

APPENDIX B

Legal Services and Advocacy before the Courts

Phone information

NJSBA staff attorneys compile and report on the latest developments in public school law, through research, networking and maintaining professional relationships with state government officials, which enables them to enhance information-sharing on recent trends and legal developments.

Members One of three staff attorneys is available each afternoon, Monday through Friday, for legal phone information consultations with school board members and administrators. NJSBA staff attorneys do not keep track of the amount of time per phone call, but only the number of contacts made. Most contacts are between six minutes and one hour. Additionally, research is often necessary to respond to the caller. The typical rate that a private attorney would charge to school boards for similar services is between \$150 and \$205 per hour.

During the three fiscal years ending June 30, 2014, NJSBA staff attorneys had 4,563 contacts with school board members and administrators, averaging 1,521 contacts annually. (This total excludes contacts with board attorneys, state Department of Education employees, and others.) The value of these services, based on the rates charged by school board attorneys, ranges from \$45,630 to \$155,902.50.

- Assuming a low hourly rate of \$150 per hour, and an estimated time per phone contact of 12 minutes (0.2 hours) per phone call, a very conservative estimate, the annual value of this service would be **\$45,630** (\$30 per phone call times 1,521 calls).
- Assuming a low hourly rate of \$150 per hour and a higher number of minutes per average contact of 0.5 hours, the annual value of this service would be **\$114,075** (\$75 per phone call times 1,521 calls).
- Assuming the high hourly rate of \$205 and the low estimated phone contact of 0.2 hours, the annual value of this service would be **\$62,361**. (\$41 per phone call times 1,521 calls).
- Assuming the high hourly rate of \$205 and a higher number of minutes per average contact of 0.5 hours, the annual value of the service would be **\$155,902.50**. (\$102.50 per call times 1,521 calls).

NOTE: Some boards retain an attorney for an annual or monthly fee that includes unlimited phone contacts. The prorated cost of phone contacts under such an arrangement would be more difficult to assess as it would depend on the amount of the fee, the level of usage, and the other services provided.

Many state school boards associations also provide attorney phone contact as part of their dues-based service to board members, while others charge a fee for telephone assistance. For example, the Kansas Association of School Boards operates a Legal Assistance Fund with a separate annual fee which allows unlimited phone and email access to six staff attorneys. If its legal staff is asked to assist with out-of-office work such as investigations or hearing representation,

KASB charges the local board \$175 per hour. The Idaho School Boards Association charges \$175 per hour after four hours of legal services per member district or charter school. In Montana, after providing two to three hours of legal services on a dues basis, the Montana School Boards Association will charge its members hour fees for additional work, ranging from \$80 for the paralegal to \$150 for staff attorneys and \$160 for the general counsel.

Board attorneys School board attorneys representing public schools frequently speak with NJSBA's staff attorneys about legal issues, thus reducing the school board attorneys' own research time and the fees they would pass on to the school boards. NJSBA staff attorneys discuss the interpretation and implications of legal rulings and statute with board attorneys, and they assist in research that may relate to litigation or other pressing school law issues. Typically, these matters are under a tight responsive deadline. NJSBA staff attorneys also provide quick access to school rulings that are not readily accessible to school law practitioners. While it is difficult to place a dollar figure on the value of this service to boards of education, the assistance rendered to school board attorneys serves to reduce the time that the attorneys would otherwise spend in representing the board.

Advocacy

Staff attorneys have supported boards of education through participation as *amicus curiae* ("friend of the court") in litigation before judicial and administrative tribunals on issues of statewide impact. For local boards of education, this assistance results in direct cost savings and improvement of educational quality. Following are examples of NJSBA's *amicus* participation:

- NJSBA successfully argued that school districts have a need to maintain the safety and order of the school environment and that this need supports a principal's right to search a student's car for drugs, where the car was parked on school premises and the principal reasonably suspected that evidence of criminal activity would be found in the car. State v. Best, 201 N.J. 100 (2010)
- NJSBA successfully argued that a Board Secretary's handwritten notes, jotted down as a memory aid to assist in preparing the formal minutes, are not a public record. O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 918 A.2d 735, 2007 N.J. Super. LEXIS 98 (App. Div. 2007)
- NJSBA successfully argued in support of the board's action to terminate on notice a teacher who was rated unsatisfactory in 16 of 26 categories. The court concluded that school boards have the inherent power to terminate a non-tenured employee pursuant to the notice terms of an individual employment contract without providing the employee with a hearing or an opportunity to arbitrate unless a board waives its right to do so, which it did not do in the matter. Northvale Bd. of Educ. v. Northvale Ed. Ass'n., 192 N.J. 501 (2007)

- NJSBA successfully argued against a state regulation that would have reduced the maximum age span of students served in a single elementary school special education class from four years to three. The regulation, which would have imposed additional expense on local school districts for new teachers, classrooms and supplies, would violate the state constitutional prohibition against new unfunded mandates. In re Complaints filed by the Special Services School Districts of Burlington, Atlantic, Cape May, and Bergen Counties (1-07) July 26, 2007.

NJSBA conducted a survey to assess the impact of such a regulation on local districts. Based on the responses, the average cost of the state requirement would have been approximately \$200,000.

