

QUORUM

(See "Boards - Meetings - Quorum", this index)

RACIAL DISCRIMINATION

Abolition of position held not racially motivated, (80:655, Perry)

Board's hiring procedure held not improperly motivated
(78:59, Mason)

(78:157, Scott)

Burden of proof; person alleging racial discrimination must show by

a preponderance of evidence that such discrimination occurred (81: August 18, Brown)

Charges of racial discrimination (80: August 6, Gonzales)

Charges of racial discrimination; none found (80:1193, Page, aff'd

St. Bd. 81: June 3)

Non-renewal of non-tenured teacher held not improperly motivated

(80: May 29, Stevenson, aff'd St. Bd. 80: September 3)

RACIAL IMBALANCE

Authority and responsibility to enforce policy against segregation

(80:1158, Linden, aff'd St. Bd. 81: May 8, aff'd App. Div. 83:1594)

Board is responsible for adoption and implementation of suitable

plan, Booker v. Plainfield Bd. of Ed., 45 N.J. 161 (1965) (C. dec. 63:136, 66:59, St. Bd. 64:167); Morean v. Montclair Bd. of Ed., 42 N.J. 237 (1964) (C. dec. 63:154 aff'd St. Bd. 63:160); (63:123) (63:141, aff'd St. Bd. 63:147, related case in U.S. Dist. Ct. 64:177); (69:51) (76:187, Roselle) (77:1014, Montclair Concerned Citizens Assoc.) Piscataway Bd. of Ed. v. Burke, 158 N.J. Super. 436 (App. Div. 1978), appeal dismissed 79 N.J. 473 (1979)

Board may adopt plan to achieve racial balance in all of its schools

even if plan of such scope is not legally required (81: September 11, Lettieri)

Citizens participation (77:1014, Montclair Concerned Citizens Assoc.)

Approval of community study group not necessary for board

adoption of plan (81: September 11, Lettieri)

Commissioner of education

Broad powers of, Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483

(1971) rev'g C. dec. 69:27 and 70:389, St. Bd. 71:688; related case 74:457, aff'd St. Bd. 74:487); Booker v. Plainfield Bd. of Ed., 45 N.J. 161 (1965) (C. dec. 63:136, 66:59, St. Bd. 64:167); Morean v. Montclair Bd. of Ed., 42 N.J. 237 (1964) (C. dec. 63:154 aff'd St. Bd. 63:160);

RACIAL IMBALANCE - continued

Commissioner of Education - continued

Broad powers of - continued

Elliott v. Neptune Twp. Bd. of Ed., 94 N.J. Super. 400 (App. Div. 1967) (C. dec. 66:52 aff'd St. Bd. 66:54); (66:15 and 66:21 aff'd St. Bd. 67:341 aff'd App. Div. 67:337, 67:343, certif. denied 50 N.J. 294 (1967) and 51 N.J. 179 (1968) Piscataway Bd. of Ed. v. Burke, 158 N.J. Super. 436 (App. Div. 1978), 79 N.J. 473 (1979)

Can order formulation and implementation of plan where

local

board has neglected to act, (Booker v. Plainfield Bd. of Ed., 45 N.J. 161 (1965) (C. dec. 63:136, 66:59, St. Bd. 64:167); Elliott v. Neptune Twp. Bd. of Ed., 94 N.J. Super. 400 (App. Div. 1967) (C. dec. 66:52 aff'd St. Bd. 66:54); (66:15 and 66:21, aff'd St. Bd. 67:341, aff'd App. Div. 67:337, 67:343, certif. denied 50 N.J. 294 (1967) and 51 N.J. 179 (1968); (67:312) (69:51) (70:269) (76:187, Roselle) (77:808, Plainfield) Piscataway Bd. of Ed. v. Burke, 158 N.J. Super. 436 (App. Div. 1978), 79 N.J. 473 (1979) In the Matter of the Board of Education of the Township of Hillside, aff'd App. Div., unpublished opinion (Docket No. A-1689-80-T4, January 26, 1982; St. Bd. 80: November 5, C. dec. 80: June 10)

Merger of school districts

Ordered by Commissioner to avoid racial imbalance, Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483 (1971) (rev'g C. dec. 69:27 and 70:389, St. Bd. 71:688; related case 74:457 aff'd St. Bd. 74:487)

Not ordered (74:938 aff'd St. Bd. 75:1109; related case at 75:445 aff'd St. Bd. 75:454)

Where regional school district created by

Commissioner

under this power, voters do not have authority to choose basis of appointment, Morris Twp. Committee v. Morris Twp. Bd. of Ed., 60 N.J. 186 (1972); (74:9 remanded St. Bd. 74:1430)

Refusal to enjoin implementation of interim plan

(71:301)

(71:438 aff'd St. Bd. 72:665)

Bd. Refusal to rescind approval of plan (74:929 aff'd St.
75:1162)
Sending-receiving relationship
Maintenance of racial balance is one consideration
when deciding termination, Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483 (1971) (rev'g C. dec. 69:27 and 70:389, St. Bd. 71:688; related case 74:457, aff'd St. Bd. 74:487); (71:221, aff'd St. Bd. 71:228) (72:286, aff'd St. Bd. 72:290) (74:457, aff'd St. Bd. 74:487) (74:938, aff'd St. Bd. 75:1109; related case 75:445, aff'd St. Bd. 75:454) (77:662, Branchburg, aff'd St. Bd. 77: September 7) (89:1880, Belmar)

