



# New Jersey School Boards Association

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## ADVANCED TRAINING: LEGAL UPDATE First Year Re-Elected/Reappointed

### NEW JERSEY SCHOOL BOARDS ASSOCIATION

#### Case Law Update

NJSBA Legal & Policy Services Department

October 2007 through September 2008

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### **Administrative Costs**

Commissioner determined that neither salaries and benefits for uncertified teachers and those with unrecognized titles, nor administrative salary in excess of the lowest maximum allowable salary in the county, could be included in tuition charged by private school to public school.

[Youth Consultation Services, Comm’r, 2007: Oct. 4.](#)

### **Assignment of Staff**

Commissioner determined that employee who had suffered cancer suffered no discrimination upon his return to service by virtue of the delegation of advanced math courses he taught before being diagnosed with cancer to other instructors and a reduction his advisory role in extra-curricular activities. Teacher was not entitled to teach the courses he wanted to teach and was at all times assigned to teach courses within his certification. [Varjian, Comm’r., 2007: Oct. 15.](#)

[2008: St. Bd. February 20](#) (motion to supplement the record denied) (appeal filed before App. Div. July 7, 2008; A-005218-07).

### **Attorney Fees and Representation**

Motion to disqualify school board attorney denied. There was no proof that while she served as Attorney General, she had any knowledge of investigations conducted by the AG’s office over alleged campaign and other board misconduct; appearance of impropriety standard did not apply. [Brennan v. Elizabeth Bd. of Ed.](#), No. 07-00329, 2008 U.S. Dist. LEXIS 21609 (D. N.J. March 19, 2008).

The decision to award fees to a prevailing defendant is not based on "hard and fast rules" and should be made on a "case-by-case basis." Although the school district prevailed in an ADA matter brought by an employee, the court denied the district's motion for attorney fees. [Weisberg v. Riverside Twp. Bd. of Ed.](#), No. 05-4190, 2008 U.S. App. LEXIS 1057( 3d Cir. January 11, 2008).

## **Board Liability**

Court affirms trial court's summary judgment dismissal of plaintiff's complaint alleging that board's negligence caused her personal injury, where door closed quickly on student's finger during a fire drill. [Swiecicki v. Old Bridge Bd. of Ed.](#), No. A5471-06 (App. Div. July 1, 2008) (slip op.).

## **Certificates-Suspension, Revocation, Denial**

Child abuse of own son disqualified candidate from serving as parent center educator where such position had unattended access to children. [Chavis v. NJDOE, Comm'r 2008: May 30.](#)

Undergraduate grade-point average too low, inadequate college preparation, no college recommendation. [Maslin v. NJDOE, Comm'r, 2008: April 14.](#)

Criminal conviction for unauthorized use of computer and other unbecoming conduct involving pornographic web sites, profanity, and violence. [I.M.O. Grendysa, Exam, 2008: Jan. 17.](#)

Suspension of certificate for breaching security procedures in administering the GEPA test; [I.M.O. Karis, Exam, 2008: Jan 17;](#) [I.M.O. Karis, St. Bd., 2008: June 18.](#)

Revocation of certificate for violating NJ ASK testing procedures, [I.M.O. Mascuch, Exam, 2008: Jan 17.](#)

Failure to provide 60 days notice of resignation. [I.M.O. Hemerick, Comm'r, 2008: Jan. 9.](#)

Supervisor's harassment of teachers. [I.M.O. Mazarella, St. Bd. 2007: Sept 5.](#)

Kissing a student. [I.M.O. Fox, St. Bd. 2007: Sept. 20.](#)

## **Charter Schools**

Charter school was responsible for paying the cost of a regular course of home instruction offered to a disabled student enrolled in the charter school. Local school district was not responsible for the cost. [Golden Door Charter School v. Jersey City State Op. School District, 400 N.J. Super. 578 \(App. Div. 2008\).](#)

## **CEPA**

Record did not support a claim that the school district retaliated against a former employee who provided information to the Attorney General's Office in conjunction with an investigation of the superintendent for theft of services in the school district. Did not need to address question of whether individuals who are not employers may be liable under CEPA. [Martucci v. Freehold Regional Bd. of Ed.](#) A-6517-05, (App. Div. Jan. 10, 2008) (slip op.).

## **Civil Procedure**

District Court declared that pro se parents lacked standing to represent minor child's section 504, ADA and NJLAD claims, although parents could proceed with their own parental claims. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815, 2007 U.S. Dist. Lexis 93569 (D. N.J. Dec. 20, 2007). *See also*, subsequent ruling on amended complaint, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815, 2008 U.S. Dist. Lexis 29304 (D. N.J. April 8, 2008).

## **CSA Contract**

Pending litigation filed June 3: Attorney General's Office on behalf of Commissioner Davy, seeks to have the severance provision of Trzeszkowski's 2003 school contract ruled "null and void." State v. Trzeszkowski, (moved to Monmouth County).

Commissioner suspended contractually tenured superintendent for six months for conduct unbecoming for failing to report vacation days, misdirecting leave time, intentionally deceiving the board, and abusing his authority. I.M.O. Witmer, Comm'r., 2007: Dec. 24. State Board affirmed the Commissioner's decision for the reasons stated therein. I.M.O. Witmer, St. Bd., 2008: May 21

## **Emergency Relief**

Petitioner was not entitled to prevail because of extended delay in issuance of the ALJ initial decision; emergency relief denied. El-Hewie, St. Bd. 2008: April 16, (decision on motion).

## **Ethics/Conflict of Interest**

The NJ Supreme Court interpreted N.J.S.A. 18A:12-2 in the context of whether a board member could continue to serve when he pursued the enforcement of a settlement agreement regarding his disabled child, payment for services rendered by his spouse, and attorneys fees. The Supreme Court held that while not all disputes over the special education program for a board member's child should require the member's removal from office, in this matter removal was necessary and appropriate because of the concrete pecuniary nature of the dispute. Sea Isle City Board of Education v. Kennedy, 196 N.J. 1 (2008).

## **Collective Negotiations, Bargaining and Contracts**

School Ethics Commission issued Advisory Opinion A34-07, clarifying prior AOA14-00. The SEC had previously advised that board members who are conflicted from negotiating, but not conflicted from voting, may fully participate on any outstanding issues where the Memorandum of Agreement includes salary guides and total compensation. SEC clarified by indicating that if the Memorandum of Agreement does not include salary guides and/or compensation, such board members should not discuss or vote on outstanding issues.

## **Employment Decisions**

SEC issued Advisory Opinion A30-07 advising that a board member whose spouse was employed as a security guard could not participate in the search for or hiring of a district superintendent if the current director of education became a candidate for superintendent. Director had indirect supervision over spouse.

## **Code of Ethics**

### **Unwarranted privileges**

The Commission advised that a board member would be using position to obtain unwarranted privileges if he were to participate in the evaluation of the Superintendent where, prior to his becoming a board member, his employment with the district was terminated as a result of a decision made by the Superintendent. [Advisory Opinion, A06-08](#).

Commissioner reduced suspension of board member from three months to one month where SEC found that board member violated the School Ethics Act when he emailed the district superintendent in an attempt to secure an unwarranted privilege for his wife regarding leave time. Commissioner held that SEC recommended penalty was inconsistent with penalties issued in prior decisions. [I.M.O. Kanaby, Hillsborough Twp. Bd. of Ed. Comm'r., 2007: Sept. 10](#).

### **Compromising the Board**

SEC dismissed complaint against board member took private action that could compromise the board in violation of [N.J.S.A. 18A:12-24.1\(e\)](#) and failed to provide accurate information in violation of [N.J.S.A. 18A:12-24.1\(g\)](#). Neither testimony nor evidence showed that she purported to represent the board or provided inaccurate information when she wrote a letter to the editor with her opinions indicating that she was board president, or when she appeared at a meeting of the PTO and answered questions. [Dressel v. Kolupanowich, SEC 2008: June 24](#).

