign and successfully complete PTI, did not bind the board. (01:Aug. 30, Busler, aff'd St. Bd. 02:Feb. 6)

**BOARDS OF EDUCATION—Actions by
Grades**

Board neither exceeded its authority nor violated pupil's constitutional or due process rights when it upheld teacher's assignment of a zero grade for pupil's failure to delete from assignment references associated with drug use and drug culture; relying on Hazelwood, held that gravamen of case is pedagogical control. (99:Oct. 18, J.L., aff'd St. Bd. 00:Feb. 2, aff'd App. Div. unpub. op. Dkt. No. A-3787-99T5, June 19, 2001)

Indemnification

Board of education not obligated to indemnify teacher who successfully defended criminal harassment charge brought by student. Charge did not arise out of the performance of the duties and responsibilities of a high school English, journalism and drama teacher. (03:Jan. 3, Brothers)

Kindergarten program

Board's decision to abolish half-day, four-year old kindergarten program in favor of full-day five-year old program, was lawful and took into account sound economics; board could transfer funds among line items and program categories of its budget; Sunshine Law violations were cured. (00:Jan. 18, Sherman, aff'd St. Bd. 00:June 7)

Denial of admission to special French immersion kindergarten program was not arbitrary, capricious or unreasonable where student did not meet criteria for admission and criteria developed and applied in fair and reasonable manner. (03:March 14, C.C.L.)

BOARDS OF EDUCATION—Actions by Policy

Absent a clear showing of abuse of discretion (i.e. bad faith and an utter failure to consider the consequences), the Commissioner may not substitute his own judgment for that of a school board with respect to a redistricting decision. This applies even if the selected redistricting plan is not the best of all available options, or if it is based on erroneous conclusions. (99:May 13, Harrison, aff'd St. Bd. 99:Oct. 6)

Board did not act improperly by not conducting suspension/expulsion proceedings mandatory under N.J.S.A. 18A:37-2.1, where administrators did not believe that incidents involving threats to teachers constituted criminal assaults, where Board took measured discipline against pupils, and where teachers' appeal of discipline did not allege assault. (01:Aug. 20, Knight, aff'd with clarification St. Bd. 02:Jan. 2)

Board member appealed board's censure of him for violating board policy when he spoke to media after closed session discussing potential ethics complaints against him. Policy that required five-day notice to board prior to releasing board information did not violate First Amendment rights. (00:Jan. 18, Crystal)

Board's policy forbidding employees from possessing cellular phones and pagers during preparation and instructional periods is constitutional; policy does not implicate free speech/association, and is neither vague nor overbroad. (00:June 12, North Bergen)

PIP: Board's policies mandating the inclusion of district goals in the development of Professional Improvement Plan (PIP) did not violate N.J.A.C. 6:3-4.3 by circumscribing role of teacher; however, PIP must also contain teacher's individual goals, and district responsibilities. (01:May 18, Kinnelon)

Policy: Board could adopt new policy of not accepting non-resident tuition students; not bound by prior practice of permitting siblings (99:Sept. 3, J.S., aff'd St. Bd. 00:Jan. 5)

Policy: Board's policy requiring pupils who leave the district mid-year to pay tuition was not arbitrary or capricious, even though some districts may permit students in such circumstances to remain free of charge. (99:Sept. 23, J.B., aff'd St. Bd. 00:Jan. 5)

Policy giving students from some, but not all, constituent districts of a regional board a meaningful choice to attend the high school they wanted, was not illegal "discrimination"; there is no constitutional right to receive an education in a specific school house in the district; the policy was valid exercise of board's discretion and was not arbitrary and capricious; board's motion for summary judgment granted. (99:March 10, Piccoli)

BOARDS OF EDUCATION—Actions by

Policy: not arbitrary for policy to preclude district pupils who attend a vocational technology school paid for by the district, to participate in awards for scholarships donated to the district. (00:Sept. 25, S.G.)

Policy that required board member to provide 5 days' notice to board prior to speaking to media, did not violate due process or free speech; policy exempted members who issue a disclaimer that they are speaking as private citizens and who do not disseminate private material. (00:Jan. 18, Crystal)

Public funds

Board does not have the statutory authority to improve property of the municipality, and improperly expended public funds to improve sidewalk owned by municipality, to jointly develop and construct a recreational field; Division of Finance must recover from school board all state aid received on the amount appropriately disbursed. (00:Feb. 26, Wildwood Crest)

Qualifications

Residency

Board member undergoing divorce found to be bona fide resident and qualified as board member under N.J.S.A. 18A:12-3 even though he does not always stay overnight at the marital home. No evidence of interest to change residence. (01:June 22, Cohen, decision on remand 00:Dec. 28)

No facts warrant tolling of 90-day period under N.J.A.C. 6A:3-1.3(d); challenge to mayor's appointment of nonresident to fill vacancy on board is dismissed; moreover, appointee vacated seat rendering issue moot. (02:Jan. 7, Barnes)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Removal—attendance at meetings

Commissioner rejects board member's application for emergent relief; rejects law judge's conclusion that board acted arbitrarily in removing board member for missing 4 consecutive meetings where board member was legitimately ill during one meeting thereby breaking the consecutive chain; no likelihood of success shown because law is unsettled regarding statutory intent of "three consecutive meetings" and regarding whether good cause is required for each individual absence or for the period of absence. (99:March 8, Smith, decision on motion, matter withdrawn 99:August 18)

BOARDS OF EDUCATION—Actions by

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

Use and administration of placement test for kindergarten French language immersion program not arbitrary, capricious or unreasonable. (03:March 14, G.L.L.)

BUDGETS

Although funding for a program is eliminated pursuant to voter rejection and subsequent governing body or board of school estimate review, a board must nonetheless take affirmative action to formally abolish any positions which may be impacted by such elimination. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Board did not act according to its responsibility when it failed to abolish a position, in the wake of a budget defeat and the municipality's failure to restore funding for that position. Commissioner will not grant relief that compels a school board to fill a position which, by law, it does not have the authority to fund. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Board may not modify its base budget for expenditures that were rejected by the voters and not restored by the municipality. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Board's decision to establish full-day kindergarten program was lawful and took into account sound economics; board could transfer funds among line items and program categories of its budget pursuant to N.J.S.A. 18A:22-8.1. (00:Jan. 18, Sherman, aff'd St. Bd. 00:June 7)

Citizen's challenge to board actions following defeat of public question on expending funds for football program dismissed. Actions by board in subsequent years to contract with non-profit corporation for the provision of football program did not contravene results of a public vote taken during 2001, since proposal was only applicable to the 2001-02 school year. (04:Jan. 8, Arnone)

Failure to Agree

Above the Box – Budgets in Excess of the Maximum T&E Budget

(02:June 19, Freehold Regional)(02:June 19, Manchester Regional)(02:June 19, Somerset Hills Regional)(03:June 26, Freehold Regional)(03:September 23, Manchester Regional)(03:June 26, Shore Regional)

In the Box – Budgets at or Below the Maximum T&E Budget

(01:June 18, Penns Grove-Carneys Point Regional)(03:June 26, Penns Grove-Carneys Point Regional)

Failure to Certify

Above the Box – Budgets in Excess of the Maximum T&E Budget

(01:June 15, Keansburg)

Below the Box – Budgets Below the Minimum T&E Budget

(03:June 26, Brick Twp.)

In the Box – Budgets at or Below the Maximum T&E Budget

(01:June 27, East Newark)

Purchase of land: board may purchase land from surplus without passing referendum, so long as voters pass on budget that includes line item reflecting such appropriation of surplus. (00:Aug. 2, Fairfield, St. Bd. rev'g 00:Feb. 17)

BUDGETS

Restoration of Reductions

Above the Box – Budgets in Excess of the Maximum T&E Budget

Any transfers between budget lines addressed in the decision must receive prior written approval from the county superintendent upon written request and demonstration of need. (03:Sept. 5, Bogota)

Burden of proof on board to demonstrate that budget reductions would have a negative impact on the stability of the district. (98:Nov. 6, Lodi)(00:June 30, Middletown)(01:July 6, Pine Hill)(01:July 19, Moorestown)(01:Aug. 2, Kearny)(02:Aug. 5, Winfield)(03:Sept. 5, Bogota)

Reductions restored

Commissioner lacked the statutory authority to increase the tax levy beyond the original amount proposed to the voters. (01:July 6, Pine Hill)

Commissioner restores \$907,785 of \$1,200,700 budget reduction; \$158,756 through reallocations and \$749,209 in general fund taxes. \$450,000 restored to surplus; reductions would have left district with an unreserved fund balance deficit of \$31,210. Surplus restoration was less than 3% of budget. Funds restored to teachers' salaries and tuition accounts; reductions would have impacted the board's ability to fulfill its contractual obligations. (98:Nov. 6, Lodi)

Commissioner restores \$900,000 of \$1,425,000 general fund tax levy reductions. \$407,500 was available for reallocation but was offset by \$680,905 in anticipated budget shortfalls, for a net shortfall of \$273,405. \$200,000 in debt service levy reduction was not within the authority of the governing body and was restored. (00:June 30, Middletown)

Commissioner restores \$240,889 of \$386,000 budget reduction, all through tax levy. Restorations were mostly in the areas of staff salaries, social security and unemployment, utilities and construction and transportation services. An additional \$172,972 was reallocated by the SDOE to address the district's budget deficit, restore surplus to a level necessary for fiscal stability and fund a SBA position from 10/03 through 6/04. (03:Sept. 5, Bogota)

BUDGETS

Commissioner restores full \$800,000 of general fund tax levy reductions. While Commissioner agreed with \$481,215 of governing body's reductions and found an additional \$236,000 in revenue through reallocations, the board's salary accounts shortfalls needed all of the revenue. (01:July 6, Pine Hill)

Commissioner restores \$195,962 of \$901,025 general fund tax levy reductions. Additional revenues of \$110,000, reallocation of \$20,000 in surplus and reallocation of \$100,000 in general fund expenses were identified. (01:July 19, Moorestown)

Commissioner restores \$131,553 of \$1,794,005 general fund tax levy reductions, mostly in the areas of health benefits and plant maintenance. (01:Aug. 2, Kearny)

Reductions sustained

Commissioner sustains \$145,111 of \$386,000 budget reductions, mostly in salaries, health benefits and athletic supplies. (03:Sept. 5, Bogota)

Commissioner sustains \$292,915 of \$1,200,700 budget reductions, mostly in health benefits and substitute salaries. (98:Nov. 6, Lodi)

Commissioner sustains \$525,000 of \$1,425,000 in budget reductions. (00:June 30, Middletown)

Commissioner sustains \$705,063 of governing body's reductions, mostly in construction services and tuition. (01:July 19, Moorestown)

Commissioner sustains \$1,662,452 of \$1,794,005 in budget reductions, mostly in the areas of salary and capital reserve. (01:Aug. 2, Kearny)

Commissioner sustains full \$150,000 of budget reductions, primarily in the areas of supervisor salary and benefits and a reallocation of funds. (02:Aug. 5, Winfield)

Surplus

No appropriation of surplus, including the additional \$102,972 made available through reallocation, can be made during the 2003-2004 school year without prior written approval from the county superintendent. (03:Sept. 5, Bogota)

Surplus restoration of \$450,000 was less than 3% of budget. (98:Nov. 6, Lodi)

\$20,000 of surplus was reallocated, bringing surplus down to 3% of the general fund budget. (01:July 19, Moorestown)

BUDGETS

\$172,972 was reallocated by the SDOE to address the district's budget deficit, restore surplus to a level necessary for fiscal stability (\$380,841, slightly less than 3%) and fund a SBA position from 10/03 through 6/04. (03:Sept. 5, Bogota)

In the Box – Budgets at or Below the Maximum T&E Budget

Burden of proof on board to demonstrate that restoration was necessary for T&E in accordance with the efficiency standards or on the grounds that the reductions would negatively impact the stability of the district. (98:Aug. 14, Bayonne, aff'd State Board 99: Feb. 3) (98:Sept. 9, North Brunswick) (98:November 24, Manasquan) (02:Aug. 5, Kingsway Regional) (02:Aug. 5, Delanco) (02:Sept. 19, Clifton) (02:Dec. 17, Deptford Twp.)

Reductions restored

Commissioner restores \$1,682,690 of \$5,785,583 budget reduction; \$150,000 through reallocation and \$1,532,690 in general fund taxes. Restorations to salary line items made on the basis of need to fulfill existing contractual obligations and in consideration of the statewide trends in collective bargaining. Restorations made to special education tuition line items and operations and maintenance, given the age of the board's facilities. (98: Aug. 14, Bayonne, aff'd State Board 99: Feb. 3)

Commissioner restores \$230,000 of \$570,000 budget reduction; all in general fund taxes. Board had asked for \$342,000 in restorations. Restorations made to salary line items for necessary new positions and capital outlay and construction services as necessary for health and safety of students. (98:Sept. 9, North Brunswick)

Commissioner restores \$40,625 of \$167,000 budget reductions, all through reallocation of surplus. No tax levy adjustment necessary. Monies restored to staff training and salary accounts. (98:November 24, Manasquan)

Commissioner restores \$41,473 of \$70,125 contested budget reductions, mostly in the areas of salaries and benefits. (02:Aug. 5, Delanco)

Commissioner restores \$514,632 of \$2,000,000 budget reductions, mostly in salaries and surplus. (02:Sept. 19, Clifton)

BUDGETS

Reductions sustained

- Commissioner sustains \$4,102,893 of \$5,785,583 budget reductions, mostly in salaries and benefits. (98:Aug. 14, Bayonne, aff'd State Board 99:Feb. 3)
- Commissioner sustains \$111,700 of reductions applied for restoration, all in salary line items. (98:Sept. 9, North Brunswick)
- Commissioner sustains \$126,375 of \$167,000 budget reductions, mostly in equipment and fund balance accounts. (98:Nov. 24 Manasquan)
- Commissioner sustains full \$700,000 budget cut in land and improvements, no adverse impact on district's stability given the need for long-term planning and budgeting. (02:Aug. 5, Kingsway Regional)
- Commissioner sustains \$28,652 of \$70,125 in contested budget reductions, \$18,311 of which was accomplished through general fund reallocations, the balance mostly in workers comp accounts. (02:Aug 5, Delanco)
- Commissioner sustains \$1,485,368 of \$2,000,000 in general fund tax levy reductions, mostly in the areas of supplies and salaries. (02:Sept. 19, Clifton)
- Commissioner sustains full \$1,160,028 in budget reductions. While \$418,458 in governing body reductions cannot be sustained, this amount can be fully funded through other reallocations. (02:Dec. 17, Deptford Twp.)

Surplus

- No surplus reallocated as June 30 balance was 2.2% of general fund budget. (98:Aug. 14, Bayonne, aff'd State Board 99: Feb. 3)
- No surplus reallocated as June 30 balance was less than 3% of the proposed general fund budget. (98:Sept. 9, North Brunswick)
- Reallocation of \$278,960 in general fund appropriations and revenue into surplus because of board's low level of surplus, less than one percent. (02:Dec. 17, Deptford Twp.)
- Surplus of \$40,625 reallocated as board's unreserved general fund surplus balance was greater than 3% of proposed general fund budget. (98:Nov. 24 Manasquan)

BUDGETS

Surplus of \$232,000 restored as governing body reductions would leave the board with 0.4% of general fund budget in surplus. Because of the low level of surplus, any appropriation of surplus will require county superintendent approval. (02:Sept. 19, Clifton)

Surplus levels below one percent cannot be condoned or supported by the Department of Education. Because of the low level of surplus, any appropriation of surplus will require county superintendent approval. (02:Dec. 17, Deptford Twp.)

Below the Box – Budgets Below the Minimum T&E Budget

Any transfers between budget lines addressed in the decision must receive prior written approval from the county superintendent upon written request and demonstration of need. (03:June 26, Hammonton)(03:June 26, Woodbine)(03:June 26, Bound Brook)

Automatic review must occur even where board votes not to appeal the reductions. (98:Sept. 24, Egg Harbor Twp.) (98:Dec. 11, Belleville)(98: Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98: Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy)(02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Mullica Twp.) (02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 26, Chesilhurst)

BUDGETS

Board of education budgets that are reduced below the minimum T&E budget are subject to automatic review by the Commissioner to determine whether such reductions will adversely affect the ability of the district to provide T&E or the stability of the district given the need for long term planning and budgeting. (98:Feb. 26 Wallington, aff'd State Board 98: July 1) (98:Sept. 24, Egg Harbor Twp.) (98:Oct. 7, Sayreville) (98:Oct. 8, Mt. Ephriam)(98:Dec. 11, Belleville)(98: Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98: Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:June 12, Newfield) (00:June 14, Palmyra) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy)(02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Clayton) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Monroe Twp.) (02:June 19, Mullica Twp.) (02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 25, Pittsgrove Twp.)(02:June 26, Chesilhurst) (02:June 26, Hammonton)

Board of education budgets that are reduced below the minimum T&E budget by the municipality and which are contested by the board of education, are subject to automatic review by the Commissioner to determine whether such reductions will adversely affect the ability of the district to provide T&E or the stability of the district given the need for long term planning and budgeting. (03:June 26, Hammonton)(03:June 26, Woodbine)(03:June 26, Corbin City)(03:June 26, Mullica Township)(03:June 26, Bound Brook)

BUDGETS

Burden of proof on governing body to demonstrate that reductions would not adversely effect the district's ability to provide T&E or negatively impact the district's stability. (98:Feb. 26 Wallington, aff'd State Board 98: July 1) (98:Sept. 24, Egg Harbor Twp.) (98:Oct. 7, Sayreville) (98:Oct. 8, Mt. Ephriam)(98:Dec. 11, Belleville)(98: Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98: Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:June 12, Newfield) (00:June 14, Palmyra) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy)(02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Clayton) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Monroe Twp.) (02:June 19, Mullica Twp.) (02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 25, Pittsgrove Twp.)(02:June 26, Chesilhurst) (02:June 26, Hammonton)(03:June 26, Hammonton)(03:June 26, Woodbine)(03:June 26, Corbin City)(03:June 26, Mullica Township)(03:June 26, Bound Brook)

Districts with general fund budgets that are below the T&E minimum, which do not contest the budget cuts made by their municipalities, are not subject to Commissioner review. N.J.A.C. 6A:23-8.10(e)(1)(i). See Cliffside Park, Clayton, Freehold Borough, Prospect Park, Eastampton, North Bergen, Haledon and Upper Pittsgrove – 2003.

Reductions restored

Commissioner restores \$436,201 of \$507,872 budget reductions; all through general fund tax levy.
Governing body failed to demonstrate that cuts would not negatively impact T&E. (98:Feb. 26, Wallington, aff'd State Board 98: July 1)

BUDGETS

- Commissioner restores \$44,556 of \$400,000 in budget reductions through reallocation of surplus. No additional tax levy. Automatic review even though board of education voted to accept the reductions. (98:Sept. 24, Egg Harbor Twp.)
- Commissioner restores \$75,000 in reductions funded through an appropriation of fund balance. Governing body reduced board's proposed surplus to \$18,220, less than 1% of the proposed general fund budget. (98: October 8, Mt. Ephraim)
- Commissioner restores \$120,000 in reductions to general fund tax levy in areas of capital outlay, tuition and general fund balance. (00:June 12, Newfield)
- Commissioner restores \$50,000 in general fund tax levy through a reallocation of surplus, reducing surplus to 0.8% of general fund budget. Reduction could not be sustained and ensure the stability of the district given the need for long term planning and budgeting. (00:June 14, Palmyra)
- Commissioner restores full \$467,178 of governing body reductions to general fund tax levy. Governing body did not show clear and convincing evidence that the reductions would not adversely affect the district's ability to provide T&E and/or affect the district's stability. (02:June 19, Clayton)
- Commissioner restores \$339,970 of \$700,470 in budget reductions in unreserved general fund balance. Reductions would bring surplus balance down to 0.76% of budgeted general fund appropriations. (02:June 19, Monroe Twp.)
- Commissioner restores \$307,911 of \$906,968 budget reductions. (02:June 25, Pittsgrove Twp.)
- Commissioner restores \$737,000 of \$880,000 budget reductions, mostly in salary accounts. (02:June 26, Hammonton)

BUDGETS

Commissioner restores \$227,000 of \$686,000 contested budget reductions, all through general fund tax levy. Restored areas included 2 full-time employees, grade 1-5, reallocation of a full-time employee for kindergarten, and restoration of a full-time Italian teacher and a .5 math teacher at the high school level. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Hammonton)

Commissioner restores \$73,221 of \$120,101 contested budget reductions by the council, all through the general fund tax levy. Restored areas included health and safety items, employee benefits, sending tuition and library staff. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Woodbine)

Commissioner restores \$824,968 of \$1,421,015 contested budget reductions by the council, \$324,123 through restoration of tax levy reductions and \$500,845 by reallocations including \$432,600 in fund balance, which was determined to be available from current year unexpended balances and additional receipts. Council's cuts were in the areas of salary and benefit accounts, tuition, student support services and payment of lease purchase principal. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Bound Brook)

Commissioner restores entire \$69,000 of contested budget reductions by the council, all through the general fund tax levy. Council's cuts were totally in the area of student tuition. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Corbin City)

BUDGETS

Commissioner restores entire \$84,316 of contested budget reductions by the council, \$47,316 through restoration of tax levy reductions and \$37,000 by reallocation of fund balance from additional revenues anticipated to be earned through interest on bond proceeds. Council's cuts were in the areas of salary accounts, maintenance and operations and purchased services. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Mullica Township)

Reductions Sustained

Commissioner, pursuant to automatic review, agrees with board's decision not to apply for full restoration of budget reductions, as the uncontested budget reductions (vice principal, supplies and food service transfer) did not adversely affect the district's ability to provide T&E or negatively impact the district's stability. (03:June 26, Hammonton)

Commissioner, pursuant to automatic review, agrees with board's decision not to apply for restoration of budget reductions as reductions did not adversely affect the district's ability to provide T&E or negatively impact the district's stability. (98:Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98:Dec. 29, Stafford Twp.) (98:Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy) (02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Mullica)

BUDGETS

- Twp.)(02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 26, Chesilhurst)
- Commissioner sustains \$87,141 of \$493,342 budget reductions; mostly in supplies, salaries and food service. (98:Feb.26, Wallington, aff'd State Board 98: July 1)
- Commissioner sustains \$335,434 of \$400,000 in budget reductions upon automatic review. Board had voted not to appeal the reductions. (98:Sept. 24, Egg Harbor Twp.)
- Commissioner sustains \$300,000 of reductions through appropriation of surplus by council. No automatic review. Original budget had been approved by county supt. as sufficient for T&E and no reductions were made in any spending plan. (98:Oct. 7, Sayreville)
- Commissioner sustains \$12,185 of reductions. Reduction would not adversely affect the district's ability to provide T&E or negatively impact the district's stability. (98:December 11, Belleville)
- Commissioner sustains \$360,500 in governing body reductions, mainly in underestimated local revenues. (02:June 19, Monroe Twp.)
- Commissioner sustains \$599,047 of \$906,968 in budget reductions. (02:June 26, Pittsgrove Twp.)
- Commissioner sustains \$143,000 of \$880,000 in budget reductions mostly in insurance, general administration and communication/telephone. (02:June 26, Hammonton)
- Commissioner sustains \$553,500 of \$686,000 contested budget reductions. Two full-time employees, grades 6-8 and 8.5 full-time employees, grades 9-12, would not adversely affect the district's ability to provide T&E or maintain stability. (03:June 26, Hammonton)
- Commissioner sustains \$46,890 of \$120,101 contested budget reductions all in the area of library staff. These reductions would not adversely affect the district's ability to provide T&E or maintain stability. (03:June 26, Woodbine)

BUDGETS

Commissioner sustains \$596,047 of \$1,421,015 contested budget reductions by the council. \$824,968 in restoration of budget reductions partially accomplished through reallocation of \$500,845, including \$432,600 in fund balance, resulting in a tax levy restoration of \$324,123. \$1,241,878 in tax levy reductions were sustained. Council's cuts were in the areas of salary and benefit accounts, tuition, student support services and payment of lease purchase principal. Governing body demonstrated by clear and convincing evidence that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Bound Brook)

Surplus

Commissioner restores \$50,000 in general fund tax levy through a reallocation of surplus, reducing surplus to 0.8% of general fund budget. Reduction could not be sustained and ensure the stability of the district given the need for long term planning and budgeting. (00:June 14, Palmyra)

Commissioner restores \$20,000 in general fund balance. Reductions would reduce surplus to 1.6% of general fund budget. (00:June 12, Newfield)

Commissioner restores entire \$84,316 of contested budget reductions by the council, \$47,316 through additional tax levy and \$37,000 by reallocation of fund balance from additional revenues anticipated to be earned through interest on bond proceeds. Council's cuts were in the areas of salary accounts, maintenance and operations and purchased services. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Mullica Twp.)

Commissioner restores full \$460,178 in budget reductions. District's surplus prior to reductions was below 0.5% of budgeted general fund appropriations. (02:June 19, Clayton)

Commissioner reduces general fund balance by \$55,000 to bring surplus down to 3% of budgeted general fund appropriations. (02:June 19, Monroe Twp.)

BUDGETS

Commissioner sustains \$596,047 of \$1,421,015 contested budget reductions by the council. \$824,968 in restoration of budget reductions partially accomplished through reallocation of \$500,845, including \$432,600 in fund balance, resulting in a tax levy restoration of \$324,123. \$1,241,878 in tax levy reductions were sustained. Council's cuts were in the areas of salary and benefit accounts, tuition, student support services and payment of lease purchase principal. Governing body demonstrated by clear and convincing evidence that cuts would not adversely affect the stability of the district's overall operations. (03:June 26, Bound Brook)

Surplus cut of \$10,141 sustained. Amount was above the generally acceptable level of 3%. (98:Feb. 26, Wallington, aff'd State Board 98: July 1)

Restoration of \$44,566 in reductions funded through reallocation of surplus. (98:Sept. 24, Egg Harbor Twp.)

Surplus of less than 1% of proposed budget deemed insufficient to meet emergencies. (98:Oct. 8 Mt. Ephraim)

Tax levy reduction of \$400,000 accomplished by appropriation of surplus. (01:June 26, Sayreville)

Board of School Estimate in Type I district not required to provide statement of reasons for reduction; procedural requirements under N.J.S.A. 18A:22-37 do not apply to Type I districts. (98:Aug. 14, Bayonne, aff'd St. Bd. 99:Feb. 3)

Where Board of School Estimate reduced budget submitted at or below the box, board of education must demonstrate that amount reduced is necessary for T & E or that the stability of the district required restoration. (98:Aug. 14, Bayonne, aff'd St. Bd. 99:Feb. 3)

CERTIFICATION

Acquisition

Burden of establishing entitlement to certification/endorsement is on applicant beyond a preponderance of the competent and credible evidence. (00:Oct. 2, Avellino, aff'd St. Bd. 01:March 7)

Certification denial on basis of conviction for homicide, upheld. (99:Sept. 13, Bilal)

Certification denied. Disqualified due to 1990 CDS possession conviction. Evidence of rehabilitation not permitted. (02:May 20, Garvin)

CERTIFICATION

Denial of application for issuance of School Administrator Certificate of Eligibility was not arbitrary; applicant did not have proper preparation (99:June 30, Flaherty)

Denial of supervisor endorsement by State Board of Examiners upheld. Masters Degree obtained from American State University, an institution neither approved nor accredited. Petitioner not qualified for administrative certification with a supervisor's endorsement. (02:April 1, Dominianni)

Part-time home instruction teacher was hired to a full-time position by board of education. Thereupon she completed 11 hours of professional development. Board of education refused to credit the hours because they were not performed in accordance with a professional improvement plan developed as part of the prior year's Annual Performance Report. Commissioner affirmed ALJ's dismissal of teacher's complaint. (02:Nov. 21, Bowens)

Alternate Route

Endorsement as substance awareness coordinator denied by State Board of Examiners where applicant's participation in after-school program did not satisfy intensive training required through alternate route program. (00:Oct. 2, Avellino, aff'd St. Bd. 01:March 7)

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:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

Endorsements

An endorsement is not invalidated simply because it is no longer issue. (99:Nov. 29, Ziegler)

Entitlement to technology coordinator by art teacher who was reduced from full to part-time, cannot be evaluated without remand to determine appropriate endorsement for this position. (00:July 27, Holloway)

State Board of Examiners did not revoke certificate, as there was no proof that teacher purposefully misrepresented the status of her certificate. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, remanded App. Div. 01:Oct. 17, remanded to Commissioner, St. Bd. 01:Dec. 5)

State Board of Examiners must not issue standard certificates to provisional teachers who have not yet demonstrated compliance with regulatory requirements. (St. Bd. 03:April 2, Englewood on the Palisades)

CERTIFICATION

Tenured teacher was summarily dismissed for fraudulently serving in current assignment for which she did not possess valid endorsement; although board should have filed tenure charges, petition is barred by 90-day rule. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, remanded App. Div. 01:Oct. 17, remanded to Commissioner, St. Bd. 01:Dec. 5)

Whether teacher's Employment Orientation endorsement permitted him to teach district's industrial arts courses and whether he was improperly terminated for lack of appropriate certification, to be determined on remand by examination of actual job responsibilities. (99:Nov. 29, Ziegler)

Given unusual procedural history of certification deficiencies for which teacher was not given proper notice, along with subsequent satisfactory performance, revocation of certificate is not proper, even though certificate issued erroneously. (St. Bd. 03:April 2, Englewood on the Palisades)

Provisional Teacher Training: Charter school directed to implement provisional teacher training program for teacher holding provisional certificate and to demonstrate that training program meets regulatory requirements. (St. Bd. 99:March 17, Englewood on the Palisades, charter school placed on probationary status and directed to submit remedial plan for provisional training program, St. Bd. 99:June 2, remanded to St. Bd. Of Examiners, St. Bd. 99:Dec. 1)

Psychologist who had been serving on emergency certificate could not have been offered position for the following year where district filled the position with a certified individual prior to August 1; emergency certificates can only be issued after August 1, and where district is unable to employ a suitable certified individual. (02:Oct. 7, Sniffen)

Reinstatement of certificate that teacher had voluntarily surrendered after his second entry into PTI for sexual misconduct with students, denied, where he failed to demonstrate rehabilitation and was dishonest. (01:Nov. 5, Arminio)

Private vendors – Subcontracting

ALJ denied contractor's motion for a stay of the board's contract award to competitor. Contractor asserted that the Department of Labor wrongfully suspended his right to engage in public contract projects during the pendency of his debarment proceedings before that department. (02:Aug. 22, Framan)

Despite authorizing resolution, board did not hire any uncertified instructors from Berlitz to teach foreign languages. Matter dismissed as moot. (02:April 19, Morris)

CERTIFICATION

Required

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Computers: Special endorsement is not usually required to teach computer courses; RIF'd teacher with K-12 music endorsement not entitled to elementary computer position because she did not possess elementary endorsement. (99:Nov. 3, Adler, rev'd St. Bd. 00:July 5)

In-class support instructor; assignment of social worker/substance awareness coordinator who did not possess teaching certificate to be in-class support instructor did not violate law. Board admonished for not taking greater care to outline instructor's role from the outset. (01:June 7, Possien-Kania, decision on remand from 99:Aug. 9)

In school suspension assignment was a teaching staff position requiring teaching certificate; back pay ordered for tenured teacher who, upon RIF, was entitled to position but not appointed. (99:Nov. 29, Lewis, on remand)

Question of whether English teacher who possessed English endorsement but neither reading nor elementary endorsements, was improperly assigned to teach remedial reading, remanded for further proceedings. (01:April 20, Middlesex)

Standard Certificate Eligibility: Candidates must possess provisional certificate and complete a State-approved training program to be eligible. (St. Bd. 03:April 2, Englewood on the Palisades)

Whether positions of dropout prevention coordinator and coordinator of health and social services as authorized by Abbott regulations, N.J.A.C. 6A:24-1.4(h), are positions requiring certification, will depend on the duties assigned thereto by the local district; here, particular duties required educational services certificate; county Superintendent must review for proper endorsement. (01:Aug. 16, Passaic, aff'd with modification, St. Bd. 01:Dec. 5, emergent relief denied St. Bd. 02:Feb. 6)

Suspension

Certificate suspended for nine months where teacher, albeit overwhelmed by her situation, expressed no concern for elementary school pupils when she resigned "effective immediately" just two weeks into the year. (01:Nov. 26, Brown, aff'd with modification St. Bd. 02:June 5)

CERTIFICATION

- Notice of resignation: board's acceptance of guidance counselor's resignation given with only 2 weeks notice, did not mean that it consented to waiving the 60 days' notice; Commissioner was authorized under N.J.S.A. 18A:26-10 to suspend her certificate for one year. (02:Oct. 25, Green)
- Notice of resignation: suspension of special education teacher's certificate for one year ordered pursuant to N.J.S.A. 18A:26-8, N.J.S.A. 18A:26-10 and N.J.A.C. 6:11-3.8 where teacher gave only 12 days notice of resignation because teacher had secured alternative employment as police officer and provided no compelling mitigating factors warranting a shorter suspension. (01:June 1, Montalbano)
- Notice of resignation: where teacher failed to give full 60-days as required by contract, Commissioner was authorized under N.J.S.A. 18A:26-10 to suspend her certificate for one year. (00:June 19, McFadden)
- Settlement; certification suspended for six months for failure to give 30 days' notice pursuant to N.J.S.A. 18A:26-10. (01:Nov. 9, Blitz)
- Settlement under N.J.S.A. 18A:26-10 requiring suspension of certificate for one year for abandonment of position, approved. (01:Sept. 28, Savage)
- Teacher's certificate suspended for one year for failure to give proper notice of resignation. Engaged in unprofessional conduct. N.J.S.A. 18A:26-10. (02:April 29, Owens)
- Teacher's certificate suspended for one year where social worker sat around doing personal business and thereby constructively abandoned her duties, without giving 60 days' notice; board could also withhold unpaid salary. (99:July 16, Lawnside)
- Teacher's failure to provide 60 days' contractual notice of resignation resulted in finding of unprofessional conduct and suspension of certificate for 1 year pursuant to N.J.S.A. 18A:26-10; negative evaluation triggering emotional distress no excuse. (99:May 24, Falco)
- Teacher's failure to provide 60 days' contractual notice of resignation resulted in finding of unprofessional conduct and suspension of certificate for 1 year pursuant to N.J.S.A. 18A:26-10; poor working conditions no excuse. (98:Sept. 25, Verbesky)
- Technology coordinator position required an elementary education endorsement, where computer strategies were geared to the substantive curriculum areas such as language arts and social studies, and as a vehicle for teaching core curriculum standards. (01:Nov. 26, Holloway)
- Reinstatement of certificate that teacher had voluntarily surrendered after his second entry into PTI for sexual misconduct with students, denied, where he failed to demonstrate rehabilitation and was dishonest. (01:Nov. 5, Arminio)

CERTIFICATION

Settlement; certification suspended for six months for failure to give 30 days' notice pursuant to N.J.S.A. 18A:26-10. (01:Nov. 9, Blitz)
Vice principal served for 5 years on misrepresentation that she held principal certification; district's negligence in checking did not excuse her dishonesty; tenure rights never attached as contract was void ab initio; employment relationship is dissolved as of date district was notified by county office. (00:Feb. 2, Desmond)

CHARTER SCHOOLS

Appeal of denial of charter dismissed after failure to file brief. (St. Bd. 01:May 2, New World Charter School, appeal dismissed for failure to perfect)
Challenge that charter school enrollment was racially imbalanced dismissed. District's allegations of racial imbalance were based on an inapplicable standard and an erroneous understanding of the Charter School Program Act and decisional law. (03:May 22, Unity Charter, aff'd App. Div. 00:July 13, Dkt. No. A-4212-98T1)
Charter school applications met requirements of the Charter School Program Act; Commissioner has authority to grant conditional approval of charter applications; Charter School Program Act does not violate right to thorough and efficient education; charter schools not required to comply with traditional school laws; Charter School Program Act does not unconstitutionally permit use of public funds for private purposes; and Charter School Program Act does not violate procedural due process or equal protection. Engelwood on the Palisades, et als., 320 N.J. Super. 174 (App. Div. 1999), aff'd with modification 164 N.J. 316 (2000); see also I/M/O Final Grant of Charter to Englewood on the Palisades Charter School, for approval of final grant of charter App. Div. unpub. op. Dkt. No. A-2692-99T1 (May 23, 2001)
Charter school housed in facility where bathroom facilities have not been specified and where there is social club that serves alcohol will not be approved until compliance with regulations is demonstrated. (St. Bd. 99:Feb. 3, Unity Charter School, parties directed to file additional briefs, St. Bd. 99:April 7, grant of final approval of charter affirmed with direction, St. Bd. 99:July 7, Commissioner directed to develop and implement security plan, St. Bd. 99:Aug. 4)
Charter school must comply with all statutes and regulations that apply. Commissioner must verify that charter schools have complied with all requirements before issuing certificate of use pursuant to N.J.S.A. 18A:36A-10. St. Bd. remands back to Commissioner. (St. Bd. 98:Nov. 4, Teaneck Community Charter School)(St. Bd. 98:Nov. 4, Unity Charter School)(Cert. Denied 165 N.J. 468.
Charter school regulations do not constitute unfunded mandate. (St. Bd. 01:May 2, Green Willow Charter School)

CHARTER SCHOOLS

- Commissioner's review of charter school applications must include analysis of racial impact of granting application. If segregation would occur by grant, commissioner must use full powers to avoid segregation and cannot wait until after charter has been approved. Englewood on the Palisades, et als., 164 N.J. 316 (2000); aff'g with modification 320 N.J. Super. 174 (App. Div. 1999); see also I/M/O Final Grant of Charter to Englewood on the Palisades Charter School, for approval of final grant of charter App. Div. unpub. op. Dkt. No. A-2692-99T1 (May 23, 2001)
- Commissioner, on remand, rejects settlement agreement that would create a racially tiered lottery system for selection of new charter school students. Nothing on the record that would warrant such a remedy. (03:May 22, Unity Charter)
- Conditional approval granted: charter granted conditioned on receiving funding indicated in application. (St. Bd. 01:May 2, Green Willow Charter School)
- County Superintendent directed to file written report on location and type of bathroom facilities as well as the location where alcoholic beverages are stored in building containing social club and charter school. (St. Bd. 99:Feb. 3, Unity Charter School, parties directed to file additional briefs, St. Bd. 99:April 7, grant of final approval of charter affirmed with direction, St. Bd. 99:July 7, Commissioner directed to develop and implement security plan, St. Bd. 99:Aug. 4)
- Denial of charter: appeal of denial of charter dismissed for failure to perfect within time limit. (St. Bd. 01:June 6, Ibrahim Charter School)
- Denial of charter: charter school application fails to address N.J. Core Curriculum Content Standards; irregularities in financial plan. (St. Bd. 99:April 7, Galloway Educational Meridian Charter School)
- Denial of charter: failure to file briefs on appeal after initial denial will result in dismissal. (St. Bd. 00:July 5, Liberty Academy Charter School, appeal dismissed for failure to perfect)
- Denial of charter: failure to file complete detailed application with relevant financial data and cash flow statements will result in denial of charter. (St. Bd. 99:March 3, Ibrahim Charter School)
- Denial of charter: where application shows lack of understanding of educational equity and access, weakness in plans to serve at-risk and special education pupils and assessing curriculum, application is properly denied. Jersey Shore Charter School, St. Bd. 02:July 2. (See also 02:Jan. 11, Jersey Shore Charter School, St. Bd. Decision on motion, 02:April 3)
- Emergency relief granted to parents seeking bus transportation to charter school, pending outcome on the merits. (99:Dec. 27, A.J.G.)
- Emergent relief denied: charter school failed to meet Crowe standard when it failed to demonstrate a likelihood of success on appeal of revocation of charter. (St. Bd. 01:June 27, Greenville Community Charter School)

CHARTER SCHOOLS

- Failure to obtain an appropriate facility will result in denial of final approval to operate. (00:Sept. 1, Newark Prep, appeal dismissed for failure to perfect, St. Bd. 00:Dec. 6)
- Given unusual procedural history of certification deficiencies for which teacher was not given proper notice, along with subsequent satisfactory performance, revocation of certificate is not proper, even though certificate issued erroneously. (St. Bd. 03:April 2, Englewood on the Palisades)
- Local Board within proposed charter school's region of residence need not file motion to intervene in appeal of denial of charter school application as party respondent status already conferred through operation of N.J.S.A. 18A:36A-4(c) and (d) as well as N.J.A.C. 6A:11-2.1(a). (02:Jan. 11, Jersey Shore Charter School, St. Bd. Decision on motion, 02:April 3)
- Motion granted for Commissioner's participation in appeal of contingent approval of charter. (St. Bd. 03:May 7, Jersey Shore Charter School, motion granted to supplement record, St. Bd. 03:June 4, motion to intervene granted, St. Bd. 03:July 2)
- Motion to stay Commissioner's decision to revoke charter, denied. (01:June 25, Greenville)
- Neither the Charter School Program Act nor implementing regulations provide local board with right to hearing prior to issuance of a charter or grant of renewal application. Red Bank Community Charter School, St. Bd. 02:June 5. (See also, 01:Dec. 14; decision on motion, 02:Jan. 22, motion for stay denied, St. Bd. 02:April 3)
- Nonrenewal of charter: charter will not be renewed where there is low enrollment, instability in school governance, poor standardized testing achievement, concern over fiscal solvency, and lack of accountability in measuring student progress. (St. Bd. 01:Aug. 1, Samuel DeWitt Academy Charter School)
- Provisional Teacher Training: Charter school directed to implement provisional teacher training program for teacher holding provisional certificate and to demonstrate that training program meets regulatory requirements. (St. Bd. 99:March 17, Englewood on the Palisades, charter school placed on probationary status and directed to submit remedial plan for provisional training program, St. Bd. 99:June 2, remanded to St. Bd. Of Examiners, St. Bd. 99:Dec. 1)
- Renewal of charter: decision to renew charter and expand school will not be stayed where local board fails to meet Crowe standards; board has not demonstrated for purposes of motion the specific effect of the charter school, as opposed to other causes, or that its existence has resulted in an impermissible impact on the racial composition of the district's public schools. (01:Dec. 14, Red Bank Community Charter School, dec. on motion, 02:Jan. 22, motion for stay denied, St. Bd. 02:April 3, aff'd St. Bd. 02:June 5)

CHARTER SCHOOLS

- Renewal of Charter denied: Neither Charter School Program Act nor implementing regulations permit probationary period before denying renewal request. Evidence of weak student achievement, lack of alignment with Core Curriculum Content Standards, declining enrollment and failure to implement corrective action plan sufficient to warrant closure of school. Greater Trenton Area Academic and Technology Charter School, St. Bd. 02: May 1.
- Revocation: charter properly revoked where school fails to correct ongoing safety concerns, does not correct governance structure to conform with law, docks certified teaching staff, fails to incorporate core curriculum content standards and fails to implement effective discipline policies. (St. Bd. 01:Aug. 1, Greenville Community Charter School)
- Revocation: charter will be revoked where board of trustees fails to select and hire lead person, faculty and staff and fails to review curriculum, develop plan to demonstrate academic progress, stabilize enrollment, develop or adopt critical policies, follow GAAP accounting or submit budget for 2001-02 school year. (01:Aug. 10, Russell Academy Charter School, dec. on motion 01:Aug. 30, dec. on motion, St. Bd. 01:Nov. 7, aff'd St. Bd. 01:Dec. 5, motion for clarification denied St. Bd. 02:March 6)
- Revocation of charter: charter will be revoked where school does not operation in compliance with its charter or state laws and regulation, and experiences a steady decline in enrollment over course of academic year. (01:June 14, College Preparatory Academy Charter School, decision on motion 01:Aug. 14, decision on motion, St. Bd. 01:Sept. 5, aff'd St. Bd. 01:Oct. 3)
- Salary policy: Charter school is not bound by the salary policy in its charter application as these are only a guide; only the board of trustees can establish a salary policy, and not the founders who prepared the application; therefore, no amendment to the school's charter was necessary. (02:Feb. 11, Pleasantech, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0375-02T3, Dec. 5, 2003)
- Settlement proposing remedy employing race as paramount factor in determining which students may be admitted to the charter school is set aside as there is absence of proofs that the school does not in fact represent a racial cross-section of the community's school age population, or that there is a negative impact on the composition of the district's schools, or that if such an infirmity exists, the remedy proposed is specifically tailored to address it; moreover, such proposed remedy is tantamount to changing the school's charter. (02:Jan. 11, Morris)
- Statutory and regulatory framework for charter schools imposes on districts the dual requirement to pay directly to charter school both 90% of local per pupil levy as well as transportation costs. (99:March 30, Teaneck Community Charter School)
- Stay of revocation of charter, denied; unlikely to prevail on the merits. (01:Aug. 14, College Prep Academy, letter opinion)

CHARTER SCHOOLS

- Termination of business manager/board secretary by charter school was reasonable where employee had left work without permission and was uncooperative (99:Nov. 15, Mezzacappa)
- Thirty-day limit for filing appeal to State Board pursuant to N.J.S.A. 18A:6-28 is jurisdictional. August 3, 1998 App. Div. order vacated and Trenton Board of Education's motion for remand denied. International Charter School of Trenton (Granville), App. Div. order on motion Dkt. No. A-004932-97T1, Sept. 15, 1998)
- When a proposed charter school completes all of the requirements for the granting of a charter, including N.J.A.C. 6A:11-2.1, the granting of the charter will be approved. (St. Bd. 99:March 3, Teaneck Community Charter School)
- Where charter school fails to provide appropriate documentation showing that they have complied with N.J.S.A. 18A:36A-1, the State Board will remand to Commissioner for further determinations. (St. Bd. 98:Dec. 2, Englewood on the Palisades)

CHILD STUDY TEAM

- Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (02:Dec. 2, Trigani)
- Psychologist who had been rified had no tenure entitlement to employment with ESU that was under contract with board to supply child study team services on a case-by-case basis; distinguished from Shelko where county special services school district assumes operation of and responsibility for entire special education program. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

CLERKS AND SECRETARIES

- Jurisdiction: Commissioner questions whether he has jurisdiction over increment withholding of noncertified clerk within a bargaining unit; ALJ ruling that the board acted arbitrarily is set aside, and matter remanded on jurisdictional issue (99:Oct. 28, North Bergen)

COACHES

- Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)
- Board's reasons for failing to renew coach (less than satisfactory performance) were not arbitrary, capricious or unreasonable, and board followed requirements of N.J.S.A. 18A:27-4.1; therefore, the nonrenewal stands. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)

COACHES

- N.J.S.A. 18A:27-4.1 did not preempt or repeal N.J.S.A. 34:13A-24 nor was N.J.S.A. 34:13A-24 unconstitutional delegation of governmental power to arbitrator; PERC determination that employee has right to arbitrate board" decision not to renew his extracurricular coaching contract. Jackson Twp. Bd. of Ed. v. Jackson Ed. Assn., 334 N.J. Super. 162 (App. Div. 2000); certif. den. 165 N.J. 678 (2000)
- Non-renewal of head coach's coaching contract was not arbitrary and capricious, nor in violation statute or code. (00:March 6, Cohen)
- Teaching staff member does not accrue tenure as a coach; a board may discontinue a coaching assignment at its discretion. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)
- Tenured teacher's coaching position is not governed by notice of non-renewal protections set forth in N.J.S.A. 18A:27-10 or N.J.A.C. 6:3-1.20. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)
- The employment of coaches is a managerial decision of the board and not subject to the tenure law. (03:Jan. 31, Miller)

CODE OF ETHICS

Holding matters confidential, N.J.S.A. 18A:12-24.1(g)

Board member violated Act when he sought out and disclosed confidential employee information to citizen; reprimand ordered. (03:March 6, Pizzichillo)

Board member violated Act when he sought out and disclosed confidential student information to the board; censure ordered. (02:July 16, Vickner, motions to supplement record and compel production of documents denied St. Bd. 02:Dec. 4, motions for reconsideration and for oral argument denied, St. Bd. 03:March, decision of SEC and Commissioner aff'd St. Bd. 03:July 2)

Private action that may compromise the board, N.J.S.A. 18A:12-24.1(e)

Board member violated Act when he sought out and disclosed confidential employee information to citizen; reprimand ordered. (03:March 6, Pizzichillo)

Board member violated Act when he sought out and disclosed confidential student information to the board; censure ordered. (02:July 16, Vickner, motions to supplement record and compel production of documents denied St. Bd. 02:Dec. 4, motions for reconsideration and for oral argument denied, St. Bd. 03:March 5, decision of SEC and Commissioner aff'd St. Bd. 03:July 2)

COLLECTIVE NEGOTIATIONS

Authority

ALJ held that physical education teacher's lunch hours need not coincide with student lunch times. The decision to assign lunch hours, where not addressed in the collective bargaining agreement, fell within managerial prerogative, so long as the schedule is consistent with statute and code provisions. Commissioner agreed that teacher failed to show board of education schedule was outside the scope of their discretion or otherwise improper. (02:Nov. 18, Morris Ed. Assn.)

