New Jersey School Boards Association

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This document contains a *TOPICAL INDEX OF DECISIONS OF THE COMMISSIONER OF EDUCATION*, beginning with decisions filed in July 1998. This index will be continuously updated as new decisions of the Commissioner of Education become available to NJSBA through the Department of Education's website.

The index summaries are intended as guidance in locating cases relating to a particular topic in the area of school law. The summaries should not be relied on as legal advice. The index summaries should not substitute for independent research and review of the actual rulings. Note that while selected decisions may include cites to State Board or other subsequent proceedings, not all decisions include the relevant cite to subsequent history.

90 Day Rule - Applied

Commissioner dismisses parent's petition for reimbursement for summer chemistry class their daughter had taken after failing chemistry; their petition was barred by the 90-day rule as the 90 days began to run as of the district's decision in May 2006 not to investigate or correct the alleged mistreatment of S.B. by her chemistry teacher; even absent a timeliness problem the Commissioner did not have jurisdiction to award consequential damages. (T.B. and M.B., Commr. 2007:May 24, aff'd St.Bd. 2007: Sept. 5)

The Court affirms the State Board of Education's holding that a petition to the Commissioner of Education was properly dismissed as untimely. The underlying matter involved employees' claim for indemnification for legal fees and costs after having been acquitted of criminal charges emanating from their concealed ownership of a building that the School District was leasing. Indemnification was not the kind of absolute statutory entitlement that is exempt from the 90-day rule. Parlavecchio et al. v. State Operated School District of Newark, Unpublished Opinion, Dkt. No. A6634-04, decided January 18, 2007.

Commissioner determined that the 90-day rule barred district's petition to recalculate FY 02-03 and 03-04 core curriculum standards aid. N.J.S.A. 18A:7F-15 allowing a challenge to the calculation of CCSA under certain circumstances did not supersede the operation of the 90-day rule. (Milford BOE, Commr. 2005:June 2)

A teacher who successfully established that he would have continued in his position had he not been wrongfully terminated by the board, and that he would have been subject to a subsequent reduction in force, subsequently claimed that he should have been rehired because by the time of his reduction he had acquired an additional endorsement as Teacher of the Handicapped; however, his petition was dismissed as filed out of time. (Ziegler, Commissioner 2008:November 3)

Commissioner determined that terminated teacher failed to timely file petition of appeal. Commissioner specifically rejected that portion of the Initial Decision that granted terminated teacher the right to a Donaldson hearing as being unnecessary to the disposition of the matter. (Lachenauer, Commr., 2009:March 18)

The Commissioner dismissed Pemberton's petition as to recoupment of 2000-01 tuition overpayment because it was untimely, district should have filed its appeal within 90 days of receiving notice of the recertified rates in February 2004. (Pemberton, Commr., 2007: April 12).

The event that triggered the union's 90-day period to challenge the sick leave provisions of the SBA's contract, was not the date the board approved the contract as determined by the ALJ, but rather the date the contract was provided to the petitioning union upon its request. Until the union's suspicions were raised, it had every reason to rely on the board's compliance with statutory requirements surrounding the contract's sick leave provisions, and was not on adequate notice of the board's action.

(Carteret Education Association, Commr., 2006: may 26), affirmed (Carteret Education Assoication, St. Bd., 2006: Nov. 1)

Commissioner rejected ALJ determination that superintendent's appeal of notice of non-renewal was not timely filed where it was filed more than 90 days after written notice issued by board president, but within 90 days of formal board action. Matter remanded for determination as to whether board acted in conformity with the Open Public Meetings Act. (Drapczuk, Commr. 2005:May 20)

Commissioner determined that tuition paid by a sending district is subject to the 90-day rule. Each monthly tuition bill does not constitute a new cause of action. (Mountainside Bd. of Ed., Commr., 2008: Jan. 17).

State Board reversed the Commissioner's determination that the date the 90-day period for filing was not the date the teacher received the "blanket" nonrenewal letter as determined by the ALJ, but rather the date she learned that similarly-situated colleagues were being recalled but she was not. Therefore, the teacher's petition was deemed untimely by the State Board. Teacher was aware of allegedly discriminatory conduct prior to her non-renewal. Decision on motion. (Charapova, Commr. 2006:Dec. 6, reversed St. Bd. 2007:August 1)

Commissioner dismissed, as untimely, parental petition seeking tuition reimbursement where parent unilaterally enrolled student in private school because all available in-district schools were classified as in-need-of improvement. (D.Q. on behalf of minor child S.Q., Commr., 2009: Jan. 21)

District Court dismissed pro se complaint where plaintiff failed to comply with the 90-day rule contained in 28 U.S.C. 1915(e)(2)(B). Gadsden v. N.J. Ed. Assn. et al., No. 07-4861 (D. N.J., Dec. 4, 2007), 2007 U.S. Dist. Lexis 89000.

Case addressed the date on which teacher's cause of action accrued on his claim that he was entitled to a position after a 2003 RIF. The Commissioner held that his cause of action accrued on December, 2006 during previous litigation, wherein he had been put on notice by the board's brief on remand for back pay that his rights could have been violated. The teacher had argued that his claim did not arise until the Commissioner's final decision on remand on the matter of his entitlement to back pay. Therefor, his December 2007 claim was dismissed as untimely filed. (Ziegler, Commissioner 2008:November 3)

Commissioner determined that district failed to file a timely appeal of county superintendent's determination of residency within the 30-day period allowed by N.J.A.C. 6A:23-5.2(d). District's petition dismissed. (North Brunswick Twp., Commr., 2008:March 3)

Commissioner dismissed teacher's petition of appeal regarding the enforcement of an earlier appeal as untimely. Teacher retained right to enforce in superior court. (Mazzeo, Commr., 2006: Sept. 29). See also, Mazzeo v. Barnegat BOE, A-2202-05 (App. Div. June 6, 2006) (slip op. at 8). Certification denied Sept. 6, 2006, 188 N.J. 354 (2006).

Commissioner dismissed retired teacher's appeal of the denial of her petition to restore sick days as untimely. Although teacher's attorney delayed providing notice to the teacher, she received denial 45 days after it was issued and had ample time to file an appeal. (Gusler, Commr., 2009:April 21)

Motion to dismiss complaint as untimely denied. Plaintiffs' appeal from ALJ's IDEA decision under 20 U.S.C.S. § 1415(i)(2)(B) was denied because amendment shortening time limitations for filing appeal from two years to 90 days did not mean appeal had to be filed 90 days from amendment's effective date and amendment did not apply retroactively. Statute was amended 12/04, effective 7/1/2005. Third Circuit held statute had prospective application, presumption against retroactive application without clear Congressional intent. ALJ decision issued December 3, 2004, plaintiffs filed action October 3, 2005. (P.S. v. Princeton Reg'l Schs. Bd. of Educ., No. 05-4769 2006 U.S.)

State Board affirms ruling below denying parents emergent relief from application of the district's school uniform policy; parents filed outside the 90-day limitation period set forth in N.J.A.C. 6A:3-1.3(d) and provided no factual or legal justification which would warrant relaxation of this rule, nor did they establish grounds for medical or religious exemptions. (Coles, St. Bd. 2007:April 4)

State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of limitations. (Bradford, St. Bd. 2007:June 6)

Mayor and Council lack standing to challenge attendance boundaries of school district. Further, filing violated 90-day rule, no justification for relaxation of rule. (Howell Township, Commr., 2006: Dec 5).

Commissioner determined that 90 day rule was triggered by the Board's acceptance of her letter of resignation, citing Charles E. Willson III v. Board of Education of the Toms River Regional School District, 96 N.J.A.R. 2d (EDU) 872 and Blossom S. Nissman v. Board of Education of the Township of Long Beach Island, 272 N.J. Super. 373, 380-81 (App. Div. 1994). Neither the fact that petitioner continued in the Board's employ subsequent to its acceptance of her resignation nor petitioner's attempt to rescind her resignation by letter dated May 8, 2006 serve to preclude application of the 90-day rule. (Snow, Commr., 2007: April 20).

Commissioner determined that former teacher's allegation that the Board required her to submit a letter of resignation in order to continue her employment and subsequently refused to allow her to withdraw her resignation before it took effect was time-barred. (Snow, Commr., 2007: April 20).

Social worker's claim that the board violated an arbitration consent award that included the board's promise to assist him in seeking pension credit was filed well out of time where he had knowledge of the board's mischaracterization of his service for pension purposes four years earlier

through a letter from TPAF denying him his purchase request; he did not have to wait to file until the TPAF Board determined that he was in fact, eligible for credit. (Spitaletta vs Caldwell-West Caldwell BOE, 2006:June 8)

Commissioner dismissed teacher's petition seeking additional sick leave for the same period of time that teacher had previously which had been the subject of a previous settlement agreement. Petitioning teacher filed appeal beyond the 90-day statute of limitations. (Vincenti vs Paterson City, 2006:Oct. 12)

Non-renewal upheld where appeal violated 90-day rule and petitioner did not hold proper certification for the position. (Clanton, Commr, 2007: March 12).

Tenured vice principal who was transferred from a 12-month high school vice principal position to a 10-month elementary school vice principal position alleged that the transfer was retaliatory, in bad faith and would result in a lesser future salary expectation. Vice principal began his new position on August 31, but did not file his petition until December 2006, beyond the 90-day limitation period. Even if petition were not time barred, previous case law has established that future increases in salary or salary expectation are not appropriate factors in considering the validity of a transfer. Petition was dismissed. (Wilbeck, Commr., 2007:July 9)

State Board refused to relax the 90-day rule where teacher was aware of allegedly discriminatory conduct prior to her non-renewal, but waited until she was not offered a contract for then ensuing year to file a claim. (Charapova, Commr. 2006:Dec. 6, reversed St. Bd. 2007:August 1)

Former tenured athletic director failed to establish that board of education violated his tenure, seniority and/or preferred eligibility rights when it appointed a non-tenured individual to the position of Assistant Principal for Athletics and Student Activities. Petition not time barred. (Winthrop McGriff vs Board of Education of the Township of Montclair, 2006:July 13)

Appeal dismissed as untimely challenging Commissioner's approval of application for operation of charter school. State Board is without authority to enlarge statutory thirty-day appeal window. Ecole de la mer French Immersion Charter School, St. Bd. 2005:May 4.

Former tenured athletic director failed to establish that board of education violated his tenure, seniority and/or preferred eligibility rights when it appointed a non-tenured individual to the position of Assistant Principal for Athletics and Student Activities. Matter timely filed. Winthrop McGriff vs Board of Education of the Township of Montclair, 2006:July 13

Non-renewed teacher who properly filed civil rights claims in superior court, but did not allege violations of the school laws, was not entitled to a relaxation of the 90-day rule where school law claims were not filed with the commissioner. (Bradford, Commr. 2007: Feb. 14). State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of

limitations. Bradford v. Union Twp. Bd. of Ed., 2007:Feb. 14

Non-renewed teacher who properly filed civil rights claims in superior court, but did not allege violations of the school laws, was not entitled to have the matters transferred due to lack of jurisdiction. Superior court had jurisdiction over civil rights claims. (Bradford, Commr. 2007: Feb. 14). State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of limitations. Bradford v. Union Twp. Bd. of Ed., 2007:Feb. 14

Two non-tenured teaching staff members sought reemployment, alleging that their termination was not for stated budgetary reasons. While petition was time-barred and was dismissed, Commissioner noted that where a non-tenured teacher challenges a board of education's decision to terminate her employment on the grounds that the stated reasons are not supported by the alleged facts, she is entitled to litigate the question only if the facts she alleges, if true would constitute a violation of constitutional or legislative-conferred rights. (Middletown, Commr., 2007:August 16)

Appellate Division affirms Commissioner decision, which affirmed ALJ's initial decision, dismissing, as untimely, appellant parent's petition to expunge her child's student disciplinary records. Petition was not timely filed even if parties agreed to an extension of the 90-day rule. Commissioner's decision was supported by substantial credible evidence in the record, was not arbitrary, capricious or unreasonable, and was in compliance with the controlling legal principles. J.G. ex rel. C.G. v. N.J. Dep't of Educ., (A-6057-07T2) 2009 N.J. Super. Unpub. LEXIS 1176 (App. Div. May 15, 2009). (See Initial Decision for discussion of OPRA and student records.)

Non-renewed teacher who properly filed civil rights claims in superior court, but did not allege violations of the school laws, did not misfile his claim in the wrong forum. Discrimination claims were separate and distinct from claims of procedural violations in evaluations and non-renewal. (Bradford, Commr. 2007: Feb. 14). State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of limitations. Bradford v. Union Twp. Bd. of Ed., 2007:Feb. 14

Third Circuit determined that school district's counter-claim was filed in a timely fashion although it was filed more than 90-days after the hearing officer's final decision. The IDEA's 90-day limitation only applies to complaints, not compulsory counter-claims. Jonathan H. v. Souderton Area School District, No. 08-2196, 2009 U.S. App. LEXIS 7794 (3d Cir. 2009) (precedential)

90-day rule begins to run from date of notification of non-renewal, not on date of expiration of contract. Salazar-Linden v. Board of Educ. of Holmdel, 2009 N.J. Super. Unpub. LEXIS 2713 (App.Div. Oct. 28, 2009)

Examiners revoked certificate of teacher who pleaded guilty to failure to make a lawful disposition of CDS to police. (I.M.O. the Certificate of Dougherty, Exam, 2009: May 11)

Teacher asserted that he had not been properly compensated for his services as a part-time athletic director and sought a salary adjustment retroactive to December 1992, which corresponded to the date petitioner earned a supervisory certificate. Petitioner received clear notice with every paycheck received after December 1992 that the Board had determined to continue to pay him at the teacher's salary level; a challenge to salary guide placement must be brought within ninety days of the time that the teacher first became aware of the amount of his salary; petitioner's claim was filed close to seventeen years beyond the ninety day statute of limitations. Petition was dismissed. Mauro DeGennaro vs Board of Education of Hoboken, 2009:October 6

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, Commr., 2008:March 3)

In a tuition dispute among sending/receiving districts, the Commissioner determined that 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. Commissioner found no basis to relax the 90-day rule. (Waterford Twp. Bd. of Ed., Commr., 2008:March 24)

Commissioner rejected DOE motion to dismiss petition as untimely where respondent did not assert this defense until after two years after the filing of the petition, after pleadings and a hearing related to an application for emergent relief, after cross motions for summary decision, and after three days of a plenary hearing. Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Comm'r., 2008: Aug. 8). (Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Comm'r., 2008: Aug. 8)

State Board relaxed 90 day rule where parents tardiness in filing appeal of grades given to student was based in part on the fact that the parent was not directed to the Commissioner's office to file an appeal. C.G. v. Brick Twp. Bd. of Ed., 2006:July 19

Commissioner determined that although the 90-day rule was applicable to a tuition dispute between a sending and receiving district, the fact that both districts ignored the regulatory mechanisms for calculation and payment of tuition credits in favor of a private agreement, would allow the improper effects of that private agreement to carry over into the future, and therefore called for a proper resolution. (Mountainside Bd. of Ed., Commr., 2008: Jan. 17).

School district's cancellation of vendor's contract for supply of shelf stable milk products was neither arbitrary nor capricious. Vendor's challenge to specifications was untimely. Norbert Powell o/b/o Romeo's Exotic Juice, Inc. vs State-Operated School District of the City of Newark, 2006:July 19

Commissioner determined that where board successfully enjoined arbitration of a tenured assistant principal's increment withholding because it was not

disciplinary in nature, the assistant principal was not time-barred from contesting the withholding on procedural as opposed to substantive issues. (Giorgio, Commr., 2008: Feb 19)

Commissioner adopted and modified Initial Decision dismissing teacher's petition on the basis of timeliness. Commissioner found that the superintendent's letter of non-renewal provided proper notice instead of board ratification of an employment-related settlement agreement; the 90-day rule is not tolled by virtue of petitioning the board to offer re-employment despite the non-renewal. Additionally, the board was not required to abolish his position in order for the teacher to claim that his employment was being discontinued. (Lygate, Commr., 2008:March 17)

Commissioner determined that science teacher was entitled to credit for up to five years for non-teaching experience directly related to the assigned teaching position and up to four years credit for active military service with honorable discharge; the Supreme Court has held both the six year statute of limitations for contract matters and the ninety day limitation inapplicable as it relates to military service. Neely, Commr., 2009: Jan. 5.

Commissioner affirmed NJDOE's denial of district's special request for additional funding for it's pre-school budget. No basis in the 2005-06 Private Provider Guidelines for executive, fiscal and administrative staff beyond that of director. New Brunswick BOE v NJDOE, Commr. 2005: April 6.

Commissioner dismissed tenured teaching staff member's petition alleging that the Board improperly reduced his annual base salary; petition was filed well outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i) for the filing of an appeal and the record provided no reason for relaxation of the rule. *Giantisco*, Commr 2013: Feb 5 (Delaware Valley Reg.

Commissioner declines to extend 90-day rule to pro-se teacher who filed appeal 3 months late, of time challenging the determination of State Board of Examiners that she had not satisfied the requirements for a Certificate of Eligibility to teach American Sign Language. *Murnaghan* v. S*tate Bd of Examiners, Commr 2013: July* 15

Commissioner rejects ALJ determination that parents were time-barred in their challenge to board of education's HIB determination; 90- day period began to run on November 29, 2012 when they received notice of the board's determination, and not 3 days earlier when the Board voted on the petitioners' challenge to the HIB determination during the public meeting. Parents filed on November 27, and cured deficiencies within 48 hours after they were advised that if the additional information was timely filed, the date of the original submission would be deemed the filing date. Remanded for hearing on the merits. *T.R.and T.R., obo, E.R. v. Bridgewater-Raritan Reg., Commr 2013: July 22*

Commissioner dismisses matter brought by Medford Investor Associates (MIA), which had previously leased office space to the board, which alleged that the board violated various school laws when it entered into an agreement to lease office space from another vendor, Hartford, when MIA's lease

expired. Although MIA has standing as a taxpayer within the school district, its petition was untimely as it was not filed within 90 days of receiving notice of the Board's final action with respect to the Hartford lease; nor was there any "continuing violation" that tolled the 90-day rule nor compelling reason to relax the rule. Filing a complaint initially in Superior Court did not defeat the ninety-day rule. *Medford Investor Associates*, 2013: Nov 25 (Medford)

Matter challenging refusal of principal to admit students to prom who arrived under the influence of alcohol dismissed. Matter filed over year after incident, despite administrative rules specifying 90 days to appeal. Additionally, Commissioner without authority to impose monetary damages or discipline against local district employee. *Tracy*, Comm. 2014: Jan 15

Commissioner finds that tenured teacher failed to file her challenge to her termination in a timely fashion and dismisses; she unequivocally learned that her employment was terminated on March 15, 2013 – her last day of work in the district; her appeal should have been filed at the latest within ninety days of March 15, 2013; it was filed on August 14, 2013, but not perfected until August 27, 2013. No facts are present to warrant relaxation of the 90 day rule. Johnson-Deen, Commissioner 2014:May 5 (Newark)

Petitioner appealed imposition of two-day Saturday detention regarding possession of stolen cell phone found in bathroom. Student's suspension was for violating student code of conduct by not immediately to the office and turning the cell phone over to school officials. Incident occurred on October 3, 2013; petition filed January 12, 2014, well beyond the 90 day filing period. Petition dismissed for failure to file in a timely manner. *M.P. o/b/o K.K.*, Commissioner, 2014: July 29

Petitioner, AAA, challenged the failure of the Passaic County Educational Services Commission (Commission) to award it contracts for transportation routes in August 2012 and August/September 2013. Petition was not filed until April 24, 2014 – approximately eight months after AAA's 2013 bid was rejected, and approximately one year and eight months after its 2012 bid was rejected, well beyond the 90 day filing deadline. AAA's prior unsuccessful attempts to bring these claims in Superior Court did not alter this conclusion; no compelling matters of public interest were involved in this case so as to justify relaxation of the 90 day rule. Petition was dismissed. *AAA School*, Commissioner, 2014: August 4

Petition dismissed as untimely. Toms River Regional School District alleged that Central Regional school district was responsible for tuition for 11 students from Seaside Park identified as homeless as a result of Super Storm Sandy, who were residing with relatives in Toms River. Prior to Sandy, these students were attending Toms River schools as "parent paid" tuition students; initial attendance was unrelated to Sandy. On December 4, 2013, the Ocean County ECS advised that the parents were responsible for tuition for the 2012-2013 school year and Central was not. Petition was

filed on April 30, 2014 and was out of time. Petition was dismissed. *Toms River Regional Bd. of Ed. v. Central Regional Bd. of Ed.*, Commissioner, 2014: October 14

Commissioner determined that teacher's appeal of her notice of nonrenewal was filed more than seven months after the 90-day deadline for appeal of final board determination. (Smith v. State-Operated District of Paterson City: Commr, 2014, Dec. 18)

"ABBOTT" DISTRICTS (See STATE AID)

Abbott v. Burke: A special master appointed by the N.J. Supreme Court found that the state failed to meet its responsibilities to adequately fund public education when it reduced state aid for 2010-2011. The March 22 report by Judge Peter Doyne represents a recommendation to the court, which will consider further arguments from the state and the Education Law Center (ELC), which brought the complaint.

ABBOTT – BUDGET LITIGATION

Early childhood program funding disbursed to private preschool provider is not a grant, it is state aid appropriated by the Legislature or from the local tax levy. New Brunswick BOE v NJDOE, Commr. 2005: April 6.

Commissioner denied district's special request for additional funding for it's pre-school budget for private provider's cleaning contract with an outside cleaning contractor. Since the approved budgetary line item included costs for a janitor's salary and cleaning services, a special request for cleaning services was unwarranted. New Brunswick BOE v NJDOE, Commr. 2005: April 6.

