

SALARY

- Absent board withholding action, no authority existed for superintendent to unilaterally alter salary previously set by board (89:1601, Jennings, aff'd St. Bd. 89:1613)
- Adoption of two year salary schedule for superintendent, increment withheld in second year: board not obligated to pay contract salary for second year for year following withholding since schedule had expired (87:2678, Romanoli, St. Bd. rev'g 85:1403, aff'd App. Div. unreported opinion (Docket No. A-3900-86T8 decided February 4, 1988))
- Authority of superintendent to unilaterally modify teacher's salary after commencement of school year (88:50, Jennings)
- Board of Education not required to deduct withholding taxes or Social Security payments from settlement and should have given teachers full lump sum payment; payments were not a recapture of lost salary. Emerick v. Teaneck Bd. of Ed., 221 N.J. Super. 456 (App. Div. 1987)
- Calculation of, after sick days exhausted (80:954, Oteri, aff'd St. Bd. 80:966)
- Change cannot be made by unilateral action during school year, only by corrective formal action of the board upon notice to the employee (87:512, Stockton)
- Change in compensation resulting from new labor agreement; board cannot reduce salary (80: March 24, Shteir, aff'd St. Bd. 80: July 2), but see (80: August 18, McCabe) (86:419, Dowd)
- Change requires formal board action (76:365, Mina)
- Claim for restitution of alleged overpayment of salary and counterclaim for underpayment of salary dismissed as untimely when filed eight months after cause of action arose (87:1989, Karabaic)
- Claim of error in placement barred by laches (76:751, DeChiaro); contra (77:24, DiNunzio)

SALARY - continued

- Computation of, upon resignation (80:58, Parker) (80: August 27, Thibaudeau) (80:1093, Bruner, aff'd St. Bd. 81: February 4) (81: January 19, Caroselli, aff'd St. Bd. 81: May 6), aff'd in part, rev'd in part, unpublished op., App. Div. (Docket No. A-4396-80T1, October 5, 1982) (88:2003, Leeb)
- Computation of, when administrator held to be tenured as assistant superintendent (80:1193, Page, aff'd St. Bd. 81: June 3)
- Deductions from; may only be made pursuant to statute (66:159); see N.J.S.A. 52:14-15.9e
- Deduction from salary, only for actual teaching days missed (80:954, Oteri, aff'd St. Bd. 80:966)
- De facto service, per N.J.S.A. 18A:16-11 (80: October 27, unpublished opinion, Dandorph)
- Districts may not receive state aid pursuant to Teacher Quality Employment Act for teachers who receive less than a full step on the salary scale (88:410, West Milford Board of Education)
- Does not include overtime payments for extra work (77:311, McLean)
- Eleven month employee (80:1093, Bruner, aff'd St. Bd. 81: February 4)
- Expiration of Superintendent's two year salary schedule: Board not obligated to pay increments contemplated in schedule; principle of maintenance of status quo applicable to collective negotiations does not pertain to salary established by individual negotiations with board (87:2678, Romanoli, St. Bd. rev'g 85:1403, aff'd App. Div. unreported opinion (Docket No. A-3900-86T8 decided February 4, 1988))
- Less than full-time position, board entitled to pay proportionate salary (80:158, Ebel, aff'd St. Bd. 80:171) (80: April 21, Okin)
- Master contract, terms of for general application (80:1093, Bruner, aff'd St. Bd. 81: February 4)
- Method of payment for 5 months work (76:677, Feit)
- Mistake in placement on salary guide; board cannot thereafter reduce salary to correct mistake (39-49:164) (67:297) (72:196) (72:638) (73:236) (74:1170) (75:19, Schmidt) (75:358, Galop, aff'd St. Bd. September 10) (76:365, Mina); but see, Passaic Bd. of Ed. v. Wayne Bd. of Ed., 120 N.J. Super. 155 (Law Div. 1972) aff'd App. Div. 73:780) but see (78:948, Larsen) (80:898, Honaker) (84: February 6, Tripp) (84:102, Rivers) (89:2854, Magliozzi)
- Mistake in salary due to clerical error can be corrected by reducing salary to proper level, but monies already paid out may not be recouped (86:2415, Trenton) But see (88:809, Markot, rev'd w/op. St. Bd. 89:3043) (89:2854, Magliozzi)
- New salary guide, payments in expectation of (80: August 18, McCabe)
- Non-member of teachers' bargaining unit has no claim to compensation based on teachers' salary guide (80: April 10, Castner)

No withholding action taken: Sick leave rate of pay set at 1986-87 salary level, not 1985-86 (89:1601 Jennings, aff'd St. Bd. 89:1613)

SALARY - continued

- Part-time, credit for subject to negotiation (85: August 19, Watchung Hills Regional High School)
- Part-time service, credit for (81: February 11, Grossman)
- Part-time status found where supplemental, compensatory education and Title I teachers worked fewer hours per week and/or fewer days per year than regular teachers (87:1045, North Plainfield)
- Part-time; total number duty periods, not instructional periods, determines part-time salary (80:547, Diglio)
- Payment must be semimonthly (77:704, Brick Twp.)
- Placement on salary guide of newly hired employee which conflicted with collective negotiations agreement can be corrected by freezing salary until it matches appropriate step (86:3033, Conti, St. Bd. rev'g 85:814, aff'd App. Div. unreported opinion (Docket No. A-77-86T1, decided October 13, 1987))
- Principal entitled to salary, sick leave and vacation time - medically able to return to work - board prohibited (88:2118, Donofrio)
- Recoupment of overpayment (85:385, O'Toole, aff'd St. Bd. with opinion 85:400, aff'd in part, rev'd in part and remanded, 212 N.J. Super. 624 (App. Div. 1986), certif. denied 107 N.J. 123 (1987), St. Bd. on remand 86:3115) See also (86:2415, Trenton) (87:1911, Pelle, aff'd in part and rev'd in part, St. Bd. 88:2463, aff'd App. Div. unreported op. (Dkt. No. A-4415-87T1, March 1, 1989)) (89:2854, Maqliozzi)
- Recoupment of overpayment; separate action in Superior Court possible (87:1911, Pelle, aff'd in part and rev'd in part St. Bd. 88:2463, aff'd App. Div. unreported op. (Dkt. No. A-4415-87T1 March 1, 1989))
- Reduction in salary; impermissible absent filing of tenure charges (89:2854, Maqliozzi)
- Reduction in salary; may not be reduced pursuant to agreement with bargaining unit pending contract adoption (86:419, Dowd)
- Reduction in salary; no violation of tenure laws if based upon:
Demotion or transfer resulting from good faith abolition of position (50-51:44) (60-61:167) (70:176) (71:314) (73:704, remanded 74:1416 on remand 75:644, aff'd St. Bd. 76:1158) (76:309, Wexler, aff'd St. Bd. 76:314) (76:763, Hyun) (77:555, Wilson) (77:823, Wilson) (80: April 21, Okin) (85: February 4, Schwarzkopf)
- Transfer from 12 month position to 10 month position with lower monthly salary: Salary prorated for 12 months as he signed contract for 12 months (88:367, Bell)
- Unauthorized and unexcused absence from or tardiness at work (39-49:164) (63:59) (67:287) (72:353) (73:247, aff'd St. Bd.

73:254) (73:441, aff'd St. Bd. 74:1391, aff'd App. Div.
74:1391 certif. denied 67 N.J. 99 (1975)) (74:193, aff'd St.
Bd. 74:207) (74:276) (76:980, Warren)

SALARY - continued

- Reemployment after RIF; no credit on salary guide for employment in another district while on layoff, Whalen v. Sayreville Bd. of Ed., 192 N.J. Super. 453 (App. Div. 83:1660) aff'g 83:1659, St. Bd. aff'g 82: August 12)
- Reimbursement of salary paid to employee pending workers compensation claim - service related accident upheld N.J.S.A. 18A:30-2.1 (89:1733, Pemberton)
- Rejection of salary; educational broker had no entitlement to salary that he rejected, never received, board never set by formal action, and that he failed to appeal within time (89: 118, Williams, decision on remand 89:118, aff'd St. Bd. 89:126)
- Retroactive adjustment of salaries to reflect full step payment on salary scale entitled board to reimbursement for state aid for remedial/supplemental teachers (88:410, West Milford)
- Retroactive salary increase for certain board employees, absent indication in resolution board could not deny increase to one employee who had received additional stipend (84: March 15, Gattoni)
- Settlement of litigation brought by administrators and release of salary, compensatory and overtime claims did not bar recoupment upon retirement of accumulated vacation days (89:2603, Mayo, aff'd St. Bd. 91:2542)
- Sick leave payment rate of pay set by collective bargaining agreement (89:1601, Jennings, aff'd St. Bd. 89:1613)
- Student teachers: Per diem policy of board reasonable; reduction due to short term illness unreasonable (85: August 29, Scavelli, aff'd St. Bd. 87: September 2)
- Summer salary payments (58-59:79) (75: September 4, Mannington, unpublished opinion) (St. Bd. 76:671, Dunwoody, rev'g 76:667) (76:865, Bowers) (77:493, Hoboken) (77:704, Brick Twp.)
- Payment of past year's earned wages may not be made from following year's budgeted funds (78:117, D'Agostino)
- Supplemental teaching service, credit for (81: February 11, Grossman)
- Teacher could recover interest for period during which deprived of lump sum settlement. Emerick v. Teaneck Bd. of Ed., 221 N.J. Super. 456 (App. Div. 1987)
- Teacher Quality Employment Act (N.J.S.A. 18A:29-5 et seq.)**
- Applies to full-time teachers, "full-time" employment is determined by board of education (N.J.A.C. 6:20-5.6(b)) (86:2943, Monahan)
- Part-time teachers paid a pro-rata of full-time teachers scale, either by negotiated contract of board policy adopted prior to the Act, are not entitled to a pro-rata of the new minimum salary (86:2943, Monahan) (87:1045, North)

Plainfield)

SALARY - continued

Teacher Quality Employment Act -
continued

Permanent substitutes, full time, not entitled to minimum salary established by N.J.S.A. 18A:29-5 (86:2284, Rumson-Fair Haven Ed. Assn., rev'd St. Bd. 87:2682, aff'd unreported opinion App. Div. (Docket No. A-291-87T8, decided June 24, 1988))

Pool substitute teachers are not entitled to receive salary and benefits of regular teaching staff members due to the nature of their employment as "pinch hitters" for temporarily absent regular classroom teachers (86:2298, Lowicki)

Title I teachers (80: January 28, Blue, aff'd St. Bd. 81: March 4)

Twelve-month appointment changed to ten-month appointment; salary frozen (80: April 1, Siss, aff'd St. Bd. 80: November 5, aff'd o.b. App. Div., unpublished opinion, (Docket No. A-1630-80-T2, February 24, 1982))

SALARY SCHEDULE

Generally: board must have adopted guide for every school year (83: August 29, Lindner)

Administrator's salary schedule (72:281) (79:94, Bolger, aff'd St. Bd. 79:99, aff'd App. Div. 80:1478) (79:279, Ward) (79:567, Schell, aff'd St. Bd. 80: May 7, aff'd App. Div. 81:1476) (80: April 10, Castner) (84: September 6, Orlando) (85:1403, Romanoli, rev'd by St. Bd. 87:2678, aff'd App. Div. unreported opinion (Docket No. A-3900-86T8 decided February 4, 1988)) (88:2093, Love, aff'd St. Bd. 89:3038)

Salary policy, need not be written (81: March 3, Bloomingtondale)

Board adopts salary schedule for some full-time teaching staff, all full-time teaching staff must be placed on a schedule:
Administrators are teaching staff member (85:1266, Chirico)

Board lacks authority to adopt salary schedule lasting more than two years (84: September 6, Orlando) But see, N.J.S.A. 18A:29-4.1 as amended

Board may not reduce salary schedule during the two years it is in effect (84: September 6, Orlando)

Budget must contain sufficient amounts to implement salary schedule adopted by board and binding for two years, N.J.S.A. 18A:29-4.1, Newark Teachers Assn. v. Newark Bd. of Ed., 57 N.J. 100 (1970); (71:471)