PERC laws authorize suspension of tenured teacher without pay for minor discipline if so negotiated by board and union representative; not an illegal reduction in salary. (00:July 13, Tave, letter to counsel, aff'd St. Bd. 00:Nov. 1)

Pre-judgment Interest

ALJ concluded that school district's RIF of two teachers was wrongful due to the district's failure to credit the teachers' prior military history. ALJ awarded pre-judgment interest to one teacher where the teacher identified the omission to the district in writing prior to his dismissal, finding constructive bad faith in the termination for failure to properly credit the teacher's prior military service. In addition, the ALJ ordered pre-judgment interest in that the district conceded that salary was wrongfully withheld from teacher. ALJ also precluded district from deducting unemployment compensation benefits from teacher's back-pay awards, and Ordered the teachers to file before the Department of Labor to determine compensation for July and August, if any. Finally, ALJ denied the award of consequential damages as exceeding the authority of the commissioner. Commissioner agreed with ALJ, but modified the decision to limit ALJ's award of pre-judgment interest to the difference between back-pay to be received and unemployment compensation received. Commissioner determined that teachers should arrange to reimburse Dept. of Labor, Division of Unemployment Compensation directly, without having the district deduct such amount from the back-pay award. (02:Sept. 30, Scott)

Where board could not obtain discovery about parents' financial affairs, from parents who, pursuant to earlier Commissioner decision, owed board back tuition for illegal attendance of pupil, prejudgment interest would be calculated by Court Rule rather than administrative code provision. (00:June 23, Livingston)

COLLECTIVE NEGOTIATIONS

Salary: it is a violation of tenure law to, upon negotiation of new collective bargaining agreement, reduce salary of teachers who were paid higher salary under continuation of expired collective bargaining agreement; board may freeze teachers' salaries until new salary guide "catches up." (98:Aug. 6, Schalago-Schirm, aff'd St. Bd. 98:Dec. 2)

COMMISSIONER OF EDUCATION

Authority

Commissioner has no authority in a tenure dismissal matter, to order teacher to attend training classes (99:Aug. 4, Motley, aff'd St. Bd. 99:Dec. 1)

Counsel fees: Commissioner has no authority to order. (01:May 7, North Arlington)

Issuance of Bonds

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

Only the Commissioner or an assigned Assistant Commissioner may hear and determine disputes arising under the education laws. (St. Bd. 00:May 3, Pleasantech Academy Charter School Ed. Assn., remanded to Commissioner)(See also subsequent decisions 02:Feb. 11, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0375-02T3, Dec. 5, 2003)

Commissioner has statutory authority to delegate inspection of accounts to the Office of Compliance. (97:June 3, Middle Twp., aff'd St. Bd. 98:Oct. 7, remanded App. Div. 99:June 4, remanded St. Bd. 00:June 7)

Contempt

School business administrator was not in contempt for disobeying a restraining order, by virtue of his failure to prohibit local districts from withdrawing from joint purchasing agreement. (01:Aug. 8, DeHart)

Contractual provision for counsel fees in a school construction matter may be decided by the Commissioner of Education. (03:June 9, Middletown)

Credibility

Commissioner adopted ALJ's credibility determination, according great weight to the finder of fact who observed the witnesses first-hand, pursuant to N.J.S.A. 54:14B-10(c). (03:Aug. 8, Community Charter School)

COMMISSIONER OF EDUCATION

Credibility determinations: the administrative law judge has the greatest opportunity to observe the demeanor of witnesses and assess their credibility; his credibility determination is entitled to the Commissioner's deference. (02:Feb. 25, King)

Date 90 day period begins to run

Action to suspend teacher's certification after his immediate resignation without notice; 90 days began to run from date board took official action on teacher's resignation. (99:May 24, Falco)

Formal board action and direct notice by board are not absolute prerequisites to triggering 90-days; formality of notice is irrelevant where goals of notice are achieved. (99:Dec. 16, Gloucester, aff'd with clarification St. Bd. 00:Aug. 2) (see also St. Bd. 00:June 7, Gloucester)

Not tolled by filing of PERC claim. (98:Nov. 30, AFT)

Period ran from date teacher received notice from carrier of termination of her compensation benefits, even though her attorney did not receive notice, no justification for 10-month delay in challenging district's charging sick days for work-related injury. (99:December 23, Mello)

Period ran from date that union had knowledge of the number of positions that board was seeking to fill when board approved the postings of positions; did not run from actual date the positions were posted or from start of selection process to fill positions. (98:Nov. 30, AFT)

Psychologist challenging non-renewal failed to file claim within 90 days of learning by letter that his contract would not be renewed; Commissioner rejects teachers' argument that 90-day period begins after receipt of written notice of determination after Donaldson hearing pursuant to N.J.S.A. 18A:27-3.2. (02:Oct. 7, Sniffen)

Pupil's claim that board did not hold expulsion hearing within 21 days, dismissed along with other allegations, as untimely pursuant to N.J.A.C. 6:24-1.2(c); 90 days began to run when board found him guilty of assault and advised him of suspension. (99:March 23, J.O.)

Recall rights for teaching staff members on preferred eligibility lists are inchoate until board makes appointment; period ran from date of appointment. (01:June 22, Barca)

RIF'd tenured administrator should have filed her claim within 90 days of learning that a non-tenured individual was appointed to a position to which she was claiming entitlement; dismissed for failure to comply with 90-day rule. (02:July 22, Love)

Student's challenge to board's suspension for possession of paging device was dismissed as untimely: 90 days began to run from date pupil or her attorney heard board's vote, and not from letter subsequently sent to parents from board. (98:Sept. 30, S.W.)

COMMISSIONER OF EDUCATION

Time limit of 90 days began to run from time teacher's contract expired, even where teacher believed that filing for use of union provided legal services stopped 90-day period; petition dismissed as untimely filed. (99:Feb. 22, Atkin, aff'd St. Bd. 99:July 7; aff'd App. Div. unpub. op. Dkt. No. A-128-99T1, Dec. 15, 2000)

Time limit of 90 days began to run from time teacher received letter advising him of the withholding of his increment, even where during first month of that period he believed he would not be offered reemployment; petition dismissed as untimely filed. (99:Feb. 22, Freyberger)

Declaratory ruling

Challenge to school board's actions prior to student's suicide presented posed true controversy between adverse parties; declaratory ruling was appropriate. (99:Aug. 13, M.N.)

Commissioner declines request. Will not issue advisory opinion on matter in the abstract. (02:April 19, Morris)

Matter of whether certified teaching positions in fee-based, extended day kindergarten program were tenure-eligible is not ripe not for relief, but is better suited for declaratory ruling pursuant to Commissioner's discretion under N.J.A.C. 6A:3-2.1; teachers ordered to amend their petition to proper format. (01:Aug. 6, Brown)

Dismissal

Board of education and planning board disagreed over whether planning board had authority to preclude board of education's land acquisition. Commissioner dismissed without prejudice due to expiration of statute of limitations and rejected ALJ's determination that ministerial decisions of the Office of School Facilities Financing must meet the same standards for quasi-judicial determinations as state agencies. (02:Aug. 29, Eastampton Twp., settlement approved, motions granted and matter remanded, St. Bd. 03:Jan. 8, on remand, approval of boards application to construct athletic fields still valid, 03:April 14)

Counterclaim; Failure to answer counterclaim has same effect as failure to file answer; all allegations are deemed admitted. (99:March 23, R.D.F., appeal dismissed for failure to perfect, St. Bd. 99:July 7)

Failure to appear and failure to submit explanation. Matter dismissed. (02:June 26, C.C.)

Petition dismissed for failure to file in a timely manner. (St. Bd. 00:Aug. 2, Engle)

Standard for granting motion for involuntary dismissal of case, discussed. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, remanded App. Div. 01:Oct. 17, remanded to Commissioner, St. Bd. 01:Dec. 5)

COMMISSIONER OF EDUCATION

Emergent Relief

- Denied in dispute over transportation contracts. (03:April 3, Seman-Toy, Inc.)
- Denied in pupil admission matter. Crowe v. DeGioia test not met. (02:March 25, F.P.T.)
- Denied in pupil transfer matter. Crowe v. DeGioia test not met. (02:April 18, C.P.)
- Denied in student discipline matter. Crowe v. DeGioia test not met. (02:April 18, A.G.K.)
- Denied in tuition matter for early childhood education in Abbott district where collective bargaining agreement permitted employees to send children for free but state regulation only allows pupils residing in district to attend program. (03:April 22, S.A.)
- Emergent relief denied in construction bidding matter. Crowe v. DeGioia test not met. (02:April 30, McCann Acoustics)
- Emergent relief denied in dispute over whether work on receiver's parking lot constitutes a capital expenditure and not includible in the tuition cost or work is maintenance and therefore includible in cost of tuition. (03:March 21, Lincoln Park, decision on motion)
- Granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program such as home instruction, pending final disposition of expulsion proceedings. (02:March 22, S.R.R.)
- Granted in dispute over tenure laws and *Abbott* regulations. (03:March 6, Sanchez, aff'd St. Bd. 03:June 4)
- Stay of the termination of Abbott preschool education contract denied. (01:Aug. 8, Craig)

Equitable Estoppel

- Application of order from 18 years ago that would have permitted severance of sending-receiving relationship, was barred by laches and waiver, but not equitable estoppel. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1)
- Judicial estoppel: Parents were judicially estopped from asserting claim of residency in district where they had taken inconsistent position in previous litigation; summary judgment granted; parents ordered to pay back tuition. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)
- Non-tenured teacher was estopped from obtaining withdrawal or stay of her pending discrimination claim before OAL to pursue an appeal of the dismissal of concurrent Superior Court matter; parties had almost completed the administrative hearing. (01:May 25, Stewart-Rance)
- Requirements of equitable estoppel are knowing misrepresentation, and detrimental reliance on that misrepresentation, which reliance is reasonable. (98:July 17, Powell, et al., appeal dismissed St. Bd. 98:Nov. 4)

COMMISSIONER OF EDUCATION

Indispensable Party

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

COMMISSIONER OF EDUCATION

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

CEPA: Commissioner does not reach question of jurisdiction over CEPA retaliation claims. (00:June 12, Cheloc)

Commissioner declines to exert primary jurisdiction over consolidated matter regarding whether teacher can be relieved of his tenure due to epilepsy; Division on Civil Rights should make initial determination of teacher’s claim of discrimination, retaliation and failure to accommodate; Commissioner will thereafter determine tenure dismissal matter. (01:Sept. 14, Ford, order of consolidation and predominant interest)

Commissioner has jurisdiction in dispute over violation of school business administrator tenure laws. (St. Bd. 02:June 5, Haberthur)

Commissioner had jurisdiction to enforce agreement between district and parent for tuition payment in residency dispute; to require separate Law Division filing would be pointless and wasteful. (00:Jan. 18, J.A.D.)

Commissioner had no jurisdiction over contractual matter regarding janitor, not arising from statute. (01:June 11, Camden)

Commissioner had no jurisdiction over disciplinary increment withholding where PERC had exercised jurisdiction and arbitration award had been entered. (00:Feb. 15, Montgomery)

Commissioner had no jurisdiction over petition filed by members of public claiming board failed to heed their complaints about a school custodian; if petitioners had filed tenure charges with board, Commissioner would have jurisdiction, but no charges had been filed; if custodian is not tenured, Commissioner has no jurisdiction over disciplinary issue. (00:Jan. 3, Parisi)

Commissioner had predominant interest in, and should exercise jurisdiction over school law issue of whether teacher working part-time after return from medical leave should have been reassigned to a full-time position upon her request, after district reorganization. Hearing before ALJ should also address issues of motive and reasonable accommodation. Matter should then be transmitted to Division on Civil Rights for determination of whether LAD was violated, and for appropriate relief. (01:May 10, Fleming)

Commissioner has no authority to award reimbursement for educational costs and counsel fees. (99:Dec. 23, E.A., footnote 1, aff’d St. Bd. 00:April 5)

COMMISSIONER OF EDUCATION

Commissioner has no jurisdiction over purely contractual disputes.

(98:July 17, Vitacco)

Commissioner has no jurisdiction to award legal costs. (00:Jan. 3, Parisi)

Conscientious Employee Protection Act (CEPA), Federal Family and Medical Leave Act (FMLA), tort and breach of contract claims properly brought before Superior Court. Snedeker v. Long Branch Bd. of Ed., unpublished opinion, App. Div. Dkt. No. A-844-98T1, Jan. 29, 1999.

Department of Education had predominant interest in a joint decision of the Commissioner and the Merit System Board, with regard to tenure charges involving question of whether the district had made a reasonable accommodation of DHS teacher's physical disability. (01:Dec. 31, Megargee, aff'd St. Bd. 02:May 1, motion to settle record granted, St. Bd. 03:Jan. 8)

Exhaustion of Remedies Doctrine

Stabilization aid growth limit imposed by CEIFA, although inextricably woven with constitutional issue of thorough and efficient education, requires fact-finding by commissioner of education who has particular expertise in interpreting and applying CEIFA. Wildwood Bd. of Ed. v. Loewe and New Jersey Dept. of Ed., unpublished App. Div. opinion Dkt. No. A-5377-97T1 and A-6811-97T1 (consolidated), Feb. 17, 1999, certif. denied, 160 N.J. 477 (1999)

Superior Court has jurisdiction over dispute involving board's refusal to issue diploma to student for disciplinary reasons even though student did not exhaust administrative remedies. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union County), Jan. 8, 1999.

Failure to provide discovery pursuant to prehearing order; petitioner's matter is dismissed. (98:Aug. 5, Crivelli et al., aff'd St. Bd. 98:Dec. 2; aff'd App. Div. unpub. op. Dkt. No. A-2898-98T2, Feb. 8, 2000)

Five-day suspension of non-tenured custodian was outside Commissioner's jurisdiction. Remedy lies within the confines of negotiated agreement. (02:March 14, Heminghaus)

IDEA: IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

In matters concerning the School Ethics Act, Commissioner's jurisdiction is limited to reviewing the sanction to be imposed following a violation of the Act by the School Ethics Commission. (02:April 18, Russo)

COMMISSIONER OF EDUCATION

- Monetary sanctions for failure to complete discovery: the Commissioner is not the agency heard for purposes of review of sanctions; board's request must be reviewed by Director of OAL. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein St. Bd. 00:June 7)
- No Commissioner jurisdiction over federal Title VII or Title IX claims regarding athletic team tryouts. (02:May 3, D.H.)
- No jurisdiction over board member's request that board be barred from considering grievance filed by union against board member because Commissioner not authorized to enforce or interpret collective bargaining agreement. (01:April 26, Settle)
- No jurisdiction over issue of whether child's proper name in school records should reflect father's recent paternity order; issue of child's name should be part of pending matter in Family Division (99:June 25, Barlow)
- No jurisdiction over petition by teacher employed by Juvenile Justice Commission because, as state employee, claim arises under the Civil Service laws, and not the education laws. (01:April 19, Morelli, letter opinion)
- No jurisdiction over sunshine law issue because not ancillary to claim arising under school law. (01:April 26, Settle)
- Question of a counselor's duty to disclose confidential communications is outside of Commissioner's jurisdiction. (99:Aug. 13, M.N.)
- School laws not at issue in matter of termination of contract between early childhood program provider and Abbott district. Had contract dispute involved termination for failure to provide early childhood education services, matter would be cognizable before the Commissioner. (02:May 30, Craig/Trenton)
- Settlement agreement: Commissioner has no jurisdiction over term in settlement agreement which is contingent upon satisfaction of conditions by another agency, namely Division of Pensions. (99:Sept. 21, Swallow)
- Settlement rejected. Exceptions reveal that amicable resolution had not been reached. Commissioner has no jurisdiction over 504 plan. Settlement must be confined to those areas over which the Commissioner has jurisdiction. (02:March 11, P.E.W.)
- Subpoenas: DOE staff cannot not be compelled by subpoena to provide testimony regarding DOE's position with regard to Core Curriculum Standards or other controversies where they have no knowledge of facts giving rise to dispute; subpoena quashed. (98:Dec. 3, M.C.)
- Sunshine Law: Commissioner has jurisdiction over Sunshine Law issue only if ancillary to claims arising under school law. (00:Jan. 3, Parisi)

COMMISSIONER OF EDUCATION

Where employee was not a teaching staff member for which the Commissioner has jurisdiction to review increment withholdings, nor was she a member of a collective bargaining unit which would provide a mechanism for resolving such disputes, the Commissioner would consider claim of retaliation; held that board did not act improperly. (00:June 12, Cheloc)

Mootness

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Not moot; question of whether social worker/substance coordinator who did not possess teacher certificate was improperly assigned to in-class support instructor position, was capable of repetition yet evading review; remanded. (99:Aug. 9, Possien-Kania, 01:June 7, decision on remand)

Motion to Compel: Motion to Compel dismissed as moot. (St. Bd. 00:July 5, Keaveney)

90-day rule – Application

Applying for legal services provided by union does not constitute grounds for relaxation of 90-day rule. (99:Feb. 22, Atkin, aff'd St. Bd. 99:July 7, aff'd App. Div. unpub. op. Dkt. No. A-128-99T1, Dec. 15, 2000)

Lavin waiver of 90-day rule did not apply where statutory provision that preserved employee benefits in regional district dissolution was not a "statutory entitlement" but rather was predicated on services rendered. (99:Dec. 8, Balwierzczak, aff'd St. Bd. 00:May 3)

No merit to custodians' claim that their salary level pursuant to dissolution of regional district and transfer to constituent district was a "statutory entitlement" (Lavin) not governed by the 90-day rule. Claim for correction on salary guide is out of time. (99:Dec. 8, Balwierzczak)

Notwithstanding application of 90-day rule, board must still pay tuition owed to private school for handicapped. (03:March 14, Caldwell-West Caldwell)

Petitioners' status as pro se litigants in dispute over student's status as Most Valuable Player, letter of appeal sent to wrong division and then following advice of Bureau of Controversies and Disputes constituted petition of appeal filed in a timely manner. (99:June 1, J.M., reversed and remanded St. Bd. 99:Nov. 3)

COMMISSIONER OF EDUCATION

Teacher out of time to challenge district's charging sick days for work-related injury pursuant to N.J.S.A. 18A:30-2.1; attempts to resolve the claim through negotiation do not toll the time; 90 days ran from the date teacher knew she was being charged for the sick days. (03:April 14, Gillespie)

Tenured teacher was summarily dismissed for fraudulently serving in current assignment for which she did not possess valid endorsement; although board should have filed tenure charges, petition is barred by 90-day rule. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, remanded App. Div. 01:Oct. 17, remanded to Commissioner, St. Bd. 01:Dec. 5)

The rate at which retired employees of constituent district of dissolved regional were entitled to reimbursement for unused sick leave was a contractual, and not a statutory issue; therefore, they were barred by 90-day rule. (01:July 9, Nadasky, appeal dismissed St. Bd. for failure to perfect 01:Oct. 3)

90-day rule - Relaxation

District was time-barred from avoiding payment for current year to vocational magnet school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

90-day rule was unduly harsh; waived so parent may demonstrate a pattern of past inappropriate behavior by teachers toward her son, including teacher's accusation that pupil copied other pupil's homework and detention therefor. (00:Sept. 18, C.C.)

No relaxation in appeal of district's failure to bestow upon child the MVP Award for cross country; no constitutional or significant public interest questions. (99:June 1, J.M., aff'd St. Bd. 01:Jan. 3)

No relaxation in matter involving staff selection process upon dissolution of regional district, where union had notice of a cause of action on three occasions but slept on its rights. (98:Nov. 30, AFT)

No relaxation of 90-day rule in matter involving transfer of student from regular to alternative education program. Student suspended for assault and possession of weapon. No compelling or extraordinary circumstances. No deprivation of educational program. (03:May 15, K.C.)

No relaxation of 90-day rule when teacher sought to rescind her resignation. A showing of emotional stress alone, without the showing of genuine incapacity, is not enough to toll the time period for appeal. (03:May 1, Unangst)

No relaxation of 90-day rule where parent sought to appeal disciplinary expulsion with offer of transfer to alternative program seven months after board action. (03:May 20, J.G.)

COMMISSIONER OF EDUCATION

No relaxation where employees allegedly injured on the job claimed the district wrongfully deducted sick days from their sick leave banks in violation of N.J.S.A. 18A:30-2.1. (98:July 17, Powell et al., appeal dismissed St. Bd. 98:Nov. 4)

No relaxation where petitioner files a petition seeking enforcement of tenure rights over 10 months after notification by Board that he was not entitled to position. (98:Aug. 27, Lanzi, aff'd St. Bd. 98:Dec. 2)

Relaxation justified where propriety of school board's actions surrounding student's suicide involved issues of significant public interest and underlying rationale of 90 day rule is unaffected as petition does not seek monetary damages; to dismiss mother's petition would result in injustice. (99:Aug. 13, M.N.)

Relaxation not warranted. Petitioner not required to establish that she did not fraudulently acquire English endorsement in order to pursue her tenure rights claim. No ruling from State Board of Examiners necessary. Decision on remand. (02:March 4, Osman)

Relaxation ordered in light of compelling public interest; board's refusal to honor obligation to pay tuition to vo-tech school because it disagrees with prevailing law, cannot be countenanced. (99:Dec. 16, Gloucester, remanded St. Bd. 00:June 7, aff'd with clarification, St. Bd. 00:Aug. 2)

Relaxation unwarranted where teacher claimed stress prevented her meeting deadline. (00:Sept. 11, Bland-Carter)

Relaxation warranted (00:May 22, Neptune)(00:Feb. 3, Wyckoff)

Relaxation would have been warranted where board sought suspension of teacher's certificate after his resignation without required notice. (99:May 24, Falco)

Settlement agreement of tenure charges would not be set aside when challenged 5 years after its entry; fact that Superior Court order transferred matter to Commissioner did not affect application of 90-day rule; relaxation not justified. (00:Feb. 28, Grompone, aff'd St. Bd. 00:Aug. 2)

Teacher fails to challenge non-renewal within 90 days of notification; petition dismissed. (00:Sept. 11, Wise, aff'd St. Bd. 01:Jan. 3)

Nonappearance

Failure of pro se petitioner to appear at hearing warranted dismissal, where petitioner was in communication with the law judge on other matters and failed to contact the judge about rescheduling the hearing. (02:Feb. 7, D.P.)

Failure to appear and failure to submit explanation. Matter dismissed. (02:June 26, C.C.)

COMMISSIONER OF EDUCATION

Pleadings

Motion to amend pleadings is denied, as there is no authority for pleading amendment subsequent to issuance of initial decision. (01:Oct. 15, Ryan, aff'd for reasons expressed therein, St. Bd. 02:March 6)

Pre-judgment interest

Where board could not obtain discovery about parents' financial affairs, from parents who, pursuant to earlier Commissioner decision, owed board back tuition for illegal attendance of pupil, pre-judgment interest would be calculated by Court Rule rather than administrative code provision. (00:June 23, Livingston)

Pro se: Parents with many complaints against district failed to follow even minimal standards regarding parties, allegations, and relief sought; dismissed for failure to state a claim upon which relief may be granted. (00:Aug. 14, L.C.)

Post-judgment interest

Post-judgment interest may be awarded when a respondent has been determined through adjudication to be responsible for a judgment, but has failed to satisfy the claim within 60 days of the award. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein St. Bd. 00:June 7)

Residuum rule

Even where affidavit was incomplete, Commissioner finds pupil entitled to education based on credibility of resident's testimony; hearsay was admissible where it contained residuum of credibility (99:Oct. 28, U.S.K.)

Retroactivity

Commissioner remands question of whether regulations are to apply retroactively (time-of-decision rule) or prospectively. (99:Dec. 23, Highlands)

Rulemaking

N.J.S.A. 18A:6-4 grants to the Commissioner the authority to delegate to the Office of Compliance the ability to inspect the Board's fiscal accounts; no violation of Administrative Procedures Act. (00:Feb. 26, Wildwood Crest)

Settlements

Parties act at their own peril if they effectuate the terms of a settlement prior to approval by the Commissioner. (02:June 26, Magaw)
Settlement approved. (02:March 18, Berman-Dalcerro)(02:March 15, Y.F.)(02:March 25, Miller)(02:April 1, R.J.N.)(02:April 11, R.N.)(02:April 12, E.K. and D.H.)(02:April 17, Avellino)(02:April 22, Sanchez)(02:April 22, Turrell)(02:April 22, B.G.)(02:May 14, Arena)(02:May 17, D.F.)(02:May 24, Baker)(02:May 24, Irvington)(02:May 24, Plainfield/VIF)(03:March 14, Freeman)(03:March 18, Richardson)

COMMISSIONER OF EDUCATION

- Settlement approved. Comports with Cardonick standard. (02:March 13, Brewer)(02:March 25, Rieger)(02:April 8, DeWoody)(02:May 7, DiManche)
- Settlement approved in matter regarding Abbott district request for additional state aid. (02:April 18, East Orange)(02:April 29, Vineland)
- Settlement approved in student discipline matter. (02:April 18, W.O.L.)
- Settlement approved with caveat. Terms of settlement cannot supercede statute. (02:May 24, M.N.)
- Settlement rejected. Absent a motion to seal the record for good cause shown, neither Commissioner nor any other individual can be bound to confidentiality. Commissioner decisions are a matter of public record. (03:May 5, Justiniano)
- Settlement rejected. Exceptions reveal that amicable resolution had not been reached. Commissioner has no jurisdiction over 504 plan. Settlement must be confined to those areas over which the Commissioner has jurisdiction. (02:March 11, P.E.W.)
- Settlement rejected. No board ratification of settlement. Remanded to OAL. (03:May 5, Justiniano)
- Settlement rejected. Terms do not meet Cardonick standard. Parties envision that matter will not be forwarded to State Board of Examiners or that board will not cooperate in such proceedings. Matter remanded. (02:May 10, McHarris)

Standing

- Commissioner adopted ALJ's decision to dismiss complaint for lack of standing, where complainant alleged the district was improperly paying for the criminal background checks of certain applicants in violation of N.J.S.A. 18A:6-4.14, 18A:6-7.2 and 18A:39-19.1. Complainant did not live in the district and had not applied for a position with the district. (03:Aug. 8, Nathanson)
- Current lessor of property to school district does not have standing to challenge Commissioner's approval of lease-purchase agreement between district and another lessor where current lessor shows that approval of agreement is detrimental to its interests. (01:Oct. 16, In Re Approval of the Lease in Newark, decision on motion, 01:Dec. 26, St. Bd. Dec. on motion 02:Feb. 6, rev'd St. Bd. 02:June 5, motion for reconsideration denied St. Bd. 02:Aug. 7)
- District has standing to mount a challenge on constitutional grounds to state statutes where statute, or agency's interpretation thereof, adversely affects the district's proprietary interest in a specific fund, such as state aid. (00:Oct. 10, Bayonne)
- District whose pupils are allowed to attend vocational school's magnet program had standing to mount challenge against vocational school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

COMMISSIONER OF EDUCATION

Education Association lacked standing to pursue challenge to board's elimination of woodshop courses from curriculum without formal board action; no likelihood of harm to Association or one of its members (99:June 1, Pequannock)

Parents of students attending charter school had standing to challenge local board's decision to send its pupils to out-of-district school in New York; controversy has potential to recur until students graduate. (01:Nov. 19, K.S.R.)

Teacher had no standing to bring complaint that the board failed to follow state guidelines in its implementation of the Special Review Assessment (SRA), as she was not an "interested party" pursuant to N.J.A.C. 6A:3-1.2. (01:Oct. 15, Ryan, aff'd for reasons expressed therein, St. Bd. 02:March 6)

Summary judgment

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 nonmoving party. (00:March 24, Markowski, aff'd St. Bd. 00:July 5, citing Brill, 142 N.J. 520 (1995))

CONSTITUTIONAL ISSUES

Board's policy forbidding employees from possessing cellular phones and pagers during preparation and instructional periods is constitutional; policy does not implicate free speech/association, and is neither vague nor overbroad. (00:June 12, North Bergen)

Commissioner adopted ALJ's decision that petitioner lacked standing to pursue U.S. Constitution and Federal Law claims, where taxpayer failed to establish that he suffered an injury from which he is legally protected by the U.S. Constitution or Federal Laws. Petitioner alleged the district spend public monies to implement an unconstitutional courtesy busing policy. (03:Aug. 26, Osborne)

Commissioner disagreed with ALJ's finding that petitioner lacked standing to pursue state constitutional claims, where petitioner established that as a resident taxpayer, he was directly affected by the annual expenditure of \$2 million for the courtesy busing of district students. (03:Aug. 26, Osborne)

CONSTITUTIONAL ISSUES

Commissioner does not sustain parents' argument that method of communicating notice of lottery used to select pupils for French immersion program: program violated equal protection; however, Commissioner advises Board to improve communication to avoid misunderstandings with respect to immersion program availability and deadlines. (02:Oct. 24, D.M.L., aff'd St. Bd. 03:April 2) See also, emergency relief denied to parent claiming that lottery access to French immersion program violates school law; expedited hearing ordered. (02:July 30, D.M.L.)

Commissioner found that petitioner failed to demonstrate an Establishment Clause violation, where district used public funds to provide gender segregated courtesy busing to students attending gender segregated private schools. (03:Aug. 26, Osborne)

Commissioner found that petitioner failed to establish a violation of the NJLAD where district courtesy busing policy provided for separate buses for girls and boys attending religious schools that were segregated based upon gender. (03:Aug. 26, Osborne)

Commissioner found that petitioner failed to meet his burden of presenting specific facts that district courtesy busing policy provided for separate buses for girls and boys attending religious schools that were segregated based upon gender. (03:Aug. 26, Osborne)

Free speech: Fair public comment by board members concerning other public figures and on matters of public concern is protected speech. (00:July 10, Wooley)

No violation of Constitution, Law Against Discrimination or Equal Protection Clause in statute permitting board to provide subscription and courtesy busing to public school pupils who live non-remote, but not to private school pupils who live non-remote (99:Sept. 29, M.J.K.D.)

CONTRACTS OF EMPLOYMENT

Professional Development

Part-time home instruction teacher was hired to a full-time position by board of education. Thereupon she completed 11 hours of professional development. Board of education refused to credit the hours because they were not performed in accordance with a professional improvement plan developed as part of the prior year's Annual Performance Report. Commissioner affirmed ALJ's dismissal of teacher's complaint. (02:Nov. 21, Bowens)

CONTRACTS OF EMPLOYMENT

Teacher who worked as a temporary replacement during unexplained absence of another teacher, but without a written contract, or formal approval of the school board pursuant to N.J.S.A. 18A:27-1, had no right to continued employment even if contrary representations had been made to him. (01:Jan. 25, Vincenti, appeal dismissed for failure to perfect, St. Bd. 01:June 6)

COUNTY SUPERINTENDENT

County superintendent has the authority to determine appropriate certification for a position. (96:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

County superintendent is dismissed as a party to a residency matter involving question of homelessness, where parent fails to participate as a party. Parent who acquires residence as temporary measure after being homeless, but remains for over two years, establishes permanent residence for purposes of educating her children. (01:Dec. 5, Pine Hill)

CRIMINAL BACKGROUND CHECKS

Appeal dismissed for failure to perfect for failure to file brief following disqualification for possession of marijuana. (St. Bd. 03:June 4, Tuohy)

Commissioner adopted ALJ's decision to dismiss complaint for lack of standing, where complainant alleged the district was improperly paying for the criminal background checks of certain applicants in violation of N.J.S.A. 18A:6-4.14, 18A:6-7.2 and 18A:39-19.1. Complainant did not live in the district and had not applied for a position with the district. (03:Aug. 8, Nathanson)

Petitioner disqualified from employment and teaching certificate due to 1990 conviction for possession of CDs. No evidence of rehabilitation permitted. (02:May 20, Garvin)

CURRICULUM

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Core Curriculum Standards

DOE staff cannot not be compelled by subpoena to provide testimony regarding DOE's position with regard to Standards; subpoena quashed. (98:Dec. 3, M.C.)

CURRICULUM

Lottery program used to select kindergarten pupils for French immersion program was not arbitrary or done in bad faith, despite district's failure to include in the advertisement that fact that selection would be made from students who appeared at registration; however, Commissioner advises Board to improve communication to avoid misunderstandings with respect to immersion program availability and deadlines. (02:Oct. 24, D.M.L., aff'd St. Bd. 03:April 2) See also, emergency relief denied to parent claiming that lottery access to French immersion program violates school law; expedited hearing ordered. (02:July 30, D.M.L.)

Process chosen by board with respect to core curriculum changes, including elimination of woodshop, was proper (99:June 1, Pequannock)

Emergent relief to parents seeking placement in gifted and talented program, denied. (99:March 4, Mullane)

Use and administration of placement test for kindergarten French language immersion program not arbitrary, capricious or unreasonable. (03:March 14, G.L.L.)

CUSTODIANS

Board could not reduce salary of tenured custodians when it abolished their positions as head custodian and reassigned them to other custodial positions. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:March 1; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)

Board failed to prove, by a preponderance of the credible evidence, that custodian's absenteeism was excessive; a custodian is not held to the same attendance requirements as a teacher. Loud abusive response to principal's questions constitutes unbecoming conduct. Suspension ordered. (02:Sept. 6, McCullough, aff'd St. Bd. 03:April 2)

Recoupment of salary overpayment mistakenly made to tenured custodians does not violate tenure rights. (94:Dec. 21, Trenton, reversed St. Bd. 99:Dec. 1)

Salary level of custodians transferred to constituent district from regional pursuant to regional dissolution; challenge dismissed as untimely under 90-day rule. (99:Dec. 8, Balwierzak, aff'd St. Bd. 00:May 3)

Where collective bargaining agreement provided for custodian tenure after three years, statute requires that such tenure extend to all types of custodial assignments including stockroom worker custodian and chief janitor. Tenure status does not attach to particular subcategories of janitor and thus abolition of custodial position requires board to RIF custodial employee based on overall seniority as custodian. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:March 1; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)

DECLARATORY JUDGMENT

Tenure acquisition: teachers assigned to an extended-day kindergarten program could not acquire tenure or seniority credit for service in that program even though they were required to hold teaching certificates and otherwise treated them like teachers, since the nature of the employment was related to quality child care and not T & E, and the Board did not adopt the curriculum. (02:Oct. 24, Brown)

DEREGIONALIZATION

Distribution of Assets

Deviation from asset distribution scheme approved by Supreme Court in Union County Regional justified based on facts in Lower Camden Regional dissolution. (03:May 2, Lower Camden Regional)
Each building district to make asset distribution payments to each non-building district in five equal annual installments. (03:May 2, Lower Camden Regional)

DEREGIONALIZATION

Lack of agreement of the parties to depart from the statutory scheme not determinative in the Union County court's analysis. (03:May 2, Lower Camden Regional)

Most equitable allocation was to divide total liquid assets among the four non-building districts in proportion to the percentages of school taxes paid to former regional district. (03:May 2, Lower Camden Regional)

School district involvement in sending-receiving relationship not a quantifiable asset that must be factored into the asset distribution plan. (03:May 2, Lower Camden Regional)

DISABILITIES, PUPILS WITH (See also SPECIAL EDUCATION)

Consolidated disciplinary and special education matter dismissed. Board acted for the benefit of the larger school population in matter regarding marijuana and weapon possession when parent refused to cooperate in special education evaluation. Appeal was untimely; seven months after student was expelled. (03:May 20, J.G.)

IDEA: IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

Petitioners, private schools for the disabled, not barred from utilizing straight-line depreciation on a stepped-up basis to calculate rental costs for tuition rate purposes. Straight-line depreciation is an actual allocated cost of ownership. (02:Yale School)

Severely disabled pupil in residential placement for which district had been sharing the cost, was no longer domiciled in New Jersey and thus district had no obligation under IDEA to provide FAPE; change of domicile occurred "incrementally" and was effective when parent's intention to return to New Jersey had become a mere hope for the future. (98:Aug. 3, K.W.)

While 90-day rule does not apply to special education matters, seven month delay in filing appeal of combined disciplinary and special education matter was untimely, even under Bernardsville. Semester was over, summer had passed, student was in another semester in another district. (03:May 20, J.G.)

DISCRIMINATION

Abolition of position of Organizational Development Specialist was not arbitrary, and did not violate Law Against Discrimination because decision motivated by fiscal crisis; may be entitled to compensation for unused sick or personal days if provided by policy or agreement to reimburse for unused vacation days. (01:March 7, Wellins)

Age discrimination matter settled. (98:Oct. 14, McCarthy)

DISCRIMINATION

Commissioner had predominant interest in, and should exercise jurisdiction over school law issue of whether teacher working part-time after return from medical leave should have been reassigned to a full-time position upon her request, after district reorganization. Hearing before ALJ should also address issues of motive and reasonable accommodation. Matter should then be transmitted to Division on Civil Rights for determination of whether LAD was violated, and for appropriate relief. (01:May 10, Fleming)

No discrimination, retaliation or Sunshine Law violation found; no tangible, adverse employment action alleged by staff members, just conclusory allegations unsupported by any facts. (00:July 10, Wooley)

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Third Circuit Court of Appeals found that a reasonable fact finder could not find a conspiracy to deprive petitioner of his civil rights where board determined not to promote petitioner to the position of Assistant Operational Supervisor after placing him in that position temporarily. (Taylor v. Cherry Hill Bd. of Ed., unpublished opinion, App. Div. Dkt. No. 02-3738, Jan. 13, 2004)

Third Circuit Court of Appeals held that petitioner, in a discriminatory employment practice complaint, failed to establish that the board's reason for not hiring him was pretextual or motivated by racial animus, where testimony revealed that petitioner was not promoted because he lacked "leadership qualities." (Taylor v. Cherry Hill Bd. of Ed., unpublished opinion, App. Div. Dkt. No. 02-3738, Jan. 13, 2004)

Third Circuit Court of Appeals held that the passage of five years from the time petitioner engaged in the protected activity of filing a civil rights claim and his termination precluded petitioner from establishing the requisite causal link to demonstrate retaliatory actions by the board, where board failed to promote, but did not demote, harass, falsely discipline or fire petitioner during the intervening five year period. (Taylor v. Cherry Hill Bd. of Ed., unpublished opinion, App. Div. Dkt. No. 02-3738, Jan. 13, 2004)

DRUG TESTING

Random drug testing: Temporary restraining order issued requiring school district to cease implementation of policy on random drug testing of pupils who park on campus or are involved in athletics or other extra-curricular activities. Court concluded that policy invades pupils' right to privacy under New Jersey State Constitution. Joye v. Hunterdon Central Regional High School Bd. of Ed., Superior Court of New Jersey, Law Division, Somerset County, Judge Guterl, Dkt. No. HNT-C-14031-00 (Jan. 4, 2001)

DRUG TESTING

Settlement of tenure dismissal charges includes agreement to submit to random drug testing. (99:May 10, Howard)

Vice principal not dismissed, but is permanently reduced on salary guide for mishandling pupils suspected of being under influence of alcohol or drugs. (00:Sept. 21, Graceffo, aff'd with modification St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2402-01T5, April 8, 2003)

DYFS

Child placed in out-of-state facility by State agency: Presumption of correctness of address provided by DYFS, was rebutted by board of education; parent did not reside in district on date child was placed by DYFS. (01:Feb. 8, Morris Hills)

Division of Development Disabilities Law, together with school funding law and laws regarding disabled students, compel the conclusion that where a classified pupil is placed by DDD in a group home, district of residence is responsible not only for tuition, but also for transportation costs; district where group home is located is not responsible. West Windsor-Plainsboro, App. Div. unpub. op. Dkt. No. A-4919-01T1, July 1, 2003, reversing St. Bd. 02:April 3 and 00:Sept. 5.

DYFS established that teacher committed sexual abuse upon student, and teacher's name will therefore be retained on DYFS's central registry. DYFS v. B.B., App. Div. unpub. op. Dkt. No. A-4146-01-T2.

DYFS' failure to notify district of its placement decision deprived district of opportunity to participate in decision; remanded for determination of whether such failure affects district's responsibility for cost of placement, as regulations no longer require participation of district of residence in placement of classified pupil. (99:Dec. 23, Highlands)

DYFS has no obligation to conduct independent investigation of residence but may rely on information received from the Department of Human Services. (99:March 22, Newark v. Dept of Ed.)