Commissioner denied district's special request for additional funding for it's pre-school budget. Private provider's practice of providing individual meals instead of DOE approved "family-style" meals did not warrant additional funding. Family-style meals. New Brunswick Bd. of Ed. v. NJDOE, 2005:April 6

Private provider's state and federal grant obligation to allocate expenses to its various programs does not obligate DOE to reimburse private provider for those allocated general and overhead costs over and above services determined by DOE to be necessary for a preschool program. New Brunswick BOE v NJDOE, Commr. 2005: April 6.

Commissioner, on remand, determined that the Department of Education did not violate N.J.S.A. 18A:7G-9c in denying the district's application for retroactive funding for land acquired in 1999 and used for an early childhood center that had been approved and funded pursuant to the Educational Facilities Construction and Financing Act. Board failed to obtain all necessary predicate approvals. Perth Amboy, Commr. 2005: July 6.

Commissioner denied district's special request for additional funding for it's pre-

school budget. DOE only to approve funding fringe benefits up to 12.5% of non-teaching staff salaries. Private provider has the discretion to supplement fringe benefits to match those of the district. An employer may have different classes of employees and provide them different levels of benefits without being discriminatory. New Brunswick BOE v NJDOE, Commr. 2005:April 6.

State Board affirmed Commissioner's decision. (Neptune Twp. Bd. of Ed., St. Bd., 2008: June 18).

Commissioner denied district's special request for additional funding for it's pre-school budget. District failed to demonstrate a high incidence of crime that poses an imminent threat to staff, students and property of the center, warranting an enhanced security system or security guard. New Brunswick BOE v NJDOE, Commr. 2005: April 6.

State Board affirms Commissioner's July 6, 2007 ruling that school board improperly spent funds, and Deputy Commissioner's remedy of $88,373 deduction from the board's 2006-07 school budget as a result of the Board having improperly expended 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.

The NJ Supreme Court affirmed an Appellate Division ruling that held that the per-pupil methodology used to calculate the downward adjustment in appellant school district's preschool budget was within the discretion of the Commissioner of Education. However, the adjustment to the state aid formulas, which were not calibrated with program costs, could not be made late in the school year unless there was a meaningful opportunity for a school district to present information related to actual costs and the adjustment was then realigned with those actual costs. Bd. of Educ. of Passaic v. N.J. Dep't of Educ., 183 N.J. 281 (2005).

Prior decisions in Abbott v. Burke had established the State's obligation to fully fund full day preschool costs in Abbott school districts. Under New Jersey's Appropriations Act for Fiscal Year 2004 (Act), the Department of Education (DOE) could ask school districts to reallocate monies from other approved programs to the preschool program. "Ensuring" that adequate funding for preschool programs occurred did not preclude the use of local funds. The court affirmed the Appellate Division ruling below, upholding the Act, relying on the Commissioner of Education's commitment to address any shortfalls during the school year, unless he could demonstrate that district. Millville Bd. of Ed. v. NJDOE, 2005:May 19

Court affirms State Board decision to deduct from the Elizabeth Board's 2006-2007 fiscal year the sum of $88,373 to compensate for board expenditures during the prior fiscal year for a 20-page brochure and television

communication that amounted to political advertisement and contained misrepresentations and criticized the mayor, in connection with a campaign to build new schools in Elizabeth. In the Matter of the use of Abbott Funds, App. Div. unpublished decision (A-2409-07T3, August 18, 2009)

Petitioners sought individualized needs assessments akin to that remedy sought by rural districts in Bacon. However, Bacon did not establish a new cause of action for all districts. Rather, remedies that non-Bacon districts seek can be found in legislation and QSAC regulations. (Medford Bd. of Educ., Commr., 2006: Dec 5).

ABBOTT – CLASSIFICATION LITIGATION

Gubernatorial veto authority under the MRERA did not abrogate board's status as a separate political entity. Board was therefore not entitled to 11th Amendment immunity from non-consensual litigation. Febres v. Camden City Bd. of Ed., 2006:April 18

Commissioner approved Salem City as a special needs district. Commissioner determined that Salem exhibited a multiplicity of pervasive, durable social ills similar to those experienced by other Abbott districts. Bacon, Commr., 2003: Feb. 12.

Appellate Division remanded matter to State Board where the State Board had previously determined that Bacon district circumstances mirrored those of Abbott districts but declined to order Abbott-type relief. No inconsistency in requiring the Commissioner to implement a particularized needs assessment in each district where Commissioner had previously failed to do so in order to assist the State Board's ultimate determination on remand. Bacon v. NJDOE 398 N.J. Super. 600 (2008).

State Board denied motion seeking immediate declaration that petitioning districts were "special needs" districts. Motion was based on Acting Commissioner's failure to file report required Appellate Division remanded matter to State Board where the State Board had previously determined that Bacon district circumstances mirrored those of Abbott districts but declined to order Abbott-type relief. No inconsistency in State board awaiting legislative solution in a new funding act. Bacon v. NJDOE 398 N.J. Super. 600 (2008). State Board denied motion seeking immediate declaration that petitioning districts were "special needs" districts. Motion was based on Acting Commissioner's failure to file report required by State Board's January 4, 2006 decision. Motion rendered moot. Bacon, Commr., 2003: Feb. 12.

Commissioner determined that mayor lacked standing to challenge the Department's District Factor Grouping of the school district that failed to classify the district as eligible for Abbott status. (Reiman, Commr 2005: Dec. 27).

Appellate Division affirmed Commissioner decision that the board of education substantially complied with the notice requirements of N.J.A.C. 6A:10A-

2.3(b), and the Department of Education (DOE) did not err in affirming the school board's decision not to renew the Toddler Town contract. Toddler Town Child Care Ctr. v. Bd. of Educ., (A-5749-07T2) 2009 N.J. Super. Unpub. LEXIS 728, (App.Div. April 28, 2009.) Certification denied by Toddlertown v. Bd. of Educ. of Irvington, 2009 N.J. LEXIS 826 (N.J., July 16, 2009)

ABBOTT ISSUES

Challenge brought against the implementation of new amendments to N.J.A.C. 6A:24-1.1 et seq. Court reviewed challenged regulations and found only two that failed to comply with earlier court directives. Court remanded to DOE regulations on whole school reform facilitator and security programs. In re 1999-2000 Abbott v. Burke Implementing Regulations, 348 N.J. Super. 382 (App. Div. 2002).

Commissioner accepted district's demonstration of particularized need for additional secretaries, custodians and security guards at three stand-alone early childhood schools. Employment duties mandated additional staff. (05:April 14, Elizabeth City)

Commissioner affirmed the Department of Education's denial of additional funding for salary and benefits for a preschool food service worker for a state-mandated program. Where a program generates both revenue and expenditures, expenditures are appropriately designated to same fund (Fund 50) that produces the revenue. (05:April 15, Vineland City)

Commissioner affirmed the Department of Education's denial of unconditional matching funds to support a program that was partially funded by a Department of Human Services grant. The Department declined to provide matching funds until the issuance of the grant had been officially approved and the district had demonstrated that additional revenues were unavailable and reallocation was not possible. (05:April 15, Vineland City)

Court reaffirms October 2001 schedule it set forth concerning its mandate for pre-school programs in Abbott districts. Court refused to appoint special master. Court said that the day-to-day oversight is best left to those with the proper training and expertise, not the court system. Court also says "We must never forget that a "thorough and efficient system of free public schools" is the promise of participation in the American dream. For a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future." Abbott v. Burke, 170 N.J. 537 (2002)

DOE's fundamental methodology for establishing "maintenance budget" is rational and properly deducted amounts from base budget for the establishment of "maintenance budget." (03:Sept. 25, Vineland)

Early Childhood Program – State's obligation is to ensure that sufficient funds are available to fully support the district's approved early childhood program plan, with additional State aid to be provided where formula aids and local resources are together inadequate for that purpose. (03:Sept. 25,

Millville)(03:Sept. 25, Neptune)(03:Sept. 25, Pemberton)(03:Sept. 25, Phillipsburg)

Preschool education – Preschool that fails to get approval from DOE or signed contract from district operates at its own peril and has no entitlement to retroactive funding. (03:Nov. 6, Silver Fox Learning Center, aff'd St. Bd. 04:April 7)

Preschool Program – Abbott mandate does not require full State funding of pre-school programs regardless of need. DOE's per-pupil method of reducing aid for less than projected enrollment was a rational means of adjustment. Methodology was consistent with legislative intent. Abbott districts can, under certain circumstances, be directed to cap surplus at less than 2%. (03:Sept. 25, Passaic)

One-year relaxation of the remedies for K-12 programs for the 2002-2003 school year provided for in Abbott IV and V upheld. Programs under the one year suspension include whole school reform models in middle and high schools and the formal evaluation of whole school reform. School district may appeal for more aid based on educational need within SDOE educationally-appropriate limits. Abbott v. Burke, 172 N.J. 294 (2002)

The Commissioner adopted the Initial Decision rejecting the district's request for funding for certain items contained in the district's preschool operational program. The Commissioner found no legal obligation to fund administrative costs over and above the level of administrative and supportive services determined by the Department of Education to be necessary for the provision of a high quality preschool program. (05:April 6, Newark City)

Whether positions of dropout prevention coordinator and coordinator of health and social services as authorized by Abbott regulations, N.J.A.C. 6A:24-1.4(h), are positions requiring certification, will depend on the duties assigned thereto by the local district; here, particular duties required educational services certificate; county Superintendent must review for proper endorsement. (01:Aug. 16, Passaic, aff'd with modification, St. Bd. 01:Dec. 5, emergent relief denied St. Bd. 02:Feb. 6, aff'd App. Div. unpub. op. Dkt. No. A-1975-01T2, November 27, 2002)

ABOLITION OF POSITION (RIF)

A RIF is non-negotiable and non-grievable, and will be upheld absent illegal motives; a RIF will be overturned if an incumbent sustains his burden of demonstrating that the position has not really been abolished but merely transferred to another person in violation of the incumbent's tenure rights. (05:Feb. 10, Griggs)

Abolition of position of non-tenured Chief of Center for Safety and Security was not arbitrary and did not violate Law Against Discrimination, or contractual arrangement; however, unused sick and personal that had been

agreed to outside of contract must be provided. (00:Dec. 11, Green-Janvier)

Abolition of position of Organizational Development Specialist was not arbitrary, and did not violate Law Against Discrimination because decision motivated by fiscal crisis; may be entitled to compensation for unused sick or personal days if provided by policy or agreement to reimburse for unused vacation days. (01:March 7, Wellins)

Abolition of 12-month position and reassignment of teacher to 10-month position with prorated salary constituted a RIF, not a transfer; board may prorate salary (noting that Avery must be viewed in light of Carpenito) (99:July 30, Buckley, Amended decision 99:Sept. 16)

Although it did not reduce her salary, board violated tenure rights of half-time LDTC/half-time inclusion teacher, by abolishing her part-time LDTC position, transferring her to full-time inclusion teacher position, and contracting with an employee of another school district to perform LDTC duties. (02:July 2, Iraggi)

Athletic Director (AD) serving under an instructional certificate attains tenure as a teacher, as AD is not a separately tenurable position; a board may assign such an AD to any instructional position within the scope of his certificate and not violate tenure rights if salary is not reduced. (01:Jan. 11, Barratt, aff'd on other grounds, St. Bd. 01:June 6)

Athletic Director: Whether board violated tenure rights of Athletic Director by abolishing the position and creating a newly combined position (vice principal/AD), and reassigning him to a lesser salaried teachers' position, would depend on nature of the AD position and whether it was a tenurable position or a stipended extracurricular assignment. Remanded. (01:Jan. 11, Barratt, aff'd St. Bd. 01:June 6)

Board did not act improperly when, during reorganization of its business office, it abolished position of Assistant Board Secretary/Director of Administration, and created comptroller position and hired properly credentialed individual to fill the new role. (00:June 12, Cheloc)

Board did not violate elementary teacher's tenure or seniority rights by transferring her to middle school after a RIF at elementary level; no reduction in salary or benefits. (01:July 2, Zitman, aff'd St. Bd. 01:Nov. 7)

Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (00:Jan. 2, Anders, settlement approved St. Bd. 02:Jan. 2)(02:Dec. 2, Trigani)

Board of education conducted a valid reduction in force when it eliminated its basic child study team and contracted with a jointure commission for the provision of basic child study team services. No violation of petitioners' tenure rights occurred. (04:December 20, Becton Ed. Assn., aff'd St. Bd. 05:May 4)

Board may not reduce salary of employee involuntarily transferred from 12-month to 10-month position, in absence of RIF (99:July 30, Buckley, amended decision 99:Sept. 16)

Board of Education action

Exempt Fireman's Tenure Act did not prohibit a public entity from abolishing a position or office held by an exempt fireman for good faith economic reasons. Viviani v. Borough of Bogota, 170 N.J. 452 (2002), aff'g 336 N.J. Super. 578 (App. Div. 2001)

Board's duty to aggregate assignments for the benefit of the tenured person subject to a RIF, is a general, not absolute, principle of law. (00:Aug. 18, Woodbine)

Board violated school nurse's tenure and seniority rights when it reduced her to part-time position and assigned her teaching duties to another teaching staff member; she had tenure protection in all the assignments within her tenurable position of school nurse, including teaching health. (00:Aug. 18, Woodbine)

Board violated tenure and seniority rights when they reduced principal's position and salary from a twelve month to a ten month position while retaining a staff member with less seniority in a similar twelve month position. (03:Sept. 26, Fedor)

Budget defeat and city counsel's refusal to restore line item for position, does not effectuate the abolition of that position; rather, position remains in force until board affirmatively abolishes it. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Burden of proving tenure right rests with the teacher. (99:Dec. 3, Duva, aff'd on other grounds, St. Bd. 02:March 6)

Commissioner ordered restoration to full-time position and attorney's fees where district improperly reduced a tenured school clerk from full-time to part-time service. District failed to prove that the RIF was necessitated by economy, pupil reduction, changes in the administrative or supervisory organization of the district, or for other good cause pursuant to N.J.S.A. 18A:28-9. (05:Aug. 11, Ferronto, motion to participate granted, St. Bd. 05:Dec. 7)

Commissioner will not grant relief that compels a school board to fill a position which, by law, it does not have the authority to fund, such as where the line item for the position is not restored by municipality after a budget defeat. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Decision to abolish

A violation of the bidding laws, even if proven by dismissed custodians, would not result in a finding the custodians were illegally dismissed. (05:Sept. 9, Lyndhurst Education Association)

Board failed to abolish Social Studies Teacher position as required in resolution; subsequent position was comparable in time and subject matter. Summary judgment granted. (00:March 24, Markowski, aff'd St. Bd. 00:July 5)

Board's decision to contract with Educational Services Commission to perform the functions of school social worker did not violate petitioner's tenure or seniority rights; as the boards actions were consistent with a waiver granted by the Commissioner and were further taken for reasons of economy. (97:Nov. 17, O'Neal, aff'd St. Bd. 00:June 7)

Board violated teacher tenure and seniority rights by failing to offer full-time position that was comparable to position that was abolished. (00:March 24, Markowski, aff'd St. Bd. 00:July 5)

Commissioner invalidated district's RIF where it eliminated the CST's social worker position and contracted-out those services while maintaining the district CST. Commissioner remanded where both tenure charges and disability retirement application were pending to determine appropriate relief. (05:June 9, Parise)

Commissioner invalidated district's RIF where it eliminated the CST's social worker position and contracted-out those services while maintaining the district CST. Social worker ordered reinstated with all back pay and emoluments. (05:June 9, Parise)

Entitlement to technology coordinator by art teacher who was reduced from full to part-time cannot be evaluated without remand to determine appropriate endorsement for this position. (00:July 27, Holloway); on remand, determined that position required endorsement in elementary education, which she did not possess at the time of the RIF. (01:Nov. 26)

RIF of Coordinator of Special Services in regional district and resulting transfer of functions and duties to newly created position, created genuine disputes with respect to material facts such as whether RIF accomplished in good faith, whether petitioner was entitled to other positions, and motion to amend; summary judgment denied, remanded. (98:Sept. 24, Williams, aff'd St. Bd. 99:Feb. 5. See also decisions on motion, 98:Nov. 6 and 99:Jan 6)

In school suspension assignment was a teaching staff position requiring teaching certificate; back pay ordered for tenured teacher who, upon RIF, was entitled to position but not appointed. (99:Nov. 29, Lewis, on remand)

Despite unrecognized title of "Substance Abuse Counselor," local board improperly reduced tenured position to 2/5ths based on performance and contracted service to private provider. RIF was not genuinely for reasons of economy as permitted by law. Local board ordered to reinstate petitioner to position. (04:Aug. 4, Bristol)

Director position is separately tenurable; when Director was subject to RIF he had no entitlement to position of supervisor where he had never served as supervisor although he held appropriate certification. (99:Dec. 3, Duva)

District could eliminate all three positions of its basic CST and contract with jointure commission for basic child study team services with increased hours at reduced cost; the elimination of tenured psychologist and LDTC positions did not violate tenure rights and allowed permitted more economical delivery of CST services. (04:Dec. 20, Becton)

District may not engage in a "sham RIF" by abolishing an instructor's full-time position and then offering that employee a part-time position that requires the employee to work the same or more hours. (00:Dec. 11, Peters)

Entitlement to technology coordinator by art teacher who was reduced from full to part-time cannot be evaluated without remand to determine appropriate endorsement for this position. (00:July 27, Holloway)

Exempt Firemen

Exempt Firemen's Tenure Act did not prohibit a public entity from abolishing a position or office held by an exempt fireman for good faith economic reasons. Viviani v. Borough of Bogota, 170 N.J. 452 (2002), aff'g 336 N.J. Super. 578 (App. Div. 2001)

Good faith: Question of whether RIF was performed in good faith, remanded. (03:Dec. 17, Griggs)

Notice of termination clause was vague in that it made no provision for unilateral termination by the board; therefore, the standard 60 days' notice was applied, and the RIFFED principal was not entitled to a full year's pay. (05:Feb. 10, Griggs)

Petitioner's recall rights were not violated when Board created a new position which required certification. (St. Bd. 00:July 5, Yucht, aff'g 97:Sept. 17)

Positions of Director and supervisor are each separately tenurable; tenure rights accrued in position of Director cannot be transferred to the separately tenurable position of supervisor. (99:Dec. 3, Duva)

Preferred Eligibility List (recall rights)

Psychologist who had been riffed had no tenure entitlement to employment with ESU that was under contract with board to supply child study team services on a case-by-case basis; distinguished from Shelko where county special services school district assumes operation of and responsibility for entire special education program. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

Seniority rights, if at issue, would have simultaneously accrued in categories of foreign languages supervisor and foreign languages teacher where supervisor held both supervisor and instructional certificate and worked under both, teaching on .4 basis. (01:June 22, Barca)

Spanish teacher riffed in 1976 was entitled to position of Spanish teacher to which board appointed non-tenured teacher in 1997; fact that teacher remained silent after learning in 1995 that another teacher had been appointed Spanish teacher did not warrant inference that she intended to waive her recall rights; reinstatement with back pay and benefits ordered. (99:March 10, Reider, aff'd St. Bd. 99:July 7)

Where special services school district assumes operation of district's entire special education program, tenure and seniority rights of riffed teaching staff must be recognized by special services school district. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

Principal who was provided late notice of non-renewal after the May 15 deadline, was deemed a tenured employee although he did not actually start his fourth year of service. (05:Feb. 10, Griggs)

Reassignment

Board could reduce teacher's salary upon abolishment of his 12-month position and reassignment to 10-month position as part of reduction in force (relying on Carpenito)(99:July 8, DiMaggio)

Commissioner declined to find that teacher's unfair practice claim was moot where title sought by teacher, Education Program Specialist, was no longer in use and was not approved by county superintendent. Unfair practice claim transferred to PERC. (05:Sept. 14, Derby)

Neither tenure nor seniority rights were implicated where district eliminated reading teacher position and transferred tenured reading teacher to position of Sylvan Reading Lab teacher. Teacher was not RIF'd but lawfully transferred to another position within the scope of his instructional certificate. (05:Sept. 14, Derby)

Reassignment of employee from 12-month to 10-month with prorated pay is distinguishable from facts in Carpenito; in Carpenito there was no loss of tangible employment benefit and therefor reassignment was not a RIF but rather a transfer (99:July 30, Buckley, Amended decision 99:Sept. 16)

Reassignment of teacher was treated not as a transfer, but as a RIF (see Carpenito) in institutional setting. (98:July 22, Helm)

Reduction of speech language teacher from full-time to part-time, reducing her compensation but not reducing her workload, was an illegal RIF, notwithstanding commissioner's class size waiver. (00:Dec. 11, Peters)

Reduction of two full-time teachers each to 4/5 time, violated tenure rights of senior teacher who should have kept full-time position; district's educational justification was not sufficiently compelling to defeat obligation to aggregate positions in light of tenure rights. (04:Sept. 17, Smith)

RIF of position of Special Population Coordinator entitled tenured teacher to another position in the district, even though she may not have classroom experience but possessed relevant certificates and endorsements. (04:Aug. 19, Trionfo)

RIF of principal position, and absorption by Superintendent of principal responsibilities for a stipend, was upheld; RIF was driven by economic and efficiency reasons. (05:Feb. 10, Griggs)

RIF'd auto body repair teacher not entitled to culinary arts or industrial arts positions. Seniority earned only under endorsement in which he served, auto body repair. No violation of tenure or seniority rights. (03:Jan. 15, Cooke)

RIF'd tenured administrator should have filed her claim within 90 days of learning that a non-tenured individual was appointed to a position to which she was claiming entitlement; dismissed for failure to comply with 90 day rule. (02:July 22, Love)

School Psychologist: abolition invalid where district contracts out basic child study team services to private vendor; such waiver contradicts legislative intent. (St. Bd. 00:May 5, Miller)

Secretary: Having the qualifications and ability to perform duties of three positions held by nontenured secretaries, tenured secretary was entitled any of these positions, the choice of which may be at board's discretion; however, not entitled to position of Clerical Assistant for District Services/Special Programs and Projects, as duties were not secretarial. (01:Feb. 7, Mount)