RACIAL IMBALANCE - continued

Definition of racial imbalance
Burden of proof; person alleging racial discrimination
must show by a preponderance of evidence that
discrimination occurred (81: August 18, Brown)
Department of Education guidelines, Piscataway Bd. of Ed. v. Burke, 158 N.J. Super. 436 (App. Div. 1978) 79 N.J. 473 (1979)
Linden, Desegregation plan, found unacceptable (80:1158, aff'd St. Bd. 81: May 8, aff'd App. Div. 83:1594)
public Not ratios but effect upon achievement of goals of education (69:51); but see definition according to Dept. of Education guidelines (74:929, aff'd St. Bd. 75:1162)
of the Statistical demonstration of imbalance, In the Matter Board of Education of the Township of Hillside, aff'd App. Div., unpublished opinion (Docket No. A-1689-80-T4, January 26, 1982; St. Bd. 80: November 5; C. dec. 80: June 10)
Impact on racial composition of school's proposed withdrawal from MVC to MSC justified denial by NJSIAA (89: March 29, NJSIAA)
Plans

Acceptable, "magnet program" (77:1014, Montclair
Concerned Citizens Assoc.) (88: June 9,
Bernd)
Involuntary busing (70:354) (74:929, aff'd St. Bd.
75:1162)
Merger; compare Jenkins v. Morris Twp. Sch. Dist., 58
N.J. 483
(1971) (rev'g C. dec. 69:27 and 70:389, St. Bd.
71:688) with (74:938 aff'd St. Bd. 75:1109;
related case at 75:445, aff'd St. Bd. 75:454)
Reassignment of pupils, Morean v. Montclair Bd. of Ed.,
42 N.J.
237 (1964) (C. dec. 63:154 aff'd St. Bd. 63:160);
Schults v. Teaneck Bd. of Ed., 86 N.J. Super. 29
(App. Div. 1964) aff'd o.b. 45 N.J. 2 (1965)
(related case 65:152)
Rescission requested by board, denied by Commissioner
(74:929,
aff'd St. Bd. 75:1162)
Standing of parents to intervene in challenge (74:2,
stay
denied 74:7)
Unacceptable (67:312), but later upheld (68:192, aff'd
St. Bd.
68:199) (related case 71:301)
Unacceptable, state aid withheld (76:187, Roselle)
Upheld, Schults v. Teaneck Bd. of Ed., 86 N.J. Super.
29
(App. Div. 1964) aff'd o.b. 45 N.J. 2 (1965)
(related case 65:152); (63:123) (63:141, aff'd St.
Bd. 63:147, related case in U.S. Dist. Ct. 64:177)
(64:54, aff'd St. Bd. 64:60 (68:112) (70:25)
Segregation, unlawful, Booker v. Plainfield Bd. of Ed., 45
N.J.
161 (1965) (C. dec. 63:136, 66:59, St. Bd. 64:167);
Hedgepeth v. Trenton Bd. of Ed., 131 N.J.L. 153 (Sup.
Ct. 1944); (69:51)
State policy and guidelines are reasonable (76:323,
Roselle)

RECORDS

(See "Pupils - Records", "Teachers - Records" and "Right to
Know
Law", this index)

REDUCTION IN FORCE

(See "Abolition of position", this index)

REFERENDA

(See "Elections - Referenda", this index)

REGIONAL BOARDS

(Includes decisions of Board of Review, see N.J.S.A. 18A:13-56)

Apportionment, excluding inhabitants of military reservation, held

unconstitutional, Oceanport v. Hughes, 186 N.J. Super. 109 (Ch. Div. 1982)

Apportionment, held unconstitutional, Franklin Tp. v. North Hunterdon

Reg. H.S. Bd. of Ed., 74 N.J. 345 (1977), cert. den. 435 U.S. 950 (1978)

Apportionment of members after census (85: January 29, In the

Matter of the Application of Allentown and Upper Freehold)

Appropriate to educational needs of the area (77:610, Ogdensburg,

aff'd St. Bd. 77:618)

Commission has implied statutory authority to oversee and authorize,

in proper circumstances, the reduction in purpose of or a partial withdrawal from a limited purpose regional school district (88:2392, Berlin, rev'd St. Bd. 89:2996)

Creation of; referendum question (79: August 2, Bloomingdale,

unpublished opinion)

Creation of; transfer of tenure of teachers, and secretaries from

constituent district (81: February 6, Franklin)

Child study teams; services to constituent district (81: February 18,

Castanien)

Dissolution of regional district may only be accomplished by following statutory requirements of hearing before Board of Review and referendum (86:796, Contini)

District withdrawing from regional district had no claim to

share

of regional's funds or assets where question submitted to voters specifically stated that no assets or liabilities would be removed from regional upon withdrawal, (81: June 15, Egg Harbor, aff'd St. Bd. 82: January 6, aff'd 188 N.J. Super. 92 (App. Div. 1982) certif. denied 93 N.J. 245 (1983)

REGIONAL BOARDS - continued

Equalization aid, calculation of on district-wide basis, upheld,

Washington Twp. v. Burke, 178 N.J. Super. 325 (App. Div. 1981), certif. denied 87 N.J. 413 (1981)

Equalized valuation (83: October 13, Burlington County)

Method and computation of apportionment, Alfred Vail Mut. Assn. v.