- NJSBA successfully argued that school boards are not required to have a certified school nurse physically present in the school building or complex at all times during which a non-certified nurse is regularly scheduled to perform duties supplementing the services provided by the certified school nurse, where the non-certified nurse does not provide services required to be provided by a certified school nurse. Ramsey Teachers Ass'n v. Ramsey Bd. of Educ., 382 N.J. Super. 499 (App. Div. 2006)
- NJSBA successfully argued that a requirement for periodic radon testing in every public school building violates the constitutional prohibition against new unfunded mandates. In re Complaints filed by the Monmouth Ocean Educational Services Commission, the Rumson-Fair Haven Regional High School District, and the Stafford Twp Bd. of Ed., August 20, 2004. The price tag for such a mandate would have included costs for initial testing, remediation, if necessary, and time and money for future testing. Costs were estimated at \$10 to \$50 per room, and district costs would depend on the size of the district, the number of buildings and other factors. The Stafford Township Board of Education, one of the complainants, stated that the testing for the 2003-2004 school year cost the district more than \$4,700, or \$50 per room. If all districts incurred the same expenses, statewide testing would have totaled \$2.82 million every five years.
- NJSBA successfully argued that, for a district to waive its statutory right to non-renew custodians and subject the decision to arbitration as discipline, it had to do so with explicit contractual language, and the language in the parties' contract was not sufficiently specific. Camden v. Alexander, 181 N.J. 187 (2004)
- NJSBA successfully argued in favor of providing school boards an important tool to combat major drug problems. In a 2003 case, the state Supreme Court held that school boards may institute random drug and alcohol testing programs for all students who participate in athletic and non-athletic extracurricular activities, as well as those who possess school parking permits without violating the state constitution. Joye v. Hunterdon Central Reg'l High School Bd. of Ed., 176 N.J. 568 (2003)
- The New Jersey Supreme Court held that the Education Facilities Construction and Financing Act did not violate the Debt Limitation Clause of the New Jersey Constitution. EFCFA was enacted in furtherance of the constitution's Education and School Fund Provisions. Lonagan v. State of New Jersey, 174 N.J. 435 (2002)

- NJSBA successfully participated in two rulings favoring a district's staffing decisions. One held that a board did not violate the tenure rights of a guidance counselor when it eliminated her position and created a new supervisory position that encompassed supervisor responsibilities as well, and required dual certification; her tenure rights under one certification did not transfer to create tenure under the other certification. Denney v. Passaic Valley Reg'l High School Bd. of Educ., 131 N.J. 626 (1993). In the other case, NJSBA successfully argued in favor of a board's authority to transfer a teaching staff member to another teaching assignment within the scope of the teacher's certification without triggering the employee's seniority rights. Carpenito v. Board of Educ. of Borough of Rumson, 322 N.J. Super. 522 (App. Div. 1999)
- NJSBA successfully argued before the state Supreme Court in a matter that resulted in substantial savings each year since 1996. The court held that a board of education is not required to pay (and, in fact, is prohibited from paying) its teaching staff salary increments set forth in the expired three-year collective bargaining agreement. Neptune Township Educ. Ass'n, 144 N.J. 16 (1996). Without the Neptune decision, teachers would obtain automatic salary increases during ongoing negotiations which, under New Jersey's tenure law, could not be retrieved upon the conclusion of negotiations. Such mid-negotiations payments would set expectations that continued collective bargaining would result in further increases above those provided through the automatic increments.

The scenarios below illustrate the financial benefit of the Neptune decision, by showing the increments school boards would have to pay if the decision were not in place. The examples are based upon the expiration of the districts' 2000-2001 teachers' salary guides.

- One district (where the negotiated salary increase had been 3.5%) would have been obligated to pay the following increments automatically to some of its teachers: 9.3% (\$4,850), 8.5% (\$4,850), and 13.6% (\$8,410). Other teachers in the same district would have received an automatic incremental increase of 2.6% (\$1,050).
- Another district (with a 3.7% average increase) would have paid automatic incremental increases of 16.4% (\$10,451) for teachers moving to step 19 and 2% (\$722) to teachers moving to step 5; and
- Another district (with an average negotiated increase of 4%) would have been obligated to pay some teachers an automatic incremental increase of 16.7% (\$6,300), 22.5% (\$9,900) and 18.4% (\$9,900). Teachers at the early steps of the guide would have received a 1% (\$300) incremental increase.

Legal Reference Materials

NJSBA staff attorneys have prepared a number of comprehensive FAQs and outlines to guide boards of education through such events as [school elections](#), [board organization](#), reductions-in-force and non-renewals, budget review and restoration, school budget

campaigns, and regionalization. These documents are updated annually. They serve as resources for school board members, school administrators and board attorneys and are accessible by the general public through the Association's website. While a dollar value cannot be placed on the value of these resources, their availability reduces the need of district administrators and board members to speak with counsel, reduces counsel's research time, and prevents costly errors.

The [*Index to School Law Decisions*](#) is a searchable database that lists and provides a synopsis of school-related decisions from administrative agencies and appeals courts. Where available, hyperlinks to the reported decision are included. This NJSBA fee-based service costs \$150 per year. By comparison, LexisNexis, a legal research service, charges private law firms \$450 per month.