Seniority

ALJ concluded that school district's RIF of two teachers was wrongful due to the district's failure to credit the teachers' prior military history. ALJ awarded pre-judgment interest to one teacher where the teacher identified the omission to the district in writing prior to his dismissal, finding constructive bad faith in the termination for failure to properly credit the teacher's prior military service. In addition, the ALJ ordered pre-judgment interest in that the district conceded that salary was wrongfully withheld from teacher. ALJ also precluded district from deducting unemployment compensation benefits from teacher's back-pay awards, and Ordered the teachers to file before the Department of Labor to determine compensation for July and August, if any. Finally, ALJ denied the award of consequential damages as exceeding the authority of the commissioner. Commissioner agreed with ALJ, but modified the decision to limit ALJ's award of pre-judgment

interest to the difference between back-pay to be received and unemployment compensation received. Commissioner determined that teachers should arrange to reimburse Dept. of Labor, Division of Unemployment Compensation directly, without having the district deduct such amount from the back-pay award. State Board modifies dates of prejudgment interest. (02:Sept. 30, Scott, aff'd with modification, St. Bd. 04:June 2)

Elementary teacher who also possessed music certification, who was asked (but not formally appointed) to teach music in elementary classes other than her own in 1967, accrued seniority as a music teacher (99:Nov. 3, Adler, rev'd on other grounds St. Bd. 00:July 5)

Institutional setting: Seniority accrued separately in categories of Teacher I and Teacher II since separate endorsements are required; Petitioner should not have been RIF'd as individuals with less seniority held positions in same category of Teacher I; although petitioner retired, matter not dismissed as moot because of likelihood of recurrence. (98:July 22, Helm, 98)

RIF'd auto body repair teacher not entitled to culinary arts or industrial arts positions. Seniority earned only under endorsement in which he served, auto body repair. No violation of seniority rights. (03:Jan. 15, Cooke)

Tenured physical education teacher, whose position was reduced to a 4/5 position, had any tenure and seniority claims cured when she was rehired to a full-time position. Fact that position was reversed from two days in her home district and three days in outside district to three and two days, respectively, had no effect on the claim. (03:May 1, Wood)

Where collective bargaining agreement provided for custodian tenure after three years, statute requires that such tenure extend to all types of custodial assignments including stockroom worker custodian and chief janitor. Tenure status does not attach to particular subcategories of janitor and thus abolition of custodial position requires board to RIF custodial employee based on overall seniority as custodian. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:March 1, aff'd App. Div. unpub. Op. Dkt. No. A-4015-99T2, June 26, 2001, certification denied 170 N.J. 208 (2001))

Seniority—tacking on

Service under emergency certificate "tacked on" even where employee did not immediately afterwards acquire standard certificate (relying on Metaxas); fact that 23 years ago district failed to fulfill its obligation to renew her provisional elementary certificate (analogous to today's emergency certificate) should not serve to deprive her of seniority rights. (98:Oct. 26, McGavin)

Settlement approved following tenure and seniority challenge to abolition of Supervisor of Industrial Arts position. (02:June 26, Comba)

State Operated School District

When a central office supervisory position is abolished pursuant to state takeover, all tenure and seniority rights to and originating from that position are also abolished. (99:June 14, Leong)

Where "at will" employees were terminated by discretionary action of State superintendent rather than abolishment of their positions pursuant to the takeover statute, they were not entitled to relief under the statute. (99:June 1, Gonzalez, rev'd St. Bd. 00:May 3; remanded for the computation of damages, appeal moves forward, App. Div. unpub. Op. Dkt. No. A-5434-99T5, December 8, 2000, remanded to Comm.; St. Bd. 01:Feb. 7, damages calculated by Commissioner 01:Sept. 14, aff'd as modified, St. Bd. 01:Oct. 3, aff'd 345 N.J. Super. 175 (App. Div. 2001), certification denied 171 N.J. 339 (2002))

Tenure and seniority rights abandoned where teacher on recall list refused to accept full-time position offered to him. Subsequent rehire of teacher does not obligate board to honor prior seniority. (03:Sept. 29, Alt)

Tenure entitlement claims

Acquisition of tenure does not differ based on full-time or part-time status. (01:Sept. 17, Alfieri and Mezak, aff'd St. Bd. 03:Jan. 8)

Computer course that was vehicle for teaching core curriculum standards required teacher with elementary certification; while teaching computers usually requires no specific endorsement, what is required in particular case will depend on the nature of the computer course; RIF'd teacher who held only music endorsement not qualified. (00:July 5, Adler, St. Bd. rev'g 99:Nov. 3)

Former Director of Vocational Education whose position was abolished, had no bumping rights to principal position where he had retired prior to filing his petition; moreover, his tenure rights attached only to the positions of Director and Supervisor, but not to the position of principal. (98:Sept. 4, Janik)

Newly created District-Wide Supervisor of instruction position not substantially different, not separately tenurable position. New position had no additional teaching duties and no additional certifications required. (04:March 18, Matarazzo, aff'd St. Bd. 04:Aug. 4)

Principal whose position is abolished has no entitlement to vice principal position where his only service was as principal, because positions are separately tenurable and seniority categories are also separate; his argument that duties of vice principal were subsumed under title of principal before the job of vice principal existed is flawed. (98:Feb. 2, Taylor)

Reduction in hours of a tenured part-time employee does not automatically trigger tenure and seniority rights; here, where part-time teachers' employment was from its inception intended to fluctuate in terms of the precise number of hours to be worked from year to year, there was no RIF; number of part-time teachers was not reduced, nor were positions abolished or transfers effectuated, thus no entitlement to full-time positions held by non-tenured teachers; petition dismissed. (01:Sept. 17, Alfieri and Mezak, aff'd St. Bd. 03:Jan. 8)

RIF'd auto body repair teacher not entitled to culinary arts or industrial arts positions. Seniority earned only under endorsement in which he served, auto body repair. No showing that board retained less senior teachers. No violation of tenure rights. (03:Jan. 15, Cooke)

RIF'd tenured Supervisor of Instruction entitled to District-Wide Supervisor of Instruction over non-tenured supervisor. (04:March 18, Matarazzo, aff'd St. Bd. 04:Aug. 4)

Supervisors: Area chairperson was not entitled to math supervisor position where teaching math was historically an integral duty of position (although not part of job description) and he was not certified to teach math. (98:Feb. 2, Kendrick)

Tenure rights of teachers: N.J.S.A. 18A:28-6.1 which preserves employment of tenured teachers, is triggered only if a district closes a school and agrees with another district to send its pupils from the closed school to that district; does not apply simply because limited purpose regional district dissolves. (00:Jan. 4, Hammonton)

Tenured assistant principal whose position is abolished is not entitled to vice principal position over non-tenured person; assistant and vice principal positions are separately tenurable. (02:July 22, Love)

Tenured music teacher who served part-time after full-time position was abolished, should not have been offered full-time computer position filled by non-tenured teacher because she did not have the elementary certification required by the position. (00:July 5, Adler, St. Bd. rev'g 99:Nov. 3)

Tenured physical education teacher, whose position was reduced to a 4/5 position, had any tenure and seniority claims cured when she was rehired to a full-time position. Fact that position was reversed from two days in her home district and three days in outside district to three and two days, respectively, had no effect on the claim. (03:May 1, Wood)

Tenured principal was RIF'd; acquiesced to board's desire to retain non-tenured staff member in Director of Special Education position to which he would have been entitled, and accepted vice principal position, upon agreement that he would retain all of his tenure rights; held entitled to principal position subsequently vacant (99:Aug. 12, Donahue)

Tenured teacher who was assigned to teacher/guidance position, accrued tenure in guidance position under her Educational Services Certificate; board's subsequent assignment of her to teacher position violated her tenure rights even though there was no loss in salary, as it was a transfer from one tenured position to another (99:Oct. 1, McAleer)

Termination clause: in the absence of express termination clause, 60 days' notice requirement of RIF would be imputed as reasonable. (03:Dec. 17, Griggs)

Unrecognized titles

Commissioner underscores that every position must have a position title which is recognized in the administrative code. "See, now N.J.A.C. 6A:9-5.5(a); Howley and Bookholdt v. Ewing Township Board of Education, 1982 S.L.D. 1328. A position title corresponds either to one of the enumerated endorsements (e.g., the Substance Awareness Coordinator endorsement on the Educational Services Certificate) or is specifically designated within the endorsement description. In the alternative, if a district board of education determines that use of an unrecognized position title is desirable, prior to appointment of the candidate, the title must be approved by the county Superintendent who has made a determination of the appropriate certification for the position. Despite unrecognized title of "Substance Abuse Counselor," local board improperly reduced tenured position to 2/5ths based on performance and contracted service to private provider. RIF was not genuinely for reasons of economy as permitted by law. Local board ordered to reinstate petitioner to position. (04:Aug. 4, Bristol)

Where authorizing endorsement for unrecognized position of Director was "supervisor," staff member had no tenure entitlement to principal position and would not have such entitlement unless he had actually served as a principal. (98:Sept. 4, Janik)

Where RIF occurs in unrecognized titles, petitioners cannot assert entitlement to reemployment in other recognized titles approved by county superintendent. (97:Nov. 3, Avery, Dare, Williams, aff'd with modification St. Bd. 01:July 10)

Where district improperly employed principal under multi-year agreements, district was estopped from claiming that the absence of a signed contract excused its failure to provide advance notice of a RIF. (03:Dec. 17, Griggs)

ABSENTEE BALLOTS

Challenge to absentee ballots. Election sought to be set aside due to misconduct in the absentee ballot process that allegedly resulted in 28 illegal votes being cast. The court upheld 26 of the 28 absentee ballot votes and upheld the election results. (Simonsen and Lino v. Bradley Beach Board of Education, et al., Law Division, Monmouth County, Dkt. No. L-2288-98, July 8, 1998.)

ADEA

Summary judgment granted to defendant, Diocese of Trenton, in employment reduction in force. Plaintiff alleged that his termination violated the Age Discrimination in Employment Act and the New Jersey Law Against Discrimination. Plaintiff did not demonstrate that the school's reasons for dismissal were worthy of disbelief or that invidious discrimination was likely. Because the ADEA claim could not survive summary judgment, the LAD claim was dismissed. Plaintiff and school administration had philosophical differences regarding student discipline. No material facts in dispute. *Bleistine v. Diocese of Trenton*, Civil Action No. 11-2138 (JBS/KMW), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 163072, Decided, November 14, 2012.

ADMINISTRATIVE PROCEDURES/RULEMAKING

Board's claim that DOE engaged in unlawful rulemaking in its effort to rectify erroneous method of calculating state aid, is dismissed; although recalculation of state aid should have been accomplished through rulemaking, the district sought to return to original, erroneous state aid figures, which also should have been accomplished through rulemaking; therefore no relief could be afforded to the board. On clarification, St. Bd. reiterates that board has not demonstrated an entitlement to additional

funding and there is no basis in the record for providing relief sought. Questions now raised by NJDOE about proper APA process not germane to current appeal and are tantamount to issuing an advisory opinion. (05:Jan. 14, Lacey, aff'd St. Bd. 05:May 4, decision clarified, St. Bd. 05:Oct. 19)

Plaintiff sought order compelling NJ Schools Development Authority to adopt regulations governing the delegation of school facilities projects to eligible SDA school districts. Court has jurisdiction to consider an appeal from agency inaction, Court exercises its power to compel agency action sparingly, mindful of the general deferential standard of review of agency action, and the separation of powers. Court can overturn only those administrative determinations that are arbitrary, capricious, unreasonable, or violative of expressed or implicit legislative policies If SDA fails to submit a notice of adoption of its rule proposal by April 18, 2012, its rule proposal will expire, as eighteen months will have elapsed since the publication of its original rule proposal. N.J.S.A. 52:14B-4.10(e) requires that a rule proposal, followed by a notice of substantial changes, shall expire eighteen months after the date of publication of the notice of proposal. If the rule proposal expires, then SDA will need to re-commence the rule-making process. Education Law Ctr. v. New Jersey Dep't of Educ., No. A-5191-09T3 (App. Div. Apr. 3, 2012)

Supreme Court reversed the Appellate Division and held that the former N.J.A.C. 6A:23A-3.1(e)(3) - (6) applied only to new contracts and amendments for superintendents, assistant superintendents, and other high-level officials; they did not affect existing agreements or alter terms of employment retroactively and were valid. N.J.S.A. 18A:30-3.6 did not supersede N.J.S.A. 18A:30-3.5. The New Jersey Legislature had the authority to modify terms and conditions of employment for future contracts for public employment in a manner that did not raise constitutional concerns; the laws that protected tenure rights did not prevent the Legislature's later actions; the Legislature properly exercised its power when it directed the Commissioner to issue the regulations; and the regulations were consistent with their respective enabling statutes, advanced the Legislature's goals, and protected benefits that employees had already accumulated. N.J.S.A. 18A:30-3.5, which capped sick leave payments, was not superseded and covered high-level employees, including superintendents and assistant superintendents; the more recent enactment, N.J.S.A. 18A:30-3.6, expanded the sick leave cap to cover all newly hired school employee. New Jersey Ass'n of Sch. Adm'rs v. Schundler, A-98 September Term 2010 066789, SUPREME COURT OF NEW JERSEY, 2012 N.J. LEXIS 511, January 18, 2012, Argued, May 3, 2012, Decided, Related proceeding at Dolan v. Centuolo, 2012 N.J. Super. Unpub. LEXIS 1627 (App.Div., July 9, 2012)

ADMISSIONS

Board did not act in an arbitrary, capricious or unreasonable fashion when it declined to permit a child to enter kindergarten where the child missed the October 1 cutoff date for entry into the current kindergarten class by one day; board provided appeal by hearing before board but did not change its mind, and student may advance to first grade should his assessment test scores and other criteria indicate that such advancement is in his interest upon entry into kindergarten in September 2012. L.G., o/b/o. D.G. Commr 2012: May 23. (North Brunswick)

AIDES

Board may not assign duties which are professional in nature and which require independent initiative, such as educational media services, to a paraprofessional aide. (99:Sept. 9, Pennsville)

Even though district required certification for aide position, and her aide duties contained an instructional component, teacher's year of employment as an instructional aide did not count for tenure acquisition purposes; therefore, teacher had no right to reemployment after serving the district for one year as an aide and three years as a teacher. (02:July 8, Poruchynsky, aff'd St. Bd. 03:June 4)

School health aide did not perform duties of certified school nurse. Allegation that board did not provide adequate nursing services not raised in petition. Matter dismissed. (03:Jan. 6, Franklin Lakes)

APPELLATE DIVISION

Standard of Review

Record clearly supported conclusion that teacher breached his responsibilities and engaged in conduct unbecoming a professional teacher. (00:July 27, Komorowski, aff'd St. Bd. 00:Dec. 6), aff'd App. Div. unpub. op. Dkt. No. A-2486-00T2, March 4, 2002.

The determination of an administrative agency will not be upset absent a showing that it was arbitrary, capricious or unreasonable, that it lacked fair support in the evidence or that it violated legislative policies. If sufficient, credible evidence is present in the record to sustain the agency's conclusions, it will be upheld even if the appellate panel believes it would have reached a different result. D.Y.F.S. v. M.S. and I/M/O Revocation of Teaching Certificates of M.S., App. Div. unpub. op. Dkt. Nos. A-722-00T3 and A-2494-00T3, January 22, 2002, certification denied, 796 A2d. 897, 2002 N.J. LEXIS 691, April 25, 2002. In the Matter of the Tenure Hearing of Manuel Santiago, App. Div. unpub. op. Dkt. No. A-4356-00T5, April 10, 2002.

The determination of an administrative agency will not be upset absent a showing that it was arbitrary, capricious or unreasonable, that it

lacked fair support in the evidence or that it violated legislative policies. Penalties imposed were jurisdictionally permissible, supported by sufficient credible evidence in the record and neither arbitrary nor unreasonable. (00:March 22, Allegretti, aff'd St. Bd. 00:Aug. 2, aff'd App. Div. unpub. Op. Dkt. No. A-259-00T1, August 29, 2001.)

ARBITRATION

In dispute over right of board of education to non-renew custodial/maintenance contracts and the employee's right to be disciplined only for just cause, matter would proceed to arbitration. Employees bear the initial burden of proof that they were terminated for cause. If the employee fails to carry the burden, the right to grieve is foreclosed due to the nature of the term of employment. Camden Bd. of Ed. v. Alexander, 352 N.J. Super. 442 (App. Div. 2002)

Appellate Division affirms Law Division confirmation of arbitrator's award. Arbitrator determined that board had insufficient performance-based reasons for non-renewal and failed to prove just cause for dismissal of non-tenured employee. Arbitrator awarded full pay for the 2008-09 school year. Board maintained employee demonstrated pattern of offending conduct toward female students and co-workers, which was frequent, severe and deemed to have interfered with the workplace. Trenton Business-Technical Emples. Ass'n v. Trenton Bd. of Educ., No. A-4212-09T4, 2011 N.J. Super. Unpub. LEXIS 1947 (App. Div. July 20, 2011).

Appellate Division affirmed trial court determination that, in light of the disciplinary action the board imposed on employee only two months before the letter of non-renewal, employee was entitled to arbitrate the question of whether he was terminated without "good cause," especially in light of the statutory presumption that disputes arising under public sector collective negotiation agreements shall be submitted to arbitration. See N.J.S.A. 34:13A-5.3. Salem Cmty. College v. Salem Cmty. College Support Staff Ass'n, DOCKET NO. A-1812-10T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 3169, Decided December 21, 2011.

Appellate Division affirms Chancery Division enjoinment of arbitration in matter involving non-renewal of technology support position; a position ineligible for tenure. Trial judge concluded that the contract non-renewal was not subject to the grievance procedure outlined in the contract between the parties and stayed the arbitration. Holmdel Twp. Bd. of Educ. v. Holmdel Twp. Educ. Ass'n, DOCKET NO. A-1961-11T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1408, Decided June 19, 2012.

Appellate Division reverses trial court's vacation of arbitrator's award and remands for judgment confirming arbitrator's award. Arbitrator found that the Board violated the contract by requiring Senior and Administrative I

secretaries to perform the duties of Administrative II secretaries without additional compensation and ordered compensation for the affected secretaries. The arbitrator's interpretation of the Agreement was both plausible and reasonably debatable. The arbitrator looked to the totality of the evidence presented and integrated it with a logical understanding of the Agreement. A judicial unwinding of the award was neither necessary or appropriate. Trenton Educ. Secys Ass'n v. Trenton Bd. of Educ., DOCKET NO. A-5254-10T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1034, Decided May 10, 2012.

