

HAIR REGULATIONS

(See "Pupils - Dress and appearance" and "Teachers - Dress and appearance", this index)

HANDICAPPED CHILDREN

Attorneys fees

ALJ does not have authority to award under Handicapped Children's Protection Act, 20 U.S.C. 1415 (e)(4)(A) et seq. (86: December 1, W.N. & C.N.) (87: May 15, J.L.) (88: September 9, M.G.)

Party seeking recovery must file separate action in Federal District Court (88: September 9, W.V.)

Board's obligation to, in general

Age: board responsible for tuition until school year in which pupil attains 21 years of age (84: January 5, Bay Head)

Age: board not obligated to waive requirement for admission into special education pre-school program (87: January 2, L.M.)

Age: board's obligation to 20-year old handicapped student (78:810, Graham) (80:1269, E.E., aff'd St. Bd. 81: March 4)

Age: board policy and N.J.A.C. 6:28-1.3 definition of 3-year old applies only to children in 10 month program and not to children in extended school year (87: June 29, J.B.)

Age: early admission of handicapped child to kindergarten is discretionary with board (70:296)

Age: requirement in N.J.S.A. 18A:46-6 that boards identify children enrolled in the district between the ages of 5 and 21 who need special education does not eliminate board discretion to stop providing free education in year of 20th birthday (83: April 6, B.J.M.)

Board has burden of proof that it is providing a FAPE in the LRE Lascari v. Ramapo-Indian Hills. Bd. of Ed., 116 N.J. 30 (1989) (89: August 22, J.M.) (89: August 25, J.K.) (90: October 5, C.T. & K.T.)

Board IEP ordered implemented without parental consent (85: September 3, Carteret)

Board is liable for education expenses only, not room and board, at private institution; liability extends only up to statutory maximum (74:190)

Board not obligated to provide home instruction to resident student in non-custodial parent's home in another state (86: March 21, F.A.)

Board not required to provide "best" program, only one from which student benefits (86: March 27, B.M. and F.M.)

Board ordered to formulate IEP which contains comprehensive

vocational training program for the balance of the compensatory services period (88: September 7, A.R.)
Board ordered to pay for private consultation costs where Board's CST relied upon evaluation data (87: July 2, A.M.T.)

HANDICAPPED CHILDREN - continued

Board's obligation to, in general - continued

Board ordered to pay past due private school tuition for student whom it had placed at school; board had not acted to change placement of student after notifying school it was terminating enrollment (87: May 21, J.G.)

Board's liability for education does not come into being until classification completed, assuming no unreasonable delay in doing so (St. Bd. 73:34, aff'g 73:30)

Child's inability to pass college entrance exam does not evidence board failure to meet his needs (81: November 6, A.L.)

Compensatory services provided to student who did not receive vocational training (88: September 7, A.R.) (87: September 16, P.D.)

Compulsory education laws apply to handicapped children (72:641)
Constitutional mandate of "free public education" does not apply to profoundly retarded pupils requiring total institutional care, Levine v. Dept. of Institutions and Agencies, 84 N.J. 234 (1980)

Controlling authority - where local board policy and/or state regulation conflict with the governing statutory provision, the legislative authority of the statute controls (87: June 29, J.B.)

Diploma awarded to handicapped student (74:614), but see (81: June 22, M.B.) diploma found to be "bogus" and child held entitled to education through age 20

Discipline; recurrent disciplinary problems with pupil sufficient to refer to Child Study Team (83: March 17, Bridgewater-Raritan)

Duty to classify and train, in general, Esposito v. Barber, 74 N.J. Super. 289 (Law Div. 1962); (61-62:109) (66:210) (67:6) (68:87, remanded St. Bd. 69:205, on remand 70:283; same case at 74:420, modified and aff'd St. Bd. 75:1161) (77:760, H.D., remanded St. Bd. 77:771, decision on remand 78: October 25, aff'd St. Bd. 79:832)

Education for All Handicapped Children Act provides comprehensive remedies for children seeking free public educational services and precludes them from seeking relief under Section 504 or Equal Protection Clause solely for purpose of obtaining the attorneys' fees authorized by

Section 505 and 42 U.S.C.A. 1983. Smith v. Robinson,
468 U.S. 992 (1984)

Eligible for day training

Placement in day care center ordered; board may stop
home services if parents refuse to enroll child (84:
June 28, Linden)

Pupil's severe and profound mental retardation did not
obviate board's responsibility for tuition costs (84:
January 5, Bay Head)

HANDICAPPED CHILDREN - continued

Board's obligation to, in general - continued

- Extended school year - board obligated to provide if substantial regression will result. N.J.S.A. 18A:46-6 indicates lesser standard at pre-school level (87: June 29, J.B.) See also, "Placement/Extended School Year, this index)
- Failure to design evaluation plan and secure health appraisal. Board admonished - CST directed to follow mandates of Administrative Code (87: November 30, J.P.)
- "Free and appropriate" education under 20 U.S.C.A. 1401 et seq., clarification of term (84: March 15, S.M.)
- New Jersey regulations set higher standard than does federal law: board must provide program which "best" enables student to achieve educational success (citing regulations in effect up until July, 1984) S.G. v. Parsippany Troy Hills Bd. of Ed., (Docket No. 82-3373, decided May 22, 1984) (decision issued from bench)
- Regulations adopted in September 1983 do not require "best" education (84: September 12, E.K. and C.K. for P.K.) (84: November 15, U.B.S.) but see (84: December 31, Mr. & Mrs. R.D. on behalf of B.D. & T.D.) imposing standard higher than federal law by virtue of N.J.S.A. 18A:46-19.1
- New Jersey Standard vs. Federal Standard
- Board not obligated to provide "best" education but N.J.S.A. 30:6D-9 and education of handicapped statutes require that developmental potential of autistic child be maximized (86: October 31, R.T. and D.T.)
- New Jersey standard exceeds federal standard; board must provide not just "appropriate" education but education which maximizes intellectual capacity (87: February 27, J.M.G.) (87: June 12, D.W.) (87: June 29, J.R.) (87: August 14, J.C.) (88: August 12, C.K.) (88: August 26, J.P.) (88: September 9, W.V.) (88: September 14, J.C.) (88: November 4, H.O.) (89: January 24 S.V.) (89: June 15 L.P.) citing dicta in East Windsor School District v. Diamond, 808 F.2d 987 (3rd Cir. 1986) but see also (85: October 25, M.B.) (86: July 21, J.G.) (87: June 29, J.B.)
- Psychiatric medical expenses are not compensable educational services (N.J.A.C. 6:28-1.2; 20 USCA 1401 (17) (84: April 23, D.S.)
- Psychotherapy is a related service where an essential part of program utilized by special school (T.G. v. Piscataway Bd. of Ed., 576 F.Supp. 420 (DNJ 1983), aff'd 738 F.2d 420 (3rd Cir. 1984), cert. denied _____ U.S. _____, 105 S.Ct. 592

(1984)

Pupil records of handicapped child; board may limit parental access (74:1332) but see N.J.A.C. 6:28-2.9, adopted subsequently

HANDICAPPED CHILDREN - continued

Board's obligation to, in general - continued

- Re-examination and review of classification and placement should be undertaken by board every three years, but not required where parents enrolled child in private school (75:103, R.D.H., aff'd St. Bd. 75:111, aff'd App. Div. 76:1161)
- Reimbursement; parent entitled to reimbursement only if particular expenses should not have been a parental obligation (83: December 5, Holmdel)
- Reimbursement for tuition granted for parental unilateral placement where placement proper and placement in IEP inappropriate (88: November 4, H.O.) (89: January 4, S.V.)
- Reimbursement for unilateral placement in non-approved private school denied (88: September 6, G.D.)
- Reimbursement to parent for physical, occupational and speech therapy which should have been provided by the Board. (87: August 11, S.D.) Motion to reopen denied (87: November 6, S.D.)
- Residence for school purposes of handicapped children in non-public institutions, liability of board for tuition Little Egg Harbor Bd. of Ed. v. Board of Ed. Galloway Twp., 71 N.J. 537 (1976) rev'g 145 N.J. Super. 1 (App. Div. 1975) (C. Dec. 73:324, St. Bd. 74:1410); (76:699, Trenton)
- Residential placement and special education of student is responsibility of the board, not DYFS (88: March 3, A.N.)
- Segregation of handicapped pupils, board discretion in utilizing existing facilities (70:386)
- Speech therapy, children who have not been classified by Child Study Team are not deprived of required special education where full-time speech teacher's position is reduced to part-time position (83: June 1, Hering, aff'd St. Bd. 83: November 2)
- State Facilities Education Act; held, board responsible for tuition of pupil classified eligible for day training from effective date of act (84: January 5, Bay Head)
- State regulations; provisions on eligibility for pre-school services and termination of services invalidated as inconsistent with state and federal law. Matter of Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158 (App. Div. 1985)
- Where handicap exists, no "severity" test may be used to exclude

from classification any of the handicapped. However, "severity" is a necessary component when determining whether a handicap exists (87: July 2, A.M.T.) See also Matter of Repeal, 204 N.J. Super. 158 (App. Div. 1985)

Where neurological impairment suspected, board should conduct full assessment including reference to a physician trained in neuro-developmental assessment (87: December 11, J.S.)

HANDICAPPED CHILDREN - continued

Classification of

- Adoption of procedures for diagnosis and classification
(68:87; same case at 69:205, 70:283 and 74:420, modified and
aff'd St. Bd. 75:1161) (77:478, Learning Disabilities
Assoc.)
- Appeal, dismissed as untimely (80: November 24, R.S.)
- Attention Deficit Disorder (A.D.D.) (88: September 6, G.D.)
(89: July 20, O.C.) (89: May 26 D.D.)
- Board may temporarily exclude pupils pending classification
(74:1006)
- Board's classification upheld; PI (89: June 15 L.P.)
- Challenge to board's classification (80: January 7, D.H.) (80:
927, K.M., aff'd St. Bd. 80: November 5) (82: March 3, New
Brunswick) (82: December 28, C.B.) (83: January 24, G.B.)
(87: July 1, A.M.)
- Change from emotionally disturbed to perceptually impaired
ordered (86: September 8, Washington Twp.)
- Change from perceptually impaired to neurologically
impaired ordered (85: September 12, T.H.)
- Child may not be found to be handicapped pupil without specific
classification (82: January 27, Plainfield, aff'd St. Bd.
82: May 5)
- Child study team need not make classification for board to be
responsible (80: October 22, C.M.)
- Child Study Team; where reasonable grounds exist for child's
referral to child study team, parental consent is not
necessary (ALJ decision 83: March 17, Bridgewater-Raritan)
(84: April 5, Piscataway Twp. Bd. of Ed.)
- Class size (83:737, Bd. of Ed. of Trenton)
- Classification as perceptually impaired upheld, despite
claim that no classification needed and that tests were
culturally biased (85: August 21, C.T. and F.T.)
- Classification as perceptually impaired upheld despite
physician's testimony concerning neurological impairment
(81: November 6, A.L. and E.L.)
- Combining categories of special education pupils in a single
classroom (83:737, Bd. of Ed. of Trenton)
- "Communication handicapped" (83: August 10, S.S.)
- Comprehensive evaluation, reliance on previous evaluations
insufficient, classification overturned (82: November 29,
S.F.)
- Conflicting classifications (79:754, T.J.) (82:
November 12,
East Brunswick)
- Conflicting diagnoses; great weight given to last exam and

mother's testimony and "eligible for day training" changed
to "multiply handicapped" (85: May 21, West Windsor)
County child study team, functions discussed (67:242) (67:247)

HANDICAPPED CHILDREN - continued

Classification of - continued

Declassification of emotionally disturbed child can only be accomplished through psychiatric examination, requirement cannot be waived because parent objects to exam on religious grounds; Parents Right to Conscience Act does not apply to examinations for special education purposes (86: October 17, J.P.)

Deviation from the norm alone does not make a child handicapped (87: November 30, J.P.)

"Educable retarded" (61-62:109) (71:509)

"Eligible for day training" (82: February 10, J.H., aff'd St. Bd. 82: May 5) N.J. Assn. Retarded Citizens, 89 N.J. 234 (1982) (82: November 12, East Brunswick) (83: October 7, Sandyston-Walpack) (84: January 5, Bay Head) (88: March 14, D.C.)

"Emotionally disturbed" classification found appropriate; emotional problems found to interfere with education performance despite board assertion to the contrary (86: December 12, Cranford) See (87: September 30, B.G.)

Emotionally disturbed classification ordered over parental objection (85: December 20, H.M.) (86: October 20, H.M.P.) (87: June 16, R.B.) (88: March 18, P.I.) (88: June 24, M.B., aff'd App. Div. unreported op. (Dkt. No. A-5-88T5F, February 17, 1989)) (89: March 16, K.G.)

"Emotionally disturbed" classification ordered where mother failed to cooperate and participate in classification process (88: April 20, Elizabeth)

"Emotionally disturbed" - defined (87: July 7, T.J.)

"Emotionally disturbed", overturned (82: November 29, S.F.)

(83: August 23, T.C.)

Emotionally disturbed overturned; psychiatric evaluation did not contain finding or recommendation that child was emotionally disturbed (87: July 7, T.J.)

"Emotionally disturbed", upheld (74:1141) (83: September 7,

D.V.B.) (84: May 8, Elizabeth) (84: June 6, Rutherford) (84: October 25, L.W. for M.W.) (84: April 25, Midland Park)

Board cannot refuse to classify student with behavioral problems because academic performance is still acceptable (85: January 25, K.S.)

Parental challenge to emotionally disturbed classification rejected; no evidence presented that classification

should be changed (87: September 4, J.P.)
Psychotherapy ordered, cost to be borne by parents (80:
262, Kobb, St. Bd. rev'g 80:248)
Mainstreaming of, (80: September 19, D.H.)