DYFS

DYFS placement: Pursuant to N.J.S.A. 18A:7B-12(b), board was district of residence for classified child because child lived with his mother prior to DYFS placement and because mother currently resides in the district. (99:Dec. 23, Highlands)

School district of residence, under both new and repealed regulation, has the responsibility for non-residential special education costs of pupil placed by DYFS in approval residential private school. (00:Sept. 11, Highlands)

EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT (EFCFA)

Commissioner denies the issuance of \$12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)

Commissioner orders the issuance of \$19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

EDUCATIONAL SERVICES COMMISSIONS

Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (00:Jan. 2, Anders, settlement approved St. Bd. 02:Jan. 2)(02:Dec. 2, Trigani)

Board violated N.J.A.C. 6:28-3.1 and Elson by subcontracting LDTC services to Ed. Services Commission as substitute during LDTC's sabbatical leave. (98:Oct. 5, South Amboy)

Educational Services Commission must refund DOE \$90,709 in unused Chapter 192-93 funds with interest earned. Chapter 192-93 funds that were borrowed from that account to fund salary differential payments under TQEA had to be repaid. (99:April 16, Middlesex County)

EDUCATIONAL SERVICES COMMISSIONS

N.J.S.A. 18A:46-25 does not authorize jointure commission to contract with participating board of education to provide guidance services to non-handicapped students. Boards can county establish educational services commissions under N.J.S.A. 18A:46-14 to provide a broad range of services to handicapped and non-handicapped students. Colantoni v. Long Hill Bd. of Ed., 329 N.J. Super. 545 (App. Div. 2000)

The State has no duty to subrogate itself to the losses by embezzlement suffered by an Educational Services Commission. (99:Feb. 5, Middlesex County)

ELECTIONS

Ballot: A candidate for board of education is not entitled to use a professional title ("Dr.") preceding his name on the ballot unless authorized to do so by statute or unless using the professional title is necessary to protect the voting public from confusion or deception. Sooy v. Gill, 340 N.J. Super. 401 (App. Div. 2001)

Literature

Flyers encouraging "vote yes;" matter dismissed as untimely. (98:Nov. 17, Pursell)

Referenda

Purchase of land: board may purchase land from surplus without passing referendum, so long as voters pass on budget that includes line item reflecting such appropriation of surplus. (00:Aug. 2, Fairfield, St. Bd. rev'g 00:Feb. 17)

Timeliness: Bond referenda could not be challenged after 20 day limit, even though late filing was based on misinformation given by DOE; equitable estoppel did not apply as misrepresentation was error, and not supplied by school board. (98:Nov. 17, Pursell)

School bond referendum information (community relations information book) did not unfairly advocate any position. (99:Oct. 5, Adams, aff'd St. Bd. 00:May 3)

EMPLOYMENT DISQUALIFICATION

Alternate route candidate was disqualified from school employment based on her conviction for death by auto which, while at the time was a third degree crime, constituted a disqualifying offense because it was equivalent to second degree crime of vehicular homicide under amended criminal statute. (01:Oct. 1, Howard, appeal dismissed for failure to perfect. St. Bd. 02:Feb. 6)

Bus Driver: Convictions for drug possession and other offenses sufficient for disqualification under N.J.S.A. 18A:6-7.1, petitioner demonstrates progress toward rehabilitation but fails to do so by clear and convincing standard. (98:Oct. 23, J.A.R., aff'd St. Bd. 99:Feb. 3)

EMPLOYMENT DISQUALIFICATION

Insufficient demonstration of rehabilitation

Fingerprint search of custodian revealed murder conviction in 1966; seriousness of offense and contact with pupils outweighs early release from prison, steady employment and strong ties in community. (98:Feb. 27, J.G., aff'd St. Bd. 99:June 2; aff'd App. Div. unpub. op. Dkt. No. A-6114-98T5, June 23, 2000)

Possession by bus driver of drug paraphernalia was a disqualifying offense under N.J.S.A. 18A:39-19.1. (99:March 8, J.W., aff'd St. Bd. 99:May 5; aff'd App. Div. unpub. op. Dkt. No. A-5481-98T3, June 12, 2000)

Possession of drugs, drug paraphernalia and burglary offenses were disqualifying offenses pursuant to N.J.S.A. 18A:6-7.1. (98:Oct. 23, J.A.L., appeal dismissed for failure to perfect, St. Bd. 99:Jan. 6)

Motor Vehicle offense (teacher driving while in possession of marijuana), which was downgraded from drug possession offense, is not a disqualifying offense under N.J.S.A. 18A:6-7.1; statute is limited to offenses likely to be revealed by criminal history background check, which does not include motor vehicle offenses. (01:Dec. 10, Novak)

1998 amendments: N.J.S.A. 18A:6-7.1 as amended does not permit demonstration of rehabilitation, but only the right to challenge the accuracy of the criminal record. (01:Oct. 1, Howard, appeal dismissed for failure to perfect, St. Bd. 02:Feb. 6)

EQUITABLE ESTOPPEL

Did not apply to require school board to accept sibling of non-resident tuition student although parents relied on representations that siblings would be accepted; board's decision was justified in light of overcrowding and absence of knowing misrepresentation or "manifest injustice" (99:Sept. 3, J.S., aff'd St. Bd. 00:Jan. 5)

Estoppel does not apply to a person who is not a party to the proceeding or an agent of that party. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)

Judicial estoppel: Parents were judicially estopped from asserting claim of residency in district where they had taken inconsistent position in previous litigation; summary judgment granted; parents ordered to pay back tuition. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)

Tenure acquisition: teachers assigned to a day care program could not acquire tenure or seniority credit for service in that program; tenure cannot be acquired through equitable estoppel, even though teachers were required to hold teaching certificates and otherwise treated like teachers. (02:Oct. 24, Brown)

EQUIVALENCY AND WAIVER

- Child Study Team Services: Waiver invalid for district that wanted to contract out basic child study team services to private vendor; such waiver contradicts legislative intent. (St. Bd. 00:May 5, Miller)
- Equivalency denied: School psychologist shall not be granted equivalency as guidance counselor because the positions require different certifications. Certification process is critical to providing thorough and efficient education. (St. Bd. 01:Aug. 1, Phillipsburg Education Association)
- Evaluation: Application granted to permit evaluation of tenured staff members through action research, peer coaching and portfolio assessment. Appeal filed. Settlement proposed and approved. (St. Bd. 02:Nov. 6, South Brunswick)
- Substitute teacher: District shall not be granted waiver to allow those with county substitute certificate to serve more than 20 consecutive days. (St. Bd. 00:May 3, Middletown)
- The certification process is critical to assuring the provision of a thorough and efficient education. An equivalency or waiver cannot properly be granted when T & E might be compromised. (St. Bd. 99:March 3, Guttenberg Education Association) See also (St. Bd. 00:May 3, Middletown; St. Bd. 01:Aug. 1, Phillipsburg Education Association)
- World Language Instruction: Equivalency granted to board to employ Berlitz instructors as full-time world language instructors not permitted where only certification is that of county substitute. (St. Bd. 99:March 3, Guttenberg Education Association)

ETHICS ACT

- Board member censured for representing the borough council rather than the school board in a matter before the board of education. (03:March 31, Gass)
- Board member fraudulently obtained an advisory opinion from SEC misleading SEC into believing the situation posed was his when it was actually that of another board member. Violation of public trust. SEC recommends and Commissioner concurs with board member's removal from board of education. (02:Dec. 3, Ordini, SEC motion to participate granted, St. Bd. 03:Feb. 5, aff'd for the reasons expressed therein, St. Bd. 03:May 7)
- Board member gave resume to Account Manager at Blue Cross/Blue Shield after serving on board's Finance Committee which recommended new health insurance provider – Blue Cross/Blue Shield. Board member hired by Blue Cross/Blue Shield. No findings that board member used his position for unwarranted privileges or advantages. Poor judgment shown. (Complaint dismissed C33-96, 97:Oct. 28, Mercer, appeal dismissed St. Bd. 00:Feb. 2)

ETHICS ACT

Board member used her position to secure unwarranted privilege for another when, using her official title, she requested a delay in the release of a Commissioner decision. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated the Act when she voted on three separate occasions to approve bill lists that contained bills from a printing company owned by her husband and for which she worked. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Censure reversed for board member who voted on a collective bargaining agreement negotiated with the same statewide union (NJEA) to which he belonged. (St. Bd. 00:March 1, Pannucci, reversing N.J.A.R. 2d (EDU 339))

Commissioner adopted SEC recommendation to reprimand board member for failure to file a personal/relative disclosure statement, pursuant to N.J.S.A. 18A:12-25 and/or an annual financial disclosure statement required by N.J.S.A. 18A:12-26. (04:Feb. 11, Seigel)

Disclosure Forms

Failure to file—Removal

Board member reprimanded for failure to file financial disclosure statement. (04:Feb. 5, Pabon)

Failure to disclose a relationship in and of itself does not constitute a violation of the act unless it is the failure to disclose it on a disclosure form. (99:Feb. 9, Malette)

Member of charter school board of trustees. (98:Oct. 15, Serrano) (98:Oct. 15, Wright)(01:Jan. 19, Hill)

Moot: Board member resigned. (99:Aug. 27, White)

Moot: Matter moot as to board member who failed to file and was removed from board by Superior Court. (98:Oct. 15, Neal)

Official provided statement without Commissioner's knowledge; no penalty. (99:Aug. 27, Faigenbaum)(99:Aug. 27, Ludwigsen)(99:Aug. 27, Moore)(99:Aug. 27, Richardson)

Removed (99:Aug. 27, Smith)(99:Aug. 31, Addison)(99:Aug. 31, Cornwall)(99:Aug. 31, Sekelesky)

Suspension for 30 days for failure to file; removal from board if not filed by end of 30 days. (01:Nov. 15, Logan)(01:Nov. 15, Nieves)(01:Nov. 15, Tyska)(01:Nov. 15, Murray)(01:Nov. 16, Helle)(01:Nov. 16, West)(01:Nov. 16, Kendall)(01:Nov. 26, Dixon)

False Statement

Omission of wife's employment for company that has contract with board, and with an insurance company, constituted filing a false statement; however, amount of contract was small and board member was contrite; Commissioner does not disturb ALJ's penalty of censure. (00:Nov. 20, Cirillo)

ETHICS ACT

Financial involvement reasonably expected to impair objectivity

Board member violated Act when he commented during public budget meeting that the stipend paid to team leaders was low, when his wife was a team leader at the middle school; censure ordered; no violation of board member's free speech. (02:July 16, Vickner, motions to supplement record and compel production of documents denied St. Bd. 02:Dec. 4, motions for reconsideration and for oral argument denied, St. Bd. 03:March 5, decision of SEC and Commissioner aff'd St. Bd. 03:July 2)

Board member violated the Act when she voted on three separate occasions to approve bill lists that contained bills from a printing company owned by her husband and for which she worked. Acted in a manner in which she had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Late filing—Suspension

School Administrators

Three days without pay. (98:Oct. 15, Dunham)

Suspension for 30 days and removal if fails to file properly prepared forms within those 30 days, for charter school board of trustees member who did not file until order to show cause, and then submitted inadequate filings. (02:Dec. 13, Featherson)(02:Dec. 23, Lassiter)

Ethics statutes do not confer on the individual complainant the right to prosecute matter. (St. Bd. 00:March 1, Pannucci)

Negotiations

Board member participated in negotiations with teachers' bargaining unit of which his wife was a member; reprimand ordered as he relied on attorney's mistaken advice and his participation offered little opportunity to influence the outcome. (98:Aug. 16, Santangelo)

Board member whose wife had an out-of-district union affiliation as a teacher in neighboring district and who himself had an out-of-district union affiliation as a supervisor, violated the Act when he negotiated in clandestine meetings, and voted, on two teachers' contracts and three administrators' contracts. 45-day suspension ordered for violating sections a, b, and c of the Act. (00:June 1, White, appeal dismissed for lack of standing St. Bd. 00:Sept. 6)

ETHICS ACT

No per se violation of N.J.S.A. 18A:12-24(c) where board member is a member of another local union within same statewide union and votes on collective bargaining agreement in the district. Connection between vote and salary structure of whole class of employees on statewide basis is far too attenuated. (St. Bd. 00:March 1, Pannucci, reversing Commissioner 97:Jan. 28. See also decision on motion St. Bd. 97:June 4)

Personal/financial involvement reasonably expected to impair judgment

Board member censured for failure to disclose the board as a source of prepaid expenses for her conference attendance, voting on a bill list which included reimbursement to her and for voting on tuition payment to a school where her husband was employed. (02:Sept. 6, Dunkley)

Board member participated in discussions of possible purchase of property belonging to brother-in-law (by marriage); she did not advocate for property and in-law was by marriage only; reprimand ordered. (99:Feb. 9, Malette)

Board member violated Act when he voted to retain the bank where he is employed, as the depository of monies for the district. (02:Jan. 31, Carpenter, aff'd St. Bd. 02:May 1)

Board member who served as borough consultant advising on budgetary matters. Censure imposed. (03:March 31, Gass)

Board member who voted on 15-page bill list that included his wife's expense reimbursement violated the Act; reprimand ordered. (98:Aug. 26, Levine)

Employee of non-profit PRAB had indirect financial involvement with PRAB and should not have voted on district's contract with PRAB to provide prekindergarten services. Mitigating factors included fact that this is not a new contract, but a renewal. Censure ordered. (00:July 15, Arocho)

Financial involvement: Chairperson of personnel committee moved resolution to appoint spouse but excused himself from vote (no allegations that he participated in any discussion); censure ordered. (00:July 10, Sipos)

Former board member is censured for having voted on payment of tuition to vocational school board where he was employed as a principal; financial involvement that reasonable person could perceive as impairing objectivity pursuant to N.J.S.A. 18A:12-24(c). (01:Sept. 10, White)

New board member who participated in discussion of whether board should lease building to church where he serves as Deacon, and later voted not to rescind lease, violated Act; censure ordered rather than reprimand as he acted against attorney's advice. (99:May 24, Coleman)

ETHICS ACT

- Newly appointed board members violated the Act when they voted to reappoint board's auditors who had served as their campaign treasurer; reprimand ordered in light of mitigating fact that auditors had served for several years. (99:March 4, Longo and Sedaghi, aff'd St. Bd. 99:July 7)
- Reprimand: Commissioner agrees with SEC that reprimand is appropriate penalty for board member who voted on resolution authorizing issuance and sale of bonds with bank when she was a vice president of wholly owned subsidiary of related bank; penalty took into account mitigating factors. (00:Nov. 27, Haines)
- School Ethics Commission found probable cause to credit allegations of board member's violation of the School Ethics Act, N.J.S.A. 18A:12-24(b) and (e). In the presence of the accused member, a second member, who was campaigning for election to borough council, solicited a campaign donation from a vendor's employee and implicitly threatened non-renewal of the vendor's service contract with the district. Members subsequent conversation with the employee pertaining to the donation contributed to the SEC finding of a violation of the Act in the member's attempt to use his position to secure unwarranted privileges for others and in soliciting a campaign contribution with knowledge that it was given with the knowledge that it would affect him in his official duties. Commissioner accepted SEC's recommendation of censure. (02:Nov. 4, Gallagher, SEC Decision, Commissioner Decision)
- Settlement approved: Board member voted on employment and salary of spouse and failure to reimburse board for spouse's travel expenses and her own expenses; parties agreed to three month suspension; Commissioner approves settlement: Commissioner approves penalty. (99:June 10, Harris)
- Settlement approved: board member agreed to reprimand for inadvertently voting on bill list containing a bill of her employer. (2001: July 27, Jackson)

Private action compromising the board

- Reprimand for board member who distributed to staff members a false and malicious document about fellow board members. (03:April 14, Schmidt)
- SEC determined that board members violated N.J.S.A. 18A:12-24(b) and (c) when they voted to appoint their personal attorney as board solicitor. Commissioner modified SEC's penalty due to prior ethics infraction. (03:Feb. 27, I.M.O. Davis)

Training, failure to attend--removal

- (98:Oct. 1, Severns) (98:Oct. 1, Burling) (98:Oct. 1, Trout) (98:Sept. 21, Reed)(99:July 7, Wilder)(00:July 10, Dorety (Oldmans Twp.))
- Board member resigns – matter moot. (02:April 29, Blumenthal)

ETHICS ACT

- Charter school trustee appointed February 2001 removed for failure to respond or attend training up to and including October 2002. (02:Dec. 18, Fonesca)
- Commissioner adopted SEC's recommendation of removal of board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions without good cause. (03:Aug. 19, Brunett)
- Commissioner adopted SEC's recommendation of suspension of board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions. Member advised that he missed June training due to business and family obligations and that he would attend October training session. Suspension ordered from August 19, 2003 until date of October 2003 training session. Summary removal ordered if member failed to attend October training session. (03:Aug. 19, Heinle)
- Commissioner adopted SEC's recommendation to remove board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions without good cause. (03:Aug. 21, Bailey)(03:Aug. 21, Blocker)(03:Aug. 21, Correnti)(03:Aug. 21, Gruber)(03:Aug. 21, Ryan)(03:Aug. 21, Scaldino)
- Commissioner adopted SEC's recommendation to remove board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, without good cause. (03:Aug. 21, Carter)
- Commissioner adopted SEC's recommendation to suspend board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions. Member advised that he missed June training due to family obligations and that he would attend October training session. Suspension ordered from August 19, 2003 until date of October 2003 training session. Summary removal ordered if member failed to attend October training session. (03:Aug. 19, Evans)
- Commissioner adopted SEC's recommendation to suspend re-elected board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where board member claimed exemption due to having attended training in 1987, prior to the effective date of the School Ethics Act. Commissioner agreed with SEC that member was not "grandfathered" because his prior training in 1987 did not include training in the School Ethics Act. Member suspended until October 2003 training, summary removal ordered if member failed to complete October 2003 training. (03:Aug. 21, Nicholas)

ETHICS ACT

Commissioner modified SEC's recommendation of suspension until member completed training followed by removal if member failed to complete training by October 2003. Member advised that religious observances prevented his attendance at weekend training sessions and was out of the country on the one weekday training was offered. Commissioner rescinded suspension but ordered removal unless member completed training by October 2003. (03:Aug. 21, Tawil)

Commissioner modified SEC's recommendation to suspend member until he completed training as mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, and remove if training was not completed by September 2003. Board secretary/business administrator advised that member had resigned, therefore, Commissioner dismissed matter as moot. (03:Aug. 21, Keeler)

Failure to attend from April to April with no response to recommendation recommending removal; board member removed. (98:Sept. 21, Reed)

Late attendance

Board member of non-operating district not suspended despite failure to attend – will be removed if doesn't attend by October. (99:July 28, Cahill)(99:July 28, Hall)

No suspension for board member whose failure to attend due to unique circumstances; removal if fails to attend October session. (01:Sept. 6, Kowal)

No suspension for board member whose failure to attend weekend session after warning was due to her disability and inability to do extensive walking, where she was registered for 1-day October program, removal if fails to attend October session. (01:Sept. 5, Golden)

No suspension for board member who was called upon to assist at World Trade Center after September 11; removal if fails to attend October session. (01:Sept. 6, Young, suspension vacated 01:Sept. 21)

Resignation renders issue of board member's late attendance moot. (01:Sept. 6, Colacci)

Suspension for next meeting: (98:Oct. 1, Meier) (98:Oct. 1, Osborne) (98:Sept. 4, McMahon) (98:Sept. 4, Gross-Quatrone) (98:Sept. 4, Anuario) (98:Sept. 9, Van Gieson) (98:Sept. 9, Beers) (98:Sept. 9, Calhoun) (98:Sept. 9, Winka) (98:Sept. 21, Long) (98:Sept. 21, Johnston)

Suspension for next meeting, or removal if fails to attend October session, revising Commission's recommendation in light of explanation for failure to attend June sessions. (98:Sept. 21, Improta) (98:Sept. 21, Werther)

ETHICS ACT

Suspension pending attendance at October session; otherwise removal. (00:July 10, Nothole)(00:Aug. 10, Fisher)(01:Sept. 6, Banes)(01:Sept. 6, Dowling)(01:Sept. 6, Haas)(01:Sept. 6, Kazawic)(01:Sept. 6, Murch)(01:Sept. 6, Schamp)(01:Sept. 6, Tannenhaus)(01:Sept. 6, Wada)(01:Sept. 6, Wieland)(01:Sept. 6, Williams)(01:Sept. 6, Wilson)

Suspension pending attendance at September program; removal if fails to attend October. (00:Aug. 10, Vierno)

Suspension until attends; or removal if fails to attend by October. (98:Sept. 21, Smith)(99:July 28, Adams, decision amended, recommendation to suspend or remove is moot as member attended June training session)(99:July 28, Hanna)(99:July 28, Reed)

Unwarranted privileges

Asking school business administrator to intercede for him in acquiring unsecured loan from bank that holds board's accounts was gross violation of act -- censure ordered; penalty would be harsher if evidence indicated he had actually asked school business administrator to write interceding letter. (99:Feb. 9, James)

Assistant Superintendent, part owner of local day care center, violated Act when he represented to the SEC that his day care center would need to be used to meet the demand for services and then wrote a letter to ensure that factual scenario; sent letter to district residents promoting his day care center using his title, and acted contrary to SEC's advisory opinion letter. One month suspension without pay. (00:June 16, Confessore, decision on motion St. Bd.01:Feb. 7, aff'd St. Bd. 01:Oct. 3)

Board member used her position to secure unwarranted privilege for another when, using her official title, she requested a delay in the release of a Commissioner decision. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated the Act when she acquired mailing labels containing student information that were later used for the political campaign of her husband, a former mayor. Penalty of censure recommended by SEC. Commissioner agrees. (02:April 18, Russo)

Commissioner upholds settlement agreement between Ethics Commission and board member, that requires censure of board member who violated N.J.S.A. 18A:12-24(b) by posting flyers supporting his reelection in the school's administrative office. (02:Dec. 16, Shepherd)

ETHICS ACT

Ethics Commission found that first board member violated the Ethics Act by presenting a vendor's employee to a second board member who was running for borough council and who, in the presence of the first member, solicited a donation from the employee for his campaign for borough council. Employee perceived the solicitation as a threat against the vendor's existing contract with the school district. Commissioner agreed with the Ethics Commission that the first board member should be censured for attempting to use her office to secure unwarranted privileges for herself or others. (02:Sept. 23, Ferraro)

Use of official title as a department of education employee and board of education member on letterhead in request for delay in release of decision was use of official position to influence the SEC. (03:May 12, Ball)

ETHICS ACT

Use of school for personal gain

Board member did not use school for personal gain when she used school copier to copy to staff a disparaging letter about fellow board members; no gain established. (03:April 14, Schmidt)

Violation found – penalty

Censure

Board member violated the Act when she acquired mailing labels containing student information that were later used for the political campaign of her husband, a former mayor. Penalty of censure recommended by SEC. Commissioner agrees. (02:April 18, Russo)

Ethics Commission found that first board member violated the Ethics Act by presenting a vendor's employee to a second board member who was running for borough council and who, in the presence of the first member, solicited a donation from the employee for his campaign for borough council. Employee perceived the solicitation as a threat against the vendor's existing contract with the school district. Commissioner agreed with the Ethics Commission that the first board member should be censured for attempting to use her office to secure unwarranted privileges for herself or others. (02:Sept. 23, Ferraro)

Reprimand

Board member used her position to secure unwarranted privilege for another when, using her official title, she requested a delay in the release of a Commissioner decision. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated the Act when she voted on three separate occasions to approve bill lists that contained bills from a printing company owned by her husband and for which she worked. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

EVALUATION OF TEACHING STAFF MEMBERS

PIP: Board's policies mandating the inclusion of district goals in the development of Professional Improvement Plan (PIP) did not violate regulation by circumscribing role of teacher; however, PIP must also contain teacher's individual goals, and district responsibilities. (01:May 18, Kinnelon)

EVALUATION OF TEACHING STAFF MEMBERS

PIP: District's Professional Improvement Plan practices were not in compliance with N.J.A.C. 6:3-4.3(f)(3) and (h)(3) because they unduly circumscribed the role of the teaching staff member in the development of a PIP, and because the forms failed to include space for a written statement of the district's responsibilities for implementing the PIP. (99:April 26, Ed. Ass'n of Passaic)

EXTRACURRICULAR ACTIVITIES – NJSIAA

ALJ overruled NJSIAA's denial of a student/athlete's request for a waiver of the NJSIAA's eight semester limitation on athletic eligibility. Commissioner determined that NJSIAA's denial of the requested waiver was entirely consistent with its previous application of its eligibility rules, however, the NJSIAA's deferral of the September 2000 request, until spring of 2002, denied the student due process. Commissioner found that the delay so prejudiced the student as to be arbitrary. Commissioner granted the waiver for all but the first two games of the 2002-03 football season. (02:Aug. 8, Taylor)

Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

Challenge to board's failure to bestow upon child the Most Valuable Player award was dismissed as untimely. (99:June 1, J.M.)

Coach's determination not to award petitioner MVP award for cross-country track was not unreasonable. (00:Sept. 11, J.M., aff'd St. Bd. 01:Jan. 3)

Commissioner upheld NJSIAA decision to put basketball team on probation for two years and suspend team from participating in championship tournament due to unsportsmanlike conduct involving violence. (99:Jan. 29, Paterson)

Commissioner upheld NJSIAA decision to suspend and fine coach for unsportsmanlike conduct, and to require the basketball program to provide corrective action plan related to crowd control; participation of NJSIAA's general counsel during hearing did not prejudice his due process rights; nor were NJSIAA's rules applied in an arbitrary, capricious or unreasonable manner. (98:Nov. 10, Turner)

District may not preclude vo-tech Magnet School students from participating in its extracurricular activities and athletic programs unless such participation is not practicable or reasonable. (99:Nov. 29, G.W.S.)

Divisional realignment by NNJIL establishing two public school divisions and one nonpublic school division was not arbitrary, capricious or unreasonable; it had a rational basis, did not violate equal protection or other constitutional rights of parochial schools, advance or inhibit exercise of religion, or violate the N.J. Law Against Discrimination. NJSIAA's determination is affirmed. (00:June 23, Divisional Realignment)

EXTRACURRICULAR ACTIVITIES – NJSIAA

- Judgment call of game officials, or even egregiously incorrect decision, is not reviewable by Commissioner of Education. (99:Dec. 3, Hazlet)
- N.J.S.A. 18A:27-4.1 did not preempt or repeal N.J.S.A. 34:13A-24 nor was N.J.S.A. 34:13A-24 unconstitutional delegational of governmental power to arbitrator; PERC determination that employee has right to arbitrate board” decision not to renew his extracurricular coaching contract. Jackson Twp. Bd. of Ed. v. Jackson Ed. Assn., 334 N.J. Super. 162 (App. Div. 2000); certif. den. 165 N.J. 678 (2000)
- NJSIAA’s determination that district’s team could no longer play an independent schedule in football, was not arbitrary. (00:July 28, Wildwood)
- NJSIAA was not arbitrary in denying waiver of academic credit rule to pupil who failed English; student did not produce evidence to demonstrate that his failing grade was result of mother’s cancer; not does NJSIAA have authority to change allegedly unfair grade. (01:May 4, Wohlrahe)
- Participation in extracurricular activities is not an entitlement but a privilege; board’s permanent expulsion of pupil from basketball team for sexual harassment upheld along with three day school suspension. (00:May 5, D.K.)
- Special education student whose parents unilaterally removed him from public school and placed him in school that was neither a Department of Education-approved school nor a member of NJSIAA, was not eligible to play tennis at public high school; while parents had the right to place their son in a private school at their own expense without the consent of the local board of education, this does not mean that they have the right to participate in interscholastic athletics at their local public school while attending a private school that has no relationship to it. (03:October 9, C.J.N.) (03:October 9, B.R.I.)
- Sportsmanship Rule does not prevent penalty against whole team for incident involving violence, even where individual perpetrators are identified and punished. (99:Jan. 29, Paterson)
- Sportsmanship Rule: It was not arbitrary or capricious for NJSIAA to find that sportsmanship rule was violated where track coach filed to field competitors in three events and thus prematurely concluded an event because of his dissatisfaction with the officiating in that race; NJSIAA determination to suspend him for the season provided due process and is upheld. (00:July 10, Staton)

EXTRACURRICULAR ACTIVITIES – NJSIAA

- Sportsmanship standards were violated by football coach who hired “volunteer” coaches (not subject to background checks and not board-authorized) and allowed his 11-year old son to participate in 1995 high school intra-squad scrimmage; penalty not arbitrary or unreasonable; request for *de novo* hearing denied as record not inadequate. (98:July 15, Olsen)
- Student who attends one school may not participate in interscholastic athletics for another school pursuant to reasonable NJSIAA rule. (98:Aug. 31, E.L.)
- Treatment for substance abuse is not a circumstance beyond pupil’s control that would justify waiver of academic credit rule; while in this case a different result could have been reached, Commissioner was constrained to defer to NJSIAA’s ruling. (01:Oct. 31, C.S.A.)
- Waiver of Article V, Section 1, of the NJSIAA Bylaws, denied. (03:October 9, C.J.N.) (03:October 9, B.R.I.)

FORFEITURE OF PUBLIC OFFICE

- Commissioner does not have jurisdiction; if court declines to order forfeiture, only means for board of education to remove individual is through tenure charges. (99:Aug. 30, Carney)
- Commissioner of Education does not have jurisdiction to enter order of forfeiture. (99:May 3, Tighe)
- Upon forfeiture in Superior Court, it is unnecessary to proceed with tenure hearing; tenure charges rendered moot by forfeiture; tenure matter dismissed. (99:May 24, Wilburn)(03:March 14, Nixon)
- Where court fails to order forfeiture in criminal matter, board of education may apply to court; Commissioner has no jurisdiction. (99:July 30, Morton)

GIFTS OF PUBLIC FUNDS

- Board does not have the statutory authority to improve property of the municipality, and improperly expended public funds to improve sidewalk owned by municipality, to jointly develop and construct a recreational field; Division of Finance must recover from school board all state aid received on the amounts inappropriately disbursed. (00:Feb. 26, Wildwood Crest)
- Board’s motion for summary judgment granted; expenditure of public funds (money raised through bonds) to promote the construction of a new school, was not an improper use of those funds. (01:Aug. 6, Rural Tabernacle)
- Emergent relief granted to constituent board; dissolving board is restrained from making payments to employees for accrued sick leave benefits under its Dissolution Incentive Program, until a hearing is held on whether incentive program is *ultra vires* payment of public money for service that teachers are already obligated to provide. (00:June 29, Berlin)

GIFTS OF PUBLIC FUNDS

N.J.S.A. 18A:6-4 grants to the Commissioner the authority to delegate to the Office of Compliance the ability to inspect the Board's fiscal accounts; no rulemaking requires. (00:Feb. 26, Wildwood Crest)

HOME SCHOOLING

Placement

Current State education law, which differentiates between nonpublic school students and home-schooled students with respect to providing funds for speech therapy, is constitutional, but in the context of the facts of this case was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not at home. This service was offered to other nonpublic school students at the public school, to deny a home-school student the service was a denial of equal protection. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)

Parents' application for emergent relief to place home schooled child in tenth grade rather than ninth grade, denied. District must conduct educational evaluation of pupil within 30 days to determine whether placement should be changed; parents' request for independent evaluation is denied. (98:Oct. 16, M.C.)

Reentry into public school: District should have made initial placement of home schooled pupil in accordance with grade level represented by parents as appropriate level, on presumption that instruction was equivalent; then district should have assessed her actual level with respect to the district's specific course proficiencies to determine if initial placement was appropriate. (00:Feb. 2, M.C.)

Reentry into public school system: Upon reentry, home schooled pupils to be treated as any other new or returning student from private school or school outside of district. (98:Dec. 3, M.C.)

INCREMENTS

Board action upheld

Board properly withheld basic skills teacher's increment for performance problems; clerical error on evaluation that indicated she would receive increment had no legal significance. (98:Feb. 5, Sims)

Board properly withheld increments. (99: Aug. 25, Blazakis)

Board properly withheld increments for less than satisfactory performance. (00:Oct. 13, Jackson)(00:Nov. 13, Battle)(00:Dec. 1, Schlesinger)

INCREMENTS

- Board properly withheld increment. Withholding not arbitrary, capricious or unreasonable. Teacher failed to use effective instructional methods, establish and maintain discipline and failed to appraise the effectiveness of her own instructional program and methods. (02:March 11, Miele)
- Board properly withheld special education teacher's increments for lack of classroom control and inadequate classroom techniques and assessment of student needs. (99:Jan. 25, Natapoff)
- Board properly withheld teacher's increment for performance problems and not because teacher was not a member of an African-American sorority as were her principal-evaluator and other teachers in the school. (01:March 7, Mininson)
- Board properly withheld the increments of 14 certificated staff members based on unsatisfactory performance; Commissioner reverses ALJ's determination that board acted unreasonably in one instance, finding that the board's actions were amply supported by the record. (98:Sept. 4, Andino, et. Al.)
- Board properly withheld the increments of special education (EMR) teacher for ineffective teaching techniques and harsh demeanor. (98:July 8, Elik)
- Board properly withheld increment of teacher for using improper instructional techniques, and other deficiencies. (00:Aug. 18, Alessio)(00:Aug. 18, Smallwood)
- Board properly withheld increments of speech/language specialist for failure to complete paperwork such as reporting forms and lesson plans; fact that other supervisors did not strongly enforce these requirements and that the problems were corrected by the end of the year did not affect propriety of withholding. (98:July 14, Zampella, aff'd St. Bd. 98:Dec. 2)
- Board's action to withhold teacher's increment for performance reasons is upheld. While his performance had improved, it was less than satisfactory, and although he was not specifically advised his increment was in danger, he had reasonable foundation to expect withholding. (01:July 9, McCormack)
- Elementary school teacher with 35 years experience performed unsatisfactorily with respect to pupil supervision and classroom management. (02:Dec. 23, Clark)
- Increment holding upheld for failure to properly assess pupil needs, use effective techniques, organization or planning. (00:Sept. 1, Elik)
- Increments properly withheld for teaching performance problems. (00:Sept. 15, Holston)

INCREMENTS

Increment restored

Increment restored; board failed to answer teacher's appeal. (00:July 6, Smith)(00:July 6, Burgess)

Teacher terminated for excessive absenteeism including absence due to work-related injury. Penalty of increment withholding for separate incident of insubordination rejected by Commissioner since increment withholding applies prospectively. (00:May 15, Folger)

Jurisdiction over

Commissioner had no jurisdiction over disciplinary increment withholding where PERC had exercised jurisdiction and arbitration award had been entered. (00:Feb. 15, Montgomery)

Commissioner had no jurisdiction over increment withholding since assistant board secretary/director of administration was not a teaching staff member. (00:June 12, Cheloc)

Commissioner has no statutory authority to act on increment withholding of clerk. (00:July 13, North Bergen)

Jurisdiction: Commissioner questions whether he has jurisdiction over increment withholding of noncertified clerk within a bargaining unit; ALJ ruling that the board acted arbitrarily is set aside, and matter remanded on jurisdictional issue. (99:Oct. 28, North Bergen)

Superintendent's failure to receive a travel reimbursement of expenses was a contractual matter and not an increment withholding; outside of jurisdictional purview of Commissioner. (98:July 17, Vitacco)

Where employee was not a teaching staff member for which the Commissioner has jurisdiction to review increment withholdings, nor was she a member of a collective bargaining unit which would provide a mechanism for resolving such disputes, the Commissioner would consider claim of retaliation for denying salary increases; held that board did not act improperly. (00:June 12, Cheloc)

Procedures

Matter dismissed for lack of prosecution. (99:March 31, Hayes)

Notice: There is no statutory requirement for advance written notice of intent to withhold an increment. (98:Feb. 5, Sims)

90 day rule: began to run from time teacher received letter advising him of the withholding of his increment, even where during first month of that period he believed he would not be offered reemployment; petition dismissed as untimely filed. (99:Feb. 22, Freyberger)

90-day rule: relaxation of rule unwarranted where teacher who challenged increment withholding claimed stress prevented her meeting deadline. (00:Sept. 11, Bland-Carter)

INCREMENTS

Settlements

Matter settled. (01:Sept. 5, Burd)(01:Sept. 20, Harris)(02:June 26, Chabrol)

Standard of review

Law judge applied heightened standard of review and erroneously interjected own value judgment that language specialist's failure to complete paperwork was insignificant; scope of Commissioner's review is only to determine whether evaluators had a reasonable basis for their conclusions. (98:July 14, Zampella, aff'd St. Bd. 98:Dec. 2)

INDEMNIFICATION

Board member censured for failure to disclose the board as a source of prepaid expenses for her conference attendance, voting on a bill list which included reimbursement to her and for voting on tuition payment to a school where her husband was employed. (02:Sept. 6, Dunkley)

Board member who filed petition with Commissioner for indemnification was not thereby disqualified from board membership, even where the board member is seeking indemnification which is discretionary, not statutory; the primary purpose of the claim for which indemnification was sought served important public objectives, namely the board member's ability to attend board meetings in safety. (99:Feb. 16, Walsh)

Board of education not obligated to indemnify teacher who successfully defended criminal harassment charge brought by student. Charge did not arise out of the performance of the duties and responsibilities of a high school English, journalism and drama teacher. (03:Jan. 3, Brothers)

Indemnification denied for board member who was sued for slander by private citizen, for telling others that citizen was a racist, a nazi, and under investigation by the Department of Justice, as he was not acting in his official capacity when he made the comments. (01:Aug. 13, Grant, aff'd St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2109-01T2, March 11, 2003)

Indemnification denied to teacher who was suspended upon indictment for sexual assault, and against whom charges were subsequently dismissed upon his completion of PTI; PTI not tantamount to final disposition in his favor. No need to reach issue of whether charges arose out of and in course of his employment. (01:Aug. 30, Busler, aff'd on other grounds St. Bd. 02:Feb. 6)

Teacher was entitled to reimbursement for legal fees sought by law firm that substantially assisted teacher in successfully defending criminal charges, although another firm provided primary representation. (00:Aug. 31, Seabrook)

INTER-LOCAL SERVICES AGREEMENT

Board did not abuse its discretion in failing to renew inter-local service agreement with school that provided an in-state school option for students in the district, school could readopt its sending-receiving relationship with Port Jervis, located in New York. (01:Nov. 19, K.S.R.)

JANITORS

Dismissal ordered; custodian did not file answer to charge of chronic, excessive absenteeism. (98:Aug. 7, Scott)

Failure to answer charges; custodian dismissed for insubordination and other just cause. (98:Oct. 19, Pietronico)

Five-day suspension of non-tenured custodian was outside Commissioner's jurisdiction. Remedy lies within the collectively negotiated agreement. If custodian were tenured, suspension without pay would be minor disciplinary action lawfully imposed by the board. (02:March 14, Heminghaus)

Janitor's poor performance of responsibilities, as well as conduct unbecoming by virtue of hostile behavior toward other staff members, and insubordination, warranted dismissal. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5, aff'd St. Bd. 00:May 3)

School janitor occupies a position of trust and responsibility necessitating high standards of dependability and morality. (99:June 9, Vereen)(99:June 9, Prusakowski)

JOINTURE COMMISSION

District acted within its authority when, after having opened bids it rejected all bids; lowest bidder's claims of implied contract and agency based on Jointure Commission's notice are dismissed. (99:Feb. 24, Taranto Bus)

Jointure Commission may not intervene one month after final decision has been issued. (St. Bd. 99:May 5, Colantoni)

N.J.S.A. 18A:46-25 does not authorize jointure commission to contract with participating board of education to provide guidance services to non-handicapped students. Colantoni v. Long Hill Bd. of Ed., 329 N.J. Super. 545 (App. Div. 2000)(aff'g St. Bd. decision 99:March 3 that reversed Commissioner decision 97:Jan. 23)

LABOR RELATIONS

New hires: Appellate Division upheld arbitration award that interpreted collective bargaining agreement to require the district to pay newly hired teachers (that is, teachers who had accepted offers of employment to commence in September) for their attendance at summer professional development workshops even though attendance at workshops was voluntary and the newly hired teachers had not yet reported to work for the district. East Brunswick Bd. of Ed. v. East Brunswick Ed. Assn., Superior Court of New Jersey, Appellate Division Dkt. No. A-2627-99T2 (Feb. 23, 2001); certif. den. New Jersey Supreme Court (April 30, 2001)

N.J.S.A. 18A:27-4.1 did not preempt or repeal N.J.S.A. 34:13A-24 nor was N.J.S.A. 34:13A-24 unconstitutional delegational of governmental power to arbitrator; PERC determination that employee has right to arbitrate board" decision not to renew his extracurricular coaching contract. Jackson Twp. Bd. of Ed. v. Jackson Ed. Assn., 334 N.J. Super. 162 (App. Div. 2000); certif. den. 165 N.J. 678 (2000)

Recognized representative has standing to bring action challenging board decision to employ uncertified volunteer to teach spanish under supervision of certified teacher even in absence of specific aggrieved teacher. (01:March 7, Middletown Education Assn.)

LAND (See, SCHOOLS AND SCHOOL BUILDINGS)

Board's motion for emergent relief denied for failure to meet the *Crowe* standards of irreparable harm, settled legal rights, a likelihood of prevailing on the merits, and a balancing of equities and interests in its favor. Board sought an Order voiding a prior lease agreement between it and the borough so that a field could be returned to the board to be used as the site for construction of a new school. (04:Jan. 28, Lincoln Park)

Commissioner, upon remand from N.J. S. Ct., adopted ALJ's findings to equitably distribute the regional district's assets and liabilities based upon a formula designed by expert consultant, despite the absence of the proposed distribution in the resolution adopting the dissolution. (04:Feb. 5, I.M.O. Union County Regional H.S.)

LEAVES OF ABSENCE

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

Determination of eligibility for temporary disability benefits by workers' compensation court sufficient to enable Commissioner to make a determination whether sick leave benefits under N.J.S.A. 18A:30-2.1 exists. No need to await permanent disability award. Sick and vacation days ordered restored. (01:Feb. 26, Frabizio)

No relaxation of the 90-day rule prescribed by N.J.A.C. 6A:3-1.3(d), for teacher seeking restoration of sick days for absences allegedly due to work related injury. (01:Sept. 4, Force)(01:Sept. 4, Leiva)

Sick leave under N.J.S.A. 18A:30-2.1 is not limited to the time period for which benefits are awarded by the Division of Workers Compensation (see Verneret); therefore, where leave was directly attributable to effects of earlier injury and subsequent surgery, shop teacher was entitled to full salary without loss of sick time under N.J.S.A. 18A:30-2.1, even though leave extended beyond period of time for which workers compensation benefits were awarded. (02:Oct. 30, Collins)

Teacher's acceptance of lump-sum workers' compensation settlement does not preclude claim for sick leave benefit under N.J.S.A. 18A:30-2.1 unless there is an intentional relinquishment of that right. (01:Sept. 20, Franks)

Teacher claiming "psychological injury due to stress" was not entitled to leave benefit under N.J.S.A. 18A:30-2.1 where she failed to demonstrate an illness that "arose out of and in the course of her employment" pursuant to the standard applicable in workers compensation cases. (01:Sept. 20, Franks)

Teacher's complaint for full salary under N.J.S.A. 18A:30-2.1 is dismissed as she voluntarily decided not to file a workers' compensation claim; the determination of work-relatedness of an injury should be made in a workers' compensation case except in limited instances such as where the Division of Workers' Compensation has no jurisdiction or the workers' compensation case is settled. (02:Oct. 7, Bruno-Schwartz)

Tenure charge of incapacity was not premature just because teacher has not yet received workers compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Under appropriate circumstances, the Commissioner has original exclusive jurisdiction to decide a claim for benefits under N.J.S.A. 18A:30-2.1. (00:March 1, Marino, St. Bd. rev'g 99:April 13, settlement on remand, Feb. 16, 2001)

LEAVES OF ABSENCE

Where teacher never received a determination from the Division of Worker's Compensation that his absences were due to a work-related injury, the absences were not improperly charged to his sick leave bank. (00:Jan. 24, Medeiros)

LIBRARY/LIBRARIANS

Paraprofessional aide working in library may perform clerical duties, but not professional educational media services involving independent initiative. (99:Sept. 9, Pennsville)

School library does not necessarily require properly certified librarian or educational media specialist; the school principal has the authority to develop and coordinate library. (99:Sept. 9, Pennsville)

MOOT ISSUES OR QUESTIONS

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Challenge to placement of pupil in regular math course rather than algebra dismissed as moot where pupil had transferred to different school district. (99:May 3, Fox)

Commissioner adopted ALJ's determination, pursuant to N.J.S.A. 18A:13-1 to 81, that a non-resident pupil who sought admission to a tuition placement, had her application rendered moot by virtue of her entry into college. (03:Aug. 19, A.K.)

NJEA

Board impermissibly denied the requests of three administrators (vice principals) to attend the NJEA convention, in violation of statute, N.J.S.A. 18A:31-2. Administrators' personal days were restored and any salary, benefits and emoluments were retroactively compensated. (03:May 28, Newark)

NJSIAA

Commissioner upholds NJSIAA denial of Midland Park withdrawal from Bergen-Passaic Scholastic League. Substantial need must be demonstrated. (02:April 4, Midland Park)

Petitioning board sought reversal of the final decision of the NJSIAA, which declared student ineligible to play football because he transferred to the district for athletic advantage, and further required the board to forfeit a victory over another high school as a result of the student's participation in that game. Commissioner found that both the board and student were afforded the full measure of due process to which they were entitled, and that the decision of the NJSIAA was not arbitrary, capricious or unreasonable. Petition was dismissed. (04:Feb. 18, North Brunswick)

NON-TENURED TEACHING STAFF

Charter Schools

Termination of business manager/board secretary by charter school was reasonable where employee had left work without permission and was uncooperative. (99:Nov. 15, Mezzacappa)

Commissioner adopted ALJ's decision to dismiss non-tenured Spanish teacher's claim that his dismissal was arbitrary and unreasonable. However, Commissioner modified the ALJ's dismissal of teacher's NJLAD claim because the teacher set forth facts sufficient to show a genuine issue as to whether the board's decision to nonrenew was unlawfully based on the teacher's disability. (04:Feb. 23, Grande)

Emergent relief denied teacher who was not renewed and sought medical benefits for chemotherapy. (99:Sept. 22, Castro)

Five-day suspension without pay for non-tenured custodian was outside Commissioner's jurisdiction. If custodian were tenured, suspension without pay would have been minor disciplinary action lawfully imposed by the board. (02:March 14, Heminghaus)

Nonrenewal - Reasons

By resigning his position nine or ten days after receiving notice of non-renewal guidance counselor relinquished any rights that may have otherwise accrued to him through a challenge to the non-renewal. (03:May 1, Cohen)

Decision to not grant tenure (non-renew) need not be grounded in unsatisfactory classroom or professional performance; unrelated but equally valid reasons may exist. (02:March 11, McEwan)

Non-renewal of principal was upheld; recommendation not to renew was not based on unsubstantiated rumors but rather on fact that principal lacked interpersonal skills and contributed to division within school community; determination in regard to tenure is not limited to evaluations and may include other input. (98:Aug. 17, Pratt, appeal dismissed St. Bd. 99:Jan. 6)

Nonrenewal upheld; petitioner claimed that he was non-renewed because he had cancer. Claimed board failed to give him proper number of evaluations. Commissioner agreed that discrimination claim had been abandoned and that requisite number of evaluations had been given. (00:March 15, Castro, appeal dismissed for failure to file appeal in timely manner, St. Bd. 00:Oct. 4)

Non-tenured guidance counselor resigned prior to the effective date of the non-renewal. Relinquished all rights that would have accrued to him. Board provided courtesy statement of reasons. (03:May 1, Cohen)

NON-TENURED TEACHING STAFF

Non-tenured teacher makes no claim that she was deprived a constitutional or statutory right in nonrenewal, failing to state a claim upon which relief can be granted. (02:Oct. 29, Margadonna, aff'd for the reasons expressed therein, request for oral argument denied, St. Bd. 03:Feb. 5, appeal dismissed with prejudice unpub. Op. Dkt. No. A-3338-02T2, May 1, 2003)

Superintendent of state-operated district acted within authority in nonrenewing vice principal's contract based on one negative evaluation by assessor. (98:Oct. 7, Harvey)

Teacher failed to demonstrate that non-renewal was arbitrary or capricious, notwithstanding CSA recommendation to renew. Petitioner failed to meet limited standard entitling non-tenured, non-renewed teachers to relief. (02:March 11, McEwan)

Teacher fails to challenge non-renewal within 90 days of notification; petition dismissed. (00:Sept. 11, Wise)

Non-tenured teacher who worked one week and was then terminated was not entitled to damages as employment contract had never been consummated (never approved by State District Superintendent). (99:June 14, Fanego)

Procedure: Non-tenured teacher was estopped from obtaining withdrawal or stay of her pending discrimination claim before OAL to pursue an appeal of the dismissal of concurrent Superior Court matter; parties had almost completed the administrative hearing. (01:May 25, Stewart-Rance)

Psychologist challenging non-renewal failed to file claim within 90 days of learning by letter that his contract would not be renewed; Commissioner rejects teachers' argument that 90-day period begins after receipt of written notice of determination after Donaldson hearing pursuant to N.J.S.A. 18A:27-3.2. (02:Oct. 7, Sniffen)

Social worker: Settlement approved following challenge to non-renewal as arbitrary, capricious and unreasonable. (02:June 26, Pannullo)

Teacher's challenge to non-renewal claiming discrimination because of Jamaican national origin, is dismissed for lack of prosecution. (01:May 25, Stewart-Rance)

NON-TENURED TEACHING STAFF

Termination

Absent constitutional constraints or legislation, local boards have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the board. (01:Feb. 7, Anderson, St. Bd. aff'g 00:Jan. 19)

Teacher who allowed pupil to be beaten in her presence was properly terminated for cause; board not required by statute or constitution to conduct a pre-termination hearing, only to provide a statement of reasons; any rights to a hearing under collective bargaining agreement are outside of Commissioner's jurisdiction. (01:Feb. 7, Anderson, St. Bd. aff'g 00:Jan. 19)

Termination of social worker upon 60 days' contractual notice was affirmed on remand; although exhibits in evidence had been lost, factual stipulations were not disputed. (98:Dec. 11, Fuller)

Where, after Donaldson hearing, board wished to offer teacher contract, but mistakenly thought superintendent's recommendation was necessary, board's vote to reappoint "at the discretion of superintendent" had legal effect of reappointment. Teacher, who was subsequently appointment as long-term sub for only part of year, was entitled to salary she would have earned as full-time teacher for entire year, with appropriate adjustments for unemployment compensation to avoid unjust enrichment. (00:June 26, Healy)

NURSES

Board violated school nurse's tenure and seniority rights when it reduced her to part-time position and assigned her teaching duties to another teaching staff member; she had tenure protection in all the assignments within her tenurable position of school nurse, including teaching health. (00:Aug. 18, Woodbine)

Contracted nurses, even if they possess school nurse certification, may not independently perform services reserved to the school nurse by statute; they may only assist. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)

District must employ a sufficient number of certified school nurses to ensure adequate provision of the duties specifically reserved for certified school nurses; other duties can be performed and provided by other health professionals who hold the requisite license from the Board of Nursing. (97:Dec. 12, Dover, dismissed as moot St. Bd. 00:July 5)

Non-certificated nurses and contracted nurses possessing nursing certificates may perform health-related services other than those that must be performed by a school nurse. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)

NURSES

- N.J.S.A. 18A:40-3.3 permits board to use noncertified nurse to supplement services of part-time certified school nurse assigned to facility, while certified school nurse is not present. (01:June 7, Ramsey, motion granted St. Bd. 01:Sept. 5)
- Petition filed by certified school nurses alleging that Boar retained unqualified uncertified nurses in violation of statute and of their rights, dismissed on basis of *res judicata* and collateral estoppel; issues the same as in prior litigated cases. (99:May 6, Old Bridge Ed. Ass'n)
- School health aide did not perform duties of certified school nurse. Allegation that board did not provide adequate nursing services not raised in petition. Matter dismissed. (03:Jan. 6, Franklin Lakes)

OPEN PUBLIC MEETINGS ACT

- Board member appealed board's censure of him for violating board policy when he spoke to media after closed session discussing potential ethics complaints against him. Policy that required five-day notice to board prior to releasing board information did not violate First Amendment rights. (00:Jan. 18, Crystal)
- Board's agenda did not provide sufficient notice that possible elimination of kindergarten program would be discussed; however, board later provided adequate notice of its intent to consider the issue at subsequent meeting. (00:Jan. 18, Sherman, aff'd St. Bd. 00:June 7)
- Certification of charges should not be dismissed as violative of the Open Public Meetings Act where the board did not record the vote to certify charges in its minutes; the tenure law requires that such vote take place in closed session, and such closed session minutes are not to be made promptly available; do so would violate the tenure law. (03:Oct. 14, McDonald)
- Sunshine Law: Commissioner has jurisdiction over Sunshine Law issue only if ancillary to claims arising under school law. (00:Jan. 3, Parisi)(01:April 26, Settle)

PHYSICAL AND PSYCHIATRIC EXAMINATIONS

- Board had sufficient reason to require psychiatric examination of industrial arts teacher whose teaching performance had deteriorated and who had displayed defiant and non-responsive attitude deviating from norm. Board encouraged to consider tenure charges if teacher does not comply with order for psychiatric examination. (01:Feb. 16, Varano)
- No jurisdiction over petition by teacher employed by Juvenile Justice Commission to have psychiatric evaluation expunged because, as state employee, claim arises under the Civil Service laws, and not the education laws. (01:April 19, Morelli, letter opinion)
- Settlement of tenure dismissal charges includes return to classroom conditioned on submission to, and results of, drug/alcohol testing and psychiatric examination; settlement also requires random drug testing. (99:May 10, Howard)

PRIVATE SCHOOLS FOR HANDICAPPED

- Audit – Non allowable costs under N.J.A.C. 6:20-4.4 include investment expenses, severance expenses for employees, and excess salary paid to CEO, among other expenses. (01:April 12, Carrier Foundation – East Mountain School, aff'd in part and remanded in part St. Bd. 01:Oct. 3, settlement approved, 02:July 11, aff'd St. Bd. 02:Oct. 2)
- Disallowances in tuition following audit to include salary of uncertified staff, occupancy and food expenses upheld. (03:March 3, Catholic Family and Community Services, aff'd St. Bd. 03:July 2)
- Private school for handicapped and committee from which it leased premises, were related parties; therefore, lease agreement was not an arms length transaction; rental costs were thus improperly included as allowable cost in school's tuition rate (99:July 6, Passaic County Elks Cerebral Palsy, aff'd St. Bd. 99:Dec. 1)
- Tuition rebill for school year was reasonable as lease termination costs and unamortized depreciation was not included in original bill. (03:March 14, Caldwell-West Caldwell)

PRIVATIZATION AND SUBCONTRACTING

- Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)
- Board did not violate seniority and tenure rights of child study team members when it eliminated their positions and entered into a joint agreement with an educational services commission (ESC) to obtain basic child study team services; tenure rights would be triggered should district decide to again provide CST services through its own employees; moreover, such joint agreement does not constitute a “takeover” of the CST that would warrant recognition of the CST members' tenure rights by the ESC, relying on Miller, distinguishing Shelko and Stuermer. (01:Jan. 2, Anders)(02:Dec. 2, Trigani)
- Board violated N.J.A.C. 6:28-3.1 and Elson by subcontracting LDTC services to Ed. Services Commission as substitute during LDTC's sabbatical leave. (98:Oct. 5, South Amboy)
- Child study team: psychologist who had been rified had no tenure entitlement to employment with ESU that was under contract with board to supply child study team services on a case-by-case basis; distinguished from Shelko where county special services school district assumes operation of and responsibility for entire special education program. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

PRIVATIZATION AND SUBCONTRACTING

- Child Study Team Services: Waiver invalid for district that wanted to contract out basic child study team services to private vendor; such waiver contradicts legislative intent. (St. Bd. 00:May 5, Miller)
- Contracted nurses, even if they possess school nurse certification, may not independently perform services reserved to the school nurse by statute; they may only assist. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)
- Despite authorizing resolution, board did not hire any uncertified instructors from Berlitz to teach foreign languages. Matter dismissed as moot. (02:April 19, Morris)
- Non-certificated nurses and contracted nurses possessing nursing certificates may perform health-related services other than those that must be performed by a school nurse. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)
- Where special services school district assumes operation of district's entire special education program, tenure and seniority rights of rified teaching staff must be recognized by special services school district. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)
- While it may supplement such services, a Board may not supplant the services provided by a tenured core CST member with those provided by an outside contractor. (02:July 2, Iraggi)

PUBLIC RECORDS

- Newspaper was entitled to a redacted copy of ALJ's order in case involving teacher who allegedly committed sexual abuse against her students. Division of Youth and Family Services v. M.S., 340 N.J. Super. 126 (App. Div. 2001)

PUPILS

Absenteeism

- Board was unreasonable in depriving student of course credit and graduation due to excessive absenteeism; summary judgment granted to student; offense was out of proportion to punishment where pupil had academically completed the course with an A- and absences were legitimate; also, board's appeal process denied pupil due process. (00:Jan. 13, G.J.C.)
- Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

PUPILS

Admission to School

- Admission policy requiring pupil to attain certain age by October 1 cutoff date as condition for admission to first grade not arbitrary, capricious or unreasonable. (00:July 13, N.R., aff'd St. Bd. 00:Nov. 1)
- Board had authority to deny admission to child who would not be five years old on October 1 and who did not show readiness under district's testing policy; parents' emergency application denied for lack of probability of success. (98:Oct. 6, W.D.)
- Cut-off date: Pupil not permitted to attend kindergarten where birth date falls beyond cut-off date of Oct. 1. (02:Dec. 5, K.T., aff'd St. Bd. 03:March 5)
- DA's nieces moved from Columbia to reside in America with DA. DA supported the children gratis, without compensation from their parents. Father not required to produce income tax returns because in Columbia, persons below the poverty level are not required to file income tax returns, therefore were unable to demonstrate that they were unable to support the children in America. Commissioner agreed with ALJ that DA satisfied N.J.S.A. 18A:38-1 and is domiciled within the district, supporting his nieces gratis due to family hardship. (02:Sept. 23, D.A.)
- District policy required all students to reach the age of five years prior to October 1 in order to be eligible for enrollment into kindergarten. Petitioner was born October 2, 1997, and applied for and was denied admission for the 2002-03 school year. Parent argued that district policy was unfair and filed for emergent relief before the Office of Administrative Law. OAL found that the policy, while arguably unfair, was not arbitrary, capricious or unreasonable. OAL judge also found that petitioner failed to meet her emergent relief burden by failing to prove irreparable harm if petition was not granted, legal entitlement, likelihood of prevailing on the merits on the underlying claim or that petitioner would suffer greater harm if the petition was not granted than would respondent district if petition was granted. (02:Sept. 23, R.T.)
- Emergent relief denied in pupil admission matter. Crowe v. DeGioia test not met. (02:March 25, F.P.T.)
- Non-resident student: board was within authority to reject tuition student as board's decision to accept nonresident students is discretionary under N.J.S.A. 18A:38-3; emergent relief denied. (98:Oct. 7, J.S.)