ARBITRATION TEACHNJ

Arbitrator Gifford finds that Board sustained its tenure charges of unbecoming conduct against tenured Teacher of the Year, who ran naked through parking lot and lied about it to the police. Board orders teacher's dismissal. *Tenure Hearing of Bringhurst, Arb 2012:Nov.30 (Vineland).*

Inefficiency charges are dismissed; annual evaluation failed to adhere substantially to the evaluation process as it is internally contradictory with respect to actual classroom instruction; arbitrator notes "stunning facial contradiction on the annual performance review….shattering any norms of process" where narrative was "wondrous" but teacher got zero in 4 of 5 categories. *Tenure Hearing of Williams, Arb 2012: Dec 8. (Newark).* (David Gregory, arbitrator)

Charges of incapacity, conduct unbecoming and neglect of duty are upheld, where teacher was chronically absent; teacher previously had increment withheld and earlier charges (due to 72 days absence in 2009-10; 63 days in 2010-11) had been resolved through settlement involving treatment in substance abuse program, but teacher continued to be absent from April 4 to end of year and provided no information about continued treatment; although he had days in his sick leave bank he had not requested a leave of absence according to board policy; did not attend EAP as per earlier settlement; provided no doctor note of claimed medical issues, Earlier settlement agreement of absenteeism charges did not exclude consideration of past absences for future matters. *Tenure Hearing of Levine, Arb 2012:Dec 16 (Jersey City)* (Randi E. Lowitt, arbitrator)

Arbitrator upholds charges of unbecoming conduct for teacher who used district internet to send thousands of romantic and sexually suggestive emails, but imposes suspension and increment withholding rather than dismissal, where teacher, after receiving official reprimand, immediately stopped sending sexually explicit email communications and double entendres. Although she continued to use district network for personal, albeit non-sexual communications, arbitrator finds that district's earlier reprimand did not clearly warn teacher about general use of the Network to send brief non-sexual personal email communications during non-instructional or free time, and in fact she received positive evaluations in each and every

year. Teacher did engage in unbecoming conduct by taking an unauthorized break to browse internet shopping sites on five occasions during team teaching, creating the potential for harm to students in a combined gym class. *Tenure Hearing of Buglovsky, Arb 2012:Dec 21 (Randolph)*(Joseph Licata, Esq., arbitrator)

Arbitrator accepts settlement of tenure charges, noting nature of charges, teacher's 13 years of service and fact that no child was harmed. *Tenure Hearing of DePre, Arb. 2012:Dec 27 (*Daniel Brent, arbitrator)

Piano teacher who threw a textbook at a student, lacerating her head, because student was not listening, and who had previously thrown tissue box "as a warning" engaged in unbecoming conduct but not corporal punishment; reduction in salary equal to 120 days and loss of increment for one year; no evidence that he threw items to hit students, but merely to be funny or get their attention, and had 10 unblemished years. *Tenure Hearing of Lorge, Arb 2013:Jan 4 (Atlantic City) (Biren, arbitrator)*

Arbitrator finds that board failed to establish the sufficiency of the inefficiency tenure charge filed in 17 areas against social studies teacher; arbitrator applied the old standard of review of *a preponderance of the credible evidence* since evaluation rubrics were not required to be submitted until January 2013; ordered charges to be reduced to the withholding teacher's increment during the 2011-2012 school year, with return to duty and otherwise making him whole; although board complied with 90-day improvement period, arbitrator notes that a senior instructor may not be summarily removed from his tenured position after only one year of an "Unsatisfactory" evaluation, even in the face of continuing shortcomings. *Tenure Hearing of Newson, Arb 2013:Jan 10 (Newark) (Pecklers, arbitrator)*

Special education teacher charged with incapacity, conduct unbecoming and neglect of duty for chronic and excessive absenteeism (about 30 days per year over 7 years plus additional 270 days in years 8 and 9 including when she failed to return to work after request for FMLA leave) was denied; even though she had valid personal injuries and events that forced her to miss work, tenure charges are upheld on basis of incapacity as absences diminished her value in the classroom. *Tenure Hearing of Francis, Arb 2013:Jan 10 (Jersey City) (De Truex, arbitrator)*

Arbitrator upheld dismissal of teacher on inefficiency charges, where teacher with experience teaching adult math was assigned to teach 6th grade departmentalized math and failed to make transition despite extraordinary efforts by district and considerable assistance and 90-day improvement plan; the underlying facts preceded effective date of NJTEACH and board had not evaluated him under required rubrics; however, as charges were referred after the effective date of the law, they should be treated differently than charges referred prior to effective date of the law; arbitrator's review in such case is limited to determination of whether district has shown that tenure charges are "true" by a preponderance of

evidence. *Tenure Hearing of Chavez, Arb 2013:Feb 6 (Newark) (Brown, arbitrator)*

Arbitrator dismissed charges involving 82 incidents of inefficiency against math teacher, as "arbitrary and capricious "; used clear and convincing evidence standard, where charges were lodged prior to adoption of NJTEACH and charges covered years prior to 2012-13. Finds lack of communication between employee and supervisor to be deplorable; pre- and post-observation conferences through electronic means were inadequate and not in compliance with district guidelines, insufficient assistance was offered and teacher's requests, including for transfer, were ignored; allegations that teacher was inefficient were inconsistent with high achievement of his students; board must return teacher to work with full back pay and reimbursement for any medical costs during suspension; recommends transfer to another school. *Tenure Hearing of Hawthorne, Arb 2013:Feb 6 (Newark) (Restaino, arbitrator)*

Arbitrator upholds inefficiency charges filed after two years of unacceptable ratings; "basic" in 2009-10 and 20010-11, and "unsatisfactory" in 2011-12; Arbitrator rejects teachers argument that board must wait until 2 years of unsatisfactory are established under an approved rubric, finding no evidence legislature intended two year hiatus in preferring tenure inefficiency charges; not arbitrary to assign her to teach social studies even if she was not technically "highly qualified" as subject matter was within the scope of her licensure in Sociology; moreover, charges were not based on lack of subject matter mastery, but on poor pedagogical technique, albeit in extremely difficult and challenging assignment; technical shortcoming of 87 days rather than 90 day improvement period was not fatal under circumstances; no showing that board acted arbitrarily or capriciously in bringing charges. *Tenure Hearing of Pugliese, Arb 2013:Feb 15 (Newark) (Brent, arbitrator)*

Arbitrator found teacher/track coach guilty of unbecoming conduct; accessing pornography on district issued laptop computer, communicating with current female track athletes using obscene and inappropriately suggestive language, making and engaging in inappropriate comments to female students and using profanity with students while they were under his supervision as a track coach. Teacher/coach dismissed from tenured employment. *Tenure Hearing of Nicholas Brown*, Arb 2013: April 13 (Bridgeton) (Restaino, arbitrator)

Arbitrator found teacher guilty as charged of conduct unbecoming. Teacher had repeated confrontations with his female students in which he used vulgar language. Teacher received fifteen written warnings from his supervisors involving his failure to meet his professional responsibilities, insubordination and unbecoming conduct. Eight of ten charges involved allegations of HIB against students and violation of school district's HIB policies. In the Tenure *Hearing of Jose DaCosta*, Arb 2013: April 1(Newark) (Weiss, arbitrator)

Arbitrator found teacher guilty of unbecoming conduct and dismissed teacher where teacher breached NJASK protocols, discussed and disclosed information about secure test items to students before the 2010 and 2011 NJASK tests, provided feedback, including hints regarding correctness of answers, and influenced students' answers during the tests. "Even if [he] acted purely to protect his students, there is a profound difference between giving a student a push in the right direction and riding the bicycle for him," T*enure Hearing of Radzik*, Arb 2013: April 17 (Woodbridge) (Licata, arbitrator)

Arbitrator determined that school district did not prove charges of unbecoming conduct filed against special education teacher. Teacher was accused of being verbally and physically abusive of students, with one allegation that she punched a student in the chest. After reviewing the security video, the arbitrator found the testimony of several witnesses to be inconsistent with the video. The teacher may have pushed the student and screamed in a threatening manner, but the incident did not rise to hitting or striking the student. It was isolated incident in 22 years as a teacher, with no other blemishes on her record. Dismissal not warranted, 120-day unpaid suspension issued. *Tenure Hearing of Hancock*, Arb 2013: April 10 (Bridgeton) (Brown, arbitrator)

Arbitrator finds that district acted properly in dismissing School Counselor and Substance Awareness Coordinator from her counseling positions. In dozens of incidents over several years, she engaged in unbecoming conduct, was insubordinate and failed to cooperate with law enforcement and DCP&P (formerly DYFS) officials, based on her belief that government agencies were conspiring to cover up information and evidence that would expose them to findings of wrongdoing. Board correctly moved her to a physical education teaching position in which she was tenured. (Note: Commissioner approved extending timelines; hearing held on 7 days; 31 witnesses; delay caused by teacher extended 120-day period without pay.) *Tenure Hearing of Bocco, West Long Branch, Arb. 2013:July 14.*(Mastrianni, arbitrator)

Tenure charges were rendered moot by letter of resignation, on charges of unbecoming conduct grounded in absenteeism. Arbitrator finds there is no need for Commissioner's approval. *Tenure Hearing of Blood, Bordentown, Arb 2013: July 15.* (Simmelkjaer, arbitrator)

Arbitrator orders dismissal of special education teacher and uphold charges of inefficiency occurring for a 7-year period, and insubordination over a 5-year period. District did not prove unbecoming conduct. Evidence showed lesson plan deficiencies over period of years, classroom management issues, numerous incidents of unprofessional and insubordinate behavior. Arbitrator holds that with the exception of cases already transferred to and pending before OAL as of Sept 1, 2012, the new law applies and the 90-day improvement period is eliminated. Fact that board filed its inefficiency charges 43 days after filing with the board does not render it invalid; moreover teacher waived that claim by not raising it

in earlier proceedings. Although limited number of evaluations, /observations, there were other competent and reliable measures of performance such as testimony about walk-throughs and visits, as well as numerous efforts to assist him.*Tenure Hearing of Carter, Camden, Arb 2013: July 18(*Simmelkjaer, arbitrator)

Arbitrator denies tenure charges; although teacher was culpable for serious shortcomings in his teaching they were not for racism or purposeful humiliation of students, where he told student her "people came a long way out of busting out of those chains" and made political comments about same-sex marriage and Latino and single parent households. Teacher claimed incidents were to bolster the students' self-esteem, not harm them. Further, board's finding that he committed HIB was invalid since it applies to student-student interaction, not faculty- student interactions. This otherwise stellar educator is ordered returned to his position-- reinstatement to be without back pay as period of suspension deemed to be unpaid. District is entitled to impose other discipline for his unprofessional injudicious verbal conduct, and he had been cited in earlier increment withholdings, but insufficient nexus between that behavior and current allegations to sustain removal as progressive discipline or single incident.*Tenure Hearing of King, Freehold, Arb 2013: July 22(*Brent, arbitrator)

While working with group of students in shared time technical school, carpentry instructor pushed the student and the student fell backwards and bruised his leg; in the prior year the teacher pushed a student down stairs and had been suspended with pay, ordered to undergo a psychological fitness test; and returned after weekly counseling; 8 years earlier he had kicked a student three times. Arbitrator notes that progressive discipline does not require that once disciplined for conduct, the slate is wiped clean; rather disciplinary history may be considered in determining future discipline. *Tenure Hearing of Flood, Cumberland Tech, Arb 2013: July 29(*Brown, arbitrator*)*

Arbitrator upholds tenure charges; teacher engaged in unbecoming conduct when she slapped a student across the face when he failed to let go of a marker she tried to pull from his hand. Despite mitigating factors of post-traumatic stress disorder from her experience being bullied as a child, daughter's attempted suicide and her recognition immediately after the incident that her conduct was wrong, these mitigating factors do not overcome the conduct that warrants dismissal. *Sugarman, Arb 2013: Sept. 17(Klein, arbitrator)*

Arbitrator determined that school district proved charges of insubordination and inefficiency. The district went to extraordinary efforts to remedy the tenured music teacher's deficiencies. After more than a full year of assistance, the music teacher had not made significant improvement in independently developing lesson plans consistent with school district practice and procedures; showed limited improvement in effectively implementing those plans in the classroom and effectively managing

student behavior. Teacher failed to accept constructive criticism. Inefficiency was proven. The music teacher failed to follow directives from the superintendent and the curriculum supervisor and made disrespectful comments to both. Teacher suggested that superintendent sign three copies of his rebuttal and that either of the supervisors should teach a music lesson in Italian. The ongoing defiance and disrespect amounted to insubordination. Tenure charges were sustained. Teacher was dismissed. *Tenure Hearing of Nell*, Arb 2013 November 22 (Beverly) (Brown, Arbitrator).

Arbitrator found that school district did not prove tenure charges filed against teacher Nartowicz and guidance counselor Baskay. Suspensions of 20 days for Nartowicz and 10 days for Baskay upheld. Nartowicz improperly accessed a student record and shared it with two board members. Baskay improperly accessed a student record through her computer and disseminated it to a school crossing guard. Teacher and guidance counselor were reimbursed all salary denied during the period and were credited with all rights and seniority they otherwise would have accrued except for the period of upheld suspension. *Tenure Hearing of Baskay and Nartowicz*, Arb 2013: December 10 (Carteret)(Gerber, Arbitrator) .

Arbitrator found that school district proved charges of unbecoming conduct against tenured music teacher. Teacher was charges with corporal punishment, insubordination, violation of school district policy and New Jersey law and other willful misconduct. Teacher grabbed a sixth grade general music class student with two hands, lifted him off the ground and threw him onto the teacher's desk, violating state law and school district policy regarding corporal punishment. Teacher demonstrated poor classroom management skills and poor judgment, failed to exercise self-restraint and controlled behavior required of a teacher, acted in an unprofessional and inappropriate manner, placing a child at risk of physical and emotional harm. Music teacher made inappropriate comments to a seventh grade student in an instrumental music class, calling the student "stupid" an "idiot" and telling the student to "shut up." The comments were inappropriate and unprofessional and constituted conduct unbecoming a teacher. Teacher grabbed another student in the same seventh grade instrumental music class by the arm and pushed it away, such conduct constituting conduct unbecoming a teacher. Several charges, while proven by the school district were dismissed because of principles of double jeopardy. Tenured music teacher was dismissed from employment. *Tenure Hearing of Carlomagno*, Arb. 2013: December 20 (Hillside) (Biren, Arbitrator).

Arbitrator found that while school district substantiated all three charges against middle school teacher, such charges did not warrant teacher's dismissal from employment. Teacher had kissed an 18 year old female student on the cheek and made her feel uncomfortable, teacher had also sent the student text and Facebook messages, also making her uncomfortable. Teacher had served as student's track coach when she was a minor.

Teacher took another female student alone to a play in Philadelphia, with the parent's permission but without notifying the school district administration. Teacher contacted other female students outside of school on non-school related matters. No proof of any romantic or sexual activity. School district had no policy on staff use of social media. Teacher reinstated without back pay and must comply with all psychologist recommendations. *Tenure Hearing of Boyle*, Arb. 2013:December 23 (Pittsgrove) (Buchheit, Arbitrator)

Arbitrator orders dismissal of seventh grade social studies teacher who used the "f" word and other inappropriate language with students (fag, gay, fruit loop); misused school computer for personal emails and to view obscene and sexually suggestive material on Miami Hurricanes website and inadvertently exposed students to same such that DCF Institutional Abuse and Investigation Unit found a child was at risk of harm. Teacher also had pattern of missing conferences, hall duties and arriving late to class despite verbal warnings. Older incidents of misbehavior for which he had already been disciplined by letter, or which were stale, could not be used to support the charges but could be used to show that he was on notice of administration's concern; fact that warning letter did not specify that he could be dismissed did not preclude the board from seeking dismissal. Given failure of counseling and warnings over many years to correct the conduct, principle of progressive discipline is rejected-withholding increment is not likely to correct the conduct. *Tenure Hearing of Orlovsk*y, Arb. 2014: Jan 6 (Toms River) (Joyce M. Klein, Arbitrator)

Arbitrator , in weighing credibility of sole witness against teacher, found no reason to disbelieve witnesses' account that teacher aggressively pulled pre-k student from his chair and hit him student twice on the buttocks with open hand in front of class; teacher's account that it was a tap, contained inconsistencies and was not credible; engaging in corporal punishment with refusal to take responsibility requires dismissal. *Tenure Hearing of Barnes-Bey*, Arb. *2*014:Jan 22 (Newark)(Edmund Gerber, Arbitrator)

Arbitrator orders dismissal of computer technology teacher who was also an actor, as increment withholding would not be likely to alter his conduct; eighth grade girls complained that he showed a video clip from *Law and Order* in which he was partially naked and kissing a woman in bed, and that he had negative interactions with other students, made inappropriate comments about another teacher insinuating (falsely) that they had a relationship, had poor classroom demeanor and grading practices; continued a food-exchange despite directives to stop. Showing video clip violated district's sexual harassment policies; other music videos he showed were not serious violations but nonetheless unprofessional as unrelated to curriculum. Withholding increment and filing charges did not constitute double jeopardy. Tenure Hearing of Graffanino, Arb 2014:Jan 31. (River Dell) (Walter DeTreux, Arbitrator)

Arbitrator determined that school district proved charges of unbecoming conduct against intermediate school physical education teacher, but failed to

demonstrate that the unbecoming conduct was sufficient to support the termination of the teacher. Teacher had engaged in unauthorized "cookie party" with six sixth-grade girls, for which an increment was withheld. Teacher had also engaged in "play fighting" with a student, slapping the student and leaving a red mark on the student's face. Termination went beyond the limits of fairness contemplated by the for-cause standard. Teacher's record over his ten year period of service was unblemished, except for the "cookie party' incident, for which an increment had been withheld. Teacher had not been given notice as to the circumstances under which teachers may touch students and what, if anything, be the consequences if a teacher has physical contact with a student. Teacher ordered reinstated to his position, suspended for 60 days without pay and made whole for all losses of salary and benefits except for the 60 day suspension. *Tenure Hearing of Vitelli*, Arb, 2014:May 2 (Flemington-Raritan) (Brown, Arbitrator)

Arbitrator determined that school district proved charges of unbecoming conduct against tenured student Assistance Counselor (SAC) who directed that an exchange of marijuana and money occur between two students who were in her presence, permitted the students to leave her presence, did not report to school administration that the student who received the marijuana in her presence was in possession of marijuana on school premises, was not truthful with school administration regarding the incident and did not notify school administration in a timely manner. The SAC's behavior was such an egregious display of poor judgment and obfuscation that dismissal was the only appropriate remedy, notwithstanding her prior record. Her abject lack of acceptance of responsibility without a scintilla of contrition elevated this event to that of a cardinal violation for which progressive discipline is not appropriate. *Tenure Hearing of Young*, Arb, 2014:May 2 (Hamilton Township) (Pecklers, Arbitrator)

Arbitrator determined that school district proved charges of unbecoming conduct against tenured custodian; charges of inappropriate physical conduct with students including pulling female students' hair, punching them in the back and pulling their arms. Students felt uncomfortable. Matter was referred to the Division of Children and Families, which, after an investigation found no sexual abuse or substantial risk of sexual injury occurred. No corrective action was required by DCF. The concept of progressive discipline was not a necessary prerequisite in this case because of the seriousness of the matter. Custodian engaged in wholly inappropriate conduct involving the touching of several female elementary students and did not appear to understand the severity of his conduct. Custodian's conduct violated a central tenet of the school district's fiduciary responsibility with respect to its students and violated the trust of the student's parents. Dismissal was appropriate. *Tenure Hearing of Davis*, Arb, 2014:May 15 (Asbury Park) (Symonette, Arbitrator)

Arbitrator determined that school district did not prove charges of unbecoming conduct against tenured kindergarten teacher who allegedly dismissed six

year old student at the end of the day in violation of school district policy and procedures without a parent, guardian or other designated escort accompanying the student. Teacher allegedly lied to the superintendent regarding the incident. Arbitrator was not convinced that teacher willfully and deliberately violated board policies and procedures, placing the student in harm's way. Record was insufficient to justify a finding that the teacher should be dismissed. Teacher is returned to work without back pay and will receive full seniority credit from the time of her suspension until the time she returns to work. *Tenure Hearing of Sacchiero*, Arb, 2014:May 21 (Belleville) (Restaino, Arbitrator)

Arbitrator determined that school district proved some but not all of the charges of unbecoming conduct against tenured Science teacher. Teacher, among other charges, stored and removed food from a classroom refrigerator while class was in session, interrupting the class, frequently admonished other staff members for acting in a manner above what was required under the collective bargaining agreement, was loud and intemperate with other staff members, often banging the table, interrupting others and turning red, was disruptive at faculty meetings, used profanity in the classroom with students, used sarcasm to demean students, describing students as "failures" if they did not do their work. Arbitrator determined that while a significant penalty was necessary, dismissal was not. Given the teacher's angry, abusive and demeaning behavior, the arbitrator ordered suspension without pay for one-half of the 2014-2015 school year, ordered a psychiatric examination prior to return to duty by February 2015. Failure to do so or a report that he is unfit for duty shall result in his dismissal from service. *Tenure Hearing of Vincenti*, Arb, 2014:June 11 (Paterson) (Edelman, Arbitrator)

Arbitrator determined that school district did not prove charges of unbecoming conduct against tenured teacher for failure to properly supervise kindergarten students in her care. While students who had completed testing were watching a movie under the teacher's supervision, two students, a boy and a girl, left the classroom area and entered the classroom's single bathroom together. While in the bathroom for a period of approximately five minutes the two students removed their clothes and touched each others "private parts." The matter was referred to the Institutional Abuse Investigation Unit of DYFS, which found that neglect/inadequate supervision was not established, corrective action was not required. While termination was not warranted, teacher was culpable for failure to properly supervise her students. Teacher received a 10 school day unpaid suspension. *Tenure Hearing of Mascio*, Arb, 2014:June 20 (Mullica)(Brent, Arbitrator)

Arbitrator determined that school district proved charges against tenured secretary of excessive absenteeism and tardiness, failure to use reporting procedures, personal telephone/cellular phone calls during the day, repeatedly returning late from lunch, arriving at work late, leaving early, improperly using sick days, was rude and disrespectful behavior to

parents. Actions demonstrated a pattern of misconduct over an extended period of time constituting conduct inappropriate for a public school secretarial staff member. Secretary was terminated from her position of secretary. *Tenure Hearing of Wheeler*, Arb, 2014:June 23 (Elizabeth)(Lovitt, Arbitrator)

Arbitrator determined that school district proved, by a preponderance of the evidence, charges of inefficiency against tenured teacher. Teacher allowed students to sleep in class, did not follow lesson plans, failed to use measurable objectives, failed to comply with directives, did not post or use focus activities correctly, did not prepare effective lesson plans, did not use class time effectively, failed to use closure activities, failed to provide lesson plans when absent and failed to post grades in a timely manner. Her performance as a teacher was unacceptable and the education of students in her classroom suffered. Teacher has a long history of unsatisfactory evaluations, a denial of increment and two consecutive 90 day improvement plans, none of which caused her performance to improve. Tenure charges were sustained. *Tenure Hearing of Cuff*, Arb, 2014:June 26 (Cumberland Regional)(Gerber, Arbitrator)

Arbitrator determined that Department of Corrections met its burden of proving insubordination and neglect of duty; intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor, conduct unbecoming an employee and violation of a rule, regulation, policy, procedure, order or administrative decision. Teacher's failure to communicate her valid safety concerns to her supervisor was insubordinate and evidence of neglect of duty. Arbitrator found that appropriate discipline to be major discipline – a suspension for ten working days. *Tenure Hearing of Thompson*, Arb, 2014:June 30 (Dept. of Corrections, AC Wagner Youth Correctional Facility)(Laskin, Arbitrator)

Tenure charges for inefficiency not sustained. Evaluations used in 2012 – 13 cannot be used to support charges of inefficiency where regulations were not yet in place governing such evaluations. District claim that if charges for inefficiency are rejected, it can then proceed under the TEACH NJ's more general procedures for tenure charges that do not implicate inefficiency fails. Teacher reinstated with back pay and other emoluments. Arbitration of Cheatham, Arb: 2014: Oct. 16

District failed to employ progressive discipline when punishing teacher for unbecoming conduct for using district technology equipment and systems to distribute nude photos and inappropriate e-mails in violation of district policies. Arbitrator dismissed claims of harassment against female employees. Dismissal sought by district was modified to 120 day suspension without pay. Arbitratiion of Ciripompa, Arb: 2014: Oct. 20

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ATTORNEY FEES

Counsel fees available to "prevailing party" plaintiffs in challenge to special education regulations and amendments where they prevailed on 8 of their 60 challenges. IDEA attorney fees provisions applies to challenges to regulations governing children with disabilities. Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001), certification denied 174 N.J. 193 (2002).

Court affirms denial of request for attorney's fees under IDEA. Parents sought reinstatement of child in high school, following suspension and assessment of educational needs of child. Parents who achieve favorable interm relief may be entitled to prevailing party attorney's fees as long as the interim relief granted derived from some determination on the merits. ALJ's interim order granting relief not determination on merits. J.O. v. Orange Township Board of Education, 287 F.3d 267 (3d. Cir. 2002).