HANDICAPPED CHILDREN - continued

Classification of - continued

- Emotionally disturbed; where board contends multiply handicapped pupil classification should be changed to emotionally disturbed they must sustain burden of proof (83: March 23, A.N.)
- Evaluation and physical exam ordered where parent objected to NI classification; prior evaluation out of date, more evidence needed to determine proper classification (87: July 1, A.M.)
- Expelled pupils, Commissioner may require child study team evaluation following expulsion (73:343) (73:652) (75:211, W.B.); home instruction for pupil may be ordered pending evaluation (74:418) (77:284, T.M.; 77: May 23, T.M.) but see N.J.A.C. 6:28-2.8 requiring evaluation prior to expulsion.
- Failure of board to classify, Division of Youth and Family Services may classify and place child (77:342, Harbor Hall School)
- Failure to classify; other data satisfy classification requirement (81: January 14, Somerset Hills)
- Hearing impaired child; board ordered to use individual certified as teacher of deaf and already employed by board to implement IEP (85: February 1, R.B. & B.B. for A.B.)
- Improper classification by child study team (79:105, J.G.)
- Improper classification by classification officer (82: January 27, Plainfield, aff'd St. Bd. 82: May 5)
- Learning problems; not every learning problem justifies classification as handicapped (71:234, remanded 71:240 on remand 73:30, aff'd St. Bd. 73:34, aff'd App. Div. 75:1086)
- "Mentally retarded", upheld (66:210) (75:103, R.D.H., aff'd St. Bd. 75:111, aff'd App. Div. 76:1161)
- "Multiply-handicapped" (70:283, modifying 68:87 and 69:205; same case at 74:420, modified and aff'd St. Bd. 75:1161) (72:641) (77:698, S.W., aff'd St. Bd. 77:703, remanded App. Div. 77:704, remanded St. Bd. 78:1041, Commissioner decision on remand 80:967, aff'd St. Bd. 81: March 4, remanded, unpublished opinion, App. Div., (Docket No. A-3150-80T1, March 4, 1983)) (80:927, K.M., aff'd St. Bd. 80: November 5) (83: March 8, Penns Grove) (83: March 23, A.N.) (83: March 28, Penns Grove) (84: October 5, D.H.) (89: July 12, C.K.)
- Residential placement appropriate (82: March 5, East Brunswick) (82: November 12, East Brunswick) (82: December 20, Jamesburg) (84: March 15, S.M.)

"Neurologically impaired" (78:810, Graham) (88: November 4, H.O.) (89: May 26 D.D.)
"Neurologically impaired" classification ordered (87: July 7, T.J.) (89: August 21, J.D.)

HANDICAPPED CHILDREN - continued

Classification of - continued

"Neurologically impaired" classification requires physician's finding of specific nerve system impairment; "communication handicapped" found more appropriate (87: March 17, M.P.J.) (87: December 11, J.S.)
Neurologically impaired classification retained; child's IQ not low enough to classify EMR or multiply handicapped (87: September 15, D.D.)
"Neurologically impaired" classification retained; reluctance to attach stigma of "emotionally disturbed" (86: February 14, Montvale)
Neurologically impaired classification retained where mother failed to participate in process and failed to attend hearing (88: January 21, H.G.)
"Perceptually impaired" (76:323, M.D., aff'd in part St. Bd. 76:333) (77:760, H.D., remanded St. Bd. 77:771) (78:804, H.D., aff'd St. Bd. 79:832) (78:897, B.K.)
Perceptually impaired classification ordered over parent's objection (87: October 20, J.D.)
Perceptually impaired - standard for determination (87: July 2, A.M.T.)
Physical examination ordered by board (87: July 1, A.M.)
Placement cannot be questioned in proceeding brought to challenge classification (81: September 17, I.G., on behalf of L.G., aff'd St. Bd. 82: June 2)
Powers of classification officer in Department of Education (79:105, J.G.)
Pre-school handicapped - autistic tendencies (88: September 14, J.C.) (89: September 11, G.F.)
Procedural requirements mandatory, motion to dismiss granted (82: November 29, Fairlawn Bd. of Ed.) Cf. (84: February 22, Franklin Lakes)
Notice; statutory notice requirements mandate that where written notice is allegedly technically incomplete, must look for prescribed statutory remedy; dismissal is inappropriate and would have serious consequences for the delivery of an appropriate education to a child (84: February 22, Franklin Lakes)
Psychiatric examination may be required by board (74:1006)

Reclassification; Board failed to meet burden in reclassification from multiply-handicapped to trainable mentally retarded (83: March 28, Penns Grove)
Request for classification denied. Petitioner did not prove by preponderance of the evidence that perceptual impairment existed (87: July 2, A.M.T.)
"Severely retarded" classification retained despite parental objection (88: March 14, D.C.)

HANDICAPPED CHILDREN - continued

Classification of - continued

Standard of review employed by Commissioner in reviewing classifications; will not be reversed unless procedurally defective, arbitrary or capricious (71:234, remanded 71:240, on remand 73:30, aff'd St. Bd. 73:34, aff'd App. Div. 75:1086) (71:509) (72:641) (74:1141) (80: August 21, D.D.), but see (77:698, S.W., aff'd St. Bd. 77:703, remanded App. Div. 77:704, remanded St. Bd. 78:1041, Commissioner decision on remand 80:967, aff'd St. Bd. 81: March 4, remanded, unpublished opinion, App. Div., (Docket No. A-3150-80T1, March 4, 1983)) (80: October 6, E.S., aff'd St. Bd. 81: March 4)

Timelines, should be between 30 and 90 days after identification (77:478, Learning Disabilities Assoc.)

Trainable; classification rejected based upon interpretation of N.J.S.A. 18A:46-9b. and N.J.A.C. 6:28-1.2(5)ii. (83: October 7, Sandyston-Walpack)

"Trainable retarded", upheld (68:87, modified 70:283; same case at 74:420, modified and aff'd St. Bd. 75:1161)

Discipline (see also N.J.A.C. 6:28-2.8)

Board can neither suspend educationally handicapped student convicted of drug offense nor restrict participation in extracurricular activities pending plenary hearing on placement: student was not a physical danger to others and board actions were impermissible changes of handicapped student's placement, even though student was in regular school environment and had been classified only as a result of evaluation conducted after drug offenses (86: December 5, C.C. v. Black Horse Regional)

Board failed to determine whether student's behavior primarily caused by her handicap; all suspensions 1987-88 set aside (88:2333, R.W., aff'd St. Bd. 89:3073, aff'd App. Div. unpub. op. (Dkt. No. 5645-88T1, March 5, 1990))

Board may not bar attendance at prom by former student for past disruptive behavior not related to handicap (85: May 21, M.M.)

Board may not place disruptive student on home instruction pending hearing on change of placement (86: February 3, H.M.) (88: February 9, B.P.)

Board may not place student convicted of possession and intent to distribute drugs in alternative day school where drug incidents were related to emotional disturbance and student was on criminal probation and was performing well in regular high school (87: January 26, Black Horse Pike Regional)

Board not justified in removing student pending re-evaluation; student was not a danger to others (86: October 3, M.H.)

Board ordered to find alternative residential placement where student expelled from residential placement for behavior related to handicap (89: February 23 J.M.)

HANDICAPPED CHILDREN - continued

Discipline - continued

Board request to impose one day suspension refused (85: April 26, E.T. by Mrs. M.T.)

Board shall maintain handicapped pupil displaying violent or disruptive behavior in current placement until parental consent is secured, hearing and appeal process is completed, or a court order for alternative placement is obtained (Honig v. Doe, 56 U.S.L.W. 4095 (January 20, 1988))

Emergency relief denied: ALJ will not clarify board's rights and responsibilities with respect to student it wants to expel but whose parents refuse to consent to evaluation which is precondition for that action (86: November 17, Maple Shade)

Emergent relief denied: Student did not pose threat to himself or others - Honig v. Doe cited (89: December 20, J.D.)

Emergent relief granted - Home instruction deemed inappropriate; placement at special services junior/senior high school ordered (88: February 19, V.S.)

Emergent relief granted - status quo maintained pending outcome of due process hearing (88: April 4, E.C. and F.D.R.)

Emotionally disturbed student suspended and placed on home instruction for one-half year ordered reinstated: suspension was change in placement effected without required re-evaluation (87: April J.L.)

For possession of marijuana (85: February 14, M.M.)

Handicapped pupils not exempt from school discipline (81: April 23, F.M.)

Handicapped student may not be suspended indefinitely for alleged assault on teacher pending psychiatric evaluation;

behavior at another school which he attended half-time demonstrates he was not a danger to others (87: February 11, T.B.)

Removal from classroom deemed proper; student's behavior deemed dangerous to himself and others. Interim placement in school individualized program; home instruction inappropriate placement (88: February 9, B.P.)

Removal from classroom ordered pending re-evaluation because of likelihood of danger to student and to others if he remained in current placement (86: December 5, L.W.)

Student may not be suspended for distribution of drugs where he was subsequently found to be emotionally disturbed and had not exhibited a pattern of prior or subsequent dangerous conduct. Student ordered returned to regular school environment pending development of IEP (87: April 24, C.K.)

Ten-day suspension for hitting classmate upheld pending full hearing (85: June 19, E.T.)

Domicile of handicapped pupil, generally (80:1123, Lakewood, aff'd St. Bd. 81: March 4) (80:1269, E.E., aff'd St. Bd. 81: March 4) (81: January 14, Somerset Hills)

HANDICAPPED CHILDREN - continued

Due Process Hearings

Burden of proof on party which seeks to change placement; parents have burden where they want child placed in high school of another district rather than high school to which their district usually sends students (86: December 18, C.Z.)

Handicapped child voluntarily placed in private school not entitled to due process hearing on adequacy of transportation and reimbursement because transportation was neither federally funded nor mandated by state regulations (86:266, A.A., aff'd St. Bd. 86:285, aff'd 218 N.J. Super. 32 (App. Div. 1987)

Parents are entitled to advance written notice of all procedures available under EAHCA whenever state or local agency proposes to initiate or change a child's identification, evaluation or educational program (87: December 11, J.S.)

Procedures - Parent's failure to attend hearing constitutes abandonment of due process rights (89: March 16, K.G.)

Emergent Relief

Board has burden of proof that it is providing FAPE in LRE Lascari v. Ramapo-Indian Hills, 110 N.J. 319 (1989) (89: August 22, J.M.) (89: August 25, J.K.) (89: October 5, C.T. & K.T.)

Emergent relief denied; board not provided with reasonable notice of presumed rejection of placement (89: October 11, T.S.)

Emergent relief denied; no regression of skills from lack of extended school year (87: August 12, J.H.)

Emergent relief denied; no competent proofs made (89: May 12, W.B.)

Emergent relief denied; no serious physical harm to student or others (87: November 5, R.C.)

Emergent relief denied; student no longer in district parent unilaterally moved (89: December 6, L.H.)

Emergent relief denied; student to "stay put" no immediate threat to himself or others (89: December 20, J.D.)

Emergent relief granted; board ordered to provide transportation for before school SAT Review Course (89: March 1, K.K.)

Emergent relief granted; child ordered to be available for bus pick up each school day during pendency of proceedings (89: February 16, K.S.)

Emergent relief granted; CST to reevaluate student - status quo of residential placement ordered (89: April 28, D.V.)

Emergent relief granted; 8 year old auditorially handicapped pupil entitled to transportation (89: January 25, S.T.)

Emergent relief granted; Evaluation ordered (89: February 6, M.C.)

HANDICAPPED CHILDREN - continued

Emergent relief - continued

- Emergent relief granted; expulsion hearing postponed until after CST Evaluation takes place; further order of the court (89: November 29, B.G.)
- Emergent relief granted; extended year program necessary to avoid emotional regression (87: July 6, L.B.)
- Emergent relief granted; extended year program necessary to prevent behavior regression (89: July 25, J.J.)
- Emergent relief granted; student permitted to graduate (89: June 23, B.F.)
- Emergent relief granted; home instruction deemed inappropriate; to be replaced by placement at special services junior/senior high school (88: February 19, V.S.)
- Emergent relief granted; immediate placement in out of district NI class, application for program for following year ordered (88: April 11, M.M.)
- Emergent relief granted; interim placement in school individual instruction pending due process hearing (88: February 9, B.P.)
- Emergent relief granted; out of state residential program most appropriate (87: October 28, S.G.)
- Emergent relief granted; serious physical harm to student would result if placement not granted (89: August 25, J.K.)
- Emergent relief granted - summer program necessary to prevent emotional regression (87: July 6, L.B.) (87: July 9, R.B.)
- Emergent relief pending due process hearing found proper, interim classification and placement ordered (ALJ decision 84: March 12, J.S.)

Evaluations

- Additional evaluation at no cost to parent, previous to three-year evaluation: refused where parent did not object in timely manner with evaluation obtained by school district nor was evidence presented sufficient to warrant (83: August 19, L.B.)
- Board acted reasonably in premising consent to change classroom of distractible child upon child study evaluation (89:1366, K.M., appeal dismissed St. Bd. 89:1393)
- Board not required to pay for second independent evaluation (84: August 2, J.B. on behalf of B.B.)
- Commissioned by parent prior to challenge of placement, not eligible for reimbursement (80: October 6, E.S., aff'd St. Bd. 81: March 4)
- Evaluation by CST ordered for 11 year old student with anti-social behavior where parent refused to consent (87:

September 16, C.C.)
Evaluation by independent CST ordered (89: September 18, A.H.)

HANDICAPPED CHILDREN - continued

Evaluations - continued

- Evaluation: independent evaluation ordered at board expense because of prior board errors (81: September 8, J.M. and R.M.)
- Evaluation ordered after parental consent refused (85: July 22, Englewood Cliffs) (88: January 29, H.G.) (88: February 18, G.W.) (88: April 15, S.D.) (88: July 5, S.B.) (88: July 5, O.G.) (88: August 23, E.C.)
- Evaluation ordered after parent refused consent: student had academic difficulties and had been charged with sex offense (86: September 8, South Orange-Maplewood)
- Evaluation ordered after parental consent withdrawn; second parent had initially given consent (89: October 4, N.C.)
- Evaluation ordered after parent refused consent; student had been classified N.I. in prior district (88: April 13, J.W.)
- Evaluation ordered after parental objection to NI classification; excessive absences to be considered (87: July 1, A.M.)
- Evaluation ordered after parent failed to meet with or cooperate with board (88: August 9, D.F.)
- Evaluation, ordered by court (80:1269, E.E., aff'd St. Bd. 81: March 4) (89: February 6, M.C.)
- Evaluation ordered for child preliminarily identified as emotionally disturbed (85: February 27, Pine Hill)
- Evaluation ordered for 8 year old student below norms on achievement tests (86: October 6, Chester) Child classified perceptually impaired over parent's objection (87: October 20, Chester)
- Evaluation ordered for student charged with sex offense despite parental objection that student had no academic problems (86: March 21, F.M.)
- Evaluation ordered where parent refused consent; student had attendance problem due to fear of school (87: September 25, M.M.)
- Evaluation: settlement for independent evaluation approved (88: May 11, Riverton)
- Evaluation upheld; Parental consent not necessary where child was in custody of DYFS at time (86: October 17, J.P.)
- Independent evaluation, mutually agreed to; board is not entitled to possession of the evaluation although board is responsible for its cost (ALJ decision 83: May 11, Bedminster)
- Moot; case dismissed as child no longer resides in district (87: October 20, M.H.)