PUPILS

Parents contested the board's denial of resident status where parents purchased a new home within the district, but split time between the new "in-district" residence and old "out-of-district" residence until old home was sold. Commissioner agreed that parents were not "domiciled" in the new district. Parents ordered to reimburse the district \$27,292.38 in prorated tuition. (02:Sept. 16, D.L., aff'd St. Bd. 03:Jan. 8)

Placement: Parents' application for emergent relief to place home schooled child in tenth grade rather than ninth grade, denied. District must conduct educational evaluation of pupil within 30 days to determine whether placement should be changed; parents' request for independent evaluation is denied. (98:Oct. 16, M.C.)

Policy: Board could adopt new policy of not accepting non-resident tuition students; not bound by prior practice of permitting siblings. (99:Sept. 3, J.S., aff'd St. Bd. 00:Jan. 5)

Pupil not domiciled in district. Parent ordered to pay \$31,023.93 for period of ineligible attendance for first half of school year plus \$44.46 per day until date of decision. (98:June 18, T.B.W., motion for stay denied, Comm. 98:Sept. 17, motion for stay denied and decision aff'd St. Bd. 02:Nov. 6)

Alternate School

No federal constitutional rights involved when pupil transferred from regular education program to alternative school within the district. Student had been suspended for assault and possession of a weapon. (03:May 15, K.C.)(See also emergent relief denied 03:March 26)

No relaxation of 90-day rule where parent sought to appeal disciplinary expulsion with offer of transfer to alternative program seven months after board action. (03:May 20, J.G.)

Attendance areas/attendance policy

Board did not act arbitrarily in denying pupil credit for classes where her absences exceeded the maximum permitted; pupil not moved to tenth grade; fact that absences due to difficult year including asthma, unwarranted pregnancy and father's illness not sufficient to require giving her credits. (99:Oct. 12, P.D.M., motion for emergent relief denied 98:Sept. 3)

Policy giving students from some, but not all, constituent districts of a regional board a meaningful choice to attend the high school they wanted, was not illegal "discrimination"; there is no constitutional right to receive an education in a specific school house in the district; the policy was valid exercise of board's discretion and was not arbitrary and capricious; board's motion for summary judgment granted. (99:March 10, Piccoli)

PUPILS

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Statute allowing a student living remove from appropriate school to attend a closer school in adjacent school district (N.J.S.A. 18A:38-9) did not give student the right to attend a school that was not substantially closer. (98:Oct. 29, M.M.)

Attendance at graduation ceremony

Academic requirements: Board policy to deny attendance at graduation to student who fails to satisfactorily complete State and district academic requirements upheld. Emergent relief denied. Decision on motion. (02:June 19, K.Mc.)

Parents not entitled to emergent order permitting senior to attend graduation exercise where he had excessive absenteeism in physics class, where parents were on notice of board policy. (99:June 25, G.J.C., denial of emergent relief reversed, St. Bd. 99:Oct. 6)

Possession of marijuana on school grounds: Board acted reasonably and appropriately by barring student from participation in school regulated activities (graduation) during period of suspension. (98:July 8, C.S.)

Shoplifting: excluding student from graduation and prom for lateness and lying about it while being on disciplinary probation for shoplifting was not arbitrary, capricious, or unreasonable; emergent relief denied. (02:June 14, Bush)

Awards

Coach's determination not to award petitioner MVP award for cross-country track was not unreasonable. (00:Sept. 11, J.M., aff'd St. Bd. 01:Jan. 3)

Confidential communications

Commissioner adopted findings of ALJ that athletic director violated N.J.A.C. 6:3-6.1 pertaining to the confidentiality of pupil records when he disseminated such records to the NJSIAA without authority and while no longer an employee of the district. (04:Jan. 29, Swartz)

Question of a counselor's duty to disclose confidential communications is outside of Commissioner's jurisdiction (note that ALJ below held that confidential communications between a school counselor and a pupil must be disclosed if in the best interest of the student such as where pupil is suicidal.) (99:Aug. 13, M.N.)

County jail does not qualify as a present district of residence for purposes of determination of tuition responsibility. (St. Bd. 00:July 5, Somerville, reversing 97 N.J.A.R. 2d (EDU) 352)

PUPILS

Discipline

- ALJ recommended dismissal of gym teacher, accused of grabbing, pushing, screaming at second grade students, and instructing one student to strike another. Commissioner affirmed teacher's dismissal and transmitted matter to State Board for appropriate action against teacher's certificate. (02:Nov. 6, Kendle)
- Community service as a prerequisite to receiving diploma was reasonable form of discipline. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.

Due Process

- Diploma is a property interest for purpose of due process analysis. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.
- Diploma: sanction of refusal to give student who had successfully completed requisite academic curriculum, as discipline for act of vandalism, may not be imposed without due process. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.
- Expulsion: removal of student from regular education program constituted expulsion; subsequent hearing and provision of alternative education cured potential due process violation. Emergent relief denied. Decision on motion. (02:June 24, C.L.)
- No federal constitutional rights involved when pupil transferred from regular education program to alternative school within the district. Student had been suspended for assault and possession of a weapon. (03:May 15, K.C.)
- Notice to student, given orally one half hour before graduation, that student would not receive diploma as discipline for act of vandalism satisfied student's due process rights. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.

Emergent relief

- Denied in student discipline matter. Crowe v. DeGioia test not met. (02:April 18, A.G.K.)

PUPILS

District policy required all students to reach the age of five years prior to October 1 in order to be eligible for enrollment into kindergarten. Petitioner was born October 2, 1997, and applied for and was denied admission for the 2002-03 school year. Parent argued that district policy was unfair and filed for emergent relief before the Office of Administrative Law. OAL found that the policy, while arguably unfair, was not arbitrary, capricious or unreasonable. OAL judge also found that petitioner failed to meet her emergent relief burden by failing to prove irreparable harm if petition was not granted, legal entitlement, likelihood of prevailing on the merits on the underlying claim or that petitioner would suffer greater harm if the petition was not granted than would respondent district if petition was granted. (02:Sept. 23, R.T.)

Emergent relief denied to student who was suspended for 10 days and then re-assigned to alternative school. Crowe standards not met. (03:March 26, K.C.)

Granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program such as home instruction, pending final disposition of expulsion proceedings. (02:March 22, S.R.R.)

Settlement

Settlement approved in student discipline matter. (02:April 18, W.O.L.)

Suspension and Expulsion cases

ALJ overruled NJSIAA's denial of a student/athlete's request for a waiver of the NJSIAA's eight semester limitation on athletic eligibility. Commissioner determined that NJSIAA's denial of the requested waiver was entirely consistent with its previous application of its eligibility rules, however, the NJSIAA's deferral of the September 2000 request, until spring of 2002, denied the student due process. Commissioner found that the delay so prejudiced the student as to be arbitrary. Commissioner granted the waiver for all but the first two games of the 2002-03 football season. (02:Aug. 8, Taylor)

Alternative school ordered pending final determination of whether district acted reasonably in expelling girl who committed serious assault including kicking, hair pulling on other pupil. (99:Oct. 5, D.B.)

Assault: Ten-day suspension and transfer of pupil from regular to alternative program for assault and possession of a weapon upheld. Parents failed to file in a timely manner. (03:May 15, K.C.)

PUPILS

- Assault: Two day suspension for holding student's head in urinal upheld; board did not act unreasonably. (02:June 12, T.M.)
- Assault with bricks and sticks; board's decision to provide home instruction until student's sixteenth birthday and then to expel him was upheld; even if parent's challenge had been timely filed, due process had been provided student, and board did not act arbitrarily. (99:Aug. 4, P.S.)
- Beer possession by seventh grader: 1 year suspension harsh; superintendent's automatic practice of 1 year suspension for every drug/alcohol incident without consideration of particular circumstances is inconsistent with board policy; readmission ordered. (98:Nov. 30, E.R.)
- Board acted reasonably when, pursuant to policy adopted pursuant to N.J.S.A. 18A:40A-8 through -21, it required a high school student who was at a "senior cut day" party where extensive drinking had taken place, to be referred to SAC Core Team for further investigation into possible chemical dependency, even though there was no evidence that she consumed any alcohol. (00:June 12, D.B.)
- Board did not act improperly by not conducting suspension/expulsion proceedings mandatory under N.J.S.A. 18A:37-2.1, where administrators did not believe that incidents involving threats to teachers constituted criminal assaults, where Board took measured discipline against pupils, and where teachers' appeal of discipline did not allege assault. (01:Aug. 20, Knight, aff'd with clarification St. Bd. 02:Jan. 2)
- Board generally has no obligation to provide educational services to a pupil it has expelled. (99:Sept. 7, Somerset County)
- Board had to pay tuition of expelled student adjudicated delinquent where court ordered placement in lieu of incarceration. (99:Sept. 7, Somerset County)
- Board's authority to discipline for alcohol consumption by pupils involved in school functions is not limited by distance from the school. (00:Feb. 15, F.B.)
- Board's decision to expel was moot; pupil restored, record expunged; not a matter of public concern evading review. (01:Jan. 8, L.H., remanded St. Bd. 01:June 6, settlement approved by Commissioner 02:Nov. 18, motion denied and matter dismissed, St. Bd. 03:April 2)

PUPILS

- Board's failure to hold expulsion hearings for student who "assaulted" teaching staff members through computer website postings not arbitrary and capricious. Board, through its administrators followed up quickly and diligently upon learning of the postings. (02:May 6, Hillsborough)
- Bomb threat; board's decision to expel student for bomb threat, in light of explicit policy calling for expulsion after due process hearing, upheld. (00:March 20, K.W.)
- Child study team evaluation: Failure to obtain child study team evaluation rendered expulsion void; emergent relief granted; district must place child on home instruction, conduct evaluation and may then reconsider issue of expulsion. (98:Sept. 9, E.A. and D.G.)
- Child study team referral: Propensity to act-out should have alerted board to need for referral to child study team, prior to expulsion. (99:April 7, A.B.)
- Community service is permitted form of discipline; emergent relief denied. (00:Dec. 1, K.E.)
- Consolidated disciplinary and special education matter dismissed. Board acted for the benefit of the larger school population in matter regarding marijuana and weapon possession when parent refused to cooperate in special education evaluation. Appeal was untimely; seven months after student was expelled. (03:May 20, J.G.)
- CST determined that knife-wielding child had no learning disability and that behavior leading to expulsion was not a manifestation of any such disability. (99:June 24, E.A.)
- Disciplinary transfer of pupil from one school in the "open enrollment" district to another school in the district for signing his father's name on math test was not arbitrary or unreasonable; did not require due process requirements of notice and hearing as the pupil was not excluded from the educational process. (99:Dec. 23, E.A., aff'd St. Bd. 00:April 5)
- Drinking off school premises: board's suspension of pupils from classes and extracurricular activities for five and ten days, respectively, was arbitrary and capricious where policy not consistently enforced, and where policy was vague and overly broad; all references to discipline must be removed from pupil records. (00:Feb. 15, F.B.)

PUPILS

- Due Process: Providing an explanation of the charges and an opportunity to present his/her side of the story applies only when the student denies the charges. (99:Dec. 23, E.A., ALJ dicta, p. 57, citing Giangrasso, aff'd St. Bd. 00:April 5)
- Due Process: Where board adjourned expulsion hearing due to board member's recusal and lack of quorum, failure to hold hearing within 21 days did not deprive pupil of due process. (98:Sept. 9, E.A. and D.G.)
- Emergent relief denied; expulsion for role in altercation not lifted; Crowe standard not met; expeditious hearing ordered. (98:March 20, W.W., on motion)
- Emergent relief denied; pupil who was suspended for several days for fighting, unsuccessfully sought order for school authorities to assist in defusing minor problems between students before they get out of hand. (01:March 2, E.G.)
- Emergent relief denied to pupil seeking return to original school after disciplinary directive requires attendance at alternative school. (00:Aug. 18, M.C.)
- Emergent relief denied to pupil who challenged his exclusion from participating in extracurricular activities for one year, for having made threatening and defamatory statements against teacher on web. (00:Sept. 1, M.D.)
- Emergent relief denied where district properly offers expelled student temporary home instruction from time of expulsion and choice of three different alternative education placements whose programs have NJDOE approval. (Dec. on motion 01:Oct. 18, A.M., decision on merits 02:Feb. 4, decision on motion, St. Bd. 02:April 3, aff'd St. Bd. 02:July 2)
- Emergent relief granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program, such as home instruction, pending disposition of expulsion proceedings. (02:March 22, S.R.R.)
- Emergent relief granted; where board initially voted not to expel eighth grader with four bags of marijuana, but then at subsequent meeting voted to reverse prior decision without notice to parents. (98:Sept. 10, R.R.)
- Emergent relief to stay detention is denied to pupil accused of cheating. (00:June 8, C.C., appeal dismissed for failure to perfect, St. Bd. 00:Sept. 6)

PUPILS

- Expelled pupil is granted emergent relief of home instruction; legal issue of entitlement to free public education in an alternative setting after a student's lawful expulsion is not fully settled. (00:Sept. 15, P.H., 01:July 16, decision on motion St. Bd. 01:Sept. 5, aff'd St. Bd. 01:Oct. 3)
- Expulsion: Parents did not appear at plenary hearing before OAL on expulsion matter; matter to reinstate pupil is dismissed. (99:Dec. 27, D.B.)
- Expulsion: parent's request for temporary restraint denied where board followed due process in expelling pupil for profanity, disruptive behavior, repeated violations of disciplinary code; further, board will provide education in alternative school. (00:Feb. 15, D.C.)
- Failure to provide pupil with a summary of expected testimony at the expulsion hearing was not a violation of due process; emergent relief denied. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4)
- Failure to report vandalism; no stay of suspension; however, pupils may return without submitting to psychiatric evaluation. (00:Dec. 1, K.E.)
- Gun threats: removal from regular education program and placing him in alternative program does not constitute irreparable injury for emergent relief. Decision on motion. (02:June 24, C.L.)
- Hearing process: flaws in hearing process, including restricted cross-examination and withholding name of witness, did not render it arbitrary. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)
- Hearing: the 21-day requirement in R.R. may be of limited precedential value at this point in time, given amendments to statute providing for 30 days before a hearing; significance of R.R. is that a board may not inordinately delay providing students a formal hearing. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4)
- Hit List: Suspension pending psychological or psychiatric clearance of student at board expense after student found with his list of teachers he was angry at was not arbitrary, unreasonable or capricious. (02:June 13, T.L.)

PUPILS

- Home instruction: Expelled 14-year old was entitled to emergency relief for home instruction pending hearing on reasonableness of expulsion; expulsion matter must be held in abeyance until Division of Special Education determines whether pupil should have been referred to child study team in light of propensity to act-out. (99:April 7, A.B.)
- Implementation of five-day bus suspension for student who touched emergency door handle and exited bus at wrong stop, is not stayed; parent's motion for emergency relief denied. (03:Oct. 29, D.T.)
- Jurisdiction: Commissioner had no jurisdiction to determine suspension matter involving special education student for whom the conduct was judged to be a manifestation of the disability. (03:October 27, R.P.)
- Mootness: challenge to board's disciplinary action not moot where pupil withdrew from district and enrolled in private school, as suspension for assault remained part of student's permanent school record. (99:March 23, J.O.)
- Ninety-day rule was unduly harsh; waived so parent may demonstrate a pattern of past inappropriate behavior by teachers toward her son, including teacher's accusation that pupil copied other pupil's homework and detention therefor. (00:Sept. 18, C.C.)
- One day in-school suspension and zero grade on math test imposed on truant pupil who, in order to miss morning math test, arranged for friend to pose as parent to call in tardiness excuse; pupil denied emergent relief to take test. (99:March 4, S. and M.B.)
- One year "expulsion" of eight grader due to assault on teacher was upheld; home instruction was provided. (03:April 15, C.S.)
- Paging device: Student's challenge to board's three day suspension for possession of paging device was dismissed as untimely: 90 days began to run from date pupil or her attorney heard board's vote, and not from letter subsequently sent to parents from board. (98:Sept. 30, S.W.)
- Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

PUPILS

- Parent's appeal of board's determination to expel her son upon his 16th birthday with homebound instruction until that time, is dismissed as it was out-of-time pursuant to 90-day rule. (01:Oct. 9, L.G.)
- Parents fail to establish need for emergent relief although board did not provide hearing until 34 days after suspension for bomb threat without home instruction. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4)
- Parents objection to alternative school is dismissed. (00:Sept. 8, D.C.)
- Petitioners failed to file brief on appeal of pupil suspension; dismissal for failure to perfect. (St. Bd. 00:Feb. 2, R.E.)
- Possession of knife and threats to kill other students; expulsion void for failure to conduct child study team evaluation where (*prior*) Administrative Code gave district flexibility to determine whether evaluation was warranted on case-by-case basis. (98:Sept. 9, E.A. and D.G.)
- Pupil (age 16) expelled for marijuana use must be readmitted; expulsion was not compelled by board's policy; board must consider options such as alternative school, before imposing ultimate sanction of expulsion. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)
- Pupil granted emergent relief and immediately reinstated pupil who was suspended for allegedly threatening to shoot classmate; board had no legally competent evidence to support board's hearsay evidence. (00:May 3, B.B.)
- Pupil speech: One-day suspension for a wish that a teacher die, coupled with immature doggerel "Roses are red, violets are black. Why is your chest as flat as your back;" raised a legitimate pedagogical concern and may be subject to reasonable restrictions, such as a prohibition against abusive, offensive behavior directed toward a teacher. (00:June 13, J.F.)
- Pupil who voluntarily waived disciplinary hearing and entered into settlement agreement for one semester suspension is denied emergent application to set aside the agreement in favor of less harsh punishment. (00:Sept. 8, J.B.)
- Questioning: Administrators may exercise discretion in deciding whether to notify parents or seek parental consent prior to questioning students. (99:Aug. 13, M.N.)
- Signing of a parent's name to a test is inappropriate student behavior. (99:Dec. 23, E.A., aff'd St. Bd. 00:April 5)

PUPILS

- Stay of punishment (loss of parking privileges and five detentions during which pupil is to attend drug counseling) is granted pending final determination of whether item pupil made in art class was hash pipe. (99:Oct. 4, J.K.)
- Superintendent both testified as a witness at the expulsion hearing and participated in the decision-making process; no violation of due process; emergent relief denied. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4)
- Suspension for rest of year with home instruction and return in September conditioned on submitting to psychiatric evaluation, attending summer school and executing behavior contract, not unduly harsh for 18 year junior who assaulted other pupil. (99:March 23, J.O.)
- Suspension from April to end of June for committing vandalism not overly harsh in light of fact that student was repeat offender and deplorable nature of act; however, he is still entitled to education that will allow him to complete high school: 10 hours/week home instruction and exams ordered. (2000 S.L.D. May 19, Dentino, decision on motion)
- Suspension of pupil for three days and permanent expulsion from basketball team for sexual harassment (moonie) upheld. (00:May 5, D.K.)
- Ten day suspension for threatening a teacher (during which baseball would be missed) not excessive; emergent relief denied. (00:May 19, A.S.)
- Untimely petition: Pupil's claim that board did not hold hearing within 21 days, and that board was racially biased, were dismissed where pupil's challenge was filed untimely pursuant to N.J.A.C. 6:24-1.2(c). (99:March 23, J.O.)

Drug testing

- Board's actions did not violate requirement that board provide parents a copy of its policy on discipline for substance abusers after suspension following first positive test. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)
- Consent: parents do not have a statutory right to refuse to consent to testing of pupil, and parents contention that they did not consent does not provide grounds for ignoring the results of a drug test. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

PUPILS

District properly fulfilled its dual responsibility to arrange for an immediate medical examination of a pupil when a staff member suspected that he was under the influence, and, where that suspicion was substantiated, to ensure follow-up. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

Random drug testing: Temporary restraining order issued requiring school district to cease implementation of policy on random drug testing of pupils who park on campus or are involved in athletics or other extra-curricular activities. Court concluded that policy invades pupils' right to privacy under New Jersey State Constitution. Joye v. Hunterdon Central Regional High School Bd. of Ed., Superior Court of New Jersey, Law Division, Somerset County, Judge Guterl, Dkt. No. HNT-C-14031-00 (Jan. 4, 2001)

Enrollment

Certificate of inhabitancy may not be required for registration of pupil. Absence or incompleteness of transcripts and immunization records must not interfere with or delay enrollment of new pupil although incomplete immunization records may justify delay of actual admission. Five to six-day delay in enrollment due to parent's failure to complete verification of residency did not amount to denial of due process. (00:Sept. 7, M.G.L., aff'd St. Bd. 02:Jan. 2, aff'd unpub. Op. Dkt. No. A-2975-01T5, March 25, 2003)

Entitlement to free education

Age: no entitlement after age 20 for unclassified pupil (settlement relying on Morris Hills.) (98:Aug. 12, Wallington)

Commissioner adopted ALJ's findings, pursuant to N.J.S.A. 18A:38-1(b), that R.K.'s family, who was living in Syria and suffering family hardship, was unable to provide for R.K. where R.K. moved to the district to live with an uncle who supported him gratis. (03:Aug. 11, F.M.)

Home schooled student was entitled to tuition and transportation costs for attendance at vocational school in the afternoon. (99:June 24, Jacobs)

PUPILS

Extracurricular activities

Athletics

ALJ overruled NJSIAA's denial of a student/athlete's request for a waiver of the NJSIAA's eight semester limitation on athletic eligibility. Commissioner determined that NJSIAA's denial of the requested waiver was entirely consistent with its previous application of its eligibility rules, however, the NJSIAA's deferral of the September 2000 request, until spring of 2002, denied the student due process. Commissioner found that the delay so prejudiced the student as to be arbitrary. Commissioner granted the waiver for all but the first two games of the 2002-03 football season. (02:Aug. 8, Taylor)

PUPILS

Emergent request by disrespectful student, for reinstatement to wrestling team in time for district tournament was denied, for failure to meet Crowe standards, and where matter was moot for passage of time. (03:April 15, S.L.)

No evidence of discrimination where student not placed on either JV or Varsity soccer team after competitive tryouts. (02:May 3, D.H.)

District may not preclude vo-tech Magnet School students from participating in its extracurricular activities and athletic programs unless such participation is not practicable or reasonable. (99:Nov. 29, G.W.S.)

Policy precluding vo-tech magnet school students from participating in sports at sending school violated NJSIAA Bylaws. (99:Nov. 29, G.W.S.)

Free Speech

Board had right to exercise pedagogical control over pupil's school assignment and to assign zero grade for pupil's failure to delete references to illegal drug use and drug culture, in light of school's zero tolerance policy. (99:Oct. 18, J.L., aff'd St. Bd. 00:Feb. 2; aff'd App. Div. unpub. op. Dkt. No. A-3787-99T5, June 19, 2001)

Gifted and Talented

Denial of entry to gifted and talented program for pupil who was both gifted and learning disabled was proper, where educators were concerned that he could be easily frustrated by pace. (99:Oct. 28, D.B.)

Emergent relief to parents seeking placement in gifted and talented program, denied. (99:March 4, Mullane)

There is no law or regulation which prescribes the substantive content of a gifted and talented program. (99:Oct. 28, D.B.)

Grades

Board neither exceeded its authority, violated pupil's constitutional or due process rights, nor reduced a grade for disciplinary reasons, when it upheld teacher's assignment of a zero grade for pupil's failure to delete from assignment references associated with drug use and drug culture; relying on Hazelwood, held that gravamen of case is pedagogical control. (99:Oct. 18, J.L., aff'd St. Bd. 00:Feb. 2; aff'd App. Div. unpub. op. Dkt. No. A-3787-99T5, June 19, 2001)

Board was unreasonable in depriving student of course credit and graduation due to excessive absenteeism; summary judgment granted to student; offense was out of proportion to punishment where pupil had academically completed the course with an A- and absences were legitimate; also, board's appeal process denied pupil due process. (00:Jan. 12, G.J.C.)

PUPILS

Challenge to placement in honors English where pupil failed and was denied graduation privileges, moot, where pupil completed summer school course which permitted him to receive diploma. (99:April 22, E.S.H.)

Graduation

Board acted properly in denying senior a diploma because he was deemed academically ineligible to complete a required physics course due to tardiness counted as unexcused absences. (00:Aug. 18, Buckley)

Board was unreasonable in depriving student of course credit and graduation due to excessive absenteeism; summary judgment granted to student; offense was out of proportion to punishment where pupil had academically completed the course with an A- and absences were legitimate; also, board's appeal process denied pupil due process. (00:Jan. 12, G.J.C.)

Community service as a prerequisite to receiving diploma was reasonable form of discipline. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.), Jan. 8, 1999.

Pupil is granted emergent relief and allowed to graduate with her class although private school from which she transferred refused to send records confirming successful completion from 11th grade, because of tuition dispute. (00:May 19, D.H.)

Special education pupil was denied emergent application to march in graduation ceremony, where she had not earned certification to graduate because of failing grades. (00:June 20, G.L.)

Where pupils were unable to obtain their school records from private school previously attended because of tuition dispute with that school, and there was no proof that the necessary credits, district is ordered to advance pupils to 12th grade and graduation respectively, provided they pass the required courses. (Motion for emergency relief granted 00:May 15)(00:July 3, D.K.)

Home Instruction

Commissioner adopted ALJ's decision to dismiss parent demand for home-instruction and "contempt-of-court" finding as moot due to parent's decision to re-locate to new domicile outside the district. (04:Jan. 29, E.L.C.)

Emergent relief denied to pupil who had been raped at school and subsequently provided home instruction; pupil's emergent petition to continue home instruction or transfer to out-of-district high school denied as school board already agrees to continue home instruction pending full hearing on issue of child's schooling. (99:Oct. 29, C.J., underlying matter dismissed as moot, 00:Jan. 11)

PUPILS

Emergent relief granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program, such as home instruction, pending disposition of expulsion proceedings. (02:March 22, S.R.R.)

Honors

Board did not act arbitrarily in enforcing its policy requiring student maintain 3.5 GPA for National Honor Society eligibility; board could deny admission to pupil with 3.49 average. (01:Jan. 16, L.B.)

Challenge to placement in honors English where pupil failed and was denied graduation privileges, moot, where pupil completed summer school course which permitted him to receive diploma. (99:April 22, E.S.H.)

Commissioner adopted ALJ's initial decision denying parent's Emergent Relief motion. Parents failed to show a likelihood of success on the merits where the district's evaluation system for selection to the National Honor Society varied slightly from, but was consistent with NHS policy. (03:Aug. 5, J.B.)

Commissioner adopted ALJ's Initial Decision denying parent's petition alleging that L.M.U. should have been recognized as a "distinguished student speaker" during 2003 graduation ceremonies. Pupil's graduation rendered matter moot. (03:Aug. 14, K.R.C.)

Commissioner adopted ALJ's Initial Decision denying parent's petition alleging that L.M.U. should have been recognized as a "distinguished student speaker" during 2003 graduation ceremonies. District eligibility criteria requiring four consecutive years in one program for "distinguished student speaker" designation held reasonable despite lack of board approval. (03:Aug. 14, K.R.C.)

Placement of

Board could assign pupil to another public high school within the district after a suspension, where principal of current high school had legitimate fear for her safety if the pupil were to remain on premises. (00:June 13, G.L.)

Challenge to placement of pupil in regular math course rather than algebra dismissed as moot; pupil transferred to different school district. (99:May 3, Fox)

District should have placed home schooled pupil in accordance with grade level of her equivalent instruction, and then assessed her actual level with respect to the district's specific course proficiencies to determine if initial placement was appropriate. (00:Feb. 2, M.C.)

PUPILS

Gifted and talented: Placement of pupil in science class was not improper; there are no federal or state requirements for programming for students who are arguably “gifted and talented.” (99:Dec. 27, Wicker)

Pupil is granted emergent relief and allowed to graduate with her class although private school from which she transferred refused to send records confirming successful completion from 11 grade, because of tuition dispute. (00:May 19, D.H.)

Use and administration of placement test for kindergarten French language immersion program not arbitrary, capricious or unreasonable. (03:March 14, G.L.L.)

Waiver to allow student to attend different high school denied; ALJ opines that waivers should be granted for extraordinary or medical reasons, not just for comfort. (00:Feb. 2, M.C.)

Where pupils were unable to obtain their school records from private school previously attended because of tuition dispute with that school, and there was no proof that the necessary credits, district is ordered to advance pupils to 12th grade and graduation respectively, provided they pass the required courses. (Motion for emergency relief granted 00:May 15)(00:July 3, D.K.)

Privacy rights

Parents’ section 1983 action challenging board’s administration of student survey as violation of (FERPA), Protection of Pupils Rights Amendments (PPRA) and constitutional rights is dismissed on summary judgment motion; parents were given ample notice that participation in survey was completely voluntary and anonymous; board was not required to obtain written parental consent. Individual defendants entitled to qualified immunity. Moreover, FERPA and PPRA inapplicable. Case in on appeal to Third Circuit Court of Appeals. C.N. v. Ridgewood Bd. of Ed. et al., United States District Court, District of New Jersey, Letter Opinion (Feb. 15, 2001)

Promotion/retention

Board is ordered to retain immature kindergarten pursuant to parents’ request; emergent relief granted to parents. (99:Sept. 3, J.C.)

Records

Commissioner did not have jurisdiction over issue of whether child’s proper name in school records should reflect father’s recent paternity order; issue of child’s name should be part of pending matter in Family Division. (99:June 25, Barlow)

Mandated pupil records in existence during student’s enrollment or at the time of pupil’s graduation or departure may not be destroyed without parental consent; permitted pupil records of currently enrolled pupils may be destroyed without prior notice if no longer relevant. (See N.J.A.C. 6:3-6.2(i) (99:Aug. 13, M.N.)

PUPILS

Pupil is granted emergent relief and allowed to graduate with her class although private school from which she transferred refused to send records confirming successful completion from 11 grade, because of tuition dispute. (00:May 19, D.H.)

Records dispute over IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

School district must provide to the court for *in camera* review pupil records in case where teacher/coach is charged with criminal sexual contact with a student. State v. Corsey, Superior Court of New Jersey, Law Division, Gloucester County, Dkt. No. A00-09-0579.

Substance abuse referral records subject to confidentiality; would not be provided to parent. (00:Feb. 15, D.C.)

The Commissioner rejected the ALJ's determination that certain items from pupil record should be expunged. Pursuant to N.J.A.C. 6:3-6.8(c), the pupil record of a pupil who departs a school system may be destroyed only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., which specified that a student's Confidential Disciplinary File is to be retained for "two years after graduation or termination from school system or age 23, whichever is longer." (04:Feb. 5, J.C.)

Residence for school purposes

Commissioner adopted ALJ's determination, pursuant to N.J.S.A. 18A:13-1 to 81, that a non-resident pupil who sought admission to a tuition placement, had her application rendered moot by virtue of her entry into college. (03:Aug. 19, A.K.)

Commissioner adopted ALJ's finding that petitioner who lives in a particular place and, on occasion, spends time overnight at a different place, does not automatically abandon his initial domicile. (03:Aug. 1, A.M.K.)

Commissioner adopted ALJ's finding that petitioning grandmother successfully carried her burden of persuasion in a residency contest, pursuant to N.J.S.A. 18A:38-1b.(2), where pupil often slept at his mother's home even though grandmother had obtained legal custody. (03:Aug. 1, S.G.)

Commissioner adopted ALJ's finding that the district's "drive-by" surveillance of the domicile was deficient for purpose of determining domicile. (03:Aug. 1, A.M.K.)

Commissioner adopted ALJ's finding that upon the superintendent's determination that a pupil is not domiciled within the district, the parent or guardian has the burden of proving domicile by a preponderance of the evidence standard; N.J.S.A. 18A:38-1(b)(2). (03:Aug. 1, A.M.K.)

PUPILS

Commissioner adopted ALJ's findings, pursuant to N.J.S.A. 18A:38-1(b), that R.K.'s family, who was living in Syria and suffering family hardship, was unable to provide for R.K., where R.K. moved to the district to live with an uncle who supported him gratis. (03:Aug. 11, F.M.)

Homeless: Commissioner did find compelling circumstances to permit relaxation of 30- day rule of N.J.A.C. 6A:17-2.8, N.J.A.C. 6A:23-5.1(d), where district filed appeal 84 days after notification of county superintendent's determination of district responsible for educating homeless pupil. (03:October 2, Springfield)

Parent failed to meet burden of proof that pupil was entitled to a free public education in the school district. Pupil may be removed from the educational program offered by the district. Parent ordered to pay \$5,914.92 in tuition for the period of ineligible attendance. (03:June 10, Hamilton)

Affidavit pupils:

ALJ concluded that petitioning uncle carried the burden of proof by a preponderance of the evidence in establishing the existence of a domicile, family relationship, economic hardship and gratis support pursuant to N.J.S.A. 18A:38-1b(1). Uncle supported nephew gratis and was domiciled within the school district. (02:Aug. 1, P.G.)

ALJ erred in analyzing case under the affidavit student provisions of the statute, rather than the domicile provisions. (02:March 13, D.M.)

Aunt and uncle failed to show they were supporting child gratis. No economic or family hardship shown. 35 days tuition owed to board. (02:April 8, S.M.)

Child was entitled to free education in district during period that aunt was his legal guardian; no entitlement when mother regained custody of child because parents provided financial support; tuition ordered from date. (98:Sept. 4, M.D.P.-W)

Child was entitled to education in district where supported by church friend; hardship established; continued living with his missionary parents in Uzbekistan would subject children to physical danger. (99:Aug. 25, D.K.S.)

Commissioner adopted ALJ's findings, pursuant to N.J.S.A. 18A:38-1(b), that R.K.'s family, who was living in Syria and suffering family hardship, was unable to provide for R.K. where R.K. moved to the district to live with an uncle who supported him gratis. (03:Aug. 11, F.M.)

Commissioner concludes child's parent not capable of providing support because of drug abuse, despite lack of supporting documentation. (00:Sept. 11, J.C.)

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- DA's nieces moved from Columbia to reside in America with DA. DA supported the children gratis, without compensation from their parents. Father not required to produce income tax returns because in Columbia, persons below the poverty level are not required to file income tax returns, therefore were unable to demonstrate that they were unable to support the children in America. Commissioner agreed with ALJ that DA satisfied N.J.S.A. 18A:38-1 and is domiciled within the district, supporting his nieces gratis due to family hardship. (02:Sept. 23, D.A.)
- De minimus* support provided by parents does not undermine affidavit pupil status. (98:Aug. 28, H.K.)
- Equitable principles operated under particular circumstances of this case, to allow parents standing to prosecute board's adverse determination on affidavit pupil status. (98:Aug. 28, H.K.)
- Even where affidavit was incomplete, Commissioner finds pupil entitled to education based on credibility of resident's testimony; hearsay was admissible where it contained residuum of credibility. (99:Oct. 28, U.S.K.)
- Failure of pupil's brother to appear at hearing; burden not met. Back tuition awarded for period of ineligible attendance. (02:Feb. 4, L.N.)
- Family discord constituted hardship: pupil residing with aunt is entitled to be educated in the district in light of divorcing parents' domestic violence and mother's economic situation. (99:Oct. 28, U.S.K.)
- Father could bring appeal of districts' determination to remove alleged affidavit pupil from district, although resident was statutorily required to do so, where petition was filed prior to promulgation of N.J.A.C. 6A:3-8.1(b). (02:Jan. 28, Y.I.S., aff'd St. Bd. 02:May 1)
- Grandmother's petition dismissed for failure to prosecute; must pay back tuition within 60 days. (00:Dec. 7, M.L.)

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Grandmother with whom pupil resided but was not the legal guardian, did not establish pupil's entitlement to education as an affidavit pupil; no demonstration of hardship rendering parents incapable of caring for child; child lived with grandmother as a matter of family choice, cultural custom and lack of child care. Child was entitled to free education once his father also moved in with grandmother. Case is of interest because of long and laborious procedural history, including several remands and appeals to the State Board, and involving Commissioner's insistence on obtaining grandmother's testimony to resolve the material facts and refusal to dismiss where grandmother's failure to prosecute was due to her illness. (01:Aug. 20, E.G.P.)(on remand)(See also, 98:Dec. 21, E.G.P., aff'd St. Bd. 99:June 2, aff'd with modification St. Bd. 00:July 5)

Hardship demonstrated because parents could not provide pupil privileges of citizenship because they lived in Korea; also, resident met criteria to be child's guardian despite fact that school district would not provide verification required by Surrogate. (00:Aug. 18, R.C.P., aff'd St. Bd. 01:Jan. 3)

Hardship demonstrated during period where foster child, which created family hardship, continued to reside in pupil's home. Once foster child removed, entitlement to free education removed. Desire to stay in district for dance recital or until damage to own home repaired insufficient to warrant continued free education. (01:March 2, A.D., appeal dismissed for failure to perfect, St. Bd. 01:July 10)

Hardship demonstrated where parents, immigrants from India, did not speak English and could only work in out-of-state hotel where owner spoke Indian but which did not allow children. (01:April 20, K.M.)

Hardship: when hardship ends, parents responsible for payment of tuition. (01:March 2, A.D., dismissed for failure to perfect, St. Bd. 01:July 10)

It is the resident who is responsible for back tuition where resident submits affidavit. (01:Nov. 26, Williams)

Matter settled, after ALF finds that student was left by mother in uncle's home with no showing of hardship. (01:Nov. 8, G.J.)

No entitlement to free education where uncle abandoned appeal of board's decision; tuition ordered for period of ineligible attendance. (00:July 13, G.M.)

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- Order granting custody retroactive to one year earlier entitled student residing with sister to free education under N.J.S.A. 18A:38; custody order must be accepted on its face and parties' motives are not determinative; no back tuition ordered. (01:May 11, L.D.M.)
- Petitioner demonstrates economic hardship on behalf of mother; entitlement to be educated in district. (00:Sept. 11, M.J.)
- Petitioners must prove not only family hardship, but one that renders parents "not capable" of caring for their child; not established by parents' inability to supervise their teenage sons during work hours where mother cared for elderly parents and father was working. (98:Aug. 28, H.K.)
- Polish citizen on expired temporary visitors visa was entitled to education in district where she met requirements of affidavit pupil statute; failure to present proof of the claim of hardship by way of affidavit until the time of the hearing was not fatal to her claim; further, visa status was of no moment. (99:April 9, E.M.)
- Pro se* grandmother's pleadings did not resolve all factual issues where child had lived with her for 7 years; matter remanded for oral depositions or other mechanisms to produce grandmother's essential testimony, since grandmother was currently ill and unable to attend proceedings before Commissioner. (00:Jan. 24, E.G.P.)
- Providing school supplies, transportation costs as well as other needs satisfies requirement that resident assume personal obligations for child relative to school. (98:Aug. 28, H.K.)
- Pupil, an American citizen of Korean descent, living with and supported *gratis* by friend of his parents, meets affidavit pupil standard; family hardship established where parents, while of adequate means in Korea, do not have the funds to support their son's desire to live in the United States as an American citizen. (02:Oct. 28, Q.C.S.)
- Pupil, a U.S. citizen who previously lived with his parents in South Korea and was later sent to live with his aunt and uncle in Tenafly in order to be educated in the U.S., was entitled to a free education in Tenafly as an affidavit pupil. The Appellate Division found no abuse of discretion in the decision of the State Board to permit P.B.K. to supplement the record after the initial decision to demonstrate financial hardship. P.B.K., on behalf of minor child E.Y. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001); aff'g St. Bd. 00:Jan. 5, rev'g Commissioner 97:Oct. 14)

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Pupils were neither domiciled in the district, nor did they qualify as “affidavit pupils” where after moving to Israel and renting out their house, they returned early and moved into another district with grandmother; and then attempted to create illusion of domicile in district by having a lease prepared to show that family moved in with father’s sister; nor was there credible evidence that the children lived with father’s sister due to any hardship, or were supported by her; tuition ordered for ineligible attendance. (02:Feb. 4, S.G., appeal dismissed for failure to perfect, St. Bd. 02:May 1)

Pupil who came from Poland to live with district resident after her father became seriously ill, met statutory criteria; a district may not automatically deny an application on the basis of inadequate documentation without consideration of the full circumstances developed at the evidentiary hearing. (03:October 2, B.R.)

Pupils who lived with their uncle while parents resided in Columbia, were entitled to free education; hardship established as mother works seven days a week as a dentist, and children must travel with her on weekends through dangerous areas inhabited by guerrilla groups, and father cannot care for them weekends as he works 235 miles away due to lack of work nearby. (01:July 2, L.C.A., on behalf of C.A.L.A.)

Pupil who resided with grandparents was entitled to free education although father provided son a weekly allowance and medical insurance where grandfather claimed him as a deduction on tax returns; pupil’s mother had abandoned him and father’s work entailed long hours with travel. (02:Jan. 28, Y.I.S., aff’d St. Bd. 02:May 1)

Pupil who was citizen of and living in Brazil, not entitled to a free education where her petitioning cousin, a New Jersey resident, abandoned prosecution of his appeal, and further expressly stated that he did not intend to bring the girl to the U.S. to live with him unless the Board approved her admission to its schools. (03:Jan. 16, G.B.)

Resident is the party with legal standing to appeal a board’s adverse determination on affidavit pupil status, parents have no standing. (98:Aug. 28, H.K.)

Resident of district who failed to appear and did not establish that when fire destroyed family’s mobile home she began supporting her niece “gratis” was ordered to reimburse board tuition for period of niece’s illegal attendance. (99:April 8, F.B.)

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Sister fails to prove student's entitlement to free education; inability to send pupil to a private school does not indicate that parents in Haiti are incapable of supporting or providing care due to family hardship; tuition due even though petitioner claims she didn't realize she would be responsible for tuition while awaiting decision. (00:Dec. 15, M.S.)

Student from out of state entitled to free education where student resided with aunt who applied for custody; however, Superior Court could not exercise jurisdiction to grant custody where N.J.S.A. 2A:34(e) requires child to be in state with person acting as parent for at least six months prior. (00:Aug. 2, D.W., St. Bd. rev'g 99:Oct. 4)

Student seeking to enroll did not qualify as affidavit pupil; reopening of matter not warranted in light of parent's failure to appear at hearing because she "forgot" coupled with her disregard of numerous discovery request; reimbursement for 165 days of ineligible attendance. (02:Feb. 22, S.M.)

Summer and other visits with parents do not undermine affidavit pupil status. (98:Aug. 28, H.K.)

Uncle did not establish hardship; parent, a Haitian immigrant, simply preferred New Jersey schools to those in New York. Tuition ordered within 60 days, or pursuant to payment schedule. (01:Jan. 8, S.M.)

Where relative failed to appear, relative's petition challenging board's denial of free education is dismissed; however, no prejudice to future application if relative completes adoption process in Ethiopia. (00:Aug. 18, T.M.)

Domicile

ALJ concluded that petitioning uncle carried the burden of proof by a preponderance of the evidence in establishing the existence of a domicile, family relationship, economic hardship and gratis support pursuant to N.J.S.A. 18A:38-1b(1). Uncle supported nephew gratis and was domiciled within the school district. (02:Aug. 1, P.G.)

Although parent considered herself a N.J. resident and owned a home in N.J. to which she hopes one day to return, she is not domiciled in N.J.; she rarely visits the residence, and resides in Tennessee, her husband's business is there, she has a job there, she is registered to vote there and her car and drivers license are there. (98:Aug. 3, K.W.)