New Shrewsbury, 58 N.J. 40 (1971); Matawan v. Monmouth Cty. Bd. of Tax., 51 N.J. 291 (1968); Berkeley Hts. Twp. v. Union Co. Bd. of Ed., 23 N.J. 276 (1957)

No voter approval of apportionment method required in compulsory

mergers ordered by Commissioner, Morris Twp. Committee v. Morris Twp. Bd. of Ed., 60 N.J. 186 (1972)

Regional districts may retain per pupil basis for allocation of

budget appropriations on a gradually reduced basis for five years pursuant to N.J.S.A. 18A:13-23.1, Tp. of Princeton v. N.J. Dept. of Ed., 163 N.J. Super. 389 (App. Div. 1978)

Withdrawal of district; county superintendent required to file report

on distribution of assets per N.J.S.A. 18A:13-62 (81: June 15, Egg Harbor, aff'd St. Bd. 82: January 6, aff'd 188 N.J. Super. 92 (App. Div. 1982) certif. denied 93 N.J. 245 (1983))

Withdrawal of district, rights of personnel as to tenure, seniority

pension, leaves of absence, salary (80:553, Central Regional) (83: February 9, Hartnett, aff'd St. Bd. 83: June 1)

Withdrawal of district; withdrawing board's challenge to conditions

of withdrawal set by Board of Review and approved by electorate held res judicata (81: June 15, Egg Harbor, aff'd St. Bd. 82: January 6, aff'd 188 N.J. Super. 92 (App. Div. 1982) certif. denied 93 N.J. 245 (1983))

Withdrawal requests (Bd. Rev. 77:632, Seaside Heights, clarified

77:644 order 78: January 13) (Bd. Rev. 77:1162, Mt. Olive order 79: March 12) (Bd. Rev. 78:88, Runnemedede) (Bd. Rev. 78:275, Egg Harbor Tp. order 78: October 25 order 79: February 21 order 79: April 25) (78:874, Runnemedede, dismissed as out of time St. Bd. 79: March

7) (Bd. Rev. 80:465, Marlboro) (80: July 23, Winslow)
(80: August 25, Lunn, aff'd St. Bd. 81: March 4) (Bd.
Rev. 81: September 8, Gloucester) (82: October 22,
Shore Regional) (83: July 21, Seaside Heights)

RELIGION

- Aid to parochial schools
parochial schools held unconstitutional Aquilar v. Felton, 53 U.S.L.W. 5013 (1985); Grand Rapids School District of the City of Grand Rapids v. Ball, 53 U.S.L.W. 5006 (1985); see also Public Funds for Public Schools v. Marberger, 358 F.Supp. 29 (D.N.J. 1973) aff'd 417 U.S. 961 (1974); (74:181) **NOTE:** School districts which receive Federal Chapter I funds still have the obligation to use other means to provide educational services on an equitable basis to parochial students eligible to participate in the Chapter I program, 20 U.S.C. section 3806(a), U.S. Department of Education Guidelines, August, 1985
- Chapter I instructional services provided to parochial school students
in mobile classroom units at religiously affiliated school premises did not violate Constitutionally permitted procedures and guidelines (87:2319, Paterson)
Christmas carols; singing of, held not to be a religious exercise (61-62:55)
- Commissioner of Education may order the realignment of athletic leagues and conferences to include parochial schools without violating the Establishment Clause (82: May 28, NJSIAA, St. Bd. granted motion to dismiss appeal 82: September 8)
- Discrimination on basis of, not found (72:340, aff'd St. Bd. 73:51, aff'd App. Div. 75:1157, certif. denied 75: June 4)
- Drama
religious "Jesus Christ Superstar" production held not to be exercise or religious in character; board action approving student production upheld (75:214, Jacobs)
- Equal Access Act; district which allows one student non-curriculum related group to meet on non-instructional time must allow other religious, political or philosophical groups to meet also. 20 U.S.C.A. 4071 et seq.

Exemption from Manitou test for T.B. denied (88:1007, Spano)
Flag salute
 Conscientious objection to (See "Flag", this index)
Immunization
 Religious exemption (See "Immunization", this index)
Non-denominational prayer at beginning of borough council
meeting
 not violative of establishment clause, Marsa v. Wernik,
 163 N.J. Super. 589 (Ch. Div. 1978), aff'd 171 N.J.
 Super. 587 (App. Div. 1980, aff'd 86 N.J. 232 (1981)).
 No comparable decision concerning non-denominational
 prayer. Appears from case law that it would not be
 allowed under same rationale which prevents Bible
 reading.

RELIGION - continued

Policy banning extracurricular school activities on the Sabbath, no violation of First Amendment, Student Members of the Playcrafters v. Teaneck Board of Education, 177 N.J. Super. 66 (App. Div. 1981), aff'd 88 N.J. 74 (1981)

Prayers, Bible reading and "moments of silence" in schools
Alabama statute authorizing moment of silence for prayer or meditation held unconstitutional, Wallace v. Jaffree, 472 U.S. 38 (1985)

New Jersey statute mandating moment of silence held unconstitutional, May v. Cooperman, 572 F.Supp. 1561 (D.N.J. 1983), 780 F.2d 240 (3rd Cir. 1985), app. dismiss. sub. nom., Karcher v. May, 98 L.Ed.2d 327 (1987)

New Jersey statute requiring prayers and Bible reading held unconstitutional, State Bd. of Ed. v. Netcong Bd. of Ed., 57 N.J. 172 (1970) cert. den. 401 U.S. 1013 (1971); Sills v. Hawthorne Bd. of Ed., 42 N.J. 351 (1964)

Religious discrimination alleged as basis for non-renewal of non-tenured teacher (80: May 2, Korman)

Religious holidays
Board may question sincerity and legitimacy of Catholic student observing Jewish holiday (85: October 29, Carlin)

Religious leave; board may not grant paid leaves of absence solely for religious observance; Hunterdon Central High School Bd. of Ed. v. Hunterdon Central High School Teachers' Association, 174 N.J. Super. 468 (1980), aff'd 86 N.J. 43 (1981)

Shared time and dual enrollment programs, constitutionality of,
Atty. Gen. Formal Opinion No. 4, 1965

State formula for distribution of equalization aid challenged as abridgment of freedom of religion, Karcher v. Byrne, 146 N.J. Super. 532 (Law Div. 1977) aff'd 158 N.J. Super. 67 (App. Div. 1978)

Transportation for parochial school students
Constitutionality of N.J.S.A. 18A:39-1 upheld, West Morris Reg.