Nondiscriminatory; N.J.A.C. 6:28-1.6(c) provides that in all instances evaluations shall be nondiscriminatory and take into consideration pupils socio-cultural background (83: December 23, D.H.)

HANDICAPPED CHILDREN - continued

Evaluations - continued

- Physical exam ordered - more evidence needed to determine proper classification (87: July 1, A.M.)
 - Psychiatric consultation and evaluation ordered (89: October 11, T.S.)
 - Psychiatric evaluation ordered over parental objection (87: March 10, Hamilton Twp.) (88: April 15, S.D.)
 - Psychiatric evaluation ordered where parents refused to cooperate (88: May 23, Monroe)
 - Re-evaluations after three years do not require parental consent (ALJ decision 84: July 10, Bloomfield)
 - Re-evaluation did not violate parents' rights and did not require their formal consent; they had notice of re-evaluation and knew it could lead to reclassification (87: June 16, R.B.)
 - Re-evaluation ordered where parental consent refused (88: February 18, R.J.)
 - Re-evaluation ordered by ALJ (89: April 28 D.V.)
- Funding - Jurisdiction which requires prior approval of private school placement; unapproved placement cannot be funded (87: September 11, L.D.)

Graduation

- Diploma award ordered although student did not complete requirements of IEP, based on end of year performance (84: November 15, R.M.)
- Graduation from high school of handicapped child ruled improper; child entitled to education through age 20 (81: June 22, M.B.)
- Graduation improper; cessation of special education services unwarranted and parents not informed that services were being stopped (84: October 19, A.F.)
- Graduation not valid where 18 year old student had not met goals in IEP and IEP was procedurally defective; placement in intensive remedial residential school ordered (86: April, L.C.)
- Handicapped child who withdrew from school and did not complete IEP not entitled to diploma (85: February 7, N.E.) (88:1854, M.K.)

Hearings

- Motion for reconsideration of an ALJ decision may be entertained by the ALJ under N.J.A.C. 1:6A-5.5 (84: January 30, Cranford)
- Motion to Amend Petition to seek additional relief granted, discovery ordered (89: November 9, P.D.)

Motion to join state agency as party defendant denied
(83: February 15, A.N.)

HANDICAPPED CHILDREN - continued

Hearings - continued

N.J.A.C. 6:28-1.9 providing for review of local board classification is invalid; use of classification officers employed by the Department of Education and procedure for review of officer's decision conflict with the Education for All Handicapped Children Act; (NOTE: Under N.J.A.C. 1:6A, effective January 1, 1983, hearings re: handicapped children must be transmitted to the Office of Administrative Law. The decision of the ALJ can only be appealed to the Courts.) East Brunswick Bd. of Ed. v. N.J. State Board of Education, (D.N.J., decided July 7, 1982), S.W. and D.W. v. Bd. of Ed. of Westfield, unpublished opinion (Docket No. A-3150-80T1, decided March 4, 1983) Note: Cases pending at time of East Brunswick decision, parents may accept classification officer's decision, if wish to appeal, must file in federal or state courts. If a state court is chosen, the action is brought in the law division and tried without a jury. Minquet v. Bd. of Ed. of North Brunswick, unpublished opinion, App. Div. (Docket No. A-1483-82T3, decided October 20, 1983)

Parent's failure to attend hearing constitutes abandonment of due process rights (89: March 16, K.G.)

IEP deemed inadequate; CST ordered to develop new IEP (89: February 8 D.W.)

Jurisdiction of classification officer (80:1260, Hecht)

Ramapo Hills Regional v. Van Decker, Appellate Division, unpublished opinion (D.N.J., decided September 29, 1983) certif. denied 94 N.J. 530 (1983) rev'g and dismissing as moot (81: June 23, aff'd St. Bd. 82: February 3)

Motion to recuse denied (87: December 4, E.R.)

New district automatically responsible for tuition when child moves (81: January 14, Somerset Hills)

Parent ordered to cooperate with CST in evaluation process and development of IEP (89: November 27, S.M.)

Placement of

Accessibility - physically handicapped pupil not entitled to placement in school which she would attend if non-handicapped, where another school in district is already accessible (84: August 23, L.F.)

Allergic child placed on home instruction (86: December 26, Township of Ocean School District)

Appropriate educational program, mainstreaming handicapped student with non-handicapped student body (82: November 3, E.P.) (83: August 10, S.S.) (84: February 22, Franklin)

Lakes)

HANDICAPPED CHILDREN - continued

Placement of - continued

- Autistic child ordered placed in school exclusively designed for such children despite long commute; child needed behavioral instruction used at school (86: October 31, R.T. and D.T.) (87: August 14, J.C.) See also (88: September 14, J.C.) (87: August 27, E.S.)
- Autistic child placed at private school with 1 to 1 aide, occupational, physical and speech therapy (88: September 14, J.C.)
- Autistic child placed in LRE despite inconvenience to parents (89: July 12, J.K.)
- Board IEP ordered implemented where parental consent refused and parent did not appear at hearing (87: May 28, Mansfield Twp.) (88: January 21, H.G.)
- Board permitted to forward students records to potential out of district placement (89: June 5, R.B.)
- Board's placement decision upheld; provided FAPE in LRE (89: June 8, T.W.) (89: June 15, L.P.)
- Board's reversal of its earlier placement decision held unreasonable since detrimental to child (71:260, aff'd St. Bd. 71:266)
- Burden of proof re: IEP is with the Board, Lascari, 116 N.J. 30 (1989)
- Certified reading teacher not required where progress being made under teacher with handicapped certificate (84: December 18, S.S. on behalf of C.S.)
- Change of placement prohibited pending hearing on complaint filed by parents (85: September 12, S.R.)
- Change of placement proposed by board ordered where parent failed to appear (87: March 19, Spotswood)
- Change of placement proposed by parent approved despite 2 1/2 hour daily travel time. Out-of-district placement deemed most appropriate (87: August 27, E.S.)
- Change of placement proposed by parent denied where current placement closer to home and less restrictive; student remains in in-district placement (87: August 11, S.D.) Motion to Reopen denied (87: November 6, S.D.)
- Change of placement proposed by parent rejected; homebound instruction inappropriate (88: March 14, D.C.)
- Commission reconsiders settlement: evaluation team, not board, has final say regarding administration of written tests regarding student's distractibility (88: March 8, F.M. and N.M., decision on motion)
- County Special Services district placement ordered for

emotionally disturbed child; private school placement rejected because of longer transportation time and student's history of behavioral problems on bus (87: May 7, North Hanover)

HANDICAPPED CHILDREN - continued

Placement of - continued

Day program placement overturned, residential placement ordered (83: September 7, D.V.B.)
Deaf child ordered placed in district class, not special private school (87: June 12, D.W.)
Educational institution, certain modification of program to accommodate handicapped pupil held proper (83: June 24, Brindisi)
Educational needs, not home problems, constitute criteria for residential placement (81: September 4, E.N., aff'd St. Bd. 82: March 3) (83: February 16, M.J.S.) (84: February 22, M.S.) (84: April 23, D.S.)

Extended school year

Evaluation by CST before June 1989 will determine if extended year program is necessary (88: September 14, J.C.)
Extended year for pre-school child necessary. Board obligated to provide if substantial regression will result. N.J.S.A. 18A:46-6 indicates lesser standard at pre-school level (87: June 29, J.B.)
Extended school year for speech therapy and correction denied; impractical to implement due to timing of events (87: September 4, C.M.)
Extended year necessary; autistic child suffered six month regression during previous summer (86: July 14, S.M.)
Extended year necessary; continuity in structured environment necessary to prevent regression (87: July 6, L.B.) (87: July 9, R.B.) (87: August 14, J.C.)
Extended school year necessary for appropriate education. (87: December 4, E.R.) (89: June 5, T.M.)
Extended school year necessary due to 8 month absence from classroom (89: June 8, T.H.)
Extended school year ordered - necessary to avoid substantial regression and to provide FAPE (88: September 9, W.V.)
Extended year unnecessary; no regression in skills shown (87: August 12, J.H.)
Extended year not necessary; pupil would recoup most of

skills lost (85: July 31, R.M. and E.M.) (85: August 9, J.H.)
Extra year of schooling denied; student received FAPE, district had no additional obligation (89: September 12, J.M.)
In district placement in NI class provided FAPE in LRE; out-of-district placement inappropriate (89: July 20, O.C.)

HANDICAPPED CHILDREN - continued

Placement of - continued

Extended school year - continued

Look to IEP to determine whether proficiencies will be lost, then compare the extent of regression against possibility of recoupment of skills (83: December 5, Holmdel) (85: July 31, R.M. and E.M.) (85: August 9, J.H.)
Home instruction deemed appropriate based upon temporary IEP and consent thereto (87: November 5, R.C.)
Home instruction deemed appropriate (89: September 18, S.S.)
Home instruction inappropriate - continued placement at day training center ordered (88: March 14, D.C.)
Home instruction deemed inappropriate - placement at special services junior/senior high school ordered (88: February 19, V.S.)
IEP - Burden of proof is with the board. Lascari, 116 N.J. 30 (1989)
IEP - Focus is on program actually offered not what board could have provided. Lascari, 116 N.J. 30 (1989)
IEP inadequate - incapable of objective evaluation. Lascari, 116 N.J. 30 (1989).
Individual Education Program - appropriate (89: October 5, C.T. & K.T.)
Individualized Educational Plan - (78:754, T.E.E., aff'd St. Bd. 79: February 7) (82: January 27, Plainfield, aff'd St. Bd. 82: May 5) (82: March 3, North Brunswick) (83: January 24, G.B.) (83: January 27, D.M.) (83: February 9, North Arlington) (83: August 12, P.N.) (84: April 4, C.F.) (ALJ decision 83: November 4, E.S.) (84: January 9, Cranford)
Revision not required where student achieved reasonable level of academic success and program was only one month into 90 day trial period (87: December 11, J.S.)
Revision required to include student and parental counseling (89: June 20 C.L.)
Individual Education Program inappropriate; CST ordered to

develop new IEP (89: February 8 D.W.)
Interim placement ordered pending implementation of settlement
(87: December 28, S.G.)
Laches; school board has affirmative responsibility of
advising parents of their rights (83: December 5, Holmdel)
"Least restrictive environment" (83: August 10, S.S.) (83:
August 12, P.N.) (83: August 19, L.B.) (84: February 22,
M.S.) (87: August 11, S.D.)
"Least restrictive environment for neurologically impaired
self-contained class in district is least restrictive
environment and is preferable to special school (86:
October 14, W.O. and C.O.)

HANDICAPPED CHILDREN - continued

Placement of - continued

"Least restrictive environment" is selected in light of pupil's
is selected in light of pupil's special education needs;
what is too restrictive for one child may not be restrictive
enough for another (88: June 24, M.B., aff'd App. Div.
unreported op. (Dkt. No. A-5-88T5F, February 17, 1989))
"Least restrictive environment" where child can be mainstreamed
for parts of the day is appropriate placement; previous
placement is no longer approved by state, and although
students showed excellent progress, is not least restrictive
(88: May 31, J.K.)
Mainstreaming, (80: September 19, D.H.) (82: January 27,
Plainfield, aff'd St. Bd. 82: May 5)
Mainstreaming: placement in special public school class
ordered (84: September 18, South Orange-Maplewood)
Maintenance costs, reimbursement denied for claim originating
prior to adoption of Education for All Handicapped Children
Act, October 1, 1977 (83: December 5, Holmdel)
Midyear change of placement deemed inappropriate; student
retained in present placement (88: December 28,
K.A.)
Moot, case dismissed as (71:297)
Neurologically impaired student ordered placed in school which
has both NI and EMR classes for her appropriate divided
program (87: September 15, D.D.)
Out-of-district placement at Landmark School is appropriate and
LRE (88: November 4, N.O.)
Out-of-district placement at Pathway School is appropriate and
LRE (89: January 4, S.V.)
Out-of-district placement inappropriate; Board placement
appropriate and LRE (89: February 8, D.W.) (89:

May 26, D.D.)
Out-of-district placement inappropriate; home instruction ordered
(89: September 18, S.S.)
Out-of-district placement at Landmark School deemed unnecessary,
in-district placement and IEP appropriate (89: October 5,
C.T. & K.T.)
Parental challenge to out-of-district placement rejected; no
evidence that out-of-district placement inappropriate (87:
September 4, J.P.)
Parental proposed placement rejected, in district placement
deemed least restrictive environment (87: August 21, M.D.)
(87: December 30, A.H.)
Parents may be required to reimburse state for care and
maintenance of institutionalized child, Levine v. Dept. of
Institutions and Agencies, 84 N.J. 234 (1980); but compare
(80: October 22, C.M., remanded St. Bd. 81: February 4)
and (82: February 18, C.M., aff'd St. Bd. 82: May 5) where
P.L. 94-142 found to require services at no cost to parents

HANDICAPPED CHILDREN - continued

Placement of - continued

Parents must be involved with the development of an
Individualized Educational Program (83: March 28, Penns
Grove) (83: July 21, W.W.) (83: November 4, E.S.)
Parents ordered to cooperate with Board in finding out-of-
district placement including interviews and
supplying information (89: June 5, R.B.)
Perceptually impaired student ordered removed from private
school for PI to public high school PI class (86: December
12, M.H.)
Placement cannot be questioned in proceeding brought to
challenge classification (81: September 17, I.G. on behalf
of L.G., aff'd St. Bd. 82: June 2)
Placement in fourth grade after completion of program ending at
third grade not "change in placement" which is barred upon
filing of complaint by parents (85: September 23, J.K.)
Placement in out-of-district NI program ordered; district to
apply to other program for next school year (88: April 11,
M.M.)
Placement in private school by parents (86:266, A.A., aff'd St.
Bd. 86:285, aff'd 218 N.J. Super. 32 (App. Div. 1987))
Placement in private school by parents, board not required to pay
tuition and transportation costs (81: February 4,
Pennsville, St. Bd. rev'g 80: June 30, aff'd St. Bd. 81:
July 1), but see (80:845, Rauch) (80: August 4, Hoyt, aff'd

St. Bd. 81: January 22) (80:970, A.F.) (80: October 6, E.S., aff'd St. Bd. 81: March 4) (82: March 3, North Brunswick) Olive v. Bd. of Ed. Twp. of Pennsville, unpublished opinion App. Div. (Docket No. A-2837-80, December 2, 1982) (83: February 23, S.H.) (83: May 19, S.V.) (83: September 23, S.F.)

Placement in private unapproved school by parents; board not responsible for reimbursement prior to approval being granted. Board responsible for past-approval costs if placement deemed appropriate by Board or ALJ.

Placement in 12 month day program with a one to one aide and parent training LRE; residential placement denied (89: July 12, C.K.)

Placement in year round residential program ordered for child classified as TMR (88: August 12, C.K.)

Placement of multiply handicapped pupil presently attending out of state school in newly created regional program held proper (ALJ decision 83: March 8, Penns Grove)

Placement of student with minimal brain disfunction in private community school rather than public high school resource room denied (86: October 31, B.C.)

HANDICAPPED CHILDREN - continued

Placement of - continued

Placement shall be in an appropriate setting as close as possible to the student's home. N.J.A.C. 6:28-3.6(e)5ii (87: August 31, D.Z.)

Private day school placement ordered, emotionally disturbed pupil (84: March 22, Freehold)

Private day school was least restrictive environment for student who had stabbed another and was subsequently classified as emotionally disturbed (88: June 24, M.B., aff'd App. Div. unreported op. (Dkt. No. A-5-88-T5F, February 17, 1989))

Private full day intensive placement with extended school year and speech therapy ordered for pre-school handicapped student with autism (89: June 5, T.M.)

Private placement denied; in district pre-school handicapped program appropriate (89: September 11, G.F.)

Private placement denied; NI class provided FAPE in LRE (89: May 26, D.D.)

Private school: board may not place pupil in school which has not been approved by Department of Education (84: August 8, E.S. & C.S. on behalf of M.S.) (87: September 11, L.D.) (88: June 10, C.L.)

Private school may accept, reject students as they deem appropriate (88: September 14, J.C.)

Private school ordered for neurologically impaired pupil with aide and psychological counseling to be paid for by board (85: December 27, S.P.)

Private school placement ordered for gifted, emotionally disturbed student; private school significant improvement over home instruction, can implement IEP (87: September 11, L.D.)

Private placement denied: parental motivation for change of placement was racial composition of public school classes (84: October 8, D.K.)

Promotion to ninth grade not warranted where pupil had failed to achieve IEP goals or meet standards in N.J.A.C. 6:28-4.3 (85: November 1, Mr. and Mrs. J.R.)

Regulations, N.J.A.C. 6:28-1.2 is not vague nor violative of New Jersey Constitution or Equal Protection Clause and Due Process Clause of the 14th Amendment of U.S. Constitution (82: November 29, S.F.)

Removal from classroom ordered pending re-evaluation because of likelihood of danger to student and to others if he remained in current placement (86: December 5, L.W.)

Removal of disruptive student from classroom is "change of placement" and cannot be made pending hearing on same (86: February 3, O.M.)

HANDICAPPED CHILDREN - continued

Placement of - continued

Residential costs; reimbursement of parents denied, where no showing that residential placement was educationally necessary (80: October 28, J.S., aff'd St. Bd. 81: March 4) (83: February 16, M.J.S.) (84: February 22, M.S.) (84: April 23, D.S.)

Residential costs; State Board had authority to place residential costs of placement on local boards (N.J.A.C. 6:28-4.3(g)) rather than the State despite absence of specific legislation to that effect, (80:1299, D.S., aff'd St. Bd. 81: June 3, aff'd 188 N.J. Super. 592 (App. Div. 1983), certif. denied 94 N.J. 529)

Residential placement

Board ordered to consider for child found to be emotionally disturbed and who had been unilaterally placed by parents in residential program (86: December 12, B.G.) Residential program in Colorado deemed

inappropriate; ALJ cannot compel Colorado public school to change placement; year round residential program in New Jersey ordered (87: September 30, B.G.)
 Board ordered to find alternative residential placement for student expelled from residential placement for behavior related to handicap (89: February 23 F.M.)
 Denied; board not given notice of presumed rejection of placement (89: October 11, T.S.)
 Denied; 12 month day program with one to one aide in-house and parent training LRE (89: July 12, C.K.)
 Must be continued in order to provide pupil with optimum program required by pre-July, 1984 N.J. law, even where day school program proposed by board would have met federal standard. S.G. v. Parsippany Troy Hills Bd. of Ed., (Docket No. 82-3373, D.N.J., decided May 22, 1984) (Decision issued from bench)
 Not a related service but an approved special class/program (88: March 3, A.N.)
 Not necessary; in-district placement appropriate (89: October 5, C.T. & K.T.)
 Not necessary; parents chose residential placement in order to provide "best" education (85: October 25, M.B.)
 Not necessary; special class in public high school provides least restrictive environment (84: August 29, G.G. and L.G.)
 Not necessary for 18 year old learning disabled student (85: August 9, J.H.)
 Not necessary for 18 year old emotionally disturbed child; board not obligated to provide "best" program (86: July 21, J.G.)

HANDICAPPED CHILDREN - continued

Placement of - continued

Residential placement - continued

Not necessary for emotionally disturbed child; learning problems could be segregated from emotional problems; placement in day school ordered (86: July 24, M.P.)
 Ordered continued for one semester followed by incremental removal into extended day placement (87: December 4, E.R.)
 Order continued for student as appropriate (89: September 27, D.V.)
 Ordered for autistic student (89: August 25, J.K.)
 Ordered, emotionally disturbed pupils (84:

December 31,

Mr. and Mrs. R.P. on behalf of B.P. & T.P.)

Ordered for autistic student; home instruction inappropriate
(88: November 21, R.M.)

Ordered for dyslexic student who needed intensive 2 year
remedial program (87: September 16, P.D.)

Ordered for multiply handicapped, autistic student (87:
October 28, S.G.)

Ordered for multiply handicapped student - least restrictive
environment in which student can achieve his best
success (88: August 26)

Ordered for neurologically impaired dyslexic student (88:
November 4, H.O.)

Ordered for neurologically impaired emotionally disturbed
sixteen year old with behavior problems (87: May 15,
J.L.)

Ordered for N.J. student (89: January 4, S.V.)

Ordered for severely emotionally disturbed nine year old
(85: August 16, L.P.)

Ordered for TMR student with static encephalopathy and
cerebral palsy (88: August 12, C.K.)

Ordered, multiple handicapped pupil (84:
March 15, S.M.)

(84: July 6, S.R. on behalf of E.R.)

Ordered where day training program did not meet child's
needs (87: November 10, T.D.)

Parent ordered to return child to residential placement
(86: December 4, L.D.)

Residential placement denied (84: November 15,
V.B.S.)

Residential placement with intensive remedial program
ordered for student who had failed to progress in
public school (84: September 12, E.K. & C.K. for P.K.)

Restorative damages for loss of income denied - no authority
for ALJ to award (87: August 14, J.C.)

Speech therapy program ordered for pre-school handicapped
child for 10 month school year (87: September 4, C.M.)

HANDICAPPED CHILDREN - continued

Placement of - continued

Residential placement - continued

Standard for residential placements; cited Krueller v. New Castle County School District, 642 F.2d 687 (3rd Cir. 1981) (87: December 4, E.R.)

Status quo preserved as most appropriate; placement at private residential school (89: September 27, D.V.)

Temporary continued placement ordered (90 days) while board and parents seek alternative placement (89: August 22, J.M.)

Traveling not recommended; student to remain in in-district placement (87: August 31, D.Z.)

Order sealing records (89: July 11, J.N.)

Private Schools

State Board regulation limiting rental reimbursement upheld; constitutional on its face and as applied (89:1682, Penta Assoc., aff'd with modification St. Bd. 90:1784)

Related services

Catheterization is a related service which board must provide; it is not a medical service because it need not be performed by a physician. Irving Independent School District v. Tatro, 468 U.S. 883 (1984), 104 S.Ct. 3371 (1984)

Counseling denied in specific case where learning problems found to be separate from emotional problems (84: November 20, C.D.)

Counseling program with therapy ordered as related services (89: September 18, S.S.)

Payment for occupational therapy evaluation and treatment occurring prior to child's classification ordered; board did not properly inform parents of procedural rights under EAHCA (87: December 11, J.S.)

Physical therapists in private practice need not be approved by State Board (84: July 12, V.P. and M.P. on behalf of M.P.)

Physical therapists need not be trained in technique desired by parents (84: November 5, Harrington)

Physical therapy and occupational therapy ordered as related services necessary for orthopedically handicapped pupil (89: March 23, K.S.)

Post graduate therapeutic services requested were medical not educational; not deemed to be related services (89: September 12, J.M.)

Psychiatric medical expenses are not compensable educational services (N.J.A.C. 6:28-1.2; 20 USCA 1401 (17) (84: April

23, D.S.)
Psychological services for student and family ordered (84: July
30, Mr. and Mrs. G.B. on behalf of B.B.)

HANDICAPPED CHILDREN - continued

Related services - continued

Psychotherapy is a related service where an essential part of program utilized by special school (T.G. v. Piscataway Bd. of Ed., 576 F. Supp. 420 (DNJ 1983), aff'd 738 F. 2d 420 (3rd Cir. 1984), cert. denied _____ U.S. _____, 105 S. Ct. 592 (1984) (ALJ decision 84: May 30, J.K.)

Residential placement with behavior management is not a related service but an approved special class or program (88: March 3, A.N.)

Request for one-to-one aide denied (86: April 7, R.C.)

YBP program of residential and psychotherapeutic services for adoption syndrome/attachment disorders deemed related service under special education laws (87: September 30, B.G.)

Settlement ordered enforced by ALJ where parents changed their mind prior to signing (87: December 15, J.H.)

State facilities; statutory right to a thorough and efficient education for children classified as eligible for day training, N.J. Assn. Retarded Citizens, 89 N.J. 234 (1982)

"Suitable facilities, what constitutes (61-62:109) (70:220)

Need not be "equal" to those provided by private school (67:89; same case at 69:205, 70:283 and 74:420, modified and aff'd St. Bd. 75:1161) (67:195)

Transportation

Board ordered to provide transportation, travel and lodging costs for parents and child to residential placement (88: August 12, C.K.)

Board not obligated to assume expense of transportation to private school of handicapped pre-school child (83: May 11, W.W.) NOTE: but see existing regulations concerning transportation of handicapped pre-school children under N.J.A.C. 6:28-1 et seq.

Board not obligated to comply with parent's request not to use particular bus company, as long as transportation services offered conform to IEP (86: October 27, C.P.)

Board not obligated to provide full transportation reimbursement to student who was "orthopedically handicapped." Student was not "educationally handicapped" in accordance with EHA. A.A. v. Cooperman, 218 N.J. Super. 32 (App. Div. 1987)

Board not obligated to transport student to summer programs where student had been assigned to particular session at parent's request and parent had agreed to transport student (86: July 14, M.Y.)

Board's policy restricting transportation to residence drop off

points interrupts student's education. Board ordered to transport student to YMCA after school (89: August 2, S.J.) Board responsible for transportation expenses for extended year program (88: September 9, W.V.)

HANDICAPPED CHILDREN - continued

Transportation - continued

Board to provide as related service to extended year program (89: July 25, J.J.)

Board to provide transportation services to student and one parent/aide to residential placement (87: October 28, S.G.)

Handicapped child voluntarily placed in private school entitled only to such reimbursement for transportation as allowed under N.J.S.A. 18A:39-1, and is entitled only to such transportation as is provided other private school pupils (86:266, A.A., aff'd St. Bd. 86:285, aff'd 218 N.J. Super. 32 (App. Div. 1987)) (87:921, B.W.)

Interest awarded by trial court where it found Board's refusal to reimburse parents for tuition and transportation expenses unreasonable (attorney fees denied), Fallon v. Scotch Plains-Fanwood, 185 N.J. Super. 142 (App. Div. 1982)

Ordered for 8-year old auditorially handicapped student (89: January 24, S.T.)

Reimbursement costs denied for parents voluntarily transporting pupil and refusing board transportation (77:622, Goore)

Reimbursement costs denied for private schools outside the state (76:323, M.D., aff'd in part St. Bd. 76:333)

Reimbursement costs for transportation awarded despite fact that not included in IEP, board responsible (88: March 3, A.N.)

Reimbursement for private school transportation ordered where the private school determined to be appropriate placement (83: November 30, W.W.) (87: August 14, J.C.) (87: September 16, P.D.)

To private school (79:105, J.G.)

To special education classes (73:381)

Tuition

Board did not participate in placement decision (66:210) (67:6) (67:195) (67:242) (70:220) (71:234, modified St. Bd. 71:240) (73:30, aff'd St. Bd. 73:34, aff'd App. Div. 75:1086) (74:420) (74:637) (75:6, Robinson) (75:103 R.D.H., aff'd St. Bd. 75:111, aff'd App. Div. 76:1161) (75:468, M.Q.) (78:754, T.E.E., aff'd St. Bd. 79: February 7) (78:897, B.K.) but see, court ordered placement, board held financially responsible (77:342, Harbor Hall School) and

(79:105, J.C.) Olive v. Bd. of Ed. Twp. of Pennsville, unpublished opinion, App. Div. (Docket No. A-2837-80, December 2, 1982) (83: February 23, S.H.) (83: May 19, S.V.) (83: September 23, S.F.)

Board may be liable for tuition on unilateral parent placement in private school; LRE allowing him to best achieve success in learning. Lascari, 116 N.J. 30 (1989)

Board ordered responsible for all tuition costs and related expenses in residential placement (87: September 16, P.D.)

HANDICAPPED CHILDREN - continued

Tuition - continued

Board ordered responsible for tuition, transportation and related services costs for unapproved residential placement (89: February 24, C.C.)

Board ordered to make tuition payments to private school; may not withhold payment because of concern about tuition increases (86: September 19, D.P.)

Board responsible for all tuition and related expenses in 12 month day placement with aide and parental training (89: July 12, C.K.)

Board to provide transportation and expenses for student, parents and brother to residential placement (88: August 26, J.P.)