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- A short period of residence out of the district was enough to acquire domicile in another district for 34 days; family left district with intent to remain, although they ultimately did not remain; tuition reimbursement ordered. (99:Nov. 17, H.S., aff'd St. Bd. 00:May 3)
- Board did not prove that student was not resident of the district when placed in correction center. Board responsible for tuition. (02:May 31, South River) Decision on Remand.
- Board failed to follow procedure for residency hearing and special education procedures, in determining to terminate payment for pupil's placement at private school, because of residency dispute. (00:Sept. 11, C.M.)
- Board policy permitted nonresidents to enroll if residency is established in 60 days; parents but did not establish residency; back tuition ordered; also, district ordered to permit children to complete school year on a tuition basis. (99:March 23, R.D.F., appeal dismissed for failure to perfect, St. Bd. 99:July 7)
- Child of unmarried couple, who shared time with each parent, did not reside with father based on totality of evidence, but rather resided with her mother who was not domiciled in the district. Back tuition ordered; however no prejudgment or postjudgment interest. (01:Aug. 27, W.A.)
- Child placed in out-of-state facility by State agency: Presumption of correctness of address provided by DYFS, was rebutted by board of education; parent did not reside in district on date child was placed by DYFS. (01:Feb. 8, Morris Hills)
- Commissioner adopted ALJ's findings that child was not domiciled within the district where twenty random surveillances revealed that the pupil was dropped off, but not domiciled at the in-district residence. Tuition assessed in the amount of \$31,847.16 for the period of ineligible attendance. (04:Feb. 23, E.C.)
- Commissioner adopted ALJ's finding that pupil did not reside within the district. Parent failed to appear at hearing and was thus unable to carry his burden of proving residency. Tuition of \$13,483.34 assessed for the period of ineligible attendance. (04:Feb. 26, J.H.)
- Commissioner assessed tuition against parent where he advised the district that he would be moving out of district, but requested district permission to allow his child to remain in district because he would soon purchase a home in district. District granted a 60-day retroactive grace period, then sought tuition reimbursement when parent failed to provide proof of residency within 60 days. (02:Nov. 6, C.K.)

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- Commissioner confirmed district's authority to charge tuition after investigation by district's residency investigator revealed that student did not reside in district. (02:Nov. 6, C.B.)
- Court order transferring custody to aunt was conclusive of pupil's residency, regardless of motive in obtaining order; board must pay tuition to charter school on behalf of pupil. (00:July 13, Absecon)
- Court order transferring temporary custody to grandmother was conclusive of pupil's residency, absent fraud, and regardless of motive in obtaining order; not to be analyzed as affidavit pupil. (00:Aug. 4, J.M.)
- Custody order: Sister obtained custody of brother residing with her; boy was entitled to free education as of date of entry of retroactive custody order. No need to apply affidavit pupil standard of hardship. Custody order must be accepted on its face; motive not determinative. No tuition owed for last year's attendance in light of retroactive nature of order, despite tentative agreement between parties. (01:May 11, L.D.M.)
- Despite intention to move into district, actual domicile was outside district. (98:Dec. 15, W.H.)
- District challenging DYFS determination of domicile bears burden of proof. (99:March 22, Newark v. Dept of Ed.)
- District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited. (98:May 26, Livingston, aff'd as modified, St. Bd. 99:Feb. 3, dec. on motions, St. Bd. 99:April 7, stay denied St. Bd. 99:June 2)
- Division of Development Disabilities law, together with school funding law and laws regarding disabled students, compel the conclusion that where a classified pupil is placed by DDD in a group home, district of residence is responsible not only for tuition, but also for transportation costs; district where group home is located is not responsible. West Windsor-Plainsboro, App. Div. unpub. op. Dkt. No. A-4919-01T1, July 1, 2003, reversing St. Bd. 02:April 3 and 00:Sept. 5.
- Domicile and residency explained. (99:April 13, F.P.)
- Domicile explained. (98:Sept. 24, L.B. aff'd St. Bd. 99:Jan 8. See also decision on motion 98:August 8; motion for stay denied, 98:Dec. 2)
- Domicile has two requisite elements: a physical residence and the intent to remain there. Intent is only relevant when there are multiple residences. (99:Sept. 23, J.B., settlement approved, St. Bd. 01:March 7)

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- Domicile not established; tuition ordered where house had no certificate of occupancy and remained vacant while under construction. (01:Aug. 13, K.L.)
- Domicile remained in district where family owned home, although they rented a small apartment in another district; many factors weighed in determining intent to establish domicile. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)
- Domicile was not in district where, although petitioner owns home and has strong roots there, he does not actually live there and does not list that address for tax, drivers license, car insurance and voter registration purposes ; intention to return to former home if possible is too vague to establish domicile. (98:Sept. 24, L.B., aff'd St. Bd. 99:Jan 8. See also decision on motion 98:August 8. motion for stay denied, 98:Dec. 2.)
- Dual residency: Under particular circumstances of case where special education student resided with each parent on alternate weeks under joint custody arrangement, both districts must share student's education costs. Somerville Bd. of Ed. v. Manville Bd. of Ed., 332 N.J. Super. 6 (App. Div. 2000), aff'd 167 N.J. 55 (2001)
- DYFS' failure to notify district of its placement decision deprived district of opportunity to participate in decision; Commissioner remands issue of whether such failure affects district's responsibility for cost of placement, as regulations no longer require participation of district of residence in placement of classified pupil. (99:Dec. 23, Highlands)
- DYFS has no obligation to conduct independent investigation of residence but may rely on information received from the Department of Human Services. (99:March 22, Newark v. Dept of Ed.)
- DYFS placement: In the absence of contrary evidence, mother was domiciled in Newark prior to the time the classified child was placed by DYFS, even though Newark had no such record of mother's domicile and only record was from DYFS; therefore, pursuant to N.J.S.A. 18A:7B-1 to 13, Newark was responsible for child's tuition. (99:March 22, Newark v. Dept of Ed.)
- DYFS placement: Pursuant to N.J.S.A. 18A:7B-12(b), board was district of residence for classified child because child lived with his mother prior to DYFS placement and because mother currently resides in the district. (99:Dec. 23, Highlands)

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- Equitable estoppel: Board is not estopped from removing pupil not entitled to free education simply because it admitted pupil previously. (98:Dec. 21, E.G.P., aff'd St. Bd. 99:June 2, aff'd with modification St. Bd. 00:July 5)
- Failure to answer; allegations deemed admitted; tuition ordered for period of ineligible attendance. (02:July 15, Clifton v. M.F.)(02:July 15, Clifton v. Barnes)
- Failure to answer: tuition ordered as parent failed to answer charges that pupils attended unlawfully. (01:May 7, North Arlington)
- Failure to appear at hearing and provide proofs required dismissal of parent's appeal; board's counterclaim for tuition granted. (98:July 22, M.S.)
- Failure to comply with discovery order of court required dismissal of petition; board's counterclaim for tuition granted. (99:July 30, K.O.)
- Homelessness: family members were homeless during period they lived in motel after being evicted from rented home; however homelessness ceased when family moved back to property they owned that had been listed for sale. (99:Sept. 23, J.B., settlement approved, St. Bd. 01:March 7)
- Intentional representation and frivolous defense claims could not be determined on board's motion for summary judgment; fact-finding required; dismissed without prejudice so board could pursue claim for attorneys fees in court. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)
- Joint custody: determination of where pupil was residing in light of several consent orders changing residential custody, hearing reopened. (00:July 10, M.A.D.)
- Joint custody: pupil living with a parent under joint custody arrangement, not entitled to being dropped off and picked up at alternate sites within district where the arrangement did not result from court adjudication. Fact that board was not party to divorce action had no bearing on matter. (01:June 4, Van Note)
- Joint custody: Somerville v. Manville decision inapplicable because rulling limited to factual circumstances of that case. (01:June 4, Van Note)
- Joint custody: Under particular circumstances of case where special education student resided with each parent on alternate weeks under joint custody arrangement, both districts must share student's education costs. Somerville Bd. of Ed. v. Manville Bd. of Ed., 332 N.J. Super. 6 (App. Div. 2000), aff'd 167 N.J. 55 (2001)

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- Judicial estoppel: Parents were judicially estopped from asserting claim of residency in district where they had taken inconsistent position in previous litigation; summary judgment granted; parents ordered to pay back tuition. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)
- Late filing: Parent was out of time in contesting board's residency determination; 21 days expired August 7 but petition filed September 3; board's motion to dismiss granted. (99:March 10, D.R., appeal dismissed for failure to perfect, St. Bd. 99:July 7)
- Local board cannot require legal guardianship for residency purposes nor delegate its authority to hold hearing and make determination under the residency statute, N.J.S.A. 18A:38-1, to determine eligibility to attend school in the district. Notwithstanding these defects, parents provide no information demonstrating son's entitlement to attendance in the district free-of-charge. Board not compelled to accept non-resident student. (01:Dec. 13, J.M., aff'd St. Bd. 02:April 3)
- Matter remanded to Commissioner for determination of local board's total annual per pupil cost after petitioner fails to demonstrate domicile in district. (St. Bd. 02:Jan. 2, K.D.)
- Mother's rental of duplex in Princeton while continuing to reside in Pennsylvania, did not establish domicile in Princeton; although she claimed to have misunderstood the law she never sought clarification; equal protection challenge that renters treated differently than homeowners under 60-day policy is dismissed. (01:Aug. 27, H.M., appeal dismissed for failure to file within statutory time limit, St. Bd. 02:May 1)
- No automatic stay requiring pupil to be admitted to district's school pending proceedings under N.J.S.A. 18A:38-1, where there was no residency dispute; pupil admitted nonresidency, and issue was merely whether tuition should be forgiven because of district's flawed instructions. (01:April 26, H.M.)
- No emergency relief to parents who failed to file their appeal within 21 days of board's notification that district would transfer pupil to another district for lack of residency. (00:Sept. 6, T.C.M.)

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- No entitlement to free education in district where parent neither provided persuasive proof that she resided in an apartment in the district, nor produced reliable, signed contract for the construction of new home in the district, back tuition ordered. (01:Oct. 9, S.S.)
- No entitlement to free education where parent failed to prosecute; board (party upon whom burden did not rest) presented sufficient evidence to establish prima facie case. (00:Nov. 3, E.K., aff'd St. Bd. 01:Feb. 7)
- Notice and due process rights of N.J.S.A. 18A:38-1 must be construed in light of J.A., Appellate Division's 1999 ruling. (99:June 25, S.C.)
- No tuition ordered for period during which district "let matter slip through the cracks" creating impression for parent that the matter had been resolved and attendance permitted by central office. (98:Sept. 24, L.B., aff'd St. Bd. 99:Jan 8. See also decision on motion 98:August 8; motion for stay denied, 98:Dec. 2.)
- Order of Temporary Custody with no expiration date establishes aunt's guardianship. Student entitled to free education in the district. (02:March 13, D.M.)
- Parent challenged Board's determination of ineligibility based on residency. ALJ determined that parent and children were domiciled in the district despite experiencing problems with their housing due to the events of September 11, 2001. (02:Aug. 1, L.McN.)
- Parents contested the board's denial of resident status where parents purchased a new home within the district, but split time between the new "in-district" residence and old "out-of-district" residence until old home was sold. Commissioner agreed that parents were not "domiciled" in the new district. Parents ordered to reimburse the district \$27,292.38 in prorated tuition. (02:Sept. 16, D.L., aff'd St. Bd. 03:Jan. 8)
- Parent's testimony was not credible regarding residence; tuition ordered for period of illegal attendance. (00:Jan. 21, C.C.)
- Petitioner directed to reimburse board for part of time that student was not domiciled in district. Equitable estoppel prevents board from reimbursement for entire period of time that student not domiciled in district. (St. Bd. 99:June 2, Whasun Lee, aff'd in part and rev'd in part, Docket No. A-5978-98T2 (App. Div. Aug. 7, 2000), certif. den. 165 N.J. 677 (2000), dec. on remand St. Bd. 02:July 2)

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- Petitioner failed to appear at hearing; testimony of investigators that child resided in another district with her mother was undisputed. Tuition ordered for 67 days of illegal attendance. (02:Feb. 20, R.C.S.)
- Petitioner ordered to pay tuition for the period of ineligible attendance; 1/180 of the total annual per pupil cost multiplied by the number of days of ineligible attendance. (02:April 2, T.W.J.)
- Petitioning parent failed to answer board's counterclaim; held that children were not entitled to free education in district. (99:March 23, R.D.F., appeal dismissed, St. Bd. 99:July 7)
- Pupil residing in correction center – burden of proof: matter remanded so burden is properly placed on board of education; board must demonstrate that the district of residence determination made by Division of Finance was wrong. (00:Dec. 18, South River, aff'd St. Bd. 01:July 10)
- Pupils not domiciled in the district. Parent ordered to pay tuition for period of children's ineligible attendance, \$17,935.90 plus \$47.44 per day. (02:April 8, R.T.)
- Pupils residing with uncle whose property overlapped two districts only entitled to free education in the district to which majority of property taxes paid even though uncle held address in neighboring district out as his own and even though previous homeowner's children attended neighboring district tuition-free. (01:April 2, R.D.)
- Pupil was not domiciled in district during last year of school prior to graduation where water pipes burst in family home and family moved to nearby town and rented out family home; matter remanded for determination of tuition costs. (99:March 10, G.E.A., aff'd St. Bd. 00:July 5)
- Pupil was not living with a parent resident of the district; she was actually living alone under watchful eye of neighbor while her parent lived in other town. (01:July 20, M.C. on behalf of S.M.)
- Residence was in district where mother worked in home for the elderly and received apartment there; fact that child stayed elsewhere some nights did not change residence. (99:Aug. 30, A.W.)
- Separated parents were credible; they provided plausible explanation of why investigators saw child leave mother's out-of-district apartment in the mornings; child was temporarily staying with mother while he needed help with poor grades; his residence remained with father until his parents made decision for him to move permanently. (02:Feb. 4, K.J.)

PUPILS

Severely disabled pupil in residential placement for which district had been sharing the cost, was no longer domiciled in New Jersey and thus district had no obligation under IDEA to provide FAPE; change of domicile occurred “incrementally” and was effective when parent’s intention to return to New Jersey had become a mere hope for the future. (98:Aug. 3, K.W.)

Since father was domiciled in district had custody of children pursuant to separation agreement, children were entitled to attend school in district. (02:June 20, S.B.)

Special education regulations no longer require that district of residence participate in placement decision made by other public agency. (99:Dec. 23, Highlands)

State has fiscal responsibility for tuition of student placed in a state facility when the district of residence is outside of New Jersey. (99:Aug. 13, Lower Camden)

Testimony of investigators who conducted surveillance was credible whereas that of father was not. Daughter did not live with father, but rather with mother in another district. (02:Jan. 28, H.M.)

Testimony was crucial to determination that child was not the child of a homeless family in accordance with N.J.A.C. 6:3-8.3, as parents were domiciled in the district and living with the child’s grandmother. (99:June 21, Woodlynne)

When a board contests a district of residence determination made by Finance based on information provided it by the Department of Human Services, the board bears the burden of proving that the determination was wrong. (00:July 3, Bradley Beach, settlement on remand 01:May 22)

Where father and sons were living between two residences, father failed to establish domicile in district for 1997-98; remanded for further development of record to determine whether there was necessary concurrence of physical presence and an intention to make district his home in 1998-99. (99:April 13, F.P.)

Where less than two-tenths of property was located in district, residence was not in district. (00:July 31, M.F., aff’d St. Bd. 01:Feb. 7)

Where present residence could not be determined, district of residence was district where child resided prior to admission or placement. (99:Aug. 13, Lower Camden)

PUPILS

Where pupils were not domiciled in district, fact that parents relied on neighboring district employee's refusal to enroll the children there did not excuse parents from obligation to pay back tuition from date of notification, nor did district's delay in notifying them warrant application of laches. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)

While pupil had two residences in that he spent equal time with grandmother and mother, by operation of law his domicile was with mother. (01:May 24, J.M., dismissed for failure to perfect, St. Bd. 01:Aug. 1)

Settlements

Approved

Parents agree to pay tuition in monthly payments. (02:April 12, E.K. and D.H.)

State is fiscally responsible where pupil is placed by DYFS and the parents' district of residence is out of state. (St. Bd. 00:June 7, Wildwood, reversing 96:Dec. 30, see also remand 95:Oct. 6)

State Residential Treatment Facility: Where student resides in treatment facility and parents no longer reside in New Jersey, it is then responsibility of State to pay tuition for placement. (St. Bd. 00:June 7, Wildwood, reversing 96:Dec. 30, see also remand 95:Oct. 6)

Student achievement

Although teacher had no standing to bring complaint that the board failed to follow state guidelines in its implementation of the Special Review Assessment (SRA), it was appropriate for the SRA to be reviewed by special committee recently convened by the Commissioner to review the SRA process statewide and the meaningfulness of diplomas awarded through the SRA process. (01:Oct. 15, Ryan, aff'd for the reasons expressed therein, St. Bd. 02:March 6)

Student council

Emergent relief granted in part to pupil who was elected as student council president but then disqualified for making disparaging remark in speech, where he obtained consent from school advisor and target of remark prior to making remark. (02:Oct. 16, R.B.P.)

Suspension and expulsion

Alternative education: Emergency relief granted to student who was expelled for slashing another's coat with a box cutter and possessing knife; Board must immediately assess student's alternative education needs and place him in appropriate alternative education program meeting Core Curriculum Content Standards, during pendency of appeal. (01:July 16, P.H., emergency relief granted St. Bd. 01:Sept. 5)

PUPILS

- Board's decision to expel was moot; pupil restored, record expunged; not a matter of public concern evading review. (01:Jan. 8, L.H., remanded St. Bd. 01:June 6)
- Commissioner agreed with ALJ that the Commissioner and State Board did not violate the pupil's right to a thorough and efficient education by failing to ensure that pupil was enrolled in an alternative education program subsequent to expulsion, where home instruction was provided subsequent to an emergent relief hearing. (03:Feb. 18, S.R.R.)
- Commissioner agreed with ALJ that the Commissioner and State Board did not violate the pupil's right to a thorough and efficient education guaranteed by Art. VIII, Sect. IV, para. 1 by failing to issue regulations pertaining to expulsions. (03:Feb. 18, S.R.R.)
- Commissioner found that the district did not violate pupil's constitutional right to a thorough and efficient education in expelling him. Commissioner agreed with ALJ that the Commissioner and State Board did not violate the pupils right to due process guaranteed by the 14th Amendment of the U.S. Constitution by failing to issue regulations governing expulsions. N.J. Constitution. (03:Feb. 18, S.R.R.)
- Commissioner modified ALJ decision dismissing pupil's petition alleging constitutional violations in an expulsion matter. Commissioner denied pupil's State claims seeking relief in the form of a finding that the Commissioner and State Board violated the pupil's rights under the New Jersey Constitution and an Order directing the Commissioner and State Board to issue regulations on the administration of long-term suspensions and expulsions. Commissioner noted that pursuant to P.H. and P.H. o/b/o/ M.C. v. Bergenfield Bd. of Ed., the proper course for seeking the adoption of regulations by an administrative agency is to petition that agency pursuant to the procedures prescribed by that agency. (03:Feb. 18, S.R.R.)

PUPILS

- Commissioner sustains Board's decision to expel 16-year old pupil after he twice tested positive for marijuana; however, notes that before a Board takes the dire step of expulsion it must assure that less draconian course of action was considered, such as alternative school, and during period in which Commissioner determines whether board considered such action, it is appropriate for Commissioner to order a continuation of educational services. (01:Aug. 6, M.G., aff'd St. Bd. 01:Dec. 5)
- Community service: Board's decision to suspend pupil for three days and require three hours of community service where pupil was defiant to teacher, was not arbitrary or unreasonable; emergent relief denied. (01:Dec. 31, L.B.)
- Emergent relief denied 14-year old involved in exploding homemade bomb; alternative school placement does not cause irreparable harm. (01:Oct. 16, A.M.)
- Emergent relief denied since student would have served entire suspension in issue by the date order could be rendered. (01:Oct. 15, D.P., decision on motion)
- Emergent relief denied to seniors involved in hazing incident at hockey camp; suspended from field hockey team and from serving as captain of other athletic team; argument that students would be denied opportunity to benefit from scholarships, is speculative and misguided; due process does not apply to exclusion from extra-curricular activities; behavior, while not explicit in handbook, clearly violated spirit of school rules; school may suspend for conduct occurring off-school property where safety of other pupils is threatened. (01:Oct. 22, D.M.)
- Emergent relief denied to students suspended from basketball team for 60 days for involvement with alcohol at private party; the fact that pupil only signed the anti-substance student agreement form after the party was irrelevant. (01:Dec. 28, J.J.)
- Expulsion: Board's expulsion of student who slashed another's coat with a box cutter and possessed knife, upheld; emergency relief granted regarding alternative education pending appeal. (01:July 16, P.H., emergency relief granted St. Bd. 01:Sept. 5)
- Expulsion: Pupil who is permanently expelled must be provided with an alternative education program until graduation or nineteenth birthday. (St. Bd. 02:July 2, P.H.)(See also 00:Sept. 15, P.H., 01:July 16, decision on motion St. Bd. 01:Sept. 5, aff'd St. Bd. 01:Oct. 3)

PUPILS

Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

Pupil was entitled to attend district's alternative school despite parent having signed a settlement agreement with Board withdrawing pupil from the district after he was suspended for repeatedly violating drug policy; although Commissioner lacks subject matter jurisdiction to rule on enforceability of the withdrawal agreement, Board may seek enforcement in appropriate forum while continuing to educate pupil. (02:Oct. 7, B.P.)

Student suspended from track team for drinking a few beers before attending school dance; in light of school policy against drinking by athletes, student's petition for emergent relief denied. (01:April 20, K.F.)

Two-day suspension upheld, and expungement of record denied, where male pupil played role in harassing a female pupil and parents had been provided a hearing. (01:Dec. 10, H.A.)

Where student and district entered consent order with regard to district's failure to provide alternative education as required by Abbott; after expulsion of student, the parents could not pursue the matter further with respect to effecting system wide changes; matter was moot and did not meet standard of being "capable of repetition yet evading review." (01:Dec. 31, J.M.)

Temporary residence

Parent who acquires residence as temporary measure after being homeless, but remains for over two years, establishes permanent residence for purposes of educating her children. (01:Dec. 5, Pine Hill)

Transportation costs

Where classified pupil was placed by DDD in group home, district of residence was responsible for tuition, but district where group home is located is responsible for transportation costs.

Transportation is an "educational benefit" to be provided by district in which group home sits pursuant to N.J.S.A. 30:4C-26(c). (00:Sept. 5, West Windsor-Plainsboro, aff'd St. Bd. 02:April 3)

PUPILS

Tuition

- Back tuition ordered; petitioner did not appear for hearing. (02:Jan. 10, K.F.)
- Board awarded summary judgment for back tuition for period of child's ineligible attendance, where parents produced no proof of domicile, failed to answer charges or attend hearing, and copies of notice was returned refused or unclaimed. (01:Nov. 30, Marlboro)
- Board generally has no obligation to provide tuition for educational services to a pupil it has expelled. (99:Sept. 7, Somerset County)
- Board had to pay tuition of expelled student adjudicated delinquent where court ordered placement in lieu of incarceration. (99:Sept. 7, Somerset County)
- Board policy permitted nonresidents to enroll if residency is established in 60 days; parents but did not establish residency; back tuition ordered; also, district ordered to permit children to complete school year on a tuition basis. (99:March 23, R.D.F., appeal dismissed St. Bd. 99:July 7)
- Board's refusal to waive policy imposing tuition charges after 60 days on those planning to move to district, held to be reasonable. (98:Oct. 29, M.M.)
- Change of domicile occurred "incrementally," effective when parent's intention to return to New Jersey had become a mere hope for the future; back tuition ordered for that period of disabled pupil's attendance. (98:Aug. 3, K.W.)
- Commissioner assessed tuition against parent where he advised the district that he would be moving out of district, but requested district permission to allow his child to remain in district because he would soon purchase a home in district. District granted a 60-day retroactive grace period, then sought tuition reimbursement when parent failed to provide proof of residency within 60 days. (02:Nov. 6, C.K.)
- Commissioner confirmed district's authority to charge tuition after investigation by district's residency investigator revealed that student did not reside in district. (02:Nov. 6, C.B.)
- Commissioner had jurisdiction to enforce agreement between district and parent for tuition payment in residency dispute; to require separate Law Division filing would be pointless and wasteful. (00:Jan. 18, J.A.D.)

PUPILS

- Default on settlement of tuition charges for illegal attendance: Parents were ordered, according to terms of previously entered Settlement and Release, to make additional back tuition payments to district; parents defaulted on terms of Settlement requiring monthly payments, and then failed to answer petition. (99:March 12, Warren Hills)
- District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited. (98:May 26, Livingston, aff'd as modified St. Bd. 99:Feb. 3, dec. on motions, St. Bd. 99:April 7, stay denied St. Bd. 99:June 2, aff'd App. Div. 00:March 29)
- Equitable consideration of estoppel precluded district from obtaining reimbursement for entire period of illegal attendance; tuition ordered only from date district notified parents. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)
- Equitable estoppel: board was estopped from collecting back tuition for those years where affidavit form did not ask about family hardship, and family was lead to believe they were in compliance with affidavit pupil requirements. (98:Aug. 28, H.K.)
- Failure to appear at hearing and provide proofs required dismissal of parent's appeal; board's counterclaim for tuition granted. (98:July 22, M.S.)
- Failure to comply with discovery order of court required dismissal of petition; board's counterclaim for tuition granted; neither prejudgment nor post-judgment interest were warranted. (99:July 30, K.O.)
- Homelessness: Family members were homeless during period they lived in motel after being evicted from rented home; however, homelessness ceased when family moved to property they owned in another district that had been listed for sale; back tuition ordered. (99:Sept. 23, J.B., settlement approved St. Bd. 01:March 7)
- Inequitable under circumstances to assess tuition against parents prior to board's final decision to exclude children residing with their uncle in home that overlaps two districts; appropriate to assess tuition after that date. (01:April 2, R.D.)
- Matter remanded to Commissioner for determination of local board's total annual per pupil cost after petitioner fails to demonstrate domicile in district. (St. Bd. 02:Jan. 2, K.D.)
- Parents ordered to pay tuition for period during which pupil attended district's schools, but had not yet moved into new home in district, pursuant to parties' agreement. (01:Jan. 26, Plumsted)

PUPILS

- Petitioner responsible for tuition of pupils through day he verbally informed principal of withdrawal and physically removed them from school. Written notice of withdrawal not required. Petitioner not responsible for alleged tuition owed for failing to provide written notice. (01:Oct. 15, E.M.M.A., decision on remand 02:June 27, rev'd St. Bd. 03:Feb. 5)
- Policy: Board's policy requiring pupils who leave the district mid-year to pay tuition was not arbitrary or capricious, even though some districts may permit students in such circumstances to remain free of charge. (99:Sept. 23, J.B., settlement approved St. Bd. 01:March 7)
- Pupil was not domiciled in district during last year of school; parent's challenge to board's determination could not be dismissed until tuition costs were determined on remand. (99:March 10, G.E.A., aff'd St. Bd. 00:July 5)
- Reimbursement awarded for period of attendance that did not satisfy affidavit pupil requirement, foster child removed from home so family hardship ended. Desire to remain in district for dance recital and until damage to own home repaired insufficient to warrant continued free education. (01:March 2, A.D., appeal dismissed for failure to perfect, St. Bd. 01:July 10)
- Reimbursement awarded for period of attendance that did not satisfy affidavit pupil requirements; summary decision for district where petitioner failed to respond to motion. (98:July 30, S.G.)
- Remand on amount of tuition; parent could not reopen threshold issue of pupil's entitlement to free education in district. (00:Jan. 18, G.E.A., on remand)
- Request by district for back tuition for alleged affidavit pupil was denied; parties did not seek tuition against proper party (resident), nor did board elicit facts to establish whether upon reaching majority, student was domiciled in the district; further, matter inexplicably took 2 years to resolve during which time pupil graduated from district. (01:Nov. 26,)
- School district of residence, under both new and repealed regulation, has the responsibility for non-residential special education costs of pupil placed by DYFS in approval residential private school. (00:Sept. 11, Highlands)
- Special education pupil placed by DYFS in residential facility; district of residence of parent at time of placement was responsible for tuition. (00:June 1, Burlington)
- Tuition ordered for non-resident pupil who attended district's schools prior to being in legal custody of resident aunt. (03:April 11, J.A.)

PUPILS

Tuition ordered where parents failed to submit answer in residency dispute. (00:Jan. 19, Wayne)

Tutor: Parents were unsuccessful in petitioning Commissioner to direct district to pay the cost of private tutor where they failed to follow even minimal standards regarding parties, allegations, and relief sought. (00:Aug. 14, L.C.)

Valedictorian; salutatorian

Board's policy to restrict valedictorian and salutatorian to those pupils who have competed for all four years, was reasonable. (99:June 16, P.A.)

Parents sought an order citing the board for violations of the public school choice option of the No Child Left Behind Act (NCLB) and directing the board to transfer their child. Upon review, the Commissioner, citing the 2003 U.S. District Court decision in *Association of Community Organizations for Reform Now et al. v. New York City Department of Education, et al.*, concluded that since the NCLB does not provide for a private right of action, there is no basis on which the Commissioner may consider this matter. The Commissioner granted the Motions to Dismiss and dismissed the Petition of Appeal. (04:Feb. 11, D.N.)

Where a parent or guardian is chronically transient, i.e. not homeless but having a series of short-term residencies, tuition for a student placed in a state facility is the responsibility of the parent or guardian's district of present residence, if residence can be determined. (St. Bd. 00:July 5, Somerville, reversing 97 N.J.A.R.2d (EDU) 352)

REGIONAL BOARDS

Commissioner, upon remand from N.J. Supreme Court, adopted ALJ's findings to equitably distribute the regional district's assets and liabilities based upon a formula designed by expert consultant, despite the absence of a proposed distribution in the resolution adopting the dissolution. (04:Feb. 5, I.M.O. Union County Regional H.S.)

Dissolution: Amount of assets to be distributed include the entire amount of those assets and not just those assets identified for distribution at the time of County Superintendent's report. In the Matter of the Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School District No. 1, St. Bd. Decision on remand, 02:Jan. 2)

Dissolution: Commissioner dismisses as untimely under 90 day rule, the union's claim that one of former constituent districts violated posting process established so that teachers could select districts in which they would be employed upon dissolution of the regional. (98:Nov. 30, AFT)

REGIONAL BOARDS

- Dissolution: Constituent of recently dissolved limited purpose regional school district could enter into sending-receiving relationship to send high school pupils to non-constituent district; receiving district not obligated to employ staff of the dissolved regional limited-purpose district, as it was never part of that district, and there is no derivative responsibility to hire such staff because of sending-receiving relationship. (00:Jan. 4, Hammonton)
- Dissolution: Emergent relief granted to constituent board; dissolving board is restrained from making payments to employees for accrued sick leave benefits under its Dissolution Incentive Program, until a hearing is held on whether incentive program is *ultra vires* payment of public money for service that teachers are already obligated to provide. (00:June 29, Berlin)
- Dissolution: Illegal reduction in *per diem* compensation occurred when tenured teacher, who was transferred to constituent district upon dissolution of regional school district, had increased work year pursuant to constituent district's bargaining agreement; retroactive reimbursement ordered. (99:Feb. 22, Riegel)
- Dissolution: In distributing assets of dissolved regional high school district, the two municipalities that were not deeded real estate were entitled to the district's liquid assets pursuant to agreement so providing, even though such distribution deviated from the statutory formula; strict compliance with statutory formula would have left those two municipalities with a substantial shortfall, and the remaining municipalities with a windfall, of district's assets based on proportions of district's operating budget that each municipality contributed. In the Matter of the Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School District No. 1, cert. granted 164 N.J. 189 (2001) (Statutory scheme governing dissolution permitted deviation from the general requirement that liquid assets be divided proportionately) 168 N.J. 1 (2001) (See also St. Bd. Decision on remand 02:Jan. 2)
- Dissolution: Motion to Appeal nunc pro tunc granted; parties cautioned to comply with all procedural requirements. (Decision on motion St. Bd. 99:May 5, Lower Camden)
- Dissolution: Salary level of custodians transferred to constituent district from regional pursuant to regional dissolution; Stagaard challenge dismissed as untimely under 90-day rule. (99:Dec. 8, Balwierzczak, aff'd St. Bd. 00:May 3)
- Lease purchase is a "capital project," but is not "indebtedness" as intended under N.J.A.C. 6:3-7.2; therefore, Commissioner will not grant declaratory judgment barring the dissolving regional district from passing a resolution regarding 10-year lease purchase agreement at the present apportionment rate per constituent district, with benefit beyond the dissolution period. (00:Feb. 25, Lower Camden, aff'd for reasons expressed by ALJ, St. Bd. 00:July 5)

REGIONAL BOARDS

- Policy giving students from some, but not all, constituent districts of a regional board a meaningful choice to attend the high school they wanted, was not illegal “discrimination”; there is no constitutional right to receive an education in a specific school house in the district; the policy was valid exercise of board’s discretion and was not arbitrary and capricious; board’s motion for summary judgment granted. (99:March 10, Piccoli)
- Reapportionment: County Superintendent decision to include military personnel and inmate populations to determine reapportionment neither arbitrary and capricious nor an abuse of discretion. (02:April 12, Northern Burlington Regional, motion to intervene granted, St. Bd. 02:July 2, Comm. Dec. clarified and reaffirmed 02:July 19, aff’d in part on other grounds, St. Bd. 03:March 5)
- Reapportionment: County Superintendent use of "equal proportions" method to reapportion board member seating among the regional Board's constituents following the 2000 census neither arbitrary and capricious nor an abuse of discretion. (02:April 12, Northern Burlington Regional, motion to intervene granted, St. Bd. 02:July 2, Comm. Dec. clarified and reaffirmed 02:July 19, aff’d in part on other grounds, St. Bd. 03:March 5) (See also 02:April 12, Rancocas Valley Regional, stay granted in part and denied in part, 02:July 22, aff’d St. Bd. 02:Aug. 7, aff’d App. Div. unpub. op. Dkt. No. A-0368-02T2, Dec. 11, 2003)

REGIONAL BOARDS

- Reapportionment: Use of equal proportions method proper to reapportion seats among constituent districts. Upon examination of legislative history of 18A:13-8, inclusion of prison population was proper in reapportionment. (02:April 12, Northern Burlington Regional, motion to intervene granted, St. Bd. 02:July 2, Comm. Dec. clarified and reaffirmed 02:July 19, aff'd in part on other grounds St. Bd. 03:March 5)
- Retired employees of constituent district of dissolved regional were barred by 90-day rule from pursuing claim for reimbursement for unused sick leave at rate set by collective bargaining agreement that had governed employment in regional prior to its dissolution. (01:July 9, Nadasky, appeal dismissed St. Bd. for failure to perfect 01:Oct. 3)
- Settlement of tenure and seniority rights to position in constituent district upon dissolution of Lower Camden County Regional. (01:June 15, Grimmett)(01:July 2, Hanna)
- Significant procedural distinctions between withdrawal and dissolution regarding the assumption of indebtedness, explained. (00:Feb. 25, Lower Camden, aff'd for reasons expressed by ALJ, St. Bd. 00:July 5)
- State Board regulations relating to withdrawal of districts also apply to dissolutions. (00:Feb. 25, Lower Camden, aff'd for reasons expressed by ALJ, St. Bd. 00:July 5)
- Stay denied; scheduled selection process for employment of staff members affected by dissolution will go forward; if mistakes occur, adjustments can be made prior to date of dissolution. (00:March 14, Lower Camden, settled 01:March 19)
- Stay denied: Stay for withdrawal of constituent district denied. Only after party has sought stay of Commissioner's decision before the Commissioner which is denied will State Board entertain a motion for stay in accordance with N.J.A.C. 6A:4-2.2. (Motion den. St. Bd. 03:March 5, In the Matter of the Withdrawal of the North Haledon School District, matter dismissed as moot, St. Bd. 03:July 2)
- Stay granted and denied: Where constituent district puts three seats up on ballot in spite of County Superintendent determination, Commissioner will keep three seats of constituent district on regional board but give them weighted votes so as not to thwart the reapportionment required by census nor will of electorate, pending outcome of underlying claims. (02:April 12, Rancocas Valley Regional, stay granted in part and denied in part, 02:July 22, aff'd St. Bd. 02:Aug. 7)
- Tenure rights of teachers in dissolving district: N.J.S.A. 18A:28-6.1 is triggered only if a district closes a school and agrees with another district to send its pupils from the closed school to that district; does not apply simply because limited purpose regional district dissolves. (00:Jan. 4, Hammonton)

REGIONAL BOARDS

Withdrawal

Court reverses Board of Review's order that would have permitted a referendum on issue of withdrawal on one district from limited purpose regional district; Board of Review misperceived impact on racial diversity and racial imbalance due to loss of 9% of white population of high school. (In the Matter of the Petition for Authorization to conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, 363 N.J. Super. 130 (App. Div. 2003), certif. granted 177 N.J. 573 (2003))(See also, appeal dismissed as moot St. Bd. 03:July 2)

REGIONALIZATION

Mandatory Regionalization: State Board's decision not to order mandatory regionalization but to encourage districts to explore other alternatives to reduce racial impact (e.g. magnet and other specialty schools) upheld. Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000), certif. granted in part, 166 N.J. 604 (2000)(aff'g St. Bd. final decision 98:Oct. 7)

Mandatory Regionalization: court assumes, without deciding, that State Board has authority to mandate establishment of a regional school district. Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000), certif. granted in part, 166 N.J. 604 (2000)(aff'g St. Bd. final decision 98:Oct. 7)

Request for directed regionalization, denied. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1)

RESIDENCY

ALJ determined that parents have the burden of proof by a preponderance of the evidence standard to establish residency and that the unorthodox post-divorce relationship did not support residency. Board granted tuition payments of \$16,831.10. Commissioner modified the initial decision such that notwithstanding N.J.S.A. 18A:38-1(b)(2), mandating tuition reimbursement to the district, the Commissioner is not precluded from considering principles of fundamental fairness and equitable estoppel in determining whether tuition should be assessed for any period of ineligible attendance. (03:Feb. 24, M.R.N.)

Commissioner granted parents petition for domicile where district failed to file an answer after having accepted service of process. (03:Feb. 11, D.H.)

RESIGNATION

By resigning his position nine or ten days after receiving notice of non-renewal guidance counselor relinquished any rights that may have otherwise accrued to him through a challenge to the non-renewal. (03:May 1, Cohen)

RESIGNATION

- Rescission: custodian's rescission of resignation was valid where rescission occurred before Board took formal action to accept it. (98:Sept. 24, Monroe)
- Rescission of resignation denied. Art teacher did not file petition in a timely manner. (03:May 1, Unangst)
- Resignation was a voluntary, uncoerced, knowing relinquishment of guidance counselor position. Fact that it might have been predicated on non-renewal notice is of no consequence. (03:May 1, Cohen)
- Settlement of teacher's claim against district, which terms include teacher's resignation and payment of lump sum, rejected for failure to reveal factual context to Commissioner. (99:June 7, Moreen)
- Teacher's certificate suspended for one year for failure to give proper notice of resignation. Engaged in unprofessional conduct. N.J.S.A. 18A:26-10. (02:April 29, Owens)
- Teacher's failure to provide 60 days' contractual notice of resignation resulted in finding of unprofessional conduct and suspension of certificate for 1 year pursuant to N.J.S.A. 18A:26-10; poor working conditions no excuse. (98:Sept. 25, Verbesky)
- Tenure dismissal: Tenure charges dismissed as moot upon unilateral resignation from district. (03:March 14, Sturm)
- Tenure settlement: Voluntary resignation prior to removal for cause in tenure matter permitted superintendent to avoid the effect of the mandatory forfeiture provisions on his deferred retirement benefits; preservation of pension rights is a legitimate consideration of the Commissioner in considering tenure charges. (00:May 15, Mullen – involved CSA)
- The Commissioner adopted ALJ's dismissal of teacher's petition concluding that her voluntary, unequivocal resignation terminated any employment rights she may have had in the district. Conversations that teacher had with school officials, which led her to believe that she could return to the district if the charter school did not work out, could not overcome her voluntary resignation. (04:Jan. 30, Williams)
- The Commissioner agreed with and adopted the ALJ's determination that the board impermissibly accelerated petitioner's resignation date thereby depriving petitioner of one month's salary. The Commissioner found that this N.J.S.A. 18A:26-10, in conjunction with the parties' employment contract, which required the party wishing to terminate employment to give the other party 60 days' notice of such intent, required that petitioner be compensated for the full notice period. Although the Commissioner lacks jurisdiction over disputes that are solely contractual in nature, he does have jurisdiction over contractual claims that are incidental to his obligation to resolve education claims that are the subject of litigation. (04:Feb. 9, Carrelle)

RETIREMENT AND PENSION

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Former Director of Vocational Education whose position was abolished, had no bumping rights to entitlement to principal position where he had retired prior to filing his petition; moreover, his tenure rights did not attach to the position of principal. (98:Sept. 4, Janik)

School board was not obligated to allow teacher to change his retirement date once it had accepted it, although the board had allowed him to do so once before. (02:July 26, Johnson III, aff'd St. Bd. 03:Jan. 8)

Teacher could not argue that his retirement request was nullified when TPAF voided the clause in his collective bargaining agreement permitting use of accumulated sick time to increase base salary in final years of employment, as his retirement request was not made conditional or contingent upon his gaining the benefits of this clause. (02:July 26, Johnson III, aff'd St. Bd. 03:Jan. 8)

RIF (See, ABOLITION OF POSITION)

RIF of social worker position from 4/5 to 1/5 upheld. Decision to adjust the Child Study Team's workload was made in good faith and promoted economy and efficiency and did not violate tenure rights. (04:Jan. 8, Maier)

RIGHT TO KNOW

Newspaper was entitled to a redacted copy of ALJ's order in case involving teacher who allegedly committed sexual abuse against her students. Division of Youth and Family Services v. M.S., 340 N.J. Super. 126 (App. Div. 2001)

SALARY

Overpayment

Board properly froze teacher's salary until the overpayment due to Board's error, was recouped; she would prevail even if her petition were not out of time; and since Board's error was inadvertent, estoppel did not bar recovery. (98:Aug. 10, Harris)

SALARY SCHEDULES

Board was arbitrary and capricious when it denied salary increases where there was nothing in evaluation to suggest poor performance and the increase had been recommended by supervisors and employee was the only person in district not to get raise. (00:June 12, Cheloc, aff'd in part and rev'd in part St. Bd. 02:July 2)

Board violated teacher's tenure rights when it reduced her salary to eliminate a disparity in salaries between her salary and that of her part-time colleagues; board ordered to reimburse her for amounts deducted, and to freeze her salary until such time as salary meets or exceeds her proper salary. (00:Feb. 28, Hendershot)

Charter schools

Charter school is not bound by the salary policy in its charter application as these are only a guide; only the board of trustees can establish a salary policy, and not the founders who prepared the application; therefore, no amendment to the school's charter was necessary. (02:Feb. 11, Pleasantech, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0375-02T3, Dec. 5, 2003)

Principals' salary schedule did not have to be based alone on years of service; applied retroactively and was in conformity with N.J.S.A. 18A:29-4.1 and 4.3; summary judgment granted to board. (98:July 22, Bauer)

Recoupment of salary overpayments mistakenly made to tenured custodians does not violate tenure rights. (94:Dec. 21, Trenton, rev'd St. Bd. 99:Dec. 1)

Secretaries tenure rights not affected by school board's recoupment of salary overpayment. Salaries were from part-time non-tenured positions in adult evening school. (96 N.J.A.R. 2d (EDU) 264, Sklute, aff'd with modification St. Bd. 00:Feb. 2)

SCHOOL SEARCHES

Settlement: board member agrees not to search closed desks or other private areas of professional staff. (99:Dec. 27, Parleveccio)

SCHOOLS AND SCHOOL BUILDINGS

- Application to install lighting on athletic fields does not require DOE review for educational adequacy, but rather must be submitted to the municipal construction agency. Determining factor triggering DOE review of capital project application is whether review is required pursuant to N.J.A.C. 6:22-1.11, and not whether a nexus exists between nighttime lighting and district's educational program. (01:July 2, Northern Highlands Regional, aff'd unpub. Op. Dkt. No. A-2109-01T2, March 11, 2003)
- Board of education and planning board disagreed over whether planning board had authority to preclude board of education's land acquisition. Commissioner dismissed without prejudice due to expiration of statute of limitations and rejected ALJ's determination that ministerial decisions of the Office of School Facilities Financing must meet the same standards for quasi-judicial determinations as state agencies. (02:Aug. 29, Eastampton Twp., settlement approved, motions granted and matter remanded, St. Bd. 03:Jan. 8, on remand, approval of boards application to construct athletic fields still valid, 03:April 14)
- Board's motion for summary judgment granted; expenditure of public funds (money raised through bonds) to promote the construction of a new school, was not an improper use of those funds. (01:Aug. 6, Rural Tabernacle)
- Commissioner cautioned all boards that failure to act in accordance with the standards established in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-1 et seq., may result in action to withhold state funds. (03:Feb. 5, Wicks)
- Commissioner denies the issuance of \$12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)
- Commissioner determined that petitioner's complain alleging that the board violated N.J.A.C. 6:22-1.7 by advertising, bidding and awarding a contract for a roofing project before obtaining construction code approval was moot. Commissioner found that the county construction board of appeals had previously approved the now completed project; therefore, petitioner's appeal was now moot because there was no meaningful relief to be obtained. Commissioner cautioned all boards that failure to act in accordance with the standards established in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-1 et seq., may result in action to withhold state funds. (03:Feb. 5, Wicks)
- Commissioner dismissed petitioner's claims that board violated N.J.A.C. 6:22-1.7 by advertising, bidding and awarding a contract for a roofing project before obtaining construction code approval. Commissioner held that petitioner was barred by the doctrine of *res judicata* and by the entire controversy doctrine because the matter was previously litigated under Wicks v. Bd. of Ed. of the Twp. Of Bernards. (00:Nov. 20, Wicks, aff'd St. Bd. 01:April 4)

SCHOOLS AND SCHOOL BUILDINGS

Commissioner orders the issuance of \$19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Condemnation: Board sought to condemn property owned by New Jersey Transit for educational purpose. Court held that there is no express or implied statutory authority which permits a board of education to condemn land owned by the State. Elizabeth Bd. of Ed. v. New Jersey Transit, 342 N.J. Super. 262 (App. Div. 2001)

Educational Facilities Construction and Financing Act (EFCFA) does not violate the State Constitution's Debt Limitation Clause (Clause), N.J. Const., Art. VIII, section 2, para. 3. Plaintiff argued that the Debt Limitation Clause bars contract bond financing without voter approval. The Appellate panel affirmed the Law Division's ruling that while the Clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay without prior approval by public referendum, the Clause is not violated here because successive Legislatures are not bound to make the appropriations to pay on the bonds. Lonegan; Stop the Debt.com v. State of New Jersey, 341 N.J. Super. 465 (App. Div. 2001)

SCHOOLS AND SCHOOL BUILDINGS

Lease purchase is a “capital project,” but is not “indebtedness” as intended under N.J.A.C. 6:3-7.2; therefore, Commissioner will not grant declaratory judgment barring the dissolving regional district from passing a resolution regarding 10-year lease purchase agreement at the present apportionment rate per constituent district, with benefit beyond the dissolution period. (00:Feb. 25, Lower Camden)

Motion granted for participation of Commissioner in matter involving violations of Public School Contracts Law. In the Matter of the State Share of School Facilities Project Costs under N.J.S.A. 18A:7G-15, motion granted, St. Bd. 03:April 2.