Board member did not take private action that may compromise the board or fail to provide accurate information when he wrote a letter to the newspaper containing attacks on and opinions about a community activist. The letter was private action without sufficient nexus to a potential for compromising the work of the board; however the SEC cautioned that board members should not express their personal opinions while using the designation of “board member” unless they state that the letter is not authorized by the board. Further, any inaccuracies were attributable to the member only in his role as a private citizen and not as a Board member, and were more an opinion, rather than a formal statement. “Inaccurate information” under [N.J.S.A. 18A:12-24.1\(g\)](#) must be more than a personal opinion. [Benson v. Gearity, SEC 2008: June 24](#).

School Ethics Commission determined that board member violated School Ethics Act when she confronted the superintendent after a board meeting and had to be restrained by other board members. The instigation of the confrontation was significantly beyond the scope of a board member’s duties. Commissioner recommended censure where board member was no longer on the board at the time of decision. [I.M.O. Grimsley, Roselle Bd. of Ed. SEC, 2007: Jan. 22](#). Commissioner adopted penalty recommendation. [I.M.O. Grimsley, Roselle Bd. of Ed., Comm’r, 2008: Feb. 19](#).

State Board affirmed that a board member violated [N.J.S.A. 18A:12-24.1\(e\)](#) and took private action that could compromise the board, by threatening a member of the public with profanity at a board meeting after the citizen called for the board member’s resignation. State Board rejects Commissioner’s three-month suspension and imposed SEC’s recommended suspension of one year. [Atallo, State-Operated School District of Paterson, St. Bd. 2008: March 19](#), stay of penalty denied, [Atallo, State-Operated School District of Paterson, St. Bd. 2008: April 16](#).

CSA did not take private action that could compromise the board in violation of [N.J.S.A. 18A:12-24.1\(e\)](#) when he used school stationary for his personal use by placing his personal email address on it, as the Code of Ethics only applied to board members and not to the CSA. The Commission denied the CSA’s request for sanctions as he did not demonstrate that the complaint was brought for political reasons, nor is there any information to suggest that the complaint should otherwise be deemed frivolous. [McCann v. Gass, SEC 2008: May 27](#).

SEC found that while a former board member did not did take private action that could compromise the board in violation of N.J.S.A. 18A:12-24.1(e) or use the schools for the gain of friends in violation of N.J.S.A. 18A:12-24.1(f) as alleged, with respect to the hiring of her fiancé when she remained in the room during the interview and participated in the interviews of the other candidates, she was cautioned that should she serve as a board member in the future, she must bear in mind the restrictions of N.J.S.A. 18A:12-24(c) regarding personal involvement that might reasonably be expected to impair her objectivity and should follow the SEC's previous findings regarding recusal. [McCann v. Harris, SEC 2008: May 27.](#)

### **Administering the Schools**

Commissioner adopted School Ethics Commission penalty recommendation of public censure where board member unilaterally pressured school secretary to provide résumés of candidates for employment. Board member also obtained key to an administrator's locked office in order to review additional résumés and engaged in an argument that disrupted the working environment. [Polinik, Wayne Twp. Bd. of Ed., Comm'r., 2008: March 10.](#)

Board member administered the schools in violation of N.J.S.A. 18A:12-24.1(d) when she spoke with the Facilities Coordinator regarding his recommendation to transfer and demote her cousin, and discussed her distant cousin's employment with the personnel committee at its meeting. Evidence did not establish that she used her position to secure unwarranted privileges in violation of N.J.S.A. 18A:12-24(b) or surrendered her independent judgment for gain of friends in violation of N.J.S.A. 18A:12-24.1(f). [Graves, Pleasantville Bd. of Ed., SEC 2008: May 5, 2008.](#)

Commission determined to dismiss allegations that board member administered the schools; failed to refer matters for an administrative resolution, or failed to support and protect school personnel in the proper performance of their duties where he merely questioned an administrator, albeit, in a demanding tone. [Jackson v. Davis, SEC, 2008: April 1.](#)

Commissioner adopted School Ethics Commission recommendation to censure board member who violated the Code of Ethics for School Board Members through actions which included: voicing questions and concerns directly to reporters without first seeking an administrative resolution, and contacting teachers and administrators directly without going through the superintendent. [I.M.O. Delbury, Sussex-Wantage Reg'l Bd. of Ed., Comm'r., 2007: Dec. 6;](#) affirmed, [I.M.O. Delbury, Sussex-Wantage Reg'l Bd. of Ed., St. Bd., 2008: June 18](#) , (appealed to Appellate Division A-5873-07, Aug. 7, 2008).

### **Other**

SEC found no personal involvement that created a benefit to a board member where board attorney provided personal services to board member while in office and where she voted to appoint attorney as board solicitor. SEC departed from reasoning of previous cases, [I.M.O. Huber, SEC 1997: May 27](#), [I.M.O. Davis and Jackson, SEC: 2002: Nov. 26](#), [I.M.O. Patterson, SEC 2003: Sept. 23](#), and [A03-01](#) that found a conflict because the board attorney might be inclined to render advice favorable to his client/board member, as being unduly dependent on the prospective conduct of the attorney, a party over which the SEC had no authority. [Dressel v. Speizer, SEC 2008: August 26.](#)

Petitioner alleged that a Board member did not violate the Code of Ethics for School Board Members when at an executive session the member shared a letter from the complainant to the member's spouse that was critical of the Board's Gifted and Talented Education program

(GATE) in which the member's spouse was involved. SEC dismissed complaint because there was no cause to credit the allegations. [Goitiandia, SEC, 2007: Dec. 18.](#)

The Commission dismissed a complaint alleging board president violated various ethics provisions when he allegedly violated the Open Public Meetings Act, by conducting "secret meetings" and by voting to approve the appointment of the board member's employer as the designated depository for school funds. Violations of [N.J.S.A. 18A:12-24.1\(a\)](#) require a final decision from any court of law or administrative agency. [Sarno, SEC, 2008: April 1.](#)

The Commission dismissed for lack of evidence, a complaint alleging that a board member surrendered her independent judgment to special interest or partisan political groups where she left a board meeting, allegedly at the request of the city council president. [Currie, SEC, 2008: April 1.](#)

### **Disclosure Statements and Training**

School Ethics Commission determined in numerous cases that a board member violated [N.J.S.A. 18A:25](#) and [26](#) where the board member's annual personal/relative and financial disclosure statements were not filed by April 30 and recommended a penalty of reprimand. In numerous other cases, the School Ethics Commission recommended a penalty of suspension until the school official files the disclosure statements and removal if the disclosure statements are not filed within 30 days of the Commissioner's decision on penalty, or censure if the disclosure statements are filed prior to issuance of the Commissioner's decision.

In several cases the Commissioner agreed with the SEC that board members should be removed for failing to attend training; such disregard of the law resulted in a waste of administrative and adjudicative time at both State and local levels. Also, there were several cases where board members were reprimanded for attending training late. A complete list of actions can be found on the School Ethics Commission website: <http://www.nj.gov/education/legal/ethics/training/> and <http://www.nj.gov/education/legal/ethics/disclosure/>.

### **Discrimination**

The equal protection clause of the Constitution does not allow individual public employees to sue for workplace discrimination or separate treatment as a "class of one" where they are not a member of a protected class, such as gender or race. [Engquist v. Oregon Department of Agriculture](#), 128 [S. Ct.](#) 2146 (June 2008).

District Court dismissed parent's amended complaint alleging NJLAD, Due Process, FERPA, Negligence, Emotional Distress, IDEA, ADA, and Rehabilitation Act violations failed on various procedural grounds. [Woodruff v. Hamilton Twp. Public Schools](#), No. 06-3815, 2008 U.S. Dist. Lexis 29304 (D. N.J. April 8, 2008).

District court denies defendants' motions for reconsideration of partial summary judgment (except as to municipality) in matter brought by parent against municipal and school district defendants for alleged discrimination and violation of parent and child's civil rights by using racially derogatory terms and participating in a conspiracy in violation of the Fourteenth Amendment, the NJLAD, and other laws. [Joyce v. City of Sea Isle](#), No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008), motion for reconsideration 2008 U.S. Dist. LEXIS 56524 (D. N.J. July 23, 2008).