Board challenges award of counsel fees to plaintiff following settlement of NJLAD claim insofar as award included a 25% contingent fee enhancement, arguing that court erred both in ascertaining the proper lodestar amount and in imposing an enhancement; court finds no merit in board's arguments and affirms award. Briel v. Madison Bd. of Educ., A-1739-10T4, 2012 N.J. Super. Unpub. LEXIS 298 (App. Div. Feb. 14, 2012)(unpublished)

Court of Appeals affirmed District Court judgment. Plaintiff was not a prevailing party under the standard applied in Farrar and its progeny because he did not obtain any actual relief. The School District did not provide any new documents and plaintiff was unable to enforce the Review Panel's order. Accordingly, plaintiff was not entitled to attorney fees. Public Interest Law Ctr. of Phila. v. Pocono Mt. Sch. Dist., No. 11-4096, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 2012 U.S. App. LEXIS 13021, Decided June 26, 2012.

Court approved student's attorney's application for counsel fees where counsel spent significant time and resources in three-and-a-half-year-old case involving seven minor children, personally undertook substantial risk by covering the expenses of litigation while working on contingency and will undoubtedly incur many more hours of unpaid legal services by virtue of

his role as Court liaison in the administration of Plaintiffs' trusts, and in light of his success in obtaining a settlement of the issues. J. G. v. Board of Education of Camden Bd. of Ed., No. 10-1047 (JEI), 2012 U.S. Dist. LEXIS 115752 (August 7, 2012)

Arbitrator determined that board of education, by a preponderance of the credible evidence, satisfied its burden of proving the incapacity, conduct unbecoming and neglect of duty tenure charges filed against tenured special education teacher. Teacher had been chronically and excessively absent, preventing her from performing her critical role as an inclusion teacher for special education students. Teacher had been absent over 600 days in her career, including 195 days from 2002 through 2012. Board of education unsuccessfully attempted to correct teacher's *absenteeism through progressive discipline, withholding special education teacher's increments* for three school years; 2008-2009, 2010-2011, 2011-2012. *Tenure Hearing of Stapleton*, Arb 2013: May 7 (Newark) (Pecklers, arbitrator)

Arbitrator determined that board of education, met its burden of proving the charge of incompetence, filed against tenured special education teacher. Teacher was chronically late, careless and incomplete in preparing lesson plans, failed to timely read the IEPs of his students and through his misspellings symbolizing an embedded carelessness metastasizing into incompetence, demonstrated a larger framework of insufficient care and diligence in his work. Teacher was formally reprimanded and suspended without pay from May 24 until the end of the 2012-2013 school year. Charges of insubordination and conduct unbecoming were not proven. The arbitrator posited that imperfect, incomplete, or even careless, minimal and thoroughly mediocre unsatisfactory effectuation did not sink to the depths of insubordination. *Tenure Hearing of Evans*, Arb 2013: May 24 (Gloucester Township) (Gregory, arbitrator)

Arbitrator determined that board of education met its burden of proving charges of unbecoming conduct, neglect of duty, negative conduct towards staff and incapacity against tenured special education teacher. Teacher acted inappropriately, was insensitive and largely unaware of the needs of her students, could not take criticism, could not work with other staff members and was incapable of teaching students in an effective manner. Teacher did not demonstrate the temperament and judgment necessary for a teacher. Teacher was dismissed from her tenured employment. *Tenure Hearing of Gibbs*, Arb, 2013: May 20 (Jersey City) (Gerber, arbitrator)

Arbitrator determined that board of education met its burden of proving charges of unbecoming conduct, incompetency and other just cause against tenured teacher. Teacher engaged in inappropriate and intentional misconduct; overreacted to situations; created a classroom that was a battleground rather than a supportive and nurturing environment; failed to give students with disabilities their necessary accommodations until threatened with insubordination; was unable to interact professionally with children or adults; retaliated against students; inflicted pain on a student

by grabbing his sweatshirt; slammed a chair to the floor; had poor classroom management skills; acted negligently and incompetently when students were able to access pornography on the computer; used profanity and called students names; did not have control of his class; did not take advantage of improvement plans offered by the school district. *Tenure Hearing of Carter,* Arb, 2013: June 19 (Paterson) (Gandel, arbitrator)

Arbitrator determined that board of education met its burden of proving charges of unbecoming conduct against tenured middle school in-school suspension (ISS) teacher. Teacher engaged in a book fight with an ISS student who had cursed him, called him by his first name, used racial epithets against him and threw the first book to start the book fight. More than 20 books were thrown, two of which struck and injured the student. Teacher's loss of control and willing and continuous participation in the book war while two other ISS students looked on, warranted dismissal, notwithstanding his 13 years of employment, nine of which were served as an ISS teacher. Student received a three day out of school suspension. Charges that teacher intentionally threw Vitamin Water on the student and "mushed" her in the face, causing her glasses to fall off were not proven. *Tenure Hearing of Hilliman*, Arb, 2013: June 25 (Franklin Township) (Licata, arbitrator)

Arbitrator determined that board of education met its burden of proving charges of unbecoming conduct against tenured school nurse. Nurse's treatment of sixth grade student who injured his foot in physical education class was inadequate; student did not receive proper examination or treatment by the nurse. Nurse never left her desk during the period of time that student was in her office. Nurse's testimony was confusing and less than credible. Nurse did not accept responsibility for her actions, which were the final example of a series of misbehaviors over a significant period of time. *Tenure Hearing of Alexander*, Arb, 2013: June 27 (Vernon Township) (Dorsey, arbitrator)

Tenure charges for Inefficiency and Unbecoming Conduct, sustained. Administrator failed to conduct self-assessment or timely evaluations of others. Unnecessary force used in dragging 9 year old student across playground by shirt collar to principal's office. Charges related to excessive lateness dismissed. *Tenure Hearing of Hawkins,* Arb 2014: March 10 (Laskin, Arbitrator)

Tenure charges dismissed against theatre teacher who utilized a "Can of Squirms" lesson plan that supposedly asked about certain adolescent behaviors and attitudes without parent consent in violation of state statute. Additionally, by asking these questions in class, teacher also allegedly violated HIB law. No evidence presented that any student felt harassed, intimidated or bullied. No evidence that students were subjected to a survey in participating in lesson. Arbitrator found that lesson plan was fully approved by administration for several years. Questions asked were exaggerated in the charges presented. Arbitrator does not opine as to

whether the lesson, as presented, is appropriate for the eighth grade level. *In Re Tenure Arbitration of Priano-Keyser*, 2014: July 4

Teacher left his classroom unattended to argue with another teacher, demonstrating poor judgment. Teacher admitted same and appeared to be remorseful. Appropriate penalty is reinstatement with no backpay. Additionally, the teacher must remain in treatment for decision-making and anger management until the counselor determines that his participation in such counseling is no longer needed. *Arbitration of Foca-Rodi*, 2014:July 9.

Employee's resignation from tenured position moots district's tenure charges against him. *Arbitration of Higgins*, 2014: July 17.

One-month suspension without pay appropriate penalty where teacher improperly involved a union representative in a conference call with a parent without disclosure, resulting in an ethical breach on the part of the teacher, compromising the privacy of the student and parent. *Arbitration of Mignone*, 2014: July 28.

Tenure dismissal upheld by arbitrator after it was proven that teacher assisted students in finding the right answers on standardized tests; encouraged other staff members to give incomplete information in an OFAC investigation; as a result of inflated scores on standardized tests, certain students were denied remedial help they needed; as a result of teacher's misconduct, district had to expend funds to correct testing results. *Arbitration of Radzik*, 2014: August 4

Teacher engaged in unbecoming conduct when he violated district policy concerning computer usage; engaged in inappropriate text messages with recently graduated students, and failed to report arrest to district. *Arbitration of Clune*, 2014: August 18

BALLOTS

A board of education candidate is not entitled to use a professional title (Dr.) preceding his name on the school election ballot unless authorized to do so by statute or unless using the professional title is necessary to protect the voting public from confusion or deception. (Sooy v. Gill, 340 N.J. Super. 401 (App. Div. 2001))

BIDDING

A public entity may not increase or decrease the number of braches of work specified in the public bidding statute despite good intentions to obtain the best possible bids for its taxpayers. (Building Contractors Association of New Jersey v. Lenape Regional H.S. District Bd. of Ed., unpub. Op. Dkt. No. BUR-L-003482 (Law Div. December 21, 2000)) See also, Bidding Contractors Association of New Jersey v. Board of Chosen Freeholder, County of Bergen, unpub. Op. Dkt. No. BER-L-8812-96 (Law Div. ____)

Board entitled to recovery of legal fees and costs, pursuant to provisions in Instructions to Bidders. (03:June 9, Middletown)

Board's failure to take lawful action rejecting all bids or awarding of all bids in fact amounted to a rejection of all bids, where the failure to take such lawful action was not a purposeful manipulation to achieve an unlawful result. (04:Sept. 3, Control Building Services, stay issued, St. Bd. 04:Oct. 22, stay clarified prohibiting rebidding of custodial service contracts including opening of bids, St. Bd. 04:Oct. 25, aff'd and stay lifted, Commissioner ordered to ensure integrity of rebidding process and submit report to State Board on failures of original bidding process. St. Bd. 04:Dec. 1)

Construction

ALJ denied contractor's motion for a stay of the board's contract award to competitor. Contractor asserted that the Department of Labor wrongfully suspended his right to engage in public contract projects during the pendency of his debarment proceedings before that department. (02:Aug. 22, Framan)

Aggregate rating limit: emergent relief denied to unsuccessful bidder who did not properly list total of amount of uncompleted contracts as of bid date; board was reasonably concerned about bidder's responsibility pursuant to N.J.A.C. 17:19-2.11. (99:July 9, Schiavone)

Taxpayer does not meet burden of demonstrating that board's roofing specs were unduly restrictive or inhibited free and open competition, or that failure to draw plans to scale violated any law. (00:Nov. 20, Wicks, aff'd St. Bd. 01:April 4)

Unsuccessful bidder seeks stay of award to bidder who was not a licensed commercial electrical contractor (C-047) as required by specs; stay granted. (01:Jan. 29, Advance Electric)

Contractual provision for counsel fees in a school construction matter may be decided by the Commissioner of Education. (03:June 9, Middletown)

Custodial

A violation of the bidding laws, even if proven by dismissed custodians, would not result in a finding the custodians were illegally dismissed. (05:Sept. 9, Lyndhurst Education Association)

Board prevailed on summary judgment in challenge by unsuccessful bidder, to its inclusion in revised specs of a requirement that bidders for custodial services be doing business in a minimum of two public schools of equal or greater volume; fact that only one bidder met the requirement did not render specs void since the revision was directly related to the purpose, function or activity for which the contract was made. (99:Oct. 18, Alaska)

Even if Director of Support Services had represented to current vendor that it would be able to meet the revised bid specifications, the board would not be bound by such a statement. (99:Oct. 18, Alaska)

Revised spec requiring bidder of custodial services to be doing business with a minimum of two public school districts of comparable size, was reasonable and not designed to exclude all but one company. (99:July 2, Alaska)

Damages are unavailable under the Public Schools Contracts Law. (04:Sept. 3, Control Building Services, stay issued, St. Bd. 04:Oct. 22, stay clarified prohibiting rebidding of custodial service contracts including opening of bids, St. Bd. 04:Oct. 25, aff'd and stay lifted, Commissioner ordered to ensure integrity of rebidding process and submit report to State Board on failures of original bidding process. St. Bd. 04:Dec. 1)

Emergent relief

Emergent relief denied in construction bidding matter. Crowe v. DeGioia test not met. (02:April 30, McCann Acoustics)

Failure to file a timely stockholder or partnership disclosure statement pursuant to N.J.S.A. 52:25-24.2, was a material defect that could not be waived or cured. Board was correct in rejecting defective bid and awarding to next highest bidder. (03:June 9, Middletown)

Matter dismissed for failure to pursue claim that bid was awarded in violation of statute. (03:Oct. 29, Radar Security)

Rejection of Bids

Board's decision to reject all bids and rebid was arbitrary and capricious. Board did not substantially revise its specifications in its second round of bidding. (03:July 24, Business Automation Technologies)

School contract requiring that all yearbook portraits of seniors be taken by the contract school photographer violated neither Sherman Act's prohibition against anti-competitive practices nor State's Antitrust Act. Defendants' motion for summary judgment granted. Santomenna a/b/a LA

Photography v. Lors, Inc., et als., Civil Action No. 98-3834 (Chief Judge W. Bissell), July 19, 2001.

State district superintendent in state-operated district did not have the authority to award a contract for custodial services without a vote of the board; his action was *ultra vires* and amounted to rejection of all bids. (04:Sept. 3, Control Building Services, stay issued, St. Bd. 04:Oct. 22, stay clarified prohibiting rebidding of custodial service contracts including opening of bids, St. Bd. 04:Oct. 25, aff'd and stay lifted, Commissioner ordered to ensure integrity of rebidding process and submit report to State Board on failures of original bidding process. St. Bd. 04:Dec. 1)

Statutory amendment to N.J.S.A. 18A:18A-22 establishing specific circumstances warranting rejection of all bids, eliminated the need to demonstrate absence of bad faith. (04:Sept. 3, Control Building Services, stay issued, St. Bd. 04:Oct. 22, stay clarified prohibiting rebidding of custodial service contracts including opening of bids, St. Bd. 04:Oct. 25, aff'd and stay lifted, Commissioner ordered to ensure integrity of rebidding process and submit report to State Board on failures of original bidding process. St. Bd. 04:Dec. 1)

Transportation

Bidder for bus contract substantially complied with stockholder disclosure requirements; defects in completing statement were minimal. (98:Aug. 28, Murphy Bus)

Busing contract: Board's specs for brand name in joint purchasing project may have violated the statutory "brand name or equivalent" requirements; however, matter remanded for factual findings regarding whether bidder's engine was in fact equivalent to spec's requirement. District's motion to dismiss matter as moot granted on remand as state grant had expired and districts withdrew from joint purchasing agreement. (00:Oct. 20, DeHart, motion on remand St. Bd. 01:Aug. 8)

Deviations from bid specifications concerning maintaining buses at depot or dispatch facility, and the use of multiple dispatchers and base radio/dispatch facility clause were not material or substantial so as to preclude award of transportation contract. (99:March 9, Byram)

Lowest responsible bidder: determination of lowest responsible bidder included determination of whether the specs violated DOE transportation regulations or whether the award violated the specifications themselves. (99:March 9, Byram)

Neither law nor bid specs precluded submission of two bids (all package bid and individual route package bid) by a single bidder, nor was it precluded by administrator's announcement at prebid conference that only one bid per bidder would be accepted. (98:Aug. 28, Murphy Bus)

Petitioner established that it was lowest responsible bidder with respect to certain individual route package bids. (98:Aug. 28, Murphy Bus)

Specifications: Board was within its power to establish bid specification beyond DOE transportation specifications set forth in N.J.A.C. 6:21-13.2. (99:March 9, Byram)

Standing: an unsuccessful bidder has no standing to challenge the specifications post-bid; the time to raise issues of clarity or legality of the specs is before bids are opened; a board may not challenge the validity of specifications post-bid under the "disguised standing" principal, i.e., by arguing that it would have been the lowest responsible bidder had the board correctly interpreted the specs. (99:March 9, Byram)

Transportation: District acted within its authority when, after having taken bids it realized that it would be less expensive to renew existing transportation contract, and thus rejected all bids; lowest bidder's claims of implied contract and agency based on Jointure Commission's notice are dismissed. (Note: see ALJ's detailed discussion of public school transportation contracting and bidding laws). (99:Feb. 24, Taranto Bus)

BOARD DUTIES/AUTHORITY

Despite fact that delays in appeal of board denial of transportation services were attributable to parents, no reasonable purpose would be served in requiring parents to file a new petition where identical circumstances would result in a second request for transportation for a second child. Commissioner rejected initial decision that parent request for transportation services was moot due to child's graduation from middle school. Matter is not moot where potential for recurrence exists. Matter remanded (11/2/2005) On remand, Commissioner rules that parents failed to prove that board's decision to discontinue its practice of providing bus transportation for students in housing. Mr. and Mrs. T.F.S. o/b/o J.R.S. v. South Brunswick Twp., 2007:April 4

Court dismissed the motion made by Plaintiffs (three minors with Down Syndrome, their parents, and several organizations) for entry of final judgment as to dismissed claims and parties or for certification for immediate appeal of the ruling below, in a class action suit alleging a systemic failure on the part of the State of New Jersey to include the students in the least restrictive environment. Grieco v. N.J. Dept. of Ed., 2008:January 15

Student from Colombia living with brother in district is neither domiciled in district nor living in the home of someone domiciled in the district due to family or economic hardship. Brother must pay board tuition in the amount of $5,163.84, plus $78.24 per day for each day of student's attendance after June 6, 2007. (J.A.M. o/b/o C.A.M., Commr. 2007:August 15)

Parental indifference to dismissal procedures may not absolve the district of liability in all cases. Even if parents overlook their responsibilities,

educators retain a duty of reasonable care that includes the implementation of appropriate dismissal. Jerkins v. Anderson, 2007:June 14

Time served as interim principal does not count toward tenure as principal until resignation becomes effective and vacancy exists. Tenure is not acquired at the end of the two year period but after completion of the two year probationary period with reemployment. (Walton, Commr. 2007:August 8)

By court order, residential custody of student was shared between mother and grandmother; mother on the weekends and grandmother during the week. Student's residency for school purposes followed that of the grandmother during the week. Student was entitled to a free public education in the grandmother's school district. (V.S-L., o/b/o Z.M.M., Commr. 2007:July 9)

Court upheld district reasonable suspicion drug testing policy despite the absence of a provision requiring parental consent prior to testing. Board's motion for summary judgment granted in part and denied in part. Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006).

Student entitled to a free public education in the school district as a properly enrolled affidavit student. Student lived with grandmother, who assumed all personal responsibility for the student and intends to support the student gratuitously beyond the school year. Parents are not capable of supporting student due to a family or economic hardship and did not send him to the grandmother simply to receive a free education in the school district. (R.A.J. o/b/o C.A.P., Commr. 2007:July 27)

Student deemed ineligible to attend school in the district. Student was neither domiciled in the district nor living in the home of another domiciled in the district because of family or economic hardship. Parent required to pay tuition to the board in the amount of $3,751.02 plus $59.54 per day for each day of the student's attendance in the district after April 4, 2007. (D.R.P. o/b/o B.L., DeP, Commr. 2007:July 25)

Board secretary's handwritten notes, taken during a board of education's executive session to aid her in preparing formal typed minutes of session, did not have to be disclosed under N.J.S.A. 47:1A-1.1 of New Jersey Open Public Records Act. The formal minutes themselves, not the secretary's handwritten notes, were the public record. The Government Records Council (GRC) had concluded that the handwritten notes were a work-in-progress, as opposed to a completed draft. Further, requiring the board secretary's preliminary handwritten notes to be deemed a government record and be disclosed would defeat the purpose of the disclosure exception for executive sessions. Martin O'Shea v. West Milford Bd. of Ed., 2007:April 5

Board abused its discretion when it did not file tenure charges against teacher who used racial epithets against a fellow teacher in front of students (98:March 30, Astacio-Borja)

Commissioner determined that the threshold for deciding what a school may and

may not charge fees for the use of, or participation in, depends on whether the questioned item/activity falls within the meaning of "integral" or "mandatory" to classroom instruction. (R.H., St. Bd., 2007: May 2).

There is a common law right to videotape a meeting of a public body in New Jersey, subject to reasonable restrictions. The common law right is neither absolute nor unqualified. Public bodies may impose reasonable guidelines to ensure that the recording of meetings does not disrupt the business of the body or other citizens' right of access. However, if a public body chooses to exercise the opportunity to formulate guidelines, that decision in no way postpones the accrual of the right to videotape until guidelines are established. The borough and mayor violated the citizen's right by imposing arbitrary and unreasonable restrictions that prevented the citizen from videotaping the meeting. Tarus v. Pine Hill Borough, 2007:March 7

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. unpublished opinion, Dkt. No. A-5413-06T1,

The delay of three years from the conducting of a parent survey to the implementation of its student uniform policy, did not render the policy invalid where the community had consented and the requirements of N.J.S.A. 18A:11-8, including those with regard to disadvantaged students, were met. (Dare, Commr. 2007:May 18)

District complaint that insurance broker failed to place carrier on notice of claims against the district dismissed. D.E. v. Hunterdon-Voorhees Reg., 2007:June 21

Commissioner dismissed complaint of student who challenged board decision not to issue her a diploma. Student had attained 121 credits of the 140 necessary to graduate. (Dowling, Commr., 2008: Feb. 5)

Commissioner determined that the board did not act arbitrarily, capriciously, or unreasonably when it barred a parent from school grounds without prior appointment. The board may reasonably regulate who may enter its buildings and under what circumstances a person may enter. State Board dismisses appeal for failure to perfect. Appellant did not file brief in timely manner, either initially or after 20 day extension of time to file. Commissioner had affirmed action of board of education limiting appellant's access to district's elementary school. (L.A., St. Bd. 2007:June 6)

Commissioner dismisses parent's request that district place her son in the school of her choice because the school in which he was placed did not meet AYP under the No Child Left Behind Act; the NCLBA contains no provision

for individuals to enforce the notice, transfer or SES provisions; enforcement action is vested solely in the Secretary of Education. (F.R.P., Commissioner 2008: December 8)

Plaintiff religious organizations, which established that the policy of the school district prohibiting plaintiffs from distributing or posting flyers at school violated their rights under the First Amendment, were awarded, pursuant to 42 U.S.C.S. § 1988, attorney's fees, costs, and expenses; $ 207,403.05 in fees, together with $ 2,056.65 in costs and expenses, for a total of $ 209,459.70. The total hours reasonably expended by plaintiffs' counsel for purposes of the lodestar calculation was 954.87, 108.01 hours less than requested; hourly rates were $275.00 for attorneys and $60.00 for paralegals. Child Evangelism Fellowship vs Stafford Twp. School Dist., 2004:Oct. 15

A Board of Education was held in contempt for failure 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. The Court held that unless the board complies or is excused for factors beyond its control, it will be assessed a fine of $ 250 for each day of material non-compliance. L.J. v. Audubon Bd. of Ed., No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337 (D.N.J. February 19, 2008). L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually)

A board may not withhold or threaten to withhold diplomas in order to collect discipline-related counsel fees. (Licciardi, Commissioner 2008: December 5)

Although district could have performed manifestation determination, in light of the fact that district could have suspended student for 45 days for drug use, ALJ's order returning pupil to school reversed. A.P. v. Pemberton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 32542 (D.N.J. May 15, 2006)

District Court orders 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. The Court held that because the ALJ had earlier ruled that the parents' decision to unilaterally move the student to the Craig school was appropriate, this ruling then served to establish the student's "current educational placement" for purposes of "stay put" during proceedings over a new IEP. Traditional concepts of exhaustion of administrative remedies for the new IEP were inapplicable once there had been a pertinent ALJ ruling. P.R. vs Roxbury Twp. Bd. of Educ., 2008:Feb.6

Court holds that teacher's as-applied challenge to the board's mailbox policy (requiring permission to distribute personal correspondence through the mailboxes) and section 1983 cause of action are not barred by res judicata and may proceed as these were not addressed on their merits by the Court of Appeals in Policastro I; however Court grants motions to dismiss overbreadth challenge as it was already addressed in Policastro I, and to dismiss vagueness claim, as it could have been brought in Policastro I.