Purchase of land: board may purchase land from surplus without passing referendum, but only if voters pass on budget that includes line item reflecting such appropriation of surplus. In the unique facts here, despite board’s failure to include purchase of vacant land as a land item, State Board did not invalidate purchase where public was informed of the purchase and there was no opposition. (00:Aug. 2, Fairfield, St. Bd. rev’g’00:Feb. 17, decision on remand 01:July 16, aff’d St. Bd. 01:Oct. 3)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Sidewalk improvement: Board does not have the statutory authority to expend public funds to improve sidewalk owned by municipality, in connection with a joint effort with municipality to develop and construct a recreational field pursuant to N.J.S.A. 18A:20-22; Division of Finance must recover from school board all state aid received on the amounts inappropriately disbursed. (00:Feb. 26, Wildwood Crest)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

SENDING –RECEIVING RELATIONSHIPS

Commissioner directed to submit status report on magnet program to alleviate racial imbalance at high school, including funding for program. (St. Bd. 02:Dec. 4, Englewood Cliffs, report submitted and matter referred to legal committee, St. Bd. 03:Jan. 8, record ordered to be supplemented, St. Bd. 03:Feb. 19, prohibition against admitting tuition students lifted and St. Bd. retains jurisdiction, St. Bd. 03:April 2)

SENDING –RECEIVING RELATIONSHIPS

District could not agree to 30-year sending-receiving agreement; N.J.S.A. 18A:38-20 authorizes a maximum of 10 years, with future boards having the right to enter into successor contracts in 10-year increments; however, irrespective of contractual timelines the relationship cannot be altered or terminated except upon application made to the Commissioner pursuant to N.J.S.A. 18A:38-13. (00:Jan. 4, Hammonton)

Emergent relief denied for additional funding for academies to alleviate racial imbalance. Failure to show that irreparable harm will result if additional funding is not given. (St. Bd. 03:May 14, Englewood Cliffs)

Indispensable Party

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Modification

Modification of sending-receiving relationship and creation of new dual designation relationship is approved. (98:Aug. 28, Saddle River)

Settlement

Settlement to modify sending receiving agreement by terminating aspects of relationship, is approved. (99:March 23, Hi-Nella)

Severance

Board could readopt its sending-receiving relationship with Port Jervis, located in New York; N.J.S.A. 18A:39-10 is constitutional; the fact that New York students take different tests does not mean they are failing to obtain a thorough and efficient education. (01:Nov. 19, K.R.S.)

Burden: In cases where termination of a sending-receiving relationship is sought by the receiver rather than the sender, sender bears the initial burden of demonstrating that there is no feasible educational alternative available to it. The receiver is then given the opportunity to show that a feasible educational alternative does exist. (St. Bd. Dec. on motion, 02:October 2, Mountain Lakes)

Burden of proof in severance cases: party seeking termination has initial burden of producing feasibility study; burden then shifts to other party to demonstrate that termination will result in negative impact outweighing benefits of termination. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1)

District's request for the return of its seventh and eighth grades, denied; racial balance and quality of education in both districts would be substantially negatively affected; application of order from 18 years ago that would have permitted such severance, was barred by laches and waiver. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1)

SENDING –RECEIVING RELATIONSHIPS

Neither the State Board nor the Commissioner will approve termination of a sending-receiving relationship when it has been established that no feasible educational alternative exists. (St. Bd. dec. on motion, 02:October 2, Mountain Lakes)

N.J.S.A. 18A:38-13 only applies to withdrawal of high school students. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1)

Request for severance denied for failure to state a claim, where feasibility study admits to substantial negative impact with respect to educational, financial and racial considerations. (98:Oct. 6, Kingsway)

Severance approved but not to take place until petitioning board has constructed own high school. (01:Nov. 2, Barnegat)

Severance of 8-12 sending agreement was granted where parties agreed to severance, feasibility study showed no substantial educational, financial or racial impact to either district; however, severance not to take effect unless and until sending board has constructed its own high school. (01:Oct. 17, Washington)

State Board of Education has obligation to ensure that students from a sending district have an educational alternative before allowing termination of a sending receiving relationship. (St. Bd. dec. on motion, 02:October 2, Mountain Lakes)

While the Legislature has not established statutory criteria for withdrawal from sending-receiving relationships pursuant to N.J.S.A. 18A:38-8, the Commissioner will insure that no unreasonable financial hardship to district or detriment to the educational interests of the students. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1)

Tuition

High school parking lot: Emergent relief denied in dispute over whether work on receiver's parking lot constitutes a capital expenditure and not includible in the tuition cost or work is maintenance and therefore includible in cost of tuition. (03:March 21, Lincoln Park, decision on motion)

Legal costs, since not specifically excluded from the administrative code calculation of actual cost per student for tuition purposes, properly included in tuition calculation except where between the parties. (03:May 15, Lincoln Park)

Receiving district's inclusion of legal costs attributable to litigation between the sending and receiving districts in tuition calculation deemed improper. Prohibited by "American Rule" – each party bears its own litigation fees. (03:May 15, Lincoln Park)

SENDING –RECEIVING RELATIONSHIPS

Receiving district's omission of the building use charge in the estimated calculation of tuition did not prejudice sending district; charges had to be paid as based on actual per pupil costs, and dictated by regulation and contract. (99:June 7, Spotswood)

Voting representation

District Court ordered remedial plan be implemented whereby Branchburg would appoint six (6) members to the Somerville board, each with one vote, giving Branchburg control of 40% of the votes on matters affecting their high school students while enabling Somerville to maintain a majority vote. Somerville's motion to stay the remedial plan denied because Somerville maintains majority vote and may continue to operate the district. No irreparable harm demonstrated. On appeal to Third Circuit Court of Appeals. Branchburg Bd. of Ed. v. Bd. of Ed. of Somerville, et al., United States District Court, District of New Jersey Civil No. 98-5557 (AET) and 99-822 (AET) (Consol.)(May 22, 2001) District Court (Sept. 7, 2000) had held that New Jersey's formula for sending districts' voting representation on receiving district boards of education is unconstitutional as applied to the sending-receiving relationship between the Somerville and Branchburg boards.

New Jersey's formula for sending district's voting representation on receiving district's board of education is unconstitutional as applied to the sending-receiving relationship between the Lincoln Park (sending) and Boonton (receiving) boards. District Court Judge Hochberg on Aug. 21 ordered majority status to Lincoln Park; stay of that order granted by U.S. Court of Appeals, pending a full hearing. Lincoln Park Bd. of Ed. v. Boonton Bd. of Ed., United States District Court, District of New Jersey Civil No. 00-5394 (March 26, 2001)

SICK LEAVE

Accumulated sick days: Where teacher resigned prior to resolution of tenure charges and prior to his guilty plea for crime warranting forfeiture, district was ordered to pay him sick days accumulated prior to the date the district certified tenure charges against him. (98:Nov. 17, Reed)

Board improperly charged teacher sick leave for work-related injury.

Commissioner cautions against effectuating terms of agreement prior to settlement. Settlement approved. (02:June 26, Butcher)

SICK LEAVE

- Current State education law, which differentiates between nonpublic school students and home-schooled students with respect to providing funds for speech therapy, is constitutional, but in the context of the facts of this case was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not at home. This service was offered to other nonpublic school students at the public school, to deny a home-school student the service was a denial of equal protection. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)
- Determination of eligibility for temporary disability benefits by Workers' Compensation court sufficient to enable Commissioner to make a determination whether sick leave benefits under N.J.S.A. 18A:30-2.1 exists. No need to await permanent disability award. Sick and vacation days ordered restored. (01:Feb. 26, Frabizio)
- Nurse who settled workers compensation matter might be entitled to additional reimbursement for sick leave days pursuant to N.J.S.A. 18A:30-6, where she believed the settlement already included payment for those days, even though agreement evidenced a waiver of the right to seek sick leave. (00:Oct. 16, Sheridan, rev'd and remanded St. Bd. 01:June 6)
- Person filing restoration of sick day claim under N.J.S.A. 18A:30-2.1 must file such claim within 90 days of receipt of notice that sick time is being exhausted; untimely petition is dismissed; equitable estoppel did not apply because it was unreasonable for teachers to forego filing their petition within the 90 days simply because they believed that the sick-day issue would be handled concurrently with the resolution of their workers' compensation claims. (98:July 17, Powell, et al., appeal dismissed 98:Nov. 4)
- Settlement approved: sick leave restored following determination of temporary disability for work-related accident. (02:June 26, Magaw)(02:June 26, Cavera)
- Settlement of workers compensation claim prior to determination of whether injury occurred in the course of employment, did not bar teacher from pursuing a claim for additional benefits under N.J.S.A. 18A:30-2.1, as no knowing waiver of such right occurred. (00:March 1, Marino, St. Bd. rev'g 99:April 13, settlement on remand, Feb. 16, 2001)
- Tenure charge of incapacity was not premature just because teacher has not yet received workers compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

SPECIAL EDUCATION (See also, DISABILITIES, PUPILS WITH)

- Annual cost per pupil: certain items, including investment and severance expenses, were non-allowable in the calculation of annual cost per pupil for tuition reimbursement by the state to private special education residential school, under N.J.A.C. 6:20-4.4. (01:April 12, Carrier Foundation, aff'd and remanded in part, St. Bd. 01:Oct. 3, settlement approved, 02:July 11, aff'd St. Bd. 02:Oct. 2)
- Board certified tenure charges against special education teacher for allowing special education students to engage in sexual activity during instructional time. ALJ found that the board failed to meet its burden. Commissioner modified the initial decision, finding that the teacher failed to properly monitor students thus charges of unbecoming conduct were sustained. Mitigating factors provided for loss of 120 days salary and salary increment. (02:Aug. 16, Noon)
- Dual residency: Issue of how districts addressed provision of Individualized Education Program (IEP) and funding for child who resided with each parent on alternate weeks under joint custody arrangement was one that appropriately could be addressed by regulation that would supercede court order to share student's education costs. Somerville Bd. of Ed. v. Manville Bd. of Ed., 167 N.J. 55 (2001), aff'g 332 N.J. Super. 6 (App. Div. 2000)
- IDEA: IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)
- Individualized Education Program (IEP) where special education student resided with each parent alternate weeks under joint custody arrangement participation by representatives of both districts in developing and reviewed IEP would not be inconsistent with Individuals with Disabilities Education Act (IDEA) or New Jersey Special Education regulations. Somerville Bd. of Ed. v. Manville Bd. of Ed., 167 N.J. 55 (2001), aff'g 332 N.J. Super. 6 (App. Div. 2000)
- Parents of adult student, classified as eligible for special education and related services, challenged district policy that identified the pupil as a special education student via a notation on the pupil's high school transcript that all courses were transfer credits from other public or private schools, as a violation of the pupil's right to privacy pursuant to the Individuals with Disabilities Education Act. ALJ concluded that pupil was not harmed by the insertion and dismissed the petition. Commissioner agreed and further noted that violations of rights claimed under the IDEA fell outside the jurisdiction of the Commissioner. (03:March 5, J.B.)

SPECIAL EDUCATION (See also, DISABILITIES, PUPILS WITH)

- Parents of disabled children and disabled children's advocacy groups challenged special education regulations and amendments. Appellate Division held that regulations regarding provision of documentation to parents, assessment of post-secondary outcomes, pool of community rehabilitation programs, disciplinary procedures for potentially disabled students, dissemination of procedural safeguards statement, eligibility for consideration as surrogate parent for disabled child, "child find" and documentation of dissenting opinion of IEP team members failed to comply with federal mandates of IDEA. Baer v. Klagholz, 339 N.J. Super. 168 (App. Div. 2001)
- Special education regulations no longer require that district of residence participate in placement decision made by other public agency. (99:Dec. 23, Highlands)
- Where classified pupil was placed by DDD in group home, district of residence was responsible for tuition, but district where group home is located is responsible for transportation costs. Transportation is an "educational benefit" to be provided by district in which group home sits pursuant to N.J.S.A. 30:4C-26(c). (00:Sept. 5, West Windsor-Plainsboro, aff'd St. Bd. 02:April 3)

STATE AID

Abbott Appeals

- Abbott district whole school reform funding request dismissed. District no longer wishes to continue its appeal. (02:May 20, Elizabeth/Westminster Academy)(02:May 20, Elizabeth/Elmora School)(02:May 20, Elizabeth/Alexander Hamilton Middle School)(02:May 20, Elizabeth/Abraham Lincoln School)(02:May 20, Elizabeth/Woodrow Wilson School)(02:May 20, Elizabeth/Grover Cleveland Middle School)
- Abbott challenge to 1999-2000 school year, to the extent it is not addressed by Supreme Court's determination of the "global issue" is rendered moot by fact that preschool pupils in question are no longer in preschool, and prospective preschool issues are being addressed in separate litigation. (01:Dec. 26, Hoyos)(01:Dec. 26, Aranda)
- Abbott district: Parents and residents of Plainfield sought classification as an Abbott district under CEIFA. Commissioner held that successful challenge must link educational inequities to funding formula. (98:April 28, Jones; motion to compel Commissioner to issue decision moot; motion dismissed St. Bd. 98:July 1; motion to supplement the record granted St. Bd. 98:Aug. 5; motion to supplement additional affidavits granted St. Bd. 98:Oct. 7, appeal dismissed St. Bd. 03:June 4)

STATE AID

- Annual cost per pupil: certain items, including investment and severance expenses, were non-allowable in the calculation of annual cost per pupil for tuition reimbursement by the state to private special education residential school, under N.J.A.C. 6:20-4.4. (01:April 12, Carrier Foundation, aff'd and remanded in part St. Bd. 01:Oct. 3, settlement approved 02:July 11, aff'd St. Bd. 02:Oct. 2)
- Appeal seeking adequate funding to implement whole school reform plan under Abbott, settled. (02:Feb. 19, Elizabeth)(Eighteen separate decisions representing individual schools)
- Bifurcation of Pre-K and K plans has no effect on Early Childhood Program Aid. Would not compromise provision of appropriate kindergarten programs to Abbott students. (ECPA). (02:April 15, Pemberton)
- Board did not prove that student was not resident of the district when placed in correction center. Board responsible for tuition. State aid not restored. (02:May 31, South River) Decision on Remand
- Board does not have the statutory authority to improve property of the municipality, and improperly expended funds to improve sidewalk owned by municipality, to jointly develop and construct a recreational field; Division of Finance must recover from school board all state aid received on the amounts inappropriately disbursed. (00:Feb. 26, Wildwood Crest)
- Board's challenge to Notice of Determination regarding second level audit appeal of Title I funds dismissed. (02:May 16, Trenton)

Budget Item Added/Increased

- ALJ erred in excluding certain of the district's encumbrances in the development of its maintenance budget, by wrongly concluding that only expenditures fully paid by June 30, 2003 were properly attributable to the 2002-03 "maintenance budget." The focus is properly the timing of the receipt of goods and services, not payment. (03:Oct. 20, Gloucester). See, also (03:Oct. 20, Vineland)(03:Oct. 20, New Brunswick)
- CPI: Board's exhibits support its proposed revisions to the Department's calculations. (03:Oct. 20, Keansburg)
- Custodian: Although district's custodial costs were excessive some adjustment to the DOE's calculation is warranted based on significantly updated undisputed square footage figures. DOE to apply its formula to the district's current, verified square footage exclusive of leased preschool space receiving custodial funding through Early Childhood, taking account of partial positions with the requisite increase in full-time equivalent positions (FTEs) but with no additional allowance for "satellite" coverage. (03:Oct. 20, Jersey City)
- District's preliminary budget should be adjusted to reflect an increase in the amount of \$24,241 for utilities, since DOE did not dispute the likelihood of increased utilities costs, and there is no potential for "double counting." (03:Oct. 20, New Brunswick)

STATE AID

- In-class support for special education: District was entitled to increase. (03:Oct. 20, Phillipsburg)
- Legal fees were not excessive. (03:Oct. 20, Phillipsburg)
- Noncertificated staff: Although testimony was presented that use of non-certificated staff was not effective and efficient, budgetary reductions were not justified where Commissioner believed competing testimony that reduction of funding would result in an inability to provide important social programs and services required by Abbott to address wide range of social problems from which old urban centers suffer. (03:Oct. 20, Asbury Park)
- Nondiscretionary expenditure: Addition of six bus drivers is an allowable, non-discretionary item and is included in “maintenance” plan. (03:Oct. 20, Vineland)
- Paraprofessional aides should be retained. (03:Oct. 20, Phillipsburg)
- Part-time sub caller was not inefficient. (03:Oct. 20, Phillipsburg)
- Resource Teachers/Coordinator positions; funds restored. (03:Oct. 28, Newark)
- Same sex athletic trainers should be retained. (03:Oct. 20, Phillipsburg)
- Special education: District successfully rebutted DOE’s *prima facie* case by establishing difficulty in employing “in house” special education consultants, and because need for increased spending in new IEP’s depends on the composition of the district and the requirements of each district’s special education population. Petitioner’s budget should not be reduced based on this inefficiency. (03:Oct. 20, Passaic)
- Special education: Nondiscretionary expenditure: DOE concedes increase for special education tuition. (03:Oct. 20, New Brunswick)
- Supplies and materials not reduced. (03:Oct. 20, Phillipsburg)

Budget Item Excluded/Reduced

- Abbott state aid*: DOE properly added to the District’s fund balance a receivable representing the last payment of Additional *Abbott state aid* for the 2002-2003 school year. (03:October 20, Neptune)
- Burden of proof*: District did not offer documentary evidence to meet burden of proof demonstrating need for paraprofessionals, social workers, grade 7-8 science, and K-5 spelling programs, or a lease purchase payment for computer hardware. (03:October 9, Neptune)
- Business office*: DOE properly determined inefficiencies with the business cost center; wage freeze must take into account any superceding constraints of contractual and tenure rights of business personnel. (03:October 20, Passaic)
- Cafeteria aides: district could not show that expense for hourly cafeteria aides was non-discretionary expenditure. (03:October 20, Harrison)

STATE AID

- Capital outlay expenditures, health benefits, unspecified vocational programs, salary expenditures for non-instructional supervisors, and various “fund 11” accounts (technology, school-based non-salary accounts and aid in lieu of transportation) above 2002-03 levels, were properly excluded from the 2003-04 maintenance budget or reduced under regulatory standards of effectiveness and efficiency. (03:October 20, Camden)
- Charter school tuition: Department properly adjusted the maintenance calculation. (03:October 28, East Orange)
- Cooperative bid: Department properly reduced the District’s maintenance budget for its ineffective use of its cooperative bid purchase contract under the inefficient standard. (03:October 28, Paterson)
- Cost overruns in painting contract were excludable from maintenance budget. (03:October 28, Paterson)
- Courtesy busing: Budget reduced where proofs do not establish that these routes are unsafe, and where Board did not exhaust other methods of shifting these costs to families or to town authorities. (03: October 20, Phillipsburg)
- CPI: District did not document nondiscretionary increase in CPI beyond DOE’s calculations. (03:October 20, New Brunswick)
- CPI: DOE properly applied CPI adjustment of 2.11 percent rather than 3 percent. (03:October 20, Asbury Park)(03:October 20, Passaic)
- CPI: DOE’s maintenance calculations which incorporate Consumer Price Index (CPI) adjustments of 2.11% is upheld. (03:October 20, Passaic)
- Custodial staff should be reduced; however decision by the local board to privatize custodial services should be reached only after careful consideration of all alternatives and not in the heated context of Abbott litigation. (03:October 20, Phillipsburg)
- District’s additional \$2 million tax levy is an “available resource” to the district and the Department properly allocated and reduced the district’s discretionary aid by the amount of this tax revenue. (03: October 20, Neptune)
- District failed to timely submit updated figures to the DOE; therefore, *Abbott* State Aid is adjusted based on the annual audit rather than on board’s supplemental documentation; final adjustments will await the CAFR. (03:October 20, Plainfield)
- Documentation lacking: District did not meet its burden to prove that the Department erred in excluding from maintenance budget an increase for joint venture with hospital that resulted in the construction of a special technical high school, as district provided no documentation. (03:October 20, New Brunswick)

STATE AID

- Documentation lacking District did not meet its burden to prove that the Department erred in excluding from maintenance budget a nondiscretionary increase for transportation, as no documentation was provided by the district. (03:October 20, New Brunswick)
- Documentation lacking District did not present sufficient proof for Commissioner to determine which encumbrances have become accounts payable by virtue of the receipt of the encumbered goods or services on or before June 30, 2003 so as to be considered 2002-2003 expenditures; therefore, DOE was correct to include the encumbered funds in the fund balance calculation; adjustments can be made during the course of the CAFR review scheduled to begin in November 2003. (03:October 20, Neptune) (October 28, Paterson)
- DOE correctly excluded tuition and maintenance reserves in its calculation of the District's projected fund balance. (03:October 20, Neptune)
- Early childhood: District did not establish that the Department's use of an *approved* plan-to-plan review to determine the District's Early Childhood Plan figure was unreasonable; process used by DOE, based on the only available "like" components for comparison, *i.e.*, approved 2002-03 and 2003-04 Early Childhood Plans, in order to determine the change in district need from one year to the next, was reasonable, fair and consistent where precise calculations must necessarily await the results of the CAFR. (03:October 20, Gloucester) (03:October 20, Keansburg)
- Early childhood: Local Contribution to Special Revenue, Early Childhood Program Aid (ECPA), Demonstrably Effective Program Aid (DEPA) and Early Childhood Plan budgets; where board's methodology included use of later numbers, reflecting transfers, alterations and mid-year adjustments. Department's methodology using numbers from the approved 2002-03 General Fund Budget and approved Early Childhood Plan, allowed for consistent preliminary determinations where precise calculations must necessarily await the results of the CAFR. (03:Oct. 20, Keansburg)
- Early childhood: The DOE properly adjusted the maintenance calculation for the difference in the early childhood plan by comparing early childhood Plan Year Budget to EC Plan Year Budget as it did consistently throughout all the districts; fact that it resulted in unfavorable outcome for this district did not invalidate the approach. (03:October 20, Plainfield)
- Encumbrances were properly excluded from maintenance budget. (03:October 20, Burlington)
- ESL and Balanced Literacy Positions were beyond the "maintenance" standard set forth in N.J.A.C. 6A:10-1.2. (03:October 28, Pemberton)

STATE AID

- Fiscal monitor position was inefficient. (03:Oct. 28, Paterson)
- Grant writer: DOE properly determined inefficiencies with the grant writer's position and funding was reduced. (03:Oct. 20, Passaic)
- Health benefits: DOE methodology based on actual spending in '03 was proper. (03:Oct. 20, Phillipsburg)(03:Oct. 28, Paterson)
- Inefficiencies: numerous inefficiencies identified; DOE's reductions are upheld. (03:Oct. 28, Newark)
- Kindergarten: Aid was to be calculated on the basis of an underlying budget which must provide for full-day kindergarten, not increased by the dollar amount of second half-day kindergarten expenditures. (03:Oct. 9, Neptune)
- Legal expenses not effective and efficient but rather grossly more than that of comparative districts; therefore, DOE established basis for reduction of maintenance budget. (03:Oct. 20, Asbury Park)
- Medical provider: DOE properly excluded from maintenance budget, as potential need is variable and costs may be absorbed by efficiencies and the increase in the district's budget attributable to Consumer Price Index (CPI) allowances. (03:Oct. 20, Jersey City)
- No Child Left Behind: District's request for funding to modify its No Child Left Behind Program is denied as proposed No Child Left Behind improvement plan is beyond the "maintenance" standard set forth in N.J.A.C. 6A:10-1.2. (03:Oct. 20, Vineland)
- No Child Left Behind Supplementary Services and No Child Left Behind ESL Paraprofessional Position: District did not demonstrate that these items are "non-discretionary", where they are neither approved nor provided in 2002-03, and where the district failed to present evidence that it considered other resources or reallocations in order to meet these new requirements. (03:Oct. 28, Pemberton)
- Non-recurring costs like interest and principal on a lease-purchase are not part of maintenance budget. (03:Oct. 20, Phillipsburg)
- Question of whether district is correct that it made an error in its request for additional Abbott aid, will not be remanded for evidentiary hearing in light of Supreme Court's order to expedite proceedings; rather, error will be reviewed as part of November CAFR review. (03:Oct. 20, Neptune)
- Preschool expansion aid: District is not entitled to the initial preschool expansion aid. (03:Oct. 20, Neptune); District did not demonstrate that the adjustment was "double counted" on the Department's 2003-04 calculations. (03:Oct. 20, Asbury Park)
- Preschool expansion aid: DOE properly adjusted the preschool expansion aid for 02-03 to be zero based upon a lower enrollment than projected. (03:Oct. 20, Gloucester)
- Radon testing: DOE properly excluded from maintenance budget as may be deferred until 2004-05 and scrutinized for greater savings. (03:Oct. 20, Jersey City)

STATE AID

- Reductions not restored in allowable encumbrances, salary adjustments and vacancies, workers' compensation reserves, special education tuition costs, CPI adjustments and utilities. (03:Oct. 28, Newark)
- Revenue: DOE's calculation, based on historical performance and the district's demonstrated tendency to understate its revenues by half, is an acceptable approach to projecting miscellaneous revenue. (03:Oct. 20, Phillipsburg)
- Salaries: DOE methodology upheld (03:Oct. 20, Phillipsburg)(03:Oct. 28, Newark)
- Second Chance Program: Funding rejected for Second Chance Program to expand its hours of operation; does not comport with the maintenance budget standard set forth in N.J.A.C. 6A:10-1.2 as district did not shoulder burden of demonstrating that existing hours were ineffective. (03:Oct. 20, Vineland)
- Special education: District did not meet proof of documenting need for special education tuition beyond that which was determined by the Department; nothing on record to document likelihood of 200 new special education as district projected. (03:Oct. 20, New Brunswick)
- Special education: District failed to present a satisfactory explanation for any sudden and unexpected increase in tuition costs. (03:Oct. 20, Phillipsburg)
- Special education: IDEA funds; district did not show necessity for additional funds. (03:Oct. 28, Paterson)
- Special education: Where district included the costs of special education programs and services in the calculation of its maintenance budget, DOE appropriately included IDEA Part B revenues received to fund these services. (03:Oct. 20, New Brunswick)
- Staffing: Amounts attributable to approved and budgeted, but unfilled, 2002-03 positions were properly deducted from the district's 2003-2004 "maintenance" budget, as were funds for the purchase of textbooks approved as part of the district's long-range curriculum plan but eliminated from the 2002-03 school budget. (03:Oct. 20, Irvington)
- Supervisors. (03:Oct. 20, Phillipsburg)
- Surplus: DOE appropriately directed reallocation of surplus in excess of 2% to support core purposes, rather than permit the board to seek additional aid for such purposes while using excess surplus for supplemental services not meeting requisite standards of demonstrated need, efficacy and efficiency. (03:Oct. 9, Neptune)
- Surplus: DOE's error with regard to calculating district's surplus resulted in no entitlement to additional *Abbott v. Burke* state aid, since the board's excess surplus was still well above the level that would entitle it to such aid. (03:Oct. 20, Orange)

STATE AID

- Teachers: Increase denied where enrollment in receiving district was largely attributable to population trends in the sending districts and district had the option of increasing tuition fees to defray any increased costs. (03:Oct. 20, Phillipsburg)
- Technology staff reduced. (03:Oct. 20, Phillipsburg)
- Utilities: Anticipated cost increase of 7% rather than 30% for utilities is upheld. (03:Oct. 20, Passaic)
- Utilities: Proofs advanced by the district were devoid of any competent evidence that 30 percent natural gas cost increase in district's maintenance budget was warranted. Department offer of 15 percent increase not unreasonable. (03:Oct. 20, Gloucester)
- Utilities: Proofs offered by the district in support of its projected utility rate cost increase were deficient. (03:Oct. 28, East Orange)
- Vice principals: Four were inefficient and should be reduced. (03:Oct. 20, Phillipsburg)
- Whole School Reform: Board is not entitled to include the balance of its Whole School Reform contract amount as part of its maintenance budget. Board presented no evidence that any portion of that contract for services actually provided in 2002-03 remains unpaid. (03:Oct. 20, Orange)
- Workers compensation: Commissioner directed DOE to conduct an analysis of the district's workers' compensation needs and to make any necessary adjustments to the district's budget and supplemental aid. (03:Oct. 28, Newark)
- Burden of proof will be on the plaintiff district in a petition challenging the accuracy of district income wealth data relied on by state to determine state aid. (99:May 19, Lakewood, leave granted to appeal, motion denied, St. Bd. 00:June 7)
- CEIFA: Middle income school districts and individual taxpayers alleged that funding system caused disparate tax burdens violating Equal Protection and T&E provisions of Constitution. Court held that school districts, as creatures of the State, lacked standing to challenge constitutionality of CEIFA on equal protection grounds. However, taxpayers had standing to bring such a challenge. Court held that CEIFA did not violate the State's Equal Protection Clause. Stubaus v. Whitman, 339 N.J. Super. 38 (App. Div. 2001)
- CEIFA, the funding statute, expressly provides a district with the right to challenge the accuracy of district income wealth data that was utilized in the determination of its board's state aid entitlement for the 1998-99 school year; district's petition will not be dismissed on account of district's failure to provide facts to buttress its position, as the parameters of such appeals have not yet been explicated through rule or decisional law; matter to proceed. (99:May 19, Lakewood, leave granted to appeal, motion denied, St. Bd. 00:June 7)

STATE AID

CEIFA's stabilization aid provisions are constitutional. The Wildwood Board of Education argued that the stabilization aid provisions of the CEIFA, under which certain school districts received less than the full amount of state school aid to which they would have been entitled under the basic CEIFA funding formula, are unconstitutional because the figures used to determine the stabilization aid growth limit under CEIFA's stabilization provisions were based on a Quality Education Act (QEA) formula that the New Jersey Supreme Court had ruled unconstitutional. While the Court acknowledged that the New Jersey Supreme Court had declared the QEA unconstitutional, it pointed out that the Supreme Court's ruling was limited to the school aid formula as it applied to special needs school districts. The Supreme Court's ruling did not undermine the validity of the figures relied on by the stabilization provisions in calculating the amount of state aid Wildwood was entitled to under the CEIFA. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001)

Challenge to Abbott district's early childhood state aid for 1999-2000 dismissed as moot; further, plaintiffs failed to timely notify judge of outstanding local "Abbott issues" after resolution of global issues. (01:Oct. 1, Anthony)(01:Oct. 1, De Witt)

Commissioner modified ALJ's decision finding that five of seventeen districts should be recommended for "special needs" status. Commissioner denied recommendation as to four districts, but approved Salem City as a special needs district. Commissioner determined that Salem exhibited a multiplicity of pervasive, durable social ills similar to that experienced by other *Abbott* districts. (03:Feb. 10, Bacon)

District's complaint that DOE deprived students of T & E by applying CEIFA stabilization aid growth limit at N.J.S.A. 18A:7F-10, was dismissed for untimeliness and failure to plead requisite facts. (00:Jan. 10, D.S. and Wildwood, aff'd St. Bd. 00:June 7)

Educational Facilities Construction and Financing Act (EFCFA) does not violate the State Constitution's Debt Limitation Clause (Clause), N.J. Const., Art. VIII, section 2, para. 3. Plaintiff argued that the Debt Limitation Clause bars contract bond financing without voter approval. The Appellate panel affirmed the Law Division's ruling that while the Clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay without prior approval by public referendum, the Clause is not violated here because successive Legislatures are not bound to make the appropriations to pay on the bonds. Lonegan; Stop the Debt.com v. State of New Jersey, 341 N.J. Super. 465 (App. Div. 2001)

Educational Services Commission must refund DOE \$90,709 in unused Chapter 192-93 funds with interest earned. Chapter 192-93 funds that were borrowed from that account to fund salary differential payments under TQEA had to be repaid. (99:April 16, Middlesex County)

STATE AID

- Educational Services Commission that suffered embezzlement was ordered to repay to state total amount of assistance monies fraudulently charged to state and federal sources by Commission employee; state's recovery not limited to percentage of total amount of embezzled funds Commission recovered through insurance. (99:Feb. 5, Middlesex County)
- Fiscal Year 2003 Appropriations Act superseded any and all statutory provisions which would increase state aid, including those under CEIFA. State aid formula in CEIFA must be deemed to be suspended by the adoption of the Appropriations Act. (03:Oct. 27, Hammonton, Egg Harbor, Galloway Framework document must be promulgated by August 2001; meanwhile, compliant preschool programs may be based on *Expectations* document. The State is not required to provide funds to bring Head Start or other community provider up to Abbott standards; finding provider is a district responsibility. (01:June 1, Matter of the Abbott Global Issues)
- In Abbott districts, the pivotal question is one of *constitutional deficiency*, not one of disparity among districts or, for that matter, even of fundamental fairness. Abbott status is an extraordinary judicial remedy, not a solution for specific problems of less than constitutional dimension. For funding problems of less than constitutional dimension, these must be pursued through appropriate lawmaking processes so as to allow for full and free debate. (03:Feb. 10, Bacon, motion to participate granted, St. Bd. 03:July 3)
- In dispute between *Abbott* regulations and tenure rights, tenure rights are paramount. Emergent relief granted. (03:March 6, Sanchez, aff'd St. Bd. 03:June 4)
- New Jersey Supreme Court clarified *Abbott V* to require the state to fund all costs of necessary facilities remediation and construction in *Abbott* districts. Districts can and have been added to the "Abbott" class. If circumstances demonstrate that a district no longer meets the criteria for *Abbott* designation, the State Board and Commissioner may take appropriate action. 164 N.J. 84.
- Non-Abbott districts claiming inability to provide T & E with existing funding, were able to demonstrate to Commissioner that they had fully effectuated CEIFA, and thus were eligible to proceed with second phase of hearing to determine if they could not in fact deliver T & E; burden in second phase will be to prove that deficiencies exist and cannot be remedied by different programmatic and fiscal choices. (01:Feb. 9, Keaveney)

STATE AID

- Nothing in Abbott precludes the SDOE from requiring separate operational plans for pre-K and kindergarten programs or for having kindergarten plans incorporated into school-based plans. (02:April 15, Pemberton)
- Preschool is a significant legal right, but not a constitutional entitlement. Determinations regarding preschool programs may not be made on predetermined fiscal considerations but rather, on assessment of need. (01:June 1, Matter of the Abbott Global Issues)
- Request for early childhood education aid to rent and renovate temporary facilities, rejected; district's appeal is dismissed for failure to establish that it had, in fact, requested such funds. (01:Jan. 22, New Brunswick)
- Request for supplemental Abbott funding; settlement. (02:Feb. 1, Gloucester)(02:Feb. 4, Asbury)
- Settlement approved in matter regarding Abbott district request for additional state aid. (02:April 18, East Orange)(02:April 29, Vineland)
- State Board's public comment sessions are not required to be part of the administrative rulemaking process by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Court Rule 2:5-4 does not necessarily require the appellants to produce a transcript of the State Board meetings at which regulations that are subject of challenges were considered. (Motion to abbreviate record granted, In re N.J.A.C. 6A:26, St. Bd. 02:Jan. 2)
- State's implementation of early childhood education is not in violation of Abbott V and VI. To ensure implementation, Department of Education must revise practices and procedures and develop rules regarding preschool programs in Abbott school districts, by August 31, 2001. (01:June 1, Matter of the Abbott Global Issues)
- State's method for distributing state aid during 1993-94 and 1994-95 school years was not improper although districts with declining enrollment received a windfall at the expense of districts with declining enrollment. (00:Oct. 10, Bayonne)
- Stay of the termination of Abbott preschool education contract denied. (01:Aug. 8, Craig)

Supplemental aid/preliminary maintenance budget

- Burden of proof: Where DOE proposes T & E reductions to district's maintenance budget, DOE bears the burden of proof; where DOE does not propose reductions on T & E basis, district bears burden of demonstrating DOE's calculations are unreasonable. (03: October 20, New Brunswick)
- Inefficiencies: district must demonstrate both that the structure(s), position(s) or service(s) are *specifically* necessary and that they *cannot* be more effectively or efficiently provided than they presently are. (03:October 28, Newark)

STATE AID

“Maintenance” standard requires that programs, services and positions must have been actually provided or filled in 2002-2003 in order to be aided for 2003-2004; distinction must be made between “encumbrances” and “accounts payable,” (03:October 20, Harrison) (03:October 20, Neptune) (03:October 28, Paterson)

Methodology for staffing A methodology establishing the 2003-04 cost of providing funding for positions by determining, as nearly as possible without benefit of audit, the actual approved cost of providing for salaries and benefits in 2002-2003 and then allowing for reasonable, nondiscretionary adjustments, is a uniform, fair and rational method for estimating future expenditures for salaries and benefits, which cannot otherwise be determined with any degree of precision. To the extent that results may be imperfect, even after adjustment following audit, N.J.A.C. 6A: 10-3.1(g) provides a mechanism to obtain additional supplemental funding where unanticipated expenditures or unforeseen circumstances warrant. (03:October 20, Vineland) (03:October 20, Irvington) (03:October 20, Orange) (03:October 20, Harrison) (03:October 20, New Brunswick) (03:October 20, Camden) (03:October 28, Pemberton)(03:October 28, Newark)(03:October 28, Paterson).

OAL does not have jurisdiction to determine, directly or indirectly, the validity of definition of “maintenance budget” in N.J.A.C. 6A:10-1.2, as such determination is solely within the jurisdictional purview of the Appellate Division or the Supreme Court. However, definition appears consistent with Court decisions. (03:October 20, Gloucester)(03:October 20, Vineland) (03:October 20, Orange)(03:October 20, Burlington) (03:October 20, Pleasantville) (03:October 20, Camden) (03:October 20, Jersey City) (03:October 20, Trenton)(03: October 20, Asbury Park) (03:October 20, Keansburg)(03:October 20, Neptune)(03:October 20, Passaic) (03:October 20, Elizabeth)(03:October 20, Plainfield) See Asbury Park Bd. of Ed. v. DOE, Appellate Division, A-840-03T5, February 27, 2004, not approved for publication, holding that the definition of “maintenance budget” is facially valid; reversed in part by order of N.J. Supreme Court, holding that any final budget subsequent to August 2003 issued by the DOE based on 2002-2003 actual expenditures violates the DOE’s mediation proposal. (March 18, 2004)

Resolution of matter need not have awaited completion of the District’s Comprehensive Annual Financial Report (CAFR); Board was clearly entitled to make, prior to the school year in question, the factual and legal record necessary to resolve the substance of its claims, subject to final adjustment of calculations following audit. (03:October 20, Keansburg)

STATE AID

- Undesignated general fund: Timing of disbursements to undesignated general fund balance is appropriately deferred subsequent to completion of CAFR process and submission of district's supplementary information; adjustments will be made if supplementary information demonstrates that district's undesignated general fund balance is below two percent. (03: October 20, Gloucester) (03:October 20, Burlington)
- Supplemental funding: Abbott supplemental funding request, settled. (01:May 4, Vineland)
- Supplemental Senior Citizen Stabilization Aid: Constituent municipality of regional school district entitled to additional funds under CEIFA for fiscal year. (St. Bd. 99:May 5, Berkeley, reversed and remanded App. Div. Dkt. No. A-5555-98T1, August 22, 2000, remanded St. Bd. 00:Oct. 4)
- The State has no duty to subrogate itself to the losses by embezzlement suffered by an Educational Services Commission. (99:Feb. 5, Middlesex County)

STATE BOARD OF EDUCATION

- Appeal dismissed for failure to perfect for failure to file brief. (St. Bd. 03:June 4, Tuohy)
- Appeals: N.J.S.A. 18A:6-28 requires that appeal to State Board must be taken within 30 days after Commissioner has filed his decision; agency is without the power to waive statutory filing deadlines absent legislative action. (01:May 24, J.M., dismissed for failure to perfect, St. Bd. 01:Aug. 1)(St. Bd. 01:June 6, Ibrahim Charter School)(See also 01:Aug. 27, H.M., appeal dismissed for failure to file within statutory time limit, St. Bd. 02:May 1)
- Attorney General (AG) opinion on which State Board of Education felt constrained to rely, was not binding on court, especially in light of extensive changes in special education law since the rendering of the AG opinion. West Windsor-Plainsboro, App. Div. unpub. op. Dkt. No. A-4919-01T1, July 1, 2003.
- Controversy over board placing superintendent on paid two-week administrative leave was not moot where CSA alleged that such action caused harm to his reputation as it could reasonably be inferred action was taken for disciplinary reasons. (Reversed and remanded St. Bd. 03:May 7, Carrington)
- Emergent relief denied: charter school failed to meet Crowe standard when it failed to demonstrate a likelihood of success on appeal of revocation of charter. (01:June 27, Greenville Community Charter School)

STATE BOARD OF EDUCATION

- Emergent relief granted in dispute over transportation contract under N.J.A.C. 6A:4-3.3, which permits President of State Board and Chairperson of Legal Committee to decide applications for emergent relief. Restraints imposed by Superior Court reinstated to minimize impact on special needs students where stability in the provision of transportation services is heightened. Petitioner permitted to continue providing transportation until end of school year. (St. Bd. 03:April 16, New Jersey Lucky Tours, aff'd and remanded to Commissioner, St. Bd. 03:June 4)(See also, emergent relief denied by Comm. 03:April 9)
- Interlocutory appeals: N.J.A.C. 6A:4-2.3 is clear that a petitioner only has five days to appeal an interlocutory decision; where no justification given for relaxation, motion to appeal will be denied. (St. Bd. 01:March 7, Northern Highlands Regional)(see also 01:July 2, aff'd unpub. Op. Dkt. No. A-2109-01T2, March 11, 2003)(Commissioner dismisses school board's petition seeking review and approval for educational adequacy of board's application to install lighting)
- Motion for stay denied in dispute over change in district policy requiring payment of tuition by non-resident employees for their children to attend in-district preschool program. (St. Bd. 03:July 2, S.A.)
- Motion granted by State Board of Education to supplement record with evidence of rehabilitation following revocation of certificates for presenting a fraudulent certificate in an effort to obtain school employment. (St. Bd. 03:March 7, Elmezzi)
- Motion granted for petitioners to reopen appeal of residency dispute where petitioners mistakenly were told that withdrawal from district made dispute moot, yet residency controversy had yet to be determined by Commissioner. Interests of justice dictate that petitioners be permitted to reopen petition. (St. Bd. 03:April 2, M.S.)
- Parents of disabled children and disabled children's advocacy groups challenged special education regulations and amendments. Appellate Division held that regulations regarding provision of documentation to parents, assessment of post-secondary outcomes, pool of community rehabilitation programs, disciplinary procedures for potentially disabled students, dissemination of procedural safeguards statement, eligibility for consideration as surrogate parent for disabled child, "child find" and documentation of dissenting opinion of IEP team members failed to comply with federal mandates of IDEA. Baer v. Klagholz, 339 N.J. Super. 168 (App. Div. 2001)
- Regulations: Commissioner remands question of whether regulations are to apply retroactively (time-of-decision rule) or prospectively. (99:Dec. 23, Highlands)
- Settlement approved: Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (00:Jan. 2, Anders, settlement approved St. Bd. 02:Jan. 2)

STATE BOARD OF EDUCATION

- Stay of revocation of certificates for unbecoming conduct following guilty plea to charge of sexual contact denied. (St. Bd. 03:July 2, Vereen)
- Stay: Only after party has sought stay of Commissioner's decision before the Commissioner which is denied will State Board entertain a motion for stay in accordance with N.J.A.C. 6A:4-2.2. (Motion denied St. Bd. 03:March 5, In the Matter of the Withdrawal of the North Haledon School District)(See also, appeal dismissed as moot St. Bd. 03:July 2)
- Where resolution of issue has far-reaching implications for New Jersey's system of public education, public interest dictates that the State Board decide matter, regardless of mootness of claim. (Decision on motion, St. Bd. 99:Jan. 6, Colantoni)

STATE BOARD OF EXAMINERS

- Appeal of a State Board of Examiners decision is to the Commissioner of Education and then State Board of Education, except for revocations or suspension of certificates as required by N.J.A.C. 6A:4-1.1(a)(2). (Matter remanded to Comm., St. Bd. 03:May 7, Krupp)
- Applicant must be afforded an adequate opportunity to present evidence material to resolution of whether or not provisional training program was in conformity with requirements. (St. Bd. 99:May 5, Avellino)
- Applications for a county substitute certificate should be made to the county superintendent, not the Board of Examiners. (St. Bd. 03:July 2, Hanks)
- Certification denial on basis of conviction for homicide, upheld. (99:Sept. 13, Bilal)
- Denial of supervisor endorsement by State Board of Examiners upheld. Masters Degree obtained from American State University, an institution neither approved nor accredited. Petitioner not qualified for administrative certification with a supervisor's endorsement. (02:April 1, Dominianni)
- Evidence presented in Lincoln Park v. Boonton, 97 N.J.A.R.2d (EDU) 592, insufficient to prove superintendent's conduct related to her employment as issue not litigated; remanded back to State Board of Education for further proceedings. (St. Bd. 00:Aug. 2, DeVincenzi)
- Excessive absenteeism due to injuries suffered at work may justify tenure dismissal but do not justify suspension of certificate. (01:Jan. 3, Labib, St. Bd. rev'g St. Bd. Ex. 00:May 11)
- Guilty plea to second degree manslaughter and leaving the scene of the accident constitutes conduct unbecoming a certificate holder. (St. Bd. 99:July 7, Kinzel)
- Individuals who are denied the issuance of certification must be properly notified that such decisions may be appealed to the Commissioner of Education. (St. Bd. 99:May 5, Avellino)
- Motion for stay denied following revocation proceedings for unbecoming conduct. (St. Bd. 00:Oct. 4, Loria, aff'g St. Bd. Examiners 00:Feb. 24)

STATE BOARD OF EXAMINERS

Motion granted by State Board of Education to supplement record with evidence of rehabilitation following revocation of certificates for presenting a fraudulent certificate in an effort to obtain school employment. (St. Bd. 03:March 7, Elmezzi)

Relaxation not warranted. Petitioner not required to establish that she did not fraudulently acquire English endorsement in order to pursue her tenure rights claim. No ruling from State Board of Examiners necessary. Decision on remand. (02:March 4, Osman, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)

Revocation of certificates without presentation of defenses not appropriate where ambiguity about notice to certificate holder existed, he was not represented by counsel and demonstrated little knowledge of the administrative process. Matter remanded to State Board of Education. (St. Bd. 01:Jan. 3, Battle)

Revocation of teaching certificate appropriate where certificate has been knowingly altered. (98:Sept. 24, Tannen, aff'd St. Bd. 99:Feb. 3)

STATE BOARD OF EXAMINERS

- Revocation: State Board of Examiners does not have the authority to set aside a disqualification. Petitioner must first apply to Criminal History Review Unit to have disqualification removed and then reapply to Examiners. (St. Bd. 02:Aug. 7, Rector)
- Revocation upheld for writing threatening notes to Superintendent. (98:Nov. 5, Lucarelli, remanded St. Bd. 99:May 5; decision on remand, St. Examiners 99:Sept. 23; appeal dismissed for failure to file timely notice, St. Bd. 00:April 5)
- Revocation upheld where documents forged, subverting certification process. (99:June 17, Crawford, remanded St. Bd. 00:Feb. 2, dec. on remand St. Bd. 01:May 10, aff'd St. Bd. 02:Jan. 2)
- Standard of review of State Board of Examiners' denial of teaching certificate is whether board acted in arbitrary, capricious manner. Certification denial on basis of conviction for homicide, upheld. (99:Sept. 13, Bilal)
- State Board of Examiners did not revoke certificate, as there was no proof that teacher purposefully misrepresented the status of her certificate. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, remanded App. Div. 01:Oct. 17, remanded to Commissioner, St. Bd. 01:Dec. 5)(See also decision on remand 02:March 4, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)
- State Board of Examiners must not issue standard certificates to provisional teachers who have not yet demonstrated compliance with regulatory requirements. (St. Bd. 03:April 2, Englewood on the Palisades)
- State Board of Examiners without authority to consider petition for new county substitute certificate. (Appeal denied St. Bd. 99:Nov. 3, Gaba)
- State Board's public comment sessions are not required to be part of the administrative rulemaking process by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Court Rule 2:5-4 does not necessarily require the appellants to produce a transcript of the State Board meetings at which regulations that are subject of challenges were considered. (Motion to abbreviate record granted, In re N.J.A.C. 6A:26, St. Bd. 02:Jan. 2)
- Stay of revocation of certificates for unbecoming conduct following guilty plea to charge of sexual contact denied. (St. Bd. 03:July 2, Vereen)
- Teacher's certificate suspended for one year for failure to give proper notice of resignation. Engaged in unprofessional conduct. N.J.S.A. 18A:26-10. (02:April 29, Owens)
- Where charge of improper sexual conduct proven by a preponderance of credible evidence; certificates will be revoked on the basis of the egregious conduct. (00:June 15, M.S., aff'd St. Bd. 00:Dec. 6)

