

## **SALARY**

- "Active duty" includes, for purposes of military service, credit time spent in college in pursuit of baccalaureate degree (90:1242, Megara)
- Board action in freezing teacher's salary until it recoups inadvertent ministerial overpayment of increment which should have been withheld does not constitute unlawful reduction of compensation (94 N.J.A.R.2d (EDU) 248, Cerato, aff'd St. E. 94 N.J.A.R.2d (EDU) 422)
- Board and school administrator never reached agreement on contract deductions for health insurance co-payment based on proposed contract improper - must be refunded (95 N.J.A.R.2d (EDU) 373, Granaldi)
- Board may not reduce tenured CSA's salary by \$1,000 and eliminate his function as asbestos manager - violated tenure rights (95 N.J.A.R.2d (EDU) 528, Adams)
- Board prohibited pursuant to N.J.S.A. 18A:6-10 and N.J.S.A. 18A:6-5 from placing tenured teacher at step on new salary guide which would effectively reduce her salary from previous level (94 N.J.A.R.2d (EDU) 242, Cohen)
- Board's reduction of Petitioner's salary to recoup overpayment made due to mutual mistake constituted a violation of applicable tenure laws, therefore board must reimburse petitioner for the amount of improper deduction; any further action to recoup overpayments must be accomplished by freezing petitioner's salary (97 N.J.A.R.2d (EDU) 499, De Lyon, aff'd in part, rev'd in part St. Bd. 00:Feb. 2)
- Claim for erroneous overpayment barred by 90 day rule (90:619, West New York)
- Claim that reduction in per diem salary violated tenure laws without merit (97 N.J.A.R.2d (EDU) 33, Breese)
- Commissioner, not Superior Court, had primary jurisdiction over action to recoup salary erroneously paid to ex-employee (90:619, West New York)
- Corrective action plan by board to recoup monies erroneously paid to tenured teacher was proper as monies were public funds for which employee had not entitlement (96 N.J.A.R.2d (EDU) 943, Hoffman, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256, appeal withdrawn App. Div. unpub. op. A-00-3596-96T1, July 30, 1997)
- County substitute certificate does not entitle holder to be paid a full-time teaching staff member's salary. N.J.S.A. 18A:29-1. (Toomey, App. Div. unpub. op. (Dkt. No. A-4709-89T2, Jan. 8, 1991.))

## **SALARY**

Crediting employees' union and tax shelter accounts prior to earning of salary does not violate constitutional prohibition against gift of public funds to private individuals. Neptune 293 N.J. Super. 1 (App. Div. 1996), aff'g 95 N.J.A.R.2d (E) 208, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 602) (NOTE: State Board in Neptune overruled 77:704, Brick, concerning salary payments to teachers at beginning of year)

District that enters into sending-receiving relationship with another district that has discontinued a school, must treat prior service of tenured teachers transferred pursuant to agreement as if it had been performed in receiving district for purpose of determining teacher's level of compensation. N.J.S.A. 18A:28-6.1. Bd. of Ed. v. Buena Regional, 300 N. Super. 415 (App. Div. 1997)

Enlistment in National Guard for seven months entitles teacher one year salary guide advancement credit; such entitlement prospective only (90:1271, Repetti)

Full recognition of prior years service provision of N.J.S.A. 18A:28-12 is limited to seniority for re-employment purposes and does not extend to salary disputes; board may negotiate salary (96 N.J.A.R.2d (EDU) 27, Picot)

Initial placement on the salary guide is not a management prerogative but rather a term and condition of employment within the scope of negotiability (96 N.J.A.R.2d (EDU) 27, Picot)

No reduction in salary under tenure law where board appointed acting superintendent to former assistant principal position and salary was commensurate therewith (98:Jan. 27, Gonzalez aff'd St. Bd. 98:June 3)

No reduction in salary under tenure law where daily rate of pay decreased when the 10-month teacher voluntarily took twelve month position (97 N.J.A.R.2d (EDU) 33, Breese)

Once employee acquires tenure, compensation may only be reduced proportionately with reduction in hours (91:2447, Laufenber)

### **Overpayment**

Board cannot require reimbursement of monies paid in error through no fault of employees (93 N.J.A.R.2d (EDU) 43 Kalapos) See also (Markot, 89:3043, St. Bd. rev'g 88:80 aff'd App. Div. unpub. op. Dkt. No. A-345-89T5, Dec. 2 1990.)

## SALARY

- Board's reduction in salary to cover cost of overpayment constitutes a reduction in compensation that is violative of tenure law; proper action would be to freeze salary until monies are recouped (97 N.J.A.R.2d (EDU) 499, D Lyon, aff'd in part, rev'd in part St. Bd. 00:Feb. 2)
- Inadvertent overpayment of tenured staff members salary was properly recouped by freezing salary (97:July 15, Hamm)
- Inasmuch as petitioner's do not have tenure rights in their respective positions, the board's recoupment of overpayments did not reduce any compensation protected by tenure law (97 N.J.A.R.2d (EDU) 507, Buena Regional)
- Recoupment of salary overpayments mistakenly made to tenured custodians does not violate tenure rights (94:Dec. 21 Trenton, rev'd St. Bd. 99:Dec. 1)
- Reimbursement of overpayment not evidence of voluntary waiver of entitlement to overpayment in case where employee never informed of right to retain overpayment (93 N.J.A.R.2d (EDU) 430, Kalapos)
- Secretaries tenure rights not affected by school board's recoupment of salary overpayment. Salaries were from part-time non-tenured positions in adult evening school (96 N.J.A.R.2d (EDU) 264, Skute, aff'd with modification St. Bd. 00:Feb. 2)
- Primary jurisdiction for enforcement of a non-binding arbitration award of a teaching staff members' salary upon reemployment following a RIF is with the courts, not the Commissioner (96 N.J.A.R.2d (EDU) 27, Picot)
- Reduction in salary of tenured CST secretary violative of tenure statute where CST secretary continued performing duties of that position despite board's change of job title (97 N.J.A.R.2d (EDU) 523, Bove)
- Rejection of salary; educational broker had no entitlement to salary that he rejected, never received, board never set formal action and that he failed to appeal within time (89:118, Williams, dec. on remand, aff'd St. Bd. 89:126, aff'd App. Div. unpub. op. (Dkt. No. A-6449-88T5, March 27, 1990)
- Salary adjustment cannot be made by unilateral action during school year, but only by corrective formal action of board with notice to the employee (95 N.J.A.R.2d (EDU) 522, Gerri)
- Salary may not be suspended during period where teacher refuses to submit to psychiatric examination by board-designated physician (95 N.J.A.R.2d (EDU) 291, Pleasantville, rev'd St. Bd. on other grounds, 96 N.J.A.R.2d (EDU) 447)

## **SALARY**

- Secretaries tenure rights not affected by school board's recoupment of salary overpayment. Salaries were from part-time non-tenured positions in adult evening school (96 N.J.A.R.2d (EDU) 264, Sklute, aff'd with modification St. Bd. 00:Feb. 2)
- Supervisor of Athletic Activities entitled to back pay and benefits when Board wrongfully violated his tenure rights (97 N.J.A.R.2d (EDU) 186, Reinhardt)
- Support staff employees - board entitled to recoup salary mistakenly overpaid (97 N.J.A.R.2d (EDU) 507, Buena Regional)
- Teacher not entitled to payment of salary while awaiting acceptance of retirement application; pension payments were made retroactively for same time period (95 N.J.A.R.2d (EDU) 97 Scherr, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 154)
- Tenured administrator entitled to payment for unused vacation days; board resolution which expressly required use of unused vacation days in specific years did not repeal prior policy paying administrators for unused vacation days (94 N.J.A.R.2d (EDU) 12, Kirschling)
- Tenured secretary, terminated for abandonment of position, entitled to payment for accrued vacation time (92 N.J.A.R.2d (EDU) 393, Lowe, rev'd St. Bd. 93 N.J.A.R.2d (EDU) 789, aff'd App. Div. 95 N.J.A.R.2d (EDU) 139)
- Tenured teaching staff member claim of erroneous reduction of salary by board dismissed for failure to file within 90 days after notification pursuant to N.J.A.C. 6:24-1.2(c) (96 N.J.A.R.2d (EDU) 943, Hoffman, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256, appeal withdrawn App. Div. unpub. op. A-3596-96: July 30, 1997)