Policastro v. Tenafly Bd. of Educ., Civ. No. 09-1794 (DRD), 2009 U.S. Dist. LEXIS 64461 (D. N.J. July 30, 2009)

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).

A state employee who made public statements as a function of his employment duties could not claim 1st Amendment protection in those statements. Employee was performing employment duties when he wrote a memo regarding the proper disposition of a pending criminal matter. The First Amendment did not prohibit discipline based on the employee's expressions made pursuant to official responsibilities. Remanded for further proceedings. When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. Garcetti vs Ceballos, 2006:May 30

State Board affirms Commissioner determination that board of education's refusal to issue student laptop computer for the 2005-2006 school year was reasonable and permissible, as student's parents refused to comply with school district computer use policy. (R.H., St. Bd., 2007: May 2).

State Board dismisses appeal for failure to perfect. Appellant did not file brief in timely manner, either initially or after 20 day extension of time to file. Commissioner had affirmed action of board of education limiting appellant's access to district's elementary school.L.A. v. Port Republic Bd. Of ed., 2007:June 6

State Board affirms the decision of the Acting Commissioner to dismiss the matter as moot. Local association alleged that board procedures subcontracting custodial, maintenance and bus transportation services for the 2002-03, 2003-04 and 2004-05 school years violated public bidding laws. (Lyndhurst, St. Bd. 2007:May 2)

State Board affirms Commissioner's determination that student was entitled to free public education in the school district. Domicile of child is domicile of parent. Fact that mother sent child to live with her parents when she discovered that her live-in boyfriend was a convicted sex offender did not affect domicile. (E.A.E., St Bd., 2007: May 2) see also (E.A.E., Commr., 2006: Dec. 19).

Students deemed not to be residing with grandmother in district. While two court orders granted grandmother "residential custody" of the students, based on surveillance of grandmother's residence, it was determined that students actually resided with their mother in another community. No credible evidence that students actually lived with grandmother. Petitioner ordered to disenroll students and remit $15,472.08 in tuition to the school district. (B.W. o/b/o S.L. and N.A., Commr 2007:Aug. 21)

Students, whose father was incarcerated, were living with mother. Mother lived in

another school district and wanted students to remain in their schools for the sake of continuity until father returned and resumed custody. Mother did not appear nor provide reason for nonappearance. Commissioner ordered tuition reimbursement for the 2006-2007 school year in the amount of $14,812.56. (L.D.R. o/b/o T.M. and P.M., Commr. 2007:August 16)

Board duties after dismissal include reasonable policy, adequate notice, and effective implementation of that policy. Jerkins v. Anderson, A-49-06, (N.J. June 14, 2007), A-1575-04 (App. Div. June 20, 2006) (slip. op. at 15).

Board duties after dismissal include faithful adherence to a reasonable, published dismissal practice including compliance with a parent's instructions including release of the child to walk home. The district must also have a plan for dealing with parents who are late in picking up their children. Jerkins v. Anderson, A-49-06, (N.J. June 14, 2007), A-1575-04 (App. Div. June 20, 2006) (slip. op. at 15).

District's student assignment plans using race as a factor were not narrowly tailored to achieve the compelling goal of diversity. Parents Involved in Community Schools vs Seattle School District No. 1, 2007;June 28

Where parents sold their in-district home, moved out of district, and signed an agreement of sale for vacant land in the district with intentions to construct a home upon that vacant land, they met the intentions of the district's "future resident" policy that permitted seniors to remain in the district tuition-free. S.B. v. Kingsway Reg. Bd. of Ed., 2006:March 14

Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. 127 S. Ct. 976; 166 L. Ed. 2d 709; 75 U.S.L.W. 3350. O'Brien v. Valley Forge Special Education Services, 2007:Jan. 8

Petitioner parent ordered to pay tuition in the amount of $4,599.34 per child for the period between September 6, 2005 and February 23, 2006, plus any additional days of attendance beyond February 23, 2006 at the rate of $43.39 per day per child. Petitioner failed to demonstrate that she resided in the school district and that her children were entitled to a free public education in the district. The Board is authorized to disenroll the students unless it determines to permit their further attendance on a discretionary basis. T.S. vs. Gloucester Twp. Bd. of Ed., 2006:April 13

Commissioner determined that regulation of visitors to school property is clearly action which lies within respondent's discretionary powers pursuant to N.J.S.A. 18A:20-20. Nothing in the record to suggested that the district had any improper motives for imposing the reporting restrictions upon petitioning parent Commissioner refused to say that it was irrational to ask parent, who continued to show bad judgment in evaluating his own conduct, to advise school administrators when he was on school premises. McCann v. South Plainfield, 2006:Feb. 10

When the parties have not included any provision in the collective negotiation agreement that clearly creates a right to challenge a mid-term termination of a non-tenured teacher through a grievance proceeding, the terms of the

individual contract, otherwise in accordance with applicable statutory provisions, are enforceable as written. Northvale v. Northvale, 2007:Oct. 29

Matter involving appointment of principals dismissed for lack of prosecution. (Herron, Commr., 2007:August 13)

These appeals involve related questions of law and fact and were consolidated. The complaints challenged ordinances adopted by the City of Asbury Park authorizing the acquisition, by eminent domain, of property owned by the Board and by the private developer. The trial court eventually granted summary judgment in favor of the City and the city's designated redeveloper, who intervened in the actions. The Appellate Division affirmed. (Asbury Park Bd. of Ed. v. Asbury Park Sewer Authority, No. A-1076-04T1 (App. Div. April 6, 2006) certif. denied, 188

Teacher was not officially terminated, and was entitled to back pay, where Superintendent notified her of termination but the board failed to so vote as required by N.J.S.A. 18A:27-4. (Martell-Dimaio, Comm'r., 2008:May 9)

Commissioner restores increment withheld from tenured mathematics supervisor. Petitioner proved that board's withholding was arbitrary, capricious and unreasonable and motivated by personal animosity of her supervisor. No independent evaluation was done by the board and the reasons set forth by the supervisor were largely without merit. (Kohn, Commr., 2007:July 19)

Petitioner's claim for payment of accrued vacation/personal days and health insurance waiver deemed moot. Payment in full for post-judgment interest made entire matter moot. (Kaprow, Commr., 2007:July 23, affirmed St. Bd. 2007:December 5)

Commissioner upheld board of education decision denying student the ability to participate in graduation exercises. Board's decision was based on long-standing policy prohibiting students who had not met all graduation requirements from participating in graduation exercises. ALJ's order was received by the Commissioner just before the graduation ceremony with insufficient time to review the audio tape or issue a final decision, making the issue moot. (J.Z. o/b/o C.Q., Commr., 2007:July 23)

Tenure dismissal for chronic absenteeism, incapacity and other just cause upheld against tenured secretary where she has been absent from her post since April 1999. Status of her workers compensation claims are irrelevant to the determination of the tenure charge of incapacity. IMO Tenure Hearing of Sonia Velez v. Hudson County School of Technology, 2006:April 27

Student ineligible to attend school in district. Parents liable for tuition. Board's application for tuition reimbursement granted in the amount of $7,640.82, plus $49.94 per day for each day student attends the school after May 9, 2006. K.G. v. Hamilton Twp. Bd. of Ed., 2006:June 28

Commissioner vacated the board of education's head basketball coach appointment. Appointed head coach was not properly certified, the first criteria of N.J.A.C. 6A:9-5.19. Additionally, qualified, certified applicants existed and no application for waiver to the county superintendent was

made or granted. Commissioner declined to appoint a new coach as the potential new coach was not a party to the proceeding nor was his appointment requested as part of the relief. (Eastside Paterson, Commr., 2007:July 13)

Commissioner upholds board suspension of student who was arrested off school grounds with six bags of marijuana. Conduct was of such character as to constitute a continuing danger to the physical well-being of other pupils. P.G. v. Woodcliffe Lake Bd. of Ed., 2006:June 28

Petition dismissed as time-barred. Counts not previously dismissed were adjudicated in prior proceedings. School district's imposition of a ten-day suspension for possession of the knife in school was neither arbitrary nor capricious. R.O. v. West Windsor-Plainsboro Bd. of Ed., 2006:June 28

Party filing an IDEA complaint has the burden of proving its case in special education proceedings in New Jersey. Because the case was brought under the IDEA and New Jersey has no statutory or regulatory provision purporting to define the burden of proof in administrative hearings assessing IEPs, Schaffer v. Weast controls. District court properly affirmed an ALJ's decision that a board of education did not violate the IDEA; both tribunals applied the correct legal standards for reviewing least restrictive environment and free appropriate public education issues and their findings of fact were not clearly erroneous. Court found that the partial reimbursement granted to the parents. L.E. v. Ramsey Bd. of Ed., 2006:Jan. 23

District court's grant of summary judgment to school district and employees affirmed with respect to a teacher's 42 U.S.C.S. § 1983 claims. Teacher was suspended pursuant to allegations of students smoking marijuana in his classroom and inappropriate behavior with female students. Criminal charges were brought and teacher was acquitted. Teacher ultimately resigned. Court affirmed as teacher had not produced sufficient evidence from which any reasonable jury could find that his First, Fourth, Fifth, and/or Fourteenth Amendment constitutional rights were violated. Jerrytone v. Musto, 2006:Jan. 23

Board member, whose spouse was a high school teacher's assistant, indirectly supervised by four assistant principals, directly supervised by a building principal who was, in turn, supervised by an assistant superintendent who was supervised by the superintendent, would violate N.J.S.A. 18A:12-24(c) if he were to participate in the hiring and any employment issues regarding the superintendent. Public could reasonably expect that board member's objectivity and independence of judgment could be impaired. See Advisory Opinions A10-00 and A30-05. Advisory Opinion A07-06, 2006:July 31

N.J.Supreme Court petition for certification denied. Filed April 28, 2006. 186 N.J. 607Appellare Division affirmed a PERC ruling that the board committed an unfair labor practice when it terminated bus drivers and subcontracted their work to a private company. Warren Hills v. Warren Hills Ed. Assn., 2006:April 28

Truancy officer employed by the board sued, alleging multiple causes of action, including violations of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49; 42 U.S.C.A §§ 1981 and 1983; and the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21; he also alleged defamation and intentional infliction of emotional distress. Trial court dismissed the claims on summary judgment. Appellate Division affirms in part and reverses in part. Claims for retaliation, discrimination, and civil rights violations are reinstated to allow plaintiff an opportunity to complete discovery Claims for intentional infliction of emotional distress. Russo v. Atlantic City Bd. of Ed., 2006:March 20

These appeals involve related questions of law and fact and were consolidated. The complaints challenged ordinances adopted by the City of Asbury Park authorizing the acquisition, by eminent domain, of property owned by the Board and by the private developer. The trial court eventually granted summary judgment in favor of the City and the city's designated redeveloper, who intervened in the actions. The Appellate Division affirmed. Asbury Park Bd. of Ed. v. Asbury Park Sewer Authority, 2006:April 6

While playing indoor soccer during gym class student was injured by the unprovoked assault of another student. Plaintiff sued the board for the gym teacher's alleged negligent supervision. Trial court issued summary judgment in favor of the board. Appellate Division affirms. Plaintiff failed to demonstrate that gym teacher failed to exercise reasonable care under the circumstances. Giannacopoulos v. Ridgefield Bd. of Ed., 2006:March 7

The $55 fee established by the Township of Edison for duplicating the minutes of the Township Council meeting onto a computer diskette is unreasonable and unsanctioned by the explicit provisions of OPRA; the actual cost of copying onto the diskette is far less than $55. The imposed fee creates an unreasonable burden upon plaintiffs' right of access under OPRA and is not rationally related to the actual cost of reproducing the records. The judgment of the Law Division is reversed. 384 N.J. Super. 136 (App Div 2006) Libertarian Party of Central New Jersey v. Murphy, 2006:March 23

Parent advisory committee appealed DOE’s grant of a waiver of requirement to provide a full-time bilingual program to 3rd and 4th graders in one of the district’s schools; waiver was granted because of low number of LEP students in grades 3 and 4, but parent group claimed that the district had not met the precise requirements of statute and code upon which waivers were permitted. The Commissioner ruled that the DOE did not have the authority to grant the waiver but for reasons other than those expressed by the ALJ below. While the ALJ had found that the application for a waiver must be district-wide the Commissioner found that flexibility was permissible. Executive Committee and M.N. vs Vineland BOE, 2006:June 26

District court denied motion for summary judgment and entered judgment in favor a council member, who had been ejected from a public meeting, in a

42 U.S.C.S. § 1983 action. Jury found that president had an improper unconstitutional motive when making the decision; the member's First Amendment rights were violated, and qualified immunity did not apply. Court of Appeals determined that the district court did not err. President was not entitled to qualified immunity, even though she could have constitutionally ejected the member for disrupting. Punitive damages were properly awarded since the president acted recklessly and with callous indifference to the member's rights. Appellate Division held that the settlement of litigation involves the exercise of discretionary authority by the board. Monteiro vs City of Elizabeth, 2006:Feb. 8

Proposed settlements are not binding until the board has given its approval. Mazzeo v. Barnegat BOE, A-2202-05 (App. Div. June 6, 2006) (unpublished slip op. at 8). Certification denied Sept. 6, 2006, 188 N.J. 354 (2006).

Commissioner reverses ALJ decision and upholds teacher increment withholding. School district did not abuse its discretion in concluding that teacher's performance was not sufficiently meritorious to warrant an increment award; serious deficiencies in performance were apparent during the year in question. Deficiencies included, but were not limited to, lack of individualized daily lesson plans, teaching a lesson that had already been taught, leaving class for a significant period of time and having students deliver oral reports without questions or feedback. Moore vs State-Operated School District of the City of Jersey City, 2006:July 12

Petition for Certificaton denied. March 30, 2006, 186 N.J. 365 (2006) App Div Dkt No. A-3167-04. Gazzillo vs Board of Education of South Hunterdon Regional High School, 2006:March 30

Commissioner upholds Board's recission of guidance counselor contract for 2003-04 school year with 60 days notice after the employee accepted the contract a valid exercise of Board's prerogative under the contract. Contracts of non-tenured teachers which contain provisions for termination at will by either party upon a specified number of days notice may be terminated without the need to demonstrate good cause; No showing that termination was made for arbitrary or capricious reasons. The Commissioner determined that since the notice period began on July 24, 2003 and ended on September 22, 2003, the petitioner is not entitled to salary for 38 of the 60 days. Nancy Simons vs Bd. of Ed. of Township of Hamilton, 2006:April 24

State Board affirms Commissioner decision upholding board's decision to subcontract board secretary and school business administrator position in favor of Interlocal Services Agreement with county vocational district. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7) Affirmed, No. A-5555-05 (App. Div. Aug. 7, 2007) (slip op. at 17). Cert. denied, 193 N.J. 222 (2007).

Board of trustees acted reasonably in voting to approve the settlement that resolved lawsuits filed against the charter school by two creditors to recover monies owed in connection with the construction/renovation

project undertaken by the charter school foundation. (Crapelli, Comm'r., 2008:May 15).

Commissioner determines that withdrawal from sending relationship would have a negative educational impact on receiver as majority of high school students come from sending district, even though there would be no negative racial impact on either district. Severance denied. Bd. of Ed. of Town of Boonton vs Bd. of Ed. of Borough of Lincoln Park, 2006:April 25

State Board affirms Commissioner's July 6, 2007 ruling that school board improperly spent funds, and Deputy Commissioner's remedy of $88,373 deduction from the board's 2006-07 school budget as a result of the Board having improperly expended 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. Use of Abbott Funds by the Elizabeth Board of Education, 2007:Nov. 7

District certified tenure charges against a tenured teacher for unbecoming conduct related to incidents of inappropriate behavior with a student in 1984-85 and another student in 1994-95. These tenure charges followed separate tenure charges brought against respondent by petitioner in October 2000. Final disposition of the prior tenure charges is an intervening event that renders the instant matter moot; there are no legal rights, duties, obligations, privileges, benefits or other legal relationships between the parties still in issue; and the instant matter is no longer a contested case. IMO Tenure Hearing of Mujica vs Paterson City, 2006:April 25

Tenure dismissal upheld for unbecoming conduct where school librarian used school computer to access pornography during school hours and to send e-mail messages containing inappropriate, obscene, lewd or vulgar language to another district employee. Claims that she was accessing pornography to show faults in school's filtering software not credible. IMO Tenure Hearing of Donahue vs Pemberton Twp School District, 2006:April 24

Contractor, successful bidder on school construction project, sued school board and its attorney in connection with the contractor's termination from a construction project. Contractor brought claims against the attorney for civil rights violations, tortious interference, libel and slander, and malpractice. Contractor was precluded under Fed. R. Civ. P. 37(c)(1) from introducing an expert report identifying alleged deficiencies in a school board attorney's performance during bidding on a construction project. Report did not satisfy Fed. R. Civ. P. 26(a)(2)(B) and Fed. R. Evid. 702; the expert lacked relevant legal expertise, and the report was an impermissible net opinion. D&D Associates vs Board of Education of North Plainfield, Vitetta Group, Bovis Lend Lease, 2008:May 27

Petition for certification denied. April 28, 2006. 186 N.J. 607 (2006) App. Div.

Dkt. No. A-2201-04. Mucci vs Board of Education of the Borough of Moonachie, Bergen County, 2006:April 28

SEC dismissed a complaint alleging that a board member violated N.J.S.A. 18A:12-24(b) and (c) when he attended an executive session meeting where his brother's hiring in the position of cafeteria manager was discussed. No evidence was presented that his brother's employment was discussed in executive session or that the board member exerted and influence over the hiring. The board member did not vote on his brother's hiring. Dority vs Charles Palumbo, 2006:July 25

Principal's letter regarding student suspension may not be expunged. N.J.A.C. 6A:32-7.8(b) allows student records which are no longer educationally relevant to be destroyed only while the student is still enrolled in a district. Student had permanently left the district and moved to Pennsylvania. Disposal of the records of a student who has left the district is governed by the Destruction of Public Records Law, which mandates that student disciplinary records be maintained until two years after the student's graduation or termination from the school system or age 23, whichever is longer. Since the student had not reached the age of 23, the student record was not ripe for destruction. S.S. and E.S. o/b/o E.S. vs Union Township Bd. of Ed., 2007:August 24

Parent's motion to recover fees and costs charged by a consultant for her services, under IDEA, was properly denied as parent was not a prevailing party by virtue of having obtained an acceptable IEP because parent and school district developed an IEP through negotiations out of court, and no court endorsed the agreement with a judicial imprimatur. A.W. vs East Orange Board of Education, 2007:Sept. 14

Insufficient evidence to determine whether the 36 documents requested, or portions thereof, were exempt from access. Request had been made for all documents, e-mails, reports and studies on proposed school locations. Interim Order - GRC to perform in camera examination of the requested records. Jennifer Dressel vs Monroe Township Board of Education, 2006:Dec. 14

Motion to dismiss denied. Plaintiff alleged facts sufficient to state a conspiracy between the local education association and superintendent of schools such that the local education association could be considered as acting under the color of state law for the purposes of § 1983 liability. The allegations raised were sufficient to allege that the local 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 Educ., Civil Action No. 05-70(NLH), 2007 U.S.

Former tenured athletic director failed to establish that board of education violated his tenure, seniority and/or preferred eligibility rights when it appointed a non-tenured individual to the position of Assistant Principal for Athletics and Student Activities. Winthrop McGriff vs Board of

Education of the Township of Montclair, 2006:July 13

Preliminary injunction was warranted allowing two students to continue to wear to school buttons featuring a photograph of the Hitler Youth as a protest against school uniforms; it was likely that First Amendment claims would succeed because it had not been shown that the buttons had caused a disruption or a fear of disruption at school. The buttons were not vulgar, lewd, obscene, or plainly offensive and therefore could not be barred on that basis; the photograph was not profane and did not contain sexual innuendo. Stifling of the students' protected expression constituted irreparable harm. DePinto vs Bayonne Board of Education, 2007:Sept. 19

Appellate Division affirms Law Division order granting summary judgment to defendants and dismissing plaintiff's personal injury complaint. Matter involved student who missed the bus, tried to catch up to the bus and was struck by a car while crossing the road. Andrew Snyder, individually, Barbara Snyder and Gene Snyder, his parents vs. William J. Payne, Jr., Buena Board of Education and Judy Goodwin Unpublished Opinion, Dkt. No. A-3476-05, Decided November 28, 2006.