STATE OPERATED SCHOOL DISTRICTS

- Auditors and attorneys employed by district taken over by state, are not entitled to 60 days' severance pay. (99:Jan. 4, Caponegro, et al., aff'd St. Bd. 99:April 7, aff'd in part except to extent St. Bd. denied compensation for accumulated vacation sick days remanded for reconsideration and calculation of these benefits in accordance with board's policy and procedure manual and past practice, 330 N.J. Super. 148 (App. Div. 2000), remanded to Commissioner, St. Bd. 00:June 7)
- Damages and mitigation: petitioners held by State Board to be improperly terminated by State District Superintendent (subject to final decision by Appellate Division) were entitled to the salary they would have earned from the time of termination until the effectuation of the reorganization, plus 60 days' pay; unemployment compensation benefits should be treated as mitigation of damages; consulting and rental income is not to be treated as mitigation; relief should include accrued leave time, but not value of enhanced benefits; no postjudgment interest. (01:Sept. 14, Gonzalez, aff'd as modified, St. Bd. 01:Oct. 3)
- Educational consultant whose services were discontinued after state-operated district was created, was neither entitled to 60 days' pay nor salary bonus, but was entitled to *quantum meruit* for work already performed. (00:Sept. 18, Kittrels)
- Mitigation of damages, discussed. (01:Sept. 14, Gonzalez, aff'd as modified, St. Bd. 01:Oct. 3)
- Nonrenewal: Superintendent of state-operated district acted within authority in nonrenewing vice principal's contract based on one negative evaluation by assessor. (98:Oct. 7, Harvey)
- Non-tenured teacher who worked one week in State Operated district and was then terminated was not entitled to damages as employment contract had never been consummated (never approved by State District Superintendent). (99:June 14, Fanego)
- Provision requiring 60 days' pay to staff whose positions are abolished in takeover, means calendar days. (99:Jan. 4, Caponegro, et al., aff'd St. Bd. 99:April 7, aff'd in part except to extent St. Bd. denied compensation for accumulated vacation sick days remanded for reconsideration and calculation of these benefits in accordance with board's policy and procedure manual and past practice, 330 N.J. Super. 148 (App. Div. 2000), remanded to Commissioner, St. Bd. 00:June 7)

STATE OPERATED SCHOOL DISTRICTS

- Takeover statute supercedes implied contract claim; executive administrators whose positions were abolished during state takeover were not entitled to full contractual salary or accrued sick, vacation or personal leave days; statutory 60 days' pay ordered to all except accountant. (99:Jan. 4, Caponegro, et al., aff'd St. Bd. 99:April 7, aff'd in part except to extent St. Bd. denied compensation for accumulated vacation sick days remanded for reconsideration and calculation of these benefits in accordance with board's policy and procedure manual and past practice, 330 N.J. Super. 148 (App. Div. 2000), remanded to Commissioner, St. Bd. 00:June 7)
- Tenured central office administrator/supervisor, whose position was abolished pursuant to takeover, and who was placed upon reorganization in separately tenurable, non-central office, school-based administrative position (vice principal), did not acquire tenure on first day of employment; N.J.S.A. 18A:7A-44(c), did not apply to non-central office staff. (00:Oct. 2, Di Como, aff'd St. Bd. 01:April 4)
- When a central office supervisory position is abolished pursuant to state takeover, all tenure and seniority rights to and originating from that position are also abolished. (99:June 14, Leong)
- Where "at will" employees were terminated by discretionary action of State superintendent rather than abolishment of their positions pursuant to the takeover statute, they were not entitled to relief. (99:June 1, Gonzalez, rev'd St. Bd. 00:May 3; remanded App. Div. 00:Dec. 8; remanded to Comm.; St. Bd. 01:Feb. 7, damages calculated 01:Sept. 14, aff'd as modified, St. Bd. 01:Oct. 3)

SUBSTITUTES

- A person disqualified under N.J.S.A. 18A:6-7.1 mandates denial of application for county substitute certificate. (St. Bd. 03:July 2, Hanks)
- County superintendent is directed to determine district's compliance with regulation where district had individual holding only a county substitute certificate to serve in school nurse position for two years. (00:Aug. 18, Woodbine)
- County superintendent, not State Board of Examiners, has authority to issue substitute certificate. (Appeal denied St. Bd. 99:Nov. 3, Gaba)
- Persons who hold substitute certificates are to be employed only in the matter prescribed by N.J.A.C. 6:11-4.5; the board may not employ a paraprofessional holding a substitute certificate and then assign to her tasks which are reserved for professional staff. (99:Sept. 9, Pennsville)
- Subsequent termination of a permanent employee does not convert a substitute's temporary employment to permanent employment. (01:Jan. 25, Vincenti, appeal dismissed for failure to perfect, St. Bd. 01:June 6)
- Substitute's certificate is not a teaching certificate and is issued by the county superintendent, not State Board of Examiners. (St. Bd. 03:July 2, Hanks)

SUBSTITUTES

Tenure acquisition: Where vacant position filled on full-time basis and teacher has served time needed to acquire tenure as regular teacher, person is tenurable regardless of the fact that title was that of “substitute” (03:March 14, Calabria)

SUBSTITUTE TEACHER

Board violated N.J.A.C. 6:28-3.1 and Elson by subcontracting LDTC services to Ed. Services Commission as substitute during LDTC’s sabbatical leave. (98:Oct. 5, South Amboy)

SUPERINTENDENTS

A board may not reduce a superintendent’s compensation in the event the board unilaterally terminates the contract; the board may either file tenure charges, or pay the superintendent the amount of compensation he would have received had he served the remainder of the contract, subtracting any mitigation of damages by superintendent through other employment (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff’d in part, rev’d in part and remanded for calculation of damages, St. Bd. 02:Nov. 6)

Contract: Clause requiring automatic extension of five-year contract, thus becoming 6-year contract in violation of N.J.S.A. 18A:17-15, did not render new contract invalid. (01:June 5, Howard, aff’d St. Bd. 01:Nov. 7, emergent relief denied St. Bd. 02:Feb. 6)

Contract: Failure to renew superintendent’s contract before July 1 or give notice of nonrenewal pursuant to N.J.S.A. 18A:17-20.1, triggered new contract with same provisions as expired contract including 5% salary increases. (01:June 5, Howard, aff’d St. Bd. 01:Nov. 7, emergent relief denied St. Bd. 02:Feb. 6)

Contract provision that permits the Board to terminate superintendent’s five-year contract after three years and reduce him in position and salary, was not authorized by N.J.S.A. 18A:17-15 or other statute, and therefore the Board’s actions pursuant to the contract are reversed as to the reduction in position and salary. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff’d in part, rev’d in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

Contract: Settlement agreement, once approved by Commissioner, is a binding contract. Superintendent only entitled to salary payment through the effective date of resignation, per terms of agreement, even though, absent terms, superintendent would have been entitled to salary payment until date of Commissioner’s approval of settlement. (01:Feb. 26, Williams)

SUPERINTENDENTS

Controversy over board placing superintendent on paid two-week administrative leave was not moot where CSA alleged that such action caused harm to his reputation as it could reasonably be inferred action was taken for disciplinary reasons. (Reversed and remanded St. Bd. 03:May 7, Carrington)

SUPERINTENDENTS

- Mitigation: Superintendent who successfully challenged Board's termination of his employment and placement of him in Director position with reduction in salary, was required to mitigate his damages; entitled to restoration to superintendent position with full superintendent salary and benefits. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)
- Superintendent cannot simultaneously hold full-time positions of superintendent and principal. (see ALJ decision, 01:Nov. 5, settled.)

SUSPENSION

- Board failed to prove, by a preponderance of the credible evidence, that custodian's absenteeism was excessive; a custodian is not held to the same attendance requirements as a teacher. Loud abusive response to principal's questions constitutes unbecoming conduct. Suspension ordered. (02:Sept. 6, McCullough, aff'd St. Bd. 03:April 2)
- Board improperly suspended teacher without pay, absent indictment of certification of tenure charges. (01:March 14, Kemmet)
- Commissioner adopted ALJ's dismissal of parent's complaint objecting to district imposition of a five-day transportation suspension. Board determined to nullify suspension and withdraw disciplinary records. Matter dismissed as moot. (04:Jan. 20, D.T.)
- Five-day suspension without pay for non-tenured custodian was not within Commissioner's jurisdiction. If custodian were tenured, suspension without pay would have been minor disciplinary action lawfully imposed by the board. Remedy lies within confines of collective bargaining agreement. (02:March 14, Heminghaus)
- Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

TENURE ACQUISITION

- Aide: even though district required certification for aide position, and her aide duties contained an instructional component, teacher's year of employment as an instructional aide did not count for tenure acquisition purposes; therefore, teacher had no right to reemployment after serving the district for one year as an aide and three years as a teacher. (02:July 8, Poruchynsky, aff'd St. Bd. 03:June 4)
- An endorsement is not invalidated simply because it is no longer issued. (99:Nov. 29, Ziegler)

TENURE ACQUISITION

Day care: teachers assigned to an extended-day kindergarten program could not acquire tenure or seniority credit for service in that program even though they were required to hold teaching certificates and otherwise treated them like teachers, since the nature of the employment was related to quality child care and not T & E, and the Board did not adopt the curriculum. (02:Oct. 24, Brown)

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:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

Matter of whether certified teaching positions in fee-based, extended-day kindergarten program were tenure-eligible is not ripe not for relief, but is better suited for declaratory ruling pursuant to Commissioner's discretion under N.J.A.C. 6A:3-2.1; teachers ordered to amend their petition to proper format. (01:Aug. 6, Brown)

Early tenure

Principals: question of board's intent in creating and then rescinding early tenure to limited category of employees was relevant; board action creating and then rescinding early tenure was within discretionary authority; insufficient proof of bad faith action by board. (01:Jan. 26, Swaim, decision on remand 98:Aug. 10)

Positions of Director and supervisor are each separately tenurable; tenure rights accrued in position of Director cannot be transferred to the separately tenurable position of supervisor. (99:Dec. 3, Duva, settlement rejected, decision on merits aff'd St. Bd. 02:March 6)

Promotional tenure

N.J.S.A. 18A:28-6(c) applies to staff members employed on both an academic and calendar year. (97 N.J.A.R.2d (EDU) 616, Dues), overruled to the extent that it applies to the academic year only. (01:Dec. 17, Donnelly, rev'd St. Bd. 02:Nov. 6)

Principal gained tenure where he served as acting principal and then as principal as "acting" designation counted toward tenure under N.J.S.A. 18A:28-6(c). (01:Dec. 17, Donnelly, rev'd St. Bd. 02:Nov. 6)

Salary agreements, standing alone, are not appointments for a fixed term; rather these agreements are indicia of tenure status of employee. (02:Jan. 15, McCullough, dismissed for failure to perfect St. Bd. 02:April 3)

Services of any teaching staff member who does not hold proper certification may be terminated without charge or trial. (96:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

TENURE ACQUISITION

Specific Positions

- Custodian appointed on fixed term contracts; rights not violated when board non-renewed. (00:Jan. 6, Cromwell, aff'd St. Bd. 00:June 7)
- Custodian: Tenure is afforded to all employees within the general custodial class of employment, regardless of title, and there is no right to a certain title. (98:July 8, Reinertsen, aff'd St. Bd. 98:Oct. 7, aff'd St. Bd. 00:March 1)
- Custodian who receives permanent position with board and thereafter only receives annual notice of salary is not appointed for a fixed term and thus entitled to custodial tenure as of date of appointment to permanent position. (02:Jan. 15, McCullough, dismissed for failure to perfect St. Bd. 02:April 3, see, also, tenure charges remanded based on decision that respondent is tenured employee)
- Custodians: Board could not reduce salary of tenured custodians when it abolished their positions as head custodian and reassigned them to other custodial positions. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:May 3; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)
- Custodians: Recoupment of salary overpayment mistakenly made to tenured custodians does not violate tenure rights. (94:Dec. 21, Trenton, rev'd St. Bd. 99:Dec. 1)
- Custodians: Where collective bargaining agreement provided for custodian tenure after three years, statute requires that such tenure extend to all types of custodial assignments including stockroom worker custodian and chief janitor. Tenure status does not attach to particular subcategories of janitor and thus abolition of custodial position requires board to RIF custodial employee based on overall seniority as custodian. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:May 3; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)
- Foreign languages supervisor possessing both supervisor and instructional certificates who taught on .4 basis acquired tenure as supervisor and foreign languages teacher entitling her to position over non-tenured teacher because she worked under both certificates. (01:June 22, Barca)
- Teacher had acquired tenure and held appropriate endorsement to teach employment orientation in Alternative Education program; fact that Office of Licensing and Credentials discontinued the issuance of his endorsement, namely Teacher of Employment Orientation, does not invalidate the endorsement or prevent teacher from accruing tenure thereunder. (99:Nov. 29, Ziegler)
- Teaching staff member does not accrue tenure as a coach; a board may discontinue a coaching assignment at its discretion. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)

TENURE ACQUISITION

Tenure rights never attached where vice principal served for five years on misrepresentation that she held principal certification; district's negligence in checking did not excuse her dishonesty and contract was void ab initio. (00:Feb. 2, Desmond)

Substitute: Where vacant position filled on full-time basis and teacher has served time needed to acquire tenure as regular teacher, person is tenurable regardless of the fact that title was that of "substitute" (03:March 14, Calabria)

Tenure acquired under an endorsement on an instructional certificate entitles the holder to tenure under all other endorsements obtained under the instructional certificate. (02:Jan. 10, Tomassini)

Tenure laws cannot be trumped by *Abbott* regulations. Emergent relief granted. (03:March 6, Sanchez, aff'd St. Bd. 03:June 4)

TENURE CHARGES

Abandonment of position

(03:May 1, Gilliams)

Certification of charges should not be dismissed as violative of the Open Public Meetings Act where the board did not record the vote to certify charges in its minutes; the tenure law requires that such vote take place in closed session, and such closed session minutes are not to be made promptly available; do so would violate the tenure law. (03:Oct. 14, McDonald)

Certification of charges

Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

Charges admitted – Failure to respond

Failure to answer within the prescribed period, where no extension has been applied for or granted, will result in the charges being deemed admitted by the employee. (03:May 1, Gilliams)

Charges dismissed

Board accepted teacher's resignation. Matter moot. (02:March 25, Reindel)

Commissioner adopted ALJ's determination that tenured vocational education teacher's unilateral resignation during the pendency of the matter rendered the tenure charges moot and therefore dismissed the tenure charges. (03:Feb. 6, I.M.O. Jenkins)

TENURE CHARGES

Tenure charges dismissed against teacher for unbecoming conduct on overnight field trip where teacher was photographed in questionable position and consumed alcohol with other adult chaperones at dinner. ALJ determined photographs were inadvertent and board had no policy against the consumption of alcohol on school-sponsored trips by adult chaperones. Commissioner adopted findings as his own. (04:Jan. 8, Rosencrantz)

Dismissal unwarranted; no penalty imposed

Board failed to meet its burden of proof that basic skills instructor used school computer to access and view pornography on the Internet during school hours; sole witness' testimony was not credible and computer data evidence was contaminated. Teacher reinstated with back pay. (00:June 20, Grundfest, aff'd St. Bd. 00:Nov. 1)

Board permitted to offer expert testimony as case involves "substantive issues of transcendent importance". (98:Dec. 17, Leggett, reversed and remanded, St. Bd. 99:June 2, affirmed on remand, 00:June 26, aff'd St. Bd. 00:Nov. 1)

Charges dismissed: pending tenure charges should be dismissed when there is a unilateral resignation or retirement; the broader public interest is addressed by the requirement that the district must notify the State Board of the alleged conduct. N.J.A.C. 6A:3-5.6; N.J.A.C. 6:11-3.6(a)(2). (02:Jan. 10, Jean)

Charges that Community Facilitation Teacher (DHS) struck a child were found untrue; matter turned exclusively on credibility determinations. (99:June 11, Fitzpatrick)

Corporal punishment charge not proven; teacher's version more credible. (99:Feb. 11, Jakubiak)

Distinction between incapacity, incompetency and inefficiency discussed, see ALJ decision. (00:March 10, Finn)

Incapacity and excessive absenteeism: where injuries suffered at workplace and employee steadily increases working hours upon returning to work, employee will be reinstated and charges of incapacity and excessive absenteeism will be dismissed. Back pay, less any mitigation, will be given. (99:June 9, Vereen, record ordered to be supplemented, St. Bd. 99:Oct. 6, rev'd St. Bd. 01:July 10)

Incapacity: Inefficiency charges were properly cast as incapacity, and are dismissed for failure to provide teacher with 90-day improvement period. Matter remanded for further proceedings on remaining charges involving leaving the classroom unattended and permitting an aid to teach without supervision, which are sufficient to warrant dismissal if true. (00:March 10, Finn)

TENURE CHARGES

- Previous determination to dismiss charges of unbecoming conduct against teacher who used improper techniques to rescue students in pool. (98:Dec. 17, Leggett, rev'd and remanded St. Bd. 99:June 2, affirmed on remand, 00:June 26)
- Vice principals did not engage in unbecoming conduct by failing to act on/report the continuous long-term violation of the law requiring 2 fire drills/month; the duty to conduct the prescribed number of fire drills is placed squarely upon the principal by N.J.S.A. 18A:41-1. (01:Aug. 24, Jackus and Gaines, reversed St. Bd. 02:April 3, aff'd unpub. Op. Dkt. No. A-4421-01T1, May 1, 2003)
- Unbecoming conduct charges dismissed; board provided no evidence regarding proper standard of conduct for physical education teacher following allegation that teacher did not use proper techniques to rescue swimming student. (98:Dec. 17, Leggett, rev'd and remanded St. Bd. 99:June 2, affirmed on remand, 00:June 26, aff'd St. Bd. 00:Nov. 1)
- Unbecoming conduct charges for alleged inappropriate sexual contact with student dismissed as moot where teacher admitted to pre-trial intervention probation and resigned tenured position. (01:March 19, Clothier)

TENURE CHARGES

Dismissal unwarranted; penalty imposed

- Board sustained its burden of proving that teacher was guilty of unbecoming conduct for failure to properly supervise students which led to their viewing of inappropriate movie; dismissal unwarranted in light of mitigating factors; teacher reinstated; loss of salary for 30 days. (01:Aug. 20, Prinzo)
- Loss of six months salary plus increments for two years along with mental examination prior to reinstatement for complaining to students in class that a condom was too small for him, turning condom into balloon-type giraffe, making comments of a sexual nature to female students, teaching students profane words in French and using a book to tap female students on the buttocks. (00:March 22, Allegetti, aff'd St. Bd. 00:Aug. 2)
- Unbecoming conduct: Although elementary teacher exhibited a pattern behavior arising to inappropriate conduct toward students, including insensitivity, racial remarks and inability to maintain her composure, removal was too severe in light of teacher's long unblemished career, her other attributes, and Board's failure to follow its own procedures and take corrective action earlier; ordered, permanent reduction of one step on salary guide and 120 days' salary, plus loss of additional six months' salary and emoluments. (02:Oct. 21, Emri)

Corporal punishment

- Charges proven – teacher kicked pupil who was misbehaving. Withholding of increment was appropriate penalty for this isolated incident of corporal punishment. No further penalty warranted. (02:April 8, Miller)
- Excessive, chronic tardiness: 170 tardies over 3 year period was disruptive, but dismissal of teacher not warranted in light of improvement in recent years; loss of 120 days pay. (99:Feb. 16, Pais)
- Loss of 120 days plus 2 months' salary, referral to State Board, for Athletic Director misrepresenting he possessed supervisory certificate; dismissal unwarranted in light of teacher's long service, prompt action upon learning of deficiency, and board's role in deficiency. (98:Aug. 6, Dombloski)
- Mitigating circumstances such as unblemished record, fact that lack of supervision of pupil was for short period, and pupil's poor behavior, warranted penalty less than dismissal. (99:Feb. 11, Jakubiak)
- Racist, sexist and insensitive comments constituted unbecoming conduct; however, in light of fact that conduct was unintentional, and long, unblemished record, forfeiture of 120 days plus two months' salary and merit increments for year; suggests teacher attend sensitivity training class. (00:June 26, Mamunes, aff'd St. Bd. 00:Nov. 1)

TENURE CHARGES

- Sexually harassing comments: measured against recent tenure dismissal cases for inappropriate remarks to students, dismissal not warranted for teacher found to have made imprudent and unprofessional comments to students of allegedly sexually harassing nature where record is otherwise unblemished. 120 days pay restored but increment ordered withheld. (01:Feb. 26, Wannemacher)
- Supervision: Loss of one month's salary ordered where librarian left pupil unsupervised for 5 minutes as disciplinary measure. (99:Feb. 11, Jakubiak)
- Unbecoming conduct including belittling new teacher in front of students, refusal to perform duties, raising voice to colleague and referring pejoratively to children, constituted repeated and unrepentant behavior warranting permanent reduction of one step on salary guide as well as loss of 120 days' pay and additional two months' salary and emoluments. (99:Aug. 4, Motley, aff'd St. Bd. 99:Dec. 1)
- Vice principal not dismissed, but is permanently reduced on salary guide for mishandling pupils suspected of being under influence of alcohol or drugs. (00:Sept. 21, Graceffo, aff'd with modification St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2402-01T5, April 8, 2003)

Dismissal warranted – Procedural issues

- Commissioner finds without merit petitioners argument that 90-day time limitation for disputing tenure charges is inapplicable to such charges because his claim is a statutory entitlement within the intendment of Lavin. (03:Oct. 2, Colucci)
- Custodian dismissal warranted: custodian fails to answer charges of excessive absenteeism, abandonment of position and unbecoming conduct. (00:Jan. 4, Carmona)
- Custodian dismissal warranted: custodian fails to answer charges of unbecoming conduct involving possession of stolen goods, condoning theft, conspiring to commit fraud. (02:Feb. 1, Marmora)
- Custodian resigned and withdrew his defense to charge of theft of school funds. (99:August 19, Williams)
- Custodian: Unbecoming conduct and excessive absenteeism; failure to answer charges. (00:Aug. 30, Randolph)
- Failure to answer charges; Commissioner finds that teacher's actions amounted to unbecoming conduct, insubordination, inefficiency and other just cause, but due to TPAF approval of teacher's disability retirement, board unable to move forward with charges; matter dismissed due to retirement. (99:March 3, Fuqua)

TENURE CHARGES

- Failure to answer charges; custodian dismissed for abandoning his position. (99:March 10, Crossland)
- Failure to answer charges; custodian dismissed for absenteeism. (99:April 8, Taylor)
- Failure to answer charges; custodian dismissed for alcohol abuse on the job after having previously been suspended and reinstated while attending abuse program. (00:Nov. 3, Arera)
- Failure to answer charges; custodian dismissed for insubordination and other just cause. (98:Oct. 19, Pietronico)
- Failure to answer: charges deemed admitted; custodian is dismissed for absenteeism, abandonment of position, unbecoming conduct and insubordination. (00:June 19, Kidd)
- Failure to answer charges; dismissal ordered against light cleaner for absenteeism. (98:Aug. 12, Davis)
- Failure to answer charges; dismissal ordered against teacher in State op. district, on grounds of inefficiency and incapacity. (98:Sept. 29, Battle)
- Failure to answer charges; dismissal ordered for unbecoming conduct for, while chaperoning trip with minors, showing pornographic films and providing alcohol. (98:Oct. 6, Lamperty, appeal dismissed for failure to perfect, St. Bd. 99:Jan. 6)
- Failure to answer charges; summary judgment for dismissal ordered on grounds of incapacity/excessive absenteeism and unbecoming conduct of forging sick day donor requests. (99:July 7, Joyner)
- Failure to answer charges – teacher dismissed. (01:May 7, Indar)(01:May 14, Luciano – secretary, excessive absenteeism)(01:July 25, Sconier, incapacity, etc.)
- Failure to answer charges within the prescribed period, charges deemed admitted by the employee. Teacher dismissed due to incapacity, chronic absenteeism, abuse of sick leave and abandonment of position. (03:May 1, Gilliams)
- Failure to reply to specific charges. (99:July 7, Allegretti)
- Failure to submit answer within 15 days; teaching staff member dismissed for unbecoming conduct, insubordination, inefficiency and/or other just cause. (99:March 3, Geveke, rev'd and remanded St. Bd. 99:Oct. 6)
- Failure to submit timely answer and absence of good cause for extension of time; crisis intervention teacher deemed to have admitted charges of excessive absenteeism and unbecoming conduct. (99:Dec. 23, Johnson)

TENURE CHARGES

Plenary hearing not provided in tenure matter where teacher's conduct was fully and fairly litigated and decided in prior criminal proceeding; assault constituted conduct unbecoming warranting teacher's dismissal. Board of education has the authority, pursuant to N.J.S.A. 2C:51-2(g) to apply for an order of forfeiture. Remanded to St. Bd. (App. Div. A-6729-98T3, Nov. 28, 2000) (00:May 1, Ercolano, decision on remand, decision on motion, matter dismissed as moot, St. Bd. 01:June 6)

Summary judgment to district, where charges of defrauding State Health Benefits Program no longer contested. (00:Jan. 21, Lister)

Withdrawal of opposition to tenure charges; charges of abandonment/incapacity deemed admitted; secretary dismissed. (99:July 30, Harder)

Dismissal warranted--Absences

Chronic and excessive absenteeism may constitute incapacity and unbecoming conduct even where the absences were caused by legitimate medical reasons. (03:May 12, Metallo)

Custodian's absences adversely affected Board's ability to provide sanitary and secure facilities and created morale problem for other custodians. (99:June 9, Prusakowski)

Custodian's stipulated three-year absence due to legitimate use of sick leave affected Board's ability to provide sanitary and secure facilities and morale of other custodians; custodian dismissed (99:July 22, Kasonry, aff'd St. Bd. 00:Jan. 5)

Dismissal ordered; custodian did not file answer to charge of chronic, excessive absenteeism. (98:Aug. 7, Scott)

Dismissal ordered for teacher of handicapped who did not dispute that her absenteeism over eight years adversely impacted her performance, and where district warned teacher of the problem which teacher does not assert will improve. (98:Nov. 17, Labib)

Excessive absenteeism (90 days) alone warranted teacher's removal; insubordination charges including failure to submit sub plans, failure to prepare report cards or to report absences, also proven; abandonment not proven. (98:July 15, Richardson, aff'd St. Bd. 99:Jan. 6)

Excessive absenteeism (720 days over 7 years) warranted teacher's dismissal despite legitimate illness; caused impact on continuity of instruction. Abuse of sick leave charge dismissed for lack of evidence. (00:April 17, Segall)

Pattern of absenteeism for over 23 days from January through April, and failure to comply with procedures for reporting to work was attributable to speech therapist's refusal to teach in a particular environment and not to a medical problem, established excessive absenteeism; also unprofessional conduct and neglect of duties were established. (02:Oct. 9, Thomas)

TENURE CHARGES

- Special education teacher dismissed on grounds of incapacity due to chronic absenteeism and lateness over five-year period and conduct unbecoming. (01:March 2, Brooks)
- Teacher dismissed for excessive absenteeism, excessive tardiness, unbecoming conduct and insubordination. No reply from teacher, charges deemed admitted. (02:April 30, Moore)
- Teacher had an abusive pattern of absences – 72% of the time over two years. Straddles absences over weekends, holidays and other days when schools were closed. Did not comply with district sick leave procedures. (03:May 1, Gilliams)
- Teacher's chronic and excessive absenteeism constituted unbecoming conduct and incapacity and warranted dismissal. (03:May 12, Metallo)
- Teacher terminated for excessive absenteeism including absence due to work-related injury. Penalty of increment withholding for separate incident of insubordination rejected by Commissioner since increment withholding applies prospectively. (00:May 15, Folger)

Dismissal warranted -- Corporal Punishment

- Evidence of anti-union animus not permitted because charges of corporal punishment, if proven, would sustain removal even in presence of anti-union animus, and witnesses were not part of administration who could harbor union sentiment, charges did not arise out of protected activity. (99:May 10, Hernandez, aff'd St. Bd. 99:Oct. 6)
- Excessive use of force on four occasions when disciplining pupils, along with verbal abuse warranted dismissal of teacher. (00:June 26, Cotto, aff'd St. Bd. 00:Nov. 1)
- Knocking ball away from student and pushing him against wall, making inappropriate ethnic remark, together with other incidents and warnings regarding touching pupils, warranted removal of physical education teacher. (98:Dec. 28, Miller, aff'd St. Bd. 99:May 5)
- Rough handling of pupils when imposing discipline warranted teacher's dismissal, especially where problem was noted in his professional improvement plan. (99:May 10, Hernandez, aff'd St. Bd. 99:Oct. 6)

Dismissal warranted—criminal conduct

- Charges dismissed as moot upon resignation of teacher who pled guilty to defrauding State Health Benefits Plan. (00:Nov. 20, Baker)
- Commissioner adopted ALJ's decision finding teacher guilty of unbecoming conduct when she acted to elude police, even though charge was eventually dismissed. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)

TENURE CHARGES

- Conduct giving rise to superintendent's federal conviction for tax evasion amply established charges of unbecoming conduct without the need for an additional plenary hearing; removal from tenured position warranted. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449)
- Conviction for assaulting a student constituted conduct unbecoming and warranted teacher's dismissal. (00:May 1, Ercolano, decision on remand, decision on motion, matter dismissed as moot, St. Bd. 01:June 6)
- Embezzlement of school funds and other irregularities by school business administrator, to which charges he entered guilty plea in federal court, constituted unbecoming conduct warranting removal. (01:Oct. 12, Davis)
- Forfeiture pursuant to N.J.S.A. 2C:51-2, as amended in 1995, not within the jurisdiction of education. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449)
- Fraud: teachers dismissed for participating in scheme to defraud State Health Benefits Program by conspiring with doctor to submit claims for services never rendered. (99:Feb. 11, Dykes, appeal dismissed for failure to perfect, St. Bd. 99:June 2; aff'd App. Div. unpub. op. Dkt. No. A-6596-98T1, June 14, 2000) (Physical education teacher) (99:Feb. 25, Lester, aff'd St. Bd. 99:July 7; aff'd App. Div. unpub. op. Dkt. No. A-7034-98T3, May 19, 2000) (middle school teacher)
- Guilty pleas to 4th degree offense of criminal contempt, and later disobeying restraining order required dismissal despite teacher's obsessive compulsive disorder. (99:June 23, Dombloski)
- In light of guilty pleas to sexual conduct with minors, tenure charges are sustained. (00:Aug. 18, Wood)
- Secretary arrested for theft of school funds. (01:March 19, Nurse)
- Secretary intended to convert money if not for police sting operation; dismissal warranted, although criminal theft conviction was reversed on appeal. (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)
- Single incident of theft sufficiently flagrant, despite unblemished record. (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)
- Teacher plead guilty in criminal court for fraudulent health insurance scheme, including forfeiture of position; failure to appear before Commissioner in tenure deemed admission; teacher dismissed. (00:Oct. 2, Woolard)
- Theft: Single incident of theft of school monies by custodian justified dismissal. (99:May 3, Tighe)

TENURE CHARGES

Dismissal warranted--Drugs/Alcohol

Board policy providing for prompt testing of teachers suspected of being under the influence of alcohol upheld as reasonable. Teacher smelled of alcohol during school hours. Under the circumstances, and in accordance with the Board's reasonable regulation related to matters of this sort, prompt testing was appropriate as it was in the best interests of students, staff members, the public and the teacher itself. (04:Jan. 8, Bayonne Teacher's Association)

Cocaine and drug paraphernalia possession by teacher: Dismissal ordered as plea bargain likely to fall through as teacher has fled and bench warrant out for arrest, indictment likely to result in forfeiture, and teacher failed to answer tenure charges. (98:Oct. 14, Ceccarelli)

Cocaine and drug paraphernalia possession off school premises warranted dismissal of industrial arts teacher; mitigating circumstances not demonstrated. (99:July 30, Morton)

Commissioner adopted ALJ's determination that teacher was guilty of unbecoming conduct when she admitted to possession of CDS with intent to distribute in allowing her residence to be used for the preparation and distribution of CDS, despite teacher's allegation that drug dealers commandeered her residence. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)

Custodian's possession of cocaine, marijuana and paraphernalia, warranted dismissal even though he successfully completed PTI and criminal charges were dropped, and although custodians are not held to same standard as teachers. (00:Oct. 2, Santiago, aff'd St. Bd. 01:March 7)

Reasonable accommodation: assuming drug addiction is in fact a handicap, 45-day rehab program was reasonable accommodation. (99:July 30, Morton)

Dismissal Warranted – incapacity

Chronic and excessive absenteeism may constitute incapacity and unbecoming conduct even where the absences were caused by legitimate medical reasons. (03:May 12, Metallo)

Multi-year absences by injured custodian established incapacity warranting removal, although his absenteeism constituted legitimate use of sick leave and possibility remained that he could once again be capable of resuming duties. (99:June 9, Prusakowski)

Purchasing specialist removed for incapacity due to excessive absenteeism, after failed to answer charges. (01:March 22, Davis)

Special education teacher dismissed on grounds of incapacity due to chronic absenteeism and lateness over five-year period and conduct unbecoming. (01:March 2, Brooks)

TENURE CHARGES

Teacher's chronic and excessive absenteeism constituted unbecoming conduct and incapacity and warranted dismissal. (03:May 12, Metallo)

Teacher's excessive absences demonstrated incapacity of fulfilling duties as a teacher. (03:May 1, Gilliams)

Teacher who is injured, has protracted absence for several years and fails to respond to board's repeated requests for clarifications of work status is incapable of fulfilling duties and has engaged in unbecoming conduct. (03:Jan. 21, Abernathy)

Dismissal warranted -- insubordination

ALJ recommended dismissal of gym teacher, accused of grabbing, pushing, screaming at second grade students, and instructing one student to strike another. Commissioner affirmed teacher's dismissal and transmitted matter to State Board for appropriate action against teacher's certificate. (02:Nov. 6, Kendle)

Conduct unbecoming by virtue of hostile behavior toward other staff members, insubordination, and poor performance warranted dismissal. (99:Jan. 14, Radwan, decision on motion, St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3)

Discrimination: Custodian's claim that other staff singled him out because of religious or ethnic discrimination was unfounded by testimony; he was singled out because he was belligerent and behaved badly. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3)

Guilty plea to 4th degree offense of criminal contempt, and later disobeying restraining order required dismissal despite teacher's obsessive compulsive disorder. (99:June 23, Dombloski)

In determining discipline for unbecoming conduct, the Commissioner considers the nature and circumstances of the incident, the individual's prior record and current attitude, and the likelihood that the behavior will recur; dismissal may be imposed even if the conduct did not occur in the course of a teacher's employment. (99:June 23, Dombloski)

Insubordination charges including failure to submit sub plans, failure to prepare report cards or to report absences were proven; however excessive absenteeism (90 days) alone warranted removal. (98:July 15, Richardson, aff'd St. Bd. 99:Jan. 6)

Refusal to cooperate with school and refusal to comply with board directive to undergo physical and psychiatric evaluation sufficient to warrant dismissal. (02:June 27, Ingram, aff'd St. Bd. 02:Nov. 6, aff'd App. Div. unpub. op. Dkt. No. A-2078-02T5, Nov. 6, 2003)

TENURE CHARGES

Teacher contended that her disability required different accommodations than those reasonable accommodations offered by the board and refused to perform assigned teaching duties and stayed home from work despite warning by board that tenure charges would ensue. (01:Dec. 31, Megargee, aff'd St. Bd. 02:May 1, motion to settle record granted, St. Bd. 03:Jan. 8)

Dismissal warranted – performance/inefficiency

Charges of inefficiency did not comply with procedural requirements and contained only one classroom observation; however, record established pattern of incidents constituting unbecoming conduct that warranted dismissal. Board reminded of its obligation to provide teaching staff members with observation, evaluation and PIP's in accordance with regulations. (02:Oct. 15, Zofchak, appeal dismissed for failure to correct procedural deficiencies, St. Bd. 03:Feb. 5, motion granted to reinstate appeal, St. Bd. 03:April 2, aff'd for the reasons expressed in Comm. Decision, St. Bd. 03:June 4)

Incapacity: Tenure charge was not premature just because teacher has not yet received workers compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Industrial arts teacher: Chronic lateness and failure to follow safety protocols warrants dismissal. (02:July 1, Varano)

Inefficiency: School psychiatrist's repeated failure to complete and file psychological assessments in a timely manner despite extensive efforts by board to assist her, warranted dismissal despite many years of service and adequate performance in certain areas. (00:Aug. 18, Sidberry, aff'd St. Bd. 01:Jan. 3)

Janitor's poor performance of responsibilities, as well as conduct unbecoming by virtue of hostile behavior toward other staff members, and insubordination, warranted dismissal. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3)

Dismissal warranted – procedural issues

Failure to answer charges; secretary dismissed for excessive absenteeism, incapacity. (01:Oct. 15, Hernandez)

Failure to respond to charges; teacher of developmentally disabled is suspended for ten days without pay for chronic and excessive absenteeism. (02:Feb. 22, Dillon)

Withdrawal of answer; misappropriation by Director of funds, multiple schemes to defraud board deemed admitted. (00:March 22, Hagopian)

TENURE CHARGES

Dismissal warranted -- racial remarks

Knocking ball away from student and pushing him against wall, making inappropriate ethnic remark, together with other incidents and warnings regarding touching pupils, warranted removal of physical education teacher. (98:Dec. 28, Miller)

Dismissal warranted -- Sexually inappropriate behavior/profanity/inappropriate remarks

Act of squeezing teacher's leg alone did not constitute an act of harassment warranting tenure dismissal. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part and rev'd in part on other grounds, unpub. Op. Dkt. No. A-3610-01T5, June 2, 2003)

Board certified tenure charges against special education teacher for allowing special education students to engage in sexual activity during instructional time. ALJ found that the board failed to meet its burden. Commissioner modified the initial decision, finding that the teacher failed to properly monitor students thus charges of unbecoming conduct were sustained. Mitigating factors provided for loss of 120 days salary and salary increment. (02:Aug. 16, Noon)

Comments and inappropriate past actions with female students, by industrial arts/special education teacher, amounting to sexual harassment, warranted removal for unbecoming conduct and demonstrated incapacity and unfitness. (02:July 8, Slaughter)

Conviction for aggravated sexual assault of a minor pupil. (00:Dec. 18, Duffield)

Guilty plea to second degree sexual assault on student; charges deemed admitted where no reply submitted. (01:Oct. 1, Elwell)

History teacher of 23 years is dismissed for sexually inappropriate statements and gestures, as well as actions intended to dissuade students from testifying against him. Unpub. Op. Dkt. No. A-3610-01T5, June 2, 2003, aff'g in part, and rev'g in part (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6)

TENURE CHARGES

- Inappropriate comment directing special education student to “kiss my butt” to attend class trip, although single act, sufficiently flagrant to warrant removal. (01:March 22, Cooper)
- Inappropriate relationship with student admitted by teacher warranted removal. Defense of bi-polar disorder as factor mitigating against removal rejected. Disorder may have mitigated against other unbecoming conduct (sending suicide notes to students) but not efforts to forge romantic relationship. (01:March 2, Ing)
- In light of guilty pleas to sexual conduct with minors, tenure charges are sustained. (00:Aug. 18, Wood)
- Residuum rule served to require dismissal of allegation that during class, teacher announced names of pupils who complained about him. (01:Sept. 7, Mujica, aff’d St. Bd. 02:Feb. 6, aff’d in part, and rev’d in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)
- Sexual relationship by music/band teacher with teenage pupil; a teacher who is sexually involved with a student must be stripped of his tenure; no other result can be allowed. (99:March 1, Yatauro)
- Sexual relations with blind client, and attempting to conceal guilty by falsifying records and threatening client. (99:Feb. 9, Cerutti) (Dept Human Services)
- Teacher in middle school: Despite lengthy, unblemished record, and possible alcoholism disability, dismissal warranted due to seriousness of charges that teacher left vulgar, obscene messages on answering machine for two pupils. (00:April 17, Dunham, aff’d St. Bd. 00:Sept. 6)
- Unbecoming conduct; discussions with class about torturing and killing another student, and about purchasing guns over the internet. (00:July 27, Komorowski, aff’d St. Bd. 00:Dec. 6)

Dismissal warranted – Unbecoming conduct

- Board certified tenure charges against special education teacher for allowing special education students to engage in sexual activity during instructional time. ALJ found that the board failed to meet its burden. Commissioner modified the initial decision, finding that the teacher failed to properly monitor students thus charges of unbecoming conduct were sustained. Mitigating factors provided for loss of 120 days salary and salary increment. (02:Aug. 16, Noon)
- Board established pattern of unbecoming conduct (yelling at children, corporal punishment, profanity, rigidity, etc.) and insubordination; teacher’s claim that charges were in retaliation for Workers Compensation claims, or for a case due to her disability under the Law Against Discrimination, were unfounded, and the board had provided reasonable accommodation for her disability. (02:Feb. 25, King)

TENURE CHARGES

- Chronic and excessive absenteeism may constitute incapacity and unbecoming conduct even where the absences were caused by legitimate medical reasons. (03:May 12, Metallo)
- Commissioner adopted ALJ's finding that teacher was guilty of unbecoming conduct when she was inattentive to her students for six or seven minutes. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)
- Commissioner adopted and amplified ALJ's decision to dismiss tenure charges for board's failure to prove by a preponderance of the credible evidence that school nurse was guilty of conduct unbecoming in failing to notify parents in writing of suspected scoliosis diagnosis where neither regulation or board policy required written notification. (04:Jan. 23, Kenny)
- Commissioner agreed with ALJ that teacher was guilty of unbecoming conduct when she failed to follow proper call-out procedures. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)
- Engaging in violent behavior towards student and hostile, disrespectful, and uncooperative conduct towards school principal was a flagrant deviation from the civil behavior expected of a professional teacher. (02:Dec. 6, Ashley, aff'd St. Bd. 03:May 7)
- Misappropriation by Director of funds, multiple schemes to defraud board; withdrawal of answer renders matter uncontested. (00:March 22, Hagopian)
- Repeated viewing of teenage pornography on school computer and using computers for personal and financial gain warranted dismissal. (02:Dec. 23, Gomes)
- Series of incidents including making defamatory comments to students, leaving classroom unattended, failing to report certain student activity, and rude and offensive behavior towards other staff members, constituted unbecoming conduct. Board reminded of its obligation to provide teaching staff members with observation, evaluation and PIP's in accordance with regulations. (02:Oct. 15, Zofchak, appeal dismissed for failure to correct procedural deficiencies, St. Bd. 03:Feb. 5, motion granted to reinstate appeal, St. Bd. 03:April 2, aff'd for the reasons expressed in Commissioner decision, St. Bd. 03:June 4)

TENURE CHARGES

Superintendent of schools dismissed for conduct unbecoming a chief school administrator. Proven conduct included use of school employees to perform work at his home on school time, improper use of an annuity, relocating his office at significant cost without board approval, hiring and firing of emergency special education teacher to do screenplay work. Pattern of deceit and misrepresentation. (02:April 1, Howard, motion to enlarge record granted, St. Bd. 02:April 1)

Supervisor of Mathematics dismissed for distribution of mathematics portion of early warning test and lying to supervisor about number of copies distributed. (98:March 2, McNutt, aff'd St. Bd. 98:Oct. 7, aff'd App. Div. unpub. op. Dkt. No. A-1710-98T2, Jan. 28, 2000)

Teacher dismissed for excessive absenteeism, excessive tardiness, unbecoming conduct and insubordination. No reply from teacher, charges deemed admitted. (02:April 30, Moore)

Teachers are entrusted with the care and custody of children and so their duties require a degree of self restraint and controlled behavior unlike most other types of employment. (02:Dec. 23, Gomes)

Teacher's chronic and excessive absenteeism constituted unbecoming conduct and incapacity and warranted dismissal. (03:May 12, Metallo)

Teacher who is injured, has protracted absence for several years and fails to respond to board's repeated requests for clarifications of work status is incapable of fulfilling duties and has engaged in unbecoming conduct (03:Jan. 21, Abernathy)

Unprofessional conduct and neglect of duties were established by speech therapist who wore earplugs while teaching, disconnected PA system, failed to follow proper fire drill procedures, refused to undergo physical and psychiatric examination, and showed pattern of absenteeism attributable to her refusal to teach in a particular environment and not to a medical problem. (02:Oct. 9, Thomas)

Failure to certify charges

Commissioner may entertain motion challenging board's failure to certify tenure charges. (00:Jan. 3, Parisi)

Forfeiture

Forfeiture of public office: The Commissioner of Education is without jurisdiction to enter an order of forfeiture of public employment. (99:May 3, Tighe)(97 N.J.A.R. 2d (EDU) 449, Vitacco, aff'd St. Bd. 00:April 5)

Forfeiture: Termination moot where teacher forfeited position for scheme to defraud SHBP. (00:Dec. 22, James)

Teacher was convicted of crime of dishonesty (defrauding State Health Benefits Plan) and court ordered forfeiture: tenure matter moot. (00:Sept. 1, Butler)

TENURE CHARGES

Mitigation

Diagnosis of and treatment for bi-polar disorder found not to mitigate against tenure dismissal of teacher who admitted to attempting to forge a romantic relationship with a student, although may have mitigated against unbecoming conduct of sending suicide notes to students. (01:March 2, Ing)

Mitigation of penalty was made less likely where teacher had previously been found guilty of conduct unbecoming. (99:June 23, Dombloski)

Superintendent who successfully challenged Board's termination of his employment and placement of him in Director position with reduction in salary, was required to mitigate his damages; entitled to restoration to superintendent position with full superintendent salary and benefits. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

No entitlement to payment of salary during time of suspension – delays all attributed to School Business Administrator. (97 N.J.A.R. 2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded Docket No. A-6218-99T1 (App. Div. March 28, 2002), dec. on remand St. Bd. 02:May 1, Comm. Dec. on remand 02:May 13)

Prejudgment Interest

Where board twice filed defective tenure charges, no bad faith shown; no pre-judgment interest awarded teacher. (See ALJ decision. Dismissed as moot by Commissioner.) (00:May 3, McHarris); See also, 00:April 5, St. Bd. rev'g Commissioner decision that dismissed tenure charges without prejudice for procedural defects in certification of charges; aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1 (July 3, 2001)

Procedure under Tenure hearing Act

Accumulated sick days: Where teacher resigned prior to resolution of tenure charges and prior to his guilty plea for crime warranting forfeiture, district was ordered to pay him sick days accumulated prior to the date the district certified tenure charges against him. (98:Nov. 17, Reed)

ALJ's credibility determination is entitled to the Commissioner's deference, see N.J.S.A. 52:14B-10(c). (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)

Behavior rising to level of unbecoming conduct need not be violation of rule or regulation, but may be based on implicit standard of good behavior. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)