District Court granted summary judgment in favor of defendants where it was clear that plaintiff's employment with the board of education ended for reasons unrelated to discrimination. King v. Cape May County Board of Freeholders et al., 04-4234, 2007 U.S. Dist. Lexis 84063 (D. N.J. Nov. 14, 2007).

Teacher claimed that board violated the LAD when it required her to remain out of work without pay until the beginning of the next school year upon completion of her requested child rearing leave. The court disagreed, noting that the child-rearing provision of the collective bargaining agreement was gender neutral, exercisable at a teacher's sole discretion, and applied with equal force to both men and women who elected to invoke it. However, the Law Division denied the Board's motion for summary judgment on the plaintiff's claim that the requirement that she remain out of work until the next school year, breached the Maternity/Paternity provision in the collective bargaining agreement. Hedges v. Board of Educ. of Manchester Regional High School Dist., 399 N.J. Super. 279 (Law Div. 2008).

Teacher's § 1981 racial discrimination claim was dismissed on summary judgment because there was insufficient evidence to support an inference that the school's intensive supervision, and assignment of honors class to another teacher, were motivated by discriminatory animus rather than complaints received. Public employment in a teaching profession was not a property interest that was entitled to the protections of substantive due process. Burnett v. Sch. Dist., No: 06-3771, 2007 U.S. App. LEXIS 22567 (3d. Cir. September 20, 2007).

## **Due Process**

Appellate Division determined that where teacher was detained against her will and transported to a crisis center for allegedly threatening to kill students and faculty, supervising teacher and principal were not immune from liability for intentional tort and 42 U.S.C. § 1983 claims because they both participated in the teacher's detention. The board was immune from intentional tort claims because it had no liability for the willful misconduct of employees, but could be held liable for breach of contract. Leang v. Jersey City Bd. of Ed., 399 N.J. Super. 329 (App. Div. 2008) Petition for certification granted. Leang v. Jersey City Bd. of Ed., C-1103 September Term 2007, 62,622, 2008 N.J. LEXIS 809 (N.J. June 26, 2008).

Court denies board's motion to dismiss a claim that the education association and the superintendent conspired against plaintiff. The allegations raised were sufficient to allege that the education association was a willful participant in the superintendent's alleged violation of Plaintiff's due process and First Amendment rights. Plaintiff's allegations were also sufficient to state a claim for Defendants' breach of the duty of fair representation. Veggian v. Camden Bd. of Ed., No. 05-70, 2007 U.S. Dist. LEXIS 73449, (D. N.J. October 2, 2007).

## **Equal Protection**

Federal court refused to entertain claim that DOE's failure to comply with CEIFA violated plaintiffs' equal protection rights. The federal court will not interfere with the state's efforts to regulate an area predominated by state interests, state aid for public education. Wash. Twp. Bd. of Ed. v. Davy, No. 07-968, 2007 U.S. Dist. LEXIS 75327(D. N.J. October 10, 2007).

## **Free Speech**

The Court agreed with the trial judge's finding that the board violated the parent's right to free speech at a board meeting when the parent tried to address a coach's conduct. The court, however, reversed an additional award that had been entered by the trial court to mitigate tax consequences to the parent of receiving damages of \$100,000 for emotional distress, \$45,850 in

prejudgment interest, and \$307,410 for attorney fees. Besler v. West Windsor-Plainsboro Regional School District, A-0137-05T3 (App. Div. August 25, 2008)(slip op.).

The Circuit Court ruled that a school board's policy restricting the use of teacher mailboxes to school business did not violate a teacher's free speech rights, either on the policy's face or as applied to the principal's removal of a memorandum addressing a labor dispute. The policy was not unconstitutionally overbroad as it had no actual or potential chilling effect on speech, considering that the teachers used the mailboxes both before and after this incident and that the policy was intended to prevent overstuffing and the loss of business documents. Further, the Court determined that the principal removed the memorandum because it created a disruption, and not because of the policy and therefore the policy created no ongoing harm or controversy. The free speech claim became moot as the court had no authority to offer declaratory relief, the plaintiff had not sought monetary damages, and there was no meaningful alternative relief available. Policastro v. Kontogiannis, No. 06-1471, 2008 U.S. App. LEXIS 1387 (3d Cir. Jan. 24, 2008).

District court denies cross motions for summary judgment in free speech and §1983 matter brought by mother of a former student who alleged that principal violated her free speech and assembly rights when he interfered with her right to criticize him and the school by banning her from school, prohibiting PTO flyer distribution and cancelling a PTO meeting. Given many disputed facts, court also denies principal's cross-motion for summary judgment on defamation and malicious prosecution claim, and denies summary judgment on other defendants' cross claims. Williamson v. Newark Pub. Schs., 2008 U.S. Dist. LEXIS 36060 (D. N.J. May 1, 2008)

Two students were granted a preliminary injunction; board could not prevent them from wearing buttons to school featuring a photograph of the Hitler Youth as a protest against school uniforms; there was a likelihood of success on First Amendment claims as there was no showing that the buttons had caused a disruption or a fear of disruption at school. The buttons were not vulgar, lewd, obscene, or plainly offensive. Stifling students' protected expression constituted irreparable harm. However, the students were not allowed to distribute the buttons at school. DePinto v. Bayonne Bd. of Ed., No. 06 - 5765, 2007 U.S. Dist. LEXIS 69588, (D. N.J. September 19, 2007).

Court of Appeals reversed the dismissal of the employee's First Amendment retaliation claim; the employee's allegations that the employer's officials violated Pennsylvania law clearly touched on matters of public concern. The district court erred in concluding that the disruption that resulted outweighed the employee's interest in engaging in the speech. Stump v. Richland Twp., No: 05-3810, 2008 U.S. App. LEXIS 10277 (3d Cir. May 13, 2008).

A teacher's comments about her transfer were not protected speech on matters of public concern and the district court grants judgment to the school district on Section 1983 claims; remands to state court allegations of state violations including allegations of bad faith for falsely advising the Board that RICE Notices had been provided and failing to provide timely copies of executive session minutes. Garvey v. Barnegat Bd. of Ed., 2008 U.S. Dist. LEXIS 57603 (D. N.J. July 21, 2008)(slip op.). See also, Miller v. Clinton County, 2008 U.S. App. LEXIS 20682 (3d Cir. 2008)(precedential) wherein a court employee failed to establish that her termination violated her free speech and due process rights, because her attack on management and supervisors was an unprotected personal "gripe" about her employment, despite brief references to an issue of public concern.

Third Circuit affirms District Court's order that the Child Online Protection Act ("COPA") facially violates the First and Fifth Amendments of the Constitution. [ACLU v. Atty Gen USA](#), 534 F.3d 18, 2008 U.S. App. LEXIS 15423 (3d. Cir. 2008).

In matter arising out of one staff members' suspension and the other's dismissal, the court grants school district's motion for summary judgment for alleged violations of free speech and due process due to false accusations; malicious prosecution; employment retaliation for "whistle-blowing activity"; violation of the NJLAD for reprisals from a "protected activity"; civil conspiracy and common law wrongful discharge. [Calabria v. State Operated Sch. Dist. for City of Paterson](#), 2008 U.S. Dist. LEXIS 65264 (August 26, 2008).

