

TAXES

(See also "Apportionment" "Appropriations" and "Budgets",
this index)

Educational institutions tax exempt by statute, Denville Twp. v. Morris County Voc. School Bd. of Ed., 59 N.J. 143 (1971)

Hearings on equalization tables before Division of Tax Appeals, completion date is directory not mandatory, Howell Twp. v. Division of Tax Appeals, 99 N.J. Super. 11 (App. Div. 1968)

Improperly assessed taxes may be recouped, Alfred Vail Mut. Assoc. v. New Shrewsbury, 58 N.J. 40 (1971)

Meadowlands legislation upheld against claim that method of tax-sharing failed to allow for increased school costs, Meadowlands Reg. Dev. Agency v. New Jersey, 63 N.J. 35 (1973)

Real property tax funds collected by municipality for school district must be transmitted to school district, Fair Lawn Bd. of Ed. v. Fair Lawn, 143 N.J. Super. 259 (Law Div. 1976) aff'd 153 N.J. Super. 480 (App. Div. 1977); Garfield Bd. of Ed. v. Garfield, 147 N.J. Super. 146 (App. Div. 1977); (77:36, Pine Hill) (77:105, East Windsor Reg.)

State's system of financing public education held unconstitutional, Robinson v. Cahill, 62 N.J. 473 (1973) affirming and modifying 118 N.J. Super. 223 (Law Div. 1972) and 119 N.J. Super. 40 (Law Div. 1972); see later decisions and orders at 63 N.J. 196 (1973); 67 N.J. 35 (1975); 69 N.J. 133 (1975); 69 N.J. 449 (1976); 70 N.J. 155 (1976); 70 N.J. 464 (1976)

Table of equalized valuation for school aid purposes, Cherry Hill Twp. v. Director, Div. of Taxation, 119 N.J. Super. 256 (App. Div. 1972); Kingsley v. Bayonne, 89 N.J. Super. 549 (App. Div. 1965)

TEACHERS

(See also "Tenure", "First Amendment", "Non-tenured teaching staff",

this Index)
Acceptance of a substantial cash gift held improper (77:366,
Silver, aff'd St. Bd. 77:371)
Aides; must be approved by county superintendent (80:857,
Lippincott)
Board may appoint teaching staff members (other than
superintendent)
for up to one year (66:155) (67:1)
Board may not adopt attendance policy which imposes
sanctions based on sheer number of absences and does not
consider nature of absence (89:2086,
Neptune Township)
Certification (See also "Certification" this Index)
Administrative delay in issuance of certificate, no bar
for
accepting position (80: October 17, Fulton, aff'd
St. Bd. 81: February 4)
Board cannot require additional certification over that
in
regulations (80: September 15, Loper)

TEACHERS - continued

Certification - continued
Certification required (80: June 24, Lorenz, rev'd St.
Bd. 80:
December 3, motion to reopen den. St. Bd. 81:
March 4)
Certification required for a position is determined by
duties
performed, job title is irrelevant (83:1039,
Teaneck)
Eligibility for, not actual possession of certificate,
required
(80: October 17, Fulton, aff'd St. Bd. 81:
February 4)
Emergency certification together with experience as a
guidance
counsellor does not make a board's appointment
proper where properly certified candidates for the
available position could have been appointed:
Action of board was ultra vires (87:1652,
Rumson-Fair Haven)
teaching
In school suspension assignment may or may not be a
staff assignment requiring valid
certification; depends upon
specific duties to be performed in

particular assignment (89:1194,
Dowding, aff'd St. Bd. 90:1711)

Possession of teacher of the handicapped certification
necessary
for tenure purposes; eligibility for certificate
deemed insufficient (87:1963, Ledwitz, aff'd with
opinion St. Bd. 88:2497, aff'd App. Div.
unpublished op. (Dkt. No. A-2861-87T1, February
16, 1989))

Probationary teacher pursuing alternate route
certification is
entitled to present proof to the Board of
Examiners of meeting requirements for entitlement
to standard teacher's certificate (88: August 3,
Griskey, St. Bd. rev'g 87:1803)

Special education instructors, including team teachers,
must
have teacher of the handicapped endorsement if
they may, at times, be solely responsible for
classroom instruction and supervision (83:1039,
Teaneck)

Conflicts of interest

Possibility of conflict between department chairman and
presidency of teachers' union (78:510, Connolly)

School nurse, as elected member of city council, not
disqualified
from reviewing school budget. Schulman v.
O'Reilly-Lando, 226 N.J. Super. 626 (App. Div.
1988)

School nurse may serve on board of school estimate and
city
council in same community; no conflict of
interest. Schulman v. O'Reilly-Lando, 226
N.J. Super. 626 (App. Div. 1988)

Spouse of board member may be employed by board
(76:616, Gambatese) (77:715, Elms)

Teacher may not serve on employer-board, Visotcky v.
Garfield
City Council, 113 N.J. Super. 263 (App. Div.
1971); but may serve on board of other district in
which teacher resides, Jones v. Kolbeck, 119 N.J.
Super. 299 (App. Div. 1972)

TEACHERS - continued

Conflicts of interest - continued

Teaching staff member (guidance counselor) not precluded from serving on governing body of municipality in Type II district, Kaufman v. Pannuccio, 121 N.J. Super. 32 (App. Div. 1972)

Date employment begins is date of commencement of services, not date of contract (81: April 24, Petigrew)

Dress and appearance
Board may adopt and enforce dress code for teachers, but provision mandating wearing of neckties by males is unreasonable (74:1035)

Decision upholding dress code on summary judgment motion reversed; must be factual finding of reasonableness, Cumberland Regional Educational Assn. v. Cumberland Regional High School Bd. of Ed., App. Div., unpublished opinion, (Docket No. A-1422-80-T2, January 8, 1982), rev'g and remanding 80:11 (C. dec. 80:1)

Dress code upheld; bore rational relationship to legitimate objective of Board and not five part test of Carlstadt (88:2192, Burlington Twp.)

Dress code upheld; bore reasonable relationship to goal of fostering environment conducive to discipline and learning, Carlstadt Teachers Assn. v. Carlstadt Borough Bd. of Ed., App. Div., unpublished opinion, (Docket No. A-1469-80-T4, March 26, 1982) (C. dec. 80:366; St. Bd. 80:371) (83:514, Cinnaminson, aff'd St. Bd. 83:533)

Hair length, charge of discrimination by student teacher dismissed (71:92, aff'd St. Bd. 71:93)

Duties

(See also "Extracurricular activities", this index)
Additional classes (73:513)
Combination of duties of learning disabilities teacher with

reading resource teacher held improper (80:46, Kessler, St. Bd. rev'g 80:34)
Combination of LDTC duties with those of a "vocational evaluator" is improper since different types of certificates

are required for each function (87:1481, Melillo,
aff'd St. Bd. 87:1496)

Hours prescribed by board (68:62)

Involuntary assignment of duties requiring
instructional

certificate where teacher is tenured under an
educational services certificate constitutes a
transfer in violation of N.J.S.A. 18A:28-6 and is
impermissible (87:1481, Melillo, aff'd St. Bd.
87:1496)

Involuntary assignment of staff as security personnel
at

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

TEACHERS - continued

Duties - continued

Lunchroom duty (74:1189, aff'd St. Bd. 75:1098, aff'd
App. Div. 76:1149)

Outside scope of certificate may not be performed
(60-61:137)

Part-time typing teacher serving as clerical aide must
be paid

as full-time teacher when transferred to math lab
(82: May 28, Broida, aff'd St. Bd. 82: December
1)

Rules made by board (61-62:103)

Evaluation of

(See "Evaluations", this index)

Grades, subject to review and change by board (77:862,
Talarsky)

Hiring; board's decision to hire or promote will not be
overturned

unless found to be arbitrary or capricious (81: August
11, Rey) (See N.J.A.C. 6:8-4.3(a)(vii) regarding
recommendation of superintendent and also

"Superintendent - Appointment made by - no authority to
agree on behalf of board to hire teachers", this Index)

In-School Suspension Teacher (87:848, Vanderhoof, aff'd St.
Bd. 88:2532, aff'd App. Div. unreported op. (Dkt. No. A-
5608-87T1, May 8, 1989)) (85:875, Cucolo) (88:107,
Data-Samtak, aff'd St. Bd. 88:123) (89:1194, Dowding,
aff'd St. Bd. 90:1711)

Leave without approval, salary withheld and reprimanded

(77:990, Fitzgibbon, aff'd St. Bd. 78:1009)
 Legal fees
 Action of teacher to have school board bear costs and expenses
 of defense of civil assault suit filed by student was dismissed without prejudice pending outcome of case brought by student in Superior Court (87:2304, Metzler)
 Reimbursement for successful defense of criminal charges (81: June 15, O'Neill)
 Reimbursement not available for defense of tenure charges (80: June 16, Emmons, aff'd St. Bd. 80: November 5)
 Reimbursement pursuant to collective bargaining agreement (80: June 30, Pasck, aff'd St. Bd. 81: January 22)
 Liability for use of own car in employment (80: August 25, Bernstein)
 Media specialist; third party lacks standing to contest action of State Board of Examiners in issuing certificate (82: May 3, O'Hara, aff'd St. Bd. 82: September 8)
 Part-time French teacher entitled to same full lunch period as full time teachers (88: September 27, Papiliou)
Personnel records
 Generally, (77:1, Mihatov) (77:261, S.S.) (77:366, Silver, aff'd St. Bd. 77:371) (77:990, Fitzgibbon, aff'd St. Bd. 78:1009)
 Access ordered (89:2902, Grande)
 Expungement; limited to withholding action; substantive basis for charge remains in file (86:2473, Sutton)
 Expungement or modification of annual evaluation or professional improvement plan, or both, denied (83:1258, Grieco)

TEACHERS - continued

Personnel records - continued
 Expungement, reference to improper withholding of salary increment (83: September 29, Johnson, aff'd St. Bd. 84:1949)
 Insertion of administrative letters, letters of reprimand and

comments relating to teachers' job performance in personnel files upheld (74:111) (80: January 24, Absecon) (80: December 4, Philbin) (81: May 26, Haines) (81: June 11, Washington, aff'd St. Bd. 81: October 7, aff'd unpublished opinion, App. Div. (Docket No. A-1098-81T1, November 30, 1982)) (83: March 21, Bonner, aff'd St. Bd. 83: September 7); but see (71:197, Sayreville, aff'd St. Bd. 71:203) and (74:316, dismissed St. Bd. 74:323); See also (Holland Twp., App. Div. October 23, 1987)

Property interest, none found (80: February 25,

Dalley)

(80: March 7, Kubas) (80: May 29, Stevenson, aff'd St. Bd. 80: September 3)

Records filled with unsubstantiated rumors and innuendo ordered

removed from file (78:745, Porcelain) (80: January 13, Keffer)

Placement of letter in personnel file which was disciplinary in nature

and not evaluative, proper matter for arbitration. Union Beach Bd. of Ed. v. Union Beach Ed. Assn., aff'd App. Div. unreported opinion (Docket No. A-1714-86T7, decided October 2, 1987) (Holland Township Bd. of Ed. v. Holland Twp. Ed. Assn., aff'd App. Div. unpublished opinion (Docket No. A-1513-86T7, decided September 30, 1987))

Position with unrecognized job title may not be used until job

description is approved by county superintendent (85:875 Cucolo)

Promotions

Board makes ultimate decision (77:812, Lane, appeal dismissed St. Bd. 79: June 6)

Committee decision overruled by board where union members on

committee gave zero to non-union applicant (76:133, Means, aff'd St. Bd. 77:1300)

Criteria for, held non-negotiable and non-arbitrable,

North

Bergen Twp. Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976)

Prescribe rules for (63:65) (63:161) (68:218) (74:1308, aff'd

St. Bd. 75:1098)

TEACHERS - continued

Promotions - continued

Where Newark Bd. of Ed. found a dearth of black staff members,

Commissioner held the local board could disregard its rules as to promotions even though it had a contract with the teachers' association and could adopt ex parte new rules against the wishes of the association on its eligibility lists because it felt an overriding obligation to serve the needs of the children and the community, Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969) certif. den. 55 N.J. 310 (1970) (C. dec. 68:218, St. Bd. 69:188)

(77: Property interest, in promotion, renewal, or hiring denied February 6, Quay, unpublished opinion) (77:984, Van Houten) (77:1008, Williams, aff'd St. Bd. 78:1050) (77:1102, Zink, aff'd St. Bd. 78:1051, aff'd App. Div. 79:885); Arzberger v. Neptune Tp. Bd. of Ed., unreported App. Div. October 13, 1977 (C. dec. 76:835, aff'd St. Bd. 77:1271)

Psychiatric examinations

(See "Physical and psychiatric examinations", this index)

Public/state holiday; N.J.S.A. 36:1-1, 1.2 declaring January 15 as

Martin Luther King's birthday applies to state employees; held board employees were properly docked one day's pay for improperly taking Friday preceding Martin Luther King's Day as holiday (84:166, Rumson-Fair Haven)

Reading specialist, denied category and extra compensation (76:365,

Mina)

Reassignment from department chairman to teacher upheld (77:555,

Wilson) (77:984, Van Houten)

Reassignment from mathematics coordinator to teacher upheld (76:767, Marotta)

Residence requirements, unenforceable as to teachers (59-60:141)

(64:164)

Resignation; claim that resignation coerced, (80: August 6, Nadeau)

Resignations, must give notice to board (77:1235, Verge); 60 days -

N.J.S.A. 18A:28-8, 18A:26-10 (87:2016, Drake) (88: May 16, Zwieg)

(See "Resignations", this index)

Sick leave

Reemployment, back pay denied; petitioner waived due process

right to statement of reasons for non-reemployment (83: December 22, Amorosa)

Teacher on unpaid leave ineligible to accrue or utilize sick leave benefits once unpaid leave commences; eligibility resumes upon return from unpaid leave (87:1883, Partus)

Tenured teacher must be allowed to return to position after paid leave ends (89:152, Garbos)

Standing: third party lacks standing to contest action by State

Board of Examiners in the issuance of a media specialist certificate (82: May 3, O'Hara, aff'd St. Bd. 82: September 8)

TEACHERS - continued

Transfers

Assistant executive superintendents under N.J.S.A. 18A:17A-1

(85: October 7, Wright, aff'd in part, rev'd in part St. Bd. 87: September 2)

Board has statutory right to transfer teachers within scope

of their certificates. Greenway v. Camden Bd. of Ed., 129 N.J.L. 461 (E&A 1942) aff'g 129 N.J.L. 46 (Sup. Ct.) (C. dec. 39 49:151, St. Bd. 39 49:155); Downs v. Hoboken Bd. of Ed., 12 N.J. Misc. 345 (Sup. Ct. 1934) aff'd sub nom Fletchner v. Hoboken Bd. of Ed., 113 N.J.L. 401 (E&A 1934); Cheeseman v. Gloucester City, 1 N.J. Misc. 318 (Sup. Ct. 1923) (38:368) (39-49:151) (64:151) (65:18) (66:43) (69:40) (70:149) (70:162) (71:604, aff'd St. Bd. 72:606, aff'd App. Div. 72:667) (74:316, dismissed St. Bd. 74:323) (74:678, aff'd St. Bd. 75:1082, aff'd App. Div. 76:1134) (74:1298, aff'd St. Bd. 75:1151, aff'd App. Div. 76:1168) (76: June 10, Bradley) (76:601, Kuett) (76:605, Payne) (77:24, DiNunzio) (77:555, Wilson) (77:795, Humen, aff'd St. Bd. 77:807, aff'd App. Div. 79:837) (77:832, Salowe) (79:123, Bigart) (79:180, Moore, aff'd St. Bd. 79:180) (79:517, Boor, dismissed St.

Bd. 79: December 5) (80: July 15, Williams)
(80:1221, Boehler, aff'd St. Bd. 81: April 1)
(81: June 29, Stolte) (82: December 27, Kulik,
aff'd St. Bd. 83: May 4) (84:157, Kinney)
(81:147, O'Hara, aff'd St. Bd. 81:164, aff'd in
part, rev'd in part App. Div. 82:157) (85: May 5,
Wright) (89:2919, Concerned Parents of Wall)
Board's decision to transfer reversed where basis for
transfer found to be erroneous (87:1147, Tave, aff'd St.
Bd. 87:1170)
Closing of school: tenure is transferred to new
district only if transfer is by consensual agreement of the
districts, In re Closing of Jamesburg High School,
83 N.J. 540 (1980)
Conflict of interest concerning choice of transferred
teachers, wife of district administrator recommended but not
transferred, no conflict found (83: September 26,
McQuillan)
Default judgment; where board fails to file answer to
petition in timely fashion teacher must be restored to
supervisory status (82: September 9, Jersey City)
Demotion or dismissal, transfer is neither under tenure
laws Lascari v. Lodi Bd. of Ed., 36 N.J. Super. 426
(App. Div. 1955); (73:201, aff'd St. Bd. 74:1414)
(76:601, Kuett)
Department head may be transferred to teaching position
when not qualified to serve as subject supervisor in other
disciplines, Bisler v. Bd. of Ed. of Twp. of
Woodbridge, unpublished opinion, App. Div. (Docket
No. A-520-82T3, decided January 10, 1984), aff'g
82: September 8, St. Bd. aff'g 82: May 14)

TEACHERS - continued

Transfers - continued

Extracurricular position
(See "Extracurricular activities", this index)

Failure to petition within 90 days of oral notification
of reassignment results in dismissal of petition (82: October 28, Benedict)

Fundamental fairness required that request to withdraw
petition challenging transfer be granted "with prejudice"
(88: March 25, Boylan)

Full-time to part-time denied (75:574, Oxford, aff'd
St. Bd. 76:1157, aff'd App. Div. 76:1158)

Hearing, no requirement that board hold hearing or
furnish reasons for transfer (70:176) but see (76:590, Bradley)

In context of reduction in force (80:702, Reeves) (80: July 14, Pavlik) (80:809, Bierman, aff'd St. Bd. 81: December 2, aff'd App. Div. 83:1552) (79:709, Hanneman, rev'd St. Bd. 81: May 1) (81: June 29, Stolte) (81: March 23, Horun, aff'd 82: February 3, aff'd unpublished opinion, App. Div. (Docket No. A-2743-81T2, May 26, 1983), certif. den. 96 N.J. 287 (1984) (85:875, Cucolo)

Involuntary transfer of tenured guidance counselor to
part-time English teacher/guidance counselor position
reversed (83:1310, Zorfass, aff'd St. Bd. 84:2048)

Involuntary transfer of tenured principal to principal
position with lesser salary expectation, upheld,
Williams v. Plainfield Bd. of Ed., 176 N.J. Super. 154 (App. Div. 1980) certif. den. 87 N.J. 306 (1981) (81: June 29, Stolte)
Plainfield Association of School Administrators v. Plainfield, 187 N.J. Super. 11 (App. Div. 1982) See also "Teachers, Transfer of Tenured" this Index)

Majority roll call vote of full board required;
administrative transfers are invalid (73:201 aff'd 74:1414) (74:901) (75:47, South Plainfield) (76:605, Payne) (77:795, Humen, aff'd St. Bd. 77:807, aff'd App. Div. 79:837), but may be validated by subsequent

board ratification (74:316, dismissed St. Bd. 74:323) (80:1221, Boehler, aff'd St. Bd. 81: April 1) (81: April 30, Donn)

(74:763, aff'd Must be to a comparable position (76:605, Payne)

St. Bd. 75:1160) (77:1174, Greenberg) (84:823, Turner)

tenured "Non-position" with few actual duties; transfer of

principal to such a position was a dismissal violating N.J.S.A. 18A:28-5 (83: September 26, Ruby)

supervisor Of classroom teacher to floating substitute and

of resource center upheld (79:123, Bigart)

Of classroom teacher to substitute teacher, disapproved (85: June 5, Tenney)

TEACHERS - continued

Transfers - continued

position Of day school vocational teacher to evening school
was proper, as within the scope of certification
(86:1216, Linfante)
generally be Of Dean of Students to teaching position would
permissible since both positions require teaching
certificate only and are thus not separately
tenurable (86:1655, Boylan)
which Of English teacher to in-school suspension teacher, for
no job description had been approved by county
superintendent, improper (85:875 Cucolo)
upheld; Of high school media specialist to elementary position
loss of extracurricular assignment as result of
transfer does not violate tenure rights (88:1963,
Dunbar)
between Of Librarian to teaching position prohibited, transfer
separately tenurable positions prohibited;
librarian and teaching positions are separately
tenurable because they require separate
certificates (85:1567, Kratt, aff'd St. Bd.
86:3075)
valid Of music teacher to in-school suspension teacher is
(87:848, Vanderhoof, aff'd St. Bd. 88:2532, aff'd
App. Div. unreported op. (Dkt. No. A-5608-87T1,
May 8, 1989))
of tenure Of part-time teacher to full-time upheld (66:43)
Of principal, after reinstatement following dismissal
charges, prohibited (81: October 23, Lanza, aff'd
St. Bd. 82: June 2)
arbitrary (80: Of teacher upon returning from sabbatical, held
1302, Goldstein)
prohibited Of tenured teacher to non-tenure eligible position,
(80: July 15, Stipo)
transfer Principal and superintendent have no authority to
teachers; board action required (79:180, Moore,

aff'd St. Bd. 79:180) (84:1510, Outon)
Proof that board acted illegally or improperly to
exclusion
of all other bona fide reasons is necessary to set
aside (76:590, Bradley)
Psychologist, transfer to another child study team
upheld
(77:795, Humen, aff'd St. Bd. 77:807, aff'd App.
Div. 79:837)
Reassignment from one school to another, to teach same
subject,
is "transfer" within meaning of N.J.S.A. 18A:25-1
(79:176, Moore, aff'd St. Bd. 79:180)
Reassignment of duties of a separately tenurable
position to a
tenured staff member is tantamount to an
impermissible transfer without the employee's
consent (87:1481, Melillo, aff'd St. Bd. 87:1496)
Refusal to accept transfer held abandonment of tenure
(74:678, aff'd St. Bd. 75:1082, aff'd App. Div.
76:1134)

TEACHERS - continued

Transfers - continued

Request by teacher for transfer; no obligation on part
of
board to honor same (74:901) (75:574, Oxford,
aff'd St. Bd. 76:1157) (76:601, Kuett)
Retaliation, Commissioner remands to determine whether
reassignment was politically motivated (86:1655,
Boylan)
Retaliation, insufficient proof that transfer
recommendation by
superintendent was done in bad faith or that any
such motive could be imputed to the Board, which
had properly exercised its discretion (Ivan v.
Princeton Regional Bd. of Ed., C. decision on
remand by Supreme Court 84:1656, aff'd St. Bd.
85:1950, earlier decisions: 82: December 16,
aff'd St. Bd. 83:1572, rev'd App. Div. 84:1945
(Docket No. A-4873-82T3, decided March 13, 1984)
remanded to Commissioner 97 N.J. 646 (1984), aff'd
App. Div. unreported opinion (Docket No.
A-4290-84T1, certif. denied 103 N.J. 472 (1986)
(85: May 5, Wright) (86:1394, Reimer)
Tenure laws, where transfer violates those laws,

transfer is

improper without further proofs (83: September 26, McQuillan); transfer effected due to deficiencies, teacher reinstated to teaching position, board ordered to pursue tenure charges (84:823, Turner)

must be

Timeliness; petition re: transfer of tenured teacher

filed within 90 days of oral notification (82: October 28, Benedict) (87:204, Lombardi)

Transfer at time of RIF (85:264 Fallis, aff'd St. Bd. 85:281)

(85: May 13, D'Alonzo, aff'd St. Bd. 85: September 4, aff'd App. Div. unreported (Docket No. A-780-85T1, decided November 13, 1986)) (86:1216, Linfante)

(77:

Transfer of assistant principal to teacher set aside 1174, Greenberg)

teaching

Transfer of coordinator of industrial education to

position upheld, Stegemann v. Union Twp. Bd. of Ed., unpublished opinion, App. Div. (Docket No. A-4737-79-T2, October 7, 1981), certif. den. 89 N.J. 437 (1982), rev'g St. Bd. 80:309) (C. dec. 80:303)

teaching

Transfer of department head for social studies to a

position is proper where he was not qualified as a subject supervisor in any other discipline, Bisler v. Bd. of Ed. of Twp. of Woodbridge, unpublished opinion, App. Div. (Docket No. A-520-82T3), decided January 10, 1984), aff'g (82: September 8, St. Bd. aff'd 82: May 14)

held

Transfer of departmental supervisor to social worker;

summer service may not be included within definition of academic year service (84: April 9, Strangia, aff'd St. Bd. 84: October 3, aff'd App. Div. unreported opinion (Docket No. A-1121-84T6, decided May 13, 1986))

TEACHERS - continued

Transfers - continued

no violation of tenure rights (80: October 8, Spence) (89: 2192, Aragona, aff'd St. Bd. 89:2243)

Assistant Transfer of secondary principal to Administrative set aside, but transfer to elementary school upheld (77:24, DiNunzio)

position Transfer of tenured guidance counselor to teaching prohibited, because a transfer cannot be made without the affected individual's consent, a reduction in force or a tenure hearing. See also Williams & Plainfield Bd. of Ed., 176 N.J. Super. 154 (App. Div. 1980) certif. den. 87 N.J. 306 (1981); where upheld transfer of tenured principal to position with lesser salary expectations. Plainfield Ass'n of School Administrators v. Plainfield, 187 N.J. Super. 11 (App. Div. 1982) (80:1134, Childs, aff'd St. Bd. 81: April 1, aff'd unpublished opinion, App. Div. (Docket No. A-3603-80T1, July 19, 1982), certif. den. 91 N.J. 550 (1982) (81: March 26, Woldin, aff'd St. Bd. 82: March 24)

pending Transfer of vice principal to teaching position, certification of charges, salary cannot be reduced (82: July 7, Pellechio, St. Bd. 82: August 4) Also see (84:2003, Pellechio, published opinion, App. Div. (Docket No. A-4855-82T3, decided February 28, 1984) aff'g 83:1616 St. Bd. rev'g in part 82: May 20)

(76:601, Transfer upheld (75:985, Agress) (76:590, Bradley Kuett) (77:795, Humen, aff'd St. Bd. 77:807, aff'd App. Div. 79:837) (88:1963, Dunbar)

two-fold Wrongful transfer; absent violation of tenure laws, a burden must be met by petitioner to sustain claim (83: September 26, McQuillan)

TENURE

Abandonment

Abandonment not found where teacher refused to submit medical

certificate in support of request for extended sick leave for work related injuries but tenure charges for abuse of sick leave sustained and dismissal ordered (86:2988, Bates, St. Bd. aff'g in part, rev'g in part 85:401, aff'd App. Div. unreported opinion (Docket No. A-2700-86T7, decided November 16, 1987))

Refusal of offer of reemployment following abolition of position held to constitute abandonment of tenure and seniority rights (84:311, O'Toole, aff'd by St. Bd. 84:332, aff'd App. Div. unreported opinion (Docket No. A-774-84T7 dated June 30, 1986) (86:2231, Collins)

TENURE - continued

Abandonment of (67:11) (71:403) (73:460) (74:678, aff'd St. Bd.

75:1082, aff'd App. Div. 76:1134) (75:18, Hayes) (75:343, Diffenderfer, aff'd St. Bd. 76:1137) (75:616, Caputo) Driscoll v. Clifton Bd. of Ed., 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) (80: October 8, Nadler) but compare (81: October 2, Friedman)

Acquisition of

"Acting" position, cannot acquire tenure (69:153) (77:734,

Rossi) (85: June 13, Prass, aff'd St. Bd. 85: October 2, aff'd App. Div. unreported opinion (Docket No. A-1163-85T7 decided September 19, 1986), but see (74:430) (76:526, Jannarone, aff'd St. Bd. 76: August 4) (84: June 22, Pastore) (87:2412, Puryear)

"Acting" position, where petitioner was not substituting for

another, but position was vacant, job responsibilities the same, tenure is acquired (76:526, Jannarone, aff'd St. Bd. 76: August 4) (84: June 22, Pastore) (87:2412, Puryear)

Adult basic skills teacher

adult basic Tenure and seniority rights were acquired since

skills program held to require any valid New Jersey teacher's certificate (88:11, Milwit,

decision on remand from 87:87, aff'd St. Bd. 88:30, aff'd App. Div. unreported op. (Dkt. No. A-5965-87T1, June 8, 1989))

Adult education administrators/teachers in voluntary high school

vocational program held to require certification for program and therefore tenurable, in accordance with reasoning in Spiewak v. Rutherford Bd. of Ed., 90 N.J. 63 (1982). Time served must be computed toward seniority (83: March 18, Rabolli, aff'd St. Bd. 83:217) (83: September 26, Ruby) (83: October 3, Bergen County Vocational-Technical School Ed. Assn.) But see Capella v. Camden County Voc. and Tech. School, 145 N.J. Super. 209 (App. Div. 1976) (C. dec. 75:178, St. Bd. 75:186) and (81: December 24, Perth Amboy), decided prior to Spiewak

Aide (80: November 7, Rossi, aff'd St. Bd. 81: August

5)

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. den. 94 N.J. 591 (1983)]

Assistant cafeteria manager has no tenure (70:308)

Assistant executive superintendent, no tenure (80:

April 7,

David)

Assistant principal (77:1174, Greenberg) (78:666,

Euell, aff'd

St. Bd. 79:825, aff'd App. Div. 80:1489) (88:1988, Mirandi, aff'd St. Bd. 89:3057) (89:1452, DeStefano)

TENURE - continued

Acquisition of - continued

"Assistant Principal/Student Personnel Services" was equivalent

of vice principal: tenure acquired as vice principal where service as "Director of Pupil Personnel" tacked onto prior service as "Assistant Principal/Student Personnel Services" (88:91, Cerelli)

Assistant superintendent (70:134) (72:53, aff'd St. Bd. 72:58, aff'd App. Div. 73:768) (87:269, Smith, remanded St. Bd. 87:296)

Assistant superintendent; petitioner possessed valid certificate

performed duties of assistant superintendent and served in position for more than two consecutive years (83:1418, Fischbach, aff'd St. Bd. 84:1931); see also (80: April 15, Fischbach) (85:196 Fischbach, aff'd St. Bd. 87:2608)

Assistant to assistant superintendent duties similar to principal and employee gained tenure as principal (75:644, Page, aff'd St. Bd. 76:1158)

Assistant to principal, no additional tenure rights attach (73:201, aff'd St. Bd. 74:1414)

Athletic trainer position did not encompass such duties so as

to legally require physical education certification; board's requirement did not elevate position to teaching staff member status (89:1085, Jennings, rev'd St. Bd. 89:1097)

Attendance officer (38:141) (59-60:113) (75:261, Ringele)

(77:1114, Makulinski)

Attorney for board

Cannot gain tenure because of Disciplinary Rule 2-110(b)(4)

Taylor v. Hoboken Bd. of Ed., 187 N.J. Super. 546 (App. Div. 1983); Tenure denied on other grounds; Perella v. Jersey City Bd. of Ed., 51 N.J. 323 (1968); Koribanics v. Clifton Bd. of Ed., 48 N.J. 1 (1966); but see, Gill v. Hamilton Twp. Bd. of Ed., 44 N.J. Super. 79 (App. Div. 1957); Fox v. Newark Bd. of Ed., 129 N.J.L. 349 (Sup. Ct. 1943) aff'd o.b. 130 N.J.L. 531 (E&A 1943) Tenure granted under

N.J.S.A. 38:16-1; no discussion of DR
2-110(b)(4)

to Board policy; janitor gained statutory tenure pursuant

board policy granting janitors tenure after three
consecutive years of service (83: August 15,
Smith, aff'd with modification, St. Bd. 84: April
4)

(61-62:77 Board Secretary (39-49:102) (58-59:88) (59-60:99)

aff'd St. Bd. 61-62:81) (69:83) (72:179) (74:440)
(76:970, Vanderbeck) (88:2256, Shenekji, aff'd St.
Bd. 89:3078)

TENURE - continued

Acquisition of - continued

Board secretary; Superintendent who was assigned to
combined
position of board secretary for two years acquired
tenure, board action assigning duties to Business
Administrator reversed (83: December 2, Dwyer)
NOTE: Termination. Non-tenured assistant

secretary to
the board, appointed to fixed term, without
termination clause, could not be terminated
without good cause per N.J.S.A. 18A:17-1.
Ordered reinstated, petitioner had a valid
expectation of tenure acquisition (84:792,
Schoeler)

Board vote not necessary for tenure (St. Bd. 71:664,
aff'd

App. Div. 72:692, C. dec. 70:202) (74:906)

Break in employment; petitioner acquired tenure since
the

break in service was involuntary, effect to be
given a resignation is a matter of the parties
intention (86:2111, Delk) - N.J.S.A. 18A:17-3 for
janitors not bus drivers, N.J.S.A. 18A:28-5
teaching staff only

Bus driver (77:594, Albert)

Business manager/School business administrator
(53-54:53)

(65:177) (69:153) (72:179)

Carpenter (54-55:115)

Certificate not required, position not tenurable (81:
June 2,

Rothman); certificate required, position tenurable
(84:1113, Boehm)

Certification

(See also "Certification", this index)

Administrators in voluntary vocational adult
education

program entitled to tenure where board
requires certification in vocational and
technical curriculum (83: March 18, Rabolli,
aff'd St. Bd. 83:217)

Athletic trainer position (unrecognized title) did
not encompass such duties as to
legally require physical
education certification;

board's requirement did not
elevate position to teaching
staff member status
acquisition (89:1097,
Jennings, St. Bd. rev'g
89:1085)

(89:1097,
Athletic trainer is an unrecognized title
Jennings, St.
Bd. rev'g
89:1085)

position to
Board must require certificate in order for

be eligible for tenure status (77:555,
Wilson) (83: March 8, Howard, aff'd St. Bd.
83: June 1, rev'd on other grounds App. Div.
Docket No. A-5444-82T3, unpublished November
8, 1984)

TENURE - continued

Acquisition of - continued

Certification - continued

Board must submit job description of unrecognized
title of coordinator of special education; petitioner,
though lacking proper certification, gained
tenure in unrecognized position after serving
required time Cohen v. East Brunswick Bd. of
Ed., unpublished opinion, App. Div. (Docket
No. A-4873-82T3, decided March 12, 1984)
aff'g (82: September 30, aff'd St. Bd.
83:1514)

Eligibility; where secondary teacher was eligible
for certificate upon employment and ultimately
obtained such; her seniority runs from the
date of initial employment (82: May 10,
Saad)
Emergency certificate (76:113, Sydnor) (77:1211,
Della
Santi, aff'd St. Bd. 78:1003) (80: March 7,
Kubas)
Emergency certificate, teacher who serves for
statutory period and acquires standard certificate at
any time while still employed thereupon
acquires tenure (73:636) (74:1095) (84:1721,
Amato)
Equitable estoppel; doctrine did not prevent
termination of uncertified guidance counselor with five
years service where guidance counselor knew
of deficiency in certification (83:1240,
Hansen)
Estoppel: Board not estopped from denying tenure
even though teacher relied on administrator's
comments in failing to obtain
certification (89:1097, Jennings,
St. Bd. rev'g 89:1085)
If no special certification is required, tenure
status is in general category of teaching staff
member (70:162) (70:176) (73:201 aff'd St.
Bd. 74:1414) (74:430); see also Lange v.
Audubon Bd. of Ed.,

26 N.J. Super. 83 (App. Div. 1953)
Lack of proper certificate precludes acquisition
of tenure

(72:266) (74:890 aff'd St. Bd. 75:1074 aff'd
in part, rev'd in part App. Div. 76:1124)
(74:1095 aff'd St. Bd. 75:1160) (76:113,
Sydnor) (77:1211, Della Santi, aff'd St. Bd.
78:1003) proper certificate must be obtained
by end of tenure acquisition period (74:723)
(74:906) (77:1125, North Bergen Fed. of
Teachers) (86:1603, Przystup, aff'd in part,
rev'd in part St. Bd. 87:2674, aff'd App.
Div. unreported op. (Dkt. No. A-0957-87T8,
March 15, 1989)) (87:1963, Ledwitz, aff'd
w/opinion St. Bd. 88:2497, aff'd App. Div.
unreported op. (Dkt. No. A-2861-87T1,
February 16, 1989) See St. Bd. 90: June 6)

TENURE - continued

Acquisition of - continued

Certification - continued

Principal certificate required by board and duties
as
assistant to assistant superintendent similar
to duties of principal; held tenure as
principal acquired (75:644, Page, aff'd St.
Bd. 76:1158); see also (73:704) and (74:1416)
Proper certification required (80: September 8,
Mahalik)
(81: May 4, Taylor) (81: December 16,
Bechtel)
Provisional certificate entitles one to tenure
(72:638)
Provisional certificate; teacher employed under in
fourth
year while in mathematics position, employed
under regular certificate three prior years
while in Title I position, tenure accrues
first day of fourth year under N.J.S.A.
18A:28-5(b) (83: September 2, Kautzmann)
Service without appropriate certificate; guidance
counselor
who neither possessed, nor was eligible to
possess, proper certification during 5 years
in district did not acquire tenure (83:1240,
Hansen)
Superintendent, where served requisite tenure
period but
lacked proper certificate during first five
months, board's failure to apply for "acting"
administrative coverage cannot defeat claim
for tenure (74:430)
Supervisor with supervisor's certificate, service
of
2 years and 11 months, tenured teaching staff
member, held tenured in supervisory position
(76:892, Vieland, aff'd St. Bd. 77:1308)
Transfer from coordinator to supervisor, previous
service
as coordinator does not count toward tenure
as supervisor where supervisory certification
was not a requirement of coordinator position
(84:1546, McGreery)
Child Study Team members (81: February 18, Castanien)

special Child Study Team coordinator; not tenurable because no
certificate required (84: August 27, O'Halloran,
aff'd St. Bd. 84: December 5)
Clerks (39-49:102) (59-60:109) (60-61:113) (60-61:243)
(61-62:169) (70:308) (75:271, Cummins)
and clerks No separate tenure category between secretaries
(89:2106, Hansen, aff'd
St. Bd. 90:1755,
reconsideration denied
St. Bd. 90: May 2)
must Tenured clerk, upon promotion to another position,
satisfy conditions in N.J.S.A.
18A:17-2(b),(c) to achieve tenure in new
position (78:43, Given, aff'd St. Bd. 78:46,
aff'd App. Div. 79:832)
clerical Clerk under N.J.S.A. 18A:17-2; tenure is acquired in
position if bulk of duties performed are clerical
in nature (83: September 16, Jacobsen, aff'd St.
Bd. 84: February 1)

TENURE - continued

Acquisition of - continued

Coaches
(See also "Extracurricular activities", this index)
(65:18) (71:336, aff'd St. Bd. 74:1376, aff'd App. Div. 75:1083) (73:272) (75:58, Barber) (80:646, Pfau)
Coaches; not eligible for tenure (80:1420, Furlong, aff'd St. Bd. 81: March 4) (87:1343, Faycik)
Collective bargaining agreement, janitor gained statutory
tenure after three successive yearly appointments where provision in collective bargaining agreement so provided, Wright v. Bd. of Ed. of East Orange, 99 N.J. 112 (1985) aff'g 194 N.J. Super. 181 (App. Div. 1984) rev'g (82: August 30, Wright, aff'd St. Bd. 83:1677) and implicitly overruling (83: July 22, Lang) holding that collective bargaining agreement cannot create statutory tenure status. See also (83: August 15, Smith, aff'd with modification St. Bd. 84: April 4)
Collective contract requiring competitive exams for supervisory
assignments; arbitration award enforcing clause would not abrogate petitioner's accrued tenure to position (86:2904, Flood "II")
Contract; no fixed term specified, presumed to be one year (80: June 17, Kaniper, aff'd St. Bd. 80: October 1)
Coordinator of guidance tenurable position separate from
guidance counselor where supervisory duties required (84: December 10, Sell)
County special services school districts
Tenured teacher has immediate tenure upon transfer of
program for the deaf from local district to county district (78:628, Stuermer)
Custodians
(See "Tenure - Acquisition of - Janitors", this index)
Custodian of school moneys (6-62:193) - tenure as municipal

collector does not confer tenure rights as
custodian of school moneys
Dean of students is an unrecognized title; time counts
toward
acquisition of tenure as teacher (87:1057, DeGise,
aff'd St. Bd. 87:1063, aff'd App. Div. unreported
op. (Dkt. No. A-694-87T7, December 15, 1988))
De facto jointure commission, acquisition of tenure in
(81: May 26, Chinnis, aff'd St. Bd. 81:
September 2)
Department chairmen (70:436, aff'd St. Bd. 71:660,
aff'd
App. Div. 72:664) (71:579) (77:555, Wilson)
(77:984, Van Houten, remanded St. Bd. 78:1044)
(78:160, McCormick) (80:541, Gelsomino)

TENURE - continued

Acquisition of - continued

Departmental chairperson; held that petitioner,
possessing

a supervisors certificate was tenured in position
of departmental chairperson where he had
functioned in position prior to board adopting job
description (83:680, DeCesare) (88:1442, Hatt)
Department of Education, employment with does not count

towards

tenure (75:547, King)
Department of Human Services; teachers employed by are

eligible

for tenure, Lukas v. State of N.J., App. Div.
(Docket No. A-5850-82T3, unpublished, June 28,
1984), rev'g and remanding 83:41, aff'd St. Bd.
83:52, but see, (82: March 26, N.J. Civil Service
Assn., aff'd St. Bd. 82: August 4)

duties

District in which tenure is earned is district in which
performed, not district which employs the teacher
(81: December 15, Dullea)

as a

Duties of job must include teaching to become tenured

(73:488)

teaching staff member (89:1640, South Plainfield,
aff'd St. Bd. 89:1657)

Duties of job, not title, determine tenure rights

(74:430) (74:440) (74:805) (75:644, Page, aff'd
St. Bd. 76:1158) (76:526, Jannarone, aff'd St. Bd.
76: August 4) (77:976, Levitt, aff'd St. Bd.
78:1027, aff'd App. Div. 79:847) (77:1125, North
Bergen Fed. of Teachers) (78:666, Euell, aff'd St.
Bd. 79:825, aff'd App. Div. 80:1489) (80:439,
Salerno) (80:1028, Luppino) (80:1079, Smith, aff'd
St. Bd. 81: March 4) (80: September 22,
Middletown, aff'd St. Bd. 81: March 4, aff'd
unpublished opinion, App. Div. (Docket No.
A-3167-80T1, decided June 13, 1983), certif. den.
94 N.J. 620 (1983)) (80:1193, Page, aff'd St. Bd.
81: June 3) (80: October 27, Dandorph) (81:
April 23, Enos) (81: September 14, Beaute, aff'd
St. Bd. 82: February 3)
(86:2904, Flood "II") (87:23, Miller) (87:269,
Smith, remanded St. Bd. 87:296) (88:91, Cerelli)
(89:1452, DeStefano)

Educational Services Certificate: Service under any endorsement
except for school nurse - tenure acquired in educational services (89:2244, Ellicott, rev'd St. Bd. 90:1714, aff'd 251 N.J. Super. 342 (App. Div. 1991))

Effect of additional duties. Quinlan v. North Bergen Twp.
Bd. of Ed., 73 N.J. Super. 40 (App. Div. 1962); (38:437) (72:179) (73:201 aff'd St. Bd. 74:1414) (75:261, Ringele) Capella v. Camden County Voc. and Tech. School, 145 N.J. Super. 209 (App. Div. 1976) (C. dec. 75:178, St. Bd. 75:186) (87:23, Miller)

Emergency certificate, effect on tenure acquisition
(80: March 7, Kubas)

TENURE - continued

Acquisition of - continued

Emergency certificate, effect on tenure acquisition
Eligible for standard certificate on date of certification
(85:704 Smith)

Evaluation of tenured teachers; evaluation must be based upon
academic year, not calendar year (80: December 15, Willingboro)

Evaluation of tenured teachers; professional improvement plan
must be developed jointly by teaching staff member and supervisor (81: October 21, Law)

Full-time, no right to the part-time position (75:574, Oxford
aff'd St. Bd. 76:1157)

Guidance counselors (65:56) (66:247) (72:274)
Head attendance officer, no tenure status except as attendance

officer despite additional salary as "Head attendance officer" (75:261, Ringele)
Home instruction teachers regularly and continuously employed

must be afforded tenure status as supplemental teachers (82: September 20, Rochelle Park) Cf. (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. den. 104 N.J. 469 (1986)

September 26, Hours worked reduced, no tenure violation (80:

McGee, aff'd St. Bd. 81: March 4)

Instructional aides, (81: April 23, Enos)

Janitors

10, Generally (82: August 25, Davis) (82: September

Tarlivita) (82: September 30, Willinghim)
(83: July 22, Lang) (83: August 15, Smith,
aff'd with modification St. Bd. 84: April
4), Wright v. Bd. of Ed. of East Orange, 194
N.J. Super. 181 (App. Div. 1984) aff'd 99
N.J. 112 (1985) rev'g (82: August 30,
Wright, aff'd St. Bd. 83:1677) (84:1100,
Speer, aff'd St. Bd. 85:2022) (85:548,
Leggio) (86:435, Hunterdon Central High
School Education Assn., St. Bd. aff'd in
part, rev'd in part 88:2468, aff'd App. Div.
unreported op. (Dkt No. A-5036-87T2, June 28,
1989))

exception to Employment contract for fixed term, within

tenure provision of N.J.S.A. 18A:17-3
(83:371, Johnstone, aff'd St. Bd. 83:393,
rev'd on other grounds, App. Div. unpublished
op. (Docket No. A-1695-83T3, unpublished op.,
October 10, 1984))
(83: July 22, Lang)

TENURE - continued

Acquisition of - continued

Janitors - continued

Fixed term; contract did not state when it began
or
ended, "shall be employed on an annual, 12
month basis" does not define term of
employment; employees refused to sign
(86:435, Hunterdon Central High School
Education Assn., St. Bd. aff'd in part, rev'd
in part 88:2468, aff'd App. Div. unreported
op. (Dkt. No. A-5036-87T2, June 28, 1989))
Gain of statutory tenure after three successive
yearly
appointments where provision in collective
bargaining agreement so provided (Wright v.
Bd. of Ed. of East Orange, 99 N.J. 112 (1985)
aff'g 194 N.J. Super. 181 (App. Div. 1984)
rev'g 82: August 30, Wright, aff'd St. Bd.
83:1677)
Gain of statutory tenure pursuant to board policy
granting janitors tenure
after three
consecutive years of
service (83: August
15, Smith, aff'd
with modification
St. Bd. 84: April
4)
Maintenance specialist is janitor for tenure
purposes
(84:1290, Lauffer)
Tenure hearing law, board sued for janitors
removal, tenure of janitor
undisputed (86:435,
Hunterdon Central
High School
Education Assn., St.
Bd. aff'd in part,
rev'd in part
88:2468, aff'd App.
Div. unreported op.
(Dkt. No. A-5036-
87T2, June 28,
1989)) see prior
case (82: July 19,

Hay, aff'd St. Bd.
82: December 1)

Janitors, Ratajczak v. Perth Amboy Bd. of Ed., 114
N.J.L. 577

(Sup. Ct. 1935) aff'd 116 N.J.L. 162 (E&A 1936)
(C. dec. 38:709, aff'd St. Bd. 38:711); (38:703
aff'd St. Bd. 38:705) (38:706, aff'd St. Bd.
38:709) (49-50:65) (59-60:155) (65:104) (68:20)
(68:51) (68:160) (71:135, aff'd St. Bd. 71:139,
aff'd App. Div. 72:668 (73:217, aff'd St. Bd.
74:1411) (74:540, remanded St. Bd. 75:301, on
remand 75:302) (74:1236) (74:1349) (75:258,
Giandomenico, aff'd App. Div. 76:1139) (77:740,
Mrozowski) (77:858, Melone) (78:129, Barba)

Job description, failure to adopt (81: April 23, Enos)
Jointure commission de facto, acquisition of tenure in
(86:2000, Prior, aff'd St. Bd. 87:2672)

Laches; action to assert acquisition of tenure must be
timely

filed (81: June 24, Santo, aff'd St. Bd. 81:
November 10)

Laches unavailable as a defense; acquisition of tenure
is

statutory (77:1063, Levitt)

Learning Disabilities Teacher Consultant position is
not

separately tenurable from speech correctionist.
Tenure is acquired in educational services
(89:2244, Ellicott, rev'd St. Bd. 90:1714, aff'd
251 N.J. Super. 342 (App. Div. 1991)

TENURE - continued

Acquisition of - continued

Librarian, tenured in three areas, must maintain
seniority over

non-tenured teachers in other areas in which she
holds tenure (83: February 1, Miller, St. Bd.
reversing and remanding 82: May 17)

Librarian acquired tenure in that position, not as a
teacher,

and transfer to teaching position without consent
violates tenure rights (83: May 3, Neidhardt)

Manpower Development Training Program (77:1204, Point
Pleasant

Beach, rev'd St. Bd. 79:857, aff'd 173 N.J. Super.
11 (App. Div. 1980)) (79: December 31, D'Angelo,

unpublished opinion)
Manpower Development Training Program, tenure available
(72:266, aff'd in part, rev'd in part 73:777)
(74:890, aff'd St. Bd. 75:1074, aff'd in part,
rev'd in part App. Div. 76:1124) (76:579, Hazlet
Tp. Teachers Assoc.) (77:1125, North Bergen Fed.
of Teachers)
Matron not entitled to tenure as janitorial employee
(56-57:59)
Metal worker not entitled to tenure as janitorial
employee
(54-55:118)
Middle school subject supervisor could exercise tenure
rights to
new district-wide K-8 position of subject Director
where two positions found to be similar.
Commissioner's consent to additional requirements
in new position would erode teacher's statutory
tenure rights (88:553, Schaeffer, aff'd St. Bd.
89:3077)
Motion for Stay of Commissioner's Decision denied
because law is settled that teaching staff
member's tenure rights are
preeminent and may not be diluted
by board policy (89: Dec. 6,
Schienholz, reconsidering grant of
stay 89:1878, App. Div. unpublished
op. (Dkt. No. A-2905-89T3, Nov. 19,
1990), aff'g 90:1809, St. Bd. rev'g
in part 89:1860 Commr., certif.
den. March 7, 1991)
N.J.A.C. 6:3-1.21 does not preempt all negotiation on
procedures
for evaluating tenured teachers, Bethlehem Twp.
Bd. of Ed. v. Bethlehem Twp. Teachers Assn., 91
N.J. 38 (1982)
Nurse
Part-time work in nurse's office, not entitled to
tenure as nurse because of limited duties,
absence of appointment as nurse and lack of
proper certification (74:1095 aff'd St. Bd.
75:1160)
Three years as substitute nurse, no tenure
(68:125)
Part-time employees may obtain tenure (39-49:134)
(66:43)
see also (74:1095, aff'd St. Bd. 75:1160)
(74:1201) Capella v. Camden County Voc. and Tech.
School, 145 N.J. Super. 209 (App. Div. 1976) (C.

dec. 75:178, St. Bd. 75:186); (76:685, Oros)
Lichtman v. Bd. of Ed. of Village of Ridgewood, 93
N.J. 362 (1983)

TENURE - continued

Acquisition of - continued

Part-time service

Determination of fractional position for tenure purposes, work weeks of various lengths during tenure accrual period, tenured position corresponds to work week with least hours during period (83: September 2, Von Schalscha)

Elementary teacher with tenure must be appointed to

full-time position within certification over non-tenured teachers following abolition of her part-time position (83: November 7, Raffaele)

Supplemental teacher continuously employed part-time (home

instruction teacher) entitled to part-time tenure status (82: September 20, Rochelle Park); but see Lichtman v. Bd. of Ed. of Village of Ridgewood, 93 N.J. 362 (1983), rev'g App. Div. 83:1588, aff'g 80:585 St. Bd. rev'g 80:573) (83: October 26, Tietjen, St. Bd. rev'g 83: June 1)

Tenure acquired in part-time position (83: September 2,

Von Schalscha)

Title I hourly experience, part-time, from outside district

need not be recognized by Board on salary guide (82: October 7, Pavlik)

Part-time service, hourly salary; tenure acquired (85: August

1, Garfole)

Part-time service; no entitlement to full-time position (81:

March 23, Faro, dismissed St. Bd. 81: December 2)

Part-time social worker not entitled to appointment to additional

part-time position (79:439, Cohen)

Part-time and full-time Service

First 3 years full-time, 4th year half-time,

tenure

acquired as half-time teacher; 3 years and one day needed in one position to attain tenure, Carlson v. Cranford Bd. of Ed., unpublished opinion, App. Div., (Docket No. A-4433-80-T3, March 24, 1982) (C. dec. 81: January 16, St. Bd. dec. 81: May 6)

leave of

First three years part-time with one-half year absence, fourth year full-time, tenure acquired in full-time position at mid-point of fourth year (83: July 18, Carnathan)

combined

Full-time and part-time service in position is

on an academic or calendar year basis, tenure is acquired as a teaching staff member for total of years of service, seniority is prorated, Lichtman v. Ridgewood Bd. of Ed., 93 N.J. 362 (1983); rev'g App. Div. 83:1588 aff'g (80:585, St. Bd. rev'g 80:573)

TENURE - continued

Acquisition of - continued

Part-time and full-time service - continued

Position held on first day of fourth year

determines

tenure status (81: May 11 and 81: September 18, Kelly) (83: July 18, Carnathan) (83:932, Kiminkinen) (85:412, Szpiech, aff'd St. Bd. with modification 87:2731); But see, No tenure in full-time position until requirement of N.J.S.A. 18A:28-5, service for more than 3 academic years, is met (83: April 14, Leon); See also Lichtman v. Ridgewood Bd. of Ed., 93 N.J. 362 (1983) rev'g App. Div. 83:1588, aff'g (80:585 St. Bd. rev'g 80:573); (83: April 7, Greiner, aff'd St. Bd. 84: September 5)

NOTE: Two decisions (85:412, Szpiech, aff'd St. Bd.

with

modification, 87:2731) and (83: September 1,

James)

suggest that Lichtman v. Ridgewood Bd. of Ed.

may have

eliminated concept of part-time vs. full-time

tenure

Per diem employees may obtain tenure (76:578, Hazlet Tp. Teachers Assoc.) (77:1125, North Bergen Fed. of Teachers) (80: April 11, Mancini)

Position

Early tenure - (See "Tenure - Acquisition of -

Shortening

period", this index)

affected

All members of an employment category must be

when Board chooses to grant early tenure (87:1393, Pickering, on remand 88:58, aff'd St. Bd. 88:71)

relates

Tenure accrues to the position while seniority

to category (82: December 20, Howley, aff'd St. Bd. 83:1554) (83:96, Mackey) (83:149, Colella, aff'd St. Bd. 83:172)

the

Tenure attaches to the position (secretary) not to specific job title (secretary to principal)

(83:96, Mackey) (83: August 15, Ehid, aff'd St. Bd. 84: January 4)
 Tenure does not accrue in a position unless
 position is authorized by statute or regulation, or by the county superintendent under N.J.A.C. 6:11-3.6 (83: July 11, Cortina, aff'd St. Bd. 83: November 2) (84:999, Roberts, aff'd St. Bd. 84:1026) See (84:1113, Boehm) but see (84: December 10, Sell), tenure acquired as supervisor although position not approved by county superintendent
 (84: Tenure is conferred upon position, not individuals 999, Roberts, aff'd St. Bd. 84:1026)
 Principal (59-60:106) (71:604, aff'd St. Bd. 72:666, aff'd App. Div. 72:667) (75:547, King) (77:24, DiNunzio) (77:734, Rossi) (79: August 16, Ruby, unpublished opinion) (80: April 11, Stranzl) (88:2247, Sitek, aff'd St. Bd. 89:3079)

TENURE - continued

Acquisition of - continued

Principal certificate required and duties similar to principal; held tenure as principal acquired (75:644, Page, aff'd St. Bd. 76:1158, same case at 73:704 and 74:1416)
 Principal: No distinction between elementary, secondary, evening or adult school principals for tenure purposes (87:1393, Pickering, decision on remand 88:58, aff'd St. Bd. 88:71)
 Promotional tenure - vice principal transferred to principal - tenure acquired as principal in 2 years (88:2247, Sitek, aff'd St. Bd. 89:3079)
 Psychologist (67:78, aff'd St. Bd. 67:86) (76:685, Oros) (77:315, Lilenfield) (85: August 1, Garfole)
 Psychologist properly reduced from 12 to 10 months where replacement child study program not funded from salary allocation (82: May 24, Bridgeton, aff'd

St. Bd. 82: October 7)
 Reading teacher (71:277)
 Regional day school teachers; such schools are
 autonomous entities under statute, teachers acquire tenure
 and seniority rights only at the facility that
 employs them (84:311, O'Toole, aff'd by St. Bd.
 84:332, aff'd App. Div. unreported opinion (Docket
 No. A-774-84T7 dated June 30, 1986))

(81: Regional districts; transfer of tenure upon creation of
 February 6, Franklin)
 Regional districts; vice principal's tenure is not
 preserved upon transfer to regional district N.J.S.A.
 18A:13-42 (83:1626, Rogers, St. Bd. rev'g 82:
 November 22)
 Replacement teacher; petitioner's employment did not
 constitute sufficient time served to accrue tenure; no
 jointure commission existed de facto or de jure,
 (86:2000, Prior, aff'd St. Bd. 87:2672)

(80: Replacement teacher, for teacher on maternity leave
 September 22, Middletown, aff'd St. Bd. 81: March
 4, aff'd unpublished opinion, App. Div. (Docket
 No. A-3167-80T1, decided June 13, 1983), certif.
denied 94 N.J. 620 (1983) (89:1419, Panettieri,
 aff'd. St. Bd. w/opinion, 89:1433, rev'd and
 remanded App. Div. (Dkt. No. A-373-89T1, decided
 May 16, 1990), remanded St. Bd. 90: December 5)
 Resignation (76: March 10, Williams, unpublished
 opinion)
 (77:650, Solomon, aff'd St. Bd. 77:657) (77:976,
Levitt, aff'd St. Bd. 78:1027, aff'd App. Div.
 79:847) (79:439, Cohen) (79: November 29, Mann,
 unpublished opinion) (80:636, Riemann) (81: June
 3, Alexander) (81: July 30, Bridgewater-Raritan)
 (81: September 22, Schneiderman, aff'd St. Bd.
 82: October 6) (84: October 11, Tomlin, aff'd
 St. Bd. 85: February 6)

TENURE - continued

Acquisition of - continued

Resignation: effect is a matter of the parties
intention

(86:2111, Delk)

Resignation: request to rescind resignation must be
timely

(81: June 3, Alexander, record closed by St. Bd.
81: August 5)

Salary, payment for wrongful dismissal (80: September
29,

Connolly)

School Business Administrator (88:2256, Shenekji, aff'd
St. Bd. 89:3078)

Secretary (81: August 18, Kigerl, aff'd St. Bd. 81:
December 2) (83: August 15, Ehid, aff'd
St. Bd. 84: January 4) (84:
July 23, Lavine, aff'd St. Bd.
84: December 5)

Probation period upon prosecution: tenure will
not accrue

until precise requirement of N.J.S.A.
18A:17-2(b) and/or (c) are met, 1978 S.L.D.
43, Gruen (83: August 15, Ehid, aff'd St.
Bd. 84: January 4)

Tenured secretary may not lay claim to
confidential secretary position until
probationary period is served
(89:2106, Hansen, aff'd St. Bd.
90:1755, reconsideration denied 90:
May 2)

Secretary to board

(See "Tenure - Acquisition of - Board secretary",
this index)

Social worker/home trainer (83: May 23, Buxbaum)

Social worker with attendance duties, must meet tenure
requirements for teaching staff member, not
attendance officer (81: September 14, Schuller)

Special education coordinator (82: September 30,
Cohen, aff'd St. Bd. 83:1514)

Special education cooperative program; employees
acquire

tenure in district which administers program, not
district which send pupils to it (85: July 1,
Dailey, aff'd St. Bd. 85:931)

Special education teacher (81: December 15, Dullea)

Special education teacher: petitioner did not serve
requisite time to accrue tenure (86:2000, Prior, aff'd St.
Bd. 87:2672)

Special services teacher is entitled to preservation of
tenure rights acquired while employed by local district
when program was undertaken by the County pursuant
to N.J.S.A. 18A:28-15, Shelko v. Mercer County
Special Services School District, aff'd App. Div.
83:1639, rev'd and remanded 97 N.J. 414 (1984), on
remand (St. Bd. 85: April 3)

Speech therapist employed by board to teach non-public
students in parochial schools, eligible for tenure
(81:1051, Reeves)

TENURE - continued

Acquisition of - continued

Staff serving under educational services certificates
achieve

tenure in educational services; LDTC and speech
correctionist are separately tenurable, Ellicott
v. Bd. of Ed. of Twp. of Frankford, 251 N.J.
Super. 342 (1991), aff'g 90:1714 St. Bd., rev'g
89:2244 Commr.

18A:7B-11, State Facilities Education Act; pursuant to N.J.S.A.

teacher employed after the Garden State School
District was abolished not entitled to tenure as
evidenced by legislative intent to preserve tenure
specifically for those teachers who had attained
tenure before the district was abolished, Ward v.
State of New Jersey, aff'd App. Div. 83:1655)
Lukas v. State, Dept. of Human Services, 103 N.J.
126 (1986)

Statutory requirements

7, Kubas)
Emergency certificate not sufficient (80: March

Moresh

Only positions stated in statute acquire tenure,

v. Bayonne Bd. of Ed., 52 N.J. Super. 105
(App. Div. 1958); Lascari v. Lodi Bd. of Ed.,
36 N.J. Super. 426 (App. Div. 1955) (C. dec.
54-55:83, aff'd St. Bd. 54-55:89); but see
N.J.S.A. 18A:28-5

does not

"Promotional" tenure under N.J.S.A. 18A:28-6(c)

accrue to tenured staff member without more
than two academic years' service in the new
position (87:821, Roman, aff'd St. Bd.
87:832) (87:908, Riker)

Residence in district may not be required by board
(59-60:141)

acquires

Subject supervisor with teaching responsibilities

tenure as supervisor (84: August 30, Schadewold)

different

Subject supervisor with teaching responsibilities in

category from teacher; board may reduce position
of teacher and assign classes to supervisor (82:
February 22, Huff, aff'd St. Bd. 82: July 7,
aff'd App. Div. 83:1555, certif. den. 96 N.J. 284
(1984))

Substitute teachers and staff members

Appointment by superintendent is not employment
within meaning of tenure laws (St. Bd. 71:664, aff'd
App. Div. 72:692, Com. dec. at 70:202)
Appointment to vacant position; held petitioner
was not acting in the place of another, per N.J.S.A.
18A:16-1.1, therefore petitioner who had
satisfied statutory criteria for obtaining
tenure was improperly dismissed, Sayreville
Ed. Assn. v. Bd. of Ed. of Sayreville, 193
N.J. Super. 424 (App. Div. 1984) rev'g (82:
June 18, Sayreville, aff'd St. Bd. 83:1632)
(84:534, Weigand, aff'd St. Bd. 84:549)
(85:1329, Ujhely) (87:977 decision on remand,
87:991, Williams, aff'd St. Bd. 88:2535,
aff'd unpublished op. App. Div. (Dkt. No. A-
5346-87T2, Dec. 29, 1988)) (87:2412, Puryear)

TENURE - continued

Acquisition of - continued

Substitute teachers and staff members - continued

Does not count toward tenure, Biancardi v.

Waldwick

Bd. of Ed., 139 N.J. Super. 175 (App. Div.
1976), aff'd o.b. 73 N.J. 37 (1977) (C. dec.
74:360, St. Bd. 74:368); Gordon v. State Bd.
of Ed., 132 N.J.L. 356 (E&A 1945); Schulz v.
St. Bd. of Ed., 132 N.J.L. 345 (E&A 1945);
(39-49:46) (39-49:136) (39-49:172) (57-58:69)
(67:240) (68:125) (68:189) (70:202, rev'd St.
Bd. 71:664, aff'd App. Div. 72:692) (73:57)
(75:494, Wolf) (75:505, Weehawken) (75:959,
Trued) (75:494, Wolf dismissed 76: January
7) Driscoll v. Clifton Bd. of Ed., 165 N.J.
Super. 241 (App. Div. 1977), aff'd 79 N.J.
126 (1979) rev'g (76:7, St. Bd. 76:14)
(77:1211, Della Santi, aff'd St. Bd. 78:1003)
NOTE: Those cases that were decided before
Sayreville should be examined to determine
whether an individual is properly termed a
"substitute."
Will count if improperly assigned as a
substitute (77:976, Levitt, aff'd St. Bd.
78:1027, aff'd App. Div. 79:847) (78:322,

Kuboski) (79: October 30, Union Township, unpublished opinion) (80: June 24, Lorenz, rev'd St. Bd. 80: December 3, motion to reopen den. St. Bd. 81: March 4) (80: August 4, De Leo) (80: August 6, McGinnis), but see (80: September 22, Middletown, aff'd St. Bd. 81: March 4, aff'd unpublished opinion App. Div. (Docket No. A-3167-80T1, decided June 13, 1983), certif. denied 94 N.J. 620 (1983)) (81: October 13, Moses) (81: December 15, Dullea)

Nature of the employment tendered and accepted;

held

substitute teacher who performed same duties and responsibilities as regular teacher for four consecutive school years and who obtained standard certificate obtained tenure (83: August 8, Perrotti, aff'd and remanded St. Bd. 84: February 1, decision on remand 84: June 6)

(80:

Permanent substitutes, no entitlement to tenure 972, Kearny) (83: March 31, Zaremba, aff'd St. Bd. 83: October 5); but see Sayreville Ed. Assn. v. Bd. of Ed. of Sayreville, 193 N.J. Super. 424 (App. Div. 1984) rev'g (82: June 18, Sayreville, aff'd St. Bd. 83:1632) (84:534, Weigand, aff'd St. Bd. 84:549)

St. Bd.

Principal; not acquired (81:1364, Dreher, aff'd 83:1539, remanded App. Div. unreported op. February 28, 1985, Comm. 87:1706, aff'd St. Bd. 88:2440, aff'd App. Div. unreported op. (Dkt. No. A-2970-87T6, March 28, 1989))

TENURE - continued

Acquisition of - continued

Substitute teachers and staff members - continued

teacher

Service for full year as substitute for disabled

does not count toward tenure, disabled teacher had not resigned, position was not

vacant as per Sayreville (88:386, Ward, aff'd St. Bd. 88:400)

leave Service for full year as substitute for teacher on

does not count toward tenure (81: August 11, Johnson)

place of Service for full year plus one month while taking

teacher on maternity leave, counts toward tenure where "substitute" given same contract as other teachers (Panettieri, App. Div., unpublished op. (Dkt. No. A-373-89T1, May 16, 1990), rev'g St. Bd. 89:1433, aff'g 89:1419, remanded St. Bd. 90: December 5)

leave does Service in clerical position while incumbent on

not count toward tenure (85: April 22, Kopec, aff'd St. Bd. 85: August 7)

tenure Summer employment, does not count toward acquisition of

(81:1051, Reeves) (81: October 13, Moses)
 Superintendent, Rall v. Bayonne Bd. of Ed., 54 N.J. 373 (1969) rev'g 104 N.J. Super. 236 (App. Div. 1969) (C. dec. 67:230, St. Bd. 68:264); (60-61:194) (65:202) (66:155) (67:1) (67:105) (67:320) (71:210) (71:214) (71:317) (72:28) (72:53, aff'd St. Bd. 72:58, aff'd App. Div. 73:768) (73:488) (74:430) (75:807, Procopio, aff'd St. Bd. 76:1161) (76:526, Jannarone, aff'd St. Bd. 76: August 4) (87:2412, Puryear)
 Supervisor (76:892, Vieland, aff'd St. Bd. 77:1308) (77:555, Wilson) (77:984, Van Houten) (79:627, Epps, aff'd St. Bd. 80:1488, rev'd App. Div. 83:1542) (83: March 8, Howard, aff'd St. Bd. 83: June 1, rev'd App. Div. (Docket No. A-5444-82T3, unpublished November 8, 1984)) (84: September 5, Flanagan, St. Bd. on remand, earlier decisions: (80:1283, aff'd St. Bd. 81: December 2, aff'd App. Div. 83:1548, remanded 94 N.J. 551 (1983), remanded App. Div. August 31, 1983) (85: September 27, Brownlee)
 Supervisor of teacher aides, tenure denied (80:1079, Smith, aff'd St. Bd. 81: March 4)

increased Supervisor; school psychologist by own decision
supervisory time and was not assigned by board,
tenure did not accrue (83: January 31, Lewis,
aff'd St. Bd. 83: June 1)
aff'd Teaching principal, no special tenure status (72:508,
St. Bd. 73:767)

TENURE - continued

Acquisition of - continued

Tenure and seniority rights were acquired since adult
basic

skills program was held to require any valid New Jersey teacher's certificate (88:11, Milwit, decision on remand from 87:87, aff'd St. Bd. 88:30, aff'd App. Div. unreported op. (Dkt. No. A-5965-87T1, June 8, 1989))

Tenure does not accrue unless precise statutory
conditions

are met, Zimmerman v. Newark Bd. of Ed., 38 N.J. 65 (1962); Ahrensfield v. State Bd. of Ed., 126 N.J.L. 543 (E&A 1941); (60-61:128) (66:193) (72:508, aff'd St. Bd. 73:767) (75:261, Ringele) (75:917, Ruffini) (76:113, Sydnor) (76:543, Payne, aff'd St. Bd. 76:554, aff'd App. Div. 77:1303 certif. den. 75 N.J. 602 (1978) (76:579, Hazlet Tp. Teachers Assoc.) (77:315, Lilenfield) (77:650, Solomon, aff'd St. Bd. 77:657) (77:976, Levitt, aff'd St. Bd. 78:1027, aff'd App. Div. 79:847) (77:1125, North Bergen Fed. of Teachers) (77:1211, Della Santi, aff'd St. Bd. 78:1003) (81:1493, Stachelski v. Oaklyn Bd. of Ed., certif. den. 88 N.J. 493 (App. Div. 1981); St. Bd. dec. 79:331; C. dec. 79:338) (79:517, Boor, dismissed St. Bd. 79: December 5) (80: June 24, Lorenz, rev'd St. Bd. 80: December 3, motion to reopen denied St. Bd. 81: March 4) (80: August 6, Dore) (80: August 6, McGinnis) (80: September 8, Mahalik) (80:1079, Smith, aff'd St. Bd. 81: March 4) (80:1110, Carney) (80: September 29, Connolly) (80: October 27, Dandorph) (81: May 11, Kelly) and (81: September 18, Kelly) (81: October 13, Moses) (84:2003, Pellechio, published opinion, App. Div. (Docket No. A-4855-82T3, decided February 28, 1984) aff'g (83:1616 St. Bd. rev'g in part 82: May 20) (83: August 15, Ehid, aff'd St. Bd. 84: January 4) but see (84:792, Schoeler) (87:1963, Ledwitz, aff'd w/opinion St. Bd. 88:2497, aff'd App. Div. unreported op. (Dkt. No. A-2861-87T1, February 16, 1989)) But see, (88:941, Ayoub) (88:2247, Sitek, aff'd St. Bd. 89:3079)

Tenure does not begin to accrue as of date of contract
but upon commencement of duties (83: February 9, Harnett) (84: May

31, Christian) (84:1638,
Goebel, aff'd with
modification St. Bd. 85:1928)
Termination, wrongful; reinstatement ordered (81:
March 19,

Buff)

Time

Academic year

For educational services commission employees
school

year is established by commission, not
school year of districts for which
commission provides services (87:2642,
Middlesex, St. Bd. aff'g in part, rev'g
in part 84: October 29)

TENURE - continued

Acquisition of - continued

Time - continued

Academic year - continued

Summer teaching not included (71:460)
(72:138) (77:1, Mihatov)
After 36 consecutive months of employment,

Canfield v.

Pine Hill Bd. of Ed., 51 N.J. 400 (1968)
rev'g 97 N.J. Super. 483 (App. Div. 1967) (C.
dec. 66:152, St. Bd. 67:345) (61-62:175)
(69:153) (83: June 30, Hausser) but see
(84:792, Schoeler) (non-tenured assistant
secretary to the board ordered reinstated to
position, having been terminated seven days
prior to the acquisition of tenure)

Combining separate periods (50-51:63)

Date of commencement of duties begins time period,
not date of contract,
Zimmerman v. Newark
Bd. of Ed., 38 N.J.
65 (1962)

Date on which reemployment contract states that a

teacher's

service shall begin is the date when tenure
is acquired (88:916, Kovach, on remand)

insure

Execution of contract for fourth year does not
tenure grant, Canfield v.
Pine Hill Bd. of
Ed., 51 N.J. 400
(1968) rev'g 97 N.J.
Super. 483 (App.
Div. 1967) (C. dec.
66:152, St. Bd.
67:345) (66:193)
(72:138) (73:526)
(76:543, Payne,
aff'd St. Bd.
76:554, aff'd App.
Div. 77:1303 certif.
den. 75 N.J. 602
(1978); but see
Thomas v. Morris
Twp. Bd. of Ed., 89
N.J. Super. 327
(App. Div. 1965)

aff'd 46 N.J. 581
(1966)

Indefinite term

(See "Tenure - Acquisition - Janitors", this
index)

(72:526, Leaves of absence, not counted toward tenure
aff'd St. Bd. 73:777) (82:
July 1, South
Brunswick, aff'd St.
Bd. 83: May 4)

leave Leave of absence; period of time attributable to

must be considered in determining whether
requirements of 18A:28-5 have been met
(81:1493, Stachelski v. Oaklyn Bd. of Ed.,
certif. den. 88 N.J. 493 (App. Div. 1981);
St. Bd. dec. 79:338; C. dec. 79:331) (81:
May 11, Kelly and 81: September 18, Kelly)

Leave of absence; 22 school days of unpaid leave
counted toward tenure acquisition (89:2723,
Maloney)

Leave of absence; 90 days over three year period
fully creditable for tenure purpose (84:1638,
Goebel, aff'd w/mod. St. Bd. 85:1928)

TENURE - continued

Acquisition of - continued

Time - continued

Maternity leave; held, not a break in service
which precludes tenure acquisition as long as employee meets "consecutive" years of service requirement under N.J.S.A. 18A:28-5(c) and works more than 30 months within four consecutive academic years (83: May 23, Buxbaum)
Non-renewal after three years as guidance counselor,
re-employment as social worker; at outset of fourth year, tenure obtained as guidance counselor (82: February 2, Shaffer, aff'd St. Bd. 82: July 7)
Non-renewal and re-employment: non-renewals do not preclude
tenure acquisition where requirements of N.J.S.A. 28-5(c) are met (80: April 28, Makowski)
Fort Lee Bd. Part-time service, computation of, Aslanian v. of Ed., unpublished opinion, App. Div., (Docket No. A-4745-79-T1, 81:1387) (C. dec. 79:575; St. Bd. 80: July 2)
Part-time tenured teacher who is transferred to full-time
position (83: April 7, Greiner, aff'd St. Bd. 84: September 5) See also, (81: May 11 and 81: September 18, Kelly) Lichtman v. Ridgewood Bd. of Ed., 93 N.J. 362 (1983) rev'g App. Div. 83:1588 aff'g (80:585, St. Bd. rev'g 80:573) (83: April 14, Leon)
Prior employment counts toward tenure (50-51:63)
Prior employment does not count toward tenure (77:650, Solomon, aff'd St. Bd. 77:657)
18A:28-6) Promotions or transfers, effect of (See N.J.S.A. (70:162) (72:28) (73:488) (74:430) (76:892, Vieland, aff'd St. Bd. 77:1308); see also (76:526, Jannarone, aff'd St. Bd. 76: August 4); see also Lange v. Audubon Bd. of Ed., 26 N.J. Super. 83 (App. Div. 1953) (78:666, Euell, aff'd St. Bd. 79:825, aff'd App. Div.

80:1489) (87:2412, Puryear) (88:2247, Sitek,
aff'd St. Bd. 89:3079)
Reinstatement, effect of in determining point at
which
tenure acquired (75:138, North Bergen)
Resignation and reemployment, effect on
computation of time
under N.J.S.A. 18A:28-5 (78:651, Kimless)
(79: November 29, Mann, unpublished opinion)
(80:98, Misek, aff'd St. Bd. 80:104, aff'd
App. Div., unpublished opinion (decided May
7, 1981, Dkt. No. A-4913-79))
Resignation, breaks chain (77:650, Solomon, aff'd
St. Bd.
77:657)

TENURE - continued

Acquisition of - continued

Time - continued

toward Service as acting superintendent does not accrue
tenure (80:1439, McWilliams, aff'd St. Bd. 81: May 6) but see (87:2412, Puryear) (84: June 24, Pastore) (76:526, Jannarone, aff'd St. Bd. 76: August 4)

duties Service in two month temporary position, where
equivalent to those performed for previous two years, 10 months, counts toward tenure; tenure acquisition cannot be defeated by abolition of temporary position (81: September 14, Beaute, aff'd St. Bd. 82: February 3)

illegally Settlement reinstating employee, who had been
demoted for sexually discriminatory purpose, was with tenure (86:2823, Figurelli, aff'd St. Bd. 87:2607, remanded App. Div. unreported op. December 3, 1987 supplementation of record St. Bd. 88:2458)

Shortening period
A reasonable period of probation, i.e., at
least six months must be served before tenure may be granted (89: December 13, Yasson) Clerical employees (59-60:109)

well as 12 Early tenure may be granted to 10 month as
month employees (79:112, Lodi)

board Early tenure policy is effective until future
action rescinds it (79:112, Lodi)

not be Grant of early tenure to superintendent may
rescinded (78:633, Contardo, aff'd St. Bd. 79: April 4)

language Need a specific board policy or specific
in board minutes in order to do so (75:547, King) (75:807, Procopio, aff'd St. Bd. 76:1161)

Resolution adopted by board, must affect all

members of

same class
of
employees,
Rall v.
Bayonne
Bd. of
Ed., 54
N.J. 373
(1969)
rev'g 104
N.J.
Super. 236
(App. Div.
1969) (C.
dec.
67:230 St.
Bd.
68:264);
see also
(59-60:109
) (65:134)
(66:155)
(67:320)
(71:210)
(71:317)
(71:604,
aff'd St.
Bd.
72:666,
aff'd App.
Div.
72:667)
(71:607)
(78:633,
Contardo,
aff'd St.
Bd. 79:
April 4)
(79:112,
Lodi) (82:
July 1,
South
Brunswick,
aff'd St.
Bd. 83:
May 4)
(84:999,
Roberts,
aff'd St.

Bd.
84:1026)
(88:58,
Pickering,
decision
on remand
87:1393,
aff'd St.
Bd. 88:71)
(87:
November
30, Negro,
decision
on remand
88: April
6)

Statutory time period; three years and one day

(85:

August 8, Krueckeberg)

TENURE - continued

Acquisition of - continued

Tenure - continued

employment Summer service; where a condition of regular
(e.g. 11 month employee) and employee does not receive any additional compensation for such service it may be counted towards tenure accrual (84:74, Flood)
Summer session does not count (71:460) (72:138)
Supplemental teachers employed under contracts in effect
for only part of academic year; tenure acquired under N.J.S.A. 18A:28-5(c) not N.J.S.A. 18A:28-5(b), weeks of employment, including holiday recesses, between first date of employment and concluding date of employment in each academic year are totaled, teacher must work total of 120 weeks (40 weeks is one academic year) plus one day within four consecutive academic years, tenure acquired on the last day of that period (84: January 12, Bates)
Supplemental teacher dismissed in 1978, rehired in 1981;
break in service precludes tenure acquisition (84: May 31, Levine)
Suspension, effect of (61-62:251)
Three academic years equivalent within four successive
years (80:1110, Carney) (81: May 11, Kelly and 81: September 18, Kelly) (81: October 13, Moses)
Three calendar years, Canfield v. Pine Hill Bd. of Ed.,
51 N.J. 400 (1968) rev'g 97 N.J. Super. 483 (App. Div. 1967) (C. dec. 66:152, St. Bd. 67:345); (60-61:194) (61-62:175) (65:202) (72:53, aff'd St. Bd. 72:58, aff'd App. Div. 73:768) (74:440) (75:547, King) (76:685, Oros) (77:976, Levitt, aff'd St. Bd. 78:1027, aff'd App. Div. 79:847)
Three years, five months; five month period approved only
by superintendent (St. Bd. 71:664, aff'd App. Div. 72:692 rev'g C. dec. 70:202)

Three years' service required (81: May 4, Taylor)
Title I hourly experience from another district
need not

necessarily be recognized by board on salary
guide (82: October 7, Pavlik)

Timeliness

Petition must be filed within 90 days of board
action.

There was insufficient evidence as to when
petitioner received notice of board's intent
not to recognize her tenure (86:2111, Delk)
(87:23, Miller)

Veteran's tenure (75:261, Ringele)
Veteran; no immediate tenure because of military
service

(80: June 17, Kaniper, aff'd St. Bd. 80:
October 1)

(See also "Tenure - Acquisition of -
Attorney",
this index)

TENURE - continued

Acquisition of - continued

Timeliness - continued

Vice principal, Lascari v. Lodi Bd. of Ed., 36
N.J.

Super. 426 (App. Div. 1955) (C. dec.
54-55:83, aff'd St. Bd. 54-55:89); see also
N.J.S.A. 18A:28-5

Violation of tenure/seniority rights is not a
continuing

violation, petition must be filed within 90
days of board action (83:1141, Gordon, rev'd
St. Bd. 85:1929, aff'd App. Div. unreported
opinion, (Docket No. A-3294-84T7, decided May
27, 1986) certif. den. 105 N.J. 534 (1986)

Waiver of acquisition of tenure prohibited
(80:1110,

Carney) (81: June 18, West Morris) (89:
December 13, Yasson)

Title I, supplemental and compensatory education
teachers are

eligible for tenure, Spiewak v. Rutherford Bd. of
Ed., consolidated with Anderson v. Summit Bd. of
Ed. and Hamilton Twp. Supplemental Teachers Assn.
v. Hamilton Twp. Bd. of Ed., 90 N.J. 63 (1982)

overruling Point Pleasant Beach Teachers Assn. v. Calla, 173 N.J. Super. 11 (App. Div. 1981), certif. den. 84 N.J. 469 (1980) (87:1367, Pallarino)

pending at

Application of Spiewak to teachers with cases

of

time of Supreme Court decision in that case. Authority not exceeded in delaying implementation

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. den. 94 N.J. 591 (1983)]

eligible for

Supervisor of Title I program was in position

tenure (86:1446, Howard, aff'd St. Bd. 86:1461, aff'd App. Div. unreported opinion (Docket No. A-1180-86T7, decided March 7, 1988))

decided, not

Teachers not employed by board on date Spiewak

entitled to reinstatement, even though they had filed suit against the board before Spiewak decision (86: August 6, Caldwell-West Caldwell, St. Bd. rev'g 83: September 19) (86: August 6, Wilson, St. Bd. rev'g 83: February 2) (86: September 3, Bergenfield, St. Bd. rev'g 85:10) (87:2609, Jersey City, St. Bd. aff'g w/modif. 83: September 22)

TENURE - continued

Acquisition of - continued

Title I, supplemental and compensatory education -
continued

(87:2690, Scotch Plains-Fanwood, St. Bd.
aff'g in part, rev'g in part 83: October 11)
Also not entitled to placement on preferred
eligibility list (86: August 6, Wilson,
rev'g 83: February 8)

Teachers terminated prior to Spiewak not entitled
to

reinstatement even if they had filed suit
pre-Spiewak. Rutherford Ed. Assn. v.
Rutherford Bd. of Ed., consolidated with
McGovern v. Riverdale Bd. of Ed., Levinsky v.
Pascack Valley Regional High School Bd. of
Ed., Currier v. Weehawken Bd. of Ed., Fair
Lawn Ed. Assn. v. Fair Lawn Bd. of Ed., New
Milford Ed. Assn. v. New Milford Bd. of Ed.,
99 N.J. 8 (1985).

Teachers who were employed by a board of education
and

who had filed suit by date of Spiewak
decision are entitled to have tenure
calculated from the date of their employment
but are entitled to the "emoluments of
tenure" only for the six years previous to
the Rutherford decision. Rutherford Ed.
Assn. v. Rutherford Bd. of Ed., 99 N.J. 8
(1985)

NOTE: Rutherford does not decide what
"emoluments of tenure" are or what salary
rights of Title I, supplemental and
compensatory teachers are. See entry under
"Salary Guides" for decisions on this issue.
See Appendix No. 3 for cases on retroactivity
of Spiewak decided prior to Rutherford.

Title I supervisor whose position was abolished August
17,

1981 did not acquire tenure in that position (84:
March 19, Jackson, aff'd with modification St. Bd.
85: June 5)

Teachers
Title I, supplemental and compensatory education

are "currently employed" on date of Spiewak
decision and acquire tenure under that decision

where their contract was non-renewed prior to that date but still effective to June 30, 1982 (83: July 11, Bollerman)

Tenured teacher employed 5 years in Title I program as supervisor, who had been transferred back to teaching position prior to 6/23/82, held; tenure as supervisor acquired, reinstatement as such ordered, but back pay award denied, Epps v. Jersey City Bd. of Ed., App. Div. 83:1542 rev'g (79:627, aff'd St. Bd. 80:1488)

Transfer of department head to teaching position proper

where

petitioner qualified to serve as subject supervisor in only one discipline (82: May 14, Bisler, aff'd St. Bd. 82: September 8, aff'd App. Div. unreported opinion Docket No. A-520-82T3, decided January 10, 1984)

TENURE - continued

Acquisition of - continued

held Transfer of departmental supervisor to social worker;
summer service may not be included within
definition of academic year service (84: April 9,
Strangia, aff'd St. Bd. 84: October 3, aff'd App.
Div. unreported op. (Docket No. A-1121-84T6,
decided May 13, 1986))

teacher Transfer of supplemental teacher to special education
aide, whereby duties of new position were same as
old. Held: Board's action was one of "Subterfuge
and evasion" to deny tenure (87:1367, Pallarino)

N.J.S.A. Transfer of tenured teachers upon closing of school per
18A:28-6.1; tenure is transferred to new district
only if transfer is by consensual agreement of the
districts, In re Closing of Jamesburg High School,
83 N.J. 540 (1980)

petitioner Transfer; N.J.S.A. 18A:28-6 not applicable where
terminated and rehired (84:999, Roberts, aff'd St.
Bd. 84:1026)

Transportation supervisor cannot acquire tenure
(75:917, Ruffini)
Unrecognized job title (80: July 30, Heyman, aff'd St.
Bd.
80: November 5) (87:1057, DeGise, aff'd St. Bd.
87:1063, aff'd unpublished op. App. Div. (Dkt. No.
A-694-87T7, December 15, 1988))

toward tenure Unrecognized title - Dean of Students - time counts
acquisition as teacher (87:1057, DeGise,
aff'd St. Bd. 87:1063, aff'd App. Div.
unpublished op. (Dkt No. A-694-87T7,
December 15, 1988))

Dismissal or reduction in salary

Generally, In re Fulcomer, 93 N.J. Super. 404 (App.
Div. 1967)
(C. dec. 61-62:160, 64:142, on remand 67:215; St.
Bd. 63:251, 66:225, on remand 67:220)

demotions Abolition of position in good faith; transfers,
and dismissals resulting therefrom do not
violate tenure laws (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)
(76:970, Vanderbeck) (77:555, Wilson) (81:
August 18, Kigerl, aff'd St. Bd. 81:
December 2) (83:96, Mackey)

contract out

Abolition of position: Board's decision to

for custodial services in good faith does not
in itself violate tenure rights as
established by N.J.S.A. 18A:17-3 and N.J.S.A.
18A:17-4 (86:459, Hunterdon Central H.S.
Educ. Assoc., St. Bd. rev'g in part, aff'g in
part 86:459, aff'd App. Div. unreported op.
(Dkt. No. A-5036-87T2, June 28, 1989))
(See also "Abolition of Position", this

index)

Board may not attach conditions to reappointment

of tenured

teachers (80: June 11, Sheets, St. Bd. rev'g
79:790)

TENURE - continued

Dismissal or reduction in salary - continued

Criminal conduct - (See also "Forfeiture", this Index)
Generally; criminal conviction, forfeiture under

N.J.S.A.

2C:51-2 (83:173, Kendall, aff'd St. Bd. 83:182) (83: June 1, Grover); tenure protections do not extend to criminal conviction exposing board employee to forfeiture (80: December 22, Fridy, aff'd with modification St. Bd. 81: May 6, aff'd App. Div., unpublished opinion (Docket No. A-4470-80T3, decided January 26, 1983), remanded App. Div., unpublished opinion (A-4470-80T3, decided March 8, 1983), decision on appeal aff'd St. Bd. 84: May 2), Cox v. State Board of Examiners, unpublished opinion, App. Div. (Docket No. A-3527-81T3, decided November 18, 1983) (83: June 1, Grover) (84: April 5, Ash) (85: March 18, Fulcoli) (87:2010, Parker)

Acquittal of criminal charge, Commissioner may

sustain

tenure charge of unbecoming conduct arising from same incident (83: September 6, LaTronica, aff'd on remand from Commissioner's decision 83: November 9)

Acquittal of criminal charge, Commissioner may

sustain

tenure charge of unbecoming conduct arising from same incident, however, there must be a residuum of competent evidence to support the board's charges and to avoid the fact or appearance of arbitrariness (87:719, Harris)

Barring tenured teacher from returning to teaching position because of pending criminal charges improper absent filing of tenure charges or evidence of criminal conviction (82: May 25, Fairfield, aff'd St. Bd. 82: September 8); but see N.J.S.A. 18A:6-8.3, (80: December 22, Fridy, aff'd with modification St. Bd. 81: May 6, aff'd App. Div., unpublished opinion (Docket No. A-4470-80T3, decided January 26, 1983), remanded App. Div., unpublished opinion (A-4470-80T3, decided March 8, 1983), decision on appeal aff'd St.

Bd. 84: May 2) (88: September 1, Fargo);
but see N.J.S.A. 18A:6-14
Board's failure to certify charges irrelevant as

to

dismissal since forfeiture upon conviction of
crime involving moral turpitude was automatic
(83:173, Kendall, aff'd St. Bd. 83:182)
(84:298, Earl, aff'd St. Bd. 84:310)

required to

Board's vote of 5 members on 9 member board is
certify charges'
presence of full
membership of board
no required; roll
call vote not
required (89:
February 21, Gordon)

TENURE - continued

Dismissal or reduction in salary - continued

Criminal conduct - continued

Convicted of Certification of charges; tenured employee,

fraud, a crime involving moral turpitude, forfeited the position immediately upon conviction, board need not certify charges Cox v. State Board of Examiners, unpublished opinion, App. Div. (Docket No. A-3527-81T3, decided November 18, 1983) (83:173, Kendall, aff'd St. Bd. 83:182)

Collateral estoppel

estop a Doctrine may be used in tenure hearing to

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

of the Doctrine not applicable since the dismissal

criminal charges did not automatically bar consideration of the tenure charges (87:861, Roemmelt, aff'd St. Bd. 88:2527, aff'd App. Div. unpublished op. (Dkt. No. A-3303-87T7, January 25, 1989))

possession Controlled dangerous substances, conviction for

and intent to deliver is equivalent to conviction of crime of third degree, tenured teacher forfeited his position as of date of sentencing under N.J.S.A. 2C:51-2 (84:298, Earl, aff'd St. Bd. 84:310)

teacher Conviction of crime in another state, tenured

held to have forfeited position under N.J.S.A. 2C:51-2 (84:298, Earl, aff'd St. Bd. 84:310)

functional Criminal accusation filed by prosecutor was

equivalent of indictment, teacher waived
right to indictment for purposes of
suspension without pay (85:1394, Yrigoyen)
Criminal arrest; board may suspend without pay by
certifying tenure charges or by reason of
indictment, otherwise payment of salary
obligatory (88:793, Slater, aff'd St. Bd.
88:808, rev'd, remanded 237 N.J. Super. 424
(App. Div. 1989))
Criminal charges (85:946, Wallwork)
Criminal indictment; salary shall be suspended

pursuant

to N.J.S.A. 18A:6-8.3 (83:1343, Martin, aff'd
with mod. St. Bd. 84:1962, aff'd in part
rev'd in part App. Div. unpublished opinion
(Docket No. A-5503-83T6, decided July 17,
1985)

TENURE - continued

Dismissal or reduction in salary - continued

Criminal conduct - continued

Criminal indictment; suspension of salary not automatic

when employee previously suspended pursuant to certification of tenure charges (83:1343, Martin, aff'd with modification St. Bd. 84:1962, aff'd in part rev'd in part App. Div. Docket No. A-5503-83T6, July 17, 1985)

(85: Disability retirement renders tenure charges moot 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. den. 107 N.J. 123 (1987), St. Bd. on remand 86:3115)

Dismissal of criminal charges does not divest Commissioner

of jurisdiction in tenure hearing (78:526, Dusel, aff'd St. Bd. 79:155) (81: April 21, Saunders, aff'd St. Bd. 81: September 2) (87:861, Roemmelt, aff'd St. Bd. 88:2527, aff'd App. Div. unpublished op. (Dkt. No. A-3303-87T7, January 25, 1989))

Dismissal of criminal charges which were sole basis of

tenure charges; tenure charges dismissed (82: February 17, Sager)

Dismissal upheld, despite completion of pre-trial intervention program (80:721, Wolfe, aff'd St. Bd. 80:728, aff'd App. Div. 81:1537, decided October 5, 1981)

Disorderly persons conviction (89:1996, Molinaro, aff'd St. Bd. 90:1773)

Disorderly persons conviction; doesn't involve dishonesty or crime of third degree or higher, therefore doesn't compel automatic forfeiture of public office (85:933 Lieb)

Expungement of record of arrest does not preclude prosecution of tenure charges which are based on same circumstances leading to arrest (80:721, Wolfe, aff'd St. Bd. 80:728, aff'd App. Div. 81:1537, decided October 5, 1981)

Forfeiture: Failure to inform a defendant that

his guilty

plea and resulting conviction of a crime of third degree or above would lead to forfeiture of his public employment is not grounds for vacating teacher's guilty plea. State v. Heitman, 107 N.J. 603 (Sup. Ct. 1987)

guilty if

Forfeiture; occurs upon conviction or plea of

the court so orders or upon sentencing, N.J.S.A. 2C:51-2 (83:1343, Martin, aff'd with mod. St. Bd. 84:1962, aff'd in part rev'd in part App. Div. unpublished opinion (Docket No. A-5503-83T6 decided July 17, 1985) (84: April 6, Ash)

TENURE - continued

Dismissal or reduction in salary - continued

Criminal conduct - continued

Forfeiture - continued

(85: March 18, Fulcoli) (86:612, Cotsakos)
(86:649, Woodward) (86:656, Wisdom, aff'd St.
Bd. 86:667) (86: July 15, De George) (86:
August 25, Hall) (87:2010, Parker) (87:2212,
Breece); but see (80:721, Wolfe, aff'd St.
Bd. 80:728, aff'd App. Div. 81:1537, decided
October 5, 1981)

admitted

Forfeiture statute not applicable where defendant

to pretrial program for first time drug
offenders (84: August 16, Arocha and
Gonzales, St. Bd. aff'd in part, rev'd in
part on other grounds 85: April 3)

offense if

Forfeiture will be ordered for drug related

established at hearing that position involved
student contact (85: April 3, Arocha and
Gonzales, St. Bd. rev'g in part 84: August
16)

office upon

N.J.S.A. 2A:135-9 provided for forfeiture of

conviction of offense involving moral
turpitude. N.J.S.A. 2C:51-2, repealing
N.J.S.A. 2A:135-9, and applicable to offenses
committed after September 1, 1979, provides
for forfeiture of office, upon date of
sentencing, for a crime involving dishonesty,
a crime of the third degree or above, or an
offense touching the administration of the
office. Cases decided under N.J.S.A.
2A:135-9:

issue of

Commissioner required to hold hearing on

moral turpitude (79:839, Humphreys, St.
Bd. rev'g and remanding 78:689) (82:
May 5, Tanelli, St. Bd. rev'g and
remanding 81: September 18)

(80:

Offense found to constitute moral turpitude

December 22, Fridy, aff'd with
modification St. Bd. 81: May 6, aff'd
App. Div., unpublished opinion (Docket

No. A-4470-80T3, decided January 26, 1983), remanded App. Div., unpublished opinion (A-4470-80T3, decided March 8, 1983), decision on appeal aff'd St. Bd. 84: May 2) (81: February 5, Kim) (81: April 21, Saunders, aff'd St. Bd. 81: September 2)

petition

Tenure charges need not be filed; board may

Commissioner for declaratory judgment as to forfeiture (80: December 22, Fridy, aff'd with modification St. Bd. 81: May 6, aff'd App. Div., unpublished opinion (Docket No. A-4470-80T3, decided January 26, 1983), remanded App. Div., unpublished opinion (A-4470-80T3, decided March 8, 1983), decision on appeal aff'd St. Bd. 84: May 2)

TENURE - continued

Dismissal or reduction in salary - continued

Criminal conduct - continued

"Offense involving dishonesty" N.J.S.A.

2C:51-2a(1):

(shoplifting) requires automatic forfeiture of public employment (86:1945, Timmons, aff'd St. Bd. 86:1958, aff'd App. Div. unreported decision (Docket No. A-2518-85T8, decided November 13, 1987))

classroom,

Possession of under 25 grams of marijuana in

during school hours, conviction of offense under such circumstances results in forfeiture of teaching position under

N.J.S.A. 2C:51-2a(2) (83: September 1, Cito)
Settlement agreement; rejected where settlement

did not

protect students of other districts from a possibly unfit teacher pending adjudication of criminal charges for drug possession and distribution; remanded (88: September 1, Noll)

conditional

Termination unduly harsh; completed terms of

discharge program (83: October 17, Passero)
Employees of state educational institutions (80:

August 27,

Brownstein) (80: September 29, Connolly)
Extended paid sick leave under N.J.S.A. 18A:30-2.1
Board certification of tenure charges for

incapacity

due to work related injury five months after
such injury, violates statute (83: July 21,
Verga)

Failure of board to certify under oath the evidence
supporting charges; held no violation since teacher
responded (77:934, Puryear)

Free speech

Tenure charges dismissed where board held to have
certified charges in response to tenured
teacher's letter, printed in newspaper, which
criticized board (84:35, Trautwein, decision
on remand from Commissioner's decision 83:
May 19)

brought

Tenure proceedings restrained where charges were

by board president for purposes of harassment
and retaliation for teachers' exercise of
First Amendment right of free speech (Wichert
v. Walter, 606 F.Supp. 1516 (D.N.J. 1985))

salary

Increment, denial of does not constitute reduction in

under tenure laws, Kopera v. West Orange Bd. of
Ed., 60 N.J. Super. 288 (App. Div. 1960); Offhouse
v. St. Bd. of Ed., 131 N.J.L. 391 (Sup. Ct. 1944);
(66:167)

from pursuing

Increment withholding charges do not preclude board

tenure charges (88:661, Cipollini, aff'd St. Bd.
88:678)

pending disposition of criminal proceedings, Ott v. Bd. of Ed. of Hamilton Tp., 160 N.J. Super. 333 (App. Div. 1978) certif. denied 78 N.J. 336 (1978)

tenure

Board, in deciding whether or not to certify

charges, must plainly articulate the reasons for its determination, Manalapan-Englishtown Ed. Assn. v. Bd. of Ed., 187 N.J. Super. 426 (App. Div. 1981) (rev'g and remanding 79:505, aff'd St. Bd. 80:1513)

to

Board members' personal interest tainted vote

certify tenure charges, charges dismissed (85:118 Colella) see (84: October 12, Colella)

violated Oath

Board member's personal interest; voting

of Office and Code of Ethics, but did not warrant dismissal of tenure charges (77:95 Buch) (88:21, Napol i, aff'd St. Bd. 88:284, stay denied St. Bd. 89: February 1,

aff'd
App.
Div.
unpub
. op.
(Dkt.
No.
A-
2301-
88T3,
March
2,
1990)
)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Boards of education - continued

Board must comply with Open Public Meetings

Act and

advertise closed meeting at which tenure charges will be considered (82: October 1, Gandia)

paid and

Board, not jointure commission, employed,

evaluated the tenured employee, and thereby had the authority to certify charges against the employee (83: January 17, Dullea, aff'd St. Bd. 83: July 6)

charges

Board not precluded from certifying tenure

while action to withhold increment is pending, (80:204, DeMarco, aff'd St. Bd. 80:227) and vice versa increment may be withheld while tenure charges pending (82:274, Gilbert, aff'd St. Bd. 82:328, motion to reopen denied St. Bd. 90: November 19, motion for reconsideration denied St. Bd., 91:2553) (82:1358, Sokolow, aff'd St. Bd. 83:1645)

Board ordered to immediately determine whether probable cause exists to certify tenure changes to Commissioner; 45 day period had expired (89: October 23,

Rotonda)
Board vote of five members on nine member
board is required to certify charges; presence of
full membership of board not required;
roll call vote not required (89:
February 21, Gordon)
Board's failure to certify charges within 45
days warrants dismissal, but respondent's
delay in moving for dismissal precludes
award of back pay (81: September 18,
Siedlarczyk) but see (82: February 5,
Siedlarczyk, aff'd St. Bd. 82: August
4) partial back pay awarded in separate
action
Charges should be considered by board at
private meeting despite Sunshine Law, Cirangle
v. Maywood Bd. of Ed., 164 N.J. Super.
595 (Law Div. 1979) (79:605, Karsen,
aff'd St. Bd. 80:1506)
Decision to certify charges; upon
determination that there is probable cause that charge is
credible, board must also determine
whether the charges, if sustained,
warrant dismissal; Commissioner may not
substitute his judgment for the board's
(85: February 6, Ridgefield Park Ed.
Assn., St. Bd. rev'g 84: June 25)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Boards of education - continued

Failure to allow 15 days for response to charges prior

to certification is a deficient procedure; charges dismissed (82: July 12, Hamlin) (83: July 21, Verga) (86:2364, Mosellie)

Failure to provide employee with written charge and

statement of evidence as provided under N.J.S.A. 18A:6-11, charges dismissed (83: July 21, Verga) (85:1770, Kunz) (86:356, Harrell) (86:640, Rubenstein) (86:2364, Mosellie) (86:2705, Hamlen)

Failure to separately consider probable cause of each

tenure charge is not fatal to action, when board has otherwise strictly complied with N.J.S.A. 18A:6-11 (80:204, DeMarco, aff'd St. Bd. 80:227) but see (80:729, Dinich), where this was one of procedural errors leading to dismissal of tenure charges)

Inability to serve teacher with notice of charges

(80: May 14, Fancera)

Must examine evidence in support of charges, give

proper consideration once written charges are filed (63:116) (68:248, aff'd St. Bd. 70:449) (71:37)

Hearing before, not statutorily required (70:120)

(73:201)

Prior to certification of charges for absences,

board must request an explanation and fail to receive same (76:773, Martz, aff'd St. Bd. 76:791); but see (77:403, Reilly)

Principal's notice to board of teacher's uncorrected inefficiencies not required to be under oath (89: February 21, Gordon)

Refusal to certify charges:

probable

Board must (1)determine whether there is

cause to credit charges and (2)whether the charges, if sustained, warrant dismissal. As to second requirement, the Commissioner may not substitute his judgment for that of the board (87:641, Edwards, aff'd St. Bd. 87:678)

Refusal to certify charges is reviewable by Commissioner (76:14, Dennis) (74:299, aff'd St. Bd. 74:315, aff'd App. Div. 75:1073, dismissed as moot 77: May 31); see also (68:248, aff'd St. Bd. 70:449) (78: June 22, Willingboro, unpublished

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Boards of education - continued

opinion) (79:505, Manalapan-Englishtown,
aff'd St. Bd. 80:1513) (80: March 20,
Veszi, aff'd St. Bd. 80: July 2)
Manalapan-Englishtown Ed. Assn. v. Bd.
of Ed., 187 N.J. Super. 426 (App. Div.
1981) (reversing and remanding 79:505,
aff'd St. Bd. 80:1513)

Boards not required to inform employee that she
has a right to respond to tenure charges within 15
days, or to notify her when board will meet
to consider charges, although notification is
desirable (86:2705, Hamlen), (89: February
21, Gordon)
Burden of proof on board to establish charges by
preponderance of evidence (73:48) (74:631)
(78:526, Dusel, aff'd St. Bd. 79:155)
(78:677, Versocki) (78:929, Ribacka) (82:
February 17, Sager) (83: March 4, Schafer,
aff'd St. Bd. 83: December 7) (88:2162,
Burnside)
Certification of charges to Commissioner,
confusion as to date (80:729, Dinich)
Certification of charges to Commissioner must be
timely filed (85:1770, Kunz) (86:356, Harrell)
Certification of charges two years after
suspension of teacher - no critical prejudice to teacher
found (88:695, Jackson, aff'd w/modif.
88:721)
Charges and specifications must be clearly drawn
(82: March 9, Edwards)
Collateral estoppel
Doctrine may be used in tenure hearing to
estop a teacher from denying facts which
sustained conviction of a criminal
offense; Note, offense in instant matter
occurred prior to effective date of
N.J.S.A. 2C:51-2 (Orazio Tanelli, 194

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

mechanically

Orazio Tanelli, 194 N.J. Super. 492
(App. Div. 1984), certif. den. 99 N.J.
181 (1984), aff'g (83:1646, St. Bd.
rev'g 82: September 9)

Commissioner of Education

Charges dismissed; board charges

(incompetency and

unbecoming conduct) lack merit (88:1628,
Cooper)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Commissioner of Education - continued

certified
Charges dismissed; board held to have charges as a result of constitutionally protected exercise of free speech (84:35, Trautwein, decision on remand from Commissioner's decision 83: May 19)

hostile,
Charges dismissed; board witnesses were disruptive students (81: June 1, Kazanchy)

equal
Charges dismissed; conflicting testimony of weight (80: October 24, Murphy)

uncertified
Charges dismissed; dismissal of prior charges of inefficiency does not prohibit the use of such charges as evidence in support of new charges (87:218, Jackson, aff'd St. Bd. 87:258)

Commissioner
Charges dismissed-procedural defect; will not accept a dismissal by stipulation where the procedural defect is not documented or reflected in the record. Determination as to whether a procedural defect is serious enough to warrant dismissal rests with the Commissioner (85: August 30, Harrell)

flawed
Charges dismissed; procedural defect fatally the proceeding (84:2047, Verost v. Bd. of Ed. of Village of Ridgewood, published opinion, App. Div. (Docket No. A-4804-82T5, decided February 6, 1984) certif. denied 97 N.J. 593 (1984), aff'g 82: October 18, modified as to procedural defect, aff'd as to result St. Bd. 83:1654) (83: July 21, Verqa)

two board
Charges dismissed: personal interest where members filed criminal complaint against

principal, their vote in support of certifying tenure charges on same facts tainted vote; abstention proper (85:118 Colella) see (84: October 12, Colella) Charges dismissed with prejudice where board

lacks

sufficient evidence to bring matter to a hearing (86:1252, Molinaro)

determine

Commissioner has exclusive jurisdiction to

fitness for teaching; fact that tenure charges were based on allegations of sexual harassment and discrimination which were heard by Division of Civil Rights does not preclude Commissioner's

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Commissioner of Education - continued

Commissioner has exclusive jurisdiction -

continued

consideration of tenure charges, In the Matter of the Tenure Hearing of Samuel C. Capalbo, (App. Div., unpublished op. (Dkt. No. A-4686-83T6, July 17, 1985), certif. den. 102 N.J. 336 (1985); aff'g St. Bd. 84: February 1, aff'g 83: October 31)

Commissioner decides entire controversy

including

penalty (67:73) (67:201) (67:215) (71:387) (74:578) (75:366, Campbell) (77:197, Scurrile) (77:261, S.S.) (77:603, Mamatz) (82: May 6, Castaldo, remanded 83: March 9) interlocutory orders (84: January 4, 83: November 2, St. Bd. rev'g 83: June 10); see (84:685, Castaldo, aff'd St. Bd. 84:768, aff'd App. Div. unreported opinion (Docket No. A-2131-84T6, decided June 20, 1986) certif. den. 107 N.J. 164) (83: April 6, Trotta, St. Bd. rev'g 82: May 10) (82: September 7 and 82: October 27, Klemmer) (82: November 8, Halley, aff'd St. Bd. 83: May 4) (83: January 7, Wheeler)

Commissioner's decision, unless arbitrary or

an abuse

of discretion, will not be overturned by interlocutory appeal (79: June 6, Wolfe, unpublished opinion)

Consolidation of tenure and unfair labor

practice

matters (82:274, Gilbert, aff'd St. Bd. 82:328, motion to reopen denied St. Bd. 90: November 19, motion for reconsideration denied 91:2553) (87: February 19, DiCerbo, aff'd w/modif. St. Bd. 87: July 1)

Defers to judgment of hearing examiner in

determining

credibility of witnesses (80:204, DeMarco, aff'd St. Bd. 80:227) (80:431, Nacht) (82: March 2, Driscoll, aff'd St. Bd. 82: September 8, aff'd unpublished opinion, App. Div. (Docket No. A-798-82T2, decided October 28, 1983)) (84:1216, Brody, aff'd St. Bd. 84:1247, aff'd Div., unreported opinion, (Docket No. A-1326-84T7, decided March 27, 1986) but see (84: November 7, Deetz, St. Bd. rev'g 83: August 4, aff'd App. Div. unpublished op. (Docket No. A-1264-84T5, May 10, 1985), certif. den. 101 N.J. 321 (1985)) (83:225, McClelland, aff'd St. Bd. 83:247)

Delay in hearings caused by charged employee

(74:662)

Delay, no denial of due process (77:934,

Puryear)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Commissioner of Education - continued

charge to

Employee allowed 15 days after receipt of

file position statement with supporting evidence (77:451, Feitel, aff'd St. Bd. 77:458) (80: February 6, Murphy) (82: July 12, Hamlin) (83: July 21, Verga) (86:42, Matter of the Tenure Hearing of Cowan, aff'd St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App. Div. 1988))

Commissioner

Forty-five day limit to forward charges to

does not begin until board receives statement of position from employee (80: February 6, Murphy) (80: June 2, Jackson, aff'd St. Bd. 81: January 22) (85: August 30, Harrell) (86:42, Matter of the Tenure Hearing of Cowan, aff'd St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App. Div. 1988))

employee's

Jurisdiction lies with Commissioner, where

employment with Board and private food

contractor are inextricably intertwined
(82: May 3, Davis)
Labeling charges (77: August 17, Spangler,
unpublished opinion)
Not bound by rules of criminal evidence
(78:526, Dusel,
aff'd St. Bd. 79:155)
Orders board to file application for
disability for
teacher dismissed for abuse of sick
leave (81: April 24, Canzonier)
Purpose of hearing is to convince
Commissioner
charges are true (77:513, Guasconi,
aff'd St. Bd. 77:517) (77:603, Mamatz)
(77:976, Levitt, aff'd St. Bd. 78:1027,
aff'd App. Div. 79:847) (75:366,
Campbell)
Refuses to dismiss tenure charges because of
board's
failure to pay salary of suspended
teacher (80: August 7, Guma, aff'd St.
Bd. 80: December 3)
Retirement on disability; charges dismissed
(82: January 6,
Kopel)
Review of ALJ decision; Commissioner, as
agency head,
is charged with the responsibility of
making the final decision;
Commissioner's review of initial opinion
is not one of appellate review.
Caporaso, Tenure Matter of, App. Div.
unreported opinion (Docket No.
A-4558-85T6, decided March 19, 1987)
rev'g 85: October 12, aff'd with
opinion St. Bd. 86:3024, on remand
87:1664, aff'd St. Bd. 87:1668,

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Commissioner of Education - continued

Review of ALJ decision - continued

aff'd App. Div. unreported op. (Dkt. No. A-2498-87T7, November 15, 1988))

(87:599, Eberly, St. Bd. rev'g and remanding 87:553, decision on remand 87:601, decision on motion 88:2441, aff'd St. Bd. 88:2447) (87:170, Onorevole, St. Bd. rev'g 87:96)

Review of board's decision whether or not to certify

tenure charges must be based on findings which support the Commissioner's ruling, Manalapan-Englishtown Ed. Assn. v. Bd. of Ed., 187 N.J. Super. 426 (App. Div. 1981) (reversing and remanding 79:505, aff'd St. Bd. 80:1513)

Reviews refusal of board to certify charges (76:14,

Dennis) (77:261, S.S.) (74:299, aff'd St. Bd. 74:315, aff'd App. Div. 75:1073, dismissed as moot 77: May 31); see also (68:248, aff'd St. Bd. 70:449)

Manalapan-Englishtown Ed. Assn. v. Bd. of Ed., 187 N.J. Super. 426 (App. Div. 1981) (reversing and remanding 79:505, aff'd St. Bd. 80:1513) See Procedure under Tenure Hearing Act - Boards of Education - Refusal to certify charges Compensation for wrongful dismissal per N.J.S.A.

18A:6-30.1

(80: August 21, Zielinski)

Death of employee renders matter moot; dismissed with

prejudice (87: November 9, Brown)

Delay; respondent's failure to respond to notice of hearing

justifies board's continuation of suspension without pay after 120th day (81: October 5, Davis)

Depositions

May be ordered by hearing examiner (79: June 6, Wolfe,

aff'd St. Bd. 80: November 5, aff'd
App. Div., unpublished opinion, (Docket
No. A-1610-80T2, October 5, 1981)
Evidence must support charges (85:946, Wallwork)
(85:1770, Kunz) (86:640, Rubenstein) (87:719,
Harris)
Failure of board to provide employee with 15 days

to

respond to proposed tenure charges before
certification to Commissioner, charges
dismissed (86:2364, Mosellie) (87: January
29, Ferenczi)

Failure of employee to appear at hearing (68:253)
(71:259) (72:74) (72:259) (72:507) (73:235)
(74:139) (74:213) (74:734) (74:1307) (75:18,
Hayes) (75:187, Palinkas) (75:616, Caputo)
(75:722, Mazzola) (76:243, Ford) (76:979,
Jeffers) (82: July 30, Prince) (83:490,
O'Hara, aff'd St. Bd. 84:2002, aff'd App.
Div.

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Failure of employee to appear - continued

unreported opinion (Docket No. A-3128-83T3,
decided August 30, 1985) (85:1413 Gaston)
(86:1232, Figueroa) (88:2384, Marion,
dismissed St. Bd. 89: April 5)

motion to

Failure of employee to respond (77:435, Kaplan,

reopen dismissed 77:436) (77: May 23,
Schulman, unpublished opinion) (77:1117,
Ryan) (77:1178, Bradshaw) (82: July 29,
DeBenedittis) (85: July 8, Connors) (88:
April 6, Sodora) (89: November 13, Scriven)

will result

Failure to comply with procedural requirements

in dismissal of charges (82: March 9,
Edwards) (85:946 Wallwork) (86:356, Harrell)
(87: January 29, Ferenczi)

charges (80:

Failure to supply employee with copy of tenure

729, Dinich) (86:356, Harrell)

Inefficiency charges

Assistance to employee in overcoming

inefficiency during 90 day period for improvement; assistance found proper where supervisory personnel evaluated employee and offered suggested improvements before and after filing of charges (84:2006, Rowley, St. Bd. rev'g 83: May 23, rev'd and remanded 205 N.J. Super. 65 (App. Div. 1985) decision on remand St. Bd. 86:3127, settlement approved)

inefficiency Assistance to employee in overcoming during 90 day period for improvement, assistance necessary depends on circumstances, assistance provided held proper (84:269, Fodor, aff'd with modification St. Bd. 84:297)

inefficiency Assistance to employee in overcoming during 90 day improvement period; State Board failed to consider entire record; order dismissing employee reversed, matter remanded. 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)

inefficiency and Charges dismissed; proofs pointed to board certified charges of incompetency (84:333, Nafash)

strictly Notice of inefficiency; failure of board to comply with the notice requirements of Kagdis, 80:888, does not necessarily require dismissal of charges (84: March 7, Roberts, St. Bd. rev'g 83: April 19)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Inefficiency charges - continued

inefficiency Procedures for certification of charges of

pursuant to N.J.A.C. 6:24-5.1(c) 3 & 4 are mandatory. Charges dismissed for failure to comply with requirements of notice and modification of PIP (87:1683, Triana)

retention Interest awarded to petitioner due to wrongful

of salary by the Board (85:1753 Bryan) (85:1770 Kunz)

Interlocutory appeal

depositions Decision of hearing examiner not to order

may be subject of interlocutory appeal (79: June 6, Wolfe, aff'd St. Bd. 80: November 5, aff'd App. Div., unpublished opinion (Docket No. A-1610-80-T2, October 5, 1981)

without pay Suspension due to an indictment shall be

(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)

must Intervention by third parties not permitted; board

prosecute certified charges (74:631)

tenure Laches as a defense is inapplicable in a teacher

matter (86:42, Cowan, aff'd St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App. Div. 1988)

delay action Laches not a defense when board itself did not

upon learning of incident and where teacher suffered no detriment (80:987, Blasko, modified in part, aff'd in part St. Bd. 81: February 4, motion for reconsideration denied St. Bd. 81: April 1)

(80: Letter of reprimand in teacher's file, permissible

December 4, Philbin)

seek Mitigation of damages; teacher's responsibility to

other, equivalent employment, even though
wrongfully dismissed (81: June 18,
Zielinski)

Notice of charges to employee "forthwith" must be
interpreted given the circumstances of each
particular case (87: February 19, DiCerbo,
aff'd w/modification St. Bd. 87: July 1)

Notice of inefficiency

Bd. 76:791) Adequate (70:159) (76:773, Martz, aff'd St.

(77:967, Secula, aff'd St. Bd. 77:975)

must notify

After expiration of 90 days, administrator

board of employee performance within
three working days (80:888, Kagdis)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Notice of inefficiency - continued

After expiration of 90 days, board must
notify employee

of status of charges within three
working days after receipt of
administrators' report (80:888, Kagdis)
(81: April 13, Lazar, aff'd St. Bd. 81:
August 5)

charges

Full 90 days must be given for inefficiency

(68:189) (70:335) (72:650) (73:721 aff'd
St. Bd. 75:1160) (74:323) (74:867)
(77:11, Reilly) (77:451, Feitel, aff'd
St. Bd. 77:458, charges dismissed 78:
July 28) (85:374, Tenney)

send it

Invalid, only board or board secretary may

(77:1129, Levine, aff'd St. Bd. 78:1026,
aff'd App. Div. 79:846) (77:451, Feitel,
aff'd St. Bd. 77:458, charges dismissed
78: July 28)

working days

Must be given to employee within three

of board resolution (80:888, Kagdis)

correction

Must specify inefficiencies and kind of

expected (68:189) (70:335) (76:773,
Martz, aff'd St. Bd. 76:791)

inefficiency will

Notice of inefficiency must be specific (80:
August 6, Spangler)

Required to be given, or charges of

specific

be dismissed (81: October 5, Davis)

Statement of evidence must be reasonably

period for

(82: March 9, Edwards)

Within 45 days after expiration of 90 day

correction of inefficiency, charges must
be certified to Commissioner (75:163,
Masone) (76:902, Masone) (76:913,
Masone) (77:1129, Levine, aff'd St. Bd.
78:1026, aff'd App. Div. 79:846)

Penalty

aff'd

Appropriateness (82: February 25, Wells,

St. Bd. 82: July 7) (82: May 3, Davis)
(82: July 19, Hay) (83: February 25,
Mickens) (83:414, Lantz) (84:1216,
Brody, aff'd St. Bd. 84:1247, aff'd App.
Div. unreported opinion (Docket No.
A-1326-84T7, decided March 27, 1986))

Charges sustained - gambling on school
property; psychiatric exam ordered to
determine if deviation from normal
mental health exist (89:2836, Schnitzer)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Penalty - continued

Commissioner's decision placed in teacher's
file as
penalty (80:449, Brody); effect of
placement in file (84:1216, Brody, aff'd
St. Bd. 84:1247, aff'd App. Div.
unreported opinion (Docket No.
A-1326-84T7, decided March 27, 1986))
Commissioner directs that employee be placed
at
pre-suspension salary level for one year
after reinstatement (81: September 21,
DeMarco, aff'd St. Bd. 82: March 3)
of
Corporal punishment of pupils, determination
penalty under Fulcomer, 93 N.J. Super.
404 (App. Div. 1967) and Redcay, 130
N.J.L. 369 (Sup. Ct. 1943), aff'd 131
N.J.L. 326 (E&A 1944)
Determining appropriate penalty: Must
consider all
relevant circumstances, including: (1)
nature and gravity of offense, (2) any
evidence of provocation, (3) extenuation
or aggravation and (4) any harm or
injurious effect that conduct may have
had on the maintenance of discipline and
proper administration of school system;
5) past record (85:1110, Ferenz, St. Bd.
rev'g pen. 87:2602, aff'd App. Div.
unreported op. (Dkt. No. A-1309-87T7,
April 18, 1989))
Dismissal unwarranted but penalty imposed
conditioned
Reinstatement after 150 day suspension
by successful participation in
approved alcohol treatment program
(85:1800 Martin, aff'd St. Bd.
86:3093, decision on remand
87:1929)
Reinstatement with forfeiture of back
salary
from time of suspension of

reinstatement for excessive
absenteeism (85: May 13,
Tonarello)

Reinstatement with forfeiture of 120
days salary and 14 months
suspension without pay for illegal
gambling activity (89:2836,
Schnitzer, dec. on penalty 90:
April 27)

Reinstatement with forfeiture of 120

days

salary where teacher with 25 years
exemplary service violated school
procedures and also resorted to
unprofessional, albeit innocuous
physical contact with pupil
(83:973, Ziobro)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Penalty - continued

Dismissal unwarranted but penalty imposed -

continued

Reinstatement with forfeiture of 150

days salary

or forfeiture of increments for periods while suspended, whichever is greater (88:1673, Martin)

months salary

Reinstatement with forfeiture of six

plus loss of salary increments for two years (87:1895, Tyler, decision on remand 88:293, aff'd w/modif. 88:308, aff'd 236 N.J. Super. 478 (App. Div. 1989))

and loss

Reinstatement with loss of 120 days pay

of salary increment (87:1764, Yorke, aff'd St. Bd. 87:1787, aff'd App. Div. unreported op. (Dkt. No. A-2288-87T8, March 17, 1989))

salary and

Reinstatement with loss of 120 days

loss of increment for improper physical force (87:861, Roemmelt, aff'd St. Bd. with opinion 88:2527, aff'd App. Div. unpublished op. (Dkt. No. A-3303-87T7, January 25, 1989))

salary for

Reinstatement with loss of 6 month's

excessive use of physical aggression on pre-K handicapped (89:1266, Jamrogowicz)

year's

Reinstatement with forfeiture of one

salary increment where teacher's unauthorized leave of absence consistent with such conduct by other teachers and educational program not disrupted (84: January 30, Markovich)

salary and

Reinstatement with loss of 120 days'

increment for excessive absenteeism
(84: March 8, Burns, aff'd St. Bd.
84: October 24) (85:1572, Marsden,
aff'd St. Bd. 87:2628)

120 days

Reinstatement with loss of increment and

pay for permitting female student
to sit on lap (87:2602, Ferenz, St.
Bd. aff'd in part and rev'g in part
85:1110, aff'd App. Div. unreported
op. (Dkt. No. A-1309-87T7, April
18, 1989))

Reinstatement with loss of one month's
salary and denial of salary
increment where teacher inflicted
non-malicious, unpremeditated
corporal punishment (84:1986,
Nogaki, St. Bd. rev'g Commissioner
decision 83:890)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Penalty - continued

Dismissal unwarranted but penalty imposed -

continued

Reinstatement with loss of three months' salary

where infractions minor and increment withheld by board (83:836, Tennessee, aff'd St. Bd. 84:2042)

Reinstatement with loss of increment plus

forfeiture of 120 days salary where teacher engaged in unprofessional conduct

and
faile
d to
recog
nize
respo
nsibi
lity
for
his
actio
ns.
(89:1
65,
Pinto
,
aff'd
St.
Bd.
89:20
7
(with
Opini
on)

plus three

Reinstatement with loss of increments

months salary plus 120 days pay
(89:1996, Molinaro, aff'd St. Bd.
90:1773)

120 days

Reinstatement with loss of salary for

while under suspension together
with loss of increments for two
successive years, for unintended
corporal punishment and offensive
touching (85:1467, Apkarian, on
remand 86:1889, aff'd St. Bd.
86:1916, aff'd App. Div. unreported
opinion (Docket No. A-927-86T8,
decided November 20, 1987))

increment for

Reinstatement with loss of salary

conduct unbecoming (85:933, Lieb)
Superintendent ordered reinstated and

board

ordered to compensate him for 150
days' suspension for alleged
insubordination (87:172, Onorevole,
decision on remand, aff'd St. Bd.

loss of

88:2501)
Superintendent ordered reinstated with

120 days' salary for unbecoming
conduct - foul language (88:221,
Napoli, aff'd St. Bd. 88:284, stay
denied St. Bd. 89: February 1)
aff'd App. Div. unpub. op. (Dkt.
No. A-2301-88T3, March 2, 1990))

Dismissal unwarranted; relied on reports and
information expressly prohibited from
disclosure (87:1895, Tyler, decision on
remand 88:293, aff'd w/modif. 88:308,
aff'd 236 N.J. Super. 478 (App. Div.
1989))

Tiefenbacher,

Dismissal warranted (84: September 5,

St. Bd. on remand, prior decisions:
February 22, 1982, modified St. Bd.
August 6, 1982, remanded App. Div.
83:1648) (84:350, Doyle, rev'd St. Bd.

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Penalty - continued

Dismissal warranted - continued

84:383, aff'd in part vacated in part, remanded to St. Bd. 201 N.J. Super. 347 (App. Div. 1985), remanded App. Div. unreported opinion (Docket No. A-4885-85T5, decided November 13, 1986), on remand St. Bd. 87:2596, aff'd App. Div. unreported opinion (Docket No. A-4885-85T5 decided June 3, 1987)) (85:1283 Simonic, aff'd St. Bd. 86:3117)

Dismissal warranted; failure to stimulate and maintain interest and participation in instrumental music and band programs (89:1749, Gordon, aff'd St. Bd. 89:1766)

remarks to

Dismissal warranted; sexually harassing

teachers, cleaning staff and pupils over two year period (88:2384, Marion, dismissed St. Bd. 89: April 5)

assistant

Dismissal warranted; teacher's assault upon

superintendent (88:722, Samiljan, aff'd St. Bd. 88:739)

prior

Dismissal warranted; teacher disregarded

warnings by the board and continued to inflict corporal punishment on pupils (86:1973, Molineux) (88:695, Jackson, aff'd w/modif. St. Bd. 88:721)

absence

Dismissal warranted; unauthorized leave of

constituted conduct unbecoming (88:661, Cipollini, aff'd St. Bd. 88:678)

(83:1151,

Forfeit all tenurable positions with board

Capalbo, aff'd St. Bd. 84: February 1, oral argument denied, 84:1909, aff'd App. Div. unpublished opinion (Docket No. A-4686-83T6, decided July 17, 1985), cert. denied by Supreme Court 102 N.J. 336 (1985)

improperly Mitigation of damages for improper dismissal
After-school work, earnings by

dismissed auxiliary teacher not to
be included in calculation of her
award (83: November 14, Kalisch,
aff'd St. Bd. 84: March 7)

are Earnings used for mitigation purposes
those received
by
the
emplo
yee
while
schoo
l is
in
sessi
on
(83:
Novem
ber
14,
Hogue
)

considered Mitigation of penalty; factors to be

(85:1800 Martin, aff'd St. Bd. 86:3093,
decision on remand 87:1929)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Penalty - continued

Parties to a tenure action may not determine what penalty is to be imposed as a condition for the settlement and withdrawal of tenure charges (83: January 7, Wheeler, settlement approved 83: August 11) Prior record, emotional stress and present attitude are mitigating factors (82: May 3, Davis) (83:633, Cohn)

Revocation of teaching certificate by Bd. of Examiners for use of physical force and harsh methods to maintain discipline (86:668, Hamilton-Moore, aff'd St. Bd. 86:730) (86:168, Gwaley, aff'd St. Bd. 86:196); for improper physical contact with students and attending party where students consumed alcoholic beverages Settlement: Commissioner rejected settlement where the terms would invoke a penalty against teacher without a determination of guilt of the tenure charges. Decision as to what grounds warrant a dismissal or lesser penalty rests with Commissioner and cannot be settled in an agreement (85: September 26, Thompson)

Single incident; sufficiently flagrant and of such magnitude to warrant dismissal (85:1283 Simonik, aff'd St. Bd. 86:3117) (88:722, Samiljan, aff'd St. Bd. 88:739) State Board may not simply reinstate penalty imposed by ALJ, must address Commissioner's reasons for rejecting ALJ recommendation; remand to State Board ordered to determine penalty. In the Matter of the Tenure Hearing of Robert E. Doyle, 84:350, rev'd St. Bd. 84:383, aff'd in part vacated in part, remanded

to St. Bd. 201 N.J. Super. 347 (App. Div. 1985) remanded App. Div. unreported opinion (Docket No. A-4885-85T5, decided November 13, 1986), on remand St. Bd. 87:2596, aff'd App. Div. unreported opinion (Docket No. A-4885-85T5 decided June 3, 1987))

decision

Termination; as of date of Commissioner

(83:784, Lennon, aff'd St. Bd. 84:1954)
Polygraph test results held inadmissible (74:662)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Recertification of charges allowed where a
substantial

public issue is involved in allowing the
employee to return to work; 90-day rule held
not to apply to a claim seeking vindication
of statutory right (85:1770, Kunz) (86:640,
Rubenstein)

Reinstated teacher entitled to reimbursement for
academic

courses taken according to board policy while
suspended (77:50, Felmey, stay denied 77:57,
aff'd St. Bd. 77:57)

Reinstatement after dismissal of charges;
principal must be

returned to principalship, may not be
involuntarily transferred to unrecognized
position (81: October 23, Lanza, aff'd St.
Bd. 82: June 2)

Rendered moot by teacher's guilty plea to
distribution of

controlled dangerous substance; referred to
State Board of Examiners for revocation
proceedings (87:2212, Breece)

Resignation, charges dismissed (76: March 10,
Williams,

unpublished opinion) (77: August 17, Erdo,
unpublished opinion) (77: October 18,
Bartko, unpublished opinion) (77: October
18, Tullman, unpublished opinion)

Retirement; charges rendered moot (88: March 17,
Helton)

Service of charges by mail is adequate notice
(87:1023,

White)

State Board of Education

State Board erred in reversing Commissioner's
dismissal of tenure charges on
procedural grounds without reviewing
transcript of hearing. Rowley v. Bd. of
Ed. of Manalapan-Englishtown, 83: May
23 rev'd St. Bd. 84:2006, rev'd and
remanded 205 N.J. Super. 65 (App. Div.
1985) decision on remand St. Bd.

86:3127, settlement approved)
State Board may not, in reversing

Commissioner's

summary dismissal of tenure charges for
board's failure to comply with statutory
procedures, go on to conclude that board
had established case for dismissal;
hearing before ALJ required. Rowley v.
Bd. of Ed. of Manalapan-Englishtown, 83:
May 23, rev'd St. Bd. 84:2006, rev'd and
remanded 205 N.J. Super. 65 (App. Div.
1985) decision on remand St. Bd.
86:3127, settlement approved)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Statement of Evidence

certification The statement of evidence upon which the

is based is sufficient if it satisfies the purposes of N.J.S.A. 18A:6-11 (87:861, Roemmelt, aff'd St. Bd. w/opinion 88:2527, aff'd App. Div. unpublished op. (Docket No. A-3303-87T7, January 25, 1989))

regarding charges The statement of evidence under oath

to be certified need not necessarily be within the personal knowledge of the affiant (86:42, Cowan, aff'd St. Bd. 86:93, aff'd 24 N.J. Super. 737 (App. Div. 1988))

Suspension

By board

tenure Board must take action to file formal

charges or present evidence that the teacher has been convicted of a criminal offense prior to suspending the teacher for any period of time (82: May 25, Fairfield, aff'd St. Bd. 82: September 8)

duties Coach is not entitled to stipend for

during period of suspension (83: March 21, Bonner, aff'd St. Bd. 83: September 7)

prerogative Continuation of suspension is board's

pending appeal of Commissioner's reinstatement order (87:599, Eberly, St. Bd. rev'g and remanding 87:553, decision on remand 87:601, decision on motion 88:2441, aff'd St. Bd. 88:2447)

with Criminal indictment, petitioner suspended pay prior to indictment held proper,

but right to full pay ceases after indicted, 83:1343, Martin v. Bd. of Ed. of Asbury Park, aff'd with modification St. Bd. 84:1962, aff'd in part rev'd in part App. Div. unpublished opinion (Docket No. A-5503-83T6 decided July 17, 1985); see also N.J.S.A. 18A:6-8.3 and 18A:6-14

Criminal indictment: per N.J.S.A.

18A:6-8.3,

employee suspended who is subsequently indicted not entitled to receive salary, ordered to reimburse the board (83:1343, Martin, aff'd with modification St. Bd. 84:1962, aff'd in part rev'd in part App.

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Suspension - continued

By board - continued

Criminal indictment - continued

Div. unpublished opinion (Docket No. A-5503-83T6 decided July 17, 1985) (80: December 22, Fridy, aff'd with modification St. Bd. 81: May 6, aff'd App. Div., unpublished opinion (Docket No. A-4470-80T3, decided January 26, 1983), remanded App. Div., unpublished opinion (A-4470-80T3, decided March 8, 1983), decision on appeal aff'd St. Bd. 84: May 2)

Delay in hearings caused by charged

employee:

extension of 120 day period permitted (74:662)

During absence of employee because of

illness

(74:1137)

No authority to suspend without pay

unless done in

accordance with tenure hearing statute (80: December 4, Philbin)

beyond 120

Provision requiring continuation of pay days is prospective, In re Tenure Hearing of Pietrunti, 128 N.J. Super. 149 (App. Div. 1974) certif. den. 65 N.J. 573 (1974), cert. denied 419 U.S. 1057 (1974) (C. decs. 72:387, 73:9, St. Bd. 73:782)

Reimbursement to board for salary

payments not

allowed where board did not bring timely tenure charges concerning an indictment (85:1641 McGuire, aff'd St. Bd. 86:3086)

Reinstated, entitled to full

reimbursement for

salary withheld during suspension (76:1084, Hoffman) (77:142,

Scachetti, aff'd St. Bd. 77:153)
(77:451, Feitel, aff'd St. Bd.
77:458) (77:941, Fattell)

Salary after 120 days

day Board ordered to pay salary on 121st

after certification of charges
(80: August 7, Guma, aff'd St.
Bd. 80: December 3) (88:221,
Napoli, aff'd St. Bd. 88:284,
stay denied St. Bd. 89:
February 1, aff'd App. Div.
unpub. op. (Dkt. No. A-2301-
88T3, March 2, 1990)

Calculation of partial month

(87:1005,

Caporaso, dismissed St. Bd. 87:
October 1)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Suspension - continued

By board - continued

Salary after 120 days - continued

Employee charged with leave without
authorization not entitled to
salary after 120 days; entitled
to salary only from date when
he sought to return to work
(86:2988, Bates, St. Bd. aff'd
in part, rev'd in part 85:401
aff'd App. Div. unreported
opinion (Docket No.
A-2700-86T7, decided November
16, 1987))

Employee entitled to increments

granted to

other employees (81: July 2,
Johnson)

Employee entitled to increments

granted

other employees absent action
to withhold increment (85:
July 19, Melchior) (87:1005,
Caporaso, dismissed St. Bd. 87:

October 1)
Employee entitled to pre-suspension
salary
only and not increases which
would have resulted from new
salary schedule (81: September
21, DeMarco, aff'd St. Bd. 82:
March 3) (85:1707, Castaldo,
aff'd St. Bd. 86:3026); but see
(81: July 2, Johnson)
Employee is not entitled to salary

after
criminal indictment as per
N.J.S.A. 18A:6-8.3 (83:1343,
Martin, aff'd with modification
St. Bd. 84:1962, aff'd in part
rev'd in part App. Div.
unpublished opinion (Docket No.
A-5503-83T6 decided July 17,
1985) (80: December 22, Fridy,
aff'd with modification St. Bd.
81: May 6, aff'd App. Div.,
unpublished opinion (Docket No.
A-4470-80T3, decided January
26, 1983), remanded App. Div.,
unpublished opinion
(A-4470-80T3, decided March 8,
1983), decision on appeal aff'd
St. Bd. 84: May 2) (85:1641
McGuire, aff'd St. Bd. 86:3086)

Employee entitled to payment of
salary on
121st day where indictment
occurred subsequent to
certification of tenure charges
pursuant to N.J.S.A. 18A:6-14
and no separate board action
occurred.

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Suspension - continued

By board - continued

Salary after 120 days - continued

Employee entitled to payment -

continued

(83:1343, Martin, aff'd with modification St. Bd. 84:1962, aff'd in part, rev'd in part App. Div. Docket No. A-5503-83T6, July 17, 1985)

Employee is not entitled to salary

during

period between Commissioner's determination affirming employee's dismissal and remand for clarification to the Commissioner, where the determination was not reversed (81: October 5, Grandrino, aff'd St. Bd. 82: February 3, aff'd App. Div., unpublished opinion (Docket No. A-3190-81-T1, decided March 18, 1983))

Lump sum payment paid out under

settlement

agreement later rejected by Commissioner may not be used to offset board's salary obligations once tenure process resumed, nor can board deduct from salary amounts representing deductions it should have made on lump sum payment. Board can recoup lump sum payment only through court action. (85:1707 Castaldo, aff'd St. Bd. 86:3026)

Time period begins to run as of date

of

certification of charges, rather than date that school begins in the fall. See

(83:784, Lennon, aff'd St. Bd.
84:1954)

Salary payments

Are mitigated by sums earned from substituted employment; no requirement to acquire or keep employment (76:773, Martz, aff'd St. Bd. 76:791)

Back Pay

Pending an appeal from a

dismissal of

tenure charges by the Commissioner, a teaching staff member is not entitled to reinstatement, nor back payment of salary, nor award of increment, where the board decides to continue the suspension during

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Suspension - continued

By board - continued

Salary payments - continued

Back Pay - continued

Pending an appeal - continued

the appeal (88:2441, Eberly, decision on motion St. Bd., See also 87:553, rev'd St. Bd. 87:599, decision on remand, 87:601, aff'd St. Bd. 88:2447)

Board may not unilaterally suspend, alleging delay attributable to employee - must obtain order releasing it from payment (81: July 1, Dullea, St. Bd. rev'g 81: January 9)

Board must pay despite certification of second set of tenure charges, which are held pending resolution of first set of

charges (84:1390, Taylor, aff'd St. Bd. 85:2026)

Board not entitled to reimbursement upon dismissal of employee by Commissioner (82: March 2, Driscoll, aff'd St. Bd. 82: September 8, aff'd unpublished opinion, App. Div. (Docket No. A-798-82T2, decided October 28, 1983))

Calculation following reinstatement (78:696, Windsor, aff'd St. Bd. 79:884)

Continue until final decision by

Commissioner

(87:1005, Caporaso, dismissed St. Bd. 87: October 1)

Entitled to full salary where

improperly

suspended, not per diem rate based on partial year employment because of subsequent dismissal (85: July 19, Melchior)

No entitlement for periods when teacher caused delay in proceedings (82: February 17, Sager)

suspension

Not required when prior to

teacher was on medical leave without pay, and teacher unable to work (77:876, Healy, aff'd St. Bd. 78:1019)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Suspension - continued

By board - continued

Salary payments - continued

Not required when tenure hearing is enjoined pending disposition of criminal proceeding, Ott v. Bd. of Ed. of Hamilton Twp., 160 N.J. Super. 333 (App. Div. 1978) certif. denied 78 N.J. 336 (1978) (81: February 5, King)

Substituted employment can include

consulting

work if such work would not have been possible had the employee continued to work for the board (82:674, Gilbert, aff'd St. Bd. with modification as to amount earned 82:686, motion to reopen denied St. Bd. 90: November 19, motion for reconsideration denied St. Bd. 91:2553)

Suspension may be appealed and petitioner reinstated any time during suspension (77: January 11, Windsor, aff'd and clarified St. Bd. 77: May 4, unpublished opinion)

Suspension must be on same date as

certification

of charges to Commissioner or will be found untimely and without statutory authorization (71:566, aff'd St. Bd. 73:773 aff'd App. Div. 73:773) (74:378) (75:518, Banick) (76:722, Green stay denied 76:725) (76:869, Stephenson) (77:451, Feitel, aff'd St. Bd. 77:458) (77:1129, Levine, aff'd St. Bd. 78:1026, aff'd App. Div. 79:846) (77:524, Gavlick) But see Pellechio cited under this topic

Suspension must be either with or without full pay, no variation such as half

pay or short term suspension is
permitted (73:157) (73:287) (73:409)
(74:170)

Suspension need not be on same date as
certification of charges to
Commissioner, but rather "within a
reasonable time after" in order to
allow the board at least a few days
within which to determine its course
(84:2003, Pellechio, published
opinion, App. Div. (Docket No.
A-4855-82T3, decided February 28,
1984) aff'g (83:1616, St. Bd. rev'g
in part 82: May 20)

TENURE - continued

Dismissal or reduction in salary - continued

Procedure under tenure hearing act - continued

Suspension - continued

By board - continued

Suspension proper for conduct unbecoming

a

teacher (88:1420, Yorke, aff'd St. Bd. 88:1429)

Suspension with pay, then subsequent

suspension

without pay rendered employee's petition to be reinstated to active teaching duties moot (82: May 4, Bonner)

Two year delay between suspension of

teacher and

certification of tenure charges - no critical prejudice to teacher (88:695, Jackson, aff'd w/modif. 88:721)

By acting superintendent and board

Cannot suspend tenured teacher pending

resignation

unless formal charges are filed (79:200, McGuire)

By superintendent

Approval of board president required for suspension without pay (73:293) (80: December 22, Fridy, aff'd St. Bd. 81: June 3 and 81: August 5)

May be without notice to employee or

opportunity

to be heard (63:211)

Must be with pay if certified charges

have not

yet been filed with board (74:1126) (75:236, Winter) (76:869, Stephenson)

Must promptly notify board (66:107)

(76:869,

Stephenson)

Resignation, charges dismissed (76: March 10, Williams, unpublished opinion) (77: August 17, Erdo, unpublished opinion) (77: October 18, Bartko, unpublished opinion) (77: October 18, Tullman,

unpublished opinion)

Salary deductions for tardiness, strikes and
unauthorized

absences are not reductions in salary under tenure
laws (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. den. 67
N.J. 99 (1975) (74:193, aff'd St. Bd. 74:207)
(74:276)

Statutory procedures must be followed (81: April 16,
V.C.)

TENURE - continued

Dismissal or reduction in salary - continued

Teachers
teaching Certification; revocation of administrator's
certificate during pendency of tenure
dismissal charges renders such charges moot
(81: October 19, Fischbach) see also (80:
April 15, Fischbach) (83:1418, Fischbach,
aff'd St. Bd. 84:1931) (85:196 Fischbach,
aff'd St. Bd. 87:2608)

Teacher's voluntary absence from tenure hearing
does not deny due process of law, and does not make
action defective (80: March 17, Frazier)
Withholding of pay for services not rendered,
permissible (80: December 4, Philbin)

Tenure proceedings adequate to resolve teacher's claims
that charges were filed in retaliation for exercise of
First Amendment rights: Federal courts will apply
abstention doctrine but will retain jurisdiction
for part of complaint requesting damages and
attorney's fees, (81: August 27, Williams, aff'd
St. Bd. 82: February 3, aff'd App. Div. 82:1594)

Testimony of children credible (83:420, Smith, aff'd St.
Bd. 83:489) (85:1283 Simonic, aff'd St. Bd.
86:3117) (85:1524, Caporaso, aff'd with
opinion St. Bd. 86:3024, rev'd and remanded on
other grounds App. Div. unreported opinion
(Docket No. A-4558-85T6, March 19, 1987), on
remand 87:1664, aff'd St. Bd. 87:1668, aff'd
unreported op. (Dkt. No. A-2498-87T7, November
15, 1988))

Testimony of children must be examined with caution
(39-49:183)(62:160) (65:130) (68:89) (70:378)
(71:305) (72:109, aff'd St. Bd. 72:120) (74:662)
(74:1269, aff'd St. Bd. 75:1111) (75:397, Quinn)
(75:683, Puzio) (78:63, Birch) (78:368, Simpson,
aff'd St. Bd. 78:377) (80:431, Nacht)

Testimony of 6th grade pupils permitted against teacher
regarding charges of improper touching without
teacher in courtroom. Accused permitted to observe

testimony by video equipment in an adjoining room.
So fundamentally unfair - new hearing ordered
(87:1447, Wolf, aff'd St. Bd. 87:1480, rev'd 231
N.J. Super. 365 (App. Div. 1989))

Testimony of DYFS investigator; not permitted absent
court order or release by DYFS (87:1895, Tyler,
decision on remand 88:293, aff'd w/modif.
88:308, aff'd 236 N.J. Super. 478, (App.
Div. 1989)) (88:695, Jackson, aff'd
w/modif. St. Bd. 88:721)

TENURE - continued

Dismissal or reduction in salary - continued

Timetable

Board has 45 days to certify charges after response
of teacher (77:976, Levitt, aff'd St. Bd.
78:1027, aff'd App. Div. 79:847) (77:1129
Levine, aff'd St. Bd. 78:1026, aff'd App. Div.
79:846) (85: August 30, Harrell) (85:1770
Kunz) (86:356, Harrell)
Board must wait for response of teacher, or 15
days,
before considering certification of charges
(77:451, Feitel, aff'd St. Bd. 77:458) (82:
July 12, Hamlin)
Board must act promptly to either bring charges or
end
suspension following suspension by
superintendent; board cannot keep tenured
employee on suspension for indefinite period
without taking affirmative action regarding
employee's status (66:107) (76:869,
Stephenson) (77:524, Gavlick)
Delay of almost two years between suspension of a
teacher
and the filing of tenure charges is
inexcusable. Settlement of controversy
approved nevertheless. (87: November 16,
Colgan, on remand)
Importance of following (71:566, aff'd St. Bd.
73:773, aff'd App. Div. 73:773) (74:378)
(75:518, Banick) (76:722,
Green, stay denied 76:725)
(77:451, Feitel, aff'd St. Bd.
77:458) (77:1129, Levine, aff'd
St. Bd. 78:1026, aff'd App.
Div. 79:846)

Inefficiency charges

More than 90 days may be given to correct
inefficiencies, but notice of extension
must be given at time notice served
(77:1129, Levine, aff'd St. Bd. 78:1026,
aff'd App. Div. 79:846)
Ninety day notice prior to certification of
inefficiency charges to Commissioner
(68:189) (70:335) (72:650) (73:721, aff'd

St. Bd. 75:1160) (74:323) (74:867)
(76:773, Martz, aff'd St. Bd. 76:791)
(77:403, Reilly) (77:451, Feitel, aff'd
St. Bd. 77:458) (77:1129, Levine, aff'd
St. Bd. 78:1026, aff'd App. Div. 79:846)

academic

Ninety days means calendar days within the

year (77:1129, Levine, aff'd St. Bd.
78:1026, aff'd App. Div. 79:846)

Notice of inefficiency

administrator must

After expiration of 90 days,

notify board of employee performance
within three working days (80:888,
Kagdis)

TENURE - continued

Dismissal or reduction in salary - continued

Timetable - continued

Inefficiency charges - continued

Notice of inefficiency - continued

After expiration of 90 days, board must
notify
employee of status of charges within
three working days after receipt of
administrator's report (80:888,
Kagdis) (81: April 13, Lazar, aff'd
St. Bd. 81: August 5)
Must be given to employee within three
working
days of board resolution (80:888,
Kagdis) See also (84: March 7,
Roberts, St. Bd. rev'g 83: April
19), failure of board to strictly
follow Kagdis requirements does not
necessarily require dismissal of
charges.
Suspension may be ordered within a "reasonable
time" after certification of charges to
Commissioner (84:2003, Pellechio,
published opinion, App. Div. Docket No.
A-4855-82T3, decided February 28, 1984,
aff'g 83:1616 St. Bd. rev'g in part 82:
May 20)
Suspension must be on same date as
certification
of charges to Commissioner or will be
found untimely (71:566, aff'd St. Bd.
73:773, aff'd App. Div. 73:773) (74:378)
(75:518, Banick)
Within 45 days after expiration of 90 day
period for
correction of inefficiency, charges must
be certified to Commissioner (75:163,
Masone) (76:902, Masone) (76:913, Masone)
(77:1129, Levine, aff'd St. Bd. 78:1026,
aff'd App. Div. 79:846)
Withdrawal of charges permitted (75:25, Grill)
(76: September 17, Steffy, unpublished
opinion) (76: October 15, Zakarian,
unpublished opinion) (77: June 1, Luft,
unpublished opinion) (77: June 30,

Inzitari, unpublished opinion)
Withholding increment as a penalty, only

applies to

years of punishment and does not carry on
ad infinitum (75:993, Beam)

Transfer from 12 month position to 10 month position
where salary

prorated for 12 months - not a reduction of salary
under the tenure laws (88:367, Bell)

Transfers, if valid, are not dismissals or reductions
in salary or impairment of any tenure rights under
tenure laws, Lascari v. Lodi Bd. of Ed., 36 N.J.
Super. 426 (App. Div. 1955) (C. dec. 54-55:83,
aff'd St. Bd. 54-55:89);

TENURE - continued

Dismissal or reduction in salary - continued

Transfers - continued

Greenway v. Camden Bd. of Ed., 129 N.J.L. 46 (Sup. Ct. 1942); Cheeseman v. Gloucester City Bd. of Ed., 1 N.J. Misc. 318 (Sup. Ct. 1923); (66:43) (66:167) (69:40) (73:201, aff'd St. Bd. 74:1414) (74:678, aff'd St. Bd. 75:1082)

is made

When additional compensation as athletic director

an integral part of salary, it becomes part of basic salary and cannot be reduced except by following statutory provisions for reduction of salary (75:939, Shriner)

Written statement of evidence under oath: At the preliminary stage of presenting record of charges, the requirement of a certified oath extends only to the statement of evidence and not to the charges themselves (85:1467 Apkarian, on remand 86:1889, aff'd St. Bd. 86:1916, aff'd App. Div. unreported opinion) (Docket No. A-927-86T8, decided November 20, 1987) (89: February 21, Gordon)

Settlement of tenure charges

(See also "Commissioner of Education - Jurisdiction - Settlement Agreement", this index)

light

Absenteeism and abandonment; settlement approved in

of teacher's disability retirement (89:Feb. 7, Wallace)

(83:

Approved by Commissioner (83: June 1, DeRose)

August 11, Wheeler, see 83: January 7) (83: August 29, Tolbert) (83: October 3, Phillips) (83: December 7, Montgomery) (83: December 8, Pace) (84: February 3, Martin) (84: February 10, Chiaramonte) (84: February 17, Patterson) (88: March 17, Helton) (89: February 2, Carlini) (89: September 5, Madera)

Approved on remand where parties deleted term indicating

personnel records will reflect resignation in good standing (89: January 5, Bedford)

Approved on remand where term regarding future recommendations would not be limited to

employee's yearly evaluations but would include all pertinent information (89: January 27, Evans)

out Board and teacher have no legal authority to carry

settlement agreement, prior to Commissioner approval (82: April 7, Cardonick, aff'd in part and remanded St. Bd. 83: April 6)

out Board and teacher have no legal authority to carry

settlement agreement prior to Commissioner approval, or the expiration of 45 days pursuant to N.J.S.A. 52: 14B-10 (87: March 2, Walker)

TENURE - continued

Dismissal or reduction in salary - continued

Settlement of tenure charges - continued

Board and tenured employee can enter into settlement of tenure charge case, provided terms of settlement are within proper bounds and with approval of Commissioner (82: April 7, Cardonick, aff'd in part and remanded St. Bd. 83: April 6) (83: September 9, Schroeder) (83: September 12, Holden) (84: November 14, Dumansky) (84: November 16, Smith)

Board and tenured employee may not settle a tenure charge case where charges are of such a serious nature as to require a full hearing in the public interest, such as charges involving alleged misappropriation of funds (82: April 22, Nolan, aff'd St. Bd. 83:1604, aff'd 84:1991 published opinion, (Docket No. 4401-82T2, 384-82T2, decided June 15, 1984) (84: August 13, Fulcoli) (85: April 15, Harrell)

Commissioner approved tenure settlement granting lump sum payment to respondent where charges involved inefficiency and were not of a criminal nature (82: November 1, Perna)

Commissioner approves withdrawal of tenure charges against attendance officer (89: February 7, Puryear)

Commissioner disapproves settlement between board and employee charged with misappropriation of funds; gravity of charge requires adjudication (82: April 22, Nolan, aff'd St. Bd. 83:1604, aff'd 84:1991 published opinion, (Docket No. 4401-82T2, 384-82T2, decided June 15, 1984))

Commissioner remanded matter to ALJ finding it essential that sufficient factual information be provided before a determination withdrawing tenure charges pursuant to the terms and conditions of settlement may be made (83: January 21, O'Toole)

Commissioner will carefully examine tenure settlements which grant lump sum payments to respondents (82: April 7, Cardonick, aff'd in part and remanded St. Bd. 83: April 6)

Dismissal by settlement rejected where there exists an issue as to whether there is sufficient basis to require board to go forward with its charges (85: November 25, Foushee)

Gravity of tenure charges precludes agreement in settlement not to disclose accurate account of staff member's employment performance and history (87: April 3, Colgan)

TENURE - continued

Dismissal or reduction in salary - continued

Settlement of tenure charges - continued

Increment withholding - Settlement terms may not state that

increment is to be permanently withheld inasmuch as this binds future boards. However, the effect of the withholding may be permanent if a future board does not take affirmative action to restore the withheld increment (87: January 27, Tharrington)

Lump sum payment under settlement agreement rejected by

Commissioner held not to be considered as salary (85:1707 Castaldo, aff'd St. Bd. 86:3026)

Rejected and remanded for clarification of certificate/certificates required in unrecognized position to which teacher to be transferred (87: November 5, Colella, settlement accepted on remand 88: February 25)

Rejected and remanded - charges based on allegations of dishonesty, dereliction of duty, disregard of public trust. Perpetration of fiction that representation tendered in good standing not in public interest (89: October 4, Shenekji)

Rejected as inconsistent wherein board agrees to give

positive recommendation while recognizing serious nature of charges; remanded (88: January 7, Evans)

Rejected: Commissioner must refer case to State Board of

Examiners for consideration whether gravity of charges makes teacher unfit to teach in the State (89: September 18, Dempsey) (89: December 1, Shuhala)

Rejected for lack of documentation regarding retirement

(89: September 18, Dempsey)

Rejected: voluntary surrender of certification not permitted except through formal revocation process (89: December 1, Shuhala)

Rejected where charges are of a serious nature (85:

December 23, Molineux, aff'd St. Bd. 87:2658)
(86: October 6, Walker) (88: November 23,
Wilburn)
Rejected where all matters not resolved;
furthermore,
settlement rendered void since it ignores that
Commissioner's approval is required and
contains signatures not under oath; remanded
(88: January 27, Beauford)
Rejected where reasons for non-reemployment do not
appear
in record (87: November 30, Basaman)
Rejected where settlement contained inaccurate
information,
typographical errors, awarded damages (not
within Commissioner's power) and called for an
expenditure of public funds without
commensurate services (88: February 25,
Smith)

TENURE - continued

Dismissal or reduction in salary - continued
Settlement of tenure charges - continued
Rejected where settlement required board to
withdraw matter
before the State Board of Examiners, unless
parties could stipulate that State Board
matter is predicated on erroneous allegations
(89: February 17, Tanala)
Rejected where settlement language limited Board's
ability
to document fully respondent's employment
history. Remanded for removal of offensive
language (87: September 16, Caruso) (88:
February 25, Smith)
Remanded for factual hearing where Commissioner
found
penalty imposed to be ultra vires (82:
October 29, Calabrese)
Remanded for full factual hearing, charges denied
(82: November 29, Gidley)
Retirement promise by employee under terms of
settlement rejected by Commissioner as
there was no way to insure
compliance (86: April 17,

Corbett)

Revocation of license cannot be done voluntarily by agreement; matter must be submitted to State Board of Examiners for formal proceedings (86: March 14, Foushee)

Settlement set aside: board cannot make settlement effective upon submission of retirement papers rather than actual retirement (86: April 18, Helton)

Settlement set aside: Board cannot withhold

increment as

condition of withdrawing tenure charge; Commissioner must determine truth of charge and set penalty (81: August 21, Kennedy) (82: April 6, Calabrese) (88: November 23, Wilburn)

Settlement set aside: Commissioner will not accord seniority rights without proof of entitlement; case should be heard on the merits to determine what endorsement required to teach course; also the basis for military service credit should be determined. Remanded (87: June 8, Chanda)

Terms not to become effective prior to Commissioner's approval (89: October 25, Benton)

Teacher reinstated pursuant to settlement

agreement;

remanded for additional indicia of safeguards that alleged inefficiencies will not adversely affect students (88: August 2, Tenney, aff'd St. Bd. with modification, 91:2597)

Waiver of salary due under terms of settlement

rejected

by Commissioner (85: September 26, Thompson)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases (listed by position)

Attendance officer (87:719, Harris) (88:582,
Woolard, aff'd St. Bd. 88:601, aff'd App. Div.
unreported op. (Dkt. No. A-878-
88T1, June 12, 1989)) (89:
February 7, Puryear)
(settlement)
Board secretary (59-60:167) (66:167) (69:83)
(74:440)
(74:525) (76:361, Smollok) (85:319 Nolan) (88:
February 25, Smith)
Business manager/School business administrator,
Romanowski
v. Jersey City Board of Ed., 89 N.J. Super. 38
(App. Div. 1965); (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) (74:1280) (76:361, Smollok) (77:513,
Guasconi, aff'd St. Bd. 77:517)
Chauffeur (81: April 21, Sanders)
Clerks (38:93) (39-49:102) (59-60:113) (60-61:243)
(61-62:169) (66:6) (72:353) (78:551, Pedecine)
(85: May 13, Tonnarello)
Coach (79:528, Kane, aff'd St. Bd. 80: June 11,
aff'd
App. Div. 81:1439) (88:1257, Wagner)
Custodian Assistant (87: March 31, Miller)
Department head (80:145, McCormick, aff'd St. Bd.
80:157)
Guidance counselor (76:796, Lavin) (77:934,
Puryear)
(79:192, Romeo) (83: March 4, Schafer, aff'd
St. Bd. 83: December 7) (83:173, Kendall,
aff'd St. Bd. 83:182) (83:1343, Martin, aff'd
with modification St. Bd. 84:1962, aff'd in
part rev'd in part App. Div. unpublished
opinion (Docket No. A-5503-83T6, decided July
17, 1985) (84:350, Doyle, rev'd St. Bd.
84:383, aff'd in part, vacated in part,
remanded to St. Bd. 201 N.J. Super. 347
(App.Div. 1985), remanded App.Div. unreported
opinion (Docket No. A-4885-85T5, decided
November 13, 1986), on remand St. Bd. 87:2596,
aff'd App. Div. unreported opinion (Docket No.

A-4885-85T5 decided June 3, 1987)) (89:1803,
Gregg)
Head Custodian (88: September 1, Clemens)
Janitors (38:722) (38:724) (38:731) (38:737)

(38:792)

(39-49:61) (57-58:58) (59-60:115) (60-61:148)
(61-62:134) (61-62:149) (63:213) (64:12)
(66:197) (67:19) (67:110) (67:139) (67:150)
(67:181) (68:51) (68:160) (71:213) (73:235)
(74:129) (74:170) (74:540 remanded St. Bd.
75:301 on remand 75:302) (74:578) (74:734)
(74:867) (74:898) (74:1126) (74:1236)
(74:1349) (75:188, Kane) (75:683, Puzio)
(75:722, Mazzola) (76:869, Stephenson)
(77:603, Mamatz)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Janitors - continued

(77:1117, Ryan) (78:1, Grandino, remanded St. Bd. 78:10, on remand 80: June 6, aff'd St. Bd. 80: October 1, motion for clarification dismissed 81: October 5, aff'd St. Bd. 82: February 3, aff'd App. Div., unpublished op. (Docket No. A-3190-81T1, decided March 18, 1983) (79: May 18, Beckwith, unpublished opinion) (79:163, Brown) (80: June 2, Jackson, aff'd St. Bd. 81: January 22) (81: October 5, Davis) (82: May 3, Davis) (82: November 1, Perna) (82: July 19, Hay, aff'd St. Bd. 82: December 1) (83: May 6, Osborne) (83: June 1, Grover) (83: July 21, Verqa) absence: injured on job, (83: September 6, LaTronica, aff'd on remand 83: November 9) (83: October 17, Passero) (84:208, McMahan, aff'd with modification St. Bd. 84:228) (84: July 9, Johnson, aff'd St. Bd. 84: December 5, aff'd App. Div. unreported opinion (Docket No. A-2105-84T7, decided October 24, 1985) (84: August 20, Marshall) (86:435, Hunterdon Central High School Education Assn., St. Bd. rev'g in part, aff'g in part 88:2468, aff'd App. Div. unreported op. (Dkt. No. A-5036-87T2, June 28, 1989)) (86:1945, Timmons, aff'd St. Bd. 86:1958, aff'd App. Div. unreported decision (Docket No. A-2518-86T8 decided November 13, 1987)) (87:1023, White) Excessive absences without reasonable explanation (89:1224, Donohue) (89:1219, Houlroyd) (88:1296, Paladino) (88: September 1, Clemens) (88:2384, Marion, dismissed by St. Bd. 89: April 5) (89: November 13, Scriven) Librarian (83:490, O'Hara, aff'd St. Bd. 84:2002,

aff'd

App. Div. unreported opinion (Docket No. A-3128-83T3, decided August 30, 1985))

Nurses (59-60:90) (74:323) (76:841, Baley, aff'd

St. Bd.

77:1277) (78:776, Bacon) (89:1229, Snyder, aff'd w/opinion St. Bd. 89:1241)

Principals Redcay v. St. Bd. of Ed., 130 N.J.L. 369

(Sup.

Ct. 1943) aff'd 131 N.J.L. 326 (E&A 1944); (39-49:119) (64:151, modified St. Bd. 65:171) (73:40) (73:661) (74:631) (76:647, Rhen) (78:427, Altschuler, aff'd with clarification St. Bd. 78:862) (80: May 16, Williams) (81: March 2, Lanza, aff'd St. Bd. 82: June 2) (82: October 25, Guma, aff'd St. Bd. 83:1553) (82: November 1, Highton) (83:149, Colella, aff'd St. Bd. 83:172)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Principals - continued

(83:420, Smith, aff'd St. Bd. 83:489)
(83:1151, Capalbo, aff'd St. Bd. 84: February
1, oral argument denied St. Bd. 84:1909, aff'd
App. Div., unpublished opinion, (Docket No.
A-4686-83T6, decided July 17, 1985), cert.
denied by Supreme Court 102 N.J. 336 (1985);
(dismissed charges) (84: October 12, Colella)
see also (85:118, Colella) (89:2836,
Schnitzer)

Bd. 82:

Psychologist (82: February 25, Wells, aff'd St.

July 7) (84: May 7, Castaldo, aff'd St. Bd.
84:768)

St. Bd.

Special education teacher (88:459, Thomas, aff'd

with modification 89:3090)

60-61:246)

Superintendents (59-60:52 dismissed St. Bd.

(60-61:199) (63:172) (66:77, aff'd St. Bd.
66:106, aff'd App. Div. 67:351) (71:520)
(74:378) (74:1176, aff'd St. Bd. 75:763, aff'd
and remanded App. Div. 75: September 11,
aff'd on remand 75:764, aff'd App. Div.
76:1159) (75:352, Romanoli) (76:722, Green,
stay denied 76:725) (77:95, Buch) (74:299,
aff'd St. Bd. 74:315, aff'd App. Div. 75:1073,
dismissed as moot 77: May 31) (78: November
15, Moore) (80:82, Cirangle, aff'd St. Bd.
80:97, aff'd App. Div. 81:1405, certif. denied
87 N.J. 347 (1981) (80: May 5, Mulligan) (80:
July 7, Nugent) (82: October 20, Porter)
(88:221, Napoli, aff'd St. Bd. 88:284, Stay
denied St. Bd. 89: February 1, aff'd App.
Div. unpub. op. (Dkt. No. A-2301-88T3, March
2, 1990)) (88: February 25, Smith)
Insubordination; unbecoming conduct; no

further

penalty imposed where superintendent
already held to public ridicule (87:172,
Onorevole, decision on remand, aff'd St.
Bd. 88:2501)

Unbecoming conduct (88:221, Napoli, aff'd St.

Bd.

88:284, stay denied St. Bd. 89: February 1, aff'd App. Div. unpub. op. (Dkt. No. A-2301-88T3, March 2, 1990))

Teachers

Incapacity, In re Grossman, 127 N.J. Super. 13 (App. Div. 1974) certif. denied 65 N.J. 292 (1974) (C. dec. 72:144 St. Bd. 73:769); (52-53:67, aff'd St. Bd. 52-53:72) (60-61:37, rev'd St. Bd. 61-62:236, aff'd App. Div. 61-62:240) (61-62:203) (67:73) (72:144) (75:187, Palinkas) (75:313, Larson) (75:862, Guarino) (76:392, Finkbiner)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Teachers - continued

Incapacity - continued

(77:876, Healy, aff'd and modified St. Bd. 78:1019) (79:790, Sheets, rev'd St. Bd. 80: June 11) (80: March 17, Helmus) (81: May 21, Maxwell) (82: January 6, Kopel) (82: October 20, Porter) (82: November 9, Powell) (83:633, Cohn) (85:1413 Gaston) (87: September 26, Caruso) (86:1670, Gramlich, aff'd St. Bd. 86:1687, aff'd unreported opinion App. Div. (Docket No. A-1934-86T8 decided June 20, 1988)) (88:2142, Taylor) (89:2482, Leo, interlocutory appeal denied St. Bd. 89: December 6)

psychiatric exams

Incapacity established; physical and

ordered and jurisdiction of Commissioner retained (89:2482, Leo, interlocutory appeal denied St. Bd. 89: December 6)

Incompetence (80: March 17, Frazier) (80:930, Herbst, aff'd St. Bd. 81: March 4) (83:25, Hogue, aff'd St. Bd. 83:40) (83: January 17, Dullea, aff'd St. Bd. 83: July 6) (83: March 14, Holden) (83:784, Lennon, aff'd St. Bd. 84:1954)

November 8,

Incompetency (77: May 13, McRae) (82:

Halley, aff'd St. Bd. 83: May 4) (82:1358, Sokolow, aff'd St. Bd. 83:1645) (83:25, Hogue, aff'd St. Bd. 83:40) (83: January 17, Dullea, aff'd St. Bd. 83: July 6) (83: March 14, Holden) (83:784, Lennon, aff'd St. Bd. 84:1954) (84:333, Nafash) (88:221, Napoli, aff'd St. Bd. 88:284, stay denied St. Bd. 89: February 1, aff'd App. Div. unpub. op. (Dkt. No. A-2301-88T3, March 2, 1990)) (88:2074, Kind, dismissed St. Bd. 89: January 4) (88:2142, Taylor) (88:2162, Burnside)

Inefficiency (52-53:67, aff'd St. Bd.

52-53:72)

(60-61:37, rev'd St. Bd. 61-62:237, aff'd App. Div. 61-62:240) (61-62:134) (64:17, aff'd App. Div. 65:201 cert. denied N.J. Sup. Ct. and U.S. Sup. Ct. 66:239) (67:271, aff'd St. Bd. 68:273 aff'd App. Div. 69:186) (68:253) (70:335) (72:650) (73:287) (73:721, aff'd St. Bd. 75:1160) (74:213) (75:18, Hayes) (75:163, Masone) (75:313, Larson) (75:652, Sondey, dismissed St. Bd. 76: July 14) (75:862, Guarino) (76:902, Masone)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Teachers - continued

Inefficiency - continued

(76:773, Martz, aff'd St. Bd. 76:791)
(76:913, Masone) (77:403, Reilly)
(77:451, Feitel, aff'd St. Bd. 77:458)
(77:786, Zielenski) (77:967, Secula,
aff'd St. Bd. 77:975) (77:1129, Levine,
aff'd St. Bd. 78:1026, aff'd App. Div.
79:846) (78:63, Birch) (79: August 6,
Spangler, unpublished opinion) (80:
March 7, Helmus) (81: April 13, Lazar,
aff'd St. Bd. 81: August 5) (81: July
2, Johnson) (81: October 5, Davis) (82:
March 2, Driscoll, aff'd St. Bd. 82:
September 8, aff'd unpublished opinion,
App. Div. (Docket No. A-798-82T2, decided
October 28, 1983)) (82: July 30, Prince)
(83: January 17, Dullea, aff'd St. Bd.
83: July 6) (83: March 14, Holden)
(83:784, Lennon, aff'd St. Bd. 84:1954)
(84:269, Fodor, aff'd with modification
St. Bd. 84:297) (84:2006, Rowley, St. Bd.
rev'g 83: May 23, rev'd and remanded 205
N.J. Super. 65 (App. Div. 1985) decision
on remand St. Bd. 86:3127, settlement
approved) (84:1764, Slovney) (87:218,
Jackson, aff'd St. Bd. 87:258) (87:1764,
Yorke, aff'd St. Bd. 87:1787) (88:2074,
Kind, dismissed St. Bd. 89: January 4)
Music teacher, (89:1749, Gordon, aff'd
St. Bd. 89:1766)

Insubordination (80:145, McCormick, aff'd St.

Bd.

80:157) (80:449, Brody) (81: October 5,
Davis) (82: January 6, Kopel) (82:
March 2, Driscoll, aff'd St. Bd. 82:
September 8, aff'd unpublished opinion,
App. Div. (Docket No. A-798-82T2, decided
October 28, 1983)) (82: March 9,
Edwards) 84:2047, Verost v. Bd. of Ed. of
Village of Ridgewood, published opinion,
App. Div. (Docket No. A-4804-82T5,
decided February 6, 1984), certif. denied

97 N.J. 593 (1984), aff'g (82: October 18, modified as to procedural defect, aff'd as to result St. Bd. 83:1654) (83:225, McClelland, aff'd St. Bd. 83:247) (83:311, Scarpignato, aff'd with modification St. Bd. 83:338) (88:661, Cipollini, aff'd St. Bd. 88:678) (88: April 6, Sodora) (88:722, Samiljan, aff'd St. Bd. 88:739) (88:459, Thomas, aff'd St. Bd. with modification 89:3090) (88:2142, Taylor)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Teachers - continued

Unbecoming conduct, In re Pietrunti, 128 N.J.

Super.

149 (App. Div.) certif. denied 65 N.J.
573 cert. denied 419 U.S. 1057 (1974) (C.
decs. 72:387, 73:9, St. Bd. 73:782); In
re Grossman, 127 N.J. Super. 13 (App.
Div.) certif. denied 65 N.J. 292 (1974)
(C. dec. 72:144, St. Bd. 73:769); In re
Fulcomer, 93 N.J. Super. 404 (App. Div.
1967) (C. decs. 61-62:160, 64:142,
67:215, St. Bd. 63:251, 66:225, 67:220);
(52-53:67, aff'd St. Bd. 52-53:72)
(60-61:37, rev'd St. Bd. 61-62:236, aff'd
App. Div. 61-62:240) (64:32, aff'd St.
Bd. 64:171) (65:130) (66:112) (66:185)
(67:173) (67:215) (68:89) (69:130,
dismissed 70:458) (69:159, aff'd St. Bd.
70:448, aff'd App. Div. 72:662) (70:120)
(70:159) (70:169) (70:239) (70:378)
(71:26) (71:259) (71:284) (71:305)
(71:331) (71:387, aff'd St. Bd. 72:663)
(71:566, aff'd St. Bd. 73:773, aff'd App.
Div. 73:773) (71:623) (72:35) (72:74)
(72:109, aff'd St. Bd. 72:120) (72:259)
(72:302) (72:381) (72:485, aff'd St. Bd.
73:770) (72:494) (72:507) (72:535)
(72:565) (72:611) (73:157) (73:293)
(73:409, aff'd St. Bd. 74:1412) (73:460)
(73:464, aff'd St. Bd. 74:1437 aff'd App.
Div. 75:1162) (73:641) (73:721, aff'd St.
Bd. 75:1160) (74:97) (74:213) (74:246)
(74:501) (74:522) (74:573, modified St.
Bd. 74:577) (74:662) (74:755) (74:820)
(74:1269, aff'd St. Bd. 75:1111)
(74:1307) (75:18, Hayes) (75:187,
Palinkas) (75:366, Campbell) (75:397,
Quinn) (75:616, Caputo) (75:652, Sondey,
dismissed St. Bd. 76: July 14) (75:752,
Deer) (75:862, Guarino) (75:978,
Hodgkiss, aff'd and clarified St. Bd.
76:1147) (76:65, Campbell) (76:345,
Rinaldi) (76:392, Finkbiner) (76:816,

Lefakis, aff'd St. Bd. 77: March 2)
(76:913, Masone) (76:1000, Criscenzo)
(76:1028, Myers) (77:50, Felmey, stay
denied St. Bd. 77:57, aff'd St. Bd.
77:57) (77:163, Grabert) (77:197,
Sciarrillo) (77:403, Reilly) (77:435,
Kaplan, motion to reopen dismissed St.
Bd. 77:436) (77:451, Feitel, aff'd St.
Bd. 77:458) (77:513, Guasconi, aff'd St.
Bd. 77:517) (77:524, Gavlick) (77:570,
McRae) (77:786, Zielenski)
(77:941, Fattell) (77:960, Ivens)
(77:976, Levitt, aff'd St. Bd. 78:1027,
aff'd App. Div. 79:847)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Teachers - continued

Unbecoming conduct - continued

(77: March 2, Gish, aff'd St. Bd. 77: June 1, unpublished opinion) (74:755, aff'd St. Bd. 75:1120) (77: March 2, Gish, aff'd St. Bd. 77: June 1, aff'd St. Bd. 79: February 7, unpublished opinion) (78:63, Birch) (78:83, Kochman) (78:368, Simpson, aff'd St. Bd. 78:377) (78:477, Gervasio) (78:526, Dusel, aff'd St. Bd. 79:155) (78:660, Belford) (78:689, Humphreys, rev'd St. Bd. 79:839) (78:677, Versocki) (78:696, Windsor, aff'd St. Bd. 79:884) (78:726, Patras) (78:912, Greenberg) (78:929, Ribacka) (79:192, Romeo) (79:248, Gaus, modified St. Bd. 80: March 5) (79:267, Johnson, aff'd with modification St. Bd. 79:273) (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. den. 91 N.J. 538 (1982) (79:479, Harrell) (79:528, Kane, aff'd St. Bd. 80: June 11, aff'd App. Div. 81:1439) (79:583, Milligan, aff'd St. Bd. 80: February 6) (79:605, Karsen, aff'd St. Bd. 80: April 8) (80: January 3, Glick, aff'd St. Bd. 80: April 8) (80:82, Cirangle, aff'd St. Bd. 80:97, aff'd App. Div. 81:1405, certif. denied 87 N.J. 347 (1981) (80:105, Roberts, aff'd St. Bd. 81: February 4) (80:145, McCormick, aff'd St. Bd. 80:157) (80:204, DeMarco, aff'd St. Bd. 80:227) (80: March 17, Dixon) (80: April 10, Plotnick) (80:431, Nacht) (80: May 14, Fancera) (80: May 19, Rozynski) (81: May 26, Kim, aff'd St. Bd. 81: September 2) (81: May 26, King) (81: June 1, Kazanchy) (81: December 4, DeKrafft, aff'd St. Bd. 82: May 5) (82: February 17, Sager)

(84:2043, Tiefenbacher, St. Bd. on remand, prior decisions: February 22, 1982, modified St. Bd. August 6, 1982, remanded App. Div. 83:1648) (84:350, Doyle, rev'd St. Bd. 84:383, aff'd in part, vacated in part, remanded to St. Bd. 201 N.J. Super. 347 (App.Div. 1985), remanded
App.Div. unreported opinion (Docket No. A-4885-85T5, decided November 13, 1986), on remand St. Bd. 87:2596, aff'd App. Div. unreported

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Teachers - continued

Unbecoming conduct - continued

opinion (Docket No. A-4885-85T5 decided June 3, 1987)) (82: March 2, Driscoll, aff'd St. Bd. 82: September 8, aff'd unpublished opinion, App. Div. (Docket No. A-798-82T2, decided October 28, 1983)) (82: March 9, Edwards) (82: October 29, Calabrese) (82: November 8, Halley, aff'd St. Bd. 83: May 4) (82: November 9, Powell) (82: December 13, Ziobro) (83: February 25, Mickens) (83:225, McClelland, aff'd St. Bd. 83:247) (83:544, Deetz, rev'd St. Bd. 84:1923, aff'd App. Div. Docket No. A-1264-84T5, unpublished May 10, 1985, certif. den. 101 N.J. 321 (1985)) (83:633, Cohn) (83:836, Tenney, aff'd St. Bd. 84:2042) (83:973, Ziobro) (84:1, Pasquale, decision on remand from 83: July 8, aff'd with modification St. Bd. 84:34) (84:35, Trautwein, decision on remand from Commissioner's decision 83: May 19) (84:143, Michaels) (84: January 30, Markovich) (84: March 8, Burns, aff'd St. Bd. 84: October 24) (84:1986, Nogaki, St. Bd. rev'g Commissioner decision 83:890), 84:2047, Verost v. Bd. of Ed. of Village of Ridgewood, published opinion, App. Div. (Docket No. A-4804-82T5, decided February 6, 1984), certif. denied 97 N.J. 593 (1984), aff'g (82: October 18, modified as to procedural defect, aff'd as to result St. Bd. 83:1654); Tanelli, 194 N.J. Super. 492 (App. Div. 1984), certif. denied 99 N.J. 181 (1984), aff'g (83:1646, St. Bd. rev'g 82: September 9) (84:1216, Brody, aff'd St. Bd. 84:1247, aff'd App. Div.

unreported
opinion (Docket No. A-1326-84T7, decided
March 27,
1986) (84:390, Taylor, aff'd St. Bd.
85:2026) (85: March 18, Fulcoli) (85:933
Lieb) (85:946
Wallwork) (85: July 8, Connors)
(85:1110, Ferenz, aff'd in part, rev'd in
part St. Bd. 87:2602, aff'd App. Div.
unreported op. (Dkt. No. A-1309-87T7,
April 18, 1989) (85:1283 Simonis, aff'd
St.
Bd. 86:3117) (85: October 10, Marsden)
(85:1467, Apkarian, on remand 86:1889,
aff'd St. Bd. 86:1916, aff'd App. Div.
unreported opinion

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Teachers - continued

Unbecoming conduct - continued

(Docket No. A-927-86T8, decided November 20, 1987)) (85:1524 Caporaso, aff'd with opinion St. Bd. 86:3024, rev'd and remanded on other grounds App. Div., A-4558-85T6 (March 19, 1987), on remand 87:1664, aff'd St. Bd. 87:1668, aff'd App. Div. unpublished op. (Dkt. No. A-2498-87T7, November 15, 1988)) (85: October 18, Royds, aff'd St. Bd. 86:3128) (85:1641, McGuire, aff'd St. Bd. 86:3086) (85:1800, Martin, aff'd St. Bd. 86:3093, decision on remand 87:1929) (86:42, Cowan, aff'd St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App. Div. 1988)) (86:168, Gwaley, aff'd St. Bd. 86:196) (86:197, Smith) (86:240, Brotzman) (86:612, Cotsakos) (86:649, Woodward) (86:656, Wisdom, aff'd St. Bd. 86:667) (86:668, Hamilton-Moore, aff'd St. Bd. 86:730) (86:993, Ortiz, aff'd St. Bd. 86:1008) (86:1650, Johnson) (86:1973, Molineux) (86:2721, Kurts) (86: December 29, Malley, aff'd St. Bd. 87:2627) (87: February 19, DiCerbo, aff'd with modification St. Bd. 87: July 1) (87:599, Eberly, St. Bd. rev'g and remanding 87:553, decision on remand 87:601, decision on motion St. Bd. 88:2441, aff'd St. Bd. 88:2447) (87:861, Roemmelt, aff'd St. Bd. with opinion 88:2527, aff'd App. Div. unpublished op. (Dkt. No. A-3303-88T7, January 25, 1989)) (87:1764, Yorke, aff'd St. Bd. 87:1787, aff'd App. Div. unreported op. (Dkt. No. A-2288-87T8, March 17, 1989)) (87:1895, Tyler, decision on remand 88:293, aff'd w/modif. 88:308, aff'd 236 N.J. Super. 478 (App. Div. 1989)) (88:542, Pappa) (88:661, Cipollini, aff'd St. Bd. 88:678) (88:695, Jackson, aff'd w/modif. 88:721) (88:722, Samiljan, aff'd St. Bd. 88:739)

(88:1257, Wagner) (88:2074, Kind,
dismissed St. Bd. 89: January 4)
(88:2142, Taylor) (88:2162, Burnside)
(89:165, Pinto, aff'd St. Bd. 89:207)
(89:1266, Jamrogowicz) (89:1996,
Molinaro, aff'd St. Bd. 90:1773)
(89:2836, Schnitzer)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases (listed by specific charges)

Abandonment of position (78:551, Pedecine) (78:726, Patras)

(85:401 Bates, aff'd in part, rev'd in part, St. Bd. 86:2988, aff'd App. Div. unreported opinion (Docket No. A-2700-86T7, decided November 16, 1987)) (88: April 6, Sodora) (88: September 1, Clemens) (88:2074, Kind, dismissed St. Bd. 89: January 4) (88:2142, Taylor) (88:2162, Burnside) (89:1794, Pizarro)
Abandonment of position, failure to obey board's

order to

return to work (83: May 6, Osborne)

had

Absence from "Back to School Night" where employee

followed board policy for applying for emergency personal leave of absence; held board action certifying tenure charges was arbitrary and capricious (84:174, Murphy)

(71:623)

Absence without authorization (59-60:90) (71:26) (72:485 aff'd St. Bd. 73:770) (72:494) (73:641) (73:721, aff'd St. Bd. 75:1160) (74:213) (74:246) (74:755) (74:820) (75:652, Sondey, dismissed St. Bd. 76: July 14) (76:65, Campbell) (76:816, Lefakis, aff'd St. Bd. 77:1293) (76:361, Smollok) (77:50, Felmey, stay denied St. Bd. 77:57, aff'd St. Bd. 77:57) (77:403, Reilly) (77:524, Gavlick) (77:603, Mamatz) (75:366, Campbell) (74:755, aff'd St. Bd. 75:1120) (78:726, Patras) (81: May 26, King) (82: January 6, Kopel) (82: November 9, Powell) (84: August 20, Marshall) (88:661, Cipollini, aff'd St. Bd. 88:678)

Absence without prior notice, due to alcoholism (82: November 29, Powell)

December 4,

Absence without prior notice to board (81:

DeKrafft, aff'd St. Bd. 82: May 5)

Absence without reasonable explanation constituted incapacity and unbecoming conduct by

janitor (89:1219, Houlroyd)
(89:1224, Donohue)
Abuse of school property (78:477, Gervasio)
Abuse of sick leave (81: April 24, Canzonier)
(86:2988, Bates, St. Bd. aff'g in part, rev'g
in part 85:401 aff'd App. Div. unreported
opinion (Docket No.
A-2700-86T7, decided November 16, 1987))
Abusive and offensive language (86:42, Cowan,
aff'd St. Bd. 86:93, aff'd 224 N.J. Super.
737 (App. Div. 1988)) (88:2162,
Burnside)
Administering of medication to wrong child (76:841,
Baley,
aff'd St. Bd. 77:1277)
Adultery (73:40)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Advocacy of gay rights and attendant publicity do
not

constitute unbecoming conduct absent evidence of interference with teacher's performance or operation of schools (80:1229, Gish, aff'd in part, rev'd in part St. Bd. 81: July 1, aff'd in part, App. Div., unpublished opinion, (Docket No. A-5564-80T1, December 16, 1982)

Alcohol, under the influence of, while on duty as custodian, mitigated by evidence of rehabilitation, salary forfeiture ordered instead of dismissal from tenure (82: July 19, Hay)

Alcohol use at school is mitigated by evidence of rehabilitation; salary forfeiture, not dismissal, ordered (82: February 25, Wells, aff'd St. Bd. 82: July 7)

Alcohol use at school, second offense by custodian warrants discharge (84: July 9, Johnson, aff'd St. Bd. 84: December 5, aff'd App. Div. unreported opinion (Docket No. A-2105-84T7, decided October 24, 1985)

Alcohol use while at school (86:2721, Kurts)
Alcoholism, no violation of state Law Against Discrimination or federal Vocational Rehabilitation Act to suspend and charge alcoholic where use of alcohol was affecting job performance at time of action (82: July 19, Hay, aff'd St. Bd. 82: December 1) (85: April 15, Melchior, aff'd by St. Bd. 85: September 4)

Alcoholism; several instances of intoxication while
at school are grounds for dismissal (85: April 15, Melchior, aff'd by St. Bd. 85: September 4)

Anti-semitic remarks (80:987, Blasko, modified in part, aff'd in part St. Bd. 81: February 4, motion for reconsideration denied St. Bd. 81: April 1) (89:165, Pinto, aff'd w/op. St. Bd.

89:207)
Arrest (85:1800 Martin, aff'd St. Bd. 86:3093
decision on remand 87:1929) (87:2010, Parker)
Assault and battery (70:120) (72:535) (73:157)
(73:409)
(73:641) (74:755, aff'd St. Bd. 75:1120)
(77:960, Ivens) (78:368, Simpson, aff'd St.
Bd. 78: September 6)
Bizarre conduct (83:490, O'Hara, aff'd St. Bd.
84:2002,
aff'd App. Div. unreported opinion (Docket No.
A-3128-83T3, decided August 30, 1985)
(88:2142, Taylor)
Bookmaking and conspiracy; do not constitute moral
turpitude but warrant reduction in salary (80:
July 22, Rumage)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Cafeteria duty, refusal to execute duties (76:392, Finkbiner) (78:477, Gervasio)
Charging personal expenses to board (80:82, Cirangle, aff'd St. Bd. 80:97, aff'd App. Div. 81:1405, certif. denied 87 N.J. 347 (1981))

Communist affiliation

(See "Communism", this index)

Contempt for school authority (78:677, Versocki)

Contributing to delinquency of a minor (74:522)

(78:368,

Simpson, aff'd St. Bd. 78:377)

vacancy

Conversation with mayor concerning principalship

found improper (77:197, Sciarrillo)

or

Conviction of criminal offense - see also Dismissal

reduction in salary, criminal conduct - this section (76:647, Rhen) (76:1028, Myers) (77:95, Buch) (77:513, Guasconi, aff'd St. Bd. 77:517) (77:976, Levitt, aff'd St. Bd. 78:1027, aff'd App. Div. 79:847) (80: December 22, Fridy, aff'd with modification St. Bd. 81: May 6, aff'd App. Div., unpublished opinion (Docket No. A-4470-80T3, decided January 26, 1983), remanded App. Div., unpublished opinion (A-4470-80T3, decided March 8, 1983, decision on appeal, aff'd St. Bd. 84: May 2) (81: February 5, Kim) (81: April 21, Saunders, aff'd St. Bd. 81: September 2) (83:173, Kendall, aff'd St. Bd. 83:182) (83: June 1, Grover) (83:1343, Martin, aff'd with modification St. Bd. 84:1962, aff'd in part rev'd in part App. Div. unpublished opinion (Docket No. A-5503-83T6 decided July 17, 1985) (85: March 18, Fulcoli) (85:1641 McGuire, aff'd St. Bd. 86:3086) (86:612, Cotsakos) (86:649, Woodward) (86:656, Wisdom, aff'd St. Bd. 86:667) (87:265, Ware) (87:2010, Parker)

Corporal punishment (83:420, Smith, aff'd St. Bd.

83:489)

(84:350, Doyle, rev'd St. Bd. 84:383, aff'd in

part, vacated in part, remanded to St. Bd. 201
N.J. Super. 347 (App.Div. 1985), remanded
App.Div. unreported opinion (Docket No.
A-4885-85T5, decided November 13, 1986), on
remand St. Bd. 87:2596, aff'd App. Div.
unreported opinion (Docket No. A-4885-85T5
decided June 3, 1987)) (86:42, Cowan, aff'd
St. Bd. 86:93, aff'd 224 N.J. Super. 737 (App.
Div. 1988)) (86:197, Smith) (86:668,
Hamilton-Moore, aff'd St. Bd. 86:730)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Corporal punishment - continued

(85:1467, Apkarian, on remand 86:1889, aff'd St. Bd. 86:1916, aff'd App. Div. unreported opinion (Docket No. A-927-86T8, decided November 20, 1987)) (86:1973, Molineux) (87:218, Jackson, aff'd St. Bd. 87:258) (88:459, Thomas, aff'd St. Bd. with modification 89:3090)
Charged, In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967) (C. decs. 61-62:160, 64:142, 67:215, St. Bd. 63:251, 66:225, 67:220) (52 53:67, aff'd St. Bd. 52-53:72) (65:130) (66:185) (69:130, dismissed St. Bd. 70:458) (69:159, aff'd St. Bd. 70:448, aff'd App. Div. 72:662) (70:120) (70:169) (70:378) (71:37) (71:331) (72:109, aff'd St. Bd. 72:120) (72:381) (72:535) (72:565) (72:611) (73:157) (73:409 aff'd St. Bd. 74:1412) (73:464, aff'd St. Bd. 74:1437, aff'd App. Div. 75:1162) (73:641) (73:721, aff'd St. Bd. 75:1160) (74:501) (74:631) (74:755) (74:652, Sondey) (75:652, Sondey, dismissed St. Bd. 76: July 14) (76:345, Rinaldi) (77:524, Gavlick) (77: May 13, McRae, unpublished opinion) (77:941, Fattell) (77:960, Ivens) (78:63, Birch) (79:248, Gaus, modified St. Bd. 80: March 5) (79:479, Harrell) (79: October 23, Alfano, unpublished opinion) (80:105, Roberts, aff'd St. Bd. 81: February 4) (80: March 17, Dixon) (80:431, Nacht) (80:729, Dinich) (81: August 27, Williams, aff'd St. Bd. 82: February 3, aff'd App. Div. 82:1594) (84:2043, Tiefenbacher, St. Bd. on remand, prior decisions: February 22, 1982, modified St. Bd. August 6, 1982, remanded App. Div. 83:1648) (84:350, Doyle, rev'd St. Bd. 84:383, aff'd in part, vacated in part, remanded to St. Bd. 201 N.J. Super. 347 (App.Div. 1985), remanded App.Div. unreported opinion

(Docket No. A-4885-85T5, decided November 13, 1986), on remand St. Bd. 87:2596, aff'd App. Div. unreported opinion (Docket No. A-4885-85T5 decided June 3, 1987)) (84:1216, Brody, aff'd St. Bd. 84:1247, aff'd App. Div. unreported opinion (Docket No. A-1326-84T7, decided March 27, 1986)) (84: August 13, Engelke, aff'd St. Bd. 85: January 2) (87:1895, Tyler, decision on remand 88:293, aff'd w/modif. 88:308, aff'd 236 N.J. Super. (App. Div. 1989)) (88:695, Jackson, aff'd w/modif. 88:721) (88:July 26, Thomas)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Corporal punishment - continued

Defined, (38:585) (38:589) (61-62:160)

(65:121)

(65:130) (66:185) (68:98) (71:331)
(71:520) (72:86) (73:409 aff'd St. Bd.
74:1412) (73:721, aff'd St. Bd. 75:1160)
(88:695, Jackson, aff'd w/modif. 88:721)

Provocation is a mitigating circumstance

(74:755)

(77:941, Fattell) (77:960, Ivens)

Creating atmosphere of threat and fear in class

(80:431,

Nacht)

Criminal charges (85:946 Wallwork)

Criminal indictment (87:719, Harris)

Criticism of school nurse (78:63, Birch)

Criticizing administration, In re Pietrunti, 128

N.J.

Super. 149 (App. Div.) certif. denied 65 N.J.
573 cert. denied 419 U.S. 1057 (1974) (C.
decs. 72:387, 73:9, St. Bd. 73:782); (72:302)
(73:293) (75:652, Sonday, dismissed St. Bd.
76: July 14) (76:773, Martz, aff'd St. Bd.
76:791) (76:816, Lefakis, aff'd St. Bd.
77:1293) (77:403, Reilly)

Delay in returning school records (79:248, Gaus,

modified

St. Bd. 80: March 5)

Discussing own evaluation with pupils (79:528,

Kane, aff'd

St. Bd. 80: June 11, aff'd App. Div. 81:1439)

Discussing personal problems in class (79:528,

Kane, aff'd

St. Bd. 80: June 11, aff'd App. Div. 81:1439)

Disloyalty to school (79:528, Kane, aff'd St. Bd.

80: June

11, aff'd App. Div. 81:1439)

Disobeying board and/or superintendent directives

(72:35) (74:525) (74:573, modified St. Bd.

74:577) (74:820) (77:163, Grabert) (78:884,

Dolphin)

Disorderly person conviction (85:933 Lieb) (86:

1945, Timmons, aff'd St. Bd. 86:1958, aff'd

App. Div. unreported decision, Docket No.
A-2518-86T8 decided
November 13, 1987) (89:1996, Molinaro, aff'd St.
Bd.

90:1773)
Drug use and receipt of drugs away from school and
on

school premises (83:544, Deetz, rev'd St. Bd.
84:1923, aff'd App. Div. Docket No.
A-1264-84T5, unpublished May 10, 1985, certif.
den. 101 N.J. 321 (1985)) (83: October 17,
Passero)
Drug use, away from school premises (80: January
3, Glick,
aff'd St. Bd. 80: April 8) (80:721, Wolfe,
aff'd St. Bd. 80:728, aff'd App. Div. 81:1537,
decided October 5, 1981)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Embarrassment of student (80: October 24, Murphy)
Emergency lesson plans, failure to provide (81:
December 4, DeKrafft, aff'd St. Bd. 82: May 5)
Encouraging a student demonstration (78:677,
Versocki)
Excessive absence (59-60:90) (72:485 aff'd St. Bd.
73:770) (74:213) (75:652, Sonday, dismissed
St. Bd. 76: July 14) (80:1364, Merkooloff,
St. Bd. remanded to Legal Committee, 81:
April 1, aff'd St. Bd. 81: June 3) (81:
December 4, DeKrafft, aff'd St. Bd. 82: May
5) (82: January 6, Kopel) (82: July 30,
Prince) (84: March 8, Burns, aff'd St. Bd.
84: October 24) (84: August 20, Marshall)
(85: May 13, Tonnarello) (85:722 Booth, aff'd
St. Bd. 87:2541, aff'd App. Div. unreported
opinion (Docket No. A-3958-86T8, decided
November 13, 1987)) (85:1572 Marsden, aff'd
St. Bd. 87:2628) (86:1232, Figueroa) (86:1462,
Williamson) (86:2721, Kurts) (86: December
29, Malley, aff'd St. Bd. 87:2627) (87: March
31, Miller) (87:1023, White) (88:2074, Kind,
dismissed St. Bd. 89: January 4) (88:2142,
Taylor) (89:1667, Herskowitz, aff'd St. Bd.
89:1681)
Excessive tardiness (73:721 aff'd St. Bd. 75:1160)
(75:652, Sonday, dismissed St. Bd. 76: July
14) (76:65, Campbell) (76:773, Martz, aff'd
St. Bd. 76:791) (77:163, Grabert) (81:
October 5, Davis) (86:2721, Kurts) (87:1023,
White) (88:2074, Kind, dismissed St. Bd. 89:
January 4)
Failure and refusal to supervise students in
auditorium (82: March 2, Driscoll, aff'd St. Bd. 82:
September 8, aff'd unpublished opinion, App.
Div. (Docket No. A-798-82T2, decided October
28, 1983))
Failure of guidance counselor to interview and
review records of students (82: March 2, Driscoll,
aff'd St. Bd. 82: September 8, aff'd

unpublished opinion, App. Div. (Docket No. A-798-82T2, decided October 28, 1983))
Failure to answer notice of charges (79: May 18,
Beckwith, unpublished opinion) (85: July 8, Connors)
Failure to attend teachers' meeting (78:63, Birch)
Failure to do assigned duty (82: March 2,
Driscoll, aff'd St. Bd. 82: September 8, aff'd unpublished
opinion, App. Div. (Docket No. A-798-82T2,
decided October 28, 1983))
Failure to follow approved detention policy (78:63,
Birch)
(78:477, Gervasio)
Failure to follow approved field trip policy
(78:477, Gervasio)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Failure to follow fire drill regulations (77:50,
Felmey, stay denied St. Bd. 77:57,
aff'd St. Bd. 77:57) (77:786,
Zielenski)
Failure to follow rules and regulations regarding
lesson plans (88:2074, Kind, dismissed St. Bd. 89:
January 4)
Failure to give remedial help to pupils, (79:605,
Karsen, aff'd St. Bd. 80: April 8)
Failure to develop and maintain lesson plan and
IEP's (88:2162, Burnside)
Failure to obey written and oral directives (82:
March 2, Driscoll, aff'd St. Bd. 82: September 8,
aff'd unpublished opinion, App. Div. (Docket
No. A-798-82T2, decided October 28, 1983))
(83:311, Scarpignato, aff'd with modification
St. Bd. 83:338)
Failure to perform assigned duties (86:2721, Kurts)
(88:2142, Taylor)
Failure to possess required certificate (78:862,
Moore)

Failure to report to work (80: May 14, Fancera)
(87: March 31, Miller) (89:1667, Hershkowitz, aff'd St. Bd. 89:1681)
Failure to stimulate and maintain interest in instrumental music and band programs (89:1749, Gordon, aff'd St. Bd. 89:1766)
Falsification of answers to standardized achievement tests, held to be carelessness in grading (75:978, Hodgkiss, aff'd and clarified St. Bd. 76:1147) (87:1764, Yorke, aff'd St. Bd. 87:1787)
Falsification of employment application (86:993, Ortiz, aff'd St. Bd. 86:1008)
Falsification of information on student records and office logs (82: March 2, Driscoll, aff'd St. Bd. 82: September 8, aff'd unpublished opinion, App. Div. (Docket No. A-798-82T2, decided October 28, 1983)) (83: March 4, Schafer, aff'd St. Bd. 83: December 7)
Falsification of time, attendance record (88:1296, Paladino)
Field trip, diversion from approved trip and form of transportation (76:913, Masone)
Foul and offensive language (88:221, Napoli, aff'd St. Bd. 88:284, stay denied St. Bd. 89: February 1, aff'd App. Div. unpub. op. (Dkt. No. A-2301-88T3, March 2, 1990))
Gambling activity on school property (89:2836, Schnitzer)
Grading procedures, improper use of (78:63, Birch) (78:477, Gervasio)
Gun in school (76:869, Stephenson)
Harassing telephone calls (89:1996, Molinaro, aff'd St. Bd. 90:1773)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Harassment of administrators (77:976, Levitt, aff'd St. Bd. 78:1027, aff'd App. Div. 79:847)

Harassment of students (78:63, Birch) (78:929,
Ribacka) (81: April 16, V.C.)

Homosexuality

rights, does Homosexuality, or advocacy of homosexual

not constitute unbecoming conduct (81:
July 1, St. Bd. rev'g in part, aff'g in
part 80:1229, Gish) See also unpublished
opinion, App. Div. (Docket No.
A-5564-80T1, December 16, 1982) affirming
teacher's dismissal on drug charges but
declining to rule on charges of
unbecoming conduct

young adult

Isolated incident of homosexual advances to

does not constitute "personality
disorder" rendering teacher unfit
(85:1800 Martin, aff'd St. Bd. 86:3093,
decision on remand 87:1929)

aff'd St. Bd.

Psychiatric examination ordered (74:1150,
75:1085)

dismissed

Improperly touching pupils (80: July 31, Henley,

as out of time St. Bd. 80: October 3)
(83:225, McClelland, aff'd St. Bd. 83:247)
(83:973, Ziobro) (84:1600, Liskovec, aff'd St.
Bd. 85:1956, aff'd App. Div. 85:1957) (87:599,
Eberly, St. Bd. rev'g and remanding 87:553,
decision on remand 87:601, decision on motion
St. Bd. 88:2441, aff'd St. Bd. 88:2447)
(87:1447, Wolf, aff'd by St. Bd. 87:1480,
rev'd on procedural grounds 231 N.J. Super.
365 (App. Div. 1989)) (89:1803, Gregg)

Improper language in talking to pupil (79:248,

Gaus,

modified St. Bd. 80: March 5)

dismissed

Improper remarks to pupils (80: July 31, Henley,

as out of time St. Bd. 80: October 3)
Inability to control class (80: March 17, Helmus)
(84:1764, Slovney) (88:2162, Burnside)

aff'd St.

Inappropriate entries in plan book (79:528, Kane,

Bd. 80: June 11, aff'd App. Div. 81:1439)

Incapacity (See cases listed by position)

driver's

Incapacity by attendance officer for loss of

license not proven (88:582, Woolard, aff'd St.
Bd. 88:601, aff'd App. Div. unreported op.

(Dkt. No. A-898-88T1, June 12, 1989))

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

physical
Incapacity - charges not proven, no evidence of
inability to resume duties, psychiatrist's
finding of no mental illness outweighs
orthopedist's judgment that psychological
effect of past injuries would prevent
resumption of work (86:1670, Gramlich, aff'd
St. Bd. 86:1687, aff'd unreported opinion App.
Div. (Docket No. A-1934-85T8 decided June 20,
1988))

classes;
Incapacity; failure to control physical education
physical and mental examinations ordered
(89:2482, Leo)

of job
Incapacity, physical injury preventing fulfillment
responsibilities (83: July 21, Verga)
(89:1667, Hershkowitz, aff'd St. Bd. 89:1681)

"Teachers")
Incompetency (See cases listed by position -
Incompetency charges dismissed where proofs pointed
to
inefficiency not incompetency (84:333, Nafash)
Incompetency charges, remanded to ALJ for
evidentiary
hearing, reversing summary decision rendered
in favor of tenured teacher on charges of
inefficiency (83: March 14, Holden)
Incompetent (77:570, McRae)
Inefficiency (See cases listed by position -
"Teachers")
Inefficiency
Gross carelessness and inefficiency in grading
of
departmental exams is unbecoming conduct
warranting loss of salary for 120 days
and increment withholding (87:1764,
Yorke, aff'd St. Bd. 87:1787)
Janitor (87:1023, White)
Lack of classroom control documented over
several
years, dismissal held proper (84:269,
Fodor, aff'd with modification St. Bd.

84:297) (84:1764, Slovney) (88:2074, Kind, dismissed St. Bd. 89: January 4)
Performance generally, dismissal held improper
(84:2006, Rowley, St. Bd. rev'g 83: May
23, rev'd and remanded 205 N.J. Super. 65
(App. Div. 1985) decision on remand St.
Bd. 86:3127, settlement approved)
(84:1764, Slovney) (88:2074, Kind,
dismissed St. Bd. 89: January 4)
Inflammatory statement read at board meeting

(79:528,

Kane, aff'd St. Bd. 80: June 11, aff'd App.
Div. 81:1439)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Insubordination: In re Pietrunti, 128 N.J. Super. 149 (App. Div.) certif. den. 65 N.J. 573 cert. denied 419 U.S. 1057 (1974) (C. decs. 72:387, 73:9, St. Bd. 73:782); (52-53:67, aff'd St. Bd. 52-53:72) (68:89) (71:284) (71:623) (72:302) (72:381) (73:464, aff'd St. Bd. 74:1437, aff'd App. Div 75:1162) (74:213) (74:323) (75:652, Sondey, dismissed St. Bd. 76: July 14) (76:392, Finkbiner) (76:869, Stephenson) (77:50, Felmey, stay denied St. Bd. 77:57, aff'd St. Bd. 77:57) (77: March 10, Grabert) (78:63, Birch) (78:83, Kochman) (78:551, Pedecine) (78:726, Patras) (78:884, Dolphin) (79:528, Kane, aff'd St. Bd. 80: June 11, aff'd App. Div. 81:1439) (79:583, Milligan, aff'd St. Bd. 80:1515) (79:605, Karsen, aff'd St. Bd. 80:1506) (84:2047, Verost v. Bd. of Ed. of Village of Ridgewood, published opinion, App. Div. (Docket No. A-4804-82T5, decided February 6, 1984), certif. denied 97 N.J. 593 (1984), aff'g (82: October 18, modified as to procedural defect, aff'd as to result St. Bd. 83:1654) (83:490, O'Hara, aff'd St. Bd. 84:2002, aff'd App. Div. unreported opinion (Docket No. A-3128-83T3, decided August 30, 1985) (83: May 6, Osborne) (83:311, Scarpignato, aff'd with modification St. Bd. 83:338) (84:685, Castaldo, aff'd St. Bd. 84:768) (84:1216, Brody, aff'd St. Bd. 84:1247, aff'd App. Div. unreported opinion (Docket No. A-1326-84T7, decided March 27, 1986)) (86:240, Brotzman) (86:1973, Molineux) (86: December 29, Malley, aff'd St. Bd. 87:2627) (87:172, Onorevole, decision on remand, aff'd St. Bd. 88:2501) (88: April 6, Sodora) (88:459, Thomas, aff'd St. Bd. with modification 89:3090) (88:722, Samiljan, aff'd St. Bd. 88:739) (88:2142, Taylor)

Insubordination; refusal to submit physician's

certificate

in support of request for leave is not
insubordination; abuse of sick leave found

(86:2988, Bates, St. Bd. aff'g in part, rev'g
in part 85:401, aff'd App. Div. unreported
opinion (Docket No. A-2700-86T7, decided
November 16, 1987))

dismissal Insubordination and unbecoming conduct charges;

ordered based on board's exhibits, despite
failure of teacher to appear at hearing
(86:1650, Johnson)

aff'd St. Interrupted standardized testing (79:528, Kane,

Bd. 80: June 11, aff'd App. Div. 81:1439)
Intoxication (76:979, Jeffers)
Intoxication (janitors) (74:170) (74:1126)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Lack of control of emotions (79:583, Milligan,
aff'd St. Bd.
80:1515)
Lateness, excessive and without notice to board
(81:
December 4, DeKrafft, aff'd St. Bd. 82: May
5) See also "Tardiness" under this heading
Leave of absence, unauthorized (88:661, Cipollini,
aff'd St. Bd. 88:678)
Leaving class unattended (79:248, Gaus, modified
St. Bd. 80:
1490) (88:2142, Taylor) (88:2162, Burnside)
Driscoll,
Leaving school without signing out (82: March 2,
aff'd St. Bd. 82: September 8, aff'd
unpublished opinion, App. Div. (Docket No.
A-798-82T2, decided October 28, 1983))
Leaving work area or assigned post (by janitor)
(80: June
2, Jackson, aff'd St. Bd. 81: January 22)
(78:1, Grandino, remanded St. Bd. 78:10, on
remand 80: June 6, aff'd St. Bd. 80: October
1, motion for clarification dismissed 81:
October 5, aff'd St. Bd. 82: February 3,
aff'd App. Div., unpublished opinion (Docket
No. A-3190-81T1, decided March 18, 1983)
Misappropriation of school activity funds (82:
October 25, Guma, aff'd St. Bd. 83:1553)
Misappropriation of student fees (79:192, Romeo)
Misconduct (61-62:149) (72:35) (74:170) (74:573
modified
St. Bd. 74:577) (76:1000, Criscenzo)
Misrepresentation concerning payments for extra
duties by
board secretary, charges dismissed (85:319,
Nolan)
Misrepresentation concerning reasons for absences
(78:477,
Gervasio)
Misrepresentation in submission of sabbatical plan
(81: May 26, Kim)
Misrepresentation of credentials

Superintendent dismissed (74:1176, aff'd St.
Bd.
75:763, aff'd and remanded App. Div. 75:
September 11, aff'd on remand 75:764
aff'd App. Div. 76:1159)
Teacher dismissed (75:752, Deer)
Misrepresentations concerning reasons for absences
(76:816,
Lefakis, aff'd St. Bd. 77:1293) (77:50,
Felmey, stay denied St. Bd. 77:57, aff'd St.
Bd. 77:57) (77:163, Grabert) (77:524, Gavlick)
(77:934, Puryear)
Misrepresentations concerning sabbatical leave and
intentions concerning academic work for
certification
as school psychologist (76:796, Lavin)
Misuse of personal leave (77:524, Gavlick)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Misuse of sick leave (71:26) (76:816, Lefakis,
aff'd
St. Bd. 77:1293) (76:979, Jeffers) (77:934,
Puryear) (75:366, Campbell) (78:477, Gervasio)
(78: August 16, Windsor, aff'd St. Bd.
79:884, unpublished opinion)
Misuse of school property (74:867) (74:1176, aff'd
St. Bd.
75:763, aff'd and remanded App. Div. 75:
September 11, aff'd on remand 75:764 aff'd
App. Div. 76:1159)
Neglect of duties (60-61:37 rev'd St. Bd.
61-62:236,
aff'd App. Div. 61-62:240) (73:287) (74:525)
(76:647, Rhen) (76:773, Martz, aff'd St. Bd.
76:791) (76:841, Baley, aff'd St. Bd. 77:1277)
(77:967, Secula, aff'd St. Bd. 77:975)
Negligent administration of wrong dose of
medication (89: 1229, Snyder, aff'd St. Bd.
w/opinion 89:1241)
Open public lewdness; exemplary teacher guilty of
single
offense reinstated with 120 days forfeiture
and increment withholding (88:542, Pappa)

March 2, Permitting pupils to see confidential records (82:
Driscoll, aff'd St. Bd. 82: September 8,
 aff'd unpublished opinion, App. Div. (Docket
 No. A-798-82T2, decided October 28, 1983))
 compositions Permitting pupils to use vulgar language in
 (79:528, Kane, aff'd St. Bd. 80: June 11,
 aff'd App. Div. 81:1439)
Kane, Permitting unauthorized visitors in class (79:528,
 aff'd St. Bd. 80: June 11, aff'd App. Div.
 81:1439)
 Physical abuse against a board member (77:95, Buch)
 Physical abuse against a fellow professional
 (76:14, Dennis)
 (78:660, Belford) (88:722, Samiljan, aff'd St.
 Bd. 88:739)
 handicapped Physical aggression when dealing with pre-k
 children and student teachers
 (89:1266, Jamrogowicz)
 January 21, Physical and verbal outbursts - threats (85:
Todd, aff'd St. Bd. 85: June 5)
 Physical and/or psychiatric problems
 (See also "Physical and Psychiatric
 Examinations",
 this index)
 Div. (60-61:37, rev'd St. Bd. 61-62:236, aff'd App.
 61-62:240) (65:23) (67:73) (73:657)
 (74:1168) (75:616, Caputo) (77:876,
Healy, aff'd and modified St. Bd.
 78:1019)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Physical contact with female student (85:1110, Ferenz, aff'd in part, rev'd in part St. Bd. 87:2602, aff'd App. Div. unreported op. (Dkt. No. A-1309-87T7, April 18, 1989)) (86:168, Gwaley, aff'd St. Bd. 86:196) (85:1467 Apkarian, on remand 86:1889, aff'd St. Bd. 86:1916, aff'd App. Div. unreported opinion (Docket No. A-927-86T8, decided November 20, 1987))

Physical fights with supervisor and student

(82:274,

Gilbert, aff'd St. Bd. 82:328, motion to reopen denied St. Bd. 90: November 19, motion for reconsideration denied St. Bd. 91:2553)

Physical or psychiatric problems (78:83, Kochman)

(78:776,

Bacon) (79:528, Kane, aff'd St. Bd. 80: June 11, aff'd App. Div. 81:1439) (80:1229, Gish, aff'd in part, rev'd in part St. Bd. 81: July 1, aff'd in part, App. Div., unpublished opinion, (Docket No. A-5564-80T1, December 16, 1982) (85:1413 Gaston)

"Pilfering" pupil lunches (80:431, Nacht)

Poor teaching methods and negative attitude toward

parents

and students (82:274, Gilbert, aff'd St. Bd. 82:328, motion to reopen denied St. Bd. 90: November 19, motion for reconsideration denied St. Bd. 91:2553)

Possession of drugs (80: May 19, Rozynski)

(80:1229,

Gish, aff'd in part, rev'd in part St. Bd. 81: July 1, aff'd in part, App. Div., unpublished opinion, (Docket No. A-5564-80T1, December 16, 1982) (80:721, Wolfe, aff'd St. Bd. 80:728, aff'd App. Div. 81:1537, decided October 5, 1981) (81: February 5, King)

Profanity: Requesting pupil to deliver profane

message to

teaching staff member (79:605, Karsen, aff'd

St. Bd. 80:1506)
 Profanity to students (77:786, Zielenski) (88:2162,
Burnside)
 Racial slurs (71:305) (71:566, aff'd St. Bd.
 73:773,
 aff'd App. Div. 73:773) (76:345, Rinaldi)
 Refusal to allow observation by administrator
 (82:274,
Gilbert, aff'd St. Bd. 82:328, motion to
 reopen denied St. Bd. 90: November 19, motion
 for reconsideration denied St. Bd. 91:2553)
 Refusal to answer questions regarding absences (82:
 March
 2, Driscoll, aff'd St. Bd. 82: September 8,
 aff'd unpublished opinion, App. Div. (Docket
 No. A-798-82T2, decided October 28, 1983))
 Refusal to complete attendance forms and lesson
 plans
 (82:274, Gilbert, aff'd St. Bd. 82:328)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

"Series of incidents" (82: March 2, Driscoll,
 aff'd St.
 Bd. 82: September 8, aff'd unpublished
 opinion, App. Div. (Docket No. A-798-82T2,
 decided October 28, 1983)) (83: January 17,
Dullea, aff'd St. Bd. 83: July 6)
 Sex change, In re Grossman, 127 N.J. Super. 13
 (App. Div.) certif. den. 65 N.J. 292 (1974) (C.
 dec. 72:144, St. Bd. 73:769)
 Sexual advances (70:239) (73:661) (74:662) (74:820)
 (74:1269, aff'd St. Bd. 75:1111) (75:397,
Quinn)
 Sexual advances toward pupil (79: December 20,
Matthews,
 aff'd St. Bd. 80: May 7, unpublished opinion)
 (84:1600, Liskovec, aff'd St. Bd. 85:1956,
 aff'd App. Div. 85:1957)
 Sexual advances and sexual touching of pupil
 (89:1803, Gregg)
 Sexual exploitation of minors; literature/sale
 depicting minors engaging in sexual
 activity (83:1343, Martin,

aff'd with modification St. Bd. 84:1962, aff'd in part, rev'd in part App. Div. unpublished opinion (Docket No. A-5503-83T6 decided July 17, 1985)

evidence Sexual molestation; matter remanded for entry into of DYFS investigation excluded below (88:459, Thomas, aff'd St. Bd. with modification 89:3090)

Sexual relationship with student (85:1597 Royds, aff'd St. Bd. 86:3128) (85:1524 Caporaso, aff'd with opinion St. Bd. 86:3024, rev'd and remanded on other grounds App. Div. A-4558-85T6 (March 19, 1987), on remanded 87:1664, aff'd St. Bd. 87:1668, aff'd unreported op. App. Div. (Dkt. No. A-2498-87T7, November 15, 1988))

staff, Sexually harassing comments to teachers, cleaning students over two-year period (88:2384, Marion, dismissed St. Bd. 89 April 5)

Johnson, Showing "pornographic" film to pupils (79:267, rev'd in part St. Bd. 79:273)

sufficient **Single flagrant incident** or series of incidents to sustain charge of unbecoming conduct, In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967) (78:419, Altschuler, aff'd with clarification St. Bd. 78:427) (78:477, Gervasio) (78:696, Windsor, aff'd St. Bd. 79:884) (78:726, Patras) (82: October 1, Gandia)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Single flagrant incident - continued

(84:2047, Verost v. Bd. of Ed. of Village of Ridgewood, published opinion, App. Div. (Docket No. A-4804-82T5, decided February 6, 1984), certif. denied 97 N.J. 593 (1984), aff'g (82: October 18, modified as to procedural defect, aff'd as to result St. Bd. 83:1654) (87:1895, Tyler, decision on remand 88:293, aff'd w/modif. 88:308, aff'd 236 N.J. Super. 478 (App. Div. 1989)) (88:722, Samiljan, aff'd St. Bd. 88:739)

Single incident of corporal punishment (84:2043, Tiefenbacher, St. Bd. on remand, prior decisions: February 22, 1982, modified St. Bd. August 6, 1982, remanded App. Div. 83:1648)

Social relationship with student (85:1597 Royds, aff'd St. Bd. 86:3128)

Tardiness, excessive (73:721, aff'd St. Bd.

75:1160)

(75:652, Sonday, dismissed St. Bd. 76: July 14) (76:65, Campbell) (76:773, Martz, aff'd St. Bd. 76:791) (77:163, Grabert) (81: October 5, Davis)

Threat of force against pupil (80:204, DeMarco, aff'd St. Bd. 80:227)

Threats against co-worker (80: June 2, Jackson, aff'd St.

Bd. 81: January 22) (85: March 18, Fulcoli)

Threats against supervisor (78:1, Grandino, remanded St. Bd.

78:10, on remand 80: June 6, aff'd St. Bd.

80: October 1, motion for clarification dismissed 81: October 5, aff'd St. Bd. 82: February 3, aff'd App. Div., unpublished opinion (Docket No. A-3190-81T1, decided March 18, 1983)

Threats of force against pupils, staff (79:583, Milligan,

aff'd St. Bd. 80:1515)

Threats, yelling and screaming at students (86:668, Hamilton-Moore, aff'd St. Bd. 86:730)

Throwing articles at pupils (80: July 31, Henley,
dismissed as out of time St. Bd. 80:
October 3) (85:1283, Simonis,
aff'd St. Bd. 86:3117)

Took pupils off school property without permission
(79:528,
Kane, aff'd St. Bd. 80: June 11, aff'd App.
Div. 81:1439)

Unbecoming Conduct

Based upon appropriation and transport of food
stuff,
same being property of the board (82:
May 3, Davis)
Based upon emotional distress and threats of
physical
violence (83:633, Cohn)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Unbecoming conduct - continued

Based upon misappropriation of school activity
funds
(82: October 25, Guma, aff'd St. Bd.
83:1553)

Commission of sexual act by school janitor
with an

unwilling person, acquittal of criminal
charges, dismissal held proper (83:
September 6, LaTronica, aff'd on remand
from Commissioner 83: November 9)

Corporal punishment and unauthorized touching
of
students (86:1973, Molineux) (87:1895,
Tyler, decision on remand 88:293, aff'd
w/modif. 88:308, aff'd 236 N.J. Super.
478 (App. Div. 1989))

Corporal punishment of pupils (84:350, Doyle,
rev'd

St. Bd. 84: November 7, aff'd in part
vacated in part, remanded to St. Bd. 201
N.J. Super. 347 (App.Div. 1985), remanded
App.Div. unreported opinion (Docket No.
A-4885-85T5, decided November 13, 1986),
on remand St. Bd. 87:2596, aff'd App.

(87:1764,

Div. unreported opinion (Docket No. A-4885-85T5 decided June 3, 1987))
Correcting departmental Algebra II exam
Yorke, aff'd St. Bd. 87:1787,
aff'd App. Div. unreported op.
(Dkt. No. A-2288-87T8, March
17, 1989))

Criminal charge of assault and harassment (82:
February 17, Sager)

Criminal indictment (87:719, Harris)

Evidenced by series of sexual harassment and
expression of anti-semitic remarks
(83:1151, Capalbo, aff'd St. Bd. 84:
February 1, oral argument denied 84:1909,
aff'd App. Div., unpublished opinion,
(Docket No. A-4686-83T6, decided July 17,
1985), certif. denied by Supreme Court
102 N.J. 336 (1985)

union

Excessive absenteeism and adverse exercise of

leadership, charges dismissed where board
held to have certified charges because of
exercise of constitutionally protected
speech (84:35, Trautwein, decision on
remand from Commissioner 83: May 19)

Excess absences and lateness (88:2074, Kind,
dismissed St. Bd. 89: January 4)
(88:2142, Taylor)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Unbecoming conduct - continued

Failure by attendance officer to possess
driver's
license despite driving during
employment; also driving while
intoxicated, driving while on revoked
list, refusal to take breathalyzer test,
involvement in car accident (88:582,
Woolard, aff'd St. Bd. 88:601, aff'd App.
Div. unreported op. (Dkt. No. A-878-87T1,
June 12, 1989))

Failure to prevent students from consuming
alcoholic
beverages on an unauthorized school trip
(87: February 19, DiCerbo, aff'd with
modification St. Bd. 87: July 1)

Gambling activity on school property (89:2836,
Schnitzer)

Gross carelessness and inefficiency (87:1764,
Yorke, aff'd St. Bd. 87:1787, aff'd App.
Div. unreported op. (Dkt. No. A-
2288-87T8, March 17, 1989))

Improper physical force (87:861, Roemmelt,
aff'd St. Bd. with opinion 88:2527, aff'd
App. Div. unpublished op. (Dkt.
No. A-3303-87T7, January 25,
1989))

Improper sexual contact (87:599, Eberly, St.
Bd. rev'g and remanding 87:553, decision
on remand 87:601, decision on
motion St. Bd. 88:2441, aff'd
St. Bd. 88:2447)

Improper touching of pupils, conduct held
unprofessional but innocuous,
reinstatement with penalty ordered
(83:973, Ziobro)

Improper touching of pupils including
"snapping" bras
of 6th grade girls; Teacher dismissed
(87:1447, Wolf, aff'd by St. Bd.,
87:1480, rev'd on procedural grounds 231
N.J. Super. 365, (App. Div. 1989))

Insubordination (84:1216, Brody, aff'd St. Bd. 84:1247, aff'd App. Div. unreported opinion, Docket No. A-1326-84T7 decided March 27, 1986) (87:96, Onorevole, rev'd St. Bd. 87:170)

Minor violations of school's administrative regulations, reinstatement with penalty ordered (83:836, Tenney, aff'd St. Bd. 84:2042)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Unbecoming conduct - continued

Private communication by employee to superior
not
protected by First Amendment. 84:2047,
Verost v. Bd. of Ed. of Village of
Ridgewood, published opinion, App. Div.
(Docket No. A-4804-82T5, decided February
6, 1984), certif. denied 97 N.J. 593
(1984), aff'g (82: October 18, modified
as to procedural defect, aff'd as to
result St. Bd. 83:1654)
Sexual abuse not found but conduct unbecoming
sufficient to warrant reduction in
salary (88:1257, Wagner)
Sexually harassing remarks to teachers,
cleaning staff, special ed. student
(88:2384, Marion, dismissed St. Bd. 89:
April 5)
Sexual touching of students, dismissal ordered
(84:1,
Pasquale, decision on remand from
Commissioner 83: July 8, aff'd with
modification St. Bd. 84:34)
Sexual touching and proposition, dismissal
ordered
(89:1803, Gregg)
Single incident of corporal punishment,
reinstatement
with penalty ordered (84:1986, Nogaki,
St. Bd. rev'g Commissioner decision
83:890)
Spreading rumors concerning fellow teachers
and
improper use of intercom, no admissible
evidence submitted, reinstatement ordered
(84:143, Michaels)
Taking unauthorized leave of absence,
reinstatement
with penalty ordered (84: January 30,
Markovich)
Terroristic threats to staff members (85:
March 18,

Hay,

72:663)

Fulcoli)
Under the influence of alcohol (82: July 19,

aff'd St. Bd. 82: December 1) (82:
February 25,

Wells, aff'd St. Bd. 82: July 7)
Unprofessional conduct (71:387 aff'd St. Bd.

(71:623) (73:460) (74:246) (74:464 aff'd
St. Bd. 74:1347 aff'd App. Div. 75:
January 15) (74: 573 modified St. Bd.
74:577) (76:345, Rinaldi) (77:163,
Grabert) (77:786, Zielenski) (77:934,
Puryear) (77:976, Levitt, aff'd St. Bd.
78:1027, aff'd App. Div. 79:847) (84:685,
Castaldo, aff'd St. Bd. 84:768) (See also
cases listed by position above)

TENURE - continued

Dismissal or reduction in salary - continued

Tenure dismissal cases - continued

Unbecoming conduct - continued

Unprofessional conduct toward parents of
students

(86:240, Brotzman)

Unprofessional conduct, suggestive behavior
around

students (86:2721, Kurts)

Using children in pornographic films (80: December
22,

Fridy, aff'd with modification St. Bd. 81:
May 6, aff'd App. Div., unpublished opinion
(Docket No. A-4470-80T3, decided January 26,
1983), remanded App. Div., unpublished opinion
(A-4470-80T3, decided March 8, 1983), decision
on appeal aff'd St. Bd. 84: May 2)

Using profane language (79:528, Kane, aff'd St. Bd.
80:

June 11, aff'd App. Div. 81:1439) (79:605,
Karsen aff'd St. Bd. 80: April 8) (80:204,
DeMarco, aff'd St. Bd. 80:227)

Violation and existence of unwritten board policy
prohibiting partial credit on exams not
supported by evidence (87:1764, Yorke, aff'd
St. Bd. 87:1787, aff'd App. Div. unreported
op. (Dkt. No. A-2288-87T8, March 17, 1989))

Violation of safety practices

Boiler room (67:181)

Swimming pool (75:862, Guarino)

Working while on medical leave (88:1296, Paladino)

Nature of tenure

Generally, Kopera v. West Orange Bd. of Ed., 60 N.J.

Super.

288 (App. Div. 1960); Thorp v. Bd. of Trustees, 6
N.J. 498 (1951); Greenway v. Camden Bd. of Ed.,
129 N.J.L. 461 (E&A 1943) aff'g 129 N.J.L. 46 (Sup.
Ct. 1942); (60-61:52) (66:77) (67:86) (82:
December 20, Howley, aff'd St. Bd. 83:1554)

Generally; duties of position, not title, control tenure
and

seniority rights (83:1004, Rudolph-Nachtman, rev'd
St. Bd. 84:2009)

Transfer

position Involuntary transfer from an educational services
 to a teaching position constitutes a dismissal in
 violation of tenure rights (83:1310, Zorfass, aff'd
 St. Bd. 84:2048)

without Librarian, tenured, transfer to teaching position
 consent held violation of tenure rights (83: May
 3, Neidhardt)

where Transfer from 12 month position to 10 month position
 salary prorated for 12 months not a reduction in
 compensation under the tenure laws (88:367, Bell)

TENURE - continued

Transfer - continued

Transfer of tenured principal to "non-position" with few actual

duties was a dismissal in violation of N.J.S.A.
18A:28-5 (83: September 26, Ruley)

TESTING FEES

May not be charged to pupils or parents by board (63:85,
aff'd St. Bd.
63:89)

TESTS

Public's right to inspect results of standardized tests,
Citizens

for Better Education v. Camden Bd. of Ed., 124 N.J.
Super. 523 (App. Div. 1973)

Statewide achievement testing and dissemination of results
along

with interpretative materials upheld in Chappell v.
Commissioner of Education, 135 N.J. Super. 565 (App.
Div.) certif. den. 69 N.J. 84 (1975) (C. dec. 73:539,
St. Bd. 73:575) see also (74:736, aff'd St. Bd. 75:1081,
dismissed as moot App. Div. 76:1133)

THOROUGH AND EFFICIENT

Abolition of art teachers, no violation of T&E (80: December
2,

Belvidere, aff'd St. Bd. 81: April 1)

Appeal of municipal cuts in defeated budget: Commissioner
rejects

allegation by teacher's association, in context of
challenge to a RIF, that failure of board to appeal cuts
made provision of

T&E impossible (86:1588, Rahway, aff'd St. Bd. 87:2677)

Appointment of monitor general to oversee school system
(79:707,

Trenton, aff'd St. Bd. 79: November 8, aff'd 176 N.J.
Super. 553 (App. Div. 1980))

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)

Board did not shirk its obligation to provide T&E to "distractible student" placed in open classroom setting where parents refused to have child study team evaluate student (89:1366, K.M., appeal dismissed St. Bd. 89:1393)

Cap waiver appeal, decision of administrative agency will not be overturned unless found to be arbitrary, East Windsor Regional Bd. of Ed. v. St. Bd. of Ed., 172 N.J. Super. 547 (App. Div. 1980)

Citizen petition seeking appointment of monitor general and correction of fiscal problems dismissed; monitor already appointed, Commissioner has no authority to correct other problems (85: July 12, Goode)

Commissioner intervenes in budget appeal via Order to Show Cause to ensure T&E (89: October 26, Trenton)
Commissioner required to classify schools and school districts

pursuant to N.J.A.C. 6:8-6.2, Iuppo v. Burke, 162 N.J. Super. 538 (App. Div. 1978) certif. denied 79 N.J. 462 (1978)
Commissioner restore budget cuts; money necessary to provide T&E (88:1064, Paterson)

Commissioner set budget at amount necessary to provide T&E (89: October 10, Jersey City)

Commissioner's powers, Attorney General Formal Opinion No. 26 (1977)

Constitutional mandate for free public education does not apply to profoundly retarded pupils requiring total institutional care, Levine v. Dept. of Institutions and Agencies, 84 N.J. 234 (1980)

Construction of schools must meet statutory mandate (77:777, South Amboy,
aff'd St. Bd. 77:786)

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

Curriculum held insufficient to meet thorough and efficient requirements (79:35, Jamesburg, aff'd St. Bd. 79:52), rev'd on other grounds 169
N.J. Super. 328 (App. Div. 1979), aff'd 83 N.J. 540

(1981)

Decertification (St. Bd. 89: April 5, Plainfield) (St. Bd.
89: January 4, Passaic, aff'd App. Div. unreported op.
(Dkt. No. A-2883-88T3, December 11, 1989)

THOROUGH AND EFFICIENT - continued

Formula for distribution of equalization aid challenged,
Karcher v.

Byrne, 146 N.J. Super. 532 (Law Div. 1977), aff'd 158
N.J. Super. 67 (App. Div. 1978)

No evidence that loss of aid would interdict ability to
provide T&E (89: 212, North Arlington)

Physical facility held inadequate to meet thorough and
efficient

requirements (79:443, Upper Freehold, aff'd St. Bd.
79:452, aff'd 86 N.J. 265 (1981) (86:796, Contini)

Public School Education Act of 1975 held constitutional on
its face,

Robinson v. Cahill, 69 N.J. 449 (1976); Challenge to act
by urban districts must be heard first by Commissioner,
not Chancery Division, Abbott v. Burke I, 100 N.J. 269
(1985)

Public School Education Act of 1975, (Ch. 212) held
unconstitutional

as applied to poorer urban districts; State must ensure
that educational funding in these districts is
substantially equal to that of property-rich districts,
Abbott v. Burke (II), 119 N.J. 287 (1990), rev'g St. Bd.
89:1008, aff'g 89:234, decision on motion St. Bd. 88:
March 23)

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

Split sessions are unacceptable except on an emergency basis
where no other alternative is available (86:796,
Contini)

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

State takeover (89:2337, Jersey City, aff'd St. Bd. 89:2431)

TORTS

(See also "Indemnification" and "Worker's Compensation", this
index)

(Ed. note: Some of the cases below were decided under N.J.S.A.
18A:20-35, since repealed by N.J.S.A. 59:12-2. See
generally "New Jersey Tort Claims Act," N.J.S.A. 59:1-1 et
seq.)

Board not liable for failure to supervise vocational activities conducted on private property, Cadmus v. Long Branch Bd. of Ed., 155 N.J. Super. 42 (Law Div. 1977)

Board not liable to adult education student struck by car while crossing road from shopping center to school. Ross v. Moore, 221 N.J. Super. 1 (App. Div. 1987)

Burden of proof upon plaintiff with respect to showing conduct "palpably unreasonable", Fox v. Twp. of Parsippany-Troy Hills, 199 N.J. Super. 82 (App. Div. 1985)

TORTS - continued

Bus accidents

Board not liable for negligence of bus driver employed by independent contractor transporting children, Hartmann v. Maplewood Sch. Transp. Co., 109 N.J. Super. 497 (App. Div. 1970), aff'g 106 N.J. Super. 187 (Law Div. 1969)

Cassady, Collision with a car, board held not liable, McKnight v. 113 N.J.L. 565 (E&A 1934)

students "Reasonable supervisory care" required for safety of

while being transported in school bus; board accountable if negligently failed to discharge duty and injury results to student, Jackson v. Hankinson, 51 N.J. 230 (1968), aff'g 94 N.J. Super. 505 (App. Div. 1967)

Defamation action

Board of education has no power to institute such against critics, Weymouth Twp. Bd. of Ed. v. Wolf, et al., 178 N.J. Super. 481 (Law Div. 1981)

Qualified immunity; immunity will not be lost in defamation action against non-constitutional public officer arising from exercise of administrative discretion unless statement made with "actual malice", Burke v. Deiner, 190 N.J. Super. 382 (App. Div. 1983), rev'd 97 N.J. 465 (1984)

Delay in issuance of summons (26 months) after filing of complaint

justifies dismissal; mere delay without demonstrable prejudice is not enough. Student injured in gymnastics accident. Patterson v. Monmouth Regional H.S., 222 N.J. Super. 448 (App. Div. 1987))

Discretionary activity of public employee governed by Tort Claims Act, factual issue whether discretion exercised was "palpably unreasonable", Longo v. Santoro, 195 N.J. Super. 507 (App. Div. 1984)

of Duty to instruct properly, give reasonable assignments and warn dangers, Engel v. Gosper, 71 N.J. Super. 573 (Law Div. 1962); Sayers v. Ranger, 16 N.J. Super. 22 (App. Div. 1951); Taylor v. Kevlin, 121 N.J.L. 142 (E&A 1938)

aff'g Duty to supervise, Jackson v. Hankinson, 51 N.J. 230 (1968), 94 N.J. Super. 505 (App. Div. 1967); Titus v. Lindberg, 49 N.J. 66 (1967); Caltavuturo v. Passaic, 124 N.J. Super. 361 (App. Div. 1973); Doktor v. Greenberg, 58 N.J. Super. 155 (App. Div. 1959)

For public entity to be held liable under the state Tort Claims

Act,

each of strict conditions of statute must be met, including finding that actions by public entity were palpably unreasonable. Thompson v. Newark Housing Authority, 108 N.J. 525 (1987)

Immunity

injured Not sustained; principal can be held liable for student in school playground, and board obliged to pay judgment when principal acting within scope of employment at time of injury, Caltavuturo v. Passaic, 124 N.J. Super. 361 (App. Div. 1973)

TORTS - continued

Immunity - continued

School districts included, Thompson v. Millville Bd. of Ed.,

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N.J. 207 (1953) aff'g 20 N.J. Super. 419 (App. Div. 1952) aff'g 12 N.J. Super. 92 (Cty. Ct. 1951); Estelle v. Red Bank Bd. of Ed., 26 N.J. Super. 9 (App. Div. 1953) modified on other grounds 14 N.J. 256 (1954); Tripus v. Paterson, 11 N.J. Super. 282 (Cty. Ct. 1950); Kale v. Montclair Bd. of Ed., 20 N.J. Misc. 7 (Sup. Ct. 1942); Falcone v. Newark Bd. of Ed., 17 N.J. Misc. 75 (Cty. Ct. 1939); Selph v. Morristown, 16 N.J. Misc. 19 (Sup. Ct. 1938); Cohen v. Morristown, 15 N.J. Misc. 288 (Sup. Ct. 1937)

Statutes provide governmental immunity to school board exercising discretion in determining how to use or apply its resources in the face of competing demands (N.J.S.A. 59:2-3(d) and 59:4-2), Ross v. Moore, 221 N.J. Super. 1 (App. Div. 1987)

Injuries during sports activities; Clayton v. Freehold Bd. of Ed., 67 N.J. 249 (1975) aff'g 130 N.J. Super. 198 (App. Div. 1974); Dobbins v. Henry Hudson Reg. H.S. Bd. of Ed., 133 N.J. Super. 13 (App. Div. 1974) aff'd o.b. 67 N.J. 69 (1975); Thompson v. Millville Bd. of Ed., 11 N.J. 207 (1953) aff'g 20 N.J. Super. 419 (App. Div. 1952) aff'g 12 N.J. Super. 92 (Cty. Ct. 1951); Sayers v. Ranger, 16 N.J. Super. 22 (App. Div. 1951); Duda v. Gaines, 12 N.J. Super. 326 (App. Div. 1951) Sutphen v. Benthian, 165 N.J. Super. 79 (App. Div. 1979)

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

Intervening acts cut off liability, Meyer v. Middletown Bd. of Ed.,

9 N.J. 46 (1952); Doktor v. Greenberg, 58 N.J. Super. 155 (App. Div. 1959); Taylor v. Kevlin, 121 N.J.L. 142 (E&A 1938)

Criminal attack on student by another student; college not liable, Setrin v. Glassboro St. College, 136 N.J. Super. 329 (App. Div. 1975)

Liability for use of own car in employment (80: August 25, Bernstein)

New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.)

Board and teacher not immune from suit by student injured
in gym class, Sutphen v. Benthian, 165 N.J. Super. 79
(App. Div. 1979)

the

"Dangerous condition" refers to the physical condition of
property itself and not to activities on the property.
Vanchieri v. N.J. Sports and Exposition Authority, 201
N.J. Super. 34 (1985)

TORTS - continued

New Jersey Tort Claims Act - continued

Delay of 26 months between the filing of a former student's tort action and service of the summons and complaint on the school board did not justify dismissal of the complaint absent a showing of "specific or demonstrable" prejudice. Patterson v. Monmouth Regional Board of Education, 222 N.J. Super. 448 (App. Div. 1987)

Discretionary activity of public employee; students injured on athletic field. Longo v. Santoro, 195 N.J. Super. 507 (App. Div. 1984)

Indemnification provision of Title 18A not repealed by Act, Lameiro v. West New York Bd. of Ed., 136 N.J. Super. 585 (Law Div. 1975)

Immunity from liability for supervision of public recreational facilities, Law v. Newark Bd. of Ed., 175 N.J. Super. 26 (App. Div. 1980)

Immunity from liability of public body extends to private security force under contract with public body, Vanchieri v. N.J. Sports and Exposition Authority, 201 N.J. Super. 34 (1985)

78 Indemnification for agents of board, Gilborges v. Wallace, N.J. 342 (1978)

Limitation of liability; joint tort feasons, see N.J.S.A. 59:9-2(d), Rivera v. Gerner, 89 N.J. 526 (1982)

Notice

student's Delay of 26 months between the filing of a former tort action and service of the summons and complaint on the school board did not justify dismissal of the complaint absent a showing of "specific" or "demonstrable" prejudice. Patterson v. Monmouth Regional Board of Education, 222 N.J. Super. 448 (App. Div. 1987)

from Failure of Board to plead non-compliance estopped it later asserting lack of notice in motion for summary judgment. Hill v. Middletown Bd. of Ed., 183 N.J. Super. 36 (App. Div. 1982), certif. denied 91 N.J. 233 (1982)

Parent and child have same time period to file notice of claim, Rost v. Fair Lawn Bd. of Ed., 137 N.J.

Super. 76 (App. Div. 1975) rev'g 130 N.J. Super.
187 (Law Div. 1974); Vedutis v. Tesi, 135 N.J.
Super. 337 (Law Div. 1975) aff'd o.b. 142 N.J.
Super. 492 (App. Div. 1976)

Substantial compliance necessary; attorney's letter to
school principal held insufficient notice of
claim, Lameiro v. West New York Bd. of Ed., 136
N.J. Super. 585 (Law Div. 1975)

TORTS - continued

New Jersey Tort Claims Act - continued

Permanent injuries; recovery allowed even when expenses are under \$1,000, Peterson v. Edison Bd. of Ed., 137 N.J. Super. 566 (App. Div. 1975)

Scope of general immunity section, Brown v. Brown, 86 N.J. 565 (1981)

TRANSFERS

(See "Pupils - Admission to school" and "Teachers - Transfers," this index)

TRANSPORTATION

After school activities
Board is not required to provide transportation to accommodate pupil participation in after-school activities, action by sending district in discontinuing such transportation held proper (83:866, Upper Freehold Regional)

Bus routes; private property, Commissioner has no authority to order private persons to permit the use of their property for school district purposes (84: January 27, Patrick, aff'd St. Bd. 84: September 5)

Bus routes, rearrangement by board; board did not act in arbitrary manner where board received expert advice and gave due consideration to pupil safety and board liability factors, petition dismissed (84: January 27, Patrick, aff'd St. Bd. 84: September 5) (88:2065, J.A.P.)

Contracts

Assignment of transportation contracts to busing company that purchased a company which had been the successful bidder on existing school busing routes was not against public policy and did not require re-bidding of contracts (87:2243, Vogel Bus Co., appeal dismissed by St. Bd. 88: May 4, aff'd App. Div. unreported op. (Dkt. No. A-4645-87T1, April 28, 1989))

Bidding; board violated N.J.S.A. 18A:39-3 by awarding revised

new contract without competitive bidding (84: March
12, Fairfield, aff'd St. Bd. with opinion 84: December
5) (85:497, South Orange-Maplewood, aff'd St. Bd.
85:512)

proper Board's discontinuance of busing of non-remote students

where borough terminated contractual arrangement (83:
June 9, Franklin Lakes, aff'd St. Bd. 84: January 4)
County superintendent must provide advance knowing approval
of purchase of vehicle to qualify for state aid,
according to N.J.S.A. 18A:58-7 (89:212, North
Arlington)

TRANSPORTATION - continued

Contracts - continued

County Superintendent's approval did not guarantee transportation aid (84: March 12, Fairfield, aff'd St. Bd. 84: December 5) (89:212, North Arlington)

Contracts for

Approval by county superintendent required (80: December 1, South Orange-Maplewood)

Audit of, (81: August 5, Lakewood, St. Bd. rev'g 80: November 18)

Bidding

(See "Bidding," this index)

Board may contract with independent company and avoid vicarious

liability, Hartman v. Maplewood School Trans. Co., 109 N.J. Super. 497 (App. Div. 1970) aff'g 106 N.J. Super. 187 (Law Div. 1969)

Board may not contract for bus drivers and maintenance while retaining ownership of buses (78:416, Coaches of Eight, Inc.)

County superintendent may withhold state aid reimbursement when transportation contracts are filed after September 1 deadline (75:586, Union City Reg. H.S. Bd. of Ed.) (76: June 29, Wall Tp. Bd. of Ed.)

Leasing of buses prohibited (60-61:207, aff'd St. Bd. 61-62:247)

Not required by T&E (80: August 11, Logsdon)

Subject to review by State Board, Rankin v. Egg Harbor Bd. of Ed., 125 N.J.L. 299 (E&A 1947) aff'g 134 N.J.L. 342 (Sup. Ct. 1946)

Termination of (76:726, Finkle)

Private school pupils

Board may constitutionally provide courtesy transportation (18A:39-1.1) to private students but need not do so when public school students are provided such transportation (Appellate Division unreported opinion (A-3257-85T7, decided Feb. 17, 1987) aff'g 86:3116, Parents for Student Safety, St. Bd. rev'g 84:1454, aff'd App. Div. reported opinion (Docket No. A-3257-85-T7, decided February 17, 1987) certif. denied 108 N.J. 180 (1987))

Board must provide transportation or aid to remote pupils attending private schools in accordance with statute, West Morris Reg. Bd. of Ed. v. Sills, 58 N.J. 464 (1971) rev'g 110 N.J. Super. 234 (Ch. Div. 1970);

Woodbury Hts. Bd. of Ed. v. Gateway Reg. H.S., 104 N.J. Super. 76 (Law Div. 1968); McCanna v. Sills, 103 N.J. Super. 480 (Ch. Div. 1968); Fox v. West Milford Bd. of Ed., 93 N.J. Super. 544 (Law Div. 1967) (68:131) (71:6) (71:71) (71:183, aff'd St. Bd. 71:196) (75:579, Corcoran, aff'd St. Bd. 76:1135, aff'd App. Div. 76:1136) (77:622, Goore)

TRANSPORTATION - continued

Private school pupils - continued

Board may make different provisions for private school pupils

attending different schools (71:71)

Board's transportation policy must not unlawfully discriminate

against private school students (79:140, Donlan) (80:1004, Shields) (84:1454, Parents for Student Safety, rev'd St. Bd. 86:3116, aff'd App. Div. reported opinion (Docket No. A-3257-85-T7 decided February 17, 1987) certif. den. 108 N.J. 180 (1987)

Commissioner's authority to determine per pupil cost, Lepis

v.

Wall Tp. Bd. of Ed., _____ N.J. Super. _____ (Decided March 12, 1981, Dkt. No. A-4068-79)

Denial of afternoon transportation to private school was proper

where pupils resided more than 20 miles from school and cost of transportation exceeded statutory limits (83:1300, S.P.)

Denial of transportation to out of state private school was proper under N.J.S.A. 18A:39-1 (83: April 15, A.S.R.)

Hours of operation of bus service to remote school (68:131) (71:183, aff'd St. Bd. 71:196)

Parents who placed children in private school held entitled to \$250 reimbursement for transportation (79:149, M.M.) (80:1004, Shields)

"Per pupil cost" under N.J.S.A. 18A:39-1 means the cost per pupil per bus (83:1300, S.P.)

Public carrier, use of (68:53, aff'd St. Bd. 68:57)

Regional school districts; provision of transportation to non-public school students in lower grades, Woodbury Hts. Bd. of Ed. v. Gateway Reg. H.S., 104 N.J. Super. 76 (Law Div. 1968)

Apportionment of costs among constituent districts (71:6)

Reimbursement denied (79:493, Horner aff'd St. Bd. 79: December 5) (81: August 4, Yedwab)

Reimbursement granted (77:1030, Price)

"Remote" defined (79:487, Horner aff'd St. Bd. 79:493) (80:1004, Shields) (80: August 11, Logsdon) (81: August 4, Yedwab) (84:1156, Bd. of Ed. of Borough of Fair Lawn, aff'd St. Bd. 84:1165)

Route; board's choice of route presumed correct (80: October 6,

Lo Ricco)
Safety hazards (80: August 11, Logsdon)
Safety hazards; board's decision that route was not
hazardous
presumed correct (81: August 4, Wells)
Safety hazards; if board buses some pupils due to safety
hazards,
it must bus all pupils in similar circumstances (81:
August 4, Wells)
Unsafe traffic conditions, responsibility of municipality,
not
board (80: October 6, Lo Ricco) (81: August 4,
Yedwab)

TRANSPORTATION - continued

Public school pupils

Board acted reasonably in refusing to relocate assigned pick up point; followed guidelines in setting best possible route

(89: March 15, J.O.D.)

Board has discretion to determine and alter form of transportation, bus stops and bus routes (83: June 22, Stauffer)

Board must provide transportation to all students residing remote from school, Bd. of Ed. of Woodbury Heights v. Gateway Regional High School, 104 N.J. Super. 76 (Law Div. 1968) (71:183, aff'd St. Bd. 71:196)

Board not required to provide transportation for students

who

do not live remote from school (49-50:50) (51-52:35) (59-60:96) (60-61:185) (63:229) (68:42) (69:47) (69:61) (72:600) (73:321) (73:381) (74:829, aff'd St. Bd. 75:1071, aff'd App. Div. 75:1071) (85: September 9, C.R.C.)

Courtesy busing for kindergarten pupils only is not

unlawfully

discriminatory (86:2455, M.C.)

Definition of "remote"; means 2-1/2 miles or more for high school students and 2 miles or more for elementary, except for children with special handicaps (69:61) (72:600) (73:321) (73:381); N.J.A.C. 6:21-1.3

Traffic hazards do not constitute remoteness

(60-61:185) (65:29) (68:42) (69:78) (69:178) (70:113) (70:415); safety is a municipal

responsibility (38:763) (59-60:96) (60-61:185) (63:229) (65:29) (68:42) (68:53 aff'd St. Bd.

68:57) (69:47) (69:61) (69:178) (74:829, aff'd St. Bd. 75:1071, aff'd App. Div. 75:1011)

Handicapped pupils (73:381) (77:622, Goore)

Remoteness is measured from pupil's residence not that of babysitter (86:2455, M.C.)

Discretionary aspects

Board has discretion to determine and alter form of transportation, bus stops and bus routes (49-50:50) (57-58:85) (59-60:96) (60-61:185) (63:229) (64:36, aff'd St. Bd. 64:39) (64:64) (65:29) (68:42) (69:47) (69:61) (69:78) (69:124) (72:600) (73:406) (75:513, Centofanti) (76:362, Baldanzo) (77:854, Walters) (82: March 12, Crabtree)

Board may, but need not provide transportation to
students living less than remote from school, e.g., (69:47)
(74:829, aff'd St. Bd. 75:1071, aff'd App. Div.
75:1071)
Commissioner will not substitute his judgment for that
of local board unless a showing of abuse of
discretion by board (60-61:185) (69:47) (69:61)
(69:78) (69:178) (76:362, Baldanza) (77:137,
McMillan) (77:854, Walters) (85: December 4,
Melick, J.O.D.)

TRANSPORTATION - continued

Public school pupils - continued

Discretionary aspects - continued

Discrimination in furnishing transportation

Found (64:36, aff'd St. Bd. 64:39) (64:171)
(72:296)

Not found (56-57:85) (60-61:185) (63:229) (68:42)
(68:53, aff'd St. Bd. 68:57) (69:47) (69:78)
(72:296) (73:321) (73:406) (74:829, aff'd St.
Bd. 75:1071, aff'd App. Div. 75:1071)
(75:579, Corcoran, aff'd St. Bd. 76:1135,
aff'd App. Div. 76:1136) (84:1135, Garfole)

Hazardous road conditions are responsibility of
municipality

(77:854, Walters) (85: December 4, Melick)
(89:1303, J.O.D.)

Not furnishing upheld (77:137, McMillan)

Remote route, means route allowable by law; if route is two
miles to school or more than two miles from school then
route is remote (88: May 25, Dreiffuss)

Remote route, pedestrians are presumed to walk against
traffic

pursuant to N.J.S.A. 39:4-34, when measuring remote
route (85: May 17, Tenzer)

Remoteness is measured from pupil's residence not that of
babysitter (86:2455, M.C.)

Regional transportation agency (75:579, Corcoran, aff'd St.Bd.
76:1135, aff'd App. Div. 76:1136)

Reimbursement for purchase of Type 1 vehicle denied for failure
to comply with N.J.S.A.18A:58-7; recovered by reduction in
pupil transportation aid next year (89:212, North Arlington)

Remote, footpaths and trails in public park, which are not open
to

vehicular traffic, are not public roadways for purpose of determining distance from school (84:1156, Bd. of Ed. of Borough of Fairlawn, aff'd St. Bd. 84:1165)

State aid

State auditor's determination reversed; district's application

for reimbursement approved (81: August 5, Lakewood, St. Bd. rev'g 80: November 18)

Travel costs related to non-educational summer program not responsibility of board, however speech therapy reimbursement adjusted accordingly (82: May 10, Allendale)

TREASURER OF SCHOOL MONIES

(See also "Custodian of School Moneys" this Index)

Dismissal; good cause, failure to perform duties and functions of office pursuant to N.J.S.A. 18A:17-31 et seq. (85: August 5, Township of Weehawken, dismissed St. Bd. 86: January 8)

TUITION

(See also "Handicapped Children", "Sending-Receiving Relationships -

Tuition" and "Pupils - Tuition", this index)

Administrative rules regarding tuition rate limitations for private

school applicable where private school shares same board of directors as building owner (88:1693, Cerebral Palsy School)

Board need not pay tuition and transportation expenses of pupil who

enrolls in another district's schools, even if purpose of such enrollment was to take advantage of special courses (66:163, aff'd St. Bd. 70:458) (71:384, aff'd St. Bd. 72:689) (72:298)

Board not entitled to tuition where child living in home of and supported by grandmother domiciled within district; gifts and vacations provided by father do not constitute support according to N.J.S.A. 18A:38-1(b) (87:1835, Scotch Plains-Fanwood)

Children in State facilities

Responsibility for tuition rests with district where parent resides, even if board unaware of parental residence (82: February 10, Carteret)

District of mother's temporary residence immediately prior to

admission in out-of-state facility was responsible for tuition of child placed by DYFS in out-of-state institution, as per N.J.S.A. 18A:7B-12 (89:1071, Weehawken, dismissed St. Bd. 89: August 2)

Hemophiliac pupil; tuition, transportation and textbook costs held

not reimbursable, applied doctrine of laches (82: October 22, Rednor, aff'd St. Bd. 83: March 2)

Institutionalized pupil; tuition for pupil must be paid by district

where parents reside, state aid to a district where institution is located is proportionately reduced (82: May 10, Weehawken)

Juvenile and Domestic Relations Court has authority to compel school board to pay for delinquent's tuition at private school, State in Interest of F.M., 167 N.J. Super. 185 (Bergen J.D.R. 1979)

New York private school for handicapped (receiving school) barred by

90-day rule from challenging New Jersey's tuition rate which was lower than New York's (90:2572, Mt. Pleasant-Blythedale)

Non-profit corporation for classified educational students may not

include costs for non-certified teaching staff in tuition rate (88:903, Bergen)

Non-resident pupil (76:641, Elizabeth Bd. of Ed.) (76:876, White) (82: June 11, Hyman) (88:1388, Mainland Regional)

Pupil placement ordered by court, board still financially responsible (77:342, Harbor Hall School)

Non-resident pupil: Petition for refund of tuition was untimely filed (86:2159, Markman)

Pro-rata tuition under N.J.S.A.18A: 38-1(b); no basis for claim where

board failed to request resident's sworn statement (87:1835, Scotch Plains-Fanwood)

Salaries of two uncertified teachers - non-allowable costs for tuition

purposes (88:2397, Clearview)

TUITION - continued

Tuition for vocational-agricultural programs not offered in district

of residence (81: February 20, Pool)

Tuition paid by local district to county vocational school may not

be considered in computing state equalization aid for the

latter (78: June 2, Passaic, unpublished opinion)
Tuition reimbursement not warranted. Petitioner unilaterally
withdrew daughter from school. Board did not violate T&E or
other requirements in making discretionary decision
regarding student placement (89:1659, S.M.F., aff'd St. Bd.
90:1804)