Bd. of Ed. v. Sills, 58 N.J. 464 (1971) rev'g 110 N.J. Super. 234 (Ch. Div. 1970); see also McCanna v. Sills, 103 N.J. Super. 480 (Ch. Div. 1968); Woodbury Hts. Bd. of Ed. v. Gateway Reg. H.S. Bd. of Ed., 104 N.J. Super. 76 (Law Div. 1968)

Use of public schools for religious purposes, Resnick v. East

Brunswick Bd. of Ed., 77 N.J. 88 (1978) (39-49:34) (63:62) (75:214, Jacobs) see also Equal Access Act, 20 U.S.C.A. 4071 et seq.: district which allows one student non-curriculum related group to meet on school grounds during non-instructional time must allow other religious, political or philosophical groups to meet also

REPRESENTATIVES

(See also "Unions", this index)

Right of teacher to be accompanied by representative at any meeting

with board or member thereof (74:316, dismissed St. Bd. 74:323)

RES JUDICATA

Collateral Estoppel

Generally (81: October 5, Wyckoff, aff'd St. Bd. 82: May 5)

(82: November 22, Rogers; rev'd on other grounds, St. Bd. 83:1626)

Application of collateral estoppel (72:353)

Application of res judicata (76:473, Karamessinis) (77:1091,

Frick)

Both doctrines applied and distinguished (82: March 8, Janus)

(85: March 25, Killino)

Collateral estoppel bars petition (83: September 26, Kulik,

aff'd on other grounds St. Bd. 84: February 1)

(84: January 17, Salette)

Neither doctrine applied where substantive issue not addressed

in prior case which was decided on procedural grounds (87: 2175, D'Alonzo)

Neither res judicata nor collateral estoppel bars

workers

compensation judge from considering claim for temporary disability for injuries Commissioner determined were non-work related, Forgash v. Lower Camden County School District, 208 N.J. Super. 461 (App. Div. 1985)

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

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

Equitable estoppel

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

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

General application (76:473, Karamessinis) (77:1091, Frick) (88: May 2, Caldwell)

RES JUDICATA - continued

Judicial rules (e.g. res judicata, collateral estoppel, the single

controversy doctrine, stare decisis) are not strictly applicable to administrative actions, although they may be applied if appropriate, dicta contained in initial decision (84: January 17, Newman); but see (84: January 17, Salette)

Res judicata

Arbitrator's award finding supplemental teachers not entitled

to additional salary under contract does not bar teachers from seeking additional salary before Commissioner and State Board (87: April 1, Piscataway, St. Bd. aff'g in part, rev'g in part 83: October 13)

23, Bars claim (84: January 17, Salette) (84: January Rush) (85: March 25, Killino) (88:787, Caldwell)

Res judicata and collateral estoppel bar re-litigation of school

closing (88:1, Save Our Schools Ass'n)

Res judicata compared to stare decisis (82: March 19, Mauro)

Res judicata does not bar litigation over back pay after decision dismissing tenure charges (82: February 5, Siedlarczyk, aff'd St. Bd. 82: August 4)

RESIDENCE

(See "Boards - Membership - Qualifications", "Pupils - Residence

for school purposes" and "Teachers - Residence", this index)

RESIGNATION

Back pay from time of suspension to time of resignation denied since

completion of PTI did not constitute favorable dismissal of criminal charges (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 members
(See also "Boards - Membership - Resignation", this
index)
Board's refusal to rescind arbitrary and capricious.
Local board
could not, without justification and in conflict
with past practice require secretary to pass exam
as condition of rescission of intent to retire
(88:614, Hall, decision on remand 88:633, decision
on motion St. Bd. 89: March 1, aff'd St. Bd.
89:3009, aff'd App. Div. unreported op. (Dkt. No.
A-5454-88T3 May 25, 1990), rev'd and remanded 125
N.J. 299 (1990))
Computation of salary (80:58, Parker) (81: December 16,
Campion, aff'd St. Bd. 82: May 5)

RESIGNATION - continued

Employees

Agreement to resign from administrative position
(79:558, Mancia,
aff'd St. Bd. 80: January 9)
Cannot suspend tenured teacher pending resignation
unless
formal charges are filed (79:200, McGuire)
Claim that resignation was coerced not upheld (77:416,
Pedersen, aff'd St. Bd. 77:421)
Duress rejected (83: September 26, Klinka, aff'd St.
Bd. 84:
March 7) (83: November 14, Rippe, aff'd St. Bd.
84: July 11)
Effective only after acceptance by board (59-60:60)
(74:1236)
but see Evaul v. Camden Bd. of Ed., 35 N.J. 244
(1961) (76:633, Kozak)
Filing for disability retirement benefits means a
termination
of employment (77:422, Lainq, aff'd St. Bd.
77:421)
Final upon acceptance by the Board; must be knowingly
and
voluntarily proffered without duress or coercion
(87:729, Brunnquell, rev'd St. Bd. 87:736,
decision on remand 88:347, aff'd St. Bd. 88:351)
Lack of formal acceptance by board (79:439, Cohen)
Modification of resignation not permitted after
acceptance by
board (88:31, Fischer)
Notice required (See-Certificate Suspension)
For non-tenured teachers, N.J.S.A. 18A:26-10; for
tenured
teachers, N.J.S.A. 18A:28-8 (70:460); see
also (70:147) and Evaul v. Camden Bd. of Ed.,
65 N.J. Super. 68 (App. Div.) rev'd 35 N.J.
244 (1961) (76:633, Kozak) (77:1235, Verge)
(88:904, Zweig)
Notice required under N.J.S.A. 18A:28-8; 60 days, if
tenured
teaching staff member (83: July 15, Minnich)
(87:2016, Drake)
Renders moot supervisor's claim that non-renewal was
arbitrary

and capricious (88:171, Walker)
Rescission of resignation by teacher
Before acceptance (54-55:98)
Final on acceptance (69-60:60) (76:633, Kozak)

(77:

416, Pedersen aff'd St. Bd. 77:421) (87:729,
Brunnquell, rev'd St. Bd. 87:736, decision on
remand 88:347, aff'd St. Bd. 88:351)

Rescission valid since board knew of teacher's mental

state

and should have sought psychiatric examination
before accepting resignation (78:761, Knoblauch)

Resignation from part-time position does not affect

teacher's

right to remain on reemployment list for full-time
position (84:1975, Mishkin v. Mountainside Bd. of
Ed., App. Div. (Docket No. A-803-83T2, decided
November 2, 1984), rev'g 83:117, aff'd St. Bd.
83:148)

RESIGNATION - continued

Employees - continued

Submission of retirement papers to pension fund by secretary may impact on propriety of board's refusal to extend secretary's resignation; matter remanded (88:614, Hall, decision on remand 88:633, decision on motion St. Bd. 89: March 1, aff'd App. Div. unreported op. (Dkt. No. A-5454-88T3 May 25, 1990), rev'd and remanded 125 N.J. 299 (1990)) Teachers Pension and Annuity Fund; withdrawal from fund is resignation from position with school district and terminates tenure rights acquired prior thereto (83:534, Pfeiffer) Tenure forfeited though reemployed two days after effective date (84: October 11, Tomlin, aff'd St. Bd. 85: February 6) Termination of employment with application for deferred retirement constituted resignation (89:87, Sathan) Under duress alleged (67:11) (70:207) (72:432) (72:340 and 73:51, aff'd St. Bd. 74:1433, aff'd App. Div. 75:1157, certif. denied 75: June 4) (79:558, Mancia, aff'd St. Bd. 80: January 9) When teacher asked board for permission to resign as soon as possible and board chose day before Thanksgiving, teacher was not entitled to payment for holiday (81: December 16, Campion, aff'd St. Bd. 82: May 5) Where ambiguous contract provision and past practice exist permitting modification of retirement date after resignation accepted, board cannot impose performance based condition without justification (88:633, Hall, rev'd St. Bd. 89:3009, aff'd App. Div. unpublished decision (Docket No. A-5454-88T3) May 25, 1990, rev'd and remanded 125 N.J. 299 (1991)) Withdrawal of resignation distinguishes Ineffective after acceptance by board, Evaul v. Board of Education of Camden, 35 N.J. 244 (1961) (83: September 26, Klinka,

aff'd St. Bd. 84: March 7) see also (84:769, Bosner) (88:1149, Hanley)

RETIREMENT AND PENSIONS

Accidental disability

Entitlement to for emotional trauma discussed, Pushko v. Bd.
of Trustees of Teachers Pension and Annuity Fund, 202 N.J. Super. 98 (App. Div. 1985), remanded by Supreme Court for reconsideration in light of definition of "traumatic event" in Kane v. Board of Trustees, Police and Firemen's Retirement Fund, 100 N.J. 651 (1985); decision on remand, 208 N.J. Super. 141 (App. Div. 1986), remands case to TPAF Board of Trustees

RETIREMENT AND PENSIONS - continued

Accidental disability - continued

Teacher who slipped on floor did not suffer "traumatic event" to

qualify for accidental disability retirement.
Maynard v. Bd. of Trustees, 113 N.J. 169 (1988)

Accumulated sick leave, payment upon retirement is not a statutory

right but one conferred through collective negotiations (85: February 19, Goetze) (87:1911, Pelle, St. Bd. aff'd in part, rev'd in part 88:2463, aff'd App. Div. unreported op. (Dkt. No. A-4415-87T1 March 1, 1989))

Accumulated vacation days; Civil Service employee may not accumulate

beyond following year (91:2542, Mayo, St. Bd. modifying 89:2603)

Board's claim for repayment of excess accumulated sick leave time-barred by 90 day rule (87:1911, Pelle, St. Bd. aff'd in part, rev'd in part 88:2463, aff'd App. Div. unreported op. (Dkt. No. A-4415-87T1 March 1, 1989))

Date that employee received approval of retirement triggered 31 day

period for conversion to individual life policy under TPAF. McKenna v. Prudential Ins., 224 N.J. Super. 172 (App. Div. 1988)

Disability pension

Accidental disability pension granted for teacher whose injury

occurred on school premises before the beginning

of the teaching day, In re Carlson, 174 N.J. Super. 603 (App. Div. 1980)

Accidental disability retirement benefits

Denied to teacher who injured back opening window prior to

start of school day. Ordinary retirement benefits awarded. Fulco v. Bd. of Trustees of TPAF, August 12, 1981 ALJ decision affirmed by Bd. of Trustees of TPAF. See 1986 amendment to N.J.S.A. 18A:66-39(c).

Filing application terminated employment; rescission

by TPAF does not automatically reinstate teacher (77:422, Lainq, aff'd St. Bd. 77:427) Heart attack is not accidental death, Russo v.

Teachers'

Pens. & Ann. Fund, 62 N.J. 142 (1973)

May not be collected if also receiving workman's compensation benefits for same accident, Russo v. Teachers' Pens. & Ann. Fund, 62 N.J. 142 (1973); Lahm v. State, 112 N.J. Super. 167 (App. Div. 1970); Swan v. Bd. of Trustees of Teachers' Pens. Fund, 85 N.J. Super. 226 (App. Div. 1964)

Rejection of accidental disability retirement claim

will not automatically convert application to one for service retirement, Sobel v. Bd. of Trustees of Teachers' Pens. & Ann. Fund, 139 N.J. Super. 55 (App. Div. 1976)

Service-connected disability pension; injury must be a "direct" result of incident occurring at school, Titman v. Bd. of Trustees of Teachers' Pens. & Ann. Fund, 107 N.J. Super. 244 (App. Div. 1969); (60-61:175)

RETIREMENT AND PENSIONS - continued

Disability pension - continued

Accidental disability retirement benefits - continued

To recover accidental disability retirement benefit, injured

public employee must demonstrate that injuries were not induced by stress or strain of normal work effort; traumatic event is necessary. Gable v. Bd. of Trustees of PERS, 115 N.J. 212 (1989)

Board of Trustees; 30 day waiting period invalid, Frigola v. St. Bd. of Ed., 25 N.J. Super. 75 (App. Div. 1953) (St. Bd. 51-52:59)

Blinding of school custodian's eye by bristles of broom was "traumatic event" within meaning of statute. Duigan v. PERS, 223 N.J. Super. 208 (App. Div. 1988)

Board must make specific findings and certification in application for disability retirement (58-59:80, aff'd St. Bd. 58-59:82, aff'd App. Div. 61-62:203) (60-61:175)

Board ordered to apply for disability retirement on behalf of teacher (77:403, Reilly) (77:876, Healy, aff'd and modified St. Bd. 78:1019)

Disability pension granted for teacher who underwent sex change, In re Grossman, 157 N.J. Super. 165 (App. Div. 1978)

Forced retirement Delay of over 2 years in appealing, laches operates to bar suit (60-61:142, aff'd App. Div. 61-62:203)

Emotional imbalance; upheld (70:33)

Mental abnormality; physicians conducted examinations to confirm no recovery; upheld (58-59:80, aff'd St. Bd. 58-59:82, aff'd App. Div. 61-62:203)

Tenure lost upon disability retirement (82: January 6, Kopel)

Early retirement

Agreement upheld against claim that it was unlawful gift of public monies (74:216, aff'd St. Bd. 74:225)

Effective date is when application approved by Fund; 30-day waiting period invalid, Diebert v. Bd. of Trustees, 83 N.J. Super. 403 (App. Div. 1964)

Teacher showed good cause to convert ordinary disability retirement plan to early service retirement. Steinmann v. State, Department of Treasury, 116 N.J. 564 (1989), rev'g 235 N.J. Super. 356 (App.

Div. 1988)

Eligibility of Title I teachers for TPAF; determination is
exclusive

to TPAF, Middlesex Educational Services Commission Ed.
Assn. v. Middlesex Educational Services Commission,
App. Div., unpublished opinion, (Docket No.
A-3813-81T1, March 2, 1983) certif. denied 94 N.J. 583
(1983) rev'g (81: April 30, aff'd St. Bd. 82: March
25)

RETIREMENT AND PENSIONS - continued

Forced retirement

Based upon age, upheld (76:1008, Hedrick)
Board has no power to retire teacher on its own initiative
(79:4, Dunn, aff'd St. Bd. 79:4)
Life insurance benefits
Denied; must be "active member" at time of death,
Rogers v. State, 125 N.J. Super. 516 (App. Div. 1973) aff'd
o.b. 64 N.J. 40 (1973)
New designation of beneficiary form must be filed when
benefits are statutorily changed, Meyer v. Bd. of Trustees,
49 N.J. Super. 255 (App. Div. 1958)

Pension

Amount; TPAF has exclusive jurisdiction to decide (80:
December 8, Taylor)
Application must be properly signed (54-55:78)
Attorney's eligibility for membership in county pension
fund
(N.J.S.A. 18A:66-94 et seq.), only eligible if
salaried, not when employed on fee basis (70:66,
aff'd St. Bd. 71:663) see also Koribanics v.
Clifton Bd. of Ed., 48 N.J. 1 (1966)
Attorney's eligibility for membership in PERS. Atty.
General
Formal Opinion No. 27 (1976) See also Fasolo v.
Bd. of Trustees, 181 N.J. Super. 434 (App. Div.
1981), 190 N.J. Super. 573 (App. Div. 1983) and
Hiering v. PERS, 197 N.J. Super. 14 (App. Div.
1984)
Commissioner of education has no jurisdiction to hear
disputes concerning pension rights, Bd. of
Trustees v. LaTronica, 81 N.J. Super. 461 (App.
Div. 1963) (C. dec. 61-62:67, St. Bd. 61-62:73,
63:252); contra (70:66, aff'd St. Bd. 71:663)
Coverage, credits for temporary employment under
N.J.S.A.
18A:66-14 (75:505, Weehawken)
Deductions from salary are responsibility of teacher
even
if error discovered at time of retirement, Linden
Bd. of Ed. v. Liebman, 56 N.J. Super. 556 (Ch.
Div. 1959)

required Designation of beneficiary of benefits; new form
when benefits are statutorily changed, Meyer v. Bd. of Trustees, 49 N.J. Super. 255 (App. Div. 1958)

Trustees Determination of salary for retirement purposes, Bd. of v. LaTronica, 81 N.J. Super. 461 (App. Div. 1963) (C. dec. 61-62:67, St. Bd. 61-62:73, 63:252); Matthews v. Irvington Bd. of Ed., 29 N.J. Super. 232 (Law Div. 1953) aff'd 31 N.J. Super. 292 (App. Div. 1954)

Employment of janitor on retirement (39-49:3)
Filing date, held to be flexible, Swiney v. Dept. of
Treas., 84 N.J. Super. 186 (App. Div. 1964)

RETIREMENT AND PENSIONS - continued

Pension - continued

Leaves of absence

Distinguished from abandonment of position

(71:403)

If official, still in pension fund (61-62:82)

(71:403)

No benefits if not on official leave of absence,

Rogers

v. State, 125 N.J. Super. 516 (App. Div. 1973) aff'd o.b. 64 N.J. 40 (1973)

Maternity leave, purchase back full credit into fund, Geller v. Dept. of Treas., 53 N.J. 591 (1969)

Maternity leave does not encompass leave for child

rearing

after the pregnancy-related disability has passed, Chaleff v. TPAF, 188 N.J. Super. 176 (App. Div. 1983)

Maternity leave, untimely application to purchase credit will be

denied unless Board of Trustees of TPAF exercises its discretion to grant a waiver of the time limit, Zigmont v. TPAF, 91 N.J. 580 (1983), reversing and remanding 182 N.J. Super. 50 (App. Div. 1981)

Military leave; payments made by board of education remain

in pension fund if employee later withdraws from fund, Bruder v. Teachers' Pens. & Ann. Fund, 27 N.J. 266 (1958)

Membership rights are statutory, Linden Bd. of Ed. v. Liebman,

56 N.J. Super. 556 (Ch. Div. 1959)

Professional services compensated by a fixed annual retainer are

eligible services for PERS. Atty General Formal Opinion No. 27 (1976). See also Fasolo v. Bd. of Trustees, 181 N.J. Super. 434 (App. Div. 1981), 190 N.J. Super. 573 (App. Div. 1983) and Hiering v. PERS, 197 N.J. Super. 14 (App. Div. 1984)

Public employment; New Jersey statute conditioning pensioners'

right of public employment in N.J. upon giving up, for period of such employment, pensions obtained from public employment within or outside N.J. is

constitutional as applied to pensioners from Pennsylvania, Bortel v. Cherry Hill Bd. of Ed., 99 N.J. Super. 529 (App. Div. 1968) rev'g 95 N.J. Super. 289 (Ch. Div. 1967)

Purpose of; pension statutes are to be liberally construed,

Geller v. Dept. of Treas., 53 N.J. 591 (1969)

Salary increase for borough attorney from \$18,000 to \$55,000 just

over two years prior to retirement granted primarily in anticipation of retirement. DiMaria v. Bd. of Tr. PERS, 225 N.J. Super. 341 (App. Div. 1988)

Salary increases; ad hoc increases in last years of employment

in order to increase retirement allowances invalid, Bd. of Trustees v. LaTronica, 81 N.J. Super. 461 (App. Div. 1963) (C. dec. 61-62:67; St. Bd. 61-62:73, 63:252) But see, Hiering v. PERS, 197 N.J. Super. 14 (App. Div. 1984)

RETIREMENT AND PENSIONS - continued

Pension - continued

Sick leave; ordinary disability retirement approved,
petitioner

is entitled to use accumulated sick leave (less temporary disability payments) during period of disability, but is not entitled to payment for unused sick leave after retirement, absent provision in collective negotiations agreement (84: April 16, Pushko)

Sick leave, unused sick leave may be used in
calculating

retirement compensation, Maywood Ed. Assn. v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1974); but employee who is involuntarily retired pursuant to N.J.S.A. 18A:66-39 has no entitlement to payment for unused sick leave (78:807, Sharp)

Veterans

Joining teachers' pension fund is not a waiver of
right to

veterans' pension; 20 years of service need not be in same department of government, Race v. Newton Bd. of Ed., 37 N.J. Super. 333 (App. Div. 1955)

Refund of "accumulated deductions" does not
include

contributions made on behalf of teacher by board during military leave when teacher later withdraws from fund, Bruder v. Teachers' Pens. & Ann. Fund, 27 N.J. 266 (1958)

Withdrawal; strictly construed, Frigola v. State Bd. of Ed., 25

N.J. Super. 75 (App. Div. 1953) (St. Bd. 51-52:59); (61-62:82)

Workmen's compensation; if receive ordinary service
retirement

benefits, claim may be made for award of workmen's compensation, Russo v. Teachers' Pens. & Ann. Fund, 62 N.J. 142 (1973); Lahm v. State, 112 N.J. Super. 167 (App. Div. 1970); Swan v. Bd. of Trustees of Teachers' Pens. Fund, 85 N.J. Super. 226 (App. Div. 1964)

Stay of order to reinstate teacher pending State Board

decision on

retirement issue, denied (89: January 10, Hall)

Substitute teachers, not eligible for TPAF (80:972, Kearny)

Supplemental retirement benefits program

Board has no authority to establish, Fair Lawn Ed.

Assn. v. Fair

Lawn Bd. of Ed., 79 N.J. 574 (1979)

Pension fund estopped from seeking reimbursement of
additional

funds paid out pursuant to supplemental plan which
was elected by teachers prior to Fair Lawn

decision, Miller v. TPAF, 179 N.J. Super. 473

(App. Div. 1981)

Tenure

Tenure and seniority rights terminated upon receipt of
pension

(87:776, Young, aff'd St. Bd. 87:784)

RETIREMENT AND PENSIONS - continued

Title I teachers, TPAF must determine eligibility for membership

Middlesex Educational Services Commission Ed. Assn. v. Middlesex

Educational Services Commission, App. Div., unpublished opinion, (Docket No. A-3813-81T1, March 2, 1983) certif. denied 94 N.J. 583 (1983) rev'g 81: April 30, aff'd St. Bd. 82: March 25

Where ambiguous contract provision and past practice exist permitting

modification of retirement date after resignation accepted, board cannot impose performance based condition without justification (88:633, Hall, rev'd St. Bd. 89:3009, aff'd App. Div. unpublished decision (Docket No. A-5454-88T3) May 25, 1990, rev'd and remanded 125 N.J. 299 (1991))

While pension benefits can be modified in interest of assuring integrity of pension system, despite compensatory aspect of their nature, benefits cannot be rescinded unilaterally where underlying motivation is erroneous belief that benefits must be discontinued. Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987)

Widow entitled to receive continuation benefits for two months during

each year during which she did not work as a teacher. Sarisky v. ER Squibb & Sons Inc., 233 N.J. Super. 533 (App. Div. 1989)

RIGHT TO KNOW LAW

Access to results of standardized achievement tests upheld, Citizens for Better Education v. Camden Bd. of Ed., 124 N.J. Super. 523 (App. Div. 1973)

Access to should be without unnecessary "red tape" or delay (89:1434, Sokolosky)

Board of education has no obligation to do homework for a person

who wants to see documents (87:2442, Laufgas - discovery order of Commissioner, aff'd St. Bd. 88:2496)

Common law right of access to public records other than Right to Know

records requires balancing of needs for confidentiality

against public interest. Techniscan v. Passaic Valley Water, 113 N.J. 233 (1988)

RIGHT TO KNOW LAW - continued

Curriculum reports prepared by consultant are public records under

common law definition but not under Right to Know Act; remand ordered to determine whether public interest in disclosure outweighs need for confidentiality, Red Bank Register v. Red Bank Bd. of Ed., 206 N.J. Super. 1 (App. Div. 1985)

Discovery rights of a petitioner may be limited because of Right to

Know Law, pursuant to N.J.A.C. 1:1-10.1(d) (87:2442, Laufgas - discovery order of Commissioner, aff'd St. Bd. 88:2496)

a Even without testimonial compulsion, information concerning patient's medical condition can be disclosed to someone having a legitimate interest. Kurdek v. West Orange Bd. of Ed., 222 N.J. Super. 218 (Law Div. 1987)

Exceptions to law

Official poll lists must be sealed and are exempt from provisions of law, Shanahan v. N.J. State Bd. of Ed., 118 N.J. Super. 212 (App. Div. 1972) but it is permissible for challengers to compile their own list of persons voting in school elections, Shanahan v. N.J. State Bd. of Ed., 133 N.J. Super. 34 (App. Div. 1975) (C. dec. 67:28, 71:134, 72:225 aff'd St. Bd. 72:231, 73:371 and 73:376)

Personnel records held exempt, except for certain basic information such as salary, length of service, etc., Trenton Times Corp. v. Trenton Bd. of Ed., 138 N.J. Super. 357 (App. Div. 1976) (75:243, Glab) Collins v. Camden County Health Dept., 200 N.J. Super. 281 (Law Div. 1984) See Executive Orders 9 and 11.

"Public record", common law definition of discussed, along with

standards for evaluating public agency's claim that confidentiality must be maintained, Loigman v. Kimmelman, 102 N.J. 98 (1986)

"Public record", definition of, clarified and limited,

Nero

v. Hyland, 76 N.J. 213 (1978) rev'g 146 N.J. Super. 46 (App. Div. 1977), 136 N.J. Super. 537 (Law Div. 1975) Collins v. Camden County Health

Dept., 200 N.J. Super. 281 (Law Div. 1984)
Pupil records held exempt (74:1332)
Records concerning disbursement of expense allowance of
Governor held not to be "public record" under law,
Ramer v. Byrne, 154 N.J. Super. 463 (Law Div.
1977)

Record of OAL proceedings may not be sealed without
good cause

as per N.J.A.C. 1:1-3.1 (85: January 9, Van
Decker)

Terms of settlement cannot be withheld from the public
(85: April 11, Kelley)

Persons engaged in business of searching public records for
profit have same access to information under Right to
Know Law as any other citizen. Techniscan v.
Passaic Valley Water, 113 N.J. 233 (1988)

RIGHT TO KNOW LAW - continued

Public entity may establish or request court to establish reasonable

time and place restrictions on terms of access to public materials. Techniscan v. Passaic valley Water, 113 N.J. 233 (1988)

Union has no right under Right to Know Law to names and addresses of

county employees since county was not required by law to keep such records; "common law right" to records not addressed. D'Elena v. Burlington County Bd., 203 N.J. Super. 109 (App. Div. 1985)