Principal's letter regarding student suspension may not be expunged. N.J.A.C. 6A:32-7.8(b) allows student records which are no longer educationally relevant to be destroyed only while the student is still enrolled in a district. Student had permanently left the district and moved to Pennsylvania. Disposal of the records of a student who has left the district is governed by the Destruction of Public Records Law, which mandates that student disciplinary records be maintained until two years after the student's graduation or termination from the school system or age 23, whichever is longer. Since the student had not reached the age of 23, the student record was not ripe for destruction. S.S. and E.S. o/b/o E.S. vs Bd. of Ed. of the Township of Union, 2007:August 24

Appellate Division affirmed an order for summary judgment dismissing school board's complaint in lieu of prerogative writs against the City, the 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 vs City of Elizabeth, 2007:Sept. 28

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 conducted on an expedited basis to occur prior to student's graduation, since it would be rendered moot upon graduation. (C.W., Comm'r., 2008:June 13).

Home instructors act in the place of other teachers, are essentially substitute teachers, and do not accrue time toward tenure acquisition. Petition for certification denied. Donvito v. Board of Educ. of the N. Valley Reg'l

High Sch., 188 N.J. 577; 911 A.2d 69; 2006 N.J. LEXIS 1740, Decided, November 9, 2006.

High school music teacher alleged that his contract non-renewal constituted First Amendment Retaliation under 42 U.S.C. § 1983 and age discrimination pursuant to the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621 et seq. and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. No evidence was presented, either direct or circumstantial, that cast sufficient doubt on the board's articulated reasons for refusing to renew Plaintiff's employment contract. Summary judgment was granted as to all claims. Saia v. Haddonfield Area Sch. Dist., Civil Action No. 05-2876, 2007 U.S. Dist. LEXIS 67018, (D. N.J. September 10, 2007)

Certiorari denied where non-tenured teacher asserted that his non-renewal violated 42 U.S.C. 1983 and 1981. Bradford v. Township of Union Public Schools, 2006 U.S. LEXIS 4030, (May 22, 2006)

The Court dismissed claims against the school board and the school for punitive damages and any claims insofar as they involved crimes or intentional, willful misconduct on the part of a physical education teacher, who had taped student to a chair during class; however, claims for the negligent infliction of emotional distress were not barred against the board and school, and would turn on whether a jury finds that the teacher was acting within the scope of his employment. (M.K. v. Hillsdale Bd of Ed., No. 06-1438, 2006 U.S. Dist. LEXIS 55683, (D.N.J. June 28, 2006).

Commissioner determined that Type II district lacks the statutory authority to appoint a business manager; N.J.S.A. 18A:17-25. (Ruby, II, Commr., 2007: Jan. 22).

Educational Services Commission decision to factor the cost of sick leave benefits into the cost of providing a nurse to a non-public school to provide health care services was neither arbitrary, capricious, unreasonable nor unlawful. Commission had deducted sick leave benefits for absent nurses from the total Chapter 226 funds, reducing the number of hours of nursing services. Monmouth-Ocean Educational Services Commission vs New Jersey State Department of Education, 2006:August 11

Department of Education wrongfully disallowed use of $34,543 in Title I monies on the grounds that the charter school had "encumbered" the funds prior to the commencement date of its fiscal year. Commissioner agreed with ALJ that "encumbering" funds was distinguishable from "obligating" funds and was not violative of federal regulations. Department's order to reimburse Title I funds reversed. East Orange Community Charter School vs New Jersey State Department of Education, 2006:July 19

Appellate Division affirms trial court ruling dismissing plaintiff's complaint without costs and ordering the Board's counsel to supply its members with a copy of the trial court's opinion, as well as to provide a copy to plaintiff. Plaintiff had alleged various violations of the OPMA and OPRA regarding three closed session meetings of the board to discuss litigation. Plaintiff had received a copy of the unredacted minutes prior to oral argument.

Trial court's decision was well reasoned and an appropriate exercise of the court's discretion. Martin O'Shea vs West Milford Board of Education, 2006:Dec. 20

Appellate Division affirmed Law Division grant of summary judgment in favor of town and school district in slip and fall case on the grounds of common-law snow and ice removal immunity. Student was injured after early dismissal for bad weather. Even viewing the facts in the light most favorable to the plaintiff, the school board did not owe a duty, nor did it commit a breach under these facts. There was no duty on the part of the school system to hold students in bad weather. On the contrary, it was in the best interests of the students safety to end school early, before the increased snowfall created even worse traveling conditions. Navarette vs Town of Dover and Board of Education of Dover, 2006:Nov. 6

Appellate Division affirms State Board's affirmance of Commissioner's decision.Respondent tenured assistant principal removed from position due to unbecoming conduct. Issues included failure to review plan books, handle disciplinary matters, supervise a lunch room and inappropriate actions in special education matters. Petition for certification denied. In re Tenure Hearing of Sarduy, 188 N.J. 576, Decided November 6, 2006.

Board appealed a final determination of the Director of the Office of Administrative Law, finding that its law firm was disqualified from representing the Board in this tenure matter involving the Superintendent of Schools. Law firm, on behalf of the board, had represented the superintendent in an FMLA matter. Appellate Division affirmed. (Kittrels, Commr., 2008:August 26)

State Board of Education affirmed State Board of Examiners two-year suspension of appellant's teaching certificates for conduct unbecoming a teacher. Matter involved DYFS substantiated allegations of sexual misconduct at an overnight field trip to the Penn Relays. (Younger, St. Bd., 2006: Jan. 4) Appellate Division affirms, finding that the State Board's determination was supported by the record and was not arbitrary, capricious nor unreasonable. (I.M.O. the Suspension of the Certificates of Corey Younger By the State Board of Examiners, No. A-2800-05T32800-05T3 (App. Div. Nov. 15, 2006) (slip op.).

Appellate Division affirms trial court order holding that defendant and her mother, who was also the child's guardian, neglected the child by failing to provide him with a regular school education. The trial court specifically found that the family's oppositional and defiant behaviors directly impacted the child's attendance and participation in an appropriate educational program. As a result, the family failed to provide the with a regular school education as required by law, and the trial court found the child to be abused and neglected pursuant to N.J.S.A. 9:6-8.21. New Jersey Division of Youth and Family Services vs S.S., 2006:Dec. 28

Board maintained significant autonomy despite gubernatorial control over appointment of three board seats and veto authority over board actions. Gubernatorial appointment authority weighed slightly in favor of

autonomy, therefore favoring 11th Amendment immunity from suit. But see, Financial Liability as a determining factor. Febres vs Camden City BOE, 2006:April 18

District court erred by considering school district's official policy banning all religious music from the public schools, when it granted district's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Father's action, pursuant to the First Amendment and 42 U.S.C.S. § 1983, did not rely on the official policy; he never quoted the policy, which was less restrictive than the father claimed. Father claimed that district policy conveyed a government message of disapproval and hostility toward religion. Matter remanded to afford the father a chance to show that the policy in place was different from the official policy. Stratechuk v. Bd. of Educ. , No. 05-4703, 2006 U.S.

Gubernatorial veto authority under the MRERA did not abrogate board's status as a separate political entity thus weighing against 11th Amendment immunity from non-consensual litigation. But see, Financial Liability as determining factor. Febres vs Camden City BOE, 2006:April 18

Third Circuit determined that the board was not an arm of the state for 11th Amendment purposes and therefore not protected against federal suits brought by private parties. Febres vs Camden City BOE, 2006:April 18

Tenured vice principal who was transferred from a 12-month high school vice principal position to a 10-month elementary school vice principal position alleged that the transfer was retaliatory, in bad faith and would result in a lesser future salary expectation. Vice principal began his new position on August 31, but did not file his petition until December 2006, beyond the 90-day limitation period. Even if petition were not time barred, previous case law has established that future increases in salary or salary expectation are not appropriate factors in considering the validity of a transfer. Petition was dismissed. (Wilbeck, Commr., 2007:July 9)

Motion to appeal magistrate's order denying amendment of pleadings and inclusion of supplemental report denied. Board motion for summary judgment on due process claim regarding N.J.S.A. 18A:16-2 physical examination for teacher fitness for duty granted. Federal and state courts have found that there is no procedural due process violation when N.J.S.A. 18A:16-2 is properly implemented. Phillips v. Greben, Civil Action No. 04-5590 (GEB), 2006 U.S. Dist. LEXIS 78419, (D. N.J. October 27, 2006)

Neither tenure nor seniority rights were implicated where district eliminated reading teacher position and transferred tenured reading teacher to position of Sylvan Reading Lab teacher. Teacher was not RIF'd but lawfully transferred to another position within the scope of his instructional certificate. Thomas Derby vs Camden City Board of Education, 2006:March 1

State Board affirms Comm'r ruling that neither tenure nor seniority rights were implicated where district eliminated reading teacher position and transferred tenured reading teacher to position of Sylvan Reading Lab

teacher. Teacher was not RIF'd but lawfully transferred to another position within the scope of his instructional certificate. Thomas Derby vs Camden City Board of Education, 2006:March 1

The Court agreed with the State Board of Education that N.J.S.A.18A:40-3.3 does not require the physical presence in a school building of a certified school nurse at all times during which a non-certified nurse is regularly scheduled to perform supplementing services to the certified school nurse. Ramsey Teachers' Association vs Ramsey Board of Education, 2004:September 1

Appellate Division affirmed the final administrative determination of the Board of Trustees of the Public Employees' Retirement System (PERS), which denied a former school district employee's request for leave to retire from PERS with veteran retirement benefits. The Court held that under N.J.S.A. 43:15A-61, a government employee must remain actively engaged in his or her office, position, or employment until he or she attained the age and service requirements to qualify for veterans' benefits upon retirement. Robert McKenzie vs Board of Trustees of the Public Employees Retirement System, 2006:Dec. 26

Financial liability of the state weighed against 11th Amendment immunity for school board where state was not obligated to pay a civil judgment entered against the district, event though state provided the vast majority of district funding and from a practical standpoint, state funds would be used to pay the civil judgment. Once deposited in district accounts, the funds belonged to the board. Febres vs Camden City BOE, 2006:April 18

Suit challenging the validity of the regulations that set standards for payments in lieu of unused sick and vacation leave to school district business administrators was rejected. Further regulations on nepotism upheld. Commissioner's power was not in material conflict with any statute and did not set forth an unauthorized extension of power. New Jersey Ass'n of Sch. Bus. Officials v. Davy, 409 N.J. Super. 467 (App.Div. 2009)

Settlement agreement rejected. An unidentified person signed the Agreement on behalf of the Board, neither the file nor the agreement includes a copy of the Board resolution approving the settlement and designating such individual to sign the agreement on its behalf; nor, in the alternative, is the agreement signed by the Board attorney, who is the Board's duly authorized representative in litigation. Brown, Commr. 2009: September 15

Appellate Division affirmed Board of Review denial of permission to conduct a withdrawal referendum; withdrawal would result in an excessive debt burden for River Edge and would interfere with maintenance of an efficient system of education in that district without excessive costs. In Re: Petition For Authorization To Conduct A Referendum On The Withdrawal Of The Borough Of Oradell From The River Dell Regional School District, 406 N.J. Super. 198 (App. Div. 2009).

Where stipulation of settlement includes neither signature of the Jointure Commission's attorney nor resolution approving the settlement and designating who may execute it on behalf of the Commission, matter will

be remanded to revise as to signatures, or if parties unable/unwilling to agree, for hearing. South Bergen Jointure, Commr. 2009:Dec. 11.

Parent challenged school district's ability to test students to determine grade placement after a year of home schooling. Emergent relief application was denied as "it is well settled that school districts may test children to determine grade placement" and "the statutes specifically reserve to the local school district the right to prescribe its own rules for promotion." Final decision raised issues of tutoring under NCLB, for which there is no private right of action, slander or libel, which can be adjudicated in Superior Court and civil rights and discrimination claims which can be brought to the Division of Civil Rights. Petition was dismissed. R.W., Commr. 2009: October 30

Commissioner dismisses as untimely, a student's constitutional challenge to district's zero tolerance drug policy as applied to his possession of an over- the- counter- allergy pill; however, separate challenge on facial constitutionality is outside jurisdiction of Commissioner but may be refiled in Superior Court. A.S., Commr. 2009:Dec. 16.

Middle school social studies teacher appealed non-renewal notwithstanding CSA recommendation. Non-renewal was performance based, including petitioner's reliance on showing videotapes during class, insufficient parent contacts, and failure to adequately maintain her classroom. Petition was dismissed. Board of education possesses broad discretion in renewing the contract of non-tenured teaching staff members; the burden of proof rests upon the petitioner to show that the Board's non-renewal decision was arbitrary, capricious or unreasonable; and respondent's non-renewal determination is supported by credible evidence and was not arbitrary or capricious. Pamela Kondratick vs Board of Education of the Borough of Hamburg, 2009:September 29

Student suffered injury to nose in floor hockey in gym class. Summary judgment appropriate where tortfeasor's conduct was not reckless or intentional. The "societal importance" of mandatory physical education, as embodied in the legislative mandate of N.J.S.A. 18A:35-5 and -7, warrants such a heightened standard. Saracino v. Toms River Reg'l High Sch. East, 2009 N.J. Super. Unpub. LEXIS 2623 (App.Div. Oct. 20, 2009)

Student of separated parents, who resided with father while mother recuperated from illness in another town, was resident of father's school district. Board's decision to disenroll student reversed. M.K., Commr. 2009: August 26

Court affirms Merit System Board's action to affirm Newark School District's decision to resign teacher's aide not in good standing and to remove her from employment, for taking unapproved absence from work for five or more consecutive days and chronic absenteeism; also, she could not argue ineffective assistance of counsel. 2008 N.J. Super. Unpub. LEXIS 1151 (May 28, 2008); Petition for certification denied, Irvin v. Newark Sch. Dist., 199 N.J. 133 (April 23, 2009.)

Board's long term suspension of student for incident involving profanity,

threatening behavior and intimidation, combined with student's record of disciplinary infractions was not arbitrary, capricious or unreasonable. Board's discipline upheld. A.F., Commr. 2009: September 15

Board members were not entitled to legislative immunity in matter where court determined that board of education violated board attorney's procedural due process rights by permitting sending-district representatives to vote on the attorney's appointment to the receiving district. Sending-district participation was beyond parameters established by the Legislature and therefore the appointment was not procedurally legislative. Gallagher v. Atlantic City Bd. of Ed., Civil No. 08-3262, 2009 U.S. Dist. Lexis 16548 (D. N.J. Feb. 27, 2009).

Court affirms summary judgment dismissal of plaintiff's claim (and husband's per quod claim) for injury that resulted when she fell on ice in the school parking lot, as doctor reports showed that the injury had fully healed and was not permanent and thus her injuries failed to satisfy the requirements of the Tort Claims Act. Acevedo v. Edgewater Pk. Bd. of Ed., App. Div. unpublished decision (A-1397-08, August 17, 2009)

SEC dismisses complaint filed against board members who voted to censure the CSA at a meeting and at a work session voted to rescind the resolution. SEC does not have the authority to review board actions where there is no allegation that the members were conflicted, but where the challenge is to the substance or subject of the board action. SEC has authority to sanction individuals, not the Board as an entity, nor may it set aside a Board's determination. Dericks et al. v. Johnson et al., SEC 2009: Oct. 27.

After board adopted a dress code policy, parents contested the constitutionality of the law authorizing boards to adopt dress code policies. Appellate Division upheld the district dress code policy. Statute was deemed constitutional even though it failed to contain an opt-out provision; the law was neither vague or overbroad. Board policy was adopted in conformance with statute. Dempsey v. Alston, 405 N.J. Super. 499 (App. Div. 2009) certification denied, Dempsey v. Alston, 199 N.J. 518 (May 21, 2009)

Commissioner reinstates and denies parent's application for emergent relief claiming that restrictions placed on her access to school property are unlawful and make it impossible for her to send her 8-year old child to school; Commissioner grants board's counterclaim for interim judgment requiring the parent to send her son to the district school or some other school; Commissioner directs Board to initiate truancy proceedings if parent fails to provide schooling for her son within a week. A.M.M. o/b/o G.M., Commr. 2009:Nov. 30.

Appellate Division affirmed Commissioner's decision upholding teacher of mathematics' non-renewal by the board. School district's lack of full compliance with the mentoring and evaluation program did not prevent non-renewal. The Commissioner decision was overwhelmingly grounded in substantial credible evidence in the record as a whole, and was not arbitrary, capricious or unreasonable. The court found the decision to be a

fair and reasonable implementation of applicable law and legislative policies. El-Hewie v. Bd. of Ed. Voc. Sch. Dist., 2009 N.J. Super. Unpub. LEXIS 3116 (App. Div. Dec. 24, 2009.)

Appellate Division affirmed Board of Review denial of permission to conduct a withdrawal referendum; withdrawal would result in an excessive debt burden for River Edge and would interfere with maintenance of an efficient system of education in that district without excessive costs. In Re: Petition For Authorization To Conduct A Referendum On The Withdrawal Of The Borough Of Oradell From The River Dell Regional School District, 406 N.J. Super. 198 (App. Div. 2009).

Board of education did not violate the NJLAD when Biddy Basketball League, which used board of education facilities, refused 12 year old girl's request to play on 5th and 6th grade boys team. J.A. v. Vill. of Ridgewood Bd. of Educ., No. 07-1179 (DRD), 2009 U.S. Dist. LEXIS 41100 (D.N.J. May 13, 2009.)

Custodian of government records may adopt a form for requesting access to a government record, and may require specific reasonable procedures that need not include every method of transmission mentioned in N.J.S.A. 47:1A-5(g); thus where custodian required that requests be made by mail or hand-delivery, he was not required to honor request for access made by fax. Paff v. City of East Orange, 407 N.J. Super. 221(App. Div. 2009) (May 21,2009)

Board's use of a private contractor rather than a school employee to provide speech language services to a classified minor child was challenged. School district speech therapist received no loss of pay or benefits as a result of this decision. As there was no allegation of any violation of tenure, seniority rights, or any other school law rights, the matter was dismissed for lack of jurisdiction. Long Beach Island Education Association, Commr. 2009: October 13

Board did not act arbitrarily in discontinuing courtesy transportation to domestic violence shelter that operates before and after-school daycare; dismisses petition by daycare center as board's decision resulted from periodic rotation of bus routes under its uniformly applied policy, to achieve cost efficiencies. (Strengthen our Sisters, Commr. 2009:July 8)

Appellate Division affirmed Commissioner decision that the board of education substantially complied with the notice requirements of N.J.A.C. 6A:10A-2.3(b), and the Department of Education (DOE) did not err in affirming the school board's decision not to renew the Toddler Town contract. Toddler Town Child Care Ctr. v. Bd. of Educ., (A-5749-07T2) 2009 N.J. Super. Unpub. LEXIS 728, (App.Div. April 28, 2009.) Certification denied by Toddlertown v. Bd. of Educ. of Irvington, 2009 N.J. LEXIS 826 (N.J., July 16, 2009)

Commission dismisses complaint where the respondents allegedly violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f) and (h) for violating board policy and for failing to maintain objectivity. SEC has no jurisdiction to consider whether a board member violated board policy, nor was there any decision

from a court or administrative agency showing that he failed to enforce school laws or bring about changes through unethical or illegal procedures. Bouyer v. Walker SEC, 2009 Dec. 15

Trial court did not err in vacating an arbitration award that would reverse the state monitor's RIF of twenty-two non-tenured special education aides; the award ignores monitor's function to implement policies to achieve sound fiscal management of the District, and is contrary to existing law and public policy; fact that there was no "just cause" for termination under the contract was irrelevant because a RIF is not arbitrable; award must be vacated as a "mistake of law." Pleasantville Board of Education v. Pleasantville Education Association, App. Div. unpublished decision (A-2123-08T3 Aug. 25, 2009)

Appellate Division affirms Commissioner's dismissal of petition challenging charter school settlement of school construction finance related litigation. Board of trustees' decision was neither arbitrary nor capricious and was entitled to deference. Crapelli v. Bd. of Trs. of the Red Bank Charter Sch., (A-6216-07T3) 2009 N.J. Super. Unpub. LEXIS 1656 (App Div. June 23, 2009).

Parent was unsuccessful in invasion of privacy claim that PTA exploited her daughter for its commercial benefit by selling videotape of play in which she tripped; parent signed consent form issued by board, proceeds went to charity, only incidental use of her likeness, any damage merely speculative; case interesting for its analysis of tort of invasion of privacy. Jeffries v. Whitney Houston Academy PTA and East Orange BOE, App. Div. unreported decision (A-1888-08T3, July 20, 2009)

Court grants motion to reconsider; holds that insurer's duty to defend the board in litigation did not convert into a duty to reimburse and that insurer is responsible for cost of defense up to point in time that covered claim was eliminated; insurance company is entitled to reimbursement for payments it made for the Board's defense incurred after that point. N. Plainfield Bd. of Ed. v. Zurich Am. Ins. Co, No. 05-4398 (MLC), 2009 U.S. Dist. LEXIS 68175 (D. N.J. August 5, 2009)(not for publication)

In an altercation between a police officer and a parent over the improper parking of the parent's car on school property, summary judgment granted for school district where facts alleged do not create sufficient nexus between police conduct and the district. Rothman v. City of Northfield, 2009 U.S. Dist. LEXIS 91310 (D.N.J. Sept. 30, 2009)

Board of education erred when it disqualified a candidate's nominating petition because the candidate was unregistered to vote when she assented to the candidate's acceptance and oath of allegiance, even though she properly registered to vote before timely filing her nominating petition. Board was directed to accept the nominating petition. Algarin v. Haledon, 408 N.J. Super. 266 (L. Div. 2009)(Passaic Cty, April 1 2009) (approved for publication June 25)

BOARD MEMBERSHIP

Appointment/Vacancy

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. (05:Nov. 2, Graham)(05:Nov. 2, Manley)(05:Nov. 2, Rose)(05:Nov. 3, Repella)(05:Nov. 3, Shimp)(05:Nov. 7, Betances)(05:Nov. 9, Candio)(05:Nov. 9, James)

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Manley, Commr. 2005: Nov. 2.