## **Graduation, Diploma, Honors**

Board's decision not to invite student to National Honor Society in his junior year based on a single incident of cheating, was arbitrary and capricious as no determination had ever been made that cheating occurred. Matter expedited to occur prior to student's graduation, since it would be moot upon graduation. [C.W. and S.W. v. Butler Bd. of Ed, Comm'r 2008: June 13.](#)

## **Increment Withholding**

State Board upheld withholding of increment where board alleged that teacher engaged in conduct unbecoming in hitting student with a ruler. Teacher's denials not sustainable. [Morris, St. Bd. 2007: Oct. 17.](#) See also, [Morris, Comm'r 2006: Dec 1.](#)

Board's decision to withhold tenured teacher's increment was not arbitrary, capricious, or unreasonable where several formal and informal observations indicated a lack of classroom discipline and teacher failed to utilize in-service program designed to assist teachers with classroom discipline. [Gementgis, Comm'r, 2008: March 5.](#)

Board's decision to withhold tenured teacher's increment was not arbitrary, capricious, or unreasonable. Teacher disciplined students by making them sit on a chair in a storage closet. Teacher had been previously warned about the inappropriateness of the disciplinary procedure and had received a three-day suspension with pay. [Newsome, Comm'r, 2008: Jan. 4.](#)

Commissioner determined that increment withholding was untimely and therefore illegally reduced the 12-month assistant principal's compensation where it was imposed after the commencement of the fiscal school year but before the commencement of the academic school year. [Giorgio, Comm'r, 2008: Feb 19.](#)

## **Insurance**

Board's insurance company was not obligated to indemnify the board for attorneys' fees awarded to an employee in employee's action against the board. Employee's claims fell squarely within types of claims that the insurance policy excluded; policy provided that insurer would not make payment in connection with such claims and indemnification of employee's attorneys' fees would constitute such a payment. [Old Bridge Twp. Bd. of Educ. v. General Star Indem. Co.](#), No. 07-1261, 2008 U.S. App. LEXIS 11846, (3d Cir. May 28, 2008).

Where a board employee sued the board attorney in his capacity both as board attorney and as secretary pro tem, the board attorney was not entitled to indemnification for his defense costs under [N.J.S.A. 18A:16-6](#) in his capacity as board attorney, but was entitled to indemnification to extent he was sued in his capacity as secretary pro tem. [Sahli v. Woodbine Bd. of Ed.](#), 193 N.J. 309 (2008).

## **Labor**

The Supreme Court, in reversing the Appellate Division, ruled that the board's decision to terminate a custodian's employment was a disciplinary action subject to arbitration; although the employee's individual employment contract did not require arbitration of a mid-year termination, the collective bargaining agreement's definition of arbitrable discipline was sufficiently general to cover mid-year terminations. The protections of the collective bargaining agreement trumped the provisions of the individual employment contract. [Pascack Valley Reg'l High Sch. Bd. of Educ. v. Pascack Valley Reg'l Support Staff Ass'n](#), 192 N.J. 489 (2007) October 29, 2007.

The Supreme Court, by virtue of a tied ruling, affirmed the Appellate Division's opinion upholding the school board's decision to terminate a non-tenured teacher for performance reasons upon 60 days' notice as required by the individual employment contract. The Appellate Division had ruled that termination was not subject to the grievance and arbitration provisions of the collective bargaining agreement. When the parties have not included any provision in the collective negotiation agreement that clearly creates a right to challenge a mid-term termination through a grievance proceeding, the terms of the individual contract, otherwise in accordance with applicable statutory provisions, are enforceable as written. [Northvale Bd. of Educ. v. Northvale Educ. Ass'n](#), 192 N.J. 501 (2007), October 29, 2007.

## **Leaves of Absence**

Commissioner determined that teacher who was medically cleared to return from unpaid leave of absence on the date that schools closed for holiday recess was not entitled to compensation during the holiday recess. Board was entitled to unilaterally extend the teacher's unpaid leave pursuant to terms of the collective bargaining agreement. [Vuksan, Comm'r, 2008: Feb. 1.](#)

## **Meetings**

Law Division determined that town council's executive session discussion with potential health care insurance vendor violated the Open Public Meetings Act but no action was taken. Law Division enjoined the council from future violations of OPMA by discussing public contract matters in executive session where the vendor is present. [Paff v. Washington Twp. Council](#), No. MER-L-2205-07 (Law Div. March 14, 2008) (slip op.).

## **Non-Renewal and mid-year termination of teaching staff**

Where teacher received a notice of intent to terminate her employment from the Superintendent of Schools in June 2007, she was never officially terminated by a majority vote of the full board as required by [N.J.S.A. 18A:27-4](#), and should receive back pay until January 5 when the board voted. As it was not raised in the petition, the Commissioner declined to address ALJ's conclusion that a mid-term termination of a teacher does not require statement of reasons or hearing as with a non-renewal. [Martell-Dimaio, Comm'r, 2008: May 9.](#)

Commissioner determined that board actions involving non-renewal were not arbitrary, capricious, unreasonable, or discriminatory and complied with all procedural requirements. [El-Hewie, Comm'r., 2008: April 10.](#)

## **Open Public Records Act**

The Appellate Division orders DOE to must release the unredacted school funding simulation memo to the ELC. Numerical and statistical data redacted from the New Jersey Department of Education's school funding simulation memo were not exempt from disclosure under [N.J.S.A.](#)

47:1A-1.1 of the New Jersey Open Public Records Act. They did not constitute intra-agency "deliberative material" as they were not "opinions, recommendations, or advice" but were numerical and statistical. Education Law Center also had a common law right to the unredacted memo entitled "Alternative Funding Formula Simulations," as its request was based on a concern about a public matter, and the Department did not show that its decision-making ability would be chilled by disclosure. Education Law Center. v. NJDOE, 396 N.J. Super. 634 (App. Div. 2007).

Appellate Division affirmed Government Records Council decision, which upheld Board's contention that it possessed no records responsive to appellant's OPRA request. While appellant lacked standing to complain about the duplication rates charged by the board because no fee was charged, the Appellate Division concluded in dictum that the GRC's interpretation of N.J.S.A. 47:1A-5(b), as applied to small public agencies, is deserving of deference. GRC believes that it would be inappropriate and overly-rigid to apply the statute in the same precise way to each and every public agency. Windish v. Mount Arlington Bd. of Ed. Custodian of Records, No. A0579-06 (App. Div. Dec. 12, 2007) (slip op.).

Appellate Division found that city's redacted records were non-compliant where the city failed to explain why the redactions were authorized in law and because it did not establish a basis for its need to keep the redacted records confidential under common law. Mason v. City of Hoboken, No. A-3992-06 (App. Div. March 31, 2008) (slip op.).

## **Open Public Records Act: GRC RULINGS**

GRC determined that complainant O'Shea was a prevailing party in that the complaint brought about a change in the custodian's conduct, and entitled to reasonable attorneys' fees. O'Shea, GRC, 2008: April 30.

Custodian's inaccurate denial of existence of student transcript was an unlawful denial of access. Z.T. v. Bernards Township, GRC, 2008: April 23.

Vague requests that require the Custodian to research federal regulations to determine whether said regulations require that a record be created, places an undue burden on the Custodian, and are not requests for identifiable government records; Custodian is not required to conduct research in response to an OPRA request. Taylor v. Elizabeth Bd. of Ed., GRC, 2008: April 23.

OPRA contains no exemption to disclosure for records which are a part of litigation. Pisauro v. Township of Longbranch, GRC, 2008: April 23.

Executive session minutes that were not approved by the governing body prior to the date of the OPRA request are exempt from disclosure as advisory, consultative, or deliberative material pursuant to N.J.S.A. 47:1A-1.1. GRC Complaint No. 2007-251, O'Shea, GRC, 2008: Feb. 27.

The fact that the Township Attorney has not yet authorized the closed session minutes for release is not a lawful basis for a denial of access Johnston v. Hillside, GRC, 2008: Jan. 23.

OPRA does not require the governing body to approve the release of records which have been previously approved as minutes. While redactions of closed session minutes may be required before such minutes are disclosed pursuant to OPRA, a governing body may not delay access by approving the release of such government records. Janney v. Manor, GRC, 2008: Jan. 30.