Eligible for day training; held pupil's severe and profound mental retardation did not obviate board's responsibility for tuition costs (84: January 5, Bay Head)

Insufficient evidence to establish that uncertified teachers were employed as subs to qualify as allowable costs (89:97, Pineland Learning Center)

Interest awarded by trial court where it found Board's refusal to reimburse parents for tuition and transportation expenses unreasonable, (attorney fees denied), Fallon v. Scotch Plains-Fanwood, 185 N.J. Super. 142 (App. Div. 1982)

Parents entitled to tuition in unilateral private placement but not room and board; residential program was not necessary. Lascari, 116 N.J. 30 (1989)

Placement in private school by parents, board liable for tuition where placement necessitated by board's delay in classification (80:1260, Hecht)

Placement in private school by parents, board not required to pay tuition and transportation costs, Olive v. Bd. of Ed. Twp. of Pennsville, unpublished opinion App. Div. (Docket No. A-2837-80, December 2, 1982) (83: February 23, S.H.) (83: September 23, S.F.) Placement in private school voluntary by parents; board not required to pay tuition or

expense (89: July 20, O.C.)
Placement in private school by parents unilaterally; board
ordered to pay as IEP was inappropriate (88:
August 26, J.P.)
Placement in unapproved private residential facility by parents;
board not responsible for costs prior t approval,
responsible for past-approval costs if placement deemed
appropriate by Board or ALJ (88: July 22, A.N.)
Private school tuition; board not authorized to expend more
than state approved maximum without waiver from Department
of Education (85: August 20, D.H.)

HANDICAPPED CHILDREN - continued

Tuition - continued

- Private school tuition; board ordered to pay tuition in excess of state approved maximum pending selection of alternative placement, even after private school lost state approval (85: October 8, A.T.) and (84: December 24, A.T.)
- Private school tuition; board ordered to pay where it did not give formal written notice to parents during summer preceding availability of public school program (87: March 17, M.P.J.)
- Private school tuition, board required to pay 50% of tuition charges (76:323, M.D., aff'd in part St. Bd. 76:333)
- Private school tuition rates: must meet standards set out in N.J.A.C. 6:20-4.2 (82: February 25, Archway, aff'd St. Bd. 82: June 2, aff'd App. Div. 83: 1493)
- Private school tuition rates; Regulatory scheme deemed facially valid. Council of Private Schools v. Cooperman, 205 N.J. Super. 548 (App Div. 1985) (89:2750, Deron School, aff'd St. Bd. 90:1710)
- Private School tuition rates - regulatory scheme valid as applied; 2.5% surcharge ensued reasonable return on investment (89:2750, Deron School, aff'd St. Bd. 90:1710)
- Private school tuition, reimbursement denied where parents unilaterally enrolled student in out of state facility; board ordered to reimburse parents for tuition and transportation costs incurred after due process procedures initiated (84: April 4, C.F.)
- Private school tuition; statute of limitations, doctrine of laches apply to claims for (81: January 14, Somerset Hills)
- Rate may not include teachers lacking certification (89:97, Pineland Learning Center)
- Reimbursement costs approved in part, denied in part; Board responsible for Summer '89, Parents responsible for 87-88, Summer 88, 88-89 on basis of proof or lack thereof (89: October 11, G.F.)
- Reimbursement costs approved where parent unilaterally withdrew student; placement was proper and district IEP inappropriate (89: January 4, S.V.)
- Reimbursement costs denied for parents voluntarily placing child in private school (77:698, S.W., aff'd St. Bd. 77:703, remanded App. Div. 77:704, remanded St. Bd. 78:1041, Commissioner decision on remand 80:967, aff'd St. Bd. 81: March 4, remanded, unpublished opinion, App. Div., (Docket No. A-3150-80T1, March 4, 1983)) (77:760, H.D., remanded St. Bd. 77:771) (78:804, H.D., aff'd St. Bd. 79:832)

Reimbursement costs denied where parents placed student in inappropriate out-of-state placement. Burlington does not apply (87: September 30, B.G.) See also (86: December 10, B.G.)

HANDICAPPED CHILDREN - continued

Tuition - continued

- Reimbursement costs denied where parents unilaterally placed student in unapproved private school; board may be responsible for past-approved costs if placement deemed appropriate by Board or ALJ (88: July 22, A.N.)(88: September 6, G.D.)
- Reimbursement costs denied where parents voluntarily placed student in Katzenbach school and subsequently in model secondary school in Washington, D.C., where appropriate public education was offered and parents had not requested placement determination by board (84: April 11, J.J.)
- Reimbursement costs denied where parents voluntarily placed student in private school; in district placement was FAPE in LRE (89: July 20, O.C.) (89: February 8, D.W.) (89: May 26, D.D.)
- Reimbursement cost for tuition, transportation and textbook costs for hemophiliac student denied by application of doctrine of laches (82: October 22, Rednor, aff'd St. Bd. 83: March 2)
- Reimbursement costs granted, where parents removed child from school and board classification later determined to be erroneous (82: June 2, East Brunswick, St. Bd. rev'g 81: October 27)
- Reimbursement costs of Occupational Therapy evaluation and treatment prior to classification ordered where board failed to inform parents of procedural rights under EAHCA (87: December 11, J.S.)
- Reimbursement for five and one-half years of private schooling denied; board had not failed to properly classify student and student had no perceptual or neurological impairment which required special schooling (87: April 30, R.L.W.)
- Reimbursement for tuition and other costs of parental placement is "appropriate" relief under the Education for All Handicapped Children Act, where parental placement ultimately determined to be the proper one. Burlington School Committee of the Town of Burlington, Massachusetts v. Department of Education of the Commonwealth of Massachusetts, ____ U.S. ____ (1985) 53 U.S.L.W. 4509 (1985)
- NOTE: This decision departs from earlier lower federal

court decisions which held that reimbursement was available only in exceptional circumstances, and some of the following cases were decided under the reasoning of those earlier decisions.

Reimbursement denied where board made appropriate placement
(89: July 20, S.C., B.C.)

HANDICAPPED CHILDREN - continued

Tuition - continued

- Reimbursement denied, where parents withdrew child from approved private school placement during pendency of classification hearing (81: October 13, Carteret)
- Reimbursement denied where parents unilaterally placed student in non-approved facility (88: September 6, G.D.)
- Reimbursement for private school tuition denied where board made available a public education program which was least restrictive environment for pupil (83: September 23, S.F.)
- Reimbursement for private school tuition ordered from time litigation commenced which determined that pupil's appropriate placement was in the private school (83: November 30, W.W.)
- Reimbursement for vocational school ordered where parents not informed that graduation ended free special education (84: October 19, A.F.)
- Reimbursement granted for tuition and transportation costs of residential placement at unapproved school (89: February 24, C.C.)
- Reimbursement granted, where pupil was domiciled in district (80: March 4, E.E., aff'd St. Bd. 81: March 4) (80:1299, D.S., aff'd St. Bd. 81: June 3, aff'd 188 N.J. Super. 592 (App. Div. 1983))
- Reimbursement of tuition granted where educationally necessary (83: March 23, A.N.)
- Representations by board employee that board would assume out of state school tuition expenses; held as a matter of equity, board should pay tuition costs on condition of petitioners cooperation in reevaluation (84: April 23, D.S.)
- Residence, where parent of pupil resides in a school district that district is responsible for pupil's tuition even though pupil may never reside there and parent moved to district after pupil's placement (84: January 5, Bay Head)
- Salaries of two uncertified teachers - non-allowable costs for tuition calculation (88:2397, Clearview)
- State Facilities Education Act; board responsible for tuition of pupil classified eligible for day training from effective date of act (84: January 5, Bay Head)
- Tutorial assistance; board ordered to pay for home instruction tutor obtained by parents for their first grade child; severely allergic child could not be placed in classroom and board did not offer to provide district tutor until mid-academic year (86: December 26, Township of Ocean)

School District)

Unapproved private schools: ALJ has no power to award tuition and transportation costs (88: May 31, J.K.) (88: June 10, C.L.)

HANDICAPPED CHILDREN - continued

Vocational training - ordered as part of compensatory services (88: September 7, A.R.)

Witness fees - ALJ has no authority to award under the Handicapped Children's Protection Act, 20 U.S.C. Section 1415(e) (87: August 11, S.D.) Motion to reopen denied (87: November 6, S.D.)

HOLIDAYS

(See "Public Holidays", this index)

HOMEBOUND INSTRUCTION

(See "Equivalent Instruction", this index)

HOME INSTRUCTION

(See "Equivalent Instruction", "Pupils - Compulsory Attendance Laws", "Commissioner - Compulsory Attendance Laws" and "Handicapped Children", this index)

HOMOSEXUAL TEACHER

Advocacy of gay rights and attendant publicity does not constitute unbecoming conduct absent impairment of teacher's performance or disruption of school system (80:1229, Gish, aff'd in part, rev'd in part St. Bd. 81: July 1, aff'd in part, App. Div., unpublished opinion, (Docket No. A-5564-80T1, December 16, 1982))
Psychiatric examination ordered (74:1150, aff'd St. Bd. 75:1085)

IMMUNIZATION

Exclusion from school, exemption claimed on basis of religion, Mountain Lakes Bd. of Ed. v. Maas, 56 N.J. Super. 245 (App. Div. 1959) aff'd o.b. 31 N.J. 537 (1960); Kolbeck v. Kramer, 84 N.J. Super. 569 (Law Div. 1964); (60-61:134)
Exemption from Mantoux test for TB denied (88:1007, Spano)

INCREMENTS

Generally (39-49:49) (39-49:53) (39-49:57) (39-49:65) (39-49:69)

(39-49:73) (39-49:81) (39-49:128) (39-49:164) (76:852, Payne,
aff'd St. Bd. 76:554, aff'd App. Div. 77:1303 certif. denied 75
N.J. 602 (1978)

INCREMENTS - continued

Appeal must be filed within 90 days after first notice of Board decision and not reaffirmation thereof (81: February 6, (Whitaker, aff'd St. Bd. 81: May 6) (83: August 8, Improta), see also (82: May 3, Improta, appeal dismissed as untimely St. Bd. 82: July 9, aff'd App. Div., unpublished opinion (Docket No. A-5138-81T2, decided March 26, 1984) Cf. (83: August 5, Pace)

Boards may but are not required to return teachers to salary schedule in year following withholding (Probst, 127 N.J. 518 (1992) rev'g 249 N.J. Super. 222 (1991), rev'g 90:1795, St. Bd. rev'g 89:2651 Commr.)

Clerical errors: Board may freeze salary to correct clerical error made in computing salary (80:972, Massa, aff'd St. Bd. 81:1465) Correction of error in placement on guide is not withholding an increment pursuant to N.J.S.A. 18A:29-14 (80:898, Honaker) (86:3033, Conti, St. Bd. rev'g 85: June 10, aff'd App. Div. unreported decision (Docket No. A-77-86T1, decided October 13, 1987)) (See also "Salary" and "Salary Schedule", this index)

Clerical/secretarial employees; authorization to withhold increment, 18A:11-1 (81: March 9, Regent) (83: August 15, Ehid, aff'd St. Bd. 84: January 4)

Commissioner lacks jurisdiction to hear dispute alleging that initial placement on salary guide conflicts with collective negotiation agreement (86:3033, Conti, St. Bd. rev'g 85: June 10, aff'd App. Div. unreported opinion (Docket No. A-77-86T1, decided October 13, 1987))

Computation of salary after withholding of increment (78:717, Ackerman, aff'd St. Bd. 79:815) (80: May 30, Ferraiolo) (80: June 19, Cohen) (82:1212, Tenney, aff'd St. Bd. 83:1647) (82:1358, Sokolow, aff'd St. Bd. 83:1645)

Computation of salary after withholding of increment - need not be on salary guide (89:2651, Probst, rev'd St. Bd. with opinion 90:1795, rev'd 249 N.J. Super. 222 (App. Div. 1991), rev'd 127 N.J. 500 (1992))

Computation of salary of employee at maximum step on salary guide after withholding of increment (84:1167, Masone) (87:1431, Dowling)

Contractual increase, denial of both salary increment and contractual increase pursuant to board policy held within board's authority (83: May 23, Gallitano, aff'd St. Bd. 83: October 5)

Contractual increase in year following withholding - satisfactorily performing teacher entitled to annual salary progression for the year in salary schedule (89:2651, Probst, rev'd St. Bd. with opinion 90:1795, rev'd 249 N.J. Super. 222 (App. Div. 1991), rev'd 127 N.J. 500 (1992))

Denied increment need not be paid in future years (77:192,

Garibaldi) (77:1096, DeOld, rev'd St. Bd. 78:1006) (87:1431, Dowling) (89:2651, Probst, rev'd St. Bd. with opinion 90:1795, rev'd 249 N.J. Super. 222 (App. Div. 1991), rev'd 127 N.J. 500 (1992))

INCREMENTS - continued

Evaluation in all subject areas taught is not necessary to form proper basis for withholding increment (82: June 4, Dumansky) (85:1310, Carroll, aff'd St. Bd. 87:2557, aff'd App. Div. unreported opinion (Docket No. A-2830-86T7, decided October 26, 1987)) (86:537, Darden)

Evaluation on which withholding based need not be performed by one with expertise in teacher's field (80: August 21, Garfield)

Evaluations; Commissioner may not substitute his judgment for board's regarding teacher's performance (88:564, Yorke, appeal dismissed St. Bd. 88:579, aff'd App. Div. unreported op. (Dkt. No. A-5912-87T1, September 20, 1989)) and see (88:961, Caradonna)

Evaluations; greater evidential weight given to repeated evaluation of subject area supervisor than to perfunctory observations of other administrative personnel (88:564, Yorke, appeal dismissed St. Bd. 88:579, aff'd App. Div. unreported op. (Dkt. No. A-5912-87T1, September 20, 1989))

Evaluations of teacher service is a management prerogative essential to the duties of the board. Increments are subject to annual evaluations of performance. (87:1431, Dowling)

Evaluations; State Board will not substitute its judgment for that of the board or the evaluators (85:1985, Pollack, St. Bd. rev'g 84: June 8, aff'd App. Div. unreported opinion, (Docket No. A-3128-84T7 decided March 10, 1986)) (89:2969, Amos, aff'd St. Bd. 90:1686)

Evaluations; sufficient time existed between evaluation for notice and opportunity to improve for tenured VP (89:2046, Reinoso)

Evaluations; year end evaluation satisfactory, however board may make decision to withhold on basis of conduct not reflected in evaluation (85: August 26, Carroll, aff'd St. Bd. 87:2557, aff'd App. Div. unreported opinion (Docket No. A-2830-86T7, decided October 26, 1987))

Extracurricular activities which are closely connected to instruction may serve as basis for withholding (81: February 2, Deckenbach) (85: October 11, Gareau)

Good cause required for board to withhold - board action upheld

In general (58-59:96) (60-61:57) (61-62:147)