TENURE CHARGES

- Board's second attempt to certify identical tenure charges is dismissed as moot in light of State Board's ruling in first case, that because Ott rights were invoked, board was restrained from pursuing tenure charges pending disposition of criminal charges. (00:May 3, McHarris); See also, 00:April 5, St. Bd. rev'g Commissioner decision that dismissed tenure charges without prejudice for procedural defects in certification of charges; aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1 (July 3, 2001)
- Burden of proof: Board has burden of proving charges by fair preponderance of the credible evidence. (99:July 30, Morton) (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)
- By law, the entire record of any tenure proceeding adjudicated before the Commissioner is a matter of public record, unless for good cause the record is ordered sealed. (00:Jan. 13, Pantalone)
- Classroom deficiencies, although sounding in inefficiency, were brought instead as unbecoming conduct, and would be evaluated as such where Board did not follow procedures for bringing charges of inefficiency. (02:Oct. 21, Emri)
- Commissioner declines to address ALJ's discussion of whether teacher could be granted a stay of tenure matter as a consequence of an ongoing related criminal "investigation." (00:Aug. 18, Wood)
- Commissioner may entertain motion challenging board's failure to certify tenure charges. (00:Jan. 3, Parisi)
- District did not deny teacher his procedural due process with regard to its investigation of the matter prior to certification of tenure charges. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)
- Employee's past disciplinary record may be considered at penalty phase only if it resulted in a formally adjudicated action or if the charge was admitted by the employee. Unpub. op. Dkt. No. A-3610-01T5, June 2, 2003, aff'g in part, and rev'g in part (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6)
- Evidence of anti-union animus not permitted because charges of corporal punishment, if proven, would sustain removal even in presence of anti-union animus, and witnesses were not part of administration who could harbor union sentiment, charges did not arise out of protected activity. (99:May 10, Hernandez, aff'd St. Bd. 99:Oct. 6)
- Failure to answer within the prescribed period, where no extension has been applied for or granted, will result in the charges being deemed admitted by the employee. (03:May 1, Gilliams)
- General letter of warning issued five years earlier could not be basis for charge of insubordination. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)

TENURE CHARGES

- Jurisdiction: Commissioner declines to exert primary jurisdiction over consolidated matter regarding whether teacher can be relieved of his tenure due to epilepsy; Division on Civil Rights should make initial determination of teacher's claim of discrimination, retaliation and failure to accommodate; Commissioner will thereafter determine tenure dismissal matter. (01:Sept. 14, Ford, order of consolidation and predominant interest)
- Motion to reopen record denied, as there was no reason why respondent's theory could not have been developed with reasonable diligence prior to close of the record before ALJ. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)
- Motion to reopen record for further testimony granted: ALJ's findings and conclusions regarding teacher's credibility on question of whether he sexually harassed special education student, were based on facts not supported by evidence in the record. (00:Dec. 11, Brewer)
- Reconsideration of charges by board; board is not precluded from reconsidering charges that it filed, but were deemed dismissed for board's failure to determine probable cause within 45 days pursuant to N.J.S.A. 18A:6-13. (99:Feb. 11, Jakubiak)
- Settlement agreement of tenure charges would not be set aside when challenged five years after its entry; fact that Superior Court order transferred matter to Commissioner did not affect 90-day rule bar; relaxation not justified. (00:Feb. 28, Grompone)
- Settlements: Voluntary resignation prior to removal for cause in tenure matter permitted superintendent to avoid the effect of the mandatory forfeiture provisions on his deferred retirement benefits; preservation of pension rights is a legitimate consideration of the commissioner in considering tenure charges. (00:May 15, Mullen – involved CSA)

TENURE CHARGES

- Student testimony against a teacher must be viewed with great caution. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)
- Teacher fails to establish that record did not contain sufficient findings of fact by ALJ for Commissioner's review. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)
- Training: Commissioner will not compel a teacher to attend training classes as part of punishment for the determination of unbecoming conduct; however, it is appropriate for board to pursue training within the provisions of teacher's professional development requirements and teacher's contract. (02:Oct. 21, Emri)

Salary payment issue

- A board is obligated to resume payment to an employee who is the subject of pending tenure charges, upon the 121st day; the legislature has not provided any discretion to a board to wait beyond that date. Even where the employee was later dismissed, equitable principles did not apply to justify board's withholding of payment beyond 121st day. (99:Oct. 13, d not apply to justify board's withholding of payment beyond 121st day. (99:Oct. 13, Yatauro)
- Back pay: Where court-ordered forfeiture was reversed and appeal thereof is pending, and teacher is meanwhile dismissed on tenure charges, teacher was entitled to back pay from end of 120-day period, despite fact that if forfeiture order is reinstated teacher will have no entitlement to back pay. (00:May 1, Ercolano, decision on remand)
- Board improperly suspended teacher without pay, absent indictment of certification of tenure charges. (01:March 14, Kemmet)
- In uncontested tenure matter resulting in dismissal of custodian for extorting funds from the board, Commissioner orders board to reimburse custodian for sums improperly withheld prior to certifying charges. (99:Dec. 13, Lynch)
- Mitigation: back pay award must be reduced by money teacher actually earned during period of suspension for substituted employment; board may not reduce award for potential, as opposed to actual, earnings. (99:Oct. 13, Yatauro)
- No back pay for period of suspension for teacher who forfeited position for defrauding SHBP. (00:Dec. 22, James, settled on remand 01:July 20)

TENURE CHARGES

No entitlement to back pay under N.J.S.A. 18A:6-8.3 for period of suspension by reason of assistant principal's indictment for sexual assault on child, where charges were subsequently dismissed upon completion of PTI, see Pawlak. (01:Aug. 30, Busler, aff'd St. Bd. 02:Feb. 6)

Salary withheld upon indictment: Where a tenured employee seeks to recover salary which was withheld after an indictment from which the employee obtains a favorable disposition, but where the employee has later been proven in a tenure proceeding to have committed the same misconduct that was the subject of the criminal charge, the employee may not recover the salary withheld during the pendency of the indictment. (99:Oct. 13, (99:Oct. 13, Yatauro)

Summer months count toward calculating the 120 days; employee entitled to be returned to payroll on the 121st day of suspension notwithstanding that he is compensated on a 10-month pay scheduled. (00:Dec. 11, Brewer)

The entitlement to be paid after the 120th day does not terminate upon the initial finding of misconduct by the ALJ, but rather upon a final determination by the Commissioner. (99:Oct. 13, Yatauro)

Single incident: single incident of unbecoming conduct can warrant dismissal where sufficiently flagrant. (99:Feb. 11, Dykes, appeal dismissed for failure to perfect, St. Bd. 99:June 2)

Voting to certify charges: Board violated statute that prohibits actions of board on tenure charge from taking place at public meeting when it voted on tenure charge by roll call public vote; question of whether tenure charge is void or whether this is merely a technical violation for which there is no statutory or court-established remedy, is dismissed; motion not brought in tenure proceeding, but rather in different pending matter. (99:March 1, Williams, motion for leave to appeal denied, St. Bd. 99:May 5)

Reduction in Salary in Violation of Tenure Law

Reduction in salary

A board may not reduce a superintendent's compensation in the event the board unilaterally terminates the contract; the board may either file tenure charges, or pay the superintendent the amount of compensation he would have received had he served the remainder of the contract, minus any mitigation of damages. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

TENURE CHARGES

- Board did not violate elementary teacher's tenure or seniority rights by transferring her to middle school after a RIF at elementary level; no reduction in salary or benefits. (01:July 2, Zitman, aff'd St. Bd. 01:Nov. 7)
- Board violated tenure law when it reassigned tenured teacher to teacher/facilitator position and reduced her annual salary where both positions required instructional certificate. (02:Jan. 10, Tomassini)
- Board violated tenured secretary's tenure rights when it abolished her position and transferred her to a lower paying secretarial position; she was entitled to the higher salary because she remained in the same tenurable position of school secretary even after the transfer. (00:Oct. 30, Custode, aff'd St. Bd. 01:April 4, motion to reconsider denied St. Bd. 01:June 8)
- Dissolution of regional district, tenure rights of teachers: N.J.S.A. 18A:28-6.1 which preserves employment of tenured teachers, is triggered only if a district closes a school and agrees with another district to send its pupils from the closed school to that district; does not apply simply because limited purpose regional district dissolves. (00:Jan. 4, Hammonton)
- PERC laws authorize suspension of tenured teacher without pay for minor discipline if so negotiated by board and union representative; not an illegal reduction in salary. (00:July 13, Tave, letter to counsel, aff'd St. Bd. 00:Nov. 1)
- Reduction in salary: Illegal reduction in *per diem* compensation occurred when tenured teacher, who was transferred to constituent district upon dissolution of regional school district, had increased work year pursuant to constituent district's bargaining agreement; retroactive reimbursement ordered. (99:Feb. 22, Riegel)
- Reduction in salary: it is a violation of tenure law to, upon negotiation of new collective bargaining agreement, reduce salary of teachers who were paid higher salary under continuation of expired collective bargaining agreement; board may freeze teachers' salaries until new salary guide "catches up." (98:Aug. 6, Schalago-Schirm, aff'd St. Bd. 98:Dec. 2)
- Reduction in salary (prorated) did not violate tenure law when teacher's 12-month position was abolished and he was reassigned to 10-month position. (99:July 8, DiMaggio)

TENURE CHARGES

Reduction in salary: tenure attached within general category of custodian; therefor, it was illegal reduction in custodian's salary when district reduced "head custodian" to custodian, with reduced salary. (98:July 8, Reinertsen, aff'd St. Bd. 98:Oct. 7)

Stipend: While ordinarily, the failure to reappoint a staff member as advisor with stipend is not considered illegal reduction in compensation, where stipend is actually additional compensation for services directly related to primary employment as a custodian, reduction of such compensation is a reduction in salary in violation of tenure law. (98:July 8, Reinertsen, aff'd St. Bd. 98:Oct. 7)

Salary payment

Municipal court did not address forfeiture of employee who plead guilty to disorderly persons offense; therefor, employee entitled to back pay for period of suspension until date board filed tenure charges, unless forfeiture order is subsequently entered. (99:July 30, Morton)

Settlement approved

(98:Sept. 20, Katsanos) (98:Oct. 26, Peppers) (on charges that teacher attempted to defraud state health benefits program) (98:Oct. 29, Forman) (98:Nov. 18, Hollingsworth) (98:Dec. 15, Gavlick) (Dept Human Services) (98:Aug. 5, Carmona) (custodian) (99:Jan. 4, Dreyer) (on remand) (99:Jan. 4, Davis) (99:Jan. 21, Edmonson) (99:Jan. 25, McKenty) (99:Feb. 9, Shaw) (99:Feb. 18, Johnson) (99:Feb. 18, Ross) (99:Feb. 22, Arrington) (99:Feb. 24, Yandolino) (99:Feb. 24, Tumolo) (99:March 10, Stuart on remand) (98:Sept. 8, Harper) (98:Sept. 21, Albert) (98:July 6, Weber) (98:July 15, Siefert) (98:Aug. 14, Scott) (98:Aug. 28, Lederer) (on remand)(99:April 12, Masse) (99:April 22, Johnson) (99:April 26, Mysko) (99:April 29, Lloyd) (99:May 10, Howard) (99:May 17, Iglesias) (99:May 24, Solmar) (on remand) (99:May 24, Hagen) (99:June 1, King) (99:June 23, Thomas) (on remand) (99:June 25, Eubanks) (99:June 29, Wenisch) (99:July 9, Firoz) (99:July 22, Reid) (99:Oct. 12, Brogan) (99:Oct. 25, Blackwell) (99:Oct. 28, Van Dycke) (99:Nov. 17, Moore) (99:Nov. 17, Taylor) (00:Jan. 10, Jackson) (00:Jan. 10, Urban) (00:Jan. 24, Williams – involved CSA) (00:April 11, Longo) (00:April 12, Wilson, decision on remand) (00:April 20, Felder) (00:April 20, Brown) (00:May 15, Mullen – involved CSA) (00:July 13, Driscoll, decision on remand) (00:Sept. 8, Bourellos) (00:Sept. 11, Ngo) (01:Feb. 2, on remand, Black) (01:Feb. 7, Kimble) (01:March 26, Witkowski) (01:April 6, Carmona) (01:May 9, Kaska) (01:June 5, Stewart) (01:June 14, Connor) (01:July 20, Cina) (01:Aug. 15, Holman) (01:Sept. 14, Goldberg) (01:Sept. 17, Agugliaro) (01:Sept.

TENURE CHARGES

- 17, Cash)(01:Sept. 21, Bennett)(01:Nov. 5, Negron)(01:Nov. 5, Van Santen)(01:Nov. 29, D'Angelo)(02:Jan. 10, Indar)(02:Feb. 22, Varanelli, decision on remand)(02:March 13, Brewer)(02:March 25, Rieger)(02:April 8, DeWoody)(02:May 7, DiManche)(02:July 29, Kemmet)(02:Oct. 18, Ford)(03:April 14, Koerner)(03:Oct. 17, Kamler)
- Approved with clarification that parties should not effectuate terms of settlement until Commissioner has approved. (01:June 11, Petrovey)
- Approved, with clarification that terms cannot be construed to infringe in any way on the right of the board to be fully forthcoming in responding to any inquiries that might arise concerning teacher's employment with the board. (98:July 22, Bush III)
- Cardonick requires that proposed settlement be accompanied by documentation of nature of charges, circumstances justifying settlement, consent by district and teacher, ALJ's findings that agreement is in public interest, entered into with full understanding of rights. Does not require relinquishment of rights before Board of Examiners. Such relinquishment not permitted. (00:Oct. 16, Mitchell, rev'd St. Bd. 00:March 7)
- Cardonick standard applies to settlement of tenure matters of non-certificated as well as certificated employees. (99:May 17, Iglesias)
- Commissioner cautions parties that they act at their own peril when they effectuate terms of a settlement agreement prior to its approval by Commissioner. (01:Feb. 26, Williams)
- Settlement agreement, once approved by Commissioner, is a binding contract. Superintendent only entitled to salary payment through the effective date or resignation, per terms of agreement, even though, absent terms, superintendent would have been entitled to salary payment until date of Commissioner's approval of settlement. (01:Feb. 26, Williams)
- Settlement approved where employee pled guilty to the crime of third degree arson, forfeiting employment. Comports with Cardonick standard. (02:March 13, Brewer)
- Teacher engaged in physical contact with pupil; settlement approved; Commissioner was wrong to reject settlement for its failure to specify that teacher will not oppose proceedings before the State Board of Examiners (Allen); nor does settlement imply that teacher's resignation is contingent on actions of Division of Pensions; nor does the provision requiring confidentiality by the parties violate Executive Order 11. (01:March 7, Mitchell, rev'g 00:Oct. 16)

TENURE CHARGES

Settlement approved, with reservations

- Agreement may not preclude board from providing future employers or other members of public with reasons for employee's separation from service (Executive Order 11). (00:Dec. 21, Horner)
- Board's failure to investigate fully before filing charges resulted in board's inability to prosecute and needless expenditure of tax money and damage to person's reputation. (99:April 8, Connors)(99:May 3, Ferrugia)
- Parties' agreement to keep litigation and settlement confidential can only bind parties' own disclosures; further, parties must comply with Executive Order 11. (99:June 7, Covello)
- Provision requiring parties to keep confidential the terms of agreement and negotiations leading thereto is not binding, in light of Appellate Division ruling that filing of tenure charges and tenure charge documents are matter of public record. Further, administrative code requires that records of all tenure hearings be open to public inspection unless ordered sealed by the ALJ. (00:July 13, Montgomery)
- To avoid gift of public funds, board must assure that duties as teacher on special assignment are commensurate with 11-month work schedule and are those of a teaching staff member. (00:July 13, Montgomery)

Settlement rejected and remanded

- Agreement required board's official record to reflect that teacher with drug addiction resigned "in good standing" and required board to provide her with a letter of reference so indicating. (99:April 19, Pullen, settlement approved on remand 99:Sept. 27)
- Agreement with superintendent is devoid of content and analysis, does not indicate Commissioner's duty to refer to State Board of Examiners, and contains payment terms that have already been effectuated (at board's own peril). (00:July 7, Mann; settlement rejected again on remand for failing to remedy flaws, and reminding boards that they should fully investigate and evaluate evidence prior to filing charges, 00:Dec. 7, settlement approved on remand 01:Aug. 20)
- Charges were serious and record contained dearth of information regarding teacher's defenses or reason it is in public's interest to settle and pay considerable public funds; further, characterization of resignation as "voluntary" was misleading, and agreement was made contingent on "not" being referred to State Board of Examiners. (99:Dec. 13, Wannemacher)
- Commissioner is not persuaded that there is insufficient evidence to move forward and that settlement of sexual assault matter upon pupil is in public's interest. (98:Oct. 29, Seabrook, settlement approved, 99:Oct. 25)

TENURE CHARGES

- Failure to contain explanation and analysis of why charges should no longer be pursued; and failure to advise of Commissioner obligation to refer to State Board of Examiners for possible revocation of certificate. (01:Feb. 8, Coleman)(01:May 24, Young, settlement approved 01:Sept. 7)
- Failure to indicate that Commissioner must refer to State Board of Examiners for possible revocation of certificate. (99:Jan. 19, Thomas) (98:Aug. 28, Solmar)(99:Oct. 18, Wilson)
- Failure to indicate understanding of what status of agreement to continue teacher as employee on leave until attainment of 25 years of credited pension service would be in the event the State Board of Examiners determines to move forward with revocation of teaching certificate prior to attainment of full pension service. (01:June 1, Mabli, settlement approved 01:Sept. 4)
- Failure to set forth nature of charges or explanation of circumstances justifying settlement; nor does it demonstrate why placing employee on paid leave of absence is in the public interest. (01:Dec. 31, Brown, settlement approved and matter dismissed 02:June 27)
- Ratification by the board must be accomplished prior to Commissioner's approval of tenure settlement. (99:June 7, Idec)
- Rejected because settlement was contingent on actions of another agency (i.e., Division of Pensions' recognition of additional pension credit). (00:Nov. 27, Miller)
- Rejected in absenteeism case where board filed charges before completing full investigation, and where board alluded to newly discovered information without informing Commissioner of the nature of the information. (99:May 24, James)
- Rejected where charges were serious, involving disparate treatment of minority students and sexual activity, foul language and other activity, and board fails to set forth a specific explanation as why the charges should not be pursued. (01:Oct. 10, Kenney)
- Rejected where explicitly provided for parties to waive statutory procedural requirements for refiling tenure charges in the event disability retirement is not approved by PERS; Commissioner notes that the parties may mutually consent to hold tenure proceedings in abeyance pending review of disability retirement by PERS. (99:April 22, Kasonry, aff'd St. Bd. 00:Jan. 5)
- Rejected where provision could be interpreted to imply that the board exonerated itself from its duty to cooperate in proceedings before State Board of Examiners. (99:April 19, Pullen, settlement approved on remand 99:Sept. 27)

TENURE CHARGES

- Rejected where there was no indication that teacher was advised of possible revocation of certificate and where board failed to “spread forth on the record” a reasonably specific explanation of why it is in public’s interest not to pursue the tenure charges. (98:Jan. 23, Jean), tenure charges dismissed as moot on remand where teacher resigned. (02:Jan. 10)
- Settlement approved (02:June 26, Matushewsky)
- Settlement approved: Settlement of charges of inefficiency, excessive absenteeism and insubordination approved. (02:June 26, Matushewsky)
- Settlement rejected where it was contingent upon satisfaction of conditions by another agency, namely, Division of Pensions. (99:Oct. 4, Jean)
- Settlement rejected where meaning of “administrative leave” was not explained where respondent was suspended. (99:Oct. 4, Jean)
- Settlement rejected, where record failed to indicate why in public’s interest to dismiss charges of physical abuse and where record contains no copies of tenure charges which were initially certified. (99:Sept. 17, Tyson) Commissioner refuses to approve withdrawal of matter; withdrawal must be predicated on approval of settlement agreement. (99:Sept. 23, Tyson)
- Settlement rejected, where serious allegations concerning pupils were raised, and record failed to indicate why in public’s interest to dismiss charges; teacher’s resignation alone does not insure that Cardonick standards were met. (99:July 7, Younger)(99:Oct. 4, Jean)(99:Nov. 10, Driscoll)
- Settlement was not accompanied by documentation of the nature of the charges and circumstances justifying settlement, and it failed to reflect duty to refer to State Board of Examiners for possible revocation of certificate. (02:Feb. 25, Hammary)
- “Side Bar” clause required board to present form letter to prospective employers not containing reason for separation; Executive Order No. 11 (1974) requires such information be made available upon request. (98:Dec. 28, Wilson)
- Terms of settlement do not meet Cardonick standard. Parties envision that matter will not be forwarded to State Board of Examiners or that board will not cooperate in such proceedings. Matter remanded. (02:May 10, McHarris, settlement approved on remand 02:Oct. 18)
- Where record provided no information regarding the position the teacher will actually hold between resuming employment with Board and the effective date of retirement, or how the sum for payment of accumulated sick, vacation and personal days was calculated, which sum further does not contain contingency for days that may be used prospectively. (00:June 15, Kimble)

TENURE CHARGES

Where teaching staff member continues to dispute the charges, and absent factual findings on record, settlement will be rejected unless teaching staff member agrees not to oppose proceedings before the State Board of Examiners to suspend or revoke the certification. (00:June 12, Black)(00:June 19, Allen, settlement approved St. Bd. 00:Nov. 1)

Statement of Evidence

Hearsay evidence was not presented by sworn statement and therefore defective, inconsistent with allowance of hearsay evidence authorized in Cowan. (See ALJ decision.) (00:May 3, McHarris); See also, 00:April 5, St. Bd. rev'g Commissioner decision that dismissed tenure charges without prejudice for procedural defects in certification of charges; aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1 (July 3, 2001)

Tenure charges rendered moot by resolution of criminal matter and forfeiture of position. (97 N.J.A.R.2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded Docket No. A-6218-99T1 (App. Div. March 28, 2002), dec. on remand St. Bd. 02:May 1, Comm. Dec. on remand 02:May 13)

Tenure charges withdrawn/moot

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Charges dismissed as moot where teacher retired and granted disability pension retroactive to date prior to institution of tenure charges. (01:July 9, Quadrini)

Charges involving teacher's admission during discovery of sexual relationship with minor, could not be dismissed as moot although teacher resigned; Commissioner will grant dismissal only if finds that would be in the public's interest, see Kotkin, Barshatky. (03:April 3, Bennett)

Charges of absenteeism against custodian are dismissed as he resigned. (01:July 20, Wilson)

In light of disability retirement, charges are dismissed; Board's may file additional charges if in the future, TPAF determines that teacher should return to duty because disability has diminished. (99:April 27, Mosley)

Tenure charges moot by teacher's resignation; matter withdrawn; district to comply with N.J.A.C. 6:11-3.5 by reporting conduct to State Board of Examiners. (00:May 19, Johnson)(00:Jan. 27, Badomi)

TENURE CHARGES

Unbecoming conduct charges for alleged inappropriate sexual contact with student dismissed as moot where teacher admitted to pre-trial intervention probation and resigned tenured position. (01:March 19, Clothier)

Upon forfeiture in Superior Court, it is unnecessary to proceed with tenure hearing; tenure charges rendered moot by forfeiture; matter dismissed. (99:May 24, Wilburn)

Withdrawal of charges is rejected by Commissioner in light of serious nature of charges including allegations of mental incapacity and unbecoming conduct towards students. (02:Dec. 23, Zimic)

Withdrawal of charges: once charges have been certified to the Commissioner, they may be withdrawn or settled only with the Commissioner's approval. (02:Feb. 5, Gregg)(02:Dec. 23, Zimic)

Withdrawn where teacher refused to sign modified settlement agreement, and he resigned from district two years ago; would not be in public interest to again remand. (00:Jan. 13, Pantalone)

Tenure dismissal cases (listed by position)

Business education teacher (99:June 23, Dombloski)

Crisis intervention teacher (99:Dec. 23, Johnson)

Custodian (99:Dec. 13, Lynch)

Janitors: (98:Oct. 19, Pietronico) (98:Aug. 7, Scott) (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3) (99:March 10, Crossland)(99:April 8, Taylor) (99:May 3, Tighe)(99:June 9, Prusakowski)(99:July 22, Kasonry, aff'd St. Bd. 00:Jan. 5)

Librarian: (99:Feb. 11, Jakubiak)

Physical education teacher: (98:Dec. 17, Leggett, rev'd and remanded, St. Bd. 99:June 2, affirmed on remand, 00:June 26, aff'd St. Bd. 00:Nov. 1) (98:Dec. 28, Miller) (99:Feb. 11, Dykes, appeal dismissed for failure to perfect, St. Bd. 99:June 2) (98:Aug. 6, Dombloski) (Athletic Director)

Secretary: (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)

Special Education Teacher

Charges proven – teacher kicked pupil who was misbehaving. Withholding of increment was appropriate penalty for this isolated incident of corporal punishment. No further penalty warranted. (02:April 8, Miller)

TENURE CHARGES

Superintendent

Superintendent of schools dismissed for conduct unbecoming a chief school administrator. Proven conduct included use of school employees to perform work at his home on school time, improper use of an annuity, relocating his office at significant cost without board approval, hiring and firing of emergency special education teacher to do screenplay work. Pattern of deceit and misrepresentation. (02:April 1, Howard, motion to enlarge record granted, St. Bd. 02:April 1)

Supervisor of Mathematics dismissed for distribution of mathematics portion of early warning test and lying to supervisor about number of copies distributed. (98:March 2, McNutt, aff'd St. Bd. 98:Oct. 7, aff'd App. Div. unpub. op. Dkt. No. A-1710-98T2, Jan. 28, 2000)

Teachers: (98:Oct. 14, Ceccarelli) (98:Nov. 17, Labib) (98:Sept. 29, Battle) (98:Oct. 6, Lamperty, appeal dismissed for failure to perfect, St. Bd. 99:Jan. 6) (99:Jan. 8, Jabour) (99:Feb. 9, Cerutti) (Dept Human Services) (99:Feb. 25, Lester, aff'd St. Bd. 99:July 7, aff'd App. Div. unpub. op. Dkt. No. A-7034-98T3) (99:March 1, Yatauro) (98:July 15, Richardson) (99:Feb. 16, Pais) (99:Aug. 4, Motley, aff'd St. Bd. 99:Dec. 1) (01:March 2, Ing) (01:March 22, Cooper) (03:May 1, Gilliams) (03:May 12, Metallo)

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Teacher dismissed for excessive absenteeism, excessive tardiness, unbecoming conduct and insubordination. No reply from teacher, charges deemed admitted. (02:April 30, Moore)

Testimony by children

(98:Dec. 28, Miller)

Discovery timelines: board's expert report barred where untimely; prejudice to respondent by delay was overriding consideration in denying reconsideration of ALJ's order barring late submission. (98:Dec. 17, Leggett, rev'd and remanded St. Bd. 99:June 2, aff'd on remand 00:June 26, aff'd St. Bd. 00:Nov. 1)

Recollection of pupils was questionable. (99:Feb. 11, Jakubiak)

THOROUGH AND EFFICIENT EDUCATION (See STATE AID)

Commissioner denies the issuance of \$12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)

Commissioner orders the issuance of \$19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

TRANSFER

A board may not transfer a tenured individual between positions requiring different certifications. (02:July 2, Iraggi)

TRANSPORTATION

Bidding

Bidder substantially complied with stockholder disclosure requirements; defects in completing statement were minimal. (98:Aug. 28, Murphy Bus)

Commissioner adopted ALJ's Initial Decision granting petitioner's emergent motion, enjoining board's award of transportation contract and ordering an immediate rebidding. ALJ concluded that contract award without rebidding would place an economic burden on taxpayers. (03:Aug. 14, Dehart)

Deviations from bid specifications concerning maintaining buses at depot or dispatch facility, and the use of multiple dispatchers and base radio/dispatch facility clause were not material or substantial so as to preclude award of transportation contract. (99:March 9, Byram)

District acted within its authority when, after having taken bids it realized that it would be less expensive to renew existing transportation contract, and thus rejected all bids; lowest bidder's claims of implied contract and agency based on Jointure Commission's notice are dismissed. (Note: see ALJ's detailed discussion of public school transportation contracting and bidding laws). (99:Feb. 24, Taranto Bus)

TRANSPORTATION

Neither law nor bid specs precluded submission of two bids (all package bid and individual route package bid) by a single bidder, nor was it precluded by administrator's announcement at prebid conference that only one bid per bidder would be accepted. (98:Aug. 28, Murphy Bus)

Petitioner established that it was lowest responsible bidder with respect to certain individual route package bids. (98:Aug. 28, Murphy Bus)

Specifications: Board was within its power to establish bid specification beyond DOE transportation specifications set forth in N.J.A.C. 6:21-13.2. (99:March 9, Byram)

Bus routes/stops

Although walk to the designated bus stop was long and potentially hazardous, parents were unsuccessful in challenging the reasonableness of the location of the stop; children were not treated differently from other children similarly situated. (98:Aug. 28, Lemma)

Board acted reasonably in assigning one bus stop for children who share time between divorced parents (alternate weeks) residing in separate residences in the same school district. Assigning one seat on one bus route was a reasonable policy, neither arbitrary nor capricious. (03:June 5, T.B.R.)

Board's decision to locate child's bus stop at the bottom of street not arbitrary, capricious or unreasonable. (03:March 5, B.S., appeal dismissed for failure to perfect, St. Bd. 03:June 4)

Board's refusal to accommodate parents' request to establish alternative bus stop was arbitrary and capricious where walking route was dangerous, and bus stop was near abandoned landfill, known as feeding place for bears. Board is directed to select alternative route allowing for van service to pupil's driveway. (00:May 19, J.F.N., Jr.)

Emergency relief granted to parents seeking bus transportation to charter school, pending outcome on the merits. (99:Dec. 27, A.L.G.)

It is the municipality, not the school board, who must insure safe walkways for children. (98:Aug. 28, Lemma)

Commissioner adopted ALJ's grant of summary judgment in favor of the district where parents failed to show that the district's redistricting plan was arbitrary, capricious or unreasonable, in violation of the Rehabilitation Act of 1973, the New Jersey Law Against Discrimination or the New Jersey Constitution. The plan required students who walked to their neighborhood school to be transported by bus to a more distant school. Petitioning parents failed to show bad faith or wrongdoing as the motive for the board's actions. (03:Feb. 3, J.P. and M.P.)

TRANSPORTATION

Emergent relief granted in dispute over transportation contract under N.J.A.C. 6A:4-3.3, which permits President of State Board and Chairperson of Legal Committee to decide applications for emergent relief. Restraints imposed by Superior Court reinstated to minimize impact on special needs students where stability in the provision of transportation services is heightened. Petitioner permitted to continue providing transportation until end of school year. (St. Bd. 03:April 16, New Jersey Lucky Tours, aff'd and remanded to Commissioner, St. Bd. 03:June 4)(See also, emergent relief denied by Comm. 03:April 9)

Obligation to provide

Commissioner adopted ALJ's decision that petitioner lacked standing to pursue U.S. Constitution and Federal Law claims, where taxpayer failed to establish that he suffered an injury from which he is legally protected by the U.S. Constitution or Federal Laws.

Petitioner alleged the district spend public monies to implement an unconstitutional courtesy busing policy. (03:Aug. 26, Osborne)

Commissioner adopted ALJ's finding that district was responsible to reimburse charter school for transportation costs, pursuant to N.J.S.A. 18A:36A-13 and N.J.A.C. 6A:27-3.1(d). Charter school obtained transportation for remote students when district replaced bus service with bus tickets on public transportation. (03:Aug. 8, Community Charter School)

Commissioner disagreed with ALJ's finding that petitioner lacked standing to pursue state constitutional claims, where petitioner established that as a resident taxpayer, he was directly affected by the annual expenditure of \$2 million for the courtesy busing of district students. (03:Aug. 26, Osborne)

Commissioner found that board of education's decision to spend 50% of busing funds on courtesy transportation was within the board's authority pursuant to N.J.S.A. 18A:39-1.1, and therefore not contrary to law. (03:Aug. 26, Osborne)

Commissioner found that petitioner failed to demonstrate an Establishment Clause violation, where district used public funds to provide gender segregated courtesy busing to students attending gender segregated private schools. (03:Aug. 26, Osborne)

Commissioner found that petitioner failed to establish a violation of the NJLAD where district courtesy busing policy provided for separate buses for girls and boys attending religious schools that were segregated based upon gender. (03:Aug. 26, Osborne)

Commissioner found that petitioner failed to meet his burden of presenting specific facts that district courtesy busing policy was being applied in a discriminatory manner in violation of Art. I.1 and/or 5 of the New Jersey Constitution. (03:Aug. 26, Osborne)

TRANSPORTATION

Commissioner reversed ALJ's finding that petitioner's discriminatory busing complaint was not timely filed, pursuant to N.J.A.C. 6A:3-1.3(d), where courtesy busing policy had been in effect for seven years. Commissioner held that respondent waived statute of limitations and laches defenses by failing to assert them as affirmative defenses. Commissioner further held that the implementation of a discriminatory busing policy would constitute a pattern of discrimination and a continuing violation of law; therefore, statute of limitations is tolled until wrongful action ceases. (03:Aug. 26, Osborne)

Distance: Route from pupil's home not to be measured along Route 46, dangerous state highway, for purpose of calculating distance from school for determining entitlement to transportation. (00:Nov. 9, G.A.)

Distance: School routes are not theoretical abstractions, but must be capable of being walked by real children; cannot be measured in a manner contrary to motor vehicle laws. (00:Nov. 9, G.A.)

District has obligation to provide transportation to Vo-Tech for home-schooled student residing in district. (St. Bd. 99:Dec. 1, Jacobs)

Home schooled student was entitled to tuition costs and transportation to attend vocational school in the afternoon. (99:June 24, Jacobs)

Pupils attending both a private school and a vocational school on a shared-time basis were statutorily entitled to transportation to both schools. (99:Nov. 29, S.V.)

There is no obligation to provide transportation to private school students whose schools are located more than 20 miles from pupils' residence. (00:Aug. 25, J.D.K.)

Subscription busing

Board is not obligated to provide subscription busing or courtesy busing to non-public school pupils who do not live remote, even where it provides such busing to public school pupils. (99:Sept. 29, M.J.K.D.)

TUITION

Aunt and uncle failed to show they were supporting child gratis. No economic or family hardship shown. 35 days tuition owed to board. (02:April 8, S.M.)

Board did not prove that student was not resident of the district when placed in correction center. Board responsible for tuition. (02:May 31, South River) Decision on Remand.

Board generally has no obligation to provide educational services to a pupil it has expelled. (99:Sept. 7, Somerset County)

Board had to pay tuition of expelled student adjudicated delinquent where court ordered placement in lieu of incarceration. (99:Sept. 7, Somerset County)

TUITION

- Board's refusal to waive policy imposing tuition charges after 60 days on those planning to move to district, held to be reasonable. (98:Oct. 29, M.M.)
- Board was required to pay transportation and tuition for child to attend magnet high school (vocational-technical school for science, math and technology), where district did not offer comparable program (99:July 12, D.F.)
- Commissioner adopted ALJ's determination, pursuant to N.J.S.A. 18A:13-1 to 81, that a non-resident pupil who sought admission to a tuition placement, had her application rendered moot by virtue of her entry into college. (03:Aug. 19, A.K.)
- District must pay tuition for home-schooled student living in district wishing to attend vo-tech. (St. Bd. 99:Dec. 1, Jacobs)
- Home schooled student was entitled to tuition costs and transportation to attend vocational school in the afternoon. (99:June 24, Jacobs)
- Legal costs, since not specifically excluded from the administrative code calculation of actual cost per student for tuition purposes, properly included in tuition calculation except where between the parties. (03:May 15, Lincoln Park)
- Parents contested the board's denial of resident status where parents purchased a new home within the district, but split time between the new "in-district" residence and old "out-of-district" residence until old home was sold. Commissioner agreed that parents were not "domiciled" in the new district. Parents ordered to reimburse the district \$27,292.38 in prorated tuition. (02:Sept. 16, D.L., aff'd St. Bd. 03:Jan. 8)
- Petitioner ordered to pay tuition for the period of ineligible attendance; 1/180 of the total annual per pupil cost multiplied by the number of days of ineligible attendance. (02:April 2, T.W.J.)
- Petitioners, private schools for the disabled, not barred from utilizing straight-line depreciation on a stepped-up basis to calculate rental costs for tuition rate purposes. Straight-line depreciation is an actual allocated cost of ownership. (02:Yale School)
- Private school for handicapped and committee from which it leased premises, were related parties; therefore, lease agreement was not an arms length transaction; rental costs were thus improperly included as allowable cost in school's tuition rate (99:July 6, Passaic County Elks Cerebral Palsy, aff'd St. Bd. 99:Dec. 1)
- Providers of resident placement and full-day special education services challenged the NJDOE's determination that they were related parties, the disallowance of salaries for non-certified staff and the NJDOE's allocation of occupancy and food expenses. The ALJ found a relationship between the two entities because the chancellor of the diocese was a member of the second provider's board and because of other business relationships. ALJ then upheld NJDOE's disallowance of food expenses but dismissed rental and salary expenses. (03:Feb. 3, Catholic Family)

TUITION

Pupils attending both a private school and a vocational school on a shared-time basis were statutorily entitled to transportation to both schools. (99:Nov. 29, S.V.)

Pupils not domiciled in the district. Parent ordered to pay tuition for period of children's ineligible attendance, \$17,935.90 plus \$47.44 per day. (02:April 8, R.T.)

Receiving district's inclusion of legal costs attributable to litigation between the sending and receiving districts in tuition calculation deemed improper. Prohibited by "American Rule" – each party bears its own litigation fees. (03:May 15, Lincoln Park)

Receiving district's omission of the building use charge in the estimated calculation of tuition did not prejudice sending district; charges had to be paid as based on actual per pupil costs, and dictated by regulation and contract. (99:June 7, Spotswood)

Settlements

Parents agree to pay tuition in monthly payments. (02:April 12, E.K. and D.H.)(02:April 22, B.G.)(02:May 17, D.F.)

Settlement approved regarding payment of tuition and transportation by school board for pupil's attendance at county vocational school. (98:Oct. 19, M.R.v. Pompton Lakes)

VOCATIONAL SCHOOLS

- A local board may permit a pupil to attend a vocational program offered by another district and may pay for attendance if the district does not offer a comparable program; but the local board is not required to do so. (00:Nov. 28, J.K.H., motion granted, St. Bd. 01:March 7, aff'd St. Bd. 01:July 10)(see also 00:Nov. 28, D.M., motion granted St. Bd. 01:March 7, aff'd St. Bd. 01:July 10)
- Board was required to pay transportation and tuition for child to attend magnet high school (vocational-technical school for science, math and technology), where district did not offer comparable program (99:July 12, D.F.)
- Commissioner rejects ALJ's suggestion that a program in performing arts cannot be "vocational"; rather each program must be assessed against the regulatory criterion. Gloucester County Institute of Technology (GCIT) performing arts program is an approved vocational program under then-existing and current statute, and neither absence of DOE-developed competency nor lack of meaningful placement data undermines that finding, nor is it a private vocational school. GCIT may charge tuition and non-resident fees to sending district for nonresidents pursuant to N.J.S.A. 18A:54-20.1(c) and transportation costs pursuant to N.J.S.A. 18A:39-1. (02:July 18, K.B. and Gloucester, decision on remand, aff'd St. Bd. 03:July 2) See also, motion for emergent relief denied 97:Sept. 25; Commissioner decision 97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1)
- County Institute of Technology seeking tuition and transportation from sending district, could rely on DOE's final approval to establish that it complied with vocational program approval procedures set forth in administrative code (N.J.A.C. 6:43-8.2), where DOE may have destroyed related records and no affirmative evidence was presented to show it did not comply. (02:July 18, K.B. and Gloucester, decision on remand, aff'd St. Bd. 03:July 2) See also, motion for emergent relief denied 97:Sept. 25; Commissioner decision 97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1)
- District fails to allege facts that would demonstrate it offers program comparable or superior to that offered by vocational tech magnet school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)
- District not obligated to pay tuition and transportation for pupils to attend dance program at Red Bank Regional; Red Bank's special status as LAVSD terminated upon repeal of code provision. (00:Nov. 28, J.K.H., motion granted St. Bd. 01:March 7, aff'd St. Bd. 01:July 10)(See also 00:Nov. 28, D.M., motion granted St. Bd. 01:March 7, aff'd St. Bd. 01:July 10; and 02:Dec. 6, Union County Vo-Tech, aff'd for the reasons expressed therein, St. Bd. 03:May 7)

VOCATIONAL SCHOOLS

- District is responsible for transportation costs of student's attendance at Gloucester County Institute of Technology Academy of Performing Arts as district does not have a comparable program available to student. (97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1, decision on remand 02:July 18, aff'd St. Bd. 03:July 2) see motion for emergent relief denied 97:Sept. 25)
- District was time-barred from avoiding payment for current year to vocational magnet school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)
- Elimination of LAVSD in code in 1991 did not signify demise of such programs, although mandatory and permissible enrollment was affected; as per 1994 AG opinion, district of residence is only required to pay tuition if it approves the placement, pursuant to a sending-receiving relationship or otherwise (unlike county vocational schools). (00:Nov. 28, J.K.H., motion granted, St. Bd. 01:March 7, aff'd St. Bd. 01:July 10)
- Home schooled student was entitled to tuition costs and transportation to attend vocational school in the afternoon. (99:June 24, Jacobs)
- Magnet school operated by county vo-tech is not a gift of public funds, does not contravene Perkins Act nor constitution, if based on an approved vocational program. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)
- N.J.S.A. 18A:54-20.1(a) and N.J.A.C. 6:43-3.11 require a district to pay tuition and transportation of a resident home-schooled pupil who has been accepted by the district's own county vocational school. (99:June 24, Jacobs, set aside and remanded, St. Bd. 00:June 7)
- Performing arts program was an approved vocational education for which district of residence, having no comparable program, must pay tuition. (99:Dec. 16, Gloucester, remanded St. Bd. 00:June 7, aff'd with clarification, St. Bd. 00:Aug. 2)
- Policy precluding vo-tech magnet school students from participating in sports at sending school violated NJSIAA Bylaws. (99:Nov. 29, G.W.S.)
- Programs and courses of study, and not individual school, must be approved by Commissioner in vocational school and placed in DOE's official directory. (00:July 10, Ramapo Hills, aff'd St. Bd. 02:Feb. 6)
- Program's inclusion in the Department of Education's Directory of Verified Occupational Educational Programs, without giving parties an opportunity to challenge designation, is insufficient to be considered a vocational program under the vocational education statute. (97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1, decision on remand 02:July 18, aff'd St. Bd. 03:July 2) see motion for emergent relief denied 97:Sept. 25)
- Pupils attending both a private school and a vocational school on a shared-time basis were statutorily entitled to transportation to both schools. (99:Nov. 29, S.V.)

VOCATIONAL SCHOOLS

- School not entitled to exemption in 18A:54-20.1 where vocational programs delivered through comprehensive high school rather than through county vocational school. (02:Dec. 6, Union County Vo-Tech, aff'd for the reasons expressed therein, St. Bd. 03:May 7)
- Settlement approved regarding payment of tuition and transportation by school board for pupil's attendance at county vocational school. (98:Oct. 19, M.R.v. Pompton Lakes)
- Standing: District whose pupils are allowed to attend vocational school's magnet program had standing to mount challenge against vocational school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)
- The "comparable program" threshold requirement in the regulations exceeds the enabling statute. (00:July 10, Ramapo Hills, rev'd St. Bd. 02:Feb. 6)
- Vo-tech academies ("magnet schools") that offered college preparatory programs were approved pursuant to N.J.A.C. 6:43-8.2 and conformed to state and federal definitions of "vocational education." District's programs were not comparable to the programs provided in the Academy; therefore district is liable for tuition and related costs to Academy for resident students. (00:July 10, Ramapo Hills, aff'd St. Bd. 02:Feb. 6)

VOLUNTEERS

- Use of uncertified volunteer to teach Spanish under supervision of certified teacher dismissed as moot because arrangement at issue ceased to exist and because amendment to Professional Licensure Standards Code providing for conditional certification of world languages teachers adopted. (01:March 7, Middletown Ed. Assn.)

WORKERS COMPENSATION

- Board improperly charged teacher sick leave for work-related injury. Commissioner cautions against effectuating terms of agreement prior to settlement. Settlement approved. (02:June 26, Butcher)
- Custodian filed a petition before the Commissioner seeking restoration of sick and personal leave asserting that his absences were a work-related disability caused by the psychological stress induced by harassment from fellow employees. Commissioner adopted ALJ's dismissal for want of jurisdiction, noting that the custodian had failed to file a claim before the Division of Worker's Compensation and holding that the Commissioner should refrain from exercising jurisdiction until the Division has determined the work relatedness of the asserted injury. (04:Feb. 5, Graziosi)

WORKERS COMPENSATION

- Determination of eligibility for temporary disability benefits by Workers' Compensation court sufficient to enable Commissioner to make a determination whether sick leave benefits under N.J.S.A. 18A:30-2.1 exists. No need to await permanent disability award. Sick and vacation days ordered restored. (01:Feb. 26, Frabizio)
- Failure of teacher to file workers compensation claim requires dismissal of her claim that absences were due to work-related incident, and that they therefore should not be charged to sick leave. (00:Nov. 8, Schmidtke)
- Nurse who settled workers compensation matter not entitled to additional reimbursement for sick leave days pursuant to N.J.S.A. 18A:30-2.1, where she believed the settlement already included payment for those days, and agreement evidenced a waiver of the right to seek sick leave. (00:Oct. 16, Sheridan)
- Part-time private school psychologist for special education students was an employee and not an independent contractor. Therefore, injuries sustained during student-staff touch football game arose out of and were in the course of his employment and, thus, compensable under workers' compensation. Auletta v. Bergen Center for Child Development, 338 N.J. Super. 464 (App. Div. 2001)
- Petitioner seeking sick leave under N.J.S.A. 18A:30-2.1 must file petition under school law within 90 day filing period, even though Commissioner should hold matter in abeyance until determination by Division of Workers Compensation is rendered. (99:Sept. 7, Shereshewsky)(99:Sept. 7, Yaffee)
- Settlement approved. (02:May 14, Arena)
- Sick leave under N.J.S.A. 18A:30-2.1 is not limited to the time period for which benefits are awarded by the Division of Workers Compensation (see Verneret); therefore, where leave was directly attributable to effects of earlier injury and subsequent surgery, shop teacher was entitled to full salary without loss of sick time under N.J.S.A. 18A:30-2.1, even though leave extended beyond period of time for which workers compensation benefits were awarded. (02:Oct. 30, Collins)
- Teacher claiming "psychological injury due to stress" was not entitled to leave benefit under N.J.S.A. 18A:30-2.1 where she failed to demonstrate an illness that "arose out of an in the course of her employment" pursuant to the standard applicable in workers compensation cases. (01:Sept. 20, Franks)
- Teacher out of time to challenge district's charging sick days for work-related injury. (99:Dec. 23, Mello)(03:April 14, Gillespie)
- Teacher's acceptance of lump-sum workers' compensation settlement does not preclude claim for sick leave benefit under N.J.S.A. 18A:30-2.1 unless there is an intentional relinquishment of that right. (01:Sept. 20, Franks)

WORKERS COMPENSATION

Teacher's complaint for full salary under N.J.S.A. 18A:30-2.1 is dismissed as she voluntarily decided not to file a workers' compensation claim; the determination of work-relatedness of an injury should be made in a workers' compensation case except in limited instances such as where the Division of Workers' Compensation has no jurisdiction or the workers compensation case is settled. (02:Oct. 7, Bruno-Schwartz)

Temporary disability: sick leave restored after determination of temporary disability. (02:June 26, Magaw)(02:June 26, Cavera)

Tenure charge of incapacity was not premature just because teacher has not yet received Workers Compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Where teacher never received a determination from the Division of Worker's Compensation that his absences were due to a work-related injury, the absences were not improperly charged to his sick leave bank. (00:Jan. 24, Medeiros)

Where teacher settled Workers Compensation matter, he waived his right to any claim for benefits under N.J.S.A. 18A:30-2.1; relief under that statute is dependent upon resolution of the contested issue of whether the accident was the "cause" of his injury; having chosen to forego such determination, petitioner may not seek more favorable outcome from Commissioner. (99:April 13, Marino)