GRC determined that the Custodian of Records may not charge the proposed special service charge of \$2,099.41 because it is not reasonable pursuant to N.J.S.A. 47:1A-5.d. [Rivera, GRC, 2008: Feb. 27.](#)

The Custodian of Records was not authorized to charge a special service charge of \$31.50 to produce one (1) audiotape of a board meeting. The Custodian did not meet the statutory criterion permitting a charge greater than actual cost of reproduction (\$1.50). The Complainant was a prevailing party entitled to reasonable attorney fees, as he achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” [O’Shea, GRC, 2008: Feb. 27.](#)

The draft of the Township of Edison’s 2008 budget and the pre-decisional worksheets for salaries and wages used to assist the township in its budgetary decision-making process are exempt from disclosure as advisory, consultative, and deliberative material. [Tousman, GRC, 2008: Feb. 27.](#)

Staff attendance records are government records, specifically payroll records, and are subject to public access. [Burdick v. Franklin Township Board of Education, GRC, 2007: Oct. 31.](#)

GRC ordered Custodian of Records to release the requested attendance records of all full time employees and all members of the administration at Franklin Township School for the period of July 1, 2005 to June 30, 2006 with appropriate redactions. The Custodian must provide a redaction index detailing the nature of the information redacted and the lawful basis of the redactions. [Burdick, GRC, 2008: Jan. 30.](#)

GRC determined that the Custodian of Records shall release the Township’s closed session minutes regarding discussions of the Hillside school district’s base budget tax levy review, dated May 17, 2006 to the Complainant with appropriate redactions, if any, including a detailed document index explaining the lawful basis for each redaction. [Johnston, \(on behalf of the Hillside Board of Education\), GRC, 2008: Jan. 30.](#)

GRC determined that on site inspection of bid proposal was not a reasonable substitute for copies of the requested records. [Grauer v. NJ Department of Treasury, GRC, 2007: Nov. 28.](#)

GRC determined that denial of access was authorized by law. Complainant’s 7 page 59 item request spanning over 12 years would result in substantial disruption of the agency’s operations. [Caggiano v. Borough of Stanhope, GRC, 2007: Sept. 26.](#)

GRC determined that custodian’s failure to produce the “School Agreement” as part of a request for information related to the contract for Channel One between the Nutley Board of Education and Channel One was an unreasonable denial of access under OPRA. [Quirk v. Nutley Bd. of Ed., 2007: Oct. 31.](#)

GRC dismissed complaint as frivolous. Complaint was issued in bad faith only for the purpose of harassment. [Caggiano v. Borough of Stanhope, GRC, 2007: Oct. 31.](#) *See also,* [Caggiano v. Borough of Stanhope, GRC, 2007: Oct. 31.](#)

GRC determined that failure of custodian to respond within 7 days is deemed a denial. Because there is insufficient evidence in the record to ascertain to what extent the executive session minutes requested by the Complainant contained privileged and confidential information, the GRC should conduct an in camera review of the completed executive session minutes to

determine to what extent [N.J.S.A. 47:1A-10](#) or any other exemption applies to these documents. [Seiler v. Old Bridge Economic Development Corp., GRC, 2007: Oct. 31.](#)

GRC determined that even though the custodian eventually made the requested floor plans available to the complainant after she realized that the initial denial was a mistake, the custodian violated OPRA by denying the complainant access to the requested records. No willing or knowing violation found. [May v. Township of Edison, GRC, 2007: Oct. 31.](#)

GRC determined that custodian's failure to grant or deny access, seek clarification or request an extension of time in writing within the statutorily mandated seven business days was deemed a denial. Custodian's charge of \$69.39 was reasonable pursuant to OPRA because the custodian charged the enumerated copy costs in [N.J.S.A. 47:1A-5.b.](#) for paper copies of letters, emails and faxes, and what appears to be the actual cost for copies of audio tapes. [Restino v. Township of Cherry Hill, GRC, 2007: Dec. 19.](#)

### **Petitions for Certification**

Certification denied. Appellate Division had previously determined that school district could subcontract the services of a school business administrator pursuant to [N.J.S.A. 40:8A-3](#) instead of sharing services pursuant to [N.J.S.A. 18A:17-24.1](#). [Raimondi v. Westwood Regional School District Bd. of Ed.](#), 193 [N.J.](#) 222, 2007 N.J. Lexis 1504. See also, [Raimondi v. Westwood Regional School District Bd. of Ed.](#), No. A-5555-05, (App. Div., Aug. 7, 2007) (slip op.).

### **Physical/Psychiatric Exam**

Commissioner directed tenured science teacher to submit to psychiatric and physical examination where his irrational and threatening conduct toward fellow teachers over the past several years demonstrated a deviation from normal physical and mental health. [Lyndhurst Bd. of Ed., Comm'r., 2007: Dec. 5](#)

### **Procedural Issues - 90-Day Rule**

Where district was untimely in its appeal of county superintendent's determination of "last permanent residence" where family is homeless, the petition was dismissed. [North Brunswick Twp. Bd. of Ed., Comm'r., 2008: March 3.](#)

Commissioner adopted Initial Decision holding that the date that non-tenured teacher received notice of non-renewal commenced the 90-day period to file an appeal and that the issue was not of such compelling public interest that that rule should be relaxed. [Salazar-Linden, Comm'r., 2008: March 3.](#) See also; [Lygate, Comm'r., 2008: March 17](#) (holding that board was not required to abolish his position in order for the teacher to claim that his employment was being discontinued. Appeal to State Board dismissed for timeliness, despite counsel's health related issues). [Lygate, St. Bd., 2008: May 21.](#)

In a tuition dispute among sending/receiving districts over whether the sending district was obliged to pay resource room charges that were not included in the tentative tuition charges but were included in the certified charges, the Commissioner determined that the sending districts failed to file a timely challenge under the 90-day rule; although tuition disputes are required to be presented to the county superintendent for mediation, that process does not obviate the need to protect district rights via administrative measures. [Waterford Twp. Bd. of Ed., Comm'r., 2008: March 24.](#)

## Public Contracts

The Court affirmed a partial summary judgment in favor of the defendant subcontractor retained to perform a geotechnical evaluation on district property. In the board's action for \$6 million damages resulting from a construction delay caused by the discovery of pharmaceutical waste, the Court rejected the board's arguments that 1) the subcontractor's limitation of liability clause was void as against public policy, and 2) the board was not bound by the clause because it never indicated acceptance of that provision. [North Brunswick Bd. of Ed. v. French and Parello Associates, P.A.](#), No. A-5413-06, (App. Div. Feb. 26, 2008) (slip op.)

In a complex breach of contract claim, where the board criticized the general contractor's sloppy performance on the board website, the District Court denied the Board's motion for summary judgment as to defamation; libel and slander; destruction of prequalification for public works contracts without due process; 1st amendment; and breach of contracts claims. The Court granted summary judgment in favor of certain defendants and board of education on other numerous allegations. [D&D Associates v. North Plainfield Bd. of Ed.](#), No. 03-1026, 2007 U.S. Dist. Lexis 93867 (D. N.J. Dec. 21, 2007).

## Public Funds

State Board affirmed Commissioner's ruling that school board improperly spent funds, and Deputy Commissioner's remedy of \$88,373 deduction from the board's 2006-07 school budget, where the Board improperly spent that sum on political advertising, presenting incomplete information and advocating only one side of a controversial question regarding the purchase of two parcels of land. The color brochure and four television spots, presented incomplete information, were exhortative and one-sided in violation of [Citizens to Protect Public Funds](#), 13 N.J. 172 (1953) and were an ineffective and inefficient use of State money. [I.M.O. Elizabeth, St. Bd. 2007: Nov. 7.](#)

## Real Property

Appellate Division affirmed an order for summary judgment dismissing school board's complaint in lieu of prerogative writs against the City, Mayor, and Town Council. The Court held that the municipality had no obligation to transfer property to the Board of Education, despite the Abbott Board's desire to obtain the land for a vocational high school. The Court declined to draw from the Abbott decisions a process that would allow a board of education to compel its municipality to convey land for school construction, outside the statutory condemnation process. [Elizabeth Board of Education v. Elizabeth City](#), No. A-0090-06T5 (App. Div. Sept. 28, 2007).