(63:78) (65:84) (66:66) (66:243) (71:589) (71:654 aff'd St. Bd. 72:669) (72:251 aff'd St. Bd. 73:764) (72:327 aff'd St. Bd. 73:767) (72:378) (74:124) (75:336, Longo) (75:593,

Seybt, aff'd St. Bd. 76:1169) (75:830, Filardo) (75:593, Seybt, aff'd St. Bd. 76:1169) (76:118, Quay) (76:980, Warren) (77:24, DiNunzio) (77:120, Gregg) (77:192, Garibaldi) (77:218, Hillman) (77:1008, Williams, aff'd St. Bd. 78:1050) (77:1244, Martin, remanded St. Bd. 78:1030) (84: May 15, Filardo) (84: May 29, Cisternino) (84: May 31, Shafran) (88:78, Rosania, decision on remand)

INCREMENTS - continued

Good cause required for board to withhold -
board action upheld - continued

- Absenteeism not in excess of statutory entitlement is not a bar to withholding of increment (86:563, Meli, aff'd St. Bd. with opinion 86:580, rev'd App. Div. unreported opinion (Docket No. A-5820-85T7 decided May 21, 1987 (Meli III))
- Abuse of sick leave (86:1724, Sheehan, rev'd St. Bd. 87:2701)
- Assistant principal's poor performance (89:2969, Amos, aff'd St. Bd. 90:1686)
- Board cannot unilaterally impose a standard of "good cause" not set forth at N.J.S.A. 18A:29-14, Passaic Ed. Assoc. v. Passaic Bd. of Ed., 166 N.J. Super. 250 (App. Div. 1977)
- Board need not rubber stamp evaluations, rather the Board has the responsibility and duty to consider other factors outside of satisfactory teaching performance (83: January 26, Sellers) (83: February 17, Damon, aff'd St. Bd. 83: June 1); recommendation need not arise from supervisory or administrative personnel (85: February 14, McElroy) (87: 757, Daly) (88:196, Dunham)
- Cumulative effect; prior incidents over past two years may serve to establish unprofessional conduct (89:53, Guyet, appeal dismissed St. Bd. 89: August 2, reaffirmed St. Bd. 89: October 4)
- Deficient job performance in general (87:497, Reaves, aff'd St. Bd. 87:511)
- Excessive absenteeism alone is good cause (78:445, Trautwein, aff'd with modification St. Bd. 79:876, rev'd App. Div. April 8, 1980 (unpublished opinion) certif. denied 84 N.J. 469 (1980)) (80:1066, Angelucci, aff'd St. Bd. 81: February 4, aff'd St. Bd. 80: April 30) (81: January 2, Virgil, aff'd St. Bd. 81: May 6) (83:1059, Kulik, aff'd St. Bd. 84:1953) (84:906, Meli, aff'd St. Bd. 84:921 ("Meli I")) (84: September 17, Ricketts, aff'd St. Bd. 85: February 6, aff'd App. Div. unreported opinion (Docket No. A-3126-84T7 decided March 10, 1986)) (85:310, Meli, rev'd St. Bd. 85:355, aff'd App. Div. unreported opinion (Docket No. A-2237-85T7, decided March 4, 1987, ("Meli II")) (85:847, Newark Teachers Union) (86:563, Meli, aff'd St. Bd. with opinion 86:580, rev'd App. Div. unreported opinion (Docket No. A-5820-85T7, decided May 21, 1987, (88:1078, "Meli III")) (86:866, Malley, aff'd St. Bd. 86:882) (87:833, Garrison) (88:2361, Ledbetter, aff'd St. Bd. 89:3037) (89:1495, Smith)
- Excessive absenteeism is good cause even when caused by legitimate illness (88:2361, Ledbetter, aff'd St. Bd.

89:3037)

INCREMENTS - continued

Good cause for board to withhold -
board action upheld - continued

- Excessive absenteeism; although board's action of withholding increment in previous year was upheld, in current matter board failed to consider circumstances of absences (85:310, Meli, rev'd by St. Bd. 85:355, aff'd App. Div. unreported opinion (Docket No. A-2237-85T7, decided March 4, 1987) ("Meli II"))
- Excessive absenteeism; board may adopt policy to withhold increment of anyone absent 50 days per year in excess of accumulated sick leave (85:988, Bialek, aff'd St. Bd. 85:1009) (87:785, Fried, aff'd St. Bd. 87:795)
- Excessive absenteeism is good cause but reasons for absences and circumstances of particular case must be considered (85: July 25, Williams)
- Excessive absenteeism is good cause, however legitimate absences which do not disrupt the continuity of instruction are not sufficient to withhold increment, Law v. Bd. of Ed. of Parsippany-Troy Hills, App. Div. 83:1584, aff'g (82: August 4, St. Bd. rev'g 81: October 26) See also (83:1581, Kuehn, St. Bd. rev'g 81: November 25) Cf. Trautwein, supra, (83:1059, Kulik, aff'd St. Bd. 84:1953) (88:1078, Meli III) (89:1495, Smith) (89:1509, Transky, aff'd St. Bd. 89:1531)
- Excessive discipline of kindergarten pupil (84: September 21, Wilson)
- Failure of cooperative industrial education coordinator to place students in and match students with jobs (88:402, Jackson)
- Failure of principal to complete staff evaluations in timely fashion is good cause (82: August 23, Green v. Lakewood Bd. of Ed.)
- Failure to adjust teaching methods to students as evidenced by poor pupil grades, is good cause (81: April 23, Martin) (86:2138, Deveney, aff'd St. Bd. 87:2595)
- Failure to follow administrative procedures (83: July 25, Shanklin) (83: December 22, Englewood Teachers Assn., aff'd St. Bd. 84: August 8) (84:1257, Sherman) (84: November 19, Woodside, aff'd St. Bd. 85: April 3) (85: December 30, Caffrey) (88:1930, Gordon, aff'd St. Bd. 89:3001)
- Failure to follow curriculum and submit lesson plans (88:1930, Gordon, aff'd St. Bd. 89:3001)
- Failure to follow supervisor's leadership (88:831, Smilon, rev'd St. Bd. 89:3080, aff'd App. Div. unreported op. (Dkt. No. A-2932-88T2, November 13, 1989))

Failure to implement computer program (87:757, Daly)
Failure to maintain discipline is good cause; additional
charges need not be proven (81: August 25, Littman) (82:
May 17, Rosenblum)

INCREMENTS - continued

**Good cause required for board to withhold -
board action upheld - continued**

- Failure to provide proper supervision of students in gym class (88:961, Caradonna)
- Failure to publish guidelines on absenteeism does not render withholding of increment improper (84: September 17, Ricketts, aff'd St. Bd. 85: February 6, aff'd App. Div. unreported opinion (Docket No. A-3126-84T7, decided March 10, 1986))
- Failure to submit staff evaluations on time (87:757, Daly)
- Gross carelessness and inefficiency (88:1420, Yorke, aff'd St. Bd. 88:1429)
- Improvements in poor performance, held not sufficient to merit increment (81: April 13, Mackinnon) (84: November 19, Woodside, aff'd St. Bd. 85: April 3) (88:402, Jackson)
- Inability to control students (84: July 26, Friedelbaum)
- Inadequate performance of extracurricular responsibilities is good cause (80:713, Stephenson, aff'd St. Bd. 81: January 22) (81: February 2, Deckenbach)
- Leaving faculty meeting without permission good cause (80: November 21, Lymon)
- Leaving pupils unsupervised on one occasion is good cause (81: April 24, Moymer) (82:1212, Tenney, aff'd St. Bd. 83:1647)
- Lesson plans were continually inadequate (85: December 30, Caffrey)
- Loss of attendance cards and leaving students unsupervised are prima facie evidence of unsatisfactory performance (88:78, Rosania, decision on remand)
- Misuse of sick time (85: June 25, Newark Teachers' Union)
- "Needs improvement" in areas of performance sufficient (86:537, Darden) (88:564, Yorke, appeal dismissed St. Bd. 88:579, aff'd App. Div. unreported op. (Dkt. No. A-5912-87T1, September 20, 1989))
- Negative evaluations (89:1767, Whaley)
- Overall "needs improvement" as per observations, combined with teacher's admission that students moved about during teaching time, were ready to leave 3 minutes early and did homework in class (87:1842, England)
- Parental complaints appropriately considered by board in evaluation of assistant principal (86:2346, Dowling)
- Personal animosity; teacher failed to prove that evaluations were motivated by supervisor's animosity (88:564, Yorke, appeal dismissed St. Bd. 88:579, aff'd App. Div. unreported

op. (Dkt. No. A-5912-87T1, September 20, 1989))
Personal typing, requesting board employee to do personal
typing sufficient to withhold (84: October 22, Blauvelt,
aff'd St. Bd. 85: December 4, aff'd by App. Div. unreported
opinion (Docket No. A-2196-85T7, decided March 13, 1987))

INCREMENTS - continued

**Good cause required for board to withhold -
board action upheld - continued**

Physical assault with another teacher not sufficient to warrant
dismissal - single incident in an unblemished career;
increment, forfeit 60 days' salary (89:2297, Villani)
Physical contact short of corporal punishment good cause (81:
January 14, Brown)
Physical contact used in process of disciplining students
(89:1830, Reilly)
Physical force used on students found to be conduct unbecoming
(87:861, Roemmelt, aff'd w/opinion St. Bd. 88:2527, aff'd
App. Div. unreported op. (Dkt. No. A-3303-87T7, January 25,
1989))
Racial slurs written on form letter, refusal to admit
involvement in incident are good cause (85:428, Smith, aff'd
St. Bd. with opinion 87:2713)
Reading aloud actual final exam questions to class as review
technique (88:1747, Fiorello)
Refusal of superintendent to cooperate with board (84:1738,
Romanoli, aff'd St. Bd. 85:1991)
Refusal to act as chaperone on annual class trip (87:796,
Carrato)
Refusal to meet with superintendent good cause (80: December 2,
Rock, aff'd St. Bd. 81: May 6)
Retaliation for petitioner's filing grievances unsupported
(86:1755, Soriano)
Retaliatory evaluations; petitioner failed to show evaluations
unjustified (85:654, Nafash)
Scaling exam grades (88:1747, Fiorello)
Sexually suggestive comment to student (84:229, Gallagher)
Single infraction can constitute good cause (81: January 23,
Grabe)
Tenure charges dismissed:
Pending an appeal from the dismissal of tenure charges by
the Commissioner, the teaching staff member is not
entitled to reinstatement, nor back payment of salary,
nor award of increment, if the board decides to
continue the suspension during the appeal (87:553,

Eberly, rev'd and remanded St. Bd. 87:598, decision on remand 87:601, decision on motion 88:2441, aff'd St. Bd. 88:2447)

Tenure charges dismissed, but increment withheld for incompetency (82:1358, aff'd St. Bd. 83:1645)

Tenure charges dismissed, but increment withheld for inflicting corporal punishment (81: August 27, Williams, aff'd St. Bd. 82: February 3, aff'd App. Div. 82:1594)

Use of sick days for vacation time constitutes good cause (81: August 26, Newmark)

INCREMENTS - continued

Good cause required for board to withhold - board action upheld - continued

Union activity; petitioners failed to sustain burden that board's action was in retaliation for union activities (83: December 22, Englewood Teachers Assn., aff'd St. Bd. 84: August 8)

Unprofessional conduct (84: September 20, Devaney)

Unprofessional conduct established although charge of anti-semitism not proven (89:165, Pinto, aff'd St. Bd. 89: 207, with opinion)

Unsatisfactory performance (84: November 19, Woodside, aff'd St. Bd. 85: April 3) (85:764, Klein) (85: June 25, Newark Teachers Union) (85: August 12, Woodside, aff'd St. Bd. 86:3135) (86:1124, Rey) (87:628, Cotyk) (87:1029, Sanders, aff'd St. Bd. 87: September 2) (87:1184, Phillips) (88:1930, Gordon, aff'd St. Bd. 89:3001) (88:1774, Loewengart, aff'd St. Bd. 88:1786) (89:2538, Yorke, rev'd St. Bd. 90:1818)

Violation of unwritten policy good cause (80:907, Hostetter, dismissed St. Bd. 80: November 5) (87:796, Carrato) (88:1774, Loewengart, aff'd St. Bd. 88:1786) (88:1930, Gordon, aff'd St. Bd. 89: January 4)

Withholding may not be based on evaluation not completed in accordance with regulations; however, board had independent basis to withhold increment (86:1016, Buzinky, on remand 86:1034, aff'd St. Bd. 87:2550)

Good cause required - board action reversed

Board reversed; absences were legitimate use of sick leave and personal leave - no discontinuity of instruction demonstrated (88:1078, Meli)

Board reversed; board policy of withholding increment, after certain number of absences, found to be arbitrary

and capricious when board failed to consider reasons for absences (83:1581, Kuehn, St. Bd. rev'g 81:1299) See also, Law v. Bd. of Ed. of Parsippany-Troy Hills, App. Div. 83:1584 aff'g (82: August 4, St. Bd. rev'g 81:1216) (89:1622, Kelsey)

Board reversed; evaluations on which withholdings based discredited in tenure proceeding (85: April 8, Nafash)

Board reversed; excellent record of teacher considered (St. Bd. 78:1006, DeOld, rev'g 77:1096) (80: March 17, Baumlin, aff'd St. Bd. 80: July 2) (85: February 14, McElroy)

Board reversed; failure to observe and evaluate properly; evaluation instrument relied on by board was favorable (84: July 20, Carney, aff'd St. Bd. 85: February 6, aff'd App. Div. unreported decision (Docket No. A-3190-84T7, decided November 8, 1985))

INCREMENTS - continued

Good cause required - board action reversed - continued

Board reversed for not advising teacher within 10 days and giving reasons therefor (76:661, Gill aff'd St. Bd. 76:666, aff'd App. Div. 77:1289 (unreported)) (77:886, Martin, aff'd St. Bd. 78:1031, rev'd App. Div. 79:852) but see: board's action upheld in spite of failure to advise teacher of reasons for withholding within 10 days, substantial compliance found (82:1183, Lutsky)

Board reversed for not stating reasons and for failing to follow superintendent's recommendation that increment be granted (73:80)

Board reversed; increment withheld in retaliation for initiation of arbitration proceedings (80: July 29, Matcho)

Board reversed, reasons were vague and without merit (77:383, Fanella) (84: July 20, Carney, aff'd St. Bd. 85: February 6, aff'd App. Div. unreported decision (Docket No. A-3190-84T7, decided November 8, 1985))

Board reversed, superintendent's criterion for withholding increments found to be arbitrary (80: July 21, Brasile)

Board reversed; superintendent's recommendation to withhold not based in fact - found to be precipitous, arbitrary, capricious and unreasonable (88:196, Dunham)

Delay; board acted improperly when it withheld salary and adjustment increments for 1982-83 school year based upon assessment of performance during 1980-81 school year; board

had delayed withholding action pending outcome of civil rights case (83:914, Borrelli, aff'd St. Bd. 85:1848, see also 83: December 8)

Evaluations and recommendation for withholding provided by principal were not supported by underlying facts and evidenced personality conflict (84: July 31, D'Amico)

Excessive absence was not proven (85:847, Newark Teachers' Union)

Proof presented before ALJ was legally insufficient since it was entirely comprised of hearsay, in violation of the residuum rule in N.J.A.C. 1:1-15.8, (Colavita v. Hillsborough Bd. of Ed., App. Div., (Docket No. A-4342-83T6, unpublished March 28, 1985), rev'g 83:1205, aff'd St. Bd. 84:1920)

Suspension without pay pending tenure hearing or criminal investigation is not sufficient basis in itself to sustain withholding action (85: June 25, Newark Teachers' Union)

Untimely action by board where it acted to withhold increment subsequent to commencement of the following school year (86:2473, Sutton)

Use of excessive force to break up student incident not proven (87:1147, Tave, aff'd St. Bd. 87:1170)

INCREMENTS - continued

Good cause required - board action reversed - continued

Where tenure charges had been dismissed for procedural flaws, denial of increment based solely on fact of suspension during pendency of charges was unjustified (85: June 24, Loria)

Hearings

Five day notice of intent to discuss withholding in closed session, and suggestion that teacher meet with supervisor in closed session constitutes "pre-withholding" due process and provides adequate opportunity for teacher to exercise right under Sunshine Law to request public discussion of matter (86:1016, Buzinky, on remand 86:1034, aff'd St. Bd. 87:2550)

Increment

A salary increment is in the nature of a reward for meritorious service; it is not a statutory right, but subject to denial pursuant to N.J.S.A. 18A:29-14 (87:1431, Dowling)

Increment is defined to include negotiated salary increase (82:970, Bellet)

Increment may not be withheld after commencement of school year in which it was to take effect (83: September 29, Johnson, aff'd St. Bd. 84:1949) (84:1045, Newark Teachers Union)

Increment withholding charges do not preclude board from pursuing tenure charges (88:661, Cipollini, aff'd St. Bd. 88:678)

Increments which are required under minimum salary law (repealed 1985) (55-56:77) (55-56:80) (55-56:83) (55-56:86) (55-56:88)

Janitor: authorization to withhold increment, N.J.S.A. 18A:11-1 (83: August 15, Smith, aff'd with modification St. Bd. 84: April 4) (84:1100, Speer, aff'd St. Bd. 85:2022)

Longevity payment is an employment increment (77:218, Hillman) (77:952, Shahbazian)

Midyear payments and credit for work outside district (77:952, Shahbazian)

Military service credits count toward longevity increments (76:269 Wall Tp. Ed. Assoc. aff'd St. Bd. 76:273, aff'd 149 N.J. Super. 126 (App. Div. 1977))

Negotiated salary increase is subject to N.J.S.A. 18A:29-14 in that a board cannot bargain away its right to withhold an increment (82:970, Bellet)

Non-negotiability of board's right to withhold increments Clifton Teachers Assn. v. Clifton Bd. of Ed., 136 N.J. Super. 336 (App. Div. 1975) (76:661, Gill, aff'd St. Bd. 76:666) (77:383, Fanella) (78:558, Dullea, aff'd St. Bd. 78:563, aff'd App. Div. 79:823), Bd. of Ed. of Bernards Twp. v. Bernards Twp. Ed. Assoc., 79 N.J. 311 (1979) overruling Bd. of Ed. of Edison Twp. v. Edison Twp.

Ed. Assoc., 161 N.J. Super. 155 (App. Div. 1978) (80:1354,
Gollob) (80: December 15, Bailey)

INCREMENTS - continued

Partial withholding is illegal and Board's action withholding part of increment is ultra vires (84: June 28, Golonka)
Period of time which board may consider when withholding an increment (78: March 7, Trautwein, aff'd with modification St. Bd. 79:876 rev'd App. Div. April 8, 1980 (unpublished opinion), certif. denied 84 N.J. 469 (1980)) (80:280, Vandercher)

Permanent withholding

Action by board is permanent unless future board acts to restore increment (84: March 8, Burns, aff'd St. Bd. 84: October 24) (84: September 17, Ricketts, aff'd St. Bd. 85: February 6, aff'd App. Div. unreported opinion (Docket No. A-3126-84T7 decided March 10, 1986))

Action by board is permanent unless future board acts to restore increment: effects of salary guide compression, petitioners treated similar to other teachers (86:2892, East Orange Ed. Association) (87: January 27, Tharrington)

Adjustment increment; failure of board to grant is not generally appealable (83: May 23, Gallitano, aff'd St. Bd. 83: October 5) (85: April 18, Blake)

Adjustment increment; salary increment withheld, in later years a teacher will not move two steps to make up for withholding unless board grants both salary and adjustment increments (83: May 23, Gallitano, aff'd St. Bd. 83: October 5)

Maximum of salary guide; petitioner who had reached maximum of salary guide prior to year for which adjustment increment was withheld could not be moved back one step; restored to maximum step of guide (84:1167, Masone)

Board may not prevent successor boards from restoring withheld increment, thereby depriving the successor board of its discretionary authority (82: December 30, Blake) (83: February 17, Damon, aff'd St. Bd. 83: June 1) (83: February 25, Mickens, remanded) (83: May 23, Gallitano, aff'd St. Bd. 83: October 5) (83:1205, Colavita, aff'd St. Bd. 84:1920, rev'd on other grounds App. Div. (Docket No. A-4342-83T6, unpublished March 28, 1985)) (84: January 30, Markovich); but, once an increment is withheld it will not be restored unless a future board affirmatively acts to restore it (84:1191, Cordasco, aff'd with opinion St. Bd. 84:1201, aff'd App. Div. 205 N.J. Super. 407 (1985) (84:1167, Masone)

Board need not confine effects of withholding to one year: re-evaluation of permanency of withholding required only when a condition of initial action (81: July 27, Trautwein)

INCREMENTS - continued

Permanent withholding - continued

- Board's action reversed; may not permanently withhold increment thereby binding future boards (83:914, Borrelli, aff'd St. Bd. 85:1848, see also 83: September 26, aff'd St. Bd. 85: July 3) (82:1423, Blake) But see (82:1592, Williams, St. Bd. aff'g 81: August 27, aff'd App. Div. 82:1594)
- Held to be potentially too severe a punishment: board ordered to re-evaluate employee after two years to determine whether he should be restored to step he would have attained absent withholding (80:280, Vandercher) (80: March 28, McKenna)
- Restoration of increment; board not arbitrary in failing to restore increment in subsequent years (81: July 27, Trautwein)
- Salary guide was not adopted by board: board acted to keep petitioner behind other directors permanently; board ordered to adopt guide and to restore petitioner to same salary as other directors (85:1266, Chirico)
- Settlement modified: Board may not permanently withhold increment thereby binding future boards (87: January 27, Tharrington)
- Withholding an increment does not constitute a continuing violation; the fact that petitioner will always lag one step behind is attributable to the effect of an earlier employment decision and not to a new violation each year (87:1431, Dowling) (89:1614, LaBelle) (89:1779, Lulewicz, aff'd St. Bd. 89:1790) (89:2651, Probst, rev'd St. Bd. with opinion 90:1795, rev'd 249 N.J. Super. 222 (App. Div. 1991), rev'd 127 N.J. 500 (1992))
- Policy on restoring increment held ultra vires (81: August 10, Elmwood Park)
- Principal; withholding increment of; board must specify standards by which he will be evaluated (80: October 3, Green v. Lakewood Bd. of Ed., aff'd St. Bd. 81: March 4, aff'd App. Div., unpublished opinion, (Docket No. A-3365-80-T2, March 5, 1982))

Procedure

- Board error in withholding increment at executive session may be corrected by taking action at subsequent public meeting (81:102, Winson)
- Board may withhold increment of teacher terminated in reduction of force, to take effect in event of reemployment (81: February 2, Deckenbach)
- Board minutes need not reflect independent consideration of grounds for withholding increment (80:713, Stephenson, aff'd St. Bd. 81: January 22); see also (may rely on

Superintendent's recommendation) (84: June 8, Greene v.
Perth Amboy Bd. of Ed.)

INCREMENTS - continued

Procedure - continued

Board need not adopt specific policy authorizing withholding of increments; statute (N.J.S.A. 18A:29-14) is self-executing at all salary levels, including those in excess of statutory minimum Westwood Ed. Assn. v. Westwood Bd. of Ed. (unreported App. Div. decision the text of which is set forth in full in 75:336, Longo); (76:661, Gill, aff'd St. Bd. 76:666) (77:192, Garibaldi) (77:383, Fanella) (77:886, Martin aff'd St. Bd. 78:1031, rev'd App. Div. 79:852) (77:1244, Martin remanded St. Bd. 78:1030) Westwood overrules contrary interpretations set forth in (64:89) (64:100) (64:119) (68:26, aff'd St. Bd. 68:29) (71:120) (71:127) (71:254, aff'd St. Bd. 71:258) (71:484) (72:196) (73:85) (73:401) (73:449) (78:558, Dullea, aff'd St. Bd. 78:563, aff'd App. Div. 79:823)

Board policy, failure to follow is not capricious or arbitrary; withholding upheld (86:1724, Sheehan, rev'd on other grounds St. Bd. 87:2701)

Board's failure to advise teacher within 10 days and give reasons for withholding increment held insufficient to set aside withholding. Teacher received negative evaluation and thus had knowledge of deficiencies (86:1724, Sheehan, rev'd on other grounds St. Bd. 87:2701)

Burden of proof is on employee to show that board's action was unreasonable (87:353, Cain) (88:564, Yorke, appeal dismissed 88:579, aff'd App. Div. unreported op. (Dkt. No. A-5912-87T1, September 20, 1989))

Determination to withhold increment may be made at executive session as long as official action taken at public meeting (81: June 9, Walsh)

Half of increment may not be withheld under statute, (73:449)

Half of increment restored after six months after improvement in employee performance (81:121, Union Twp. Teachers' Assn.)

Hearings

Board policy requires hearing before withholding; where policy violated, action invalid (84: June 4, Shifrinson)

Board responds to evidence presented by petitioner (77: 952, Shahbazian)

Hearing before board not required prior to action to withhold increment, but staff member must be informed of deficiencies (80:13, Brody) (80: February 4, Greaney) (80: May 16, Simon, aff'd St. Bd. 80: September 3) (80:1335, Boynton) (81: February 6,

Whitaker, aff'd St. Bd. 81: May 6), but see (78:
August 30, Hart) (82: August 23, Green) (84: June 8,
Greene v. Perth Amboy Bd. of Ed.)

INCREMENTS - continued

Procedure - continued

Hearings - continued

Predetermination hearing, no constitutional right to
before board acts (84: June 8, Greene v. Perth Amboy
Bd. of Ed.)

Right to appeal denial cannot be waived (77:1096,
DeOld, rev'd St. Bd. 78:1006)

Teaching staff member is entitled to notice and some
opportunity to be heard prior to any action to withhold
an increment (69:4) (73:401) (74:124); hearing before
board is non-adversary (72:327, aff'd St. Bd. 73:767)
(76:118, Quay); but see, (84: June 8, Greene)

Increment may not be withheld after commencement of school
year in which it was to take effect (83: September 29,
Johnson, aff'd St. Bd. 84: June 6) (84:1045, Newark
Teachers Union and Smith) (88:740, Smith)

Laches not a defense absent showing of prejudice by the movant
(83: March 14, Bogart)

Notice (See also, "Hearings", this topic)

Adequacy of reasons (78:377, Harrell) (80:
March 17,

Baumlin, aff'd St. Bd. 80: July 2) (81: June 4,
Price) (82:1183, Lutsky) (82:1310, Schwab, aff'd St.
Bd. 83:1634)

Board's action reversed, employee had not seen all
documents upon which action was based (80:586, Zucaro,
aff'd St. Bd. 81: June 11)

Board's duty to provide reasons (78:442, Holly)
(78:445, Trautwein aff'd with modification St. Bd.
79:876, rev'd App. Div. 80:1539, certif. denied 84 N.J.
469 (1980)) (78:593, Marshall) (78:740, Baker) (81:
April 29, Pineiro) (82:1310, Schwab, aff'd St. Bd.
83:1634)

Board's failure to advise teacher within 10 days and give
reasons for withholding increment held insufficient to
set aside withholding. Teacher received negative
evaluation (82:1183, Lutsky)

Board's failure to provide reasons; action sustained where
employee had knowledge of deficiencies (80:847, Huth)
(81:1156, Klein) (81:1190, Klein) (82: August 23,
Green) (83: June 27, Woodside) (83: July 25,
Shanklin) (85:764, Klein) (85: June 12, Corsetto)

Board's failure to provide reasons: action reversed
where board policy requiring withholding after certain
number of absences was found arbitrary (83:1581, Kuehn,

St. Bd. rev'g 81: November 25)
Board's failure to provide reasons was subsequently remedied
(78:844, Kriss) (80: October 3, Green, aff'd St. Bd.
81: March 4, aff'd App. Div. 82: March 5) (81: April
24, Moymer)

INCREMENTS - continued

Procedure - continued

Notice - continued

Board's failure to provide timely statement of reasons:
actions sustained where employee had received
constructive notice (87:757, Daly)

Contract year; petitioners' who received notice of
withholding after contract renewal but previous to
commencement of succeeding year received adequate
notice (83: December 22, Englewood Teachers Assn.,
aff'd St. Bd. 84: August 8)

Evaluations; petitioner put on notice of deficiencies
by numerous evaluations and afforded ample opportunity
to respond (84: June 8, Greene)

Failure to warn that increment adjustment may be
withheld for unsatisfactory performance prior to
decision to withhold is not fatal; better practice
would be to provide as much notice as possible
(84: June 25, Kouba, aff'd St. Bd. 84: October
3) See also, (89:2538, Yorke, rev'd St. Bd.
90:1818)

Teacher had specific and timely notice of deficiencies
from narrative portion of evaluations and oral
recommendations; notice and opportunity required
to correct deficiencies less than in tenure matter
(88:78, Rosania, decision on remand)

Prior notice needed under Sunshine Law if board intends to
discuss withholding increment in closed session (84:
November 19, Woodside, aff'd St. Bd. 85: April 3)

Petition of appeal

Form is specific. Intent to appeal insufficient (83:
March 14, Bogart)

Must be filed within 90 days of notice that "any possible
increment" would be withheld for succeeding school
year, not after salary actually fixed by the board (83:
November 14, Barry) (87:1431, Dowling)

Must be filed within 90 days of receipt of order
withholding increment. The rule will be relaxed only
for a compelling reason (83: March 14, Bogart)

Roll call vote

Majority vote of the full membership of the board merely requires that a majority of the board membership is needed to withhold, it does not require all members of the board to be present (83: January 26, Sellers) (77:886, Martin, aff'd St. Bd. 78:1031, rev'd App. Div. 79:852) (82:1310, Schwab, aff'd St. Bd. 83:1634); failure to affirmatively withhold not fatal (84: June 8, Greene v. Perth Amboy Bd. of Ed.)

