

## EDUCATIONAL SERVICES COMMISSIONS

### Adult education

Student in LPN course entitled to partial refund after partially completing course found to be materially deficient in content and administration (82: August 30, Rinehart)

### Executive Director

Not entitled to accumulated vacation pay where not approved by fiscal monitor overseeing dissolution of ESC (86:928, Lewis)

Public body; educational services commissions, created to "provide" educational services may not subcontract its obligation to provide services; contract was ultra vires and unenforceable. Remedial Education and Diagram Service vs. Essex County Educational Services Commission, 191 N.J. Super. 524 (App. Div. 1983)

### Status

ESC's are not local educational agencies created by State Board but rather exist under statutorily defined status apart from State Department of Education (84:392, N.J.E.A.)

Termination of entire staff upheld (84:420, NJEA v. Essex County Educational Services Commission, St. Bd. aff'g 85:1976)

## ELECTIONS

### Activity at polls

(See "Elections - Procedures at polling place", this index)

### Ballots

**Absentee** (57-58:79) (58-59:109) (59-60:130) (60-61:203) (78:360, West Orange)

Board secretary not authorized to accept absentee ballots (73:212 aff'd St. Bd. 74:1413)

Candidate denied right to inspect list of absentee voter applicants (73:108)

## ELECTIONS - continued

### Ballots - continued

#### **Absentee** - continued

Commissioner has no authority to recount absentee ballots (79: May 16, Lyndhurst, unpublished opinion)

Commissioner is without jurisdiction to review absentee ballots (73:212 aff'd St. Bd. 74:1413) (74:381) (75: June 4, Garwood, unpublished opinion) (80: April 1, Greater Egg Harbor) (80: April 21, Willingboro) (81: May 11, Fairview)

Additional or distinctive markings on ballot (68:34)  
(68:59) (72:121) (73:164) (73:600) (74:254) (74:257)  
(74:1342 aff'd St. Bd. 75:1116, aff'd App. Div. 76:1155)  
(75:199, Woodstown) (76:30, Cumberland County Reg. H.S. Dist.) (78:22, North Hunterdon) (78:617, Lenape)

Affidavit ballots, can be used only in certain narrowly defined circumstances (74:1071, rev'd in part St. Bd. 74:1077, aff'd App. Div. 74:1078)

Candidates' names  
Alphabetical arrangement (38:175)  
Arrangement; 3-year, 2-year and 1-year terms on same ballot (70:156)  
Blacking out or filling in square void as selection of candidate (73:164)  
Improper order (75:413, Jamesburg) (84:1498, Lakewood)  
Opportunity for inspection of paper ballots should be afforded all candidates (75:413, Jamesburg)  
Removal not warranted (76:233, Monroe, dismissed St. Bd. 76: July 14) (84: July 23, Buena Regional)  
Reversal of names (59-60:124)  
Same name; father and son (67:56)  
Waived where election result is unaffected (49-50:62)

Check mark; diagonal line is insufficient (39-49:92)  
(52-53:76) (69:44) (71:65) (72:121) (72:132) (74:1342 aff'd St. Bd. 75:1116, aff'd App. Div. 76:1155)

Defects  
Misprint of bond amount held insubstantial (73:680)  
Waived (49-50:34) (49-50:51) (72:167)

Denial of (38:184) (78:341, Cliffside Park) (78:579, Warren County)

Drawing for positions (72:16)  
Assistant board secretary may conduct drawing when board secretary is ill (84: March 16, Marini)  
Held improper and void (73:36) (76:123, Edgewater Park) (77:339, West Milford) (78:41, West Deptford)

**ELECTIONS - continued**

**Ballots - continued**

**Drawing for positions - continued**

Held proper (81: April 7, Fiedorczyk)

Petitioner running for unexpired, one-year term, whose name was drawn third, was properly placed in fifteenth position where Board Secretary reasonably differentiated between three-year and one-year term positions (84: June 29, Old Bridge)

Upheld notwithstanding irregularities (74:233) (76:585, Pittsgrove)

Procedure under N.J.S.A. 18A:14-13; where names drawn from uncovered box, box not agitated properly and cards bearing names not placed in box publicly, drawing set aside despite lack of fraud or deceit (84: March 16, Marini)

Erasure by blacking out square upheld (72:141)

Erasure clear, ballot valid (85: May 22, Newton)

Errors in printing (80: April 18, Sandyston-Walpack)

Failure to remove coupon voids ballot (76:441, Hopatcong) (79:390, Eastampton Township)

Incorrect absentee ballot sent to voter (80: April 21, Carteret)

Irregular ballots revealed by recheck, disregarded where they would not change result (81: May 13, Hawthorne)

Illegal ballots affect plurality (38:182) (88:1702, Holland Township)

Ink (55-56:119) (57-58:77) (57-58:92) (60-61:165) (66:69)

Instructions may be followed, even if incorrect (49-50:53)

(74:591) (See also "Elections - Commissioner - Voiding", this index)

**Marking** (38:164) (38:166) (38:185) (38:191) (49-50:51)

(49-50:52) (49-50:53) (52-53:59) (52-53:72) (52-53:73)

(52-53:74) (52-53:76) (53-54:69) (53-54:71) (54-55:107)

(54-55:110) (55-56:103) (55-56:119) (55-56:122) (56-57:67)

(57-58:72) (57-58:77) (57-58:83) (57-58:92) (58-59:98)

(58-59:109) (58-59:111) (60-61:165) (65:45) (73:212 aff'd

St. Bd. 74:1413) (76:30, Cumberland County Reg. H.S. Dist.)

(77:817, Merchantville) (78:298, Ogdensburg) (78:617, Lenape)

Color of ink doesn't matter (66:69) (70:83) (71:65)

(71:231) (72:65) (72:77) (73:600) (74:1342, aff'd St.

Bd. 75:1116, aff'd App. Div. 76:1155) (78:617, Lenape)

(85: May 22, Newton)

Erasure of mark not counted as vote (80: April 22,

Maurice River)

Mark is "substantially a cross" and ballot is counted  
(86: June 3, Frelinghuysen) (86: June 4, Sparta)

**ELECTIONS - continued**

**Ballots - continued**

**Marking - continued**

- Mark must be cross, plus, or check mark (80: April 22, Maurice River) (81: May 18, Lower Alloways Creek) (85: May 22, Newton)
- Mark must be made within square (71:65) (71:87) (71:109) (72:121) (72:141) (73:164) (73:212) (73:600) (75:199, Woodstown) (75:208, Belvidere) (76:30, Cumberland County Reg. H.S. Dist.) (76:441, Hopatcong) (78:617, Lenape) (80: April 23, Pitman)
- Marking more names than there are seats voids ballot (72:121) (73:212 aff'd St. Bd. 74:1413) (76:441, Hopatcong) (85: May 22, Newton)
- Name of candidate crossed out, ballot valid (85: May 22, Newton)
- Sufficiency of marks (80: April 23, Pitman) (85: May 22, Newton)
- Misprint of bond amount on ballot held insubstantial defect (73:680)
- Rejected ballots
  - Ballot not counted: Voter voted for four candidates where only three positions open (86: June 3, Frelinghuysen)
  - Ballots not counted: Did not contain cross, plus or check-mark (86: June 4, Sparta)
  - Cannot be added to make majority (50-51:48)
- Sample, unauthorized (76:791, Kearny)
- Sample Ballot: Use of sample ballots is discretionary on the part of the board (87:1218, Point Pleasant)
- Test of substantiality (71:65) (71:109) (72:121) (73:164) (73:228) (73:600) (74:382) (74:1342, aff'd St. Bd. 75:1116, aff'd App. Div. 76:1155)
- Write-in votes** (51-52:45) (55-56:103) (57-58:90) (60-61:204) 74:357) (74:1049)
  - Difficulties caused by (71:102)
  - Display of candidate's name at polls improper (78:543, Maywood)
  - Erroneous instructions given by election officials (77:695, Helmetta) (88:1404, Florham Park)
  - First initial and last name sufficient (72:135)
  - Irregularities in (74:752)
  - Last name only is insufficient (51-52:45) (57-58:90) (72:80) (72:135) (77:607, Union Beach) (77:817, Merchantville) (77: May 19, Edgewater Pk., unpublished opinion); but see (78:204, Hopewell) (78:272 Victory)

Gardens) (85: May 22, Newton)