## Reduction in Force

Commissioner adopted Initial Decision upholding RIF where tenured social worker who held both educational services and instructional certifications but only provided services as a social worker under the educational services certificate was terminated through a RIF. Social worker's tenure status is limited to positions within the educational services certification and is not entitled to tenure protection in positions requiring instructional certification. [Aiello, Comm'r, 2008: March 20, affirmed](#) State Board, [Aiello, St. Bd., 2008: June 18.](#) (currently on appeal to Appellate Division)

Commissioner dismissed petition of custodian who alleged a violation of his tenure rights following the board's reduction in force. Custodian had been employed for a series of fixed terms and district policy did not provide tenure status to custodians. [Sloan, Comm'r, 2007: Dec. 27.](#)

## Regional Districts

State Board affirms the determination of the Commissioner of Education that the “Librera” methodology method for allocating costs among constituent districts remains in place in the Manchester Regional School District, and that Prospect Park and Haledon must repay the amounts they underpaid in the 2006-2007 school year in accordance with the schedule set forth in the Commissioner’s July 9, 2007 determination. [I.M.O. Manchester, St. Bd. 2007: Nov. 7](#)

State Board reaffirmed the scope of its earlier directive to remand issues regarding the cost apportionment plan to the Commissioner for amplification of the record, on question of whether the apportionment plan fulfills the terms of the New Jersey Supreme Court’s remand. State Board retains jurisdiction. [I.M.O. Referendum for Withdrawal of North Haledon from Manchester, St. Bd. 2007:Nov. 7](#). (Decision on motion).

## Religion

East Brunswick School Board’s policy prohibiting faculty from participating in student-initiated prayer did not violate a football coach’s freedom of speech or association. The 3rd circuit ruled that the coach’s actions of bowing his head during his team’s pre-meal grace and taking a knee with his team during a locker-room prayer were not protected speech; even if they were, they would violate the Establishment Clause because a reasonable observer would conclude that his actions were an endorsement of religion, based on the history and context of his conduct. The Third Circuit decision reversed the district court ruling that had found the school board’s policy unconstitutional. [Borden v. East Brunswick Twp. Sch. Dist.](#), 523 F.3d 153 (3d Cir. April 15, 2008)

The board prevails on its summary judgment motion to dismiss claims by parents that its policy restricting the performance of holiday music during December concerts violated the [Establishment Clause](#) by conveying a government-sponsored message of hostility toward religion. [Stratechuk v. South Orange-Maplewood Bd. of Ed.](#), 2008 U.S. Dist. LEXIS 66383 (3d Cir, August 29, 2008)(unreported)

Third Circuit affirmed that portion of the District Court’s decision dismissing claims of failure to accommodate a sincerely held religious belief where teacher failed to inform the charter school that a libations ceremony, conducted by the charter school, conflicted with those beliefs. Third Circuit reversed and remanded that portion of the lower court’s decision that held that the proscription against discrimination did not apply to at-will or fixed termination date employees. [Wilkerson v. New Media Technology Charter School Inc.](#), No. 07-1305, 2008 U.S. App. Lexis 7526 (3d Cir. April 9, 2008).

## School Funding

In a suit challenging the constitutionality of CEIFA, the appeal of eight rural and poor school districts was remanded to the New Jersey State Board of Education for a needs assessment under the new funding formula set forth in School Funding Reform Act of 2008, L. 2007, c. 260. [Bacon v. N.J. Department of Education](#), 398 N.J. Super. 600 (App. Div. 2008) (March 14)

Law Division dismissed claims by the Pleasantville Board and Education Association that the School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54, et seq., is unconstitutional. The court transferred the remainder of the claims to the DOE for disposition; the Law Division rejected the plaintiffs’ assertion that the Act unconstitutionally impinged on the attorney-client privilege and the right to procedural due process; moreover, the plaintiffs’ challenges to the

specific actions of the appointed State monitor "would most appropriately be resolved in the administrative arena." [Pleasantville Bd. of Ed. v. State Department of Education](#), L-2796-07, (Law Div., March 5, 2008).

State Board affirmed restoration of \$5,170,982 in reductions from the general fund base budget tax levy made by the Township of Willingboro in its certification of the tax levy necessary to support the annual school budget. [I.M.O. Application Pursuant to N.J.A.C. 6A:23-8.10 for: Restoration of Budget Reductions, St. Bd. 2007: Oct. 17.](#)

## **Sending-Receiving**

State Board affirmed Commissioner ruling that, in light of [N.J.S.A. 18A:38-8.1](#), sending district board members are not entitled to vote on the selection of a board solicitor. [Evans, St. Bd. 2007: November 7.](#)

Commissioner upheld ratification vote where initial vote to award a food services contact was improper due to the participation of sending district representatives. [Compass Group USA, Comm'r, 2007: Dec. 7.](#)

Tuition regulations superseded private agreement between a sending and receiving district regarding tuition payments. Mountainside ordered to pay \$2,980,313.90 in past due tuition. [Mountainside Bd. of Ed., Comm'r., 2008: Jan. 17.](#)

## **Seniority Rights**

Board violated supervisor's tenure rights when it eliminated his position and appointed a non-tenured person as supervisor of early childhood education. His experience working in a Philadelphia learning center for preschoolers in the 70's qualified as "experience in preschool education," and as the regulation does not provide a time frame nor require "hands-on" experience. Board ordered to provide back pay and emoluments, less income received. [Savage v. Vineland Bd. of Ed., Comm'r 2008: May 23.](#)

## **Settlements**

Commissioner rejected proposed settlement agreement which had been signed by the board president. Settlement documents failed to include board resolution authorizing board president to execute on behalf of the board or the signature of the board attorney who was the board's duly authorized representative in litigation. Commissioner remanded to OAL to revise the Stipulation of Agreement. [Northey-Armstrong, Comm'r, 2008: Jan. 31.](#)

Commissioner rejected and remanded tenure settlement agreement that failed to indicate board approval of the settlement and failed to indicate that board president and business administrator/board secretary had authority to execute the settlement. Agreement was not signed by board attorney. [I.M.O. Tenure Hearing of Crandall, Comm'r., 2007: Dec. 26.](#)

## **Special Education**

District court held that plaintiff advocacy organizations had standing to sue the DOE, the State Board of Education and the Commissioner under IDEA and the Rehabilitation Act in a matter alleging that the State had systematically failed to comply with IDEA's inclusion mandates; [N.J. Prot. & Advocacy, Inc. v. N.J. Dep't of Ed.](#), 2008 U.S. Dist. LEXIS 50627 (June 30, 2008). *But see*, [Grieco v. N.J. Dep't of Ed.](#), No. 06-4077, 2008 U.S. Dist. LEXIS 3284, (D. N.J. Jan. 15, 2008), where similar claims on the part of specific students and their parents, was dismissed.

In a federal court case arising from the discipline of a student whose parents refused to have their child classified, the court held, among other things, that since the student was not classified, the parents could sue in federal court without exhausting administrative remedies over a 504 claim that the district discriminated against their son because of a perceived, versus an actual, disability. M.G. v. Crisfield, No. 06-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

Appellate Division determined that the Commissioner lacked jurisdiction to consider an appeal of an Office of Special Education Program's final decision. N.J.A.C. 6A:14-9.2 specifically authorized OSEP to issue final decisions and authorized no further right of administrative appeal except motions to reconsider. Lenape Regional High School Bd. of Ed., v. NJ Dept. of Ed., Office of Special Education Programs, 399 N.J. Super. 595 (App. Div. 2008).

District Court determined that the IDEA does not require that a student receive special education and related services from the district in order to be eligible for tuition reimbursement where parent unilaterally placed student in a private educational placement before receiving services from the district. J.S. and J.S. on behalf of R.S. v. South Orange-Maplewood Bd. of Ed., No. 06-3494, 2008 U.S. Dist. Lexis 24031 (D. N.J. March 26, 2008).

In a matter of first impression, court rules that parents were not entitled to their counsel fees under the IDEA's fee-shifting provision where the child ultimately was determined not to be a "child with a disability" for IDEA purposes. D.S. v. Neptune Twp. Bd. of Ed., No. 05-5652, 2008 U.S. App. LEXIS 3267(3d Cir. February 14, 2008).

Parents were not entitled to reimbursement for private tuition, related services, or other fees, where they refused to cooperate with the Child Study Team and did not carry their burden of establishing that the IEP in place when they enrolled the child in private school failed to provide FAPE. The administrative law judge's former position as a public school administrator was insufficient to establish bias requiring the ALJ's recusal. M.S. v. Mullica Twp. Bd. of Ed., No. 07-2466, 2008 U.S. App. LEXIS 2737, (3d Cir. February 7, 2008).

A Board of Education was held in contempt and assessed a fine of \$250 for each day it continued to comply with a preliminary injunction order to provide a student with compensatory education at the rate of fifteen weekly hours of ABA-related services. L.J. v. Audubon Bd. of Ed., No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337, (D. N.J. Feb. 19, 2008).

District Court ordered the school district to maintain and pay for the student's private school placement for the duration of the proceedings arising from disputes over the student's IEP. As the ALJ had earlier ruled that the parents' decision to unilaterally move the student to the Craig school was appropriate, this ruling established the student's "current educational placement" for purposes of "stay put" during proceedings over a new IEP. Exhaustion of administrative remedies requirement for the new IEP was inapplicable once there had been a pertinent ALJ ruling. P.R. v. Roxbury Twp. Bd. of Ed., No. 07-5935, 2008 U.S. Dist. LEXIS 8638, (D. N.J. Feb. 6, 2008)

Although he was not on witness list the testimony of board of education's counsel was admissible to explain a letter he wrote to the student's mother regarding arrangements for the student's sixth grade placement. The mother had opened the door by offering the letter into evidence. D.G. ex. Rel. J.G. v. North Plainfield Bd. of Ed., 400 N.J. Super. 1 (App. Div. 2008).

Parents need not enroll special education child in an inadequate placement in order to preserve the right to receive special education services from the district. D.L. and K.L. o/b/o minor child

J.V. v. Springfield Bd. of Ed., No. 05-5129, 2008 U.S. Dist. Lexis 17727, (D. N.J. March 6, 2008)

## **Student Discipline**

Board was not arbitrary or unreasonable where it imposed discipline limiting student's participation in team sports and extracurricular activities, withheld parking and lunch privileges for the school year, and included a three-day in-school suspension for his tangential participation in a fight on district property. [S.L. o/b/o Minor Child D.L., Comm'r, 2008: March 7.](#)

Board was not arbitrary, capricious, or unreasonable when it suspended students and removed them from the honors program for plagiarism and unauthorized downloads [T.B.-M. o/b/o M.M., Comm'r., 2008: April 7.](#)

Alternative education: Commissioner dismissed parent petition that sought the addition of AP courses to the student's alternative education program following his long-term suspension. Record suggests that the parties reached a settlement. [J.L. and D.L. on behalf of minor child, J.L., Comm'r, 2008: Feb. 25.](#)

Commissioner granted parent petition to reinstate child to regular education program after he was suspended for making threats against students that had allegedly bullied and harassed him. Commissioner reminded district of its obligation to ensure a harassment-free educational environment. [O.E. o/b/o Minor Child A.E., Comm'r, 2007: Dec. 7.](#)

Commissioner upheld 10-day suspension of student who engaged in a fight outside the high school. Given the student's prior history of suspensions and the off-campus altercation involving the same student to which police were called, there was a need to deter aggression. [M.W. on behalf of minor child T.C., Comm'r., 2007: Dec. 27.](#)

## **Student Records**

Commissioner rejects former guidance counselor's claims that "case notes" he retained at the end of his employment are personal memory aids rather than student records; the notes were student records under N.J.S.A. 18A:36-19 and N.J.A.C. 6A:32-2.1. [Welty v. Lafayette Bd. of Ed., Comm'r, 2008: May 12.](#)

District acted properly in refusing to permit parents of charter school special education pupil, who transferred to another district, to have comments student made expunged from his record prior to transmittal of his file to new district. Comments demonstrate that student is a continuing danger; further, parents did not file within 90 days of learning that board refused to expunge the records, but waited 11 months. (See Initial Decision for discussion of OPRA and student records.) [J.G. o/b/o Minor Child C.G., Comm'r, 2008: Jan. 11.](#)

## **Student Residency**

Student living with grandmother in Somerville was not entitled to attend Somerville schools as an "affidavit student;" grandmother does not support child gratis nor is there economic hardship; tension and arguments among family members is not a legal basis to assert a claim of entitlement to attend public schools free of charge. [T.H. v. Somerville, Comm'r, 2008: May 9.](#)

Commissioner adopted Initial Decision finding that child was domiciled within the district for that portion of the school year where the family was homeless and moved to several different locations. Commissioner declined to issue an order allowing the child to finish out the current

school year as a nonresident student due to extreme financial hardship. [S.J. o/b/o Minor Child V.J., Comm'r, 2008: March 3.](#)

Child was domiciled in the district with her father despite the fact that the child's mother lived in Pennsylvania and possessed a court order giving her primary physical custody. [R.A.R. o/b/o Minor Child B.D.R., Comm'r, 2008: March 5.](#)

Commissioner adopted and supplemented Initial Decision finding that student was domiciled with his sister within the district and that economic hardship was the basis for his transfer into the district. Sister had obtained a court order awarding joint legal and residential custody of A.R. Commissioner declined to look behind the order. [M.H.C. o/b/o Minor Child A.R., Comm'r., 2008: March 12.](#)

Commissioner determined to affirm district's residency determination where parent provided no proof of residency and refused to provide her address to the district, or even confidentially at the hearing to a police officer. Commissioner does not accept parent's justification that she feared for her safety due to alleged threats from former landlord. [Z.A o/b/o Minor Child J.K., Comm'r 2008: April 23.](#)

Commissioner determined that niece was not a resident of the district where petitioning aunt did not have legal custody, did not support her gratis, and failed to demonstrate family or economic hardship where aunt kept child due to father's work schedule. [R.C. on behalf of minor child, R.H., Comm'r, 2008: Feb. 25.](#)

Commissioner determined that niece was not a resident of the district where petitioning aunt did not support the child gratis, and failed to demonstrate family or economic hardship where child's mother lived in an abusive atmosphere. [L.T. on behalf of minor child, P.T., Comm'r, 2008: Feb. 28,](#) St. Bd. dismisses notice of appeal for failure to perfect.

Commissioner granted aunt's appeal of district's non-residency determination. Child's father left child with the child's aunt after promising to return from Europe. [F.A.C., Comm'r, 2007: July 30.](#)

State Board affirmed Commissioner's decision that parent's temporary custody arrangement with the child's grandparents while parent was on active duty with the U.S. Army did not shift the child's residency to that of the grandparents. [A.M.S. o/b/o A.D.S.,](#) St. Bd. 2008: March 19. *See also,* [A.M.S., o/b/o A.D.S., St. Bd.2008: January 9,](#) State Board denying motion to supplement the record and holding that a determination by the Division of Developmental Disabilities to offer and fund a placement for an individual to meet his habilitation needs has no bearing on a determination of the school district's responsibility to provide a student a free public education.

Commissioner interprets and enforces a residency settlement agreement; matter returned to Superior Court for a determination of fees and costs. [Port Republic Bd. of Ed., Comm'r, 2007: Oct. 9.](#)

County Superintendent's determination of homelessness upheld, and district of origin is responsible for costs of tuition and transportation. [Belleville, Comm'r, 2007: Nov. 19.](#)  
Dispute over residency dismissed where affidavits submitted to district established that pupil was entitled to free education in the district. [D.Y., Comm'r, 2007: Nov. 19.](#)

## Tenure Acquisition

Teacher hired in temporary absence of regular English teacher under a “Leave Replacement Employment Contract” did not accrue time toward tenure for that period of service that continued after the absent teacher returned from leave, even though the replacement teacher remained teaching the same classes in the same rooms. As there were no actual vacancies in the English department there were no tenure-track positions to which she could lay claim. [Giacomazzi v. South Orange-Maplewood Bd. of Ed., Comm’r. 2008: June 13.](#)

A teacher who served as a county apprenticeship coordinator under a waiver of the appropriate certification requirements was not eligible for tenure; waiver permits the district to hire a less-than-fully certified person but such service is not tenure-eligible service. [Lagrutta, St. Bd. 2007: Nov. 7.](#)

Bilingual/bicultural education teachers hired with emergency certification did not acquire tenure because services provided under a temporary/emergency certification do not accrue toward tenure unless full certification is subsequently obtained in the same service endorsement. [Gerber, Comm’r., 2008: March 14.](#)

Supervisor of Science was not properly certified as a supervisor where she held a certificate of eligibility for principal/supervisor. A supervisor’s endorsement is required for persons in positions of the position of supervisor of instruction and who do not hold the requisite higher level administrative endorsement. Absent proper certification, times served in that position would not accrue toward tenure eligibility. [Nelson, Comm’r., 2008: April 18.](#)

Commissioner determined that secretary gained tenure by virtue of the fact that the district entered into a settlement agreement that designated a 55-week absence as a leave of absence. Due to that designation, the secretary did not suffer a break-in-service and therefore gained tenure. [Billi, Comm’r., 2008: April 14.](#)

Commissioner determined that attendance aide had acquired tenure due to the primarily clerical nature of her duties. However aide voluntarily left that position to become a classroom aide, she had no entitlement to continued employment within the district. [Colon-Serrano, Comm’r., 2008: Jan. 28,](#) affirmed [Colon-Serrano, St. Bd., 2008: June 18.](#)

## Tenure Dismissal

State Board affirmed penalty of suspension for six months and loss of increment after board brought tenure charges against secretary who left work early without permission on several occasions, failed to heed Board policy and warnings against selling commercial items, and used disrespectful and unprofessional language. [Tenure Hearing of McCain, St. Bd. 2007: Dec. 5.](#)

Forfeiture of pay and suspension ordered for science teacher who on several occasions demonstrated unprofessional conduct when he failed to control his temper, displayed poor judgment, and used force against a student (although not excessively under the circumstances) in the aftermath of a student fight. Commissioner finds ALJ’s recommended penalty of dismissal too harsh in light of cases decided on similar facts, and ordered forfeiture of 120 days of salary already withheld and suspension without pay for four months while teacher obtains training in anger management, which he must successfully complete as a condition of return to duty. [I.M.O. Tenure Hearing of Mierzwa, Comm’r., 2008: June 23.](#)

State Board affirmed Commissioner decision that teacher is guilty of charges involving dishonesty including theft of district and personal property and conducting business during instructional time, but finds that dismissal is too harsh a penalty given her 24 years in the district, and adopts penalty set forth by the ALJ, namely six-month suspension without pay, withholding of increments for 2 prior and 2 future years. [Long, St. Bd. 2008:April 16.](#)

State Board affirmed Commissioner's order that tenured custodian be dismissed where his behavior was more than sufficient to establish excessive and chronic absenteeism and conduct unbecoming. [Moore, St. Bd. 2008:April 16.](#)

Commissioner increases penalty from 70 days' salary withheld to 120 days', where of the nine incidents alleged the board only proved two: the presentation of a birthday gift to a minor female student, and the establishment of a clandestine email account for secret communications with her. Teacher must exercise self-restraint, prudence and controlled behavior in his interactions with students under his charge. [I.M.O. Tenure Hearing of Dennis, Comm'r. 2008: May 8.](#)

Commissioner dismissed tenured teacher for possession of CDS despite completion of PTI and testimony of rehabilitation. [I.M.O. the Tenure Hearing of Carter-Lee, Comm'r., 2008: March 19.](#)

Commissioner adopted Initial Decision upholding board determination not to certify tenure charges filed against the superintendent by the local education association. Board decision not to certify was based on credibility determinations and was not arbitrary, capricious, or unreasonable. [Carteret Ed. Assn., Comm'r., 2008: March 31.](#)

Commissioner dismissed tenured custodian for excessive absenteeism and abandonment of position where the custodian failed to deny the charges. [I.M.O. the Tenure Hearing of Battaglia, Bergen County Special Services School District, Comm'r., 2008: April 2.](#)

Commissioner rejected proposed settlement that only offered the board's desire to avoid the cost, uncertainty, and inconvenience of litigation. Board failed to indicate on the record a reasonably specific explanation of why it is now in the public interest not to pursue tenure charges. [I.M.O. the Tenure Hearing of Langley, Comm'r., 2008: Feb. 19.](#)

The Department of Education properly denied the petition of a tenured teacher brought on tenure charges to amend [N.J.A.C. 6A:3-5.1\(a\)](#), which permits the State district superintendent to make probable cause determinations in certain tenure proceedings; the regulation was consistent with other statutes conferring authority on State superintendent in districts under State intervention and was adopted in accordance with the Administrative Procedures Act. [Gillespie v. Department of Ed., 397 N.J. Super. 545 \(App. Div. 2008\).](#)

Tenure charges of chronic absenteeism and persistent tardiness were upheld, and the secretary was dismissed. [IMO Tenure Hearing of Battle, St. Bd. 2008: February 20.](#)

Following his arrest and indictment on criminal charges alleging possession of cocaine and drug paraphernalia, and subsequent completion of a pre-trial intervention program (PTI), board sought removal of tenured vice-principal. Commissioner rejected the ALJ's conclusion that the respondent's agreement to participate in a PTI was an admission of the allegations against him. The Commissioner remanded the matter to the OAL for a hearing on the facts underlying the tenure charges. [I.M.O. Tenure Hearing of Thomas, Comm'r, 2007: Nov. 26](#)

Tenure charges were based on drug possession and not simply the teacher/vice principal's arrest, indictment, and participation in PTI. Therefore, employee's underlying conduct constituted conduct unbecoming and warranted his dismissal; the fact that the conduct took place off school premises was irrelevant; however, he was entitled to back pay from the date he completed PTI until the filing of tenure charges, as well as from the 121st day after filing of charges to the Commissioner's decision. [I.M.O. Tenure Hearing of Thomas, Comm'r, 2008: May 23.](#)

Commissioner dismissed tenured teacher in an institution for the developmentally disabled who claimed self-defense after child struck teacher's chest near an implanted defibrillator. Commissioner did not credit self-defense explanation and determined that Department of Human Services policy unequivocally prohibited hitting a student. [I.M.O. Tenure Hearing of Gall, Comm'r., 2007: Dec. 26.](#) State Board affirmed, expressing regret in light of teacher's 41 years of exemplary service. [I.M.O. the Tenure Hearing of Gall, St. Bd., 2008: June 18.](#)

State Board affirmed dismissal of physical education teacher from his position for insubordination, habitual lateness, and absence; use of disrespectful and unprofessional language and vulgar gestures towards colleagues; and use of inappropriate language toward a student. Even assuming that some of the conduct was inefficient, there was ample evidence of unbecoming conduct. [I.M.O. the Tenure Hearing of Hill, St. Bd. 2007: Oct. 17.](#) See also, [I.M.O. the Tenure Hearing of Hill, Comm'r., 2007: May 15.](#)

Commissioner determined that tenure charges were rendered moot where employee's public office was forfeited in a judgment of the sentencing court. [Iglesias, Comm'r., 2007: Oct. 2.](#)

## **Transportation**

Parent failed to establish that bus stop was dangerous or that board's decision to deny parental request to relocate the bus stop was arbitrary, capricious, or unreasonable. [F.P. on behalf of minor child K.P., Comm'r., 2007: Oct. 17,](#) affirmed [St. Bd. 2008: March 19.](#)

State Board affirmed Commissioner's decision that petitioners failed to establish that the Board's determination to discontinue its practice of providing bus transportation for students who resided less than a mile from their respective schools was arbitrary, capricious, or unreasonable. [T.F.S. and C.S., o/b/o J.R.S., St. Bd. 2008: February 20.](#)

## **Tuition**

Non-resident students were entitled to free education in district for the balance of the school year, where the board's denial of grandparent's tuition waiver application was without a rational basis. [C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Comm'r., 2008:Jan. 23.](#)