INCREMENTS - continued

Procedure - continued

Roll call vote - continued

Recorded roll call majority vote of full board required (75:47, South Plainfield) (77:886, Martin, aff'd St. Bd. 78:1031, rev'd App. Div. 79:852) but see (81: December 4, Massaro, aff'd St. Bd. 82: June 2) failure to take not fatal when employee has actual notice of withholding and deficiencies (83: August 5, Pace)

Salary freeze; board's denial of both salary step increment and contractual increase pursuant to board policy, held proper (83: May 23, Gallitano, aff'd St. Bd. 83: October 5)

Settlement rejected, partial withholding ultra vires (89: November 20, Marsella)

Term used, i.e., salary increase, employment increment, adjustment increment, insufficient reason to set aside withholding (82:1183, Lutsky) (82:1212, Tenney, aff'd St. Bd. 83:1647)

Testimony of children, petitioners motion to depose second grade children denied (83: February 17, Damon, aff'd St. Bd. 83: June 1)

Timing of withholding: effect on validity

After the commencement of the school year in which increment takes effect, withholding improper (83: September 29, Johnson, aff'd St. Bd. 84:1949) See (84:1045, Newark Teachers Union and Smith)

Board action to withhold must be prior to date ten-month service commences, prior to September 1 (84:1045, Newark Teachers Union and Smith) (85: June 25, Newark Teachers Union) (88:740, Smith)

Board may withhold increment after teacher receives contract and proposed salary for ensuing year but before board officially sets salary at proposed level (81: May 1, Proctor) but see (84:1045, Newark Teachers Union and Smith)

Existence of individual contract for following year at higher salary does not preclude board from acting to withhold increment prior to last day of current school year (82: January 4, Van Houten) but see (84:1045, Newark Teachers Union and Smith)

Retroactive withholding of increments not permitted; must be done prior to start of next school year (63:95) (72:462)

Reduction in salary in new negotiated agreement is not withholding of increment (80: August 18, McCabe)

Salary reduction, relationship to withholding increment; withholding increment after notice of what subsequent year's salary would be does not constitute salary reduction (80: July 15, O'Malley) (81: May 1, Proctor) (82: January 4, Van Houten)

INCREMENTS - continued

Settlement agreement may not permit retroactive reinstatement of increment upon satisfactory performance as this would bind future board (88: February 9, Sisto)

Settlement agreement to place teacher between steps set aside: violates prohibition against withholding one-half increment (81: September 8, Peccoralo)

Settlement agreement rejected, partial increment withholding deemed ultra vires (89: November 20, Marsella)

Settlement agreement to restore one half of increment step in following year set aside: violates prohibition against withholding one-half increment (81: June 15, Fochesato) (81: May 26, Gollob) (But see 81:121, Union Twp. Teacher's Assn.; half of increment restored after six months after improvement of performance)

Settlement terms may not state that increment is to be permanently withheld inasmuch as this binds future boards (87: January 27, Tharrington)

Specific wording of actual resolution contained in minutes necessary for determination of board's intent to withhold employment, adjustment or longevity increments; matter remanded for inclusion of official board minutes (87:1855, Rosania, on remand 88:78)

Specificity: Board's intention to withhold all increments determinative despite absence of specificity where board minutes state salary for ensuing year (88:78, Rosania, decision on remand)

Specificity required as to whether salary or adjustment increment being withheld (80: July 15, Ormosi)

Specificity required; board need not notify of sanction to be invoked for unsatisfactory performance (80: July 15, Applegate, aff'd St. Bd. 80: February 4)

Standard of review by Commissioner

Board's action is discretionary and will not be overturned unless arbitrary and without rational basis or induced by improper motives Kopera v. West Orange Bd. of Ed., 60 N.J. Super. 288 (App. Div. 1960); (71:654, aff'd St. Bd. 72:669) (72:251, aff'd St. Bd. 73:764) (74:124) (75:336, Longo) (76:980, Warren) (77:24, DiNunzio) (77:218, Hillman) (77:952, Shahbazian) (77:1096, DeOld, rev'd St. Bd. 78:1006) (77:1244, Martin, remanded St. Bd. 78:1030) (78:558, Dullea,

aff'd St. Bd. 78:563, aff'd App. Div. 79:823) (79:371, Albanese) (79:638, Gold) (79:643, Holden) (80:13, Brody) (80: February 4, Greaney) (80:136, Griggs) (80: April 25, Ziccardi) (80: July 15, O'Malley) (80: September 2, Gardiner, aff'd St. Bd. 81: April 1) (80: September 4, Feshkens) (80: September 25, Holmes, aff'd St. Bd. 81: March 4) (81: January 14, Brown) (81: October 15, Klein) (82: January 4, Van Houten) (82: October 4, Novitsky)

INCREMENTS - continued

Standard of review by Commissioner - continued

Board's action is discretionary and will not be overturned unless arbitrary and without rational basis or induced by improper motives - continued

(83: February 17, Damon, aff'd St. Bd. 83: June 1)
(85:1985, Pollack, St. Bd. rev'g 84:1027, aff'd App. Div. unreported opinion (Docket No. A-3128-84T7 decided March 10, 1986)) (84: May 10, Brown) (84: May 15, Filardo) (85: August 12, Woodside, aff'd St. Bd. 86:3135) (87:628, Coty) (87:757, Daly) (87:785, Fried, aff'd St. Bd. 87:795) (87:1184, Phillips) (87: August 18, England) (87:1855, Rosania, on remand 88:78) (88:196, Dunham) (88:740, Smith) (88:564, Yorke, appeal dismissed St. Bd. 88:579, aff'd App. Div. unreported op. (Dkt. No. A-5912-87T1, September 20, 1989)) (88:961, Caradonna) (89:1622, Kelsey) (90:1818, Yorke, St. Bd. rev'g 89:2538 Commr.)

Relationship of appeal of withholding of increment to pending tenure charges (78:377, Harrell)

Relationship of classroom performance and direction of co-curricular activities (81: February 2, Deckenbach)

Reliance on Caporaso standard of review in withholding case is misplaced and without merit; Kopera is proper standard (88:78, Rosania, decision on remand)

Salary plan of principal, found to require annual increment absent action under N.J.S.A. 18A:29-14 (80: July 22, June)

Salary plan of superintendent held to require payment of increment absent action to withhold (85:1403, Romanoli, rev'd by St. Bd. with opinion 87:2678, aff'd App. Div. unreported opinion (Docket No. A-3900-86T8, decided February 4, 1988))

Tenure charges: Remedy of withholding increment does not prevent board from pursuing tenure charges simultaneously on the same facts (87: February 19, DiCerbo, aff'd in part, rev'd in part, St. Bd. 87: July 1)

Withholding is only effective for one year (77:120, Gregg); but see (84:1191, Cordasco, aff'd with opinion 84:1201, aff'd App. Div. 205 N.J. Super. 407 (1985) (84:1167, Masone)

INDEMNIFICATION

Civil actions

Board members entitled to reimbursement for legal expenses incurred in defending themselves respecting "acts or omissions arising out of and in the course of

the performance of their duties as board members", Errington v. Mansfield Twp. Bd. of Ed., 100 N.J. Super. 130 (App. Div. 1968); Jones v. Kolbeck, 119 N.J. Super. 299 (App. Div. 1972); (59-60:73, modified St. Bd. 60-61:232); Suruda v. Jersey City Bd. of Ed., 167 N.J. Super. 331 (Law Div. 1979)

INDEMNIFICATION - continued

Civil actions - continued

- Board members entitled to legal fees for action arising out of board's refusal to seat them (84:684, Brown)
- Board member entitled to indemnification; action (restraint from picketing business premises) related to board's negotiating activities defensive in nature (89:3048, Matawan Regional Teachers Assn., St. Bd. rev'g 88:1759)
- Board of education entitled to indemnification from physicians who treated injured child where alleged medical malpractice caused additional harm. New Milford Bd. of Ed. v. Juliano, 219 N.J. Super. 182 (App. Div. 1987)
- Civil rights, 1983 action (42 USCA § 1983), Planning board members were not entitled to qualified immunity in civil rights action where their actions were malicious in intent, Anastasia v. West Orange Twp. Planning Bd., 197 N.J. Super. 457 (Law Div. 1984)
- Conflict of interest actions
 - Defense of, Jones v. Kolbeck, 119 N.J. Super. 299 (App. Div. 1972); (71:144) (75:47, South Plainfield)
 - Right of board member to vote for indemnification for own legal expenses upheld (75:47, South Plainfield)
- Employee indemnification statute (N.J.S.A. 18A:16-6)
 - Does not cover employee who signs contract to purchase goods without complying with board policy (85:1230, Payton)
- Employee indemnification statute (N.J.S.A. 18A:16-6)
 - does not cover independent contractors, Hartman v. Maplewood School Trans. Co., 109 N.J. Super. 497 (App. Div. 1970) aff'g 106 N.J. Super. 187 (Law Div. 1969) see (67:167)
- Employee indemnification statute (N.J.S.A. 18A:16-6) does not cover students engaged in school activities, Gilborges v. Wallace, 78 N.J. 342 (1978)
- Immunity will not be lost in defamation action against non-constitutional public officer arising from exercise of administrative discretion unless statement made with "actual malice." Burke v. Deiner, 197 N.J. Super. 382 (App. Div. 1983), rev'd 97 N.J. 465 (1984)
- Indemnification provisions of Title 18A respecting employees

are not repealed by Tort Claims Act, Lamiero v. West New York Bd. of Ed., 136 N.J. Super. 585 (Law Div. 1975)
Libel actions, Errington v. Mansfield Twp. Bd. of Ed.,
100 N.J. Super. 130 (App. Div. 1968); (67:280, aff'd St. Bd.
68:261)
Qualified immunity, Anastasia v. West Orange Twp. Planning Bd.,
197 N.J. Super. 457 (L.D. 1984)
Reimbursement denied to employee who was successfully sued by
Board for mismanagement of funds (73:671)

INDEMNIFICATION - continued

Civil actions - continued

Settlement of action against borough and school board did not preclude indemnification. New Milford Bd. of Ed. v. Juliano, 219 N.J. Super. 182 (App. Div. 1987)

Statute limited to actions brought against board members and does not authorize reimbursement for expenses incurred by board members in suit brought against board (82: April 12, Hogan, aff'd St. Bd. 82: August 4)

Torts in general

(See "Torts", this index)

Criminal actions

Acts of sexual assault and endangering the welfare of children do not arise out of the performance of duties; teacher ineligible for indemnification (88:132, Pawlak, aff'd with modifications St. Bd. 88:154, aff'd App. Div. unreported op. (Dkt. No. A-5083-87T2, July 12, 1989))

Board member held not entitled to reimbursement for successful defense of criminal charge arising out of alleged acts of extortion occurring while he was member of the board; criminal indemnification provision, in contrast to civil one, should be interpreted strictly Powers v. Union City Bd. of Ed., 124 N.J. Super. 590 (Law Div. 1973) aff'd o.b. 127 N.J. Super. 294 (App. Div. 1974)

Disorderly persons offense is a criminal offense for purposes of N.J.S.A. 18A:16-6.1 (85:1513, Cilento)

Impact of PTI upon employee's right to indemnification for cost of criminal litigation (88:132, Pawlak, aff'd with modifications St. Bd. 88:154, aff'd App. Div. unreported op. (Dkt. No. A-5083-87T2, July 12, 1989))

Teachers (See "Teachers - Legal Fees", this index)

Legal fees

Action of teacher to have school board bear costs and expenses of defense of civil assault suit filed by student was dismissed without prejudice pending outcome of case brought by student in Superior Court (87:2304, Metzler)

Reimbursement for successful defense of criminal charges (81: June 15, O'Neill)

Reimbursement not available for defense of tenure charges (80: June 16, Emmons, aff'd St. Bd. 80: November 5)

Reimbursement pursuant to collective bargaining agreement (80: June 30, Pasck, aff'd St. Bd. 81: January 22)

INDIVIDUALS WITH DISABILITIES ACT

(See "Handicapped Children" this index)

INSURANCE

Accident insurance for employees who use own cars as part of duties (80: August 25, Bernstein)

Bidding; no requirement in Title 18A or Title 40A that insurance be bid; board's choice of insurance agent and policy upheld (72:361)

Board's failure to process employee's hospitalization coverage (79:580, Milewski)

Board's policy limiting medical benefits to employees under contract for minimum of 20 hours per week upheld (82: March 8, Janus)

Long-term substitute teacher ineligible for health insurance coverage (80: May 5, Kafes, aff'd St. Bd. 81: January 22)

Policy requiring pupils to take out and pay for accident insurance as prerequisite to participation in athletics held unlawful (67:267)

Self-funded insurance; joint. N.J.S.A. 18A:18B-1 et seq.

Self-funded insurance plan held to be outside the authority of a board to organize (82: October 15, Irvington, aff'd St. Bd. 83:1571), aff'd App. Div., unpublished opinion (Docket No. A-4805-82T5, decided February 9, 1984))

State Health Benefits Plan; increase in benefits for state employees requires automatic increase in benefits for employees of participating local governments, NJSBA v. State Health Benefits Comm., 183 N.J. Super. 215 (App. Div. 1982)

INTEGRATION

(See "Racial Balance", this index)

INTEREST

(See "Commissioner - Interest", this index)

INTERIM RELIEF

(See "Commissioner - Preliminary relief", this index)