## **SALARY SCHEDULE**

- Board may change administrator's salary schedule from merit system based on teachers' increases to tiered system based on flat percentage increases but change must be made prospectively (91:1026, Schlenker)
- Legislature has never authorized a school board to adopt a salary schedule beyond the three year term of N.J.S.A. 18A:29-4.1 (Neptune v. Neptune, 144 N.J. 16 (1996))

## **SALARY SCHEDULE**

### **Placement on salary schedule**

Board prohibited pursuant to N.J.S.A. 18A:6-10 and N.J.S.A. 18A:28-5 from placing tenured teacher at step on new salary guide which would effectively reduce her salary from previous level (94 N.J.A.R.2d (EDU) 242, Cohen)

Board recovery of salary paid for doctorate when teacher never formally placed in doctorate column of salary guide and notice was given is proper (96 N.J.A.R.2d (EDU) 943, Hoffman, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 256, appeal withdrawn App. Div. unpub. op. A-3596-96T1, July 30, 1997)

Confidential employees: Commissioner has jurisdiction over challenge to initial salary guide placement (90:543, Migliaccio)

No statutory right to salary guide advancement for prior part-time supplemental teaching service (97 N.J.A.R.2d (EDU) 365, aff'd St. Bd. , aff'd App. Div. unpub. op. Dkt. No. A-417-97T2, Dec. 18, 1998)

Petitioner was given proper credit for his military service when initially placed on salary guide (97 N.J.A.R.2d (EDU) 324, Wurster)

Salary increments: N.J.S.A. 18A:29-4.1 preempts conflicting labor law precluding a unilateral change of the status quo board is prohibited under N.J.S.A. 18A:29-4.1 from paying salary increments to teaching staff after the expiration of three-year collective bargaining agreement. Neptune v. Neptune, 144 N.J. 16 (1996) Previous history, see (93 N.J.A.R.2d (EDU) 178, Neptune Twp. Education Assoc., aff'd St. Bd. 93 N.J.A.R.2d (EDU) 791, aff'd App. Div. unpub. op. (Dkt. No. A-1184-93T2, May 15, 1995), aff'd in part, rev'd in part 144 N.J. 16 (1996))

## **SCHOOL BUSINESS ADMINISTRATOR**

County superintendent correctly exercised his authority to deny board's request to change from unit control to dual control structure and allow School Business Administrator to report directly to the board (90:1032, Barrington)

School business administrator who continued employment in district after election to office of mayor violated School Ethics Act because of impermissible conflict of interest between positions; appropriate penalty for violation is minimum one-year suspension (95 N.J.A.R.2d (EDU) 123, Steele, Commission 95:March 9, stay denied St. Bd. 95:June 7, aff'd St. Bd. 95:Sept. 6)

## **SCHOOL ETHICS ACT**

(See "Ethics Act" this Index)

## **SCHOOL OFFICIAL**

(See "Ethics Act" this Index)

## **SCHOOL YEAR**

### **School Calendar**

Board of education not obligated to negotiate over snow day rescheduling. May have to negotiate impact. Remanded to PERC for determination under Woodstown-Pilesgrove standard. Piscataway Ed. Assn. V. Bd. of Ed. 307 N.J. Super. 263 (App. Div. 1998)

## **SCHOOLS AND BUILDINGS**

### **Closing of**

Emergent relief denied; determination by Commissioner as to whether or not all criteria for closing a school had been met would be premature since Bureau of Facility Planning Services had not completed its review; controversy not ripe for determination (93 N.J.A.R.2d (EDU) 694, Brodie) Upheld; decision to close school based on declining enrollment and economic considerations following consideration of several studies and public response community meetings was not arbitrary, capricious or unreasonable (93 N.J.A.R.2d (EDU) 673, Glynos)

### **Construction of**

(See also "Torts" this Index)

Board's post referendum change from two story to one story plan for new school was within its discretion and was not unlawful, arbitrary, capricious or unreasonable (96 N.J.A.R.2d (EDU) 670, Shuster)

Lease purchase; board has statutory discretion to finance construction of new school through lease purchase (91:230, Brower, aff'd St. Bd. 91:251)

## SCHOOLS AND BUILDINGS

### Plans and specifications

Approval by Dept. of Education of site plans which deviate from regulations constitutes a variance if the Dept. of Education is sole means for acquiring site approval (92 N.J.A.R.2d (EDU) 347, Murnick, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 362, aff'd App. Div. unpub. op. (Dkt. No. A-4774-91, July 1, 1993))

Approval of 1.84 acre site for three story, 700 pupil school urban area where land is at premium price appropriate because of eight criteria in 1990 regulations met (92 N.J.A.R.2d (EDU)347, Murnick, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 362, aff'd App. Div. unpub. op. (Dkt. No. A-4774-91, July 1, 1993))

Extension of site acquisition approval for 18 months appropriate in the absence of changes in scope of building plans (92 N.J.A.R.2d (EDU) 347, Murnick, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 362, aff'd App. Div. unpub. op. (Dkt. No. A-4774-91, July 1, 1993))

Petitioner, not board, bears burden of persuasion relative to approvability of site plans (92 N.J.A.R.2d (EDU) 347, Murnick, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 362, aff'd App. Div. unpub. op. (Dkt. No. A-4774-91, July 1, 1993))

Regulations regarding minimum space requirement for private schools for the handicapped were valid facially and as applied. (Association of Schools and Agencies, App. Div. unpub. op. (Dkt. No. A-2887-89T5, March 12, 1991.))

Site visitation not requirement in review of sites submitted for approval (92 N.J.A.R.2d (EDU) 347, Murnick, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 362, aff'd App. Div. unpub. op. (Dkt. No. A-4774-91, July 1, 1993))

## SECRETARIES

- AV library technician entitled to tenure protection as clerk based on job duties (96 N.J.A.R.2d (EDU) 370, Roach)
- Dismissal warranted for neglect of duty and excessive tardiness where secretary continuously attended to personal business during working hours and was tardy 35 times during the school year (97:Aug. 19, Whitfield)
- Increment withholdings for non-teaching staff members may be evaluative or disciplinary. Non-disciplinary withholdings are not subject to mandatory arbitration. PERC has jurisdiction to make the determination. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 328 N.J. Super. 540 (App. Div. 2000), certif. den. 165 N.J. 132 (2000) (Randolph II, certif. den. 165 N.J. 132 (2000))
- Salary increment for non-teaching employee that is predominantly disciplinary (excessive absenteeism) must be submitted to binding arbitration - may not be replaced by contract through negotiations. PERC has jurisdiction. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 328 N.J. Super. 540 (App. Div. 2000), certif. den. 165 N.J. 132 (2000) (Randolph II, certif. den. 165 N.J. 132 (2000))
- Secretaries tenure rights not affected by school board's recoupment of salary overpayment. Salaries were from part-time non-tenured positions in adult evening school (96 N.J.A.R.2d (EDU) 264, Skulte, aff'd with modification St. Bd. 00:Feb. 2)
- Secretary's tenure charges of insubordination and unbecoming conduct (refusal to complete a work assignment and use of foul language to assistant superintendent) did not warrant dismissal. 120 day suspension loss of two increments penalty (97 N.J.A.R.2d (EDU) 390, Bohannon)
- Tenure accrues in the position of secretary (96 N.J.A.R.2d (EDU) 727, Sherrill, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 731)
- Tenured RIF'd 12 month 1/2 time secretary entitled to full-time 12 month secretarial position (96 N.J.A.R.2d (EDU) 727, Sherrill, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 731)
- Tenured secretary, terminated for abandonment of position, entitled to payment for accrued vacation time (92 N.J.A.R.2d (EDU) 393, Lowe, rev'd St. Bd. 93 N.J.A.R.2d (EDU) 789, aff'd App. Div. unpub. op. 95 N.J.A.R.2d (EDU) 139)

## SECRETARY TO BOARD



## **SENDING-RECEIVING RELATIONSHIPS**

### **Closure of school**

N.J.S.A. 18A:28-6.1 requires that teachers transferred to receiving district upon the closure of sending district school are entitled to have their prior service in sending district considered in establishing level of compensation, including longevity payments. Union cannot bargain away the teachers' statutory rights to full credit for such prior service. Bd. of Ed. v. Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)

Commissioner required to grant severance of sending-receiving relationship where there is no showing of a substantial racial, educational or financially negative impact (96 N.J.A.R.2d (EDU) 964, Ho-Ho-Kus)

Decision to abolish building trades position based on declining enrollment and economic considerations upheld; allowing first students to take abolished course at another high school does not constitute transfer of program under N.J.S.A. 18A:28-6 and does not trigger tenure rights at second school (93 N.J.A.R.2d (EDU) 600, Bausmith)

### **Out-of-state receiving district**

Board decision to enter into sending-receiving relationship with NY school district upheld; students receiving first and appropriate education (94 N.J.A.R.2d (EDU) 443, Campbell)

### **Pupils**

Receiving district obligated to permit sending students to attend County Vo-Tech where comparable classes were not offered through its LAVSD program (92:Apr. 2, Maurice River, St. Bd. rev'g & remanding to Div. of Fin. 91:36 decision on remand 95 N.J.A.R.2d (EDU) 92)

Sending districts and parents of students were acting under legislative authority when allowing students to attend specialized vocational program not offered by the receiving district; further, this does not violate the apportionment statute, which does not guarantee attendance at receiving high school (97 N.J.A.R.2d (EDU) 464, Asbury Park, aff'd St. Bd. 97:Sept. 3, aff'd App Div. unreported decision, Dkt. No. A-1043-97T5, March 1999)

## SENDING-RECEIVING RELATIONSHIPS

### Sending District Representative

- Emergent relief denied for additional funding for academies alleviate racial imbalance. Failure to show that irreparable harm will result if additional funding is not given. (St. Bd. 03:May 14, Englewood Cliffs)
- Emergent relief denied. Receiving board need not consider evaluative input from sending district representatives evaluation of board solicitor (96 N.J.A.R.2d (EDU) 69 Callowhill)
- Emergent relief granted. Receiving board must consider evaluative input from sending district representative regarding CSA, SBA. Inconsistent to allow vote on CS contract but not participate in evaluation (96 N.J.A.R. (EDU) 693, Callowhill)
- Notwithstanding that quorum requirements to convene meetings remain constant, voting requirements will vary depending upon whether the sending district representatives are eligible to vote (97:Aug. 5, Green)
- Sending district representative was improperly excluded from voting on the election of receiving board officers. Therefore, reorganization meeting is void and must be conducted again in accordance with this decision (97:June 24, Little Ferry v. Ridgefield Park)
- Sending district representatives have limited voting rights substantive matters before the board; but in all other respects, such as procedural matters, sending representatives are full members of the board (97:Aug. Green)
- Sending district representatives may not share executive session discussions of the receiving board with their sending district board (97:Aug. 5, Green)
- Sending representative is entitled to copies of all documents when distributed to other board members, even if they are not related to categories upon which he may vote (97:May 30, Lincoln Park)
- Sending representative may communicate freely with sending district's superintendent about confidential items; superintendent is bound to maintain strict confidentiality (97:May 30, Lincoln Park)

## **SENDING-RECEIVING RELATIONSHIPS**

Sending representative may not disclose confidential information to other members of sending board, except superintendent; only non-confidential communications may be disseminated to board, and only when sending board formally convened (97:May 30, Lincoln Park)

Sending representative's deliberative role is not limited to questions arising under voting categories (97:May 30, Lincoln Park)

### **Termination**

Burden of production and proof; party seeking termination must introduce statutory feasibility study; party opposing must submit evidence of negative impact (90:Sept. 5, Merchantville, St. Bd. rev'g ALJ pre-hearing order)

Commissioner, in order to prevent further racial imbalance had authority to both deny severance petition and deny sending district's application to enter into a second sending-receiving relationship; State Board's additional order enjoining all public school districts from entering into a sending-receiving relationship with the petitioning sending district also upheld (88:1501, Englewood Cliffs, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. 327 (1993) certiorari denied 510 U.S. 991 (1993). Regarding mandatory regionalization, See also Englewood Cliffs, 132 N.J. Super. 370 (App. Div. 2000), certif. granted in part, 166 N.J. 604 (2000), (certif. granted on limited issue of allocation of specific responsibilities between Commissioner and Board to develop and implement role plan to achieve racial balance)(See also St. Bd. 97:Nov. 5, St. Bd. orders record to be supplemented, St. Bd. 03:Feb. 19, prohibition against admitting tuition students lifted and St. Bd. retains jurisdiction, St. Bd. 03:April 2)

State Board ruling denying severance of sending-receiving relationship affirmed. Bd. of Ed. of Belmar v. Bd. of Ed. of Asbury Park v. Bd. of Ed. of Bradley Beach v. Bd. of Ed. of South Belmar, et al., App. Div. unpublished opinion Dkt. No. A-665T-95T3, May 26, 1998.

## SENDING-RECEIVING RELATIONSHIPS

### Factors considered

Educational impact (93 N.J.A.R.2d (EDU) 464, Merchantville II) See also, App. Div. unpub. op. Dkt. No. A-3396-97T1, May 5, 1998, suasponte dismissing appeal as moot due to Haddonfield's withdrawal, any sending-receiving disposition would have to be by new application); See also, 98: Jan (St. Bd. denying Merchantville's petition to sever sending-receiving relationship with Haddonfield and denying Pennsauken's cross-petition to enjoin Haddonfield's tuition policy)

Financial impact (93 N.J.A.R.2d (EDU) 464, Merchantville II, parties directed to supplement record on appeal, St. Bd. 97 N.J.A.R.2d (EDU) 24 See also, App. Div. unpub. op. Dkt. No. A-3396-97: May 5, 1998, suasponte dismissing appeal as moot due to Haddonfield's withdrawal, any sending-receiving disposition would have to be by new application) See also, 98: Jan. 7 (St. Bd. denying Merchantville's petition to sever sending-receiving relationship with Haddonfield and denying Pennsauken's cross-petition to enjoin Haddonfield's tuition policy)

Financial impact on all districts involved (92 N.J.A.R.2d (EDU) 235, Boonton) (94 N.J.A.R.2d (EDU) 553, Bloomingtondale, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 151, aff'd App. Div. 96 N.J.A.R.2d (EDU) 843)

Quality of education (92 N.J.A.R.2d (EDU) 235, Boonton) (94 N.J.A.R.2d (EDU) 553, Bloomingtondale, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 151, aff'd App. Div. 96 N.J.A.R.2d (EDU) 843)

Racial balance (92 N.J.A.R.2d (EDU) 235, Boonton) (89:1880, Belmar, dec. on motion - update record denied, St. Bd. 95:Jan. 4, appeal dismissed St. Bd. 96:June motion to abbreviate record denied, St. Bd. 96:Sep 4, aff'd App. Div. unpub. op. Dkt. No. A-6651-95: May 26, 1998)

## SENDING-RECEIVING RELATIONSHIPS

Racial impact (93 N.J.A.R.2d (EDU) 464, Merchantville II, parties directed to supplement the record on appeal St. Bd. 97 N.J.A.R.2d (EDU) 249); See also 98: Jan. 7 (St. Bd. denying Merchantville's petition to sever sending-receiving relationship with Haddonfield and denying Pennsauken's cross-petition to enjoin Haddonfield's tuition policy) (88:1501, Englewood Cliffs, aff'd St. Bd. 90:172 aff'd 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. 327 (1993), certiorari denied 510 U.S. (1993); Regarding mandatory regionalization, see also, Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000); certif. granted in part, 166 N.J. 60 (2000)(certif. granted on limited issue of allocation of specific responsibilities between Commissioner and Board to develop and implement voluntary plan to achieve racial balance)(See also St. Bd. 97:Nov. 5)

Removal of pupils: impact on educational program and fiscal situation (89:1880, Belmar, decision on motion - update record St. Bd. 95:Jan. 4, appeal dismissed St. Bd. 96:June 5, motion to abbreviate record denied, St. Bd. 96:Sept. 4, aff'd App. Div. unpub. op. Dkt. No. A-6651-95T3, May 26, 1998)

"Social Capital" (94 N.J.A.R.2d (EDU) 553, Bloomington 95 N.J.A.R.2d (EDU) 151, aff'd App. Div. 96 N.J.A.R.2d (EDU) 843)

Feasibility study should include analysis of tuition costs for current receiving district, changes in tuition for sending districts and tax rates for all communities involved (92 N.J.A.R.2d (EDU) 235, Boonton)

Motion to supplement record denied: Neither receiving board's discussion of curriculum enhancements nor letter concerning special education student at receiving district relevant to termination dispute (90:March 7, Englewood Cliffs) - See also, (88:1501, Englewood Cliffs, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. 327 (1993), certiorari denied 510 U.S. 991 (1993); Regarding mandatory regionalization see also, Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000); certif. granted in part, 166 N.J. 604 (2000)(certif. granted on limited issue of allocation of specific responsibilities between Commissioner and Board to develop and implement voluntary plan to achieve racial balance)(See also St. Bd. 97:Nov. 5)

## SENDING-RECEIVING RELATIONSHIPS

Must be granted where no substantial negative impact; may granted if negative impacts outweighed by benefits (9 Sept. 5, Merchantville, St. Bd. rev'g ALJ pre-hearing order)(See also 93 N.J.A.R.2d (EDU) 464); See also, 9 Jan. 7 (St. Bd. denying Merchantville's petition to sever sending-receiving relationship with Haddonfield and denying Pennsauken's cross-petition to enjoin Haddonfield's tuition policy)

No substantial negative financial, racial or educational impact found; termination approved (92 N.J.A.R.2d (EDU) 235, Boonton)

Settlement agreement which provides that receiving district may not contest during two-year period any request to withdraw is unenforceable (95 N.J.A.R.2d (EDU) 493, Lincoln Park, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 494)

State Board has authority to order regionalization study based on recommendation of Commissioner, who had been directed by State Board to monitor problem of racial imbalance highlighted in earlier petition for severance Supreme Court reserves question of whether State Board has authority to order regionalization (Englewood Cliffs: 257 N.J. Super. 413 (App. Div. 1992), aff'd 132 N.J. Super. (1993); certiorari denied, 510 U.S. 991 (1993))

Termination approved as feasibility study established to the Commissioner's satisfaction that there would be no substantial negative impact on the financial, racial educational programs in each of the districts (97:Dec 23, Plumsted)

Termination denied; significant negative fiscal and educational impact on receiving district if it were to lose half of its student body preclude granting of severance (94 N.J.A.R.2d (EDU) 553, Bloomingtondale, aff'd 95 N.J.A.R.2d (EDU) 151, aff'd App. Div. 96 N.J.A.R.2d (EDU) 843)

Termination denied - substantial negative racial impact (89:1880, Belmar, decision on motion update record St. Bd. 95:Jan. 4, appeal dismissed St. Bd. 96:June 5, motion to abbreviate record denied St. Bd. 96:Sept. 4, aff'd App. Div. unpub. op. Dkt. No. A-6651-95T3, May 26, 1996)

## SENDING-RECEIVING RELATIONSHIPS

Termination denied; Withdrawal of sending district would have substantial negative impact by increasing racial imbalance in receiving district (88:1501, Englewood Cliffs, aff'd St. Bd. 90:1720, aff'd 257 N.J. Super. (App. Div. 1992), aff'd 132 N.J. 327 (1993); certiora denied 510 U.S. 991 (1993). Regarding mandatory regionalization, See also, Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000), certif. granted in part, N.J. 604 (2000) (certif. granted on limited issue of allocation of responsibilities between Commissioner and Board to develop and implement voluntary plan to achieve racial balance)(See also St. Bd. 97:Nov. 5)

Termination granted: No substantial negative financial, racial, or educational impact found (97 N.J.A.R.2d (EDU) 207, Logan, motion for stay denied St. Bd. 97:April 2 appeal dismissed St. Bd. 98:Jan. 7, stay denied St. Bd. 97 N.J.A.R.2d (EDU) 420)

Test for termination, generally (89:1880, Belmar, decision on motion update record St. Bd. 95:Jan. 4, appeal dismissed St. Bd. 96:June 5, motion to abbreviate record denied St. Bd. 96:Sept. 4, aff'd App. Div. unpub. op. Dkt. No. A-6651-95T3, May 26, 1998)

Test for termination: Where single substantial negative impact found among three articulated considerations of educational, financial and racial impacts, severance must be disallowed (93 N.J.A.R.2d (EDU) 464, Merchantville parties directed to supplement record on appeal St. Bd. 97 N.J.A.R.2d (EDU) 249) See also, App. Div. unpub. op. Dkt. No. A-3396-97T1, May 5, 1998, sua sponte dismissal of appeal as moot due to Haddonfield's withdrawal, any sending-receiving disposition would have to be by new application. See also, 98: Jan. 7 (St. Bd. denying Merchantville's petition to sever sending-receiving relationship with Haddonfield and denying Pennsauken's cross-petition to enjoin Haddonfield's tuition policy)

## **SENDING-RECEIVING RELATIONSHIPS**

### **Tuition**

Basing tuition charges for vocational program students on State categorical aid to which sending districts entitled was inappropriate; tuition to be calculated using correct cost apportionments and correct enrollment figures so to represent actual cost to receiving district of educating sending students (92:Apr. 2, Maurice River Millville, St. Bd. rev'g & remanding to Div. of Fin. 91:363, decision on remand 95 N.J.A.R.2d (EDU) 92, aff' St. Bd. 95 N.J.A.R.2d (EDU) 150, aff'd App. Div. 96 N.J.A.R.2d (EDU) 687, certif. den. 146 N.J. 565 (1996)  
Claim for additional tuition time barred (89:1532, Middle Township, aff'd St. Bd. 89:1548, aff'd App. Di unpub. op. (Dkt. No. A-391-89T3, April 12, 1990))

## **SENIORITY**

(See "Abolition of Position" this index)

## **SETTLEMENT OF SPECIAL EDUCATION MATTERS**

A settlement agreement voluntarily entered into by a school district and the parents of a child with a disability during mediation of an IDEA claim created a binding contract between the parties and was enforceable as written. D.R. by M.R. East Brunswick Bd. of Ed., 109 F.2d. 896 (3d Cir. 1997)

## **SEX CHANGE**

## **SEX DISCRIMINATION**

(See "Discrimination" this index)

## **SEX EDUCATION PROGRAMS**



## **SICK LEAVE**

(See also "Leaves of Absence" this index)

Cap on payment for unused sick leave was an illegal inducement to early retirement and was non-negotiable. Association did not knowingly bargain away the accrued sick leave compensation of its members by agreeing to be bound by the fact-finder's recommendations. Analogized to deferred compensation - knowing waiver required to bargain away. In the Matter of Morris School District Bd. of Ed. and the Education Association of Morris, 310 N.J. Super. 332 (App. Div. 1998 certif. den. 156 N.J. 407.

Claim for payment of sick leave benefits beyond period for which employee received Workers Compensation benefits must be filed within 90 days of board action which has effect of denying benefits to employee (91:1725, Verneret, aff'd w/modif. St Bd. 95 N.J.A.R.2d (EDU) 134)(97:Dec. 29, Molinari)

Employee may elect to use either accumulated sick days or worker compensation during sick leave to a work related injury; it is within the power of the board to direct an employee to use one or the other (97:Aug. 6, Practico)

Permanent building based substitutes eligible for sick leave and participation in State Health Benefits Plan (94 N.J.A.R.2d (EDU) 364, East Orange Education Association)

## **SMOKING**

Commissioner lacks jurisdiction to enforce smoking ban, which is the responsibility of the Department of Health, enforceable in the municipal courts (96 N.J.A.R.2d (EDU) 488, Bauder)

## **SPECIAL NEEDS DISTRICTS**

Commissioner holds that as a matter of public policy, full time teachers should compose a majority of the School Base Planning Teams (97:Dec. 29, Twp. of Neptune)

## **SPLIT SESSIONS**

## STANDING

(See "Commissioner of Education" this index)

State's historic liberal approach to issue of standing applies taxpayer suits challenging quasi-legislative action of local board of education. (Ridgewood Ed. Assn. v. Ridgewood Bd. of Ed., 284 N.J. Super. 427 (App. Div. 1995))

Teachers association and taxpayers who were also teachers of school district had standing to challenge school board policy regarding supplemental teachers. (Ridgewood Ed. Assn. v. Ridgewood Bd. of Ed., 284 N.J. Super. 427 (App. Div. 1995))

## STATE AID

Abbott district: Parents and residents of Plainfield sought classification as an Abbott district under CEIFA. Commissioner held that successful challenge must link educational inequities to funding formula (98:April 28, Jones motion to compel Commissioner to issue decision moot; motion dismissed St. Bd. 98: July 1; motion to supplement the record granted St. Bd. 98: Aug. 5; motion to supplement additional affidavits granted St. Bd. 98:Oct. 7, appeal dismissed St. Bd. 03:June 4)

Commissioner's letter to members of the Legislature regarding reduction in state aid to school district not an appealable decision. (Lacey Twp., St. Bd. 95:Oct. 5)

Department of Education justified reduction of state aid (\$274,200 where board had received \$925,000 donation from municipality) (96 N.J.A.R.2d (EDU) 867, Lacey, aff'd St. Bd. 96:Dec. 4)

Department of Education's actions in withholding state aid for district's failure to bid transportation contracts to and from extra curricular activities appropriate; transportation "to and from school" includes transportation to and from extracurricular and athletic activities (97:Sept. 22, Lakeland Regional v. DOE, aff'd St. Bd. 98:March 4)

Desegregation aid denied; N.J.S.A. 18A:6-33.16 does not guarantee desegregation grant on basis of post receipt of such grants (97 N.J.A.R.2d (EDU) 144, St. Bd. Weehawkin)

District ordered to return Level III state aid monies paid to fund corrective action plan must be returned after audit reveals existence of surplus; district's lack of knowledge of surplus at time of application irrelevant (94 N.J.A.R.2d (EDU) 170 Orange Twp.)

## STATE AID

Educational services commission must refund to state \$1,056 million in surplus funds remaining at end of 1987 fiscal year. No authority to retain surplus funds. (Essex Co. Ed. Service Comm., 93 N.J.A.R.2d (EDU) 522, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 117, aff'd App. Div. 95 N.J.A.R.2d (EDU) 106.)

Freezing of state aid levels after the QEA was deemed unconstitutional did not violate the constitutional rights of students in districts that subsequently experienced increased enrollments (96:July 5, Bayonne, remanded back to Commissioner St. Bd. 98:March 4)

Grant funds were not expended or "committed" by date established by terms of grant when they were simply "reserved" or "pledged"; recoupment of grant monies ordered through adjustments in state aid (95:July 12, Jersey City)

No violation of equal protection where Legislature bases financial need for Abbott districts on the previous year's aid regardless of student enrollment (96:July 5, districts on the previous year's aid regardless of student enrollment (96:July 5, Bayonne, rev'd and remanded St. Bd. 96:Dec. 4)

Overpayment of state aid for three years due to impermissible transfers to capital outlay; repayment ordered (90:518, Burlington, aff'd St. Bd. 90:525)

Penalty; noninstructional cost penalty applied against board's 1995-96 state aid (95:March 22, Lincoln Park, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 557)

Recoupment of State aid directed by Office of Compliance is proper where Board improperly expended funds in violation of the Public School Contracts Law (98:June 3, Middle Twp., aff'd St. Bd. 98: Oct.)

State aid withheld to recover mistakenly believed misspent federal Part B funds ordered restored (91:412, Newark)

### Supplemental

Appropriate remedy for fraudulent misrepresentations by board in application for supplemental aid is rescission and return of grant and return of funds improperly transferred from municipality to school district in related transaction (91:Nov. 1, Lyndhurst, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 623) See also (93 N.J.A.R.2d (EDU) 621, St. Bd. rejecting settlement, retaining jurisdiction and staying matter pending SCI review)

## STATE AID

Purposeful misrepresentation by board of purposes for which discretionary supplemental state aid was sought constitutes fraud (93 N.J.A.R.2d (EDU) 623, Lyndhurst St. Bd. aff'g 91:Nov. 1) See also (93 N.J.A.R.2d (EDU) 621, St. Bd. rejecting settlement, retaining jurisdiction and staying matter pending SCI review)

Use of supplemental state aid for tax relief impermissible and justifies rescission of award (93 N.J.A.R.2d (EDU) 623, Lyndhurst, aff'g 91:Nov. 1) See also (93 N.J.A.R. (EDU) 621, St. Bd. rejecting settlement, retaining jurisdiction and staying matter pending SCI review)

TQEA funds provided for funding teacher salary differential payments; Education Services Commission may not use Chapter 192/193 funds to make payments and place all of TQEA funds reserve account (94 N.J.A.R.2d (EDU) 234, Middlesex County Educational Services Commission, aff'd St. Bd. 94 N.J.A.R. (EDU) 430)

## STATE BOARD OF EDUCATION

Appeal filed late was dismissed (St. Bd. 96:Nov. 6, Ludviksen)  
Appeal filed 25 days late without explanation for late filing : case which does not present matter of public importance dismissed for failure to perfect (91:2557, St. Bd. Jones)

Appeal not dismissed although untimely where attorney had made error in choice of forum but met the time requirements for that forum (92:Oct. 8, Pellagatti)

Appeal of Board of Examiners' decision to revoke certificate is dismissed for counsel's failure to file a brief due to his claimed difficulty in finding school law cases, the relocation of his office, and allergies (St. Bd. 97:July 2, Bauer)

Appeal to Appellate Division filed four months after Commission decisions and then transferred to State Board, deemed untimely (95 N.J.A.R.2d (EDU) 74, McGuire, appeal dismissed St. Bd. N.J.A.R.2d (EDU) 140, rev'd and remanded App. Div. unpub. c Dkt. No. A-4742-95T3, Feb. 10, 1998) (96 N.J.A.R.2d (EDU) 140, Sheridan)

Appeals: Commissioner's decision regarding student's entitlement to free education in district pursuant to N.J.S. 18A:38-1 is a final decision pursuant to N.J.A.C. 6:2-1.1(a) and thus subject to the 30-day limit for appeals; however, particular circumstances may prevent time-bar for appeal (98:May 6, A.McG., St. Bd. remanding to Commissioner)

## STATE BOARD OF EDUCATION

- Brief suppressed where it included references to material not included in record (95 N.J.A.R.2d (EDU) 201, Princeton Learning Center (St. Bd. dec. on motion; see also 95 N.J.A.R.2d (EDU) 199)
- Commissioner's letter to members of the legislature regarding reductions in state aid to school district not an appealable decision. Board retains right to appeal from determination petition currently pending State Board (95:Oct. 5, Lacey Township)
- Determination by Board of Review under N.J.S.A. 18A:13-56 is a final determination of an administrative agency appealable directly to the Appellate Division; State Board has authority to hear appeals only from decisions of Commissioner (Winslow 275 N.J. Super. 206 (App. Div. 1994))
- Dismissal of appeal of Commissioner's decision not to permit refinancing of lease-purchase agreement under N.J.A.C. 6:27-1.3 for failure to perfect upheld where State Board gave attorney ample opportunity to file brief but failed to do so; attorney's conduct is imputed to the board. (Refinancing of the 1994 Lease Purchase Agreement by the Fairview Bd. of Education App. Div. unpub. op. Dkt. No. A-6473-96T1, Feb. 4, 1999)
- Failure to timely file brief; appeal dismissed (St. Bd. 97:June 5) In the Matter of the Refinancing of the 1994 Lease Purchase Agreement motion for reconsideration denied 97:Nov. 5)
- Faxed notice of appeal may be used for purposes of establishing filing date but an original notice, signed by the attorney and filed in the record, is necessary to open the appeal (96 N.J.A.R.2d (EDU) 142, Sheridan)
- Legislature has delegated the responsibility for the regulation and administration of public education tenure to the State Board (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (January 13, 1994), dec. on remand 96 N.J.A.R.2d (EDU) 95) appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)
- Motion to re-open eight year-old tenure dismissal case denied, despite pending TPAF dispute (90:Nov. 19, St. Bd. Gilbert, motion for reconsideration denied, 91:2553)
- Post judgment interest: Request to State Board denied where none made to Commissioner (90:559, West Orange, aff'd St. Bd. 91:99)
- Regulation invalidated - Impermissibly narrowed language of another frustrated policy in IDEA w/r provision of assistive technology and services. Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6 and 4.3, 305 N.J. Super. 389 (App. Div. 1997)

## STATE BOARD OF EDUCATION

- Regulation regarding inclusion in IEP of description of "specialized equipment and materials" invalid as different from and more narrow than federal mandate. (Note: special education regulations recodified at N.J.A.C. 6A:14 et seq. In re N.J.A.C. 6:28-3.6.)
- Regulation serves legitimate state interest of containing the cost to the public of educating handicapped students (89:16) Penta Assoc., aff'd w/mod. St. Bd. 90:1784, aff'd w/mod. App. Div. unpub. op. (Dkt. No. A-3631-89T1, July 8, 1991) cert. den. 127 N.J. 546 (1991))
- Regulations changing certification requirements for principals upheld against challenge that State Board violated Administrative Procedure Act by making substantial changes proposed rules without providing additional notice (New Jersey Ass'n of School Administrators, App. Div. unpub. op. (Dkt. No. A-1207-88T3, February 21, 1990))
- Regulations regarding minimum space requirements for private schools for the handicapped. N.J.A.C. 6:22 were valid facially and as applied. (Association of Schools and Agencies, App. Div. unpub. op. (Dkt. No. A-2887-89T5, March 12, 1991))
- Regulations shifting proficiency evaluation from State to local district held valid. Violated neither intent nor mandate Bilingual Education Act. (In re: N.J.A.C. 6:11-8.4, 8.5, App. Div. unpub. op. Dkt. No. A-2509-89T5, June 18, 1991))
- State Board has also clearly stated that tenure rights obtained in a State Board created position may not be extended to those specifically enumerated tenurable positions described by the Legislature (96 N.J.A.R.2d (EDU) 81, Brenner stayed; St. Bd. (January 13, 1994), 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)
- State Board decision given deference; a reviewing court should defer to administrative agency's findings if findings are based on sufficient credible evidence on record as a whole. Mere disagreement with agency's conclusion does not permit reviewing court to reject that conclusion. (Wayne v. Kraft 139 N.J. 597 (1995), rev'g 274 N.J. Super. 211 (App. Div. 1994), rev'g 92 N.J.A.R.2d (EDU) 393, aff'g 92 N.J.A.R.2d (EDU) 111)
- State Board set aside Commissioner's decision and conducted independent de novo review in case where Commissioner relied on document he had authored and opinions of personnel of agency not entered into evidence (94 N.J.A.R.2d (EDU) 301, Edison Twp. Educ. Assoc., de novo review by St. Bd. 94 N.J.A.R.2d (EDU) 592, aff'd App. Div. 96 N.J.A.R.2d (EDU) 40)

## STATE BOARD OF EDUCATION

State Board's interpretation of school laws entitled to deference. Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Supr. 222 (App. Div. 1991), rev'g St. Bd. 90:1795, rev'g Commissioner 89:2651.

Stay denied (St. Bd. 95:Oct. 5, Skowronski - See 94 N.J.A.R.2d (EDU) 208, aff'd in part, rev'd in part 95 N.J.A.R.2d (EDU) 451, settled App. Div. unpub. op. Dkt. No. A-6643-94T3, May 1996)(95:April 5, Keyport)(96 N.J.A.R.2d (EDU) 804, S.P., stay denied St. Bd. 96:Sept. 4, aff'd St. Bd. 96:Oct. 2, aff'd App. Div. unreported op. Oct. 16, 1997)(96 N.J.A.R.2d (EDU) 947 McVeigh, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 318)(97 N.J.A.R.2d (EDU) 420, Logan)

Stay granted (St. Bd. 96:May 1, Williams) (95:Dec. 6, Pedrick)  
The time limit within which an appeal must be taken to the State Board is statutory and given the jurisdictional nature of that statutory time limit, the State Board lacks the authority to extend it (95 N.J.A.R.2d (EDU) 74, McGuire, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 140, rev'd and remanded App. Div. unpub. op. Dkt. No. A-4742-95T3, Feb. 10, 1998) (96 N.J.A.R.2d (EDU) 142, Sheridan)

Timelines for appeal to State Board are statutory, N.J.S.A. 18A:6-28, and may not be relaxed (90:Apr. 4, St. Bd. Roone (90:Sept. 5, St. Bd. Robinson)(95:Jan. 4, St. Bd. Wanaque)(95:Oct. 5, St. Bd. Northern Burlington County Regional, aff'd App. Div. consolidated unpub. ops. Dkt. No. A-1743-95T5 and A-1787-95T5)(96 N.J.A.R.2d (EDU) 140, A.Mc.G.)(95 N.J.A.R.2d (EDU) 74, McGuire, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 140, rev'd and remanded App. Div. unpub. op. Dkt. No. A-4742-95T3, Feb. 10, 1998) (96 N.J.A.R.2d (EDU) 142, Sheridan)

### Untimely appeal

Order issued by Appellate Division referring matter to State Board did not comply with statutory time limit for appeal of Commissioner's decision (93 N.J.A.R.2d (EDU) 553, University Bus Company, appeal dismissed St. Bd. 94 N.J.A.R.2d (EDU) 223, aff'd App. Div. unpub. op. Dkt. No. A-3039-93T3, May 2, 1995)

State Board may not extend statutory 30 days within which appeals from Commissioner's decision must be taken; neither settlement negotiations nor difficulty in locating petitioners excused failure to comply with time limit (90:1, MacMillan, appeal dismissed St. Bd. 90:2 see St. Bd. decision)

**STATE BOARD OF EDUCATION**

Stay denied St. Bd. (95:June 7, Steele)

**STATE BOARD OF EXAMINERS**

(See also Employment Disqualification)

ALJ decision adopted - State Board of Examiners failed to act within 45 days - N.J.S.A. 52:14B-10 (St. Bd. 96:June 5, Pedrick, see also St. Bd. 95:Dec. 6)

Conduct did not warrant revoking or suspending certificate (St. Bd. 96:June 5, Pedrick, see also St. Bd. 96:Dec. 6)

Denial of principal certification upheld. Candidate did not have required masters degree in management or leadership or substantial equivalent of course work in those areas (96 N.J.A.R.2d (EDU) 561, Fisher)

Denial of school administrator endorsement arbitrary, capricious and unreasonable where CSA held an administrative certificate with an executive superintendent certification prior to charter in regulation on September 1, 1992 and may be issued school administrator endorsement to serve as chief school administrator in any district in the State (97 N.J.A.R.2d (EDU) 257, Salley)

Dismissed tenured teacher's license revoked for use of corporal punishment on pupils (96:March 28, Jackson (Gloria), St. Bd. of Examiners adopting ALJ's recommendation, aff'd St. Bd. (1 reported), aff'd App. Div. unpub. op. Dkt. No. A-1246-96T5 Sept. 9, 1997)

Extension of time to serve as acting superintendent (three months granted. Additional three months to be granted if appeal State Board of Examiners' decision not decided (96:June 12 Salley)

Fact that inexperienced staff person erred does not impede public interest nor is manifestly erroneous (St. Bd. 96:June 5, Pedrick, see also St. Bd. 95:Dec. 6)

Inefficiency charge standing alone may warrant revocation of certificate depending on the circumstances (96:May 1, Barshatky, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71)

Interlocutory appeal: notice of motion to appeal interlocutory decision of State Board of Examiners to block issuance of emergency certification was untimely; must be filed within 5 days, not 5 working days (St. Bd. 97:Sept. 3, Ilconich)



### STATE BOARD OF EXAMINERS

Revocation of certificate of teacher terminated from tenured position is not time-barred; no statute of limitations governing decertification (Charlton, App. Div. unpub. op. Df No. A-5241-96T2, Feb. 9, 1999)

School administrators certificate revoked for submission of fraudulent information. Instructional and Principal/Supervisors certificate suspended for two years (95:May 15, Williams, stay Granted 95:Aug. 16, St. Bd. remar 95:Oct. 5, dec. on remand 95:Dec. 14, St. Bd. grants stay 96:May 1)

### STATE HEALTH BENEFITS COMMISSION

The State Health Benefits Commission has the statutory authority to adjudicate, in the first instance, a dispute concerning a school board's withdrawal from the State Health Benefits Plan. Bd. of Ed. of Upper Freehold Regional School District v. State Health Benefits Commission, 314 N.J. Super 486 (App. Div. 1998)

### STATE OPERATED SCHOOL DISTRICTS

Budget appeal in State operated district must be initiated by governing body and governing body has burden of proving that appropriations are in excess of what is necessary for provision of T&E education (94 N.J.A.R.2d (EDU) 98, Paterson City failed to meet burden of demonstrating that funds appropriated for salaries exceed what is necessary to provide T & E education; proposed reductions in general supplies too drastic (95 N.J.A.R.2d (EDU) 391, Paterson, aff'd St. Bd. 96:Feb. 7)

Commissioner lacks subject matter jurisdiction to determine disputes which are governed by Title 11 (eleven), Civil Service Laws (97 N.J.A.R.2d (EDU) 505, State Operated School District of the City of Jersey City)

Discharge, as opposed to six month suspension was appropriate sanction for school security guard guilty of misconduct. State Operated School District-Newark v. Garies, 309 N.J. Super. 327 (App. Div. 1998), certif. den. 156 N.J. 381 (1998)

Discrimination not factor in decision not to reappoint tenured school administrators to supervisory positions following State takeover and reorganization of district (95 N.J.A.R.2d (EDU) 1, Walsh, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 204, aff'd 97 N.J.A.R.2d (EDU) 315 (App. Div.))

## STATE OPERATED SCHOOL DISTRICTS

Evidentiary hearing not required prior to state operated district order. (Contini v. Bd. of Ed. of Newark, 286 N.J. Super. 108 (App. Div. 1995), certif. den. 145 N.J. 372, aff'g St. Bd. 95 N.J.A.R.2d (EDU) 220, aff'g Commissioner 96 N.J.A.R.2d (EDU) 196)

Former supervisors and coordinators were part of central administrative or supervisory staff subject to automatic loss of position as soon as reorganization in State operated district implemented (95 N.J.A.R.2d (EDU) 141, Cirasa, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 149, aff'd App. Div. unpub. op. (Dkt. No. A-2408-93T2, Jan. 10, 1995))

Local board's right to evidentiary hearing prior to removal and creation of state-operated district is subject to summary decision procedures under APA. (Contini v. Bd. of Ed. of Newark, 286 N.J. Super. 108 (App. Div. 1995), certif. den. 145 N.J. 372, aff'g St. Bd. 95 N.J.A.R.2d (EDU) 220, aff'g Commissioner 96 N.J.A.R.2d (EDU) 196)

No state constitutional rights violated by denial of assistance of counsel or presence of stenographer in purely investigatory administrative proceedings (94 N.J.A.R.2d (EDU) 9, In the Matter of the Comprehensive Compliance Investigation of the School District of Newark, aff'd App. Div. 276 N.J. Super. 108 (1994))

Protections granted under the takeover statute, N.J.S.A. 18A:7A-44 applies to both tenured and non-tenured employees whose positions are abolished pursuant to the state takeover; the protections do not apply to the individual at will employee whose employment was terminated by the lawful discretionary authority of the State District Superintendent (97:Feb. 11 State Operated School District of the City of Newark)

Rehiring of employees in central administrative or supervisory staff positions is permissive, not mandatory, pursuant to N.J.S.A. 18A:7A-44 (95 N.J.A.R.2d (EDU) 141, Cirasa, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 149, aff'd App. Div. unpub. op. (Dkt. No. A-2408-93T2, Jan. 10, 1995))

School district must return grant monies not used or committed within time limits set by discretionary grant (95 N.J.A.R.2d (EDU) 541, State-Operated School District of Jersey City)

State operated school districts are required to abolish certain positions pursuant to statute; therefore the district is under no obligation to rehire an employee whose position was abolished (97:Sept. 16, State Operated School District of Newark)

## **STATE OPERATED SCHOOL DISTRICTS**

- State operated school district superintendent has authority to withhold increments (96:May 6, Jersey City)
- State operated school district's evaluation procedures were reasonable (96:May 6, Jersey City)
- State operated school district's withholding of increments of ni employees upheld (96:May 6, Jersey City)
- State take-over legislation authorizes superintendent to act on recommendation to withhold increment (93 N.J.A.R.2d (EDU) 8' Brown)
- Sufficient foundation for State Board's discretionary determination that removal of local board and creation of state operated district was necessary for T & E. (Contini Bd. of Ed. of Newark, 286 N.J. Super. 108 (App. Div. 1995) certif. den. 145 N.J. 372, aff'g St. Bd. 96 N.J.A.R.2d (EDU) 220, aff'g Commissioner 96 N.J.A.R.2d (EDU) 196)
- Superintendent in state-operated school district has power to act on a recommendation to withhold an increment (96 N.J.A.R.2d (EDU) 31, Rago)
- The appropriate standard of review for State Operated School districts budget appeals is whether the city has demonstrated that the certification of the State Superintendent is in excess of what is required to provide a thorough and efficient education. The monies in dispute here are necessary to provide a thorough and efficient education, therefore, the general fund tax levy shall stand (97:July 28, State Operated School District of the City of Paterson)
- Unless otherwise specified by statute, all expenses of a state operated school district are to be borne by the district, not the State (90:26, Jersey City, aff'd St. Bd. 90:33, aff'd App. Div. unpub. op. (Dkt. No. A-5630-89T5, March 28, 1991))

## **STRIKES AND WORK STOPPAGES**

(See "Collective Negotiations" this index)

## **STUDENTS**

(See "Pupils" this index)

## **SUBCONTRACTING**

(See "Privatization Subcontracting")

## **SUBSTITUTE TEACHER**

Board may not employ teacher under county substitute certificate in the same position for more than 20 consecutive days. (Toomey, App. Div. unpub. op. (Dkt. No. A-4709-89T2, Jan. 1991))

One year leave of absence does not create a vacancy; RIF'd teacher not entitled to temporary position over long term substitute (Lammers, 134 N.J. 264 (1993), rev'g N.J. Super. 390 (App. Div. 1992) rev'g St. Bd. 91:2570, rev'g 90:1500)

Permanent building based substitutes eligible for sick leave and participation in State Health Benefits Plan (94 N.J.A.R.2d (EDU) 364, East Orange Education Association)

Permanent substitute was not a tenurable "position" under N.J.S.A. 18A:28-12 to which rified tenured teacher has a tenure entitlement (95 N.J.A.R.2d (EDU) 348, Driscoll, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 761)

Pool substitute was not entitled to 60 days' notice of non-renewal (92 N.J.A.R.2d (EDU) 116, Schultz)

Rate of compensation not dispositive of whether employed as substitute or regular teacher (92 N.J.A.R.2d (EDU) 606, Valentino, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 173)

Service as permanent substitute in position which subsequently became vacant does not count toward tenure; board did not have notice that incumbent teacher would not return (92 N.J.A.R.2d (EDU) 372, Mills, aff'd w/modif. 95 N.J.A.R.2d (EDU) 133, aff'd App. Div. 96 N.J.A.R.2d (EDU) 588)

Service for full year plus one month while serving in place of teacher on maternity leave, counts toward tenure where "substitute" given same contract as other teachers (Panettieri, App. Div. unpub. op. (Dkt. No. A-373-89T1, Mar. 16, 1990), rev'g St. Bd. 89:1433, aff'g 89:1419, dec. on remand St. Bd. 90:Dec. 5)

## **SUMMARY JUDGMENT**

(See "Commissioner of Education" this index)

## **SUMMER SCHOOLS**

Petitioner did not prove by a preponderance of credible evidence that he was entitled to summer per diem employment (97:Dec 15, Boyle)

Student's right to procedural due process not violated by expulsion from summer school without hearing; given limited duration of summer school, fundamental fairness requires oral notice and opportunity to be heard (94 N.J.A.R.2d (EDU) 70 Ivory)

Summer employment prior to start date of contract does not count towards tenure or seniority (92 N.J.A.R.2d (EDU) 230, Polo aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 459, aff'd App. Div. unpub. op. (Dkt. No. A-256-92T2, May 12, 1994))

Summer school; no entitlement to summer school employment by virtue of tenure (92 N.J.A.R.2d (EDU) 389, Doran)

## **SUPERINTENDENT**

Board may not demote contract tenured superintendent to assistant superintendent position in order to relieve him of his duties (96 N.J.A.R.2d (EDU) 279, Dunn, decision on remand 96 N.J.A.R.2d (EDU) 284, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 284)

Board members' access to personnel files is through the Chief School Administrator (90:752, Horner)

Board members may not nominate candidates independently of the Chief School Administrator's recommendation (90:752, Horne (But see Rotondo, 276 N.J. Super. 36 (App. Div. 1994), rev. St. Bd. 92 N.J.A.R.2d (EDU) 622, aff'g 92 N.J.A.R.2d (EDU) 376) holding to the contrary, which was in turn superseded P.L. 1995, c. 125)

Board not obligated to accept CSA's recommendation for renewal of curriculum coordinator (96 N.J.A.R.2d (EDU) 784, Lally)

Board ratification of notice of suspension and notice of termination provided by Superintendent one day after such notification upheld and deemed to be notification, suspension and termination by board (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. N.J.A.R.2d (EDU) 317)

Chief school administrator who held an administrative certification with an executive superintendent certification prior to charter in regulation on September 1, 1992 may be issued school administrator endorsement and serve as chief school administrator in any district in the State (97 N.J.A.R.2d (EDU) 257, Salley)

## **SUPERINTENDENT**

- County superintendent correctly exercised his authority to deny board's request to change from unit control to dual control structure (90:1032, Barrington)
- Modification of superintendent's employment contract must conform with statutory limitation on term of employment; effective 5 year term following modification is violative of N.J.S.A. 18A:17-15 (95 N.J.A.R.2d (EDU) 115, West Village Civic Club aff'd w/mod. St. Bd. 96:June 5)
- School board may rescind initial agreement with superintendent prior to agreement's expiration and vote to reappoint for new contractual term as long as new term is between three and five years (95 N.J.A.R.2d (EDU) 509, Graham)
- Statute of frauds, requiring that contracts over one year be in writing, was applicable to contracts between boards of education and superintendents (95 N.J.A.R.2d (EDU) 509, Graham)
- Statutory protections prohibit board from unilaterally terminating superintendent's employment contract (95 N.J.A.R.2d (EDU) 509, Harrington)
- Superintendent is agent of board in notifying non-tenured teaching staff member of suspension and notice of termination of contract (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- Tenured superintendent who resigned in a timely manner entitled reimbursement for unused vacation time (96 N.J.A.R.2d (EDU) 801, Gilson)

## SUSPENSION

(See also "Pupils - Suspension" and "Tenure - Dismissal or reduction in salary" this index)

A board that chooses to suspend a teacher pending resolution of tenure charges may not unilaterally thereafter terminate the suspension and order the employee back to work (ALJ decision on motion attached to settlement 95:June 1, Holmes-William)  
Commissioner rejects argument that secretaries and business administrators are excluded from purview of N.J.S.A. 18A:6-14 (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)  
Statute concerning suspension, N.J.S.A. 18A:6-14, does not impose a duty on employee to seek substituted employment (ALJ decision on motion attached to settlement 95:June 1, Holmes-Williams)

Suspension with pay under N.J.S.A. 18A:6-8.3 may not be continued indefinitely (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)

Suspension without pay may only be accomplished by certifying tenure charges or, under N.J.S.A. 18A:6-8.3, by reason of indictment (90:July 5, Major)

Tenured employees may be suspended with pay either under N.J.S.A. 18A:6-10 after filing tenure charges, or under N.J.S.A. 18A:6-8.3 in absence of tenure charges (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)