**ELECTIONS - continued**

**Ballots - continued**

**Write-in votes - continued**

- Last name only, misspelled last name and last name with incorrect first initial do not render ballot void where there is no evidence that any person with the same last name actively campaigned as a write-in candidate (87: May 21, Washington Twp.)
- Last name sufficient, but ballots will not be counted where first name initials were incorrect (81: September 2, Milltown, St. Bd. affirming and modifying 81: June 11); see also (84: May 16, Oldmans Twp.)
- Machines incorrectly prepared for write-in, election set aside (77:586, Pompton Lakes)
- Mark or check in square no longer required (78:204, Hopewell) (79:390, Eastampton Twp.) (81: June 1, Milltown, aff'd with modification St. Bd. 81: September 2) (81: June 17, Haddonfield) (72:280 holding to the contrary overruled)
- Machines, write-in votes on (65:74) (74:591) (75:231, Mt. Arlington) (78:319, Galloway) (78:380, South River)
- More than one name written in on a single line invalidates ballot (87: May 14, Middlesex Borough Bd. of Ed.) (87: 1140, Matawan-Aberdeen, aff'd St. Bd. 87:1146)
- Must also have mark or check in square (72:80)
- Must be cast on same line as that corresponding to the office to be filled (86:2438, Shamong)
- Officials were not notified of write-in candidate and write-in column was not properly designated (74:382)
- Pasters on ballots (38:161) (38:187) (38:188) (67:50) (68:31)
- Personal choice votes (38:164) (68:31)
- Security and validity of write-in votes not fully litigated nor finally determined by Commissioner (89:2800, rev'd St. Bd. 90:1688, remanded to ALJ)
- Special instructions for election officials regarding write-in ballots (74:1049)
- Spelling errors waived (38:176) (72:135) (74:357)
- Votes written in on a line other than the one next to the appropriate office will not be counted (86:1347, Shamong)
- Will not be counted where it appears that voter could also have voted on printed ballot (81: June 17, Haddonfield)

## ELECTIONS - continued

### Candidates

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

No disqualifying conflict of interest where candidates have relatives teaching in district (81: April 18, Rancocas Valley)

No disqualifying conflict where candidate has suit pending against board (81: April 8, Rancocas Valley)

No disqualifying conflict where candidate is a former board employee receiving pension and health insurance benefits (89:1434, Sokolosky)

No irregularities occurred that produced illegal votes, but candidate should be more cautious when campaigning (88:1711, Watchung Hills Regional)

Pupil in district's high school (81: April 1, King)

### Challengers

Board members may act as (72:225 aff'd St. Bd. 72:231)

Designation of (59-60:163) (73:279) (78:472, Lakewood)

Function of (67:28) (72:107) (75:268, Hopatcong)

Identification badges should not also be campaign buttons (75:268, Hopatcong)

May prepare formal pool lists and take them out of polling place, Shanahan v. St. Bd. of Ed., 133 N.J. Super. 34 (App. Div. 1975); Shanahan v. N.J. St. Bd. of Ed., 118 N.J. Super. 212 (App. Div. 1972) (C. decs. 67:28, 71:134, 72:225, aff'd St. Bd. 72:231, 73:371 and 73:376)

Close margin (51-52:45) (56-57:67) (56-57:33) (56-57:68) (57-58:74) (58-59:107) (58-59:113) (58-59:115)

### Commissioner of Education

#### Jurisdiction

Absentee ballots, Commissioner is without jurisdiction to review (73:212 aff'd St. Bd. 74:1413) (74:381) (75: June 4, Garwood) (76:333, Pennsauken) (80: April 1, Greater Egg Harbor) (80: April 21, Willingboro) (81: May 11, Fairview) (84: May 7, Fredon) (88: June 6, Stradford)

Appeal must be filed within 5 days (83: June 20, Newark)  
Inquiry into 2-year residency of successful candidate (79: August 6, Weehawken, unpublished opinion)

Recounts (68:31); see also Welsh v. Tewksbury Twp. Bd. of Ed., 7 N.J. Super. 141 (App. Div. 1950); (79: May 16, Lyndhurst, unpublished opinion)



**ELECTIONS - continued**

**Commissioner of Education - continued**

**Jurisdiction - continued**

Written request to review election must be filed by defeated candidate or 10 registered voters, but Commissioner may take jurisdiction in other cases as well (74:744)

Appeal must be filed within 5 days (75:203, Parsippany-Troy Hills) (88:Apr. 18, Old Bridge, rev'd and remanded St. Bd. 89:1208) dec. on remand (89: July 28, remanded St. Bd. 89: November 8)

**Procedure**

Recount must take place prior to decision on alleged irregularities (86:2438, Shamong)

**Stay of Commissioner's decision**

Stay of decision as to the disqualification of 165 write-in votes, pending appeal, denied (87: June 22, Matawan-Aberdeen)

Dual candidacy held impermissible (77:339, West Milford)

Dual candidacy; two terms by same candidate (49-50:52)

**Hours**

Board may not extend voting hours beyond 9:00 p.m. (80: April 28, Somers Point)

**Improper conduct of officials at polls**

(See "Elections - Officials", this index)

**Laches**

(See "Laches" and "Elections - Commissioner - Jurisdiction", this index)

**Literature**

Although irregularities were not sufficient to warrant new election, violation of N.J.S.A. 18A:14-97 must be addressed; matter forwarded to county prosecutor (88:1717, Old Bridge, dec. on remand 89:1198, dismissed St. Bd. 89:1208)

Board has authority to expend funds to inform public as to facts regarding school program and budget, but cannot advocate particular position on election issue, Citizens to Protect Public Funds v. Parsippany Troy Hills Bd. of Ed., 13 N.J. 172 (1953); (69:174, aff'd St. Bd. 70:462)

Circular which encouraged people not to vote and which did not have name and address of person responsible, held not to void election (80: June 11, Demarest)

Distribution of literature, which had no statement of person who paid for or published them, pursuant to N.J.S.A. 18A:14-97, held not to have had an effect on the outcome of the election (87:1270, Bellmawr) (88:1717, Old Bridge, dec. on remand 89:1198, dismissed St. Bd. 89:1208) (89:2075,

Mannington)

## **ELECTIONS - continued**

### **Literature - continued**

- Distribution through pupils prohibited (59-60:121)  
(59-60:198) (76:412, Hamilton Tp.) (76:612, Nutley) (76:  
September 1, Warren) (78:11, Greater Egg Harbor) (78:377,  
Cherry Hill) (78:394, East Hanover) (78:489, Lawnside) (80:  
April 18, Irvington) (86: October 22, Maurice River)
- Document merely encouraging people to vote held not in violation  
of pupil distribution statute (72:241) (76:412, Hamilton  
Tp.) (78: April 21, West Morris, unpublished opinion)  
(78:489, Lawnside)
- Documents distributed by board permitted (77: March 21,  
Gormley, unpublished opinion)
- Failure to disclose that funeral home paid postage for  
distribution of election materials was violating N.J.S.A.  
18A:14-97 but was not sufficient violation to warrant new  
election (88:1717, Old Bridge, dec. on remanded 89:1198,  
dismissed St. Bd. 89:1208)
- Flyer distributed by board containing candidate and bond  
information held to be permissible (82: September 24,  
Somerdale)
- Must include name and address of person responsible  
(72:260, aff'd St. Bd. 73:265) (73:697) (75:413, Jamesburg)  
(75:612, Morris School Dist.) (76:456, Carteret) (76:412,  
Hamilton Tp.) (76: September 1, Warren, unpublished  
opinion) (77:1088, Upper Tp.) (78:81, Carteret) (78:316,  
Toms River) (78: April 21, West Morris, unpublished  
opinion) (78:572, South Plainfield, aff'd St. Bd. 78:579,  
unpublished opinion) (78:622, Milltown)
- Pamphlet with erroneous information, results unaffected (76:425,  
Westfield) (78:81, Carteret) (80: April 21, North Bergen)
- Raffles prohibited (74:744)
- School newsletter with names of present board members on  
letterhead, not election material (80: April 21, Carteret)
- Machines  
(See "Elections - Procedures at polling place", this index)  
Board Secretary should inspect prior to election day (86:21,  
Passaic Township)
- Multiple seats; no more than one vote for any one candidate can be  
counted per ballot (72:135)

### **Nominating petitions**

- Board secretary has no authority to challenge or correct  
verification of signatures. The responsibility of board  
secretary is to insure that the blanks of the form are  
filled, that ten signatures of endorsement are recorded and  
that one of those ten also verifies the petition, that the  
verification is notarized and that the candidate signs the  
petition (76:233, Monroe, dismissed St. Bd. 76: July 14)

and no authority to question qualifications of the signatures, this may be adjudicated only by a court of competent jurisdiction (See also, 89:1434, Sokolosky)

**ELECTIONS - continued**

**Nominating petitions - continued**

- Candidates or others who wish to examine public records such as petitions should be able to do so without unnecessary red tape or delay (89:1434, Sokolosky)
  - Defective; name deleted from ballot (77:162, Union County Reg.) (77:259, Clark)
  - Defective; one of minimum number of signers not eligible to vote, Kumpa v. Page, 178 N.J. Super. 589 (App. Div. 1981) Such defect cannot be cured.
  - Defects corrected (74:233)
  - Dual candidacy; petitions for one candidate for more than one seat on board are not to be accepted (77:339, West Milford)
  - Effects of 4 P.M. filing deadline (70:21) (78:41, West Deptford)
  - Inspection by public, must be open to public (74:1040)
  - Late challenge to defective nominating petitions did not prevent removal of names from ballot (89:1434, Sokolosky)
  - Mailed to board (80: April 28, Gerrity)
  - No fatal defects found; on or before 49th day prior to election; one of 12 signatures was not duly registered (88:679, Leenhouts)
  - Non-availability of clerk (66:8)
  - Petition misplaced or lost by board secretary (71:11)
  - Qualifications
    - Citizenship (77:361, Seastrand)
    - Residency (77:363, Middlesex) (77:591, Fairview)
  - Signatory to petition can cure fact that he was not registered to vote at the time of signing, if cured by final date for filing petition (89:1434, Sokolosky)
  - Valid where signer of petition used nickname (89:1434, Sokolosky)
  - Verification of signatures (74:1040) (76:233, Monroe, dismissed St. Bd. 76: July 14) (76:1061, Rutherford)
- Notice of
- Adequacy (38:160)
  - Failure to provide for special election as required by statute is fatal defect voiding election (67:97)
- Officials** (57-58:83) (59-60:163)
- Appointed by board, not board secretary (72:167)
  - Assistance to voters may not be provided once voting machine curtain has been closed, unless person is blind, disabled or illiterate (87: October 20, Matawan-Aberdeen)
  - Board members appointed as poll workers, and challengers not wearing challenger badges were violations of N.J.S.A. 18A:14-6 and N.J.S.A. 18A:14-18.1, however, Commissioner

held that this did not affect the outcome of the election  
(87:1290, Gibbsboro)  
Cannot be board employees (72:167) (78:357, Woodlynn) (78:472,  
Lakewood)

## **ELECTIONS - continued**

### **Officials - continued**

Improper conduct at polls (68:73) (73:272 dismissed St. Bd.  
74:1413) (76:429, Hillside) (77:618, Hamilton Tp.) (77:660,  
Highlands) (77:771, Garfield) (77:927, Camden)  
Suspicion of improper conduct will not void election  
(65:62)  
Lack of formal board appointment not sufficient to overturn  
election (88:1172, Park Ridge)  
List of those voting should not be prepared (67:28)  
Negligence of officials does not invalidate election unless it  
is shown that will of people was thwarted (73:1) (76:438,  
Bedminster) (76:425, Westfield) (76:585, Pittsgrove)  
(76:624, Dunellen) (77:618, Hamilton Tp.) (77:660,  
Highlands) (77:771, Garfield) (77:927, Camden) (77:1156,  
Fair Lawn)  
Required to ensure accurate tally on voting machines (80:  
June 10, Camden)  
Signatures should be compared (75:276, Lower Alloways Creek)  
(76:585, Pittsgrove) (77:618, Hamilton Tp.) (77:660,  
Highlands) (77:771, Garfield) (77:927, Camden) (78:11,  
Greater Egg Harbor) (78:319, Galloway) (78:357, Woodlynn)  
(78: July 5, South Plainfield, aff'd St. Bd. 78: November  
8, unpublished opinion)

### **Partisan politics**

Endorsement of candidate by NJEA cannot be ground for  
setting aside his election (73:361)  
Endorsement by a political party is no ground for setting  
aside an election but partisan politics has no place in  
elections (64:47) (67:52)

### **Petitions**

Petitions must be filed by 4:00 p.m. of the 40th day preceding  
the election, unless extraordinary, extenuating  
circumstances beyond the candidate's control prohibit filing  
reasonably near the deadline (84: April 2, Massaro)  
Regional districts; "qualified voter of the district", N.J.S.A.  
18A:14-10, refers to candidate's district of residence and  
does not refer to any qualified voter in the regional  
district (84: April 2, Cronin)  
With unclear signature; Commissioner will not presume that

signatory is unqualified voter and will not invalidate  
petition (86:985, Delran)  
Petition of Appeal untimely - not filed prior to 49th day before the  
election (88:679, Leenhouts)  
Petition to inquire into legality of election  
Must be timely filed pursuant to N.J.S.A. 18A:63-12 (80:  
April 1, Greater Egg Harbor) (80: April 21, Secaucus) (88:  
April 18, Old Bridge, rev'd and remanded St. Bd. 89:1208,  
dec. on remand 89: July 28, remand St. Bd. 89: November 8)

## **ELECTIONS - continued**

### Poll lists

Access to school election poll lists, Shanahan v. State Bd. of Ed., 133 N.J. Super. 34 (App. Div. 1975); Shanahan v. N.J. St. Bd. of Ed., 118 N.J. Super. 212 (App. Div. 1972) (C. decs. 67:28, 71:134, 72:225, aff'd St. Bd. 72:231, 73:371 and 73:376)

Irregularities (57-58:83) (74:1040) (78:377, Cherry Hill)  
(78:385, Audubon Park, dismissed St. Bd. 78: August 2) (88:  
April 27, Passaic) (88:1327, Passaic)

Separate poll list must be placed beside each set of signature  
copy registers, (79:390, Eastampton Township)

### Polling place

Creation of new polling place on basis of number voting  
at previous election (74:1040) (78:397, Rumson-Fair Haven)

Designation of (38:173)

Realignment of voting districts assigned to polling  
places (74:586)

### **Procedures at polling place**

Activity at polls prohibited (59-60:163) (72:106)  
(72:241) (77:618, Hamilton Tp.) (77:771, Garfield) (77:927,  
Camden)

#### Activity near polls

Distance of 100 feet specified in statute is measured from  
doorway entrance, not driveway entrance (84: June 28,  
Hillsborough)

Distribution of literature (59-60:163) (74:744) (76:791),  
Kearny) (77:927, Camden)

Through pupils prohibited (59-60:121) (59-60:198)  
(74:744) (75:461, North Bergen) (75:556, Mt. Olive) (76:412, Hamilton Tp.) (76:612, Nutley)  
(76:828, Warren) (78:11, Greater Egg Harbor)  
(78:377, Cherry Hill) (78:394, East Hanover) (80:  
April 18, Irvington)

Electioneering prohibited (78:357, Woodlyne) (78: July 5, South Plainfield, aff'd St. Bd. 78: November 8, unpublished opinion) (80: April 18, Irvington) (80: April 22, Point Pleasant Beach) (88:1327, Passaic) (88:1717, Old Bridge, dec. on remand 89:1198, dismissed St. Bd. 89:1208)

Electioneering prohibited within 100 feet of room where votes cast (80: April 24, Manalapan-Englishtown)

Loitering prohibited (74:1040)

Noise and confusion, election upheld (76:585, Pittsgrove) (77:927, Camden)

Posters (74:744) (75:461, North Bergen) (75:556, Mt. Olive) (84: June 28, Hillsborough)

Raffles prohibited (74:744)



**ELECTIONS - continued**

**Procedures at polling place - continued**

- Ballots to be collected by election officials only (78:622, Milltown)
- Board secretary; presence at polls (80: May 1, Leonia)
- Machines
  - Breakdown, alternative arrangements (74:618) (74:752) (74:1040) (74:1049) (76:624, Dunellen) (76:429, Hillside)
  - Curtains failed to close (75:203, Parsippany-Troy Hills)
  - Defective (56-57:33) (59-60:131) (59-60:138) (68:84) (73:154) (73:677) (76:449, Deptford) (77:586, Pompton Lakes)
  - Difficulty in operating the write-in voting procedures in the voting machine held not to have affected the outcome of the election (87:1290, Gibbsboro)
  - Discrepancy on recheck between number of voters and number of votes cast (89: January 31, Tewksbury)
  - Inoperative during polling hours (78:344, Tinton Falls, rev'd St. Bd. 79:872) (79: September 24, Lambertville, unpublished opinion) (80: April 28, Somers Point)
  - Insufficient number (59-60:131) (60-61:181)
  - Intermittent malfunction; no showing that determination of number of voters unable to vote (80: June 9, Rahway)
  - Misinformation on voting machine held not to materially affect the outcome of the election (87:1282, Lower Camden County Regional)
  - Nonuse of slot No. 1 recommended (65:74) (74:591) (75:231, Mt. Arlington)
  - Notice of availability for inspection pursuant to N.J.S.A. 18A:14-42(b) (70:156) (78:360, West Orange) (87:1218, Point Pleasant)
  - Recheck (61-62:107) (76: April 7, Point Pleasant Beach, unpublished opinion) (76:459, Cherry Hill) (76: June 2, East Windsor Reg., unpublished opinion) (88: April 21, Wanaque)
  - Seal broken (67:59)
  - Writings, markings and defacing of; election upheld (77:1156, Fair Lawn)
  - Write-in votes on (65:74) (74:591) (75:231, Mt. Arlington)
- Maintaining order at polls (80: April 25, Lower Township)
- Majority
  - Error in election; all positions vacant and county superintendent appoints (67:335) (73:112) (73:154)

(77:586, Pompton Lakes)  
Rejected ballots cannot be counted to attain majority  
(50-51:48)  
PTA meeting should not be held on election day (72:241)

## ELECTIONS - continued

### Procedures at polling place - continued

#### Sample ballot

Incorrect sample ballot inside voting machine (80:  
April 22, Point Pleasant Beach)

#### Signatures

Absent a showing that omission resulted in casting of  
illegal votes, election will not be set aside (76:585,  
Pittsgrove) (77:618, Hamilton Tp.) (77:771, Garfield)  
(77:927, Camden)

Must be compared by election officials pursuant to N.J.S.A.  
18A:14-51 (75:276, Lower Alloways Creek); but absent a  
showing that omission resulted in casting of illegal  
votes, election will not be set aside (59-60:163)  
(65:62) (70:126) (72:205) (73:140) (78:11, Greater Egg  
Harbor) (78:319, Galloway) (78:357, Woodlynne) (78:385,  
Audubon Park, appeal dismissed St. Bd. 78: August 2)  
(78: July 5, South Plainfield, aff'd St. Bd. 78:  
November 8, unpublished opinion) (87:1270, Bellmawr)

Signatures may be in pencil (79:390, Eastampton Township)  
Standard of comparison (72:205)

Voters must write down address along with signature (79:390,  
Eastampton Township)

#### Time

Additional voters may not be admitted after 9 P.M. (74:618)  
Election not invalid when polls open at 2:15 P.M. instead  
of 2:00 P.M. (74:558)

Failure to indicate standard or daylight saving time will  
not invalidate bond issue election, Welsh v. Tewksbury  
Bd. of Ed., 7 N.J. Super. 141 (App. Div. 1950)

Referendum voided due to incorrect advertisement of  
election hours (63:170)

Unauthorized persons loitering at polls (80: May 1, Leonia)

#### Pupils

Distribution of materials espousing particular position or  
candidate by pupils prohibited (59-60:121) (59-60:198)  
(68:166) (74:744) (75:461, North Bergen) (75:556, Mt. Olive)  
(76:412, Hamilton Tp.) (76:612, Nutley) (76:828, Warren)  
(78:11, Greater Egg Harbor) (78:377, Cherry Hill) (78:394,

East Hanover) (78:489, Lawnside)  
Distribution of PTA pamphlet which merely encouraged electorate to vote upheld (72:241)  
Notice sent home with pupil informing parent of upcoming election and the fact they would receive further information held proper (82: September 24, Somerdale)  
Qualification of voters; students, who met age and residency requirements and who otherwise believed they had registered 30 days prior to the budget election, votes would not be disqualified (83: June 20, Hopewell Valley)

## **ELECTIONS - continued**

### **Referenda and special elections**

Board cannot be compelled to submit proposal calling for rescission of voter approval for new school, but has power and duty to monitor changing circumstances and take such action by way of modification as it sees fit with approval of electorate, Belvidere Bd. of Ed. v. Bosco, 138 N.J. Super. 368 (Law. Div. 1975)  
Board may, but is not required to hold referendum where petition is submitted pursuant to N.J.S.A. 18A:14-3 (70:123); see also (58-59:123) (59-60:41)  
Bonding, validity of (38:192)  
Building referendum; board may not significantly change plans approved by electorate (81: January 22, Farmingdale)  
Capital outlay funds restored by governing body; claim of voters' lack of information denied (77:288, Colozzi)  
Capital projects funded totally by federal grants, voter approval not required, Attorney General Formal Opinion No. 28 (1976)  
Change of classification from Type I to Type II (74:186)  
Commissioner of education; override of defeated bond referendum In the Matter of the Application of Upper Freehold Regional High School District, 86 N.J. 265 (1981) (St. Bd. 79:452, C. decision 79:443)  
Decrease in enrollment relieves board from compliance with referendum to operate school as elementary school, Silverman v. Millburn Bd. of Ed., 134 N.J. Super. 253 (Law Div. 1975) aff'd o.b. 136 N.J. Super. 435 (App. Div. 1975)  
Failure to submit building expansion program to local planning board before submission of proposal on referendum does not invalidate election approving bond issue; procedure is not a condition precedent to referendum, Citizens to Protect Public Funds v. Parsippany-Troy Hills Bd. of Ed., 13 N.J. 172 (1953)

Governing body has authority to submit question on reclassification of school district to voters at a general election pursuant to N.J.S.A. 18A:9-4 (86: September 26, Asbury Park, aff'd St. Bd. 87: January 7, aff'd App. Div. unreported (Dkt. No. A-3123-86T1, decided October 5, 1987))  
Items in capital outlay (80: December 5, Freehold Regional)  
Non-binding referendum (70:389, rev'd in part, Jenkins v. Morris Twp. Sch. Dist. and Bd. of Ed., 58 N.J. 483 (1971); Hackensack Bd. of Ed. v. Hackensack, 63 N.J. Super. 560 (App. Div. 1960))  
Non-binding referendum question was not matter "pertaining to the government or internal affairs" of county and thus could not be included on general election ballot. Bd. of Chosen Freeholders v. Szaferman, 117 N.J. 94 (1989)

**ELECTIONS - continued**

**Referenda and special elections - continued**

- Proposed regionalization; referendum question must make reference to capital expenditure (79: August 2, Bloomingtondale, unpublished opinion)
- Recount (78:22, North Hunterdon Reg.) (79: May 7, Closter, unpublished opinion) (79: May 7, Oceanport, unpublished opinion) (80: May 2, Commercial Township) (82: February 10, Trenton)
- Referendum to reclassify district must be held at annual school election; cannot be held at special election (80: February 5, Harrison)
- Referendum to reclassify district not passed by voters; petition dismissed (89: July 5, Bernstein)
- Res Judicata; Petitioners not barred from challenging validity and security of write-in votes on basis of prior recount, Remand ordered 89: June 1, Bridgewater-Raritan (recount only), aff'd St. Bd. 89: December 6, See also 89:2800, Bridgewater-Raritan, rev'd and remanded St. Bd. with opinion 90:1688)
- Setting aside of referendum denied (64:159)
- Special elections (39-49:96) (58-59:123)
- Board not required to call special election upon petition by voters (78:601, Popeluk, aff'd St. Bd. 78:603)
- Frequency (54-55:121) (59-60:41)
- Not permitted for purpose of filling a vacancy on board (73:112)
- Not required under N.J.S.A. 18A:12-15(c) when one of candidates withdraws (81: May 18, Waterford)
- Notice of (67:97)
- Tie vote; county superintendent appoints (67:50) (70:79) (71:230) (73:145) (76:298, Fieldsboro)
- Tie vote for referendum is failure to approve (80: May 2, Commercial Township)
- Tie vote; where candidate withdrew from run-off the other candidate is duly elected (82: May 26, Weehawken) (87: June 2, Audubon Park) (88: April 20, Mansfield)
- Tie votes (51-52:44) (54-55:106) (55-56:102) (55-56:108) (56-57:66) (56-57:69) (58-59:98) (78:272, Victory Gardens) (78:334, Hope Twp.) (79: May 10, Watchung Hills Regional, unpublished opinion) (80: April 10, Audubon) (80: April 23, Pitman) (80: April 24, Lincoln Park) (80: May 2, Commercial Township) (80: May 14, Far Hills) (80: May 15, Andover Township) (80: June 11, Bound Brook) (81: May 5, Jackson) (81: May 5, Lower Cape May) (81: May 11, Somers Point) (81:

May 13, Lawnside) (83: June 13, Montague Township)  
(84: April 27, Pohatcong) (84: April 27, Pine Hill)  
(84: April 30, Palisades Park) (84: April 30, Carneys  
Point) (88: May 4, East Greenwich) (88: May 4,  
Hamburg)

## ELECTIONS - continued

### Referenda and special elections - continued

Voided by incorrect advertisement of election hours (63:170)  
Voter approval required for capital projects (77:543,  
Central Reg.) but see Attorney General Formal Opinion No. 26  
(1977) and, In the Matter of the Application of Upper  
Freehold Regional High School District, 86 N.J. 265 (1981)

### Voiding

Campaign literature displayed inside polls in violation of  
N.J.S.A. 18A:14-85 held not to have had an effect on outcome  
of election (87:1324, Milan-Vera)  
Commissioner will not set aside contested election unless it  
can be shown that irregularities charged clearly affected  
result of election (59-60:130) (60-61:181) (65:36) (65:62)  
(65:74) (67:52) (68:73) (68:84) (72:205) (72:225 aff'd St.  
Bd. 72:231) (73:1) (74:558) (74:591) (75:413, Jamesburg)  
(76:438, Bedminster) (76:425, Westfield) (76:456, Carteret)  
(76:460, East Amwell) (76:585, Pittsgrove) (76:612, Nutley)  
(76:624, Dunellen) (76:791, Kearny) (76:828, Warren)  
(76:429, Hillside) (76:1061, Rutherford) (77:586, Pompton  
Lakes) (77:618, Hamilton Tp.) (77:695, Helmetta) (77:771,  
Garfield) (77:927, Camden) (77:1088, Upper Tp.) (77:1156,  
Fair Lawn) (78:11, Greater Egg Harbor) (78:81, Carteret)  
(78:319, Galloway) (78:360, West Orange) (78:377, Cherry  
Hill) (78:380, South River) (78:385, Audubon Park, dismissed  
St. Bd. 78: August 2) (78:397, Rumson-Fair Haven) (78:472,  
Lakewood) (78:543, Maywood) (78: July 5, South Plainfield,  
aff'd St. Bd. 78: November 8, unpublished opinion) (78:622,  
Milltown) but see (79:872, Tinton Falls, rev'g St. Bd.  
78:344, Tinton Falls) (79: May 16, Warren Township,  
unpublished opinion) (80: April 18, Irvington) (80: April  
21, Carteret) (80: April 21, Willingboro) (80: April 22,  
Point Pleasant Beach) (80: April 24, Manalapan-Englishtown)  
(80: April 25, Lower Township) (80: April 28, Somers  
Point) (80: May 1, Leonia) (81: May 18, Franklin Township)  
(81: September 10, West Orange) (82: July 27, Henry  
Hudson) (83: October 26, Hopewell Valley Regional School  
District) (84: June 28, Hillsborough) (84:1498, Lakewood)  
(86:21, Passaic) (86:2536, Maurice River) (87:1200,

Willingboro) (87:1218, Point Pleasant)(87:1225, Emerson,  
aff'd St. Bd. 87:1237) (87:1259, Passaic) (87:1270,  
Bellmawr) (87:1282, Lower Camden County Regional) (87:1290,  
Gibbsboro) (87:1309, Somerville) (87:1324, Milan-Vera) (87:  
October 20, Matawan-Aberdeen) (88: April 27, Passaic)  
(88:929, Clark) (88: June 6, Stradford)

**ELECTIONS - continued**

**Voiding - continued**

- Deficiencies, waived where result unaffected (49-50:34)  
(49-50:51) (70:128) (72:167) (84: May 22, Phillipsburg)
- Distribution of pencils and offering unsolicited instruction to voters held not sufficient grounds for voiding election (87:1225, Emerson, aff'd St. Bd. 87:1237)
- Election of one candidate set aside because of allegations of fraud and one vote difference between that candidate and runner-up; run-off ordered (86:1557, Fort Lee)
- Election set aside; board directed to examine voting machine where recheck of voting machine showed discrepancy between number of voters and number of votes cast (89: January 31, Tewksbury)
- Election set aside, county superintendent appoints (77: 586, Pompton Lakes) (77:695, Helmetta)
- Election set aside for numerous irregularities including: improperly trained election workers, improperly appointed challengers and electioneering at polls (85:1065, Fairfield, appeal dismissed St. Bd. 85: December 4)
- Election set aside, machines incorrectly prepared (77:586, Pompton Lakes)
- Electioneering near voting booth held not to have had effect on outcome of election (87:1270, Bellmawr) (87:1324, Milan-Vera)
- Erroneous instructions
- Statement in flyers that citizens could vote even if unregistered, results unaffected (76:425, Westfield)
- "Vote for 2" instead of "Vote for 1" results in failure to elect (76:298, Fieldsboro); but see (87:1282, Lower Camden County Regional), where Commissioner held that misinformation on voting machine did not materially affect the outcome of the election
- "Vote for 3" instead of "Vote for 2" voids election (38:182) (67:335) (73:112) (75:175, Upper Penns Neck)
- Failure of the Commissioner and Local Finance Board to approve the issuance of bonds within 60 days pursuant to N.J.S.A. 18A:24-25, 27, did not prejudice the petitioners nor thwart the will of the electorate, no requirement that the underlying vote be set aside (87:679, Asbury Park, aff'd St. Bd. 87:688)
- Failure to elect; no provision for second annual election; county superintendent appoints (67:335) (73:112) (73:154) (78:385, Audubon Park, dismissed St. Bd. 78: August 2)
- Failure to post budget 10 days before election, results



upheld (76:460, East Amwell)  
Failure to post seven notices held fatal defect  
(67:97)

**ELECTIONS - continued**

**Voiding - continued**

- Failure to provide a sufficient number of bilingual Spanish poll workers held not sufficient grounds for voiding election (87:1259, Passaic)
- Failure to remove from ballot name of candidate who has withdrawn does not require voiding of election (80: April 21, Secaucus)
- Failure to use good faith efforts to secure election officials pursuant to N.J.S.A. 18A:14-6 held not sufficient grounds for voiding elections (87:1324, Milan-Vera)
- Illegal votes, election held valid where result unaffected (49-50:34) (76:438, Bedminster) (78:357, Woodlynne)
- Illegal votes, seat vacated (78:385, Audubon Park, dismissed St. Bd. 78: August 2)
- Improper tally on voting machine at one location; election determined by votes at other locations, new election not necessary (87: May 28, Collingswood)
- Irregularities not sufficient to require new election (88:1717, Old Bridge, dec. on remand 89:1198, dismissed St. Bd. 89:1208)
- Isolated acts of simple negligence or omission insufficient to set aside election (89:2800, Bridgewater-Raritan, rev'd and remanded St Bd. with opinion 90:1688)
- Notice to candidates to inspect voting machines pursuant to N.J.S.A. 18A:14-42 was not given. Held: insufficient grounds for voiding election. (87:1218, Point Pleasant)
- Numerous irregularities in election preparations, procedures and voter instructions made reasonable determination of successful candidates impossible; new election ordered (85:1933, Green Brook, St. Bd. rev'g 84:1358 and 84: May 22)
- Person requesting Commissioner to investigate election carries burden to present proof that allegations of irregularities are true (80: February 5, Harrison) (80: April 21, Willingboro) (87:1200, Willingboro) (87:1270, Bellmawr) (87:1309, Somerville) (87:1290, Gibbsboro) (87:1324, Milan-Vera)
- Referendum to reclassify district held at special election instead of annual school election, held void (80: February 5, Harrison)
- Standard of proof required to void election (87: October 20, Matawan-Aberdeen)
- Statutory violations -- where factual basis for allegations

known but not raised at time of Commissioner hearing, may not be raised on appeal before State Board (86: February 5, Knowlton, aff'g 85: October 8)

**ELECTIONS - continued**

**Voiding - continued**

Violation of election law found where two people entered voting booth at same time; such violation did not affect election results (89: July 28, Fair Lawn)

Voided (70:131) (74:744) (74:1040) (74:1049) (74:1071) (75:203, Parsippany-Troy Hills) (75:612, Morris School Dist.)

Budget vote voided (73:154) (See "Budgets", this index)

Voter error: voting for two candidates instead of one: election valid where error did not affect result (81: June 2, Bass River)

Voting by non-residents in violation of N.J.S.A. 18A:14-77, held not to have had an effect on outcome of election (87:1324, Milan-Vera)

**Vote count**

Votes cast for withdrawn candidate shall be counted for the purpose of the election, but not distributed to other candidates (80: April 21, Secaucus)

Voting machine totals misread; election results changed (88: April 21, Wanaque)

Voter qualifications (54-55:104) (57-58:85) (59-60:121) (78:385, Audubon Park, dismissed St. Bd. 78: August 2)

Disfranchised voters (75:276, Lower Alloways Creek)

Non-resident voters; election upheld where outcome not affected (85: July 8, Keansburg)

Unregistered voters; where outcome of election is very close and these votes were relied upon, election cannot be considered conclusive and must be set aside (68:84) (73:1)

Untimely change of address notice (86:2542, Bridgewater-Raritan, aff'd St. Bd. 87: January 7)

**Voting**

Blind voter is allowed to have another person in the voting booth if such voter declares under oath to be unable to cast vote without such assistance pursuant to N.J.S.A. 19-50-3 (87: 1270, Bellmawr)

**EMERGENCY SCHOOL FACILITIES**

County superintendent guided by State Board rules in approving same (61-62:167)



## **EMPLOYEES (NON-TEACHERS)**

(See also "Janitors", "Bus Drivers", this index)

At-will employee (bus driver), is not entitled to pre-termination hearing; however, board voluntarily afforded petitioner notice and a hearing; termination for cause upheld (85: February 22, Aukamp)

Bus driver; absent termination clause in contract, board liable for payment for balance of contract term (81: April 30, Jungblut)

Bus driver; no requirement for due process upon early termination (81: April 30, Jungblut)

Grounds maintenance worker: termination for cause, board is not liable for balance of contract term, even absent termination clause (83: January 3, Booth)

Groundskeeper: Commissioner rejects settlement terminating employment which precludes board from giving complete accurate accounting of employee's performance and history (89: March 13, Molyvade)

Permanent or temporary employees of public subdivisions, which undertake public work projects, are not entitled to prevailing wage rate, Thomas v. Teaneck Bd. of Ed., 184 N.J. Super. 443 (App. Div. 1982), But cf, Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (February 19, 1985) (Fair Labor Standards Act applies to public employers)

## **ENTRANCE REQUIREMENTS**

(See "Kindergarten" and "Pupils - Admission", this index)

## **EQUIVALENT INSTRUCTION**

(See also "Pupils - Compulsory Attendance Laws" (N.J.S.A. 18A:38-25 and "Commissioner - Compulsory Attendance Laws")

"Alternative school" staffed by community resource persons and core teachers (76:495, Jones)

Burden on parents to show that child is receiving equivalent instruction (81:260, Oostdyk, aff'd with modification St. Bd. 81:275)

Commissioner may order parents to enroll children in school or furnish proof of equivalent instruction, but cannot impose fines under N.J.S.A. 18A:38-25 (81:275, Oostdyk, St. Bd. aff'g with modification, 81:260)

Defined, Knox v. O'Brien, 7 N.J. Super. 608 (Law Div. 1950); State v. Vaughn, 44 N.J. 142 (1965); State v. Massa, 95 N.J.

Super. 382 (Law Div. 1967)

Home instruction; board may require full information (i.e., medical reports) before authorizing. Homebound instruction differs from equivalent instruction (63:232) (See N.J.A.C. 6:28-3.2)

## **EQUIVALENT INSTRUCTION - continued**

Need not be equal (67:195) (67:247)  
No hearing before local board; available as defense to complaint  
in the municipal court (67:183)  
Private school facilities (67:89)

## **ESTOPPEL**

Board not estopped from correcting administrative error  
and denying salary guide credit for continuing education courses  
(84: August 13, Caprio)  
By conduct, invoked (74:692, aff'd St. Bd. 75:1074) (76:876, White)  
By contract, not invoked (73:57)  
Collateral estoppel does not automatically apply to disciplinary  
proceedings before the Commissioner after acquittal in criminal  
action arising from the same facts (87:861, Roemmelt, aff'd  
w/opinion St. Bd. 88:2527, aff'd App. Div. unpublished op. (Dkt.  
No. A-3303-87T7, January 25, 1989))  
Public bodies, application to action of; O'Malley v. Dept. of  
Energy, Civil Service, Appellate Division unreported opinion  
(Docket No. A-2821-84T7 decided August 20, 1987))

## **EVALUATIONS OF TEACHING STAFF MEMBERS**

(See also "Non-tenured Teaching Staff" and "Tenure", this index)  
Contents of evaluations  
Absent harm, Commissioner will not review subjective analysis  
of teachers' performance (82: January 5, Victoria)  
Constitutional protections apply to contents of written  
evaluation; objectionable material ordered removed (80:483,  
aff'd St. Bd. 80:499)  
Criticism of combining classes ordered deleted: longstanding  
practice known to evaluator (81: November 12, Kauffman)  
No anti-union animus found (81: November 12, Kauffman)  
Supervisory certificate or qualification to supervise is  
necessary (76:773, Martz, aff'd St. Bd. 76:791)  
Vice principal, if certificated, may evaluate teachers  
(74:1246, aff'd St. Bd. 75:1121)  
Failure to follow statutory procedure or negotiated evaluation  
procedure does not void board's non-renewal action (77:232,  
Pelose, aff'd in part, rev'd in part St. Bd. 77:240) (77:904,  
Hutzley) (77:751, Gearing, aff'd St. Bd. 77:760) (77:1226,  
Sherwood)



Failure to make one of two evaluations mandated by negotiated agreement does not void board action in non-renewal case (75:1047, Cobb, aff'd St. Bd. 76:1135)

## EVALUATIONS OF TEACHING STAFF MEMBERS - continued

### Forms

- Adoption of form by the board for annual evaluation of tenured teachers was in compliance with N.J.A.C. 6:3-1.21 (86:2088, Manalapan-Englishtown Ed. Assoc.)
- Document submitted by board to superintendent for use in evaluating principal was not a proper evaluation form and, although it could be used by superintendent, it could not be placed in principal's personnel file (82: August 23, Parrella)
- Document used by board to evaluate superintendent held worthless and ordered removed from file (74:269, aff'd St. Bd. 74:275, aff'd App. Div. 76:1137)
- Remedies for failure to properly evaluate; neither reinstatement nor monetary awards are generally appropriate (85: July 25, Brown, aff'd St. Bd. 87: February 4, aff'd App. Div. unreported opinion (Docket No. A-3426-86T1 decided November 13, 1987))
- Grade distribution practices may justify criticism expressed in tenured teacher's annual evaluation (83:1258, Grieco)
- No requirement under N.J.A.C. 6:3-1.21 to observe and evaluate in all subject areas taught (82: June 4, Dumansky)
- Principal has authority to override recommendations of supervisor, but must have sufficient grounds based on other relevant evidence to do so (Law v. Bd. of Ed. of Parsippany-Troy Hills, App. Div. 83:1584, aff'g 82: August 4, St. Bd. rev'g 81:1216)
- Professional improvement plan, no requirement under N.J.A.C. 6:3-1.21 for teacher and administrator to reach agreement, and administrator has final authority (81: April 22, Douma) (81: November 12, Kauffmann) (83:1258, Grieco)
- Professional improvement plan, tenured teacher's submission of deficient PIP and disinclination to consult supervisor after PIP's rejection precludes action for improper evaluation based on administratively imposed PIP (83:1258, Grieco)
- Remedies for failure to properly evaluate**
- Monetary awards or reinstatement may be appropriate for extreme violations of evaluation statute, or when failure to evaluate is coupled with improper or arbitrary statement of reasons (See also - Remedies for failure to state reasons, this section)
- Board's failure to evaluate and failure to substantiate reasons for non-renewal warrant monetary award (81: March 4, Tucker, aff'd o.b. App. Div., unpublished opinion, (Docket No. A-2738-80-T1, April 7, 1982; C. decision 80:627)) (81: November 6, Stein)

Reinstatement ordered: Board had neither adopted policy on  
evaluation nor evaluated any staff members (78:720,  
Bendon)

**EVALUATIONS OF TEACHING STAFF MEMBERS - continued**

**Remedies for failure to properly evaluate - continued**

Neither reinstatement nor monetary awards are generally appropriate (79:295, Coulter, rev'g in part, aff'g in part 79:288) (80:500, Del Piano, aff'd St. Bd. 80:511) (80: September 3, Kelly, St. Bd. rev'g in part 80: April 28) (80: December 29, Korpati) (81: January 22, Dore, St. Bd. rev'g 80: May 30) (81: April 6, Clark) (81: December 22, Dacher) but compare earlier decisions -- (78:106, Folno) (79:325, Patrick) (79: November 2, Yasny, unpublished opinion) -- granting monetary awards for failure to evaluate Statutory right of board to review at any time (76:543, Payne, aff'd St. Bd. 76:554, aff'd App. Div. 77:1303, certif. denied 75 N.J. 602 (1978))  
Substantial compliance with board policy and regulations on evaluations (81: November 23, Perez)  
Time of, where required by negotiated agreement (75:540, Dooley)

**EVIDENCE**

Court's findings in collateral proceeding are admissible at hearing before Commissioner only when made after adversary hearing (73:40)  
Credible evidence must support drug charges in order for Boards' disciplinary action to be upheld (82: October 22, G.L., remanded St. Bd. 83:1550)  
DYFS: results of DYFS investigation should have been admitted in tenure proceeding on issue of sexual molestation. Remanded for limited hearing (88:459, Thomas, aff'd with modification St. Bd. 89:3090) See also (87:1895, Tyler, dec. on remand 88:293, aff'd with modification St. Bd. 88:308, aff'd 236 N.J. Super. 478 (App. Div. 1989))  
Hearsay evidence admissible (73:464 aff'd St. Bd. 74:1437 aff'd App. Div. 75: January 15) (86:42, Cowan, aff'd St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App. Div. 1988))  
Polygraph test results inadmissible (74:662)  
Residuum rule permitting hearsay evidence supported by some legally competent evidence applies to administrative law proceedings pursuant to N.J.A.C. 1:1-15.5 (86:42, Cowan, aff'd St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App. Div. 1988)) (See also Colavita v. Hillsborough Bd. of Ed., App. Div. (Docket No. A-4342-83T6, unpublished decision March 28, 1985), rev'g 83:1205, aff'd St. Bd. 84: May 2)  
School district bears burden of proving, at due process hearing, that the IEP was appropriate; obligation of parent is merely to

place in issue appropriateness of program. Lascari, 116 N.J. 30 (1989)  
Subpoena power of PERC, Newark Bd. of Ed. v. Newark Teachers' Union, 152 N.J. Super. 51 (App. Div. 1977)

#### **EXPULSION OF PUPILS**

(See "Pupils - Punishment of", this index)

#### **EXTRACURRICULAR ACTIVITIES**

Board has duty to develop programs (68:18) (66:202) (68:62)  
Board is responsible for all events (76:282, Willett)  
Commissioner of Education may order the realignment of athletic leagues and conferences to include parochial schools without violating the Establishment Clause (82: May 28, NJSIAA, St. Bd. granted motion to dismiss appeal 82: September 8)

#### **NJSIAA**

Bylaw which denies due process hearing to coach who is ejected by referee not improper (89:2873, Trimmer, dismissed St. Bd. 90: March 7)  
Commissioner may consider racial isolation of school in evaluation or modification of realignment of leagues (88:1126, NJSIAA, aff'd App. Div. unpub. op. (Dkt. No. A-4627-88T2, May 22, 1990))  
Commissioner refuses to enforce rule automatically disqualifying school from competing for one year in sport in which out-of-season coaching occurred; directs that sanctions be imposed on coaches (86: November 20, South Orange-Maplewood)  
Commissioner upholds application of rule denying eligibility to student who extended secondary schooling beyond eighth semester (86: November 13, R.S.R. on behalf of C.R.)  
Commissioner will not substitute his judgment for the Association's absent a clear showing of arbitrary or capricious action (87:211, D.S.)(89:2325, Kearny)  
Commissioner upheld Association's denial of board's conference transfer request for failure to meet requirements (89:2325, Kearny)  
Due process afforded board despite NJSIAA failure to refer matter to controversies committee or afford board with notice of hearing: board had opportunity to present views and matter required immediate resolution (86: November 20, South Orange-Maplewood)

Due process afforded coach; commissioner will not substitute his judgment for NJSIAA's Executive Committee: coach found guilty of two charges of unsportsmanlike conduct; two year probation, litigation costs, fine and attorney's fee assessed (88:1730, Unsportsmanlike Conduct Allegations-Cranford-Ridge)

Guidelines were not rules which needed to be promulgated under APA. B.C. v. Cumberland Regional School District, 220 N.J. Super. 214 (App. Div. 1987), aff'g (86:1299, B.C.)

## **EXTRACURRICULAR ACTIVITIES - continued**

### **NJSIAA - continued**

Realignment of athletic conference upheld (86: January 2, Rumson-Fair Haven Regional)

Substance abuse excluded as ground for waiving eight semester rule (89:2781, D.L.)

Thirty day ineligibility rule will not be waived for transfer student without a showing that NJSIAA's action was arbitrary or capricious (86:2314, S.S. v. NJSIAA)

### **Pupil participation**

Band camp; board responsibility for expenses of (81: July 28, McAndrew)

Board may make reasonable rules governing school dance; such rules are binding on all participating pupils, regardless of parental objection (73:97)

Dismissal upheld where student failed to conduct himself in accordance with rules and standards of athletic contract (89:2169, C.D.)

Music program (73:741, aff'd St. Bd. 74:1441, aff'd App. Div. 75:1167)

Private school pupils who are district residents have no constitutional or statutory right to participate in public school activities, however, board may adopt policy permitting such participation (86:2615, Alpert)

Selection of drum major did not evidence abuse of discretion (86:2593, L.L.S.)

### **Sports**

Academic qualification; board's policy will be upheld unless shown to be arbitrary, capricious or unreasonable (86:2956, F.H.)

Age discrimination: Senior's non-selection for soccer team upheld against charges of age discrimination and claim that coach had improper policy of selecting juniors in favor of seniors (86:1094, H.O. for G.O., aff'd by St. Bd. 86:1123, aff'd App. Div. unreported)

opinion (Docket No. A-1624-86T6, decided June 29, 1987))  
Board's decision to exclude pupil from participation on team will be upheld, unless shown to be arbitrary, capricious, unreasonable (81: August 18, Brown)  
Coach's decision as to starting center on football team; claim of preferential treatment to son of board member dismissed (74:765)  
Denial of letter for missing one wrestling practice held arbitrary (85: April 29, Bryne)  
Disqualification from varsity wrestling team upheld; new board policy required students to accumulate 30 credits during preceding semester - student rejected summer school attendance (89: February 27, Yuka)

#### **EXTRACURRICULAR ACTIVITIES - continued**

##### **Pupil participation - continued**

##### **Sports - continued**

Exclusion of male students from female athletic teams is not discriminatory where purpose is to promote equitability of female athletic program (86:1299, B.C., aff'd by App. Div. 220 N.J. Super. 214 (1987))  
Exclusion of student from athletic team for medical reasons upheld pending full hearing (75:783, P.N.) (78:135, R.P.)  
Exclusion of student from soccer team for medical reasons upheld (78:789, C.P.)  
Expulsion from track team upheld, despite claim of racial discrimination (81: August 18, Brown)  
Female student's exclusion from football team found to be discriminatory (85:1252, E.B., aff'd St. Bd. 86:1160) See also (86:1133, E.B., aff'd St. Bd. 86:1160, rev'd and remanded 225 N.J. Super. 221 (App. Div. 1988) rev'd and remanded 117 N.J. 434 (1990))  
Forfeit of game for playing two ineligible players upheld (84: November 16, Northern Burlington Regional)  
Insurance policy requiring accident insurance as prerequisite to pupil participation held void (67:267)

##### **NJSIAA**

Academic standards for eligibility effective September 1, 1984 (84:1677, Burnside v. NJSIAA, 84:1695, aff'd reported opinion App. Div. (decided November 15, 1984), certif. denied 101 NJ 236 (1985))  
Classification: appeal of group III classification based upon incorrect information supplied by

board; refusal to reclassify upheld (86:286, Middle Twp. Bd. of Ed.)  
Denial of participation must be accompanied by statement of reasons (81: August 13, Smith)  
Disqualification from wrestling competition for uttering obscenity at referee upheld (85: April 15, Pagliughi)

**Due process**

Athletic conference held to have afforded due process in imposing sanctions (Deptford Bd. of Ed. v. Olympic Conf., App. Div. (Docket No. A-3259-83T2, unreported opinion June 21, 1985), rev'g 84:191)  
Coach not denied due process rights by NJSIAA; Bylaw which denied hearing to coach with opposition was ejected by referee not improper (89:2873, Trimmer, dismissed St. Bd 90: March 7)



**EXTRACURRICULAR ACTIVITIES - continued**

**Pupil participation - continued**

**Sports - continued**

**NJSIAA - continued**

**Due process - continued**

Pupil not deprived of due process rights by NJSIAA (83:811, Lauster) (87:1848, Pascack Valley)

Right to participate in interscholastic sports programs rises above mere privilege and notice and opportunity to be heard must be afforded (83:649, Greater Egg Harbor); Cf. (84:485, Leyton)

School desiring to withdraw from MVC to join MSC not denied due process (89: March 29, NJSIAA)

**Eight semester eligibility rule**

Denial of waiver of eight semester rule must be accompanied by statement of reasons (83: 278, Sterling Regional) unless no basis for waiver is alleged (83:298, Van Note)

Preliminary injunction barring imposition denied; no showing of irreparable harm (83: November 7, T.S.)

Rules limiting participation to eight semesters must be applied uniformly (83:278, Sterling Regional) (83:1076, Snyder)

Waiver denied; extension of schooling was not beyond student's control (89:230, D.G.)

Waiver denied; loss of opportunity for participation in athletics due to academic ineligibility does not justify waiver of the rule absent compelling reasons for academic problem (83: November 7, T.S.)

Waiver denied; pupil's participation in soccer for 10 days before injury, plus three full soccer seasons, constituted participation for four seasons (83:811, Lauster)

Waiver denied; rule applies to eight semesters of attendance, not competition in a sport; waiver denied since petitioner was in attendance for eight semesters and, he failed to meet academic standards (87:211, D.S.)

Waiver denied; substance abuse excluded by guideline as grounds for waiving eight

semester rule (89:2781, D.L.)  
Waiver denied; where student's academic career  
was not affected by his injury, only his  
participation in a sport (87:1698, R.A.S.)

**EXTRACURRICULAR ACTIVITIES - continued**

**Pupil participation - continued**

**Sports - continued**

**NJSIAA - continued**

**Due process - continued**

- Waivers generally; Commissioner directs the  
N.J.S.I.A.A. to develop and publish  
guidelines governing (83:811, Lauster)
- Eligibility standards; held where ineligible student  
participated in four football games, forfeiture of  
games was appropriate penalty for submission of  
false affidavit attesting to eligibility of  
student (83:649, Greater Egg Harbor)
- Enforcement of rule barring participation as  
wrestler upheld (81: March 27, Maltese)
- Enjoined from barring participation on hockey team  
pending outcome of proceeding (82: March 11,  
Brick Twp.)
- Impact of racial composition on school's proposed  
withdrawal from MVC to join MSC justified denial  
by NJSIAA (89: March 29, NJSIAA)
- Maximum age rule held proper; pupil who attained 19  
prior to September 1 could be denied participation  
in interscholastic sports for subsequent academic  
year (84:485, Leyton)
- Private school; complaint against No. New Jersey  
Interscholastic League alleging unlawful  
discrimination ordered dismissed: N.J.S.A.  
10:5-17 and agreement between parties require that  
complaint be heard by Division on Civil Rights,  
Christian Bros. Inst. v. No. N.J. Interscholastic  
League, 86 N.J. 409 (1981)
- Rules limiting participation to eight semesters must  
be applied uniformly (81: August 13, Smith)
- Student found to have transferred in order to gain  
athletic advantage declared ineligible to compete  
for 45 days (82: July 20, Blake)
- Thirty-day rule barring parochial school transfer  
student from participation in athletics for  
prescribed period "during school year"; period

commences at the beginning of the academic year,  
not July 1 (83:1221, North Arlington)  
Transfers for athletic advantage seeking superior team  
render students ineligible for interscholastic  
competition (87:259, Koh and Kim)  
Participation in sports is not a right or privilege  
guaranteed under the federal constitution Palmer v.  
Merluzzi, 689 F.Supp. 400 (D.N.J. 1988), aff'd 868 F.2d  
90 (3rd Cir. 1989) (89: October 23, D.L)

## **EXTRACURRICULAR ACTIVITIES - continued**

### **Pupil participation - continued**

#### **Sports - continued**

Policy banning extracurricular activities on the  
Sabbath, no First Amendment violation found,  
Student Members of the Playcrafters v. Teaneck Bd.  
of Ed., 177 N.J. Super. 66 (App. Div. 1981), aff'd  
88 N.J. 74 (1981)  
Suspension from football team and denial of athletic  
letter award for violating training rules upheld  
(77:388, Dennis, aff'd St. Bd. 77:393)

#### **Tryouts**

Board acting arbitrarily in setting aside cheerleader  
tryouts (77:997, Ferrara)  
Waiver denial upheld; student precluded from competing on  
gymnastics team at another Group III school within  
district (87:1848, Pascack Valley Regional H.S.  
District)

## **Staffing**

### **Assignments**

After school hours, non-school days, assignment proper  
if reasonable under circumstances (83:1022, Penns  
Grove-Carneys Point, aff'd St. Bd. 85:1981, aff'd App.  
Div., 209 N.J. Super. 115 (App. Div. 1986) certif.  
denied 104 N.J. 439 (1986)  
Band director, board may require performance of duties  
after regular school hours, weekends and during summer  
months (83:1022, Penns Grove-Carneys Point, aff'd St.  
Bd. 85:1981, aff'd App. Div. 209 N.J. Super. 115 (App.  
Div. 1986) certif. denied 104 N.J. 439 (1986)  
Board may assign teacher to serve as coach (81: March 6,  
Randolph)  
Board may unilaterally assign employees to staff  
extracurricular activities, Mainland Reg. Teachers'  
Assn. v. Mainland Reg. Bd. of Ed., 176 N.J. Super. 476  
(App. Div. 1980)

Discretion vested in board (71:336 aff'd St. Bd. 74:1376 aff'd App. Div. 75:1083) (75:374, Hazlet) Asbury Park Bd. of Ed. v. Asbury Park Ed. Assoc., 145 N.J. Super. 495 (Ch. Div. 1976) aff'd in part, dismissed in part, 155 N.J. Super. 76 (App. Div. 1977); (77:125, Barber) Duties must be equitably distributed among staff (71:336 aff'd St. Bd. 74:1376 aff'd App. Div. 75:1083 October 10)

Holidays; board may not require a teaching staff member to perform duties on public holidays as defined under N.J.S.A. 36:1-1 and N.J.S.A. 36:1-1.1 (83:1022, Penns Grove-Carneys Point, aff'd St. Bd. 85:1981, aff'd App. Div. 209 N.J. Super. 115 (App. Div. 1986) certif. denied 104 N.J. 439 (1986)

## **EXTRACURRICULAR ACTIVITIES - continued**

### **Staffing - continued**

#### **Assignments - continued**

Holidays; generally Saturdays are not public holidays under N.J.S.A. 36:1-1 and N.J.S.A. 36:1-1.1 (83:1022, Penns Grove-Carneys Point, aff'd St. Bd. 85:1981, aff'd App. Div., 209 N.J. Super. 115 (App. Div. 1986) certif. denied 104 N.J. 439 (1986)

Involuntary assignment of staff as security personnel at athletic contests is improper exercise of board discretion, however, duties such as ticket sales, clock operator and monitor may be assigned (86:2627, Willingboro)

Loss of extracurricular assignment as result of transfer does not violate tenure rights (88:1963, Dunbar)

Managerial discretion of board; coach's deportment at games and sexually suggestive comment to student were satisfactory reasons for not reappointing (84:229, Gallagher)

Non-negotiable and non-arbitrable (71:579) but see, Asbury Park Bd. of Ed. v. Asbury Park Ed. Assoc., 145 N.J. Super. 495 (Ch. Div. 1976) aff'd in part, dismissed in part, 155 N.J. Super. 76 (App. Div. 1977)

Non-renewal of assignment, no statement of reasons required (71:336 aff'd St. Bd. 74:1376 App. Div. 75:1083) (73:272)

Reasonableness of assignment of particular teaching staff member (84:57, Brendel)

Residence may not be employed as a reason to avoid extracurricular assignment (84:57, Brendel)

Use of non-certified personnel (78:924, Weehawken) (79:186, Hightstown)

**Coaches** (N.J.A.C. 6:29-6.3)

**Appointment** (80: September 18, Carkhuff)

Arbitrary denial by board of out-of-district appointment held improper under N.J.A.C. 6:29-6.3, board ordered to pay salary lost (83:1282, Bryan, aff'd St. Bd. 85:1748)

Board may not refuse to rehire head football coach because of political party affiliation (88:1815, Caputo, Motion for Stay denied 88:September 27 rev'd St. Bd. 90:1694)

Board permitted to hire out of district coaches where in district applicants were properly rejected (85: April 3, Rancocas Valley, St. Bd. rev'g 83: September 26)

**EXTRACURRICULAR ACTIVITIES - continued**

**Staffing - continued**

**Coaches - continued**

**Appointment - continued**

Board required to appoint teacher in its employ, who is

experienced in coaching, to vacant position (81: June 15, Hamlin, aff'd St. Bd. 81: October 7 and clarified St. Bd. 81: November 10) (83: August 8, Newmark) (85:1363, Chambers)

In district teachers must be given priority over all other applicants (85:1363, Chambers)

Appointment of part-time teacher from sending district invalid (74:241)

Board, not administrators, hires coaches (80: December 1, Livingston)

Certification as teaching staff member required (78:537, Hightstown) (78:589, Deal)

Certification as teaching staff member required of coaches, assistants and trainers, even if unsalaried (74:241) (75:58, Barber, aff'd App. Div. 76:1105) (75:265, Brick Twp., remanded St. Bd. 75:268)

Charge of discrimination by gender (80:1147, Kuc, aff'd St. Bd. 81: March 4)

Coach at private high school in NJSIAA league not liable for injuries to player on opposing team; liability imposed only when coach instructs his players to commit wrongful acts; court applied same standard as would be used for public school coach. Nydegger v. Don Bosco Preparatory High School, 202 N.J. Super. 535 (Law Div. 1985)

Conduct unbecoming; same standard as teacher (88:1257, Wagner)

Denial of permission to employee to coach in nearby district, held arbitrary (80: December 1, Livingston)

Emergency situation, justifying hiring of coach not employed by school district (81: October 13, Asbury Park, aff'd St. Bd. 82: February 3)

Equal pay for boys' and girls' coaches if duties equivalent (80: November 10, Elmwood Park, aff'd St. Bd. 81: August 5)

Evaluations of coaches should be kept in separate file (75:58, Barber, aff'd App. Div. 76:1105)

Limitations on coach's authority to set rules (70:311) (84:1871, Punko)

May not disregard board policy on eligibility for athletic teams (84:1871, Punko)

No right to due process hearing before NJSIAA. Bylaws which

denied hearing to coach who was ejected by referee not improper (89:2873, Trimmer, dismissed St. Bd. 90: March 7)

No right to employment as coach (80:1321, Livingston) (81: November 13, Tabeck) (82: March 4, Hamlin)

## **EXTRACURRICULAR ACTIVITIES - continued**

### **Staffing - continued**

#### **Coaches - continued**

No right to employment as coach, but reasons for appointment cannot be arbitrary (86:2100, Koslick, aff'd St. Bd. 87:2623, aff'd App. Div. unreported opinion (Docket No. A-4358-86T1, decided November 18, 1987))

Not eligible for tenure (80:1420, Furlong, aff'd St. Bd. 81: March 4) (82: March 4, Hamlin) (89:1419 Panettieri, aff'd St. Bd. 89:1433, rev'd and remanded App. Div. unpublished op. (Dkt. No. A-373-89T1, decided May 16, 1990), decision on remand St. Bd. 90: December 5)

Reappointment not required but board's reasons cannot be arbitrary (81: September 25, Dutt) (87:1343, Faycik)

Sick Leave: Tenured teacher/assistant coach not entitled to sick leave for coaching assignment; neither tenured nor "steadily employed" as coach, nor was assignment extension of regular teaching position (89:16, DeGroot, aff'd St. Bd. 89:31, with opinion)

#### **Compensation**

Cash gift from class to advisors held improper (77:366, Silver, aff'd St. Bd. 77:371)

Fees may be charged to sponsoring organization (76:282, Willet)

Generally, extra compensation is appropriate for extra-curricular duties (68:62) (71:336 aff'd St. Bd. 74:1376 aff'd App. Div. 75:1083) but see, Asbury Park Bd. of Ed. v. Asbury Park Ed. Assoc., 145 N.J. Super. 495 (Ch. Div. 1976) aff'd in part, dismissed in part, 155 N.J. Super. 76 (App. Div. 1977)

Salary schedule for coaches, once adopted, is binding (74:922)

#### **Tenure**

Conduct unbecoming; same standard as teacher (88:1257, Wagner)

Does not attach to extracurricular positions, unless a special certificate required (71:336, aff'd St. Bd.)

74:1376, aff'd App. Div. 75:1083) (71:579) (73:272)  
Reduction in salary under tenure laws found where  
compensation as athletic director was made an integral  
part of regular salary (75:939, Shriner); compare  
Matthews v. Irvington Bd. of Ed., 31 N.J. Super. 292  
(App. Div. 1954)