Child study team members are teachers, tenurable and members of the bargaining unit (85: August 1, Garfole)

Coach's salary schedule, once adopted, is binding (74:922)

SALARY SCHEDULE - continued

Confidential employees

Board violated N.J.S.A. 18A:29-4.3 by failing to adopt salary schedules for confidential employees (84: March 23, Contardo, aff'd St. Bd. 84: August 8) (88:2093, Love, aff'd by St. Bd. 89:3038)

Board violated N.J.S.A. 18A:29-4.3 by failing to fully implement salary schedule for all confidential administrators (88:2093, Love, aff'd by St. Bd. 89:3038)

Contractual nature; binding on future boards for two year period, N.J.S.A. 18A:29-4.1 (72:93) (72:462) But see, N.J.S.A. 18A:29-4.1 as amended (three years)

Effective date of salary schedule is not necessarily date of adoption; see, Newark Teachers Assn. v. Newark Bd. of Ed., 57 N.J. 100 (1970)

Non-teaching staff salary schedules are not within N.J.S.A. 18A:29-4.1; nevertheless they are binding unless grossly extravagant or unreasonable (72:93)

Placement on salary schedule

Adjustment on schedule, for wrongful original placement (81: April 29, Jacobs, motion denied by State Board as untimely 81: November 10, aff'd App. Div. 83:1577)

Appointment; proper placement upon (81: March 16, Lowicki, aff'd St. Bd. 82: May 5)

Board not bound to grant prior service credit based on promises of individual board members or administrators (82: March 24, Dorrington)

Challenge to placement must be timely filed (81: July 6, Kelly) North Plainfield Ed. Assn. v. Bd. of Ed. of North Plainfield, unpublished opinion, App. Div. (Docket No. A-4583-81T3, decided January 20, 1983), certif. denied 95 N.J. 205 (1983) (83: March 4, Rock, aff'd St. Bd. 83: October 5) (86:2175, Spooner, aff'd St. Bd. 87:2730, aff'd App. Div. unreported opinion (Docket No. A-3299-86T8, decided November 18, 1987)) (87:183, Pezzullo, aff'd St. Bd. with opinion 89:3067)

Claim that initial placement on guide should recognize prior auxiliary experience must be made within 90 days of such placement (85: April 15, Shulman) (85: April 22, Reilly)

Classroom teachers, salary guide credit for prior Title I, compensatory education and supplemental teachers experience Board may not change decision to grant credit for auxiliary experience based on subsequent cases holding such credit is not required (86:968, Bocker, aff'd by St. Bd. on other grounds, 86:984, aff'd App. Div.

unreported opinion (Docket No. A-704-86T8, decided May 22, 1987)) and (86:2516, Union Township)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

**Classroom teachers, salary guide credit for
prior Title I, compensatory education and
supplemental teachers experience - continued**

Salary guide credit need not be granted for prior part-time auxiliary experience in district; employment as full-time classroom teacher is "initial placement" under N.J.S.A. 18A:29-6 and guide placement is determined by teacher and board subject to statutory minimum and collective negotiation agreement (85: October 18, Baker) (86:1959, Fair Lawn Ed. Assn., aff'd St. Bd. 86:1972) (86: September 3, Bergenfield, St. Bd. rev'g 85:10, aff'd unreported opinion App. Div. (Docket No. A-680-86T7 decided May 27, 1988)) (86:339, Conner, St. Bd. aff'g with modification 86:313) (87: 2514, Ball, St. Bd. rev'g 84: August 31) (87:2690, Scotch Plains-Fanwood, St. Bd. aff'g in part, rev'g in part 83: October 11) (87:2576, Comstock, St. Bd. aff'g in part, rev'g in part 83: September 15) (87: 2731, Szpiech, St. Bd. aff'g with modification 85: April 1)

Salary guide credit need not be granted for prior full-time auxiliary teaching experience in district and teacher need not be placed on same step on classroom guide as that at which he would have been placed on auxiliary guide, as long as placement on classroom teachers's guide does not result in reduction in compensation of tenured teaching staff member (87:2514, Ball, St. Bd. rev'g 84: August 31) (87:2748, Walter, St. Bd. rev'g 85: July 22)

Timeliness of claim for salary guide credit for part-time auxiliary experience (86:313, Conner, aff'd St. Bd. with modification 86:339) (86:968, Bocker, aff'd St. Bd. 86:984, aff'd App. Div. unreported opinion (Docket No. A-704-86T8, decided May 22, 1987))

Commissioner, in determining placement on guide in disputed cases, will follow written policy of board to extent set out in salary schedule (68:26) (70:144) (73:102) (74:372) (75:358, Galop, aff'd St. Bd. 75:366) (76:989, Cafarelli) (76:1019, Hussey) (76:1041, Nelson) (77:1186, Smith, aff'd St. Bd. 78:1046, aff'd App. Div. 79:870) (86:2175, Spooner, aff'd St. Bd. 87:2730, aff'd App. Div. unreported opinion (Docket No. A-3299-86T8, decided November 18, 1987))

Contractual nature; binding on future board for two years
(77:24, DiNunzio)

Credit for experience in field is within discretion of board

(76:1041, Nelson)

Credit for graduate courses; criteria may be negotiated and changed and result in denial of credit on salary scale
(76:989, Cafarelli)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

Doctor of chiropractic, not a doctorate within meaning of
N.J.S.A. 18A:29-7 (75:521, Brick Twp., aff'd St. Bd. 75:524)
Equivalent service; one year, 11 months service equivalent to
two years' credit on salary schedule (81: April 20, Miller)
Error in initial placement due to incomplete application: Board
estopped from correcting 13 years later (84:1378, Bree, St.
Bd. aff'd in part, rev'd in part on other grounds 85:1852)
Error in initial placement, may be corrected in second year
(81: April 8, Mazzoca)
Error in placement; board may correct before services rendered
(81: April 24, Petigrow)
Error in placement; correction no violation of N.J.S.A.
18A:6-10, et seq. (81: April 24, Petigrow)
Error in placement due to employee misrepresentation may be
corrected (81: July 28, McAndrew)
Error in placement of tenured teacher on guide (See "Salary -
Reduction", this index)
Estoppel: board not estopped from correcting administrative
error and denying salary guide credit for continuing
education courses (84: August 13, Caprio)
Experience factor in determination of starting salary (78:333,
Moremen, aff'd St. Bd. 79:851, aff'd App. Div. 80:1516) (80:
February 4, Joerg)
Failure to contest action affecting placement within 90 days
precludes relief in future years where placement not a
matter of statutory right. North Plainfield Ed. Assn. v.
North Plainfield Bd. of Ed., 96 N.J. 583 (1984) (85:
January 31, Andreula) (85: April 15, Shulman) (85: April
25, Reilly)
Graduate credits, earned prior to receipt of graduate degree:
board policy determines whether counted for salary purposes
(80:520, Siebold, aff'd St. Bd. 80:527, aff'd App. Div.,
unpublished opinion (Docket No. A-787-80, June 3, 1981))
(81: March 23, Hutchinson) (81: November 5, Sgro, aff'd
St. Bd. 82: March 24, aff'd App. Div. 83:1636)
Half-time teachers not entitled by statute to advance on
salary schedule by full steps (81: February 4, Watchung
Hills, aff'd o.b. App. Div., unpublished opinion (Docket No.

A-2906-80-T3, January 12, 1982; C. dec. 80: April 10)
Initial payment under N.J.S.A. 18A:29-9 is a matter of
negotiation (86:2175, Spooner, aff'd St. Bd. 87:2730, aff'd
App. Div. unreported opinion (Docket No. A-3299-86T8,
decided November 18, 1987))

SALARY SCHEDULE - continued

Placement on salary schedule - continued

Initial payment under N.J.S.A. 18A:29-9 is not solely a matter between individual employee and board and is governed by any provisions on initial placement in collective agreement. Disputes over such provisions are decided by courts, not Commissioner. Belleville Ed. Assn. v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App.Div. 1986), expressly disapproving the reasoning in Reilly v. Bd. of Ed. of Kearny, 1985 S.L.D. (April 22) and Shulman v. Bd. of Ed. of Morris School District, 1985 S.L.D. (April 15)

Juris Doctor, not recognized for salary advancement according to board policy and negotiated agreement (77:1186, Smith, aff'd St. Bd. 78:1046, aff'd App. Div. 79:870) (80: March 27, Baham, aff'd St. Bd. 80: August 6) See also (88:178, Dreher, aff'd St. Bd. 88:190, remanded to local board for arbitration, App. Div. unreported op. (Dkt. No. A-6003-87T2 June 22, 1989))

Laches and statute of limitations applies to bar retroactive recovery of salary differential for Title I, compensatory education and supplemental teachers who were determined to be in tenurable positions (82: July 20, Fair Lawn, aff'd St. Bd. 82: December 1)

Laches; bars claim for retroactive relief for wrongful placement on salary guide (81: January 22, Smaracko, aff'd St. Bd. 81: April 1) (82: December 2, Hoboken)

Laches bars retroactive relief for nurse not paid on teachers' salary guide (85: January 3, Breen)

Laches, but not statute of limitations, bars claims for retroactive credit for military service. Prospective credit available from time claim asserted. Lavin v. Hackensack Bd. of Ed., 90 N.J. 145 (1982) and Union Twp. Teachers Assn. v. Union Twp. Bd. of Ed., 90 N.J. 161 (1982) See appendix for cases prior to Lavin and Hackensack

Laches, estoppel bar claim for correct placement on salary schedule (81: February 11, Grossman) (82: October 7, Hoboken, aff'd St. Bd. 83: May 6)

Law degree entitled holder to masters degree placement on schedule by virtue of specific board policy (74:372)

Longevity credit; board need not recognize military credit in computing (80: December 11, Warr, aff'd St. Bd. 81: August 5, aff'd unpublished op. App. Div. (Docket No. A-268-81T1, October 20, 1982))

Longevity credit statute of limitations and doctrine of laches apply to claims for (81: October 19, Koch, aff'd St. Bd.

82: March 24)
Longevity increment; payment (80:616, Ford)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

- Longevity increment: Salary schedule which establishes different annual longevity increments based on whether employees attained anniversary dates before or after effective date of contract does not discriminate on the basis of age. Giammario v. Trenton Bd. of Ed., 203 N.J. Super. 356 (App. Div. 1985), certif. denied 102 N.J. 336 (1985)
- Longevity payments for service beyond maximum; contractual clause interpreted (70:57) (72:583, rev'd St. Bd. 73:760, aff'd App. Div. 74:1368) (84: June 8, Kallimanis)
- Masters plus 30 held to require 30 credits acquired after masters degree (73:102) (74:1176 aff'd St. Bd. 75:763, remanded App. Div. 75: September 11, on remand 75:764, aff'd App. Div. 76:1159); but contra, where board had not so specified in policy (75:90, McAllen)
- Military credit: Board policy crediting one half step on its salary schedule for every year of military service is valid provided that (1) the credit is equivalent to credit given for teaching experience, and (2) despite the fractional advancement, the payment in the adjustment year is more than the minimum salary required by the statutory schedule on which one year of teaching experience entitles a teacher to advancement of a full step (86: June 30, unpublished opinion, App.Div. (Docket No. A-3585-84T6); on remand 87:1171, aff'd St. Bd. 87:1183, Cape May (overruling the principal announced in 85:577, Echevarria, aff'd St. Bd. 85:588; consolidated with Cape May on remand 87:1171; aff'd St. Bd. 87:1183)
- Military credit for full-time teachers only (85: November 25, Trucillo, aff'd St. Bd. 86: April 2, aff'd App. Div. unreported op. (Docket No. A-4282-85T6, decided March 25, 1987))
- Military credit, granted (81: February 19, Malone) (82: December 29, Peterson, aff'd with modification St. Bd. 83:1625)
- Military credit has no relationship to teaching experience, qualification or skills. Administrator, as a teaching staff member, is entitled (82: December 29, Peterson, aff'd with modification St. Bd. 83:1625)
- Military credit, holders of emergency certificate ineligible (80: July 14, Pinelli)
- Military credit; laches, 90 day rule bar challenge to payments already made, but alleged overpayments made after filing of

petition may be challenged (82: March 3, Contardo, St. Bd.
affirming 81: June 26)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

- Military credit may not be waived (80: December 11, Warr, aff'd St. Bd. 81: August 5, aff'd unpublished opinion, App. Div. (Docket No. A-268-81T1, October 20, 1982))
- Military leave, credit for on salary schedule (75:297, Alfonsetti) (76:356, Whidden, modified App. Div. 77:1312) (76:1041, Nelson) (83: March 4, Laurie, aff'd St. Bd. 83: December 7)
- Longevity increments included (76:269, Wall Twp. Ed. Assoc., aff'd St. Bd. 76:273)
- Military service credit may not be given for Peace Corps Service (80: July 7, Accetta, aff'd St. Bd. 81: March 4) aff'd with modif., unpublished opinion, App. Div. (Docket No. A-3190-80T2, May 17, 1982) certif. denied 91 N.J. 526 (1982))
- Military service; credit must be granted when rehired by district despite board policy to grant only once, Campbell v. Newark Bd. of Ed., Appellate Division, unpublished opinion (Docket No. A-1470-82T3, February 24, 1984) rev'g (St. Bd. 82: October 6, rev'g 81: November 23)
- Military service credit was received as required by law, credit for prior teaching experience not statutorily required (82: October 25, Booker)
- Military service credit; where awarded granted prospectively from date of petition (83: March 31, Dascoli)
- Military service credit; where petitioner received the salary placement from present employer he would have received had he been given credit for military service by former employer, petition dismissed (82: October 28, Cicconetti, aff'd St. Bd. 83:1513)
- Military service: Prospective credit given if teacher has not reached maximum salary (81: August 5, Bergan)
- Mistake in placement on salary guide; board cannot thereafter reduce salary to correct mistake (84: February 6, Tripp) (84:102, Rivers) (See "Error in placement", this index)
- New Jersey National Guard, service is eligible for credit on salary schedule (81: August 3, Blue, aff'd St. Bd. 81: November 10)
- Overpayments for military service: Laches, 90-day rule bars challenge to payments already made but payments made after filing of petition may be challenged (82: March 3, Contardo, St. Bd. affirming 81: June 26)
- Previous service in district; placement on salary schedule upon rehiring (81: August 25, Moller)

Nurse, placement on salary schedule (81: May 1, Kline,
aff'd St. Bd. 81: September 2, aff'd App. Div. 82:1519)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

- Nurses; receipt of a BA degree did not entitle a school nurse on Column I of salary guide to placement on Column II of salary guide where board compensated both BA and non-degree nurses under Column I (83: May 23, Askew, aff'd St. Bd. 83: October 5)
- Part-time, credit negotiable (85: August 19, Watchung Hills Regional High School)
- Part-time position, not entitled to pro-rata placement on negotiated full-time scale (85: November 25, Trucillo, aff'd St. Bd. 86: April 2, aff'd App. Div. unreported opinion (Docket No. A-4282-85T6, decided March 25, 1987) But see, Bassett v. Oakland Bd. of Ed., 223 N.J. Super. 136 (App. Div. 1988, aff'd w/modif. St. Bd. 87:2528, aff'g Comm. 84: March 19)
- Part-time service, credit for in absence of definition of "part-time" in contract (81: February 11, Grossman)
- Part-time service must be fully credited on salary guide in absence of board policy to the contrary (79:241, Chaump)
- Part-time to full-time: Board free to negotiate as to placement on salary guide in absence of policy (86:2175, Spooner, aff'd St. Bd. 87:2730, aff'd App. Div. unreported opinion (Docket No. A-3299-86T8, decided November 18, 1987))
- Part-time teacher entitled to advance one step per year if worked more than 1/2 of days in school year (84:843, Hamilton Twp., rev'd St. Bd. with opinion 86:3064)
- Part-time teacher not entitled under the education laws to placement on any salary guide. Compensation is a mandatory subject for collective negotiations (84:843, Hamilton Twp., rev'd St. Bd. with opinion 86:3064)
- Permanent substitute teacher, properly placed at first step on salary schedule upon full-time employment. Time spent as substitute applicable to seniority only (83: March 31, Zaremba, aff'd St. Bd. 83: October 5)
- Petition challenging, Period of Limitation (See "Commissioner of Education - Period of Limitation - Date 90 day period begins to run", this index)
- Precise salary schedule for placement of the petitioner is a matter subject to negotiation (87:183, Pezzullo, aff'd St. Bd. with opinion 89:3067)
- Principal not entitled to advance to maximum step on salary schedule on return from medical leave. Movement on guide is conditioned on successful performance during past year. Board had policy of not allowing movement for absences in

excess of 6 months (88:2118, Donofrio)
Proper time to negotiate prior service credit is at time of
hire, not upon acquisition of tenure (82: March 24,
Dorrington)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

Pro-rata placement on salary guide not appropriate for
part-time remedial teachers (87:370, Cosmas)
Psychologist not entitled to credit for years of private
practice (75:439, Zitani)
Reemployment after RIF; no credit on salary guide for
employment in another district while on layoff, Whalen v.
Sayreville Bd. of Ed., 192 N.J. Super. 453 (App. Div.
83:1660) aff'g (83:1659, St. Bd. aff'g 82: August 12)
Rehired in a different category, may be paid less (77:
1043, Dedrick)
Rehired in same category, entitled to full recognition for
previous years of service (78:440, Scavelli) (80: March 18,
Breese)
Salary schedule not required for superintendent as per N.J.S.A.
18A:29-4.3 (86:1069, Silverman, aff'd St. Bd. 86:1077)
(86:2370, Juris)
"Six years of training" as used in N.J.S.A. 18A:29-6
includes masters plus 30 or bachelors plus 60 (70:144)
Social workers: not entitled by contract to credit on guide for
teaching experience, Campbell v. Newark Bd. of Ed.,
Appellate Division, unpublished opinion (Docket No.
A-1470-82T3, February 24, 1984) rev'g (St. Bd. 82: October
6, rev'g 81: November 23)
Statute of limitations, bars adjustment for wrongful placement on
salary guide (81: April 29, Jacobs, motion denied by St.
Bd. as untimely (81: November 10, aff'd App. Div. 83:1577)
Substitute teacher; permanent substitute receives credit for
service towards seniority, however upon acceptance of
teaching position starts at Step 1 (83: March 31, Zaremba,
aff'd St. Bd. 83: October 5)
Summer work, absent written agreement, board policy is
controlling (76:865, Bowers)
Superintendent's salary is determined by resolution of board
pursuant to N.J.S.A. 18A:17-19 not merely by budget process
(86:2370, Juris)
**Title I, compensatory education teachers and supplemental
teachers ("auxiliary teachers") See Appendix for cases
decided prior to Rutherford Ed. Assn. v. Rutherford Board of**

Education, 99 N.J. 8 (1985)

Full-time staff

Basic skills instructor transferred to classroom position is governed by provisions in classroom teacher's agreement concerning salary guide credit for prior out of district experience. Belleville Ed. Assn. v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

Title I, compensatory education teachers and supplemental teachers ("auxiliary teachers") - continued

Full-time staff - continued

Full-time auxiliary teachers need not be paid on same salary guide as full-time classroom teachers but must be paid on some salary guide whenever other full-time teaching staff members are paid in accordance with a salary schedule (83:699, Hyman, rev'd St. Bd. 85:1940, aff'd in part and remanded App. Div. unreported opinion (Docket No. A-3508-84T7, decided February 26, 1986) certif. denied 104 N.J. 469 (1986))

Full-time employees of educational services commission need not be paid on salary schedule since commission had no such schedule for other employees (87:2642, Middlesex, St. Bd. aff'g in part, rev'g in part, 84:2039)

Placement on classroom teachers guide need not include credit for prior teaching as auxiliary teacher (87: July 1, Kenny, St. Bd. rev'g 85: January 11)

Placement on classroom guide ordered for full-time auxiliary teachers where board failed to establish separate salary schedule; retroactive placement ordered under Rutherford rule (see Index, p. 266, main volume) for teachers who filed suit against board prior to Spiewak (87:2690, Scotch Plains-Fanwood, St. Bd. aff'g in part, rev'g in part 83: October 11) (87:2609, Jersey City, St. Bd. aff'g with modification 83: September 22)

Separate salary guide for Title I, compensatory education and supplemental teachers upheld, with modification that guide provide credit for military service (86:135, Fucetola, aff'd St. Bd. 86:151)

Settlement granting teachers compensation as per full-time supplemental guide approved by St. Bd.; appeal seeking placement on classroom teacher's guide dismissed (86: September 3, Star, St. Bd. aff'g 83: October 17)

Part-time staff

Hourly or per diem rate upheld (86: May 15, Veldron) (86:1959, Fair Lawn Ed. Assoc., aff'd St. Bd.)

86:1972) (86:3064, Hamilton, St. Bd. rev'g 84:843)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

Title I, compensatory education teachers and supplemental teachers ("auxiliary teachers") - continued

Part-time staff - continued

(86: December 3, Timpson, St. Bd. rev'g 84: November 13) (87:2659, Odenwald, St. Bd. rev'g 84: August 6) (87:2753, West Orange, St. Bd. aff'g in part, rev'g in part 84: September 4) See also (87:2758 St. Bd. aff'g Comm. 84: August 10, aff'd App. Div. unpublished op. (Dkt. No. A-5992-86T8 November 1, 1988)) (87:2731, Szpiech, St. Bd. aff'g w/modif. 85: April 1) but see (85: September 26, Spiewak) decided before above notice St. Bd. decisions upholding hourly payment.

Not entitled to full-time remuneration for voluntarily working extra hours; does not constitute full-time status because extra hours not required by board (88:1879, Rupakus, St. Bd. aff'd 89:3075, aff'd App. Div. unreported op. (Dkt. No. A-2768-88T2 October 10, 1989))

Part-time auxiliary teachers are not entitled to pro-rata salary based on classroom teachers salary guide and may be paid in accordance with separate salary guide or hourly rate (83:699, Hyman rev'd St. Bd. 85:1940, aff'd in part and remanded App. Div. unreported opinion (Docket No. A-3508-84T7, decided February 26, 1986) certif. denied 104 N.J. 469 (1986)

Separate salary guide upheld (86: September 3, Bergenfield, St. Bd. rev'g 85:10, aff'd unreported opinion App. Div. (Docket No. A-680-86T7 decided May 27, 1988)) (87:2514, Ball, St. Bd. rev'g 84: August 31) (87:2664, Piscataway, St. Bd. aff'g in part, rev'g in part 83: October 13) (87:1045, North Plainfield)

Retroactive compensation; permitted in theory under Rutherford for auxiliary teachers who were employed on date of Spiewak and who had suits pending against board; however, retroactive compensation sought on basis that auxiliary teachers should have been paid on classroom teachers' guide not available for part-time teachers paid by hour or on separate salary guide, or for full-time teachers paid on separate salary guide, since these methods of compensation do not

contravene education laws (86:3064, Hamilton, St.
Bd. rev'g 84: May 14)

SALARY SCHEDULE - continued

Placement on salary schedule - continued

Title I, compensatory education teachers and supplemental teachers ("auxiliary teachers") - continued

Part-time staff - continued

Retroactive compensation; permitted in theory under Rutherford... - continued

(86: September 3, Bergenfield, St. Bd. rev'g 85:10, aff'd unreported opinion App. Div. Docket No. A-680-86T7 decided May 27, 1988) (87:2576, Comstock, St. Bd. aff'g in part, rev'g in part 83: September 15) (87:2664, Piscataway, St. Bd. aff'g in part, rev'g in part 83: October 13)

Retroactive compensation precluded under Rutherford for teachers not employed by board on date of Spiewak decision (86: August 6, Caldwell-West Caldwell, St. Bd. rev'g 83: September 19)

Waiver of tenure and payment of per diem salary pursuant to collective bargaining agreement invalid (85: May 5, Shapiro)

Years of employment, salary guide (N.J.S.A. 18A:29-6); must provide minimum salary based upon years of service (85: August 23, Chirico)

SCHOOL BUSINESS ADMINISTRATOR

(See also "Business Manager and School Business Administrator"

this index)

Abolishment of business administrator, approval of Commissioner required (74:1280)

Abolition of school business administrator position without consent of county superintendent, commissioner and state board ultra vires (88:2256, Shenekji, aff'd St. Bd. 89:3078)

Certificate

Requirement of bachelor's degree for certification under N.J.A.C. 6:3-3.11 is applicable to the position of school business administrator (87:79, Nolan)

Waiver of courses may be appropriate based on work experience (75:951, Stoolmacher)

Certification required for tenure (81: May 4, Taylor)

Creation of new position of school business administrator, approval required (72:179) (75:58, Barber, aff'd App. Div. 76:1105)

Dismissal of (53-54:53, aff'd St. Bd. 53-54:66, aff'd App. Div.
54-55:123) (62:122, aff'd St. Bd. 63:240, aff'd App. Div. 65:177)
(74:525)

SCHOOL BUSINESS ADMINISTRATOR - continued

Suspension without pay upheld pending disposition of indictment for malfeasance in office. Romanowski v. Jersey City Bd. of Ed., 89 N.J. Super. 38 (App. Div. 1965)

Tenure; no tenure for part-time business administrator (81: May 4, Taylor)

Vacancy in school business administrator position must be filled (74:1280)

SCHOOL YEAR

Defined (74:387)

SCHOOLS AND BUILDINGS

"Alternative School" facilities (76:495, Jones, modified St. Bd. 78:1022)

Appraisal of (79: August 2, Bloomingtondale, unpublished opinion) (86:2041, Matawan Regional Teachers' Assoc.)

Closing of, after careful evaluation of enrollment projections and finances (83: August 29, South Mountain Civic Assn.)

Closing of, board's decision to close is entitled to a presumption of correctness and will not be set aside absent abuse of discretion or error, board action upheld (83: November 14, Coords)

Closing of; for failure to comply with fire and safety regulations (88: September 7, Dorothy Aristone School)

Closing of; res judicata as issue already litigated (88: January 4, Save our Schools Ass'n)

Closing of, temporarily postponed and timelines set up for the correction of all building deficiencies (82: May 10, Glen Gardner)

Closing of, upheld unless shown to be arbitrary or capricious (Morean v. Montclair Bd. of Ed., 42 N.J. 237 (1964) (C. dec. 63:154, St. Bd. 63:160); (39-49:7) (74:785) (75:630, Caffrey) (76:700, Green Village Road School Assoc., stay denied and remanded St. Bd. 76:716, aff'd St. Bd. 76: November 3, aff'd App. Div. 77:1292) (77:59, Mountain View Residents Assoc.) (77:137, McMillan) (77:1014, Montclair Concerned Citizens Assoc.) (74:787, aff'd St. Bd. 75:1085) (78:451, Committee to Save Bayard School) (78: August 29, Belcher, unpublished opinion) (78:890, Spring Valley PTO) (79:35, Jamesburg, aff'd St. Bd. 79:52) (79:53, Jamesburg, aff'd St. Bd. 79:72, rev'd 169 N.J. Super. 328 (App. Div. 1979),

modified 83 N.J. 540 (1980)) (80: June 11, Majka, aff'd St. Bd.
80: September 3) (80: July 28, Baker)

SCHOOLS AND BUILDINGS - continued

**Closing of, upheld unless shown to be arbitrary or capricious -
continued**

- (80: August 18, Coakley, aff'd St. Bd. 81: January 22) (81: July 28, Polak, aff'd St. Bd. 82: February 3) (84: June 11, Civic Assn. for Responsible Education) (85: December 9, Fairmount School PTA) (85: July 8, Riccio) (87:2281, Carver)
Stay of decision permitting school closing denied; no evidence of likely success on appeal or harm resulting from denial of stay (81: September 18, Polak, aff'd St. Bd. 82: February 3)
- Compliance with Guide for Schoolhouse Planning and construction is a factor (76:700, Green Village Road School Assoc., stay denied and remanded St. Bd. 76:716, aff'd St. Bd. 76: November 3, aff'd App. Div. 77:1292)
- Standing of bondholders and taxpayers to object, Silverman v. Millburn Bd. of Ed., 134 N.J. Super. 253 (Law Div. 1975) aff'd o.b. 136 N.J. Super. 435 (App. Div. 1975)
- Condemnation proceedings will not be held in abeyance pending outcome of administrative challenge to site approval granted by Department of Education (87:2098, Asbury Park Board of Education v. Murnick, aff'd in part, rev'd in part, remanded in part 224 N.J. Super. 504 (App. Div. 1988), on remand 89:1569)
- Conflict of interest; held board members who voted to close school did not have a great interest in the affairs of a local association such as to disqualify their votes (83:1124, Edison School PTA) (85: December 9, Fairmount School PTA)

Construction of

(See also "Bidding", this index)

- Acceptance without formal resolution by board effective if complete and unconditional, Graybar Elec. Co. v. Plainfield Bd. of Ed., 21 N.J. 517 (1956) aff'g 37 N.J. Super. 284 (Law Div. 1955); see also, Paul H. Jaehniq, Inc. v. Standard Acc. Ins. Co., 18 N.J. Super. 536 (Law Div. 1952); Williamsport Planning Mill Co. v. Maryland Casualty Co., 129 N.J.L. 333 (Sup. Ct. 1943); Johnson Service Co. v. American Emp. Ins. Co., 113 N.J.L. 494 (E&A 1934); Newman v. Maryland Casualty Co., 112 N.J.L. 122 (E&A 1934); Yale & Towne Mfg. Co. v. Aetna Cas. & Sur. Co., 110 N.J.L. 592 (E&A 1933)
- Approval from bureau of facility planning services of department of education required (77:777, South Amboy, aff'd St. Bd. 77:786)
- Authority to enter contract even though billings may exceed funds appropriated to project, Harsen v. West Milford Bd. of Ed., 132 N.J. Super. 365 (Law Div. 1975)

SCHOOLS AND BUILDINGS - continued

Construction of - continued

Board cannot be compelled to hold special election on rescinding voter approval for new school but has power and duty to monitor changing circumstances and take such action by way of modification as it sees fit with approval of electorate, Belvidere Bd. of Ed. v. Bosco, 138 N.J. Super. 368 (Law Div. 1975)

Lease purchase may be used to purchase unimproved parcel of land when board intends to construct facilities thereon (89: October 18, Hunterdon Central, aff'd St. Bd. March 7, 1990) (89:2712, Township Committee of Delaware Township, aff'd St. Bd. 90:1708)

Leasing of (77:462, Foote, stay denied and aff'd St. Bd. 77:477, jurisdiction released and aff'd St. Bd. 77:477)

Ordered by Commissioner where necessary to meet T&E requirement and voters had consistently defeated bond referenda (86:796, Contini)

Owner of possible building site for school to be constructed has no standing to challenge the determination of the Bureau of Facilities Planning as to site suitability for school construction (87: December, Harris)

Performance bond; bank that advanced money to contractor who defaulted not protected. Bayonne Bd. of Ed. v. Kolman, 111 N.J. Super. 585 (Ch. Div. 1970)

Plans and specifications

Alterations, held not to contravene provisions of separate bid statute. Fisher v. Union Bd. of Ed., 94 N.J. Super. 359 (Ch. Div. 1967) aff'd 99 N.J. Super. 17 (App. Div. 1968)

Alterations subsequent to voter approval, within scope of discretion of board (63:73)

Challenge to Department of Education approval; jurisdiction to hear dispute lies with Commissioner; Superior Court Judge, hearing related condemnation proceeding, does not have concurrent jurisdiction (87:2098, Asbury Park Board of Education v. Murnick, aff'd in part, rev'd in part, remanded in part 224 N.J. Super. 504 (App. Div. 1988), on remand 89:1569)

Must be approved by State Board and need not be filed with municipality or comply with local building and plumbing codes, Kaveny v. Montclair Bd. of Comm., 71 N.J. Super. 244 (App. Div. 1962) aff'g 69 N.J. Super. 94 (Law Div. 1961); but see, N.J.S.A. 52:27D-119 et seq. enacted after these decisions, which applies uniform

construction code to school buildings
Proposals for school construction are not subject to final approval by planning board. Murnick v. Bd. of Educ., 235 N.J. Super. 225 (App. Div. 1989)

SCHOOLS AND BUILDINGS - continued

Construction of - continued

- Public schools are not subject to height, yard, bulk and other municipal zoning requirements except use restrictions. Murnick v. Bd. of Educ., 235 N.J. Super. 225 (App. Div. 1989)
- Voter approval not necessary when construction totally funded by federal monies, Attorney General Formal Opinion No. 28 (1976)
- Voter approval required (77:543, Central Reg., dismissed as moot St. Bd. 78: May 3); but see Attorney General Formal Opinion No. 26 (1977) (77:610, Ogdensburg, aff'd St. Bd. 77:618)
- Wages (38:245)
Approval by State Board not a precondition to payment to contractors (71:397)
- Merger of (76:886, Feigen)
- Portable classrooms, county superintendent's denial of use to relieve overcrowding upheld (84: July 9, Southern Gloucester County Regional)
- Reorganization upheld; two notices to parents and community during two weeks prior to final decision provided adequate opportunity for public input (86:2667, Hussnatter)
- Rescission of district certification recommended by Commissioner for failure to satisfy interim minimum standard (88: September 19, Camden County Vo-Tech. School District) (88: September 19, Passaic) (88: September 19, Plainfield)
- Resume operations of school upon satisfactory compliance with fire and safety inspections (88: September 20, Dorothy Aristone School)
- Sale of property upheld: Petitioners failed to prove that the price of the property as set by the board was so far below the market value so as to constitute fraud or favoritism (86:2041, Matawan Regional Teachers' Assoc.)
- Sale of, upheld against charges board failed to inform public or consider alternative uses of building (85: October 25, Church Road Civic Association)
- Site selection
Commissioner of education will not substitute his judgment for local board; acts in advisory capacity only (56-57:71)

(74:1059)

Determination of location and size is for local boards to make.
Kenilworth v. Raubinger, 15 N.J. 581 (1953); State v. Lally,
80 N.J. Super. 502 (Law Div. 1963); (74:1059)

Split sessions

Board decides even if professional staff or parents object
(67:125)

Factor in deciding termination of sending-receiving relationship
(59-60:159) (63:167) (64:62, aff'd St. Bd. 66:252)

SCHOOLS AND BUILDINGS - continued

Split sessions - continued

Plan to implement voided; realignment of attendance areas
ordered (84:1473, C.D., aff'd St. Bd. 85:1855, aff'd App.
Div. 85:1862)

Unacceptable except on an emergency basis where no other
alternative is available (86:796, Contini)

Superintendent of buildings, employment of (38:150)

Term of office is statutory (76:515, Parachini, aff'd St. Bd. 76:519)

Unsafe conditions (Upper Freehold, 86 N.J. 265 (1981) (C. dec.
79:443, St. Bd. 79:452)

Use of

Change in use, no voter approval needed (76:886, Feigen)

Generally (38:228) (38:229) (38:231) (38:234) (38:236)

Auditorium for PTA meetings, upheld (75:461, North Bergen)

Board regulates (38:231) (38:236) (68:1)

Change in use, no voter approval needed, Silverman v. Millburn
Bd. of Ed., 134 N.J. Super. 253 (Law Div. 1975) aff'd o.b.
136 N.J. Super. 435 (App. Div. 1975); see also, 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))

Community organizations (38:234)

Distribution election materials (59-60:121) (59-60:198)

(72:241) (74:444) (75:461, North Bergen) (75:556, Mt. Olive)

Emergency; county superintendent refusal to approve building
upheld (61-62:167)

Film "Woodstock" banned by board, Commissioner affirmed (75:83,
Levine)

Political clubs (38:234)

Protests; must give reason to deny Vietnam protest meeting
(68:1) (68:108)

Religious purposes, Resnick v. East Brunswick Bd. of Ed.,

135 N.J. Super. 257 (Ch. Div. 1975) aff'd o.b. 144 N.J.
Super. 474 (App. Div. 1976), rev'd 77 N.J. 88 (1978),

(39-49:34) (63:62) See also Equal Access Act, P.L. 98, 377:

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

SECRETARY TO BOARD

(See also "Tenure - Acquisition of - Board secretary" and "Tenure - Dismissal - Tenure dismissal cases (listed by position)", this index)

Conflict of interest; may be awarded bus contract by board (69:83)

Duty to give notice of voting machine readiness for inspection (70:156)

SECRETARY TO BOARD - continued

Implied authority to act on behalf of board (76:876, White)

Majority roll call vote of full board required to appoint (39-49:20)

Termination: Non-tenured assistant secretary to the board, who was appointed by a fixed term contract, without a termination cause, could not be terminated unless provided notice and an opportunity to be heard on charges for removal for good cause, pursuant to N.J.S.A. 18A:17-1 (Reinstated to position, accruing tenure) (84:792, Schoeler)

SENDING-RECEIVING RELATIONSHIPS

Allocation of pupils must be according to law (67:275)
(69:156, aff'd St. Bd. 70:461) (71:221, aff'd St. Bd. 71:228)
(79:308, Asbury Park)

Allocation: Policy limiting attendance to 4% of students attending one of two receiving schools not arbitrary (89:1335, Reptak)

Allocation: Proof regarding geographic boundaries of southern and northern areas of district not possessing a high school were essential to determination of whether past practice was proper allocation and apportionment of students to two receiving districts in absence of formal contract; remanded (87:2189, Penns Grove-Carneys Point, dec. on remand (88: June 17)

Contract, de facto; whether express or implied N.J.S.A. 18A:38-13 clearly provides Commissioner authority to make the determination to terminate (82: December 15, Maurice River)

Designation (50-51:42) (57-58:50) (63:167) (64:110) (64:111)
(64:115) (65:133) (66:12) (66:163, aff'd St. Bd. 70:458) (73:785)

Receiving district must provide suitable educational

facilities (73:501)

Handicapped pupils, sending-receiving relationship per N.J.S.A.
18A:46-5 (81: April 13, Corbin City, aff'd St. Bd. 81:
September 2)

Jurisdiction of Commissioner of Education

Earlier cases denying Commissioner had such authority:
(61-62:144) (67:329, aff'd St. Bd. 68:261) (79:308, Asbury
Park)

Determines termination date (72:172) (75:787, Spotswood)
Merger of school districts, Jenkins v. Morris Twp. Sch. Dist.,
58 N.J. 483 (1971) (rev'g C. dec. 69:27 and 70:389, St. Bd.
71:688) (74:938, aff'd St. Bd. 75:1109; related case 75:445,
aff'd St. Bd. 75: September 10) (75:445, aff'd St. Bd.
75:454, aff'd St. Bd. 76:853 reviewed 77: March 10)
(76:944, Bloomingtondale)

SENDING-RECEIVING RELATIONSHIPS - continued

Jurisdiction of Commissioner of Education - continued

Regionalization, study of ordered, Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483 (1971) (rev'g C. Dec. 69:27 and 70:389, St. Bd. 71:688) (74:1023) (76:176, Phillipsburg-Alpha) (76:944, Bloomingtondale) (77:662, Branchburg, aff'd with modification St. Bd. 78:993, aff'd 173 N.J. Super. 268 (App. Div. 1980))

Stay of new plan granted (73:785 and following pages)

Modification

Commissioner's power to modify sending-receiving relationships is a lesser included power granted under N.J.S.A. 18A:38-13 (83: September 7, Union Beach, St. Bd. modifying 83: May 5) - Earlier decisions denying Commissioner had such authority (61-62:144) (67:329, aff'd St. Bd. 68:261) (79:308, Asbury Park)

Parent's free choice of high school conflicts with N.J.S.A. 18A:38-12 where percentage allocation and apportionment of students required by that statute is not met (OAL decision 87: September 30, Penns Grove-Carneys Point; remanded by Commissioner 87:2189, dec. on remand 88: June 17)

Personnel transfers, N.J.S.A. 18A:28-6.1 "...majority of their time in such school..." refers to total time spent in school, not instructional time alone; same or nearest equivalent portion refers to position held at time of sending-receiving relationship (82: November 8, Zanetti, aff'd St. Bd. 83:1682)

Pupils

A designated receiving board need not be consulted or advised in any way, as to those pupils from the sending districts who choose to attend LAVS or MAST programs at the time they would normally begin attendance in the receiving district (83: October 17, Keyport Bd. of Ed.)

Benefit (50-51:42)

Discipline of, lies within discretion of receiving district (71:365) (73:501)

Withdrawal (59-60:50) (59-60:79) (60-61:62) (66:163, aff'd St. Bd. 70:458) (73:501)

Termination

Generally (38:653) (38:656) (38:658) (38:662) (38:663) (38:665) (38:667) (39-49:30) (49-50:37) (50-51:42) (51-52:51) (57-58:69) (57-58:71) (58-59:100) (58-59:101) (58-59:103) (60-61:62) (61-62:144) (63:167) (64:62, aff'd St. Bd. 66:252) (64:100) (64:111) (64:115) (66:12) (66:144) (66:189) (66:207) (67:275) (67:329, aff'd St. Bd. 68:261) (69:156, aff'd St. Bd. 70:461) (71:156) (72:172) (72:627,

later C. dec. 75:856) (74:1023) (75:431, Liberty-Belvidere)
(74:457, aff'd St. Bd. 74:487, aff'd App. Div. 75:1107)

SENDING-RECEIVING RELATIONSHIPS - continued

Termination - continued

Generally - continued

- (76:176, Phillipsburg-Alpha) (76:465, Avon-by-the-Sea, aff'd St. Bd. 76:472) (76:416, East Windsor Reg., dismissed 77: March 16) (77:662, Branchburg, aff'd with modification St. Bd. 78:993, aff'd 173 N.J. Super. 268 (App. Div. 1980)) (78:508, East Windsor) (79:100, East Windsor) (79:53, Jamesburg, aff'd St. Bd. 79:72 rev'd, 169 N.J. Super. 328 (App. Div. 1979), aff'd 83 N.J. 540 (1980)) (80: August 11, Laurel Springs) (80: November 20, Bordentown) (81: May 29, Mine Hill) (81: March 4, Washington, remanded St. Bd. 81: September 2; 82: September 20, remanded St. Bd. 83: December 7; 84: November 9, aff'd St. Bd. with opinion 85:2028) (87:2580, Cranbury, St. Bd. rev'g 85:1478, partial Stay granted St. Bd. 87: August 5) (88:1021, Absecon, aff'd w/op. St. Bd. 88:1062) (88:1501, Englewood Cliffs, motion for stay denied 88:1613, intervention granted St. Bd. 88:1625, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. 327 (1993) cert. den. 114 S.Ct. 547 (1994)) (89:2010, Washington Township)
Sending-receiving agreement for 7th and 8th graders not controlled by N.J.S.A. 18A:38-13 or 38-20 but Commissioner may decide whether termination is appropriate (80: August 25, Kinnelon, aff'd St. Bd. 81: September 2, dismissed App. Div. March 9, 1982)
- Absence of contractual agreement (66:207) (69:156, aff'd St. Bd. 70:461) (74:457, aff'd St. Bd. 74:487 aff'd App. Div. 75:1107) (77:610, Ogdensburg, aff'd St. Bd. 77:618)
- Alternative facilities for sending district's pupils, availability of (58-59:101) (64:62, aff'd St. Bd. 66:252) (66:144) (67:329, aff'd St. Bd. 68:261) (70:317) (70:428, remanded St. Bd. 71:659, on remand 72:286, aff'd St. Bd. 72:290) (71:156) (72:627, later C. dec. 75:856) (74:457, aff'd St. Bd. 74:487, aff'd App. Div. 75:1107) (74:1012) (74:1023) (75:431, Liberty-Belvidere Sending-Receiving) (76:176, Phillipsburg-Alpha) (77:610, Ogdensburg, aff'd St. Bd. 77:618) (78:508, East Windsor) (81: September 2, Washington, St. Bd. rev'g 81: March 4) (88:1021, Absecon, aff'd w/op. St. Bd. 88:1062)
- Burden of Production and Proof (89:Nov. 13, Merchantville, rev'd St. Bd. 90:Jan. 3)
- Cost (76:465, Avon-by-the-Sea, aff'd St. Bd. 76:472) (77:662, Branchburg, aff'd St. Bd. 77: September 7) (77:959, Bradley Beach) (77:662, Branchburg, aff'd with modification St. Bd.

78: October 4, aff'd 173 N.J. Super. 268 (App. Div. 1980))
(79:53, Jamesburg, aff'd St. Bd. 79:72 rev'd 169 N.J. Super.
328 (App. Div. 1979), aff'd 83 N.J. 540 (1980) (81: August
31, Far Hills) (82: December 15, Maurice River)

SENDING RECEIVING RELATIONSHIPS - continued

Termination - continued

Double sessions (59-60:159) (63:167) (64:62, aff'd St. Bd.
66:252)

Effective date of (72:172) (75:787, Spotswood)

Estoppel argument rejected (74:457, aff'd St. Bd. 74:487,
aff'd App. Div. 75:1107)

Expiration provision in sending-receiving agreement not
sufficient to terminate absent showing of "good and
sufficient reason" (82: July 26, Merchantville, aff'd St.
Bd. 82: November 3, aff'd 204 N.J. Super. 508 (App. Div.
1985) certif. denied 103 N.J. 469 (1986))

Factors considered

Declining enrollment of receiving district considered,
long-term negative impact unsupported; termination of
agreement approval (85:26, Brielle, rev'd St. Bd.
85:54, limited remand by App. Div., 85: September 20,
State Board would not order termination on remand 86:
March 5)

Overcrowded conditions (57-58:43) (57-58:69) (64:62, aff'd
St. Bd. 66:252) (66:12) (66:189)(70:317)(70:428)
remanded St. Bd. 71 :659 on remand 72:286, aff'd
St. Bd. 72:290) (71:156) (72:172) (72:627 later C.
dec. 75:856) (74:938, aff'd St. Bd. 75:1109;
related case 75:445, aff'd St. Bd. 75: September
10) (74:1012) (75: June 4, aff'd St. Bd. 75:
September 10, aff'd St. Bd. 76: October 6)
(76:176, Phillipsburg-Alpha) (76:416, East Windsor
Req., dismissed 77: March 16) (77:610,
Ogdensburg, aff'd St. Bd. 77:618) (77:662,
Branchburg, aff'd with modification St. Bd. 78:
October 4, aff'd 173 N.J. Super. 268 (App. Div.
1980)) (78:508, East Windsor) (79:100, East
Windsor) (81: September 2, Washington, St. Bd.
rev'g 81: March 4) (82: September 20,
Washington, remanded St. Bd. 83: December 7,
decision on remand 84:1814) (85:28, Brielle, rev'd
St. Bd. 85:54, limited remand by Appellate
Division, 85: September 20, State Board would not
order termination on remand 86: March 5)

Physical facilities (80: November 20, Bordentown) (81: May

29, Mine Hill) (81: August 31, Far Hills) (85:26, Brielle, rev'd St. Bd. 85:54, limited remand by Appellate Division, 85: September 20, State Board would not order termination on remand 86: March 5) Quality of education (81: August 31, Far Hills)

SENDING RECEIVING RELATIONSHIPS - continued

Termination - continued

Factors considered - continued

Racial balance, Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483 (1971) (rev'g C. dec. 69:27 and 70:389, 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) (75: June 4 aff'd St. Bd. 75: September 10, aff'd St. Bd. 76: October 6) (76:465, Avon-by-the-Sea, aff'd St. Bd. 76:472) (77:662, Branchburg, aff'd St. Bd. 77: September 7) (74:457, aff'd St. Bd. 74:487, aff'd App. Div. 75:1107) (77:662, Branchburg, aff'd with modification St. Bd. 78: October 4, aff'd 173 N.J. Super. 268 (App. Div. 1980)) (79:308, Asbury Park) (81: May 29, Mine Hill) (81: August 31, Far Hills) (81: March 4, Washington, remanded St. Bd. 81: September 2; 82: September 20, remanded St. Bd. 83: December 7; 84: November 9, aff'd St. Bd. with opinion 85: June 5) (88:1021, Absecon, aff'd w/op. St. Bd. 88:1062) (88:1501, Englewood Cliffs, motion for stay denied 88:1613, intervention granted St. Bd. 88:1625, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (1992), aff'd 132 N.J. 327 (1993) cert. den. 114 S.Ct. 547 (1994) (89:1880, Belmar) (89:2010, Washington Township)

Receiving and sending districts' pupils will not be adversely affected by termination (84: April 4, Kinnelon, St. Bd. rev'g 83: January 31) (85:26, Brielle, rev'd St. Bd. 85:54, limited remand by Appellate Division, 85: September 20, State Board would not order termination on remand 86: March 5) (89:2010, Washington Township)

Receiving district's educational program, detriment to if termination granted (67:329) (74:1023)

Regionalization study ordered (80: November 17, Bordentown)

Removal of pupils: impact upon educational program and fiscal situation (81: March 4, Washington, remanded St. Bd. 81: September 2; 82: September 20, remanded St. Bd. 83: December 7; 84: November 9, aff'd St. Bd. with opinion 85:2028) (88:1501, Englewood Cliffs, motion for stay denied 88:1613, intervention granted St. Bd. 88:1625, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (1992), aff'd 132 N.J. 327 (1993) cert. den. 114 S.Ct. 547 (1994)) (89:1880, Belmar) (89:2010, Washington Township)

Feasibility study required prior to consideration (88: June 6,
Belmar)
Formal application necessary (67:275)

SENDING-RECEIVING RELATIONSHIPS - continued

Termination - continued

"Good and sufficient" (82: December 15, Maurice River) (85:26, Brielle, rev'd St. Bd. 85:54, limited remand by App. Div., 85: September 20, State Board would not order termination on remand 86: March 5)

"Good and sufficient" reason will be found where sending district's desire to send students to another district is educationally based; tuition loss alone will not prevent termination (87:2580, Cranbury, St. Bd. rev'g 85: 1478, partial Stay granted St. Bd. 87: August 5). Note: P.L. 1986, c. 156 amended N.J.S.A. 18A:38-13 and eliminated need to establish "good and sufficient" reason for withdrawal.

Interviewing students at new receiving school held not probative

(89: July 10, Merchantville, aff'd St. Bd. 89:October 6)

Mutual agreement (57-58:71) (65:133)

No substantiated negative financial, racial or educational impact found; termination approved (89:2010, Washington Township)

Optimum school size (77:662, Branchburg, aff'd with modification St. Bd. 78: October 4, aff'd 173 N.J. Super. 268 (App. Div. 1980))

Receiving district has no statutory right to continue as receiver indefinitely or in perpetuity (89:2010, Washington Township)

Test for termination of relationships:

(83: May 5, Union Beach, aff'd with modification St. Bd. 83: September 7) (81: March 4, Washington, remanded St. Bd. 81: September 2; 82: September 20, remanded St. Bd. 83: December 7; 84: November 9, aff'd St. Bd. with opinion 85:2028) (85:1478, Cranbury, rev'd St. Bd. 87: April 1, partial stay granted, St. Bd. 87: August 5) (88:1501, Englewood Cliffs, motion for stay denied 88:1613, intervenor granted St. Bd. 1625, aff'd St. Bd. 1720, aff'd 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. 327 (1993), cert. den. 114 S.Ct. 547 (1994) (89:1880, Belmar) (89:2010, Washington Township)

Tuition program in third party district enjoined (88:1501, Englewood Cliffs, motion for stay denied 88:1613, intervenor granted St. Bd. 88:1625, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. 327 (1993) cert. den. 114 S.Ct. (1994)

Transportation

After school hours

Neither sending nor receiving district need provide transportation after regular school day in order to

accommodate participation in after-school activities,
elimination of such transportation by sending district
held proper (83:866, Upper Freehold Regional)

SENDING-RECEIVING RELATIONSHIPS - continued

Tuition

- Commissioner has authority to order board to pay tuition.
O'Toole v. Bd. of Ed. of Ramsey, 212 N.J. Super. 624 (App. Div. 1986) (89:2786, Ridgefield Park, 89:2953, settlement approved St. Bd. March 7, 1990)
- Compensatory education costs, funded from state categorical aid, not intended to be included in tuition rate, i.e., double funding for the same service (83: February 17, Salem City Board of Education, St. Bd. dismisses appeal, Commissioner decision based on incorrect audit 86: October 1)
- Compensatory education salaries were not in fact included in tuition rate; controversy over whether inclusion of costs is permissible arose from audit error; appeal dismissed as moot (86: October 1, Salem City Board of Education, dismissing 83: February 17, based on incorrect audit)
- Computation done according to procedures established
Tort action judgment is proper expenditure item to be included in total operation costs in determination actual cost per pupil (68:121)
- Computation done according to procedures established by State Board of Education and statute (63:48) (63:52) (65:9) (65:100) (66:163 aff'd St. Bd. 70:458) (68:121) (70:292) (82: December 3, Somerville) (83: January 28, Greater Egg Harbor Regional)
- Cost of construction for schools may be used in computing tuition rate, Ho-Ho-Kus Bd. of Ed. v. Ramsey Bd. of Ed., 125 N.J.L. 317 (Sup. Ct. 1940)
- Cost of tuition may not include cost of roof replacement as financed through sale of bonds (82: March 24, Upper Freehold)
- Designated school alone entitled to receive tuition (59-60:65) (67:275)
- District of residence pays (53-54:67)
- Fixed rate versus tentative rate; rate is tentative and subject to later upward adjustment if and only if express reservation to that effect is made by receiving district in setting rate (73:18, aff'd St. Bd. 73:28 and 74:1415, remanded App. Div. 75:1115, remanded St. Bd. 75:1115, on remand 75:1015, aff'd St. Bd. 76:1152, aff'd App. Div. 76:1153)
- Fringe benefits of attendance and transportation employees whose salaries are excluded from calculation of tuition rate are fixed charges which may be included in tuition (86:1620, Plumsted)

Loss of tuition due to improper allocation of pupils
(67:275) (69:156, aff'd St. Bd. 70:461) (71:221, aff'd St.
Bd. 71:228) (79:308, Asbury Park)

SENDING-RECEIVING RELATIONSHIPS - continued

Tuition - continued

- May not fix rates beyond one year (74:692, aff'd St. Bd. 75:1074, aff'd App. Div. 76:1123)
- May not re-litigate certified cost issue on remand (89:2786, 89:2953, Ridgefield Park, settlement approved St. Bd. March 7, 1990)
- Post judgment interest due if fully adjudicated claim not paid within 60 days of decision (89:2786, 89:2953, Ridgefield Park, settlement approved St. Bd. March 7, 1990)
- Rate may not be adjusted on several occasions during year; based on per pupil cost of receiving district (82: December 3, Somerville)
- Refund of excess monies paid by sending district. Passaic Bd. of Ed. v. Wayne Twp. Bd. of Ed., 120 N.J. Super. 155 (Law Div. 1972) aff'd App. Div. (73:780); (63:52) (65:9) (65:100) (82: December 3, Somerville)
- Reimbursement
- Discretionary with board (72:298)
- Parents not entitled to reimbursement if they unilaterally send child to another school (66:163, aff'd St. Bd. 70:458) (71:384, aff'd St. Bd. 72:689)
- Program for socially maladjusted children, Passaic Bd. of Ed. v. Wayne Twp. Bd. of Ed., 120 N.J. Super. 155 (Law Div. 1972) aff'd App. Div. (73:780)
- Sending district may not defer payment pending determination of accuracy of receiving district's estimate (89:2786, 89:2953, Ridgefield Park, settlement approved St. Bd. March 7, 1990)
- Tentative rate; In setting tentative rate, procedures set forth in the regulation must be followed (86:1355, Kinnelon, remanded St. Bd. 86:1369; on remand 86:1370; rev'd St. Bd. 88:2489, aff'd App. Div. unreported op. (Dkt. No. A-2857-87T7 March 22, 1989))
- Time barred: (88:1207, Little Ferry, aff'd St. Bd. 88:1219, aff'd App. Div. unreported op. (Dkt. No. A-1891-88T5 July 10, 1989))

SENIORITY

- (See also "Abolition of Position", this index)
- Absence of a reduction in force affecting petitioner's employment, seniority need not be computed (84: October 24, Fazan) (87:2175, D'Alonzo)
- No seniority accrues in de facto category of high school in-school

suspension teacher (89:2277, Merlino)
Physical location of program does not preclude acquisition of
seniority: grade level and departmentalized instruction are
determining factors (90:1778, Parker, St. Bd. rev'g 89:2461)

SENIORITY - continued

Secondary subject coordinator duties substantially different than
department chairperson; no seniority claim to new position
(88:1442, Hatt)

Secretary; tenured secretaries do not possess statutory seniority
rights (83:96, Mackey)

Seniority does not accrue for tenured teacher teaching family life
although certification authorizes teaching family life
(89:2130, Savarese, aff'd St. Bd. 90:1808)

Substitute school bus driver, no seniority (76:629, Coombs)

SEX CHANGE

By teacher, In re Grossman, 127 N.J. Super. 13 (App. Div. 1974)
certif. denied 65 N.J. 292 (1974) cert. denied _____ U.S. _____
(1976) (C. dec. 72:144, St. Bd. 73:769)

Disability retirement benefits granted after sex change, In re
Grossman, 157 N.J. Super. 165 (App. Div. 1978)

SEX DISCRIMINATION

Female employees

Basketball coach; salary claim to be heard by Division on
Civil Rights (80: February 20, Kearny)

Board not required to hire a woman whose qualifications
were considered inferior to those of male candidate (78:607,
Appel, aff'd St. Bd. 78: October 4) (81: July 15, Garvin,
aff'd St. Bd. 81: December 2)

Board's violation of affirmative action plan triggers State
Board order that county superintendent monitor
implementation of plan despite failure to find
discrimination (81: July 15, Garvin, aff'd St. Bd. 81:
December 2)

Charges dismissed (70:149)

Denial of maternity leave (80: April 30, Cunningham)

Discrimination found, Decker v. Elizabeth Bd. of Ed., 153
N.J. Super. 470 (App. Div. 1977) certif. denied 75 N.J. 612
(1978)

No discrimination found, Gilchrist v. Haddonfield Bd. of Ed.,
155 N.J. Super. 358 (App. Div. 1977)

Replacement of female elementary principal with male elementary
principal; no proof of sex discrimination (79:279, Ward)

Male employees

Male coach replaced with female coach, no discrimination
found (80:1147, Kuc, aff'd St. Bd. 81: March 4, aff'd App.
Div., unpublished opinion, (Docket No. A-3253-80-T1, March
22, 1982))

SEX DISCRIMINATION - continued

Pupils

Discrimination found in testing only girls in physical education class (74:1103, modified and aff'd St. Bd. 75:1119)

Physical education testing for girls (74:1103)

School curriculum

Athletic coaches; equal duties of boys' and girls' coaches requires equal pay (80: November 10, Elmwood Park)

Discrimination complaints involving courses of study should be heard by Commissioner rather than Division on Civil Rights, Hinfey v. Matawan Reg. Bd. of Ed., 77 N.J. 514 (1978)

SEX EDUCATION PROGRAMS

Challenge remanded to administrative agency, Valent v. N.J. St. Bd. of Ed., 118 N.J. Super., 416 (Ch. Div. 1972) same case at 114 N.J. Super., 63 (Ch. Div. 1971)

Excusal from drug education course permitted (86:399, S.T., St. Bd. rev'g 86:369, appeal dismissed as moot, unreported opinion App. Div. (Docket No. A-2213-86T7 decided June 22, 1988)) student's refusal to complete alternative course resulted in failing grade.

Excusal from Family Life Health course; board may assign alternative independent study and petitioner's failure to object to alternative will not excuse child from fulfilling alternative requirements. See N.J.S.A. 18A:35-4.7 (86:2923, S.T., aff'd St. Bd. 87:2689)

Program upheld (72:219) (74:130)

State Board regulation requiring local boards to adopt family life programs upheld. Smith v. Ricci, 89 N.J. 514 (1982)

SICK LEAVE

(See "Leaves of Absence", this index)

SPECIAL EDUCATION

(See "Handicapped Children", this index)

SPLIT SESSIONS

(See "Schools and Buildings - Split sessions", this index)

STANDING

(See "Commissioner - Standing", this index)

STATE AID

- Full-time employment for remedial/supplemental teachers in order to qualify board for state aid pursuant to Teacher Quality Employment Act means payment of those teachers at full step on salary scale, not pro rata (88:410, West Milford Board of Education)
- Specificity required for notice to district of disallowance of transportation aid to trigger 90-day rule (91:2582, Paterson, rev'd in part St. Bd. 89:2586, St. Bd. 90:1781)
- State aid for transportation purchase requires knowing approval by county superintendent prior to purchase, according to N.J.S.A. 18A:58-7 (89:212, North Arlington)
- Stay of reduction of transportation aid granted (90:1781, Paterson, St. Bd. staying 89:2586, aff'd remanded St. Bd. 91:2852)

STATE BOARD OF EDUCATION

- Actions of, presumed valid (80: October 27, Jamesburg, aff'd St. Bd. 81: March 4, aff'd App. Div., unpublished opinion, (Docket No. A-3213-80-T2, March 5, 1982)
- Appeal to State Board which was timely but without proper authorization from board is of no effect, later authorization for appeal by board after 30 day filing period had expired did not ratify earlier unauthorized action, appeal dismissed as out of time (84:483, Gibson, St. Bd. aff'g 84:444, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)
- Authority not exceeded in delaying implementation of Appellate Division decision, (which remanded case for determination of when tenure accrued), until Supreme Court determined issue of retroactive effect of Spiewak. Maxfield v. Bd. of Ed. of Twp. of Ridgewood, 106 N.J. 538 (1987) rev'g 217 N.J. Super. 267 (App. Div. 1986) rev'g (St. Bd. 85: September 4). See also [(81: May 18, Maxfield, aff'd St. Bd. 82: February 3, rev'd and remanded App. Div., unreported opinion (Docket No. A-2946-81T3, decided April 20, 1983), certif. denied 94 N.J. 591 (1983), rev'd 106 N.J. 538 (1987)]

Authority to assign "monitor general" to supervise activities of local school district, In re Bd. of Ed. of City of Trenton, 176 N.J. Super. 553 (App. Div. 1980)

Authority to issue order directing creation of State-operated school district, upheld (89:2337, Jersey City, aff'd St. Bd. 89:2431, St. Bd. decision on motion 88: July 21, aff'd St. Bd. 88: December 1)

Authority under T&E law to issue administrative order specifying remedial plan for local board of education, upheld. In re Bd. of Ed. of City of Trenton, 176 N.J. Super. 553 (App. Div. 1980)

STATE BOARD OF EDUCATION - continued

Duties and powers, generally, Chappell v. Commissioner of Education, 135 N.J. Super. 565 (App. Div. 1975) (C. dec. 74:736, St. Bd. 74:1375); Rankin v. Egg Harbor Twp. Bd. of Ed., 134 N.J.L. 342 (Sup. Ct.) aff'd 135 N.J.L. 299 (E&A 1946)

"Guidelines" published by State Department of Education are not binding on local boards (72:219)

Meetings, subject to Open Public Meetings Act, Attorney General Formal Opinion No. 19 (1976)

No power to appoint Commissioner of Education, Campion v. Byrne, 175 N.J. Super. 524 (App. Div. 1980)

Procedure (61-62:223) (61-62:228)

Not bound by findings of fact of Commissioner, Quinlan v. North Bergen Bd. of Ed., 73 N.J. Super. 40 (App. Div. 1962)

Will not hear interlocutory appeals (66:149) contra (74:1414)

Regulations (administrative rules); generally; rule-making procedures allowing for review and public comment (N.J.S.A. 52:14B-4(a)(1-4)) must be followed; AIDS-related complex, regulations for admission, null and void for failure to comply with rule-making procedures. Bd. of Ed. of Plainfield v. Cooperman, 105 N.J. 587 (1987) modifying 209 N.J. Super. 174 (App. Div. 1986), rev'g (85: November 8, St. Bd. aff'g decision on motion 85: November 1)

Regulations are not binding on courts and regulations will fall if court finds that rule is inconsistent with statute it purports to interpret. Smith v. Director, Div. of Taxation, 108 N.J. 19 (1987)

State Board has authority to review factual findings and credibility determinations made below, Ridgewood Bd. of Ed. v. Deetz, aff'd App. Div. 85:1899, aff'g November 7, 1984, St. Bd. rev'g August 4, 1983, certif. denied 101 N.J. 321 (1985)

State Board must base finding upon full record; hearing transcript in addition to documentary evidence. Rowley v. Bd. of Ed. of Manalapan-Englishtown, 205 N.J. Super. 65 (App. Div. 1985) rev'g and remanding 84:2006, St. Bd. rev'g 83: May 23; decision on

remand St. Bd. 86:3127, settlement approved)
State Board regulation requiring local boards to adopt family life programs upheld, Smith v. Ricci, 89 N.J. 514 (1982)
State Board's interpretation of school laws entitled to deference (Bassett v. Board of Education, 223 N.J. Super. 136, (App. Div. 1988)) (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. 518 (1992)
Stay denied; no likelihood of success on the merits (88:2247, Sitek, aff'd St. Bd. 89:3079, stay denied St. Bd. 89: July 6) (88:221, Napoli, aff'd w/modif. St. Bd. 88:284, stay denied St. Bd. 89: February 1, aff'd App. Div. unreported op. (Dkt. No. A-2301-88T3 March 2, 1990))

STATE BOARD OF EDUCATION - continued

Stay granted (90:1781, Paterson, 89:2586, aff'd remanded St. Bd. 91:2852)

Untimely appeal, neither attorney's misreading of regulations nor delay of a couple of days excuses compliance with time requirement (88:579, Yorke, dismissing 88:564, aff'd App. Div. unreported op. (Dkt. No. A-5912-87T1, September 20, 1989))

Untimely appeal, State Board lacks authority to entertain (79:356, Henley, appeal dismissed as untimely, St. Bd. 79: October 3, reconsideration denied St. Bd. 81: May 8, aff'd unpublished opinion App. Div. (Docket No. A-3637-80T1, June 24, 1982) certif. denied 91 N.J. 538 (1982))

STATE OPERATED SCHOOL DISTRICTS

Authority to issue order creating state-operated school district upheld (89:2337, Jersey City, aff'd St. Bd. 89:2431) See also (St. Bd. decision on motion 88: July 21, aff'd St. Bd. 88: December 1)

Settlement agreement re: Assistant Superintendent's appointment is rejected for hearing to determine whether it complies with Commissioner's mandate of August 9, 1988 re: personnel matters (89: February 22, Smith)

STRIKES AND WORK STOPPAGES

Adverse evaluations due to job action of teachers, placement in personnel files held arbitrable under contract, Clifton Bd. of Ed. v. Clifton Teachers Assoc., 154 N.J. Super. 500 (App. Div. 1977)

Board may withhold pay for members and non-members of union who participate in illegal strike (81: January 19, Stukas, aff'd St. Bd. 81: June 3)

Board may withhold pay only for days that striking employees were obligated to be at work (78:597, Levitt, aff'd St. Bd. 79:847, aff'd App. Div. 80:1510, certif. denied 84 N.J. 483 (1980)) See also, In re Elizabeth Ed. Assn., 168 N.J. Super. 137 (App. Div. 1979)

Board not required to alter school calendar due to work stoppage (79:219, Camden Ed. Assn., aff'd St. Bd. 79: June 22)

Contempt: Formal contempt proceedings pursuant to R.1:10-2 must be held before imposition of fines on school employees. Passaic Twp. Board of Education v. Passaic Twp. Ed. Assn., 222 N.J.

Super. 298 (App. Div. 1987)

STRIKES AND WORK STOPPAGES - continued

Doctrine of unclean hands estopped teachers, who had participated in job action by calling in sick, from recovering sick day for which they were charged on claim that school had later been officially closed for the day, since the job action was the cause of the school closing (82: August 25, East Brunswick)

Fines of \$500 on each school employee vacated where formal contempt proceedings not held. Passaic Tp. Bd. of Ed. v. Ed. Assn., 222 N.J. Super. 298 (App. Div. 1987)

Fines upheld, In re Hoboken Teachers' Assoc., 147 N.J. Super. 240 (App. Div. 1977)

Jurisdiction of court to enjoin, Asbury Park Bd. of Ed. v. Asbury Park Ed. Assoc., 145 N.J. Super. 495 (Ch. Div. 1976); In re Hoboken Teachers' Assoc., 147 N.J. Super. 240 (App. Div. 1977) Bd. of Ed. Voc. Sussex v. Sussex Voc.-Tech. Teachers, 170 N.J. Super. 426 (Ch. Div. 1979)

Lengthening of school year to make up days in which schools were open but teachers were on strike; action barred by doctrines of laches and clean hands (81: July 9, Trenton)

Monetary sanctions for striking teachers could not be so excessive as as to constitute ruinous punishment. Bd. of Educ. v. Ed. Assn., 235 N.J. Super. 411 (App. Div. 1989)

Not negotiable or grievable (74:276)

Public employees may not strike, In re Fair Lawn Ed. Assoc., 63 N.J. 112 (1973) cert. denied 414 U.S. 855 (1973); Union Beach Bd. of Ed. v. New Jersey Ed. Assoc., 53 N.J. 29 (1968); In re Buehrer, 50 N.J. 501 (1967); In re Block, 50 N.J. 494 (1967); Delaware River & Bay Auth. v. International Org., 45 N.J. 138 (1965) (81: January 19, Stukas, aff'd St. Bd. 81: June 3) Passaic Tp. Bd. of Ed. v. Ed. Assn., 222 N.J. Super. 298 (App. Div. 1987)

Pupils are victims (74:276)

Salary

School calendar lengthened due to strike; no extra pay (73:441, aff'd St. Bd. 74:1391, aff'd App. Div. 74:1391, certif. denied 67 N.J. 99 (1975); (74:276)

Unauthorized absence; board has no authority to pay salary (72:353) (73:441, aff'd St. Bd. 74:1391, aff'd App. Div. 74:1391, certif. denied 67 N.J. 99 (1975); (74:193, aff'd St. Bd. 74:207) (74:276)

School district employees have no right to strike and restraints imposed against work stoppage by teachers and other school employees are warranted to protect the public from irreparable harm. Passaic Twp. Bd. of Ed. v. Passaic Twp. Ed. Ass'n, 222 N.J. Super. 298 (App. Div. 1987)

STRIKES AND WORK STOPPAGES - continued

Violation of restraining order or permanent injunction, In re Fair Lawn Ed. Assoc., 63 N.J. 112 (1973) cert. denied 414 U.S. 855 (1973); Union Beach Bd. of Ed. v. New Jersey Ed. Assoc., 53 N.J. 29 (1968); In re Buehrer, 50 N.J. 501 (1967); In re Block, 50 N.J. 494 (1967); In re Parsippany-Troy Hills Ed. Assoc., 140 N.J. Super. 354 (App. Div. 1975) and 140 N.J. Super. 420 (App. Div. 1976); In re Newark Teachers' Union, 118 N.J. Super. 215 (App. Div. 1972); In re Passaic Ed. Assoc., 117 N.J. Super. 255 (App. Div. 1971); Newark Bd. of Ed. v. Newark Teachers' Union, 114 N.J. Super. 306 (App. Div. 1971) certif. denied 58 N.J. 605 (1971) cert. denied 404 U.S. 950 (1971); In re Hoboken Teachers' Assoc., 147 N.J. Super. 240 (App. Div. 1977); In re Adler, 153 N.J. Super. 496 (App. Div. 1977); In re Elizabeth Ed. Assoc., 154 N.J. Super. 291 (App. Div. 1977)

STUDENTS

(See "Pupils", this index)

SUBSTITUTE TEACHER

Assignment of tenured teaching staff member to position of permanent substitute teacher set aside (76:605, Payne) (74:763, aff'd St. Bd. 75:1160) (83: January 17, Turner, aff'd St. Bd. 83: June 1)

Assignment to substitute teaching held improper (77:976, Levitt, aff'd St. Bd. 78:1027, aff'd App. Div. 79:847)

(See "Tenure - Acquisition of - Substitute teacher", this index)

Board not required to place long-term substitute on teachers' salary guide, Driscoll v. Bd. of Ed. of Clifton, 165 N.J. Super. 241 (App. Div. 1977) aff'd 79 N.J. 126 (1979) rev'g (76:7, aff'd St. Bd. 76:14); but see Sayreville Ed. Assn., 193 N.J. Super. 424 (App. Div. 1984), rev'g (83:1632, St. Bd. aff'g with modification 82: June 18)

Certificate suspended for one year for long-term substitute who failed to provide board with 60 days written notice of intention to resign (88:1898, Cashel)

Permanent substitute, filling vacant position, time must be credited for tenure and seniority purposes (85:1329, Ujhely)

Permanent substitute, full-time, not entitled to minimum salary established by N.J.S.A. 18A:29-5 (86:2284, Rumson-Fair Haven Ed. Assn., rev'd St. Bd. 87:2682, aff'd unreported op. App. Div.)

(Dkt. No. A-291-87T8, decided June 24, 1988))
Permanent substitute not entitled to benefits of N.J.S.A. 18A:29-5
(88:1484, Neptune Township Education Assn.)

SUBSTITUTE TEACHER - continued

- Permanent substitute teacher properly placed on first step of salary schedule upon full-time employment; time spent as substitute applicable to seniority only (83: March 31, Zaremba, aff'd St. Bd. 83: October 5)
- Pool substitute teachers are not entitled to receive salary and benefits of regular teaching staff members due to the nature of their employment as "pinch hitters" for temporarily absent regular classroom teachers (86:2298, Lowicki)
- Replacement teachers hired at a per diem rate (derived from the lowest step of the salary guide) to fill vacancies for a substantial balance of the academic year, were entitled to teaching staff membership during time they served and consequently to all rights and benefits of that status. Sayreville Ed. Assn., et al. v. Bd. of Ed. of Borough of Sayreville, 193 N.J. Super. 424 (App. Div. 1984), rev'g (83:1632, St. Bd. aff'g with modification 82: June 18)
- Salary; per diem policy of board reasonable; reduction of salary due to short term illness unreasonable (85: August 29, Scavelli)
- Teachers working in federally funded program may be utilized as regular substitutes at local expense during unassigned periods (86:1287, Middlesex County Vocational)
- Tenure; teacher who filled vacant position was not a substitute teacher, i.e., acting in place of another per N.J.S.A. 18A:16-1.1, therefore petitioner who had satisfied statutory criteria for attaining tenure was improperly dismissed (84:534, Weigand, aff'd St. Bd. 84:549)
- Tenure; teacher who took place of disabled teacher was a substitute teacher for 1 year period, time not counted for tenure purposes. Disabled teacher had not resigned; position was not vacant as per Sayreville (88:386, Ward, aff'd St. Bd. 88:400)
- Transfer of classroom teacher to floating substitute and supervisor of resource center upheld (79:123, Bigart)
- Transfer of classroom teacher to substitute teacher, disapproved (85: June 5, Tenney)

SUMMARY JUDGMENT

(See "Commissioner - Summary Judgment", this index)

SUMMER SCHOOLS

Appointment as teacher in summer school is discretionary (77:

125, Barber); but rescission requires notice and due process protections (75:688, Marshall, remanded St. Bd. 76:1152, on remand 77:1220, aff'd St. Bd. 78:1029)

SUMMER SCHOOLS - continued

Approval by State only if in compliance with State law and regulations (73:130, aff'd St. Bd. 73:138)

Board precluded from giving grade point average credit for college algebra course taken in unapproved summer school (87:54, G.B.C., on remand)

Fees may not be charged for approved program (73:130, aff'd St. Bd. 73:138)

Fees may be charged for enrichment programs pursuant to N.J.S.A. 18A:B-1 et seq.

Salary for summer school is separate from basic pay (75:688, Marshall, remanded St. Bd. 76:1152, on remand 77:1220 aff'd St. Bd. 78:1029)

SUNSHINE LAW

(See "Open Public Meetings Act", this index)

SUPERINTENDENT

Appointment made by

No authority to agree on behalf of board to hire teachers (77:746, Cardman) (77:832, Salowe) (77:1059, Brennan) (77:1226, Sherwood)

Appointment of

(See also "Boards - Duties - Binding future or succeeding boards", this index)

Acting Executive Superintendent (77:926, Donaldson)

Charges of conspiracy made by one board member against remainder of board regarding selection process dismissed (75:876, Maffei, aff'd St. Bd. 76:1151)

Up to five years (66:155) (67:1)

Written evaluation and interviews with several candidates not required by law (67:105)

Authority: Superintendent did not exceed his authority in going beyond job description provided by board in determining appropriate certification for unrecognized title (87:2156, Pezzullo II)

Board members as individuals seek dismissal of superintendent, no tenure charges brought, petition dismissed (84:136, Bogosian)

Clerks

Superintendent alone, not board, has power to dismiss clerks in his office (61-62:169)

SUPERINTENDENT - continued

Conflict of interest

Superintendent serving as mayor of sending district (73:18, aff'd St. Bd. 73:28, 74:1415, remanded App. Div. 75:1115, on remand 75:1015, aff'd St. Bd. 76:1152, aff'd App. Div. 76:1153)

Dismissal of

Non-tenured (71:210, aff'd St. Bd. 71:213) (73:351, aff'd St. Bd. 73:360, aff'd App. Div. 75:1087, petition to reopen dismissed 76:473, Karamessinis) (88:1361, Paladino, rev'd St. Bd. 89:3063)
(See also "Tenure - Acquisition of - Superintendent", this index)

Tenured

(See "Tenure - Dismissal - Tenure dismissal cases (listed by position)" this index)

Duties

Board can delegate supervision of adult high school to superintendent (84:1832, Polaha, dismissed St. Bd. 85:1982, rev'd in part, remanded 212 N.J. Super. 628 (App. Div. 1986) on remand Comm. opinion (reinstated Comm. opinion 84:1832) 86: November 20, rev'd by St. Bd. with opinion, 88:2517, aff'd App. Div. unreported op. (Dkt. No. A-3799-87T8, June 22, 1989))

Board may prescribe additional duties for superintendent under N.J.S.A. 18A:17-20 by adopting amendment to job description (83: November 17, Blumstein, aff'd St. Bd. 85: August 7, aff'd Appellate Division, unreported opinion, Docket No. A-309-85T1, decided November 12, 1986)

Responsibility for administration of the policy determinations of the whole board is delegated to the superintendent (87:96, Onorevole, rev'd St. Bd. 87:170)

Settlement may not unilaterally assign duties and responsibilities to a county superintendent or his/her staff (88: January 12, F.H. and N.M., settlement modified)

Superintendent must recommend formal appointment of all teaching staff members; board may not unilaterally appoint (88:1787, Bettencourt)

Superintendent not obligated to respond to directives other than those that are properly promulgated by the board as a whole at official public meetings (87:172, Onorevole, decision on remand, aff'd St. Bd. 88:2501)

Executive Superintendent under N.J.S.A. 18A:17A-1 et seq.

Supervisory authority

Assistant executive superintendent (85: October 7, Wright, aff'd in part, rev'd in part St. Bd. 87:

September 2)

SUPERINTENDENT - continued

Executive Superintendent under N.J.S.A. 18A:17A-1 et seq. - continued
Supervisory authority - continued

Lobbyist/consultant held to be employee of district within Executive Superintendent's supervisory authority, appointment of such employee without Executive Superintendent's recommendation held improper (84:444, Gibson I, aff'd with opinion St. Bd. 84:483, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

Office of Board Affairs held within supervisory authority of Executive Superintendent (84:444, Gibson I, aff'd with opinion St. Bd. 84:483, consolidated and remanded I and II, 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

Office of General Counsel held within supervisory authority of Executive Superintendent (84:444, Gibson I, aff'd with opinion St. Bd. 84:483, consolidated and remanded I and II (85:70), 205 N.J. Super. 48 (App. Div. 1985) aff'd in part, rev'd in part on remand St. Bd. 86:3044)

Four of six letters of reprimand expunged from Superintendent's personnel file - abuse of discretionary power of board (89: October 19, Reckel)

No tenure for assistant executive superintendent (80: April 7, David)
Personnel records of teaching staff member may not be withheld from any board member by superintendent (70:185) See also (90:752, Horner)

Position may not be abolished by board (63:215)

Power to suspend teaching staff members (78:149, La Grace)

Retirement agreement upheld (74:218, aff'd St. Bd. 74:225)

Request to abolish position denied (77:913, Plumsted Twp.)

Revocation of administrative certificate; board did not have to place petitioner in superintendency and credit him for service as revocation was ab initio (83:1418, Fischbach, aff'd St. Bd. 84:1931) see also (80: April 15, Fischbach) (85:196 Fischbach, aff'd St. Bd. 87:2608)

Salary

Extra salary for summer work must be approved by board; superintendent ordered to reimburse monies received prior to board approval (85:1042, Block)

Salary Schedule not required for superintendent as per N.J.S.A. 18A:29-4.3 (86:1069, Silverman, aff'd St. Bd. 86:1077) (86:2370, Juris)

Superintendent not a member of board since he has no vote:
(78:702, Windsor, aff'd St. Bd. 79:884, disapproving reasoning in
74:316, Cardano, dismissed St. Bd. 74:323)

SUPERINTENDENT - continued

Suspension of

No requirement to be in writing (77:11, Hochman, aff'd St. Bd. 77:15)

Termination

Non-tenured, termination upheld (83: September 12, Davis)

Transfer to position of vice-principal held improper (80: April 15, Fischbach) see also (83:1418, Fischbach, aff'd St. Bd. 84:1931) (85:196 Fischbach, aff'd St. Bd. 87:2608)

SUSPENSION

(See "Pupils - Suspension" and "Tenure - Dismissal or reduction in salary - Procedure-Suspension", "Certificate - Suspension of", this index)

Agreement that seniority will accrue during suspension is unenforceable (89:2959, Hermann, aff'd St. Bd. 90:1763)

Board may not suspend employee indefinitely even without pay (89:33, Spizzirri)

Indictment legitimized suspension of salary after indictment without further board action (88:793, Slater, aff'd St. Bd. 88:808, aff'd, rev'd, remanded 237 N.J. Super. 424 (App. Div. 1989)

Maintenance supervisor whose suspension did not conform with N.J.S.A. 18A:6-8.3 held entitled to back pay for period of suspension (79:401, Worrell)

Non-tenured teacher whose suspension did not conform with N.J.S.A. 18A:25-6 held entitled to back pay from date of suspension to date of contract expiration (78:149, La Grace)

Pending psychiatric examination (79:340, Griggs, aff'd with modification St. Bd. 80: March 5)

Pending resignation of tenured teacher invalid unless formal charges are filed (79:200, McGuire)

Settlement may not include suspension without pay of a tenured teacher absent certification of tenure charges or indictment (89:

February 2, Logan, appeal dismissed St. Bd. 89: November 8)

Suspension due to an indictment shall be without pay (N.J.S.A. 18A:6-8.3) so that a person does not receive salary benefits under N.J.S.A. 18A:6-14 (86:656, Wisdom, aff'd St. Bd. 86:667)

Without pay may only be accomplished by certifying tenure charges, N.J.S.A. 18A:6-14), or by reason of indictment, N.J.S.A. 18A:6-8.3 (Martin v. Bd. of Ed. of Asbury Park, App. Div. unreported opinion (Dkt. No. A-5503-83T6, July 17, 1985), aff'g in part, rev'g in part 84:1962, St. Bd. aff'g with modification 83:1343) (85:1641 McGuire, aff'd St. Bd. 86:3086) (88:793,

Slater, aff'd St. Bd. 88:808, aff'd, rev'd, remanded 237 N.J. Super. 424 (App. Div. 1989) (89:33, Spizzirri)