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Graham, Commr. 2005: Nov. 2.

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Long-Brooks v. State-Operated School District of Newark, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Young v. PleasanTech Academy Charter School, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Williams v. State-Operated School District of Newark, 2006:Jan. 27

Commissioner suspended board member who failed to file ersonal/relative and financial disclosure statements within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 26. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. Woodrow v. Beverly City, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Moses v. Newark, 2006:Jan. 25

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Motley v. Newark, 2006:Jan. 24

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Mitchell v. Newark, 2006:Jan. 24

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Marchado v. Newark, 2006:Jan. 24

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Outlaw v. Newark Bd. of Ed., 2006:Jan. 24

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. James v. Beverly Bd. of Ed., 2005:Nov. 19

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Crawford v. Newark, 2006:Jan. 27

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Candio v. Sussex County Charter School, 2005:Nov. 9

Commissioner suspended board member who failed to file ersonal/relative and financial disclosure statements within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 26. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. James v. Beverly City Bd. of Ed., 2006:Jan. 27

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Rose, Commr. 2005: Nov. 2.

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Cepero v. Newark, 2006:Jan. 27

Commissioner censured board member who failed to attend orientation training. Board member had resigned from board. (Caballero, Commr., 2006: Oct. 18).

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days

of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Parilla v. Newark, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Davis v. Newark, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Spencer v. Newark, 2006:Jan. 27

Commissioner suspended board member who failed to file personal/relative and financial disclosure statements within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 26. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. Bonds v. Newark, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Love v. Newark, 2006:Jan. 27

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. Lorenzini v. Northvale Bd. of Ed., 2006:Jan. 27

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Betances v. Guttenberg Bd. of Ed., 2005:Nov. 7

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Repella v. Queen City Academy Charter School, 2005:Nov. 3

Commissioner accepted SEC order suspending board member if she failed to attend New Board Member Orientation in October 2005 and removal from the board if she failed to attend the January 2006 training. Shimp v. Quinton Bd. of Ed., 2005:Nov. 3

Commissioner suspended board member who failed to file ersonal/relative and financial disclosure statements within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 26. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. Robinson v. Chesilhurst, 2006:Jan. 31

Conflict (12-2)

Board member, wife and adult son residing in the home, acted as a "single family unit" for N.J.S.A. 18A:12-2 analysis. Fact that wife handled family's financial affairs and had all direct dealings with

son, could not insulate board member from conflict. Palmyra, Commr. 2005: June 8.

Prohibited interest found where board member's emancipated son, residing in the home and paying rent, filed Notice of Tort Claim against district. Indirect financial benefit to board member where damage award would be used to offset costs of undergraduate education. Palmyra, Commr. 2005: June 8.

Appellate division reversed order disqualifying plaintiff's attorney from continuing representation of former high school district employee in action arising under the Conscientious Employee Protection Act (CEPA). Trial court disqualification was based on a telephone conversation in which the attorney allegedly discussed with a member of the board of education of the defendant high school district the subject matter underlying the CEPA claim. While plaintiff's attorney, who had represented the board member in another matter, called the board member to discuss the board's extension of the superintendent's contract. Martucci v. Freehold Regional, 2005:June 5

Appellate Division upheld State Board of Education removal of board member who had filed a complaint against the board alleging a violation of a consent order regarding his disabled child. The complaint disqualified the member from continuing in office, despite the conduct-based exception contained in the School Ethics Act. A member must be qualified for office before his conduct can be regulated. Sea Isle City Bd. of Ed. v. Kennedy, 393 N.J. Super. 93 (App. Div. 2007). Certif. granted 192 N.J. 478 (2007) Sept. 5, 2007 (2007 N.J. LEXIS 1076)

Discipline

Commissioner reprimanded board member for late filing of annual disclosure statement. (Cole, Commr., 2006:Dec. 14).

Commissioner reprimanded board member who failed to fle required disclosure statement in a timely manner. (Day, Commr., 2006: Dec. 13).

Board member removed for failing to filing annual disclosure statement. Removal also based on late filing previous year. (Pope, Commr., 2006: Dec. 13). See also, (Pope, Commr., 2006: Jan. 27).

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Antine, Commr., 2006: Dec. 11)

Board member reprimanded for failing to timely file disclosure statement. (Hurst, Commr., 2006: Dec. 12).

Board member reprimanded for failing to timely file disclosure statement. (Walilko, Commr., 2006: Dec. 12).

Commissioner rejected SEC penalty recommendation where personal difficulties lead to late filing of disclosure statement for school administrator. (Cole, Commr., 2006: Dec. 12).

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Dooley-Malloy, Commr., 2006: Dec. 12). Board member censured for failure to timely file disclosure statement. District cited for failure to process statements when filed. (Dooley-Malloy, Commr., 2007:April 27).

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Dooley-Malloy, Commr., 2006: Dec. 12). Board member censured for failure to timely file disclosure statement. District cited for failure to process statements when filed. (Dooley-Malloy, Commr., 2007:April 27).

Commissioner censured board member for failing to file required disclosure statements. Initial order of suspension modified in light of the fact that required disclosure statements were filed before Commissioner's decision was filed. (Wright, Commr., 2006; Dec. 26). See prior decision at (Wright, Commr., 2006: Dec.

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. See subsequent decision at, (Pope, Commr., 2006: Dec. 13)

Commissioner censured board member for failing to file required disclosure statements. Initial order of suspension modified in light of the fact that required disclosure statements were filed before Commissioner's decision was filed. (Castano, Commr., 2006: Dec. 26) See also (Castano, Commr., 2006: Dec. 12)

Commissioner suspended board member who failed to file personal/relative and financial disclosure statements within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 26. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. (SEC removed decision from SEC website at request of respondent.) Harrison-Bowers v. New Horizons Community Charter, 2006:Jan. 24

SEC recommended suspension of board member who failed to file annual disclosure statement. If no statement filed within 30 days, SEC recommended removal. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. (SEC removed decision from SEC website at request of respondent.) Harrison-Bowers v. New Horizons Community Charter, 2006:Jan. 24

State Board of Education granted School Ethics Commission and Commissioner motions to participate in appeal of reprimand of board member. ESC board member voted to award contract to county technical institute where she was employed as

superintendent. (Lobosco, St. Bd. decision on motion, 2006: June 7). Affirmed by the State Board.

Commissioner suspended board member who failed to file personal/relative and financial disclosure statements within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 26. Commissioner ordered removal if disclosures were not filed within 30 days of suspension. Bonds v. Newark, 2006:Jan. 27

School Ethics Commission Acting Commissioner motions to participate in appeal of two-month suspension of board member granted. Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members in the School Ethics Act when she took private action in confronting a member of the public in a verbal and physical manner regarding his comments during the public comment session at a board meeting. State Board upholds two-month suspension. (Talty, St. Bd. 2006: Nov. 1).

Board member sent an email to the superintendent, criticizing the superintendent's handling of a matter involving the board member's spouse and asking for an accounting of the superintendent's personal leave, copying the entire board of education. The email was sent to the superintendent just hours before a scheduled disciplinary hearing. The SEC accepted the conclusions of the Administrative Law Judge and found that the board member violated N.J.S.A. 18A:12-24 (b) and (c) of the Code of Conduct and N.J.S.A. 18A:12-24.1 (c) and (i) of the Code of Ethics for School Board Members. The SEC recommended a three month suspension for the board member. Kanaby v. Hillsborough Bd. of Ed., 2007:Sept. 10

Board member threatened a member of the public with profanity at as board meeting, a private action that could compromise the board, violative of N.J.S.A. 18A:12-24.1 (e). Any time a board member reacts in a threatening manner toward a member of the public attending a board meeting, it has the potential to compromise the board. The threat was also one of the most egregious violations of the public trust that a board member could commit. SEC recommended one year suspension for the board member. (Atallo, SEC, 2007:July 24). Commissioner reduced penalty to three month suspension as being inconsistent with prior decisions and insufficiently supported.

Board member threatened a member of the public with profanity at its board meeting, a private action that could compromise the board, violative of N.J.S.A. 18A:12-24.1(e). Any time a board member reacts in a threatening manner toward a member of the public attending a board meeting, it has the potential to compromise the board. The threat was also one of the most egregious violations of the public trust that a board member could commit. SEC recommended one year suspension for the board member. (Atallo,

SEC, 2007:July 24). Commissioner reduced penalty to three month suspension as being inconsistent with prior decisions and insufficiently supported.

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Fox, Commr., 2006: Dec. 11)

Board member reprimanded for failing to file disclosure statement in a timely manner. Board member to be summarily removed if disclosure statement not filed by a date certain. (Brazille, Commr., 2006: Dec. 12).

Commissioner censured board member who failed to attend orientation training. Board member had resigned from board. (Caballero, Commr., 2006: Oct. 18).

Appellate Division reverses State Board decision that suspended a board member for one year for threatening a member of the public at a public board meeting. Court says the State Board erred in upholding the SEC's rejection of the ALJ's credibility determinations. Although the SEC was entitled to reject the ALJ's factual determinations, it was required to defer to her credibility determinations that the board member had not in fact threatened a member of the public at the meeting. In re Atallo, 2009 N.J. Super. Unpub. LEXIS 606 (App. Div. March 20, 2009)

Board member removed where adult son, residing in board member's home, filed notice of tort claim against the district, despite the fact that adult son paid rent and was not claimed by board member as dependent for tax purposes. Palmyra, Commr. 2005: June 8.

In a corrected decision, Commissioner censured a board member who failed to file the required disclosure statements in a timely manner (Chiaravallo, Commr., 2006: Dec. 22). See also original decision at (Chiaravallo, Commr., 2006: Dec. 12).

Disqualifying Conflicts of Interest

Board member's spouse's Workers' Compensation claim against the school district was an inconsistent interest precluding board membership under N.J.S.A. 18A:12-2. Where the spouse's claim existed when the board member assumed office, his membership on the board was susceptible to being declared void. Commissioner further held that the provisions of N.J.S.A. 18A:12-2 do not apply to board candidates whose conflict is capable of being cured prior to seating if the candidate is elected. (See Thomas v. Edwards, State Board, November 3, 1993) Commissioner did not remove respondent from his position on the board. The Board and respondent were deemed equally culpable. Barnegat Twp. v. Houser, 2007:July 30

Where a board member's claim is intended to vindicate the public interest, instead of accruing to the board member's personal benefit, the board member is not subject to disqualification, but may be

required to abstain from discussions and votes regarding the matter. Sea Isle City Bd. of Ed. v. Kennedy, 393 N.J. Super. 93 (App. Div. 2007).Certif. granted 192 N.J. 478 (2007) Sept. 5, 2007(2007 N.J. LEXIS 1076)

A public official's interest in a matter need not be pecuniary in nature for the prohibition contained in N.J.S.A. 18A:12-2 to apply. The question is whether the officer, by reason of a personal interest in a particular matter, is faced with the temptation to serve his own purposes to the prejudice of his constituents. Sea Isle City Bd. of Ed. v. Kennedy, 393 N.J. Super. 93 (App. Div. 2007).Certif. granted 192 N.J. 478 (2007) Sept. 5, 2007(2007 N.J. LEXIS 1076)

Commissioner removed board member who had previously been suspended upon filing Notice of Tort Claim against the district. (Cedar Grove, Commr., 2007: April 30).

The Appellate Division determined that a planning board member who lived with her boyfriend, the principal of the engineering firm that employed the planning board engineer, must disqualify herself from applications in which the board's engineer reviews the application and provides recommendations to the board. Randolph v. City of Brigantine Planning Board, 963 A.2d 1224; 2009 N.J. Super. LEXIS 25 (App. Div. 2009). 405 N.J. Super 215

Petitioners sought injunction of board's reorganization meeting pending the outcome of election results. State Board dismissed appeal of Commissioner's decision for failure to file a supporting brief. Steele v. Atlantic City Bd. of Ed., 2006:August 2

Election

Commissioner ordered board to convene on May 26, 2006 to conduct annual reorganization meeting and to seat three newly elected members. Steele v. Atlantic City Bd. of Ed., 2006:August 2

Board of education erred when it disqualified a candidate's nominating petition because the candidate was unregistered to vote when she assented to the candidate's acceptance and oath of allegiance, even though she properly registered to vote before timely filing her nominating petition. Board was directed to accept the nominating petition. Algarin v. Haledon, 408 N.J. Super. 266 (L. Div. 2009)(Passaic Cty, April 1 2009) (approved for publication June 25)

Ethics

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) and (b) when he failed to submit documents to DOE in a timely fashion causing the school to be placed on probation and jeopardizing the educational welfare of the students. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) and (e) when he signed several checks without board authorization, including several checks to himself. Pursuant to N.J.S.A. 18A:19-

1, prior to the expenditure of funds, board must approve the expenditure by resolution. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws pertaining to the schools when he conducted a closed session meeting of the board without giving the public adequate notice as required pursuant to the OPMA. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws pertaining to the schools when he sent an e-mail to all trustees dismissing the board secretary from his position in the absence of tenure charges. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) when he hired a cleaning service, owned by another board member, without soliciting bids as required by the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq. Trustee was not acting as an authorized purchasing agent. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24(a) when he knowingly hired an uncertified business administrator without board approval and had him serve as board secretary and treasurer. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(b) by intervening in a dispute between two children and disregarded a child's IEP based behavior modification plan. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(c) and (d) when he lectured teachers about student discipline and threatened to handle suspensions himself. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(c) by failing to confine his actions to policy making, planning and appraisal and (d) by administering the schools when he made direct contact with a charter school employee to ask him to explain a scheduling mix-up after having received an explanation from the Charter School Lead Person. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(e) by failing to recognize that authority rests with the board when he sent an e-mail to all trustees unilaterally dismissing the board secretary from his position. (05:Nov. 9, McCullers)

Board of Trustees president violated N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board and (f) by using the schools for personal gain when he hired a maintenance company to refinish floors in preparation for a visit by representatives of the bank where he was employed without board authority. (05:Nov. 9, McCullers)

Board trustee violated N.J.S.A. 18A:12-24(b) by using her porisiton to secure unwarranted privileges for her husband and son when she voted to approve a contract to her husband's cleaning and

maintenance company, where that company was not the lowest bidder. Board trustee removed. (05:Nov. 2, Funches)

Board trustee violated N.J.S.A. 18A:12-24(b) by using her position to secure unwarranted privileges or advantages when she signed checks made out to her husband's company without board authorization. Board trustee removed from office. (05:Nov. 2, Funches)

Board trustee violated N.J.S.A. 18A:12-24(b) by voting on bill lists that included payments to her husband's cleaning and maintenance company. Trustee had a personal/financial involvement in the company owned by her husband that would reasonably be expected to impair her objectivity. Trustee removed from board. (05:Nov. 2, Funches)

Board trustee violated N.J.S.A. 18A:12-24(c) by acting in her official capacity in a matter in which she had a direct financial involvement that might reasonably be expected to impair her objectivity or independence of judgment when she signed checks made out to her husband's cleaning company. Board trustee removed from board. (05:Nov. 2, Funches)

Board trustee violated N.J.S.A. 18A:12-24(c) when she voted to approve the bid of her husband's cleaning and maintenance company where son was an employee of the company. Trustee had a personal involvement in ensuring the employment of her son. Trustee removed from the board. (05:Nov. 2, Funches)

Board trustee violated N.J.S.A. 18A:12-24.1(g) when she filed a personal/financial disclosure statement that failed to indicate that her husband owned a maintenance business which was under contract to the charter school. Board trustee removed from board. (05:Nov. 2, Funches)

Commission determined that board members did not violate the School Ethics Act by allowing their names and the services they provide to be listed in a resource directory. (SEC 05:Sept. 27, Tourain)

Commission determined that board members did not violate the School Ethics Act by voting in favor of professional services contracts that did not require public advertising and bidding, where friends of the board members worked for companies that received the contracts. (SEC 05:Sept. 27, Tourain)

Commission determined that board president did not violate School Ethics Act by serving as municipal prosecutor during term as board member. Income as municipal prosecutor was fully disclosed and municipal prosecutor is not a member of the municipal governing body. (SEC 05:Sept. 27, Tourain)

Commission determined that board member violated the School Ethics Act when he forwarded an e-mail containing the names of suspended students to other board members. Reprimand recommended. (SEC 05:Sept. 27, Zilinski)

Commission determined that board members did not violate the School Ethics Act when they voted to include dancing in the district curriculum because their daughters liked dance. Board has authority to establish extra-curricular activities in the district. (SEC 05:Sept. 27, Tourain)

Commission determined that board president violated N.J.S.A. 18A:12-24.1(a) and failed to uphold and enforce all laws pertaining to the schools by planning and participating in a public meeting without providing adequate notice of that meeting, by dismissing the board secretary from that position and assigning those duties to the business administrator and by improperly administering the schools. Commissioner recommended censure since member had resigned while the matter was pending. (SEC 05:Sept. 27, McCullers)

Commission determined that board vice-president violated the act when she planned and attended a board meeting without adequate public notice, when she failed to disclose the fact that her husband's company had a cleaning contract with the district and signed checks without board authorization. (SEC 05:Sept. 27, Funches)

Commission determined that chief school administrator did not violate School Ethics Act by failing to disclose an anticipated salary increase. (SEC 05:Sept. 27, Tourain)

Commission dismissed a complaint alleging a violation of the School Ethics Act where respondents attended a press conference and endorsed a political candidate for mayor without board consent or authority. No evidence that respondents were acting in their official capacity in making the endorsement. (SEC 05:Sept. 27, LaPorte)

Commission dismissed complaint alleging that board member violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce the Open Public Meetings Act when she refused to allow public comment. SEC noted that OPMA does not require public comment and provides boards discretion in prohibiting and regulating public participation, (SEC 05:Oct. 25, Durham)

Commissioner accepted SEC determination that board of trustees vice-president violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws pertaining to the schools when she participated in a public meeting without providing adequate notice to the public. Board member removed from board. (05:Nov. 2, Funches)

Commissioner reprimanded board member for a violation of N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board, when he obtained confidential information of suspended students and transmitted that information via e-mail to other board members. (05:Nov. 23, Zilinski)

Commissioner reprimanded board member for a violation of N.J.S.A. 18A:12-24.1(g) by failing to maintain the confidentiality of matters that could needlessly injure individuals or the schools, when he obtained confidential information of suspended students and transmitted that information via e-mail to other board members by taking private actin that could have compromised the board. (05:Nov. 23, Zilinski)

Where respondent board member volunteered in the district, Commission determined that she did not violate the act in contacting building principal about various parent concerns, requested documents from district staff, allegedly disclosed the name of a complaining parent in public session, requesting that another conflicted board member recuse herself from consideration of a matter, discussed board employees' personal matters in private settings or interrupting a meeting between a parent and the board attorney. Respondent's motion for sanctions for the filing of a frivolous complaint granted. (SEC 05:Sept. 27, Lee)

Board trustee violated N.J.S.A. 18A:12-24(b) by using her position to secure unwarranted privileges for her husband and son when she voted to approve a contract to her husband's cleaning and maintenance company, where that company was not the lowest bidder. Board trustee removed. Funches v. Gateway Charter School, 2005:Nov. 2

Board trustee violated N.J.S.A. 18A:12-24(c) by acting in her official capacity in a matter in which she had a direct financial involvement that might reasonably be expected to impair her objectivity or independence of judgment when she signed checks made out to her husband's cleaning company. Board trustee removed from board. Funches v. Gateway Charter School, 2005:Nov. 2

Board trustee violated N.J.S.A. 18A:12-24(b) by using her position to secure unwarranted privileges or advantages when she signed checks made out to her husband's company without board authorization. Board trustee removed from office. Funches v. Gateway Charter School, 2005:Nov. 2

Board trustee violated N.J.S.A. 18A:12-24.1(g) when she filed a personal/financial disclosure statement that failed to indicate that her husband owned a maintenance business which was under contract to the charter school. Board trustee removed from board. Funches v. Gateway Charter School, 2005:Nov. 2

Commissioner accepted SEC determination that board of trustees vice-president violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws pertaining to the schools when she participated in a public meeting without providing adequate notice to the public. Board member removed from board. Funches v. Gateway Charter School, 2005:Nov. 2

Board member, whose spouse was a high school teacher's assistant, indirectly supervised by four assistant principals, directly supervised by a building principal who was, in turn, supervised by an assistant superintendent who was supervised by the superintendent, would violate N.J.S.A. 18A:12-24(c) if he were to participate in the hiring and any employment issues regarding the superintendent. Public could reasonably expect that board member's objectivity and independence of judgment could be impaired. See Advisory Opinions A10-00 and A30-05.

Commissioner ordered censure of board member who administered the schools by instructing staff regarding their job duties and who failed to refer a parent complaint to the chief school administrator. Lahn v. Delsea, 2006:Jan. 23

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) and (e) when he signed several checks without board authorization, including several checks to himself. Pursuant to N.J.S.A. 18A:19-1, prior to the expenditure of funds, board must approve the expenditure by resolution. McCullers v. Gateway Charter School, 2005:Nov. 9

Board member violated N.J.S.A. 18A:12-24.1(c) of the Code of Ethics when she made an ethnically derogatory remark about a student project. Public statement was not limited to policy making, planning and appraisal. Jackson v. Galloway Community Charter, 2006:Jan. 24

Board of Trustees president violated N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board and (f) by using the schools for personal gain when he hired a maintenance to re-finish floors in preparation for a visit by representatives of the bank where he was employeed without board authority. McCullers v. Gateway Charter School, 2005:Nov. 9

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) when he hired a cleaning service, owned by another board member, without soliciting bids as required by the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq. Trustee was not acting as an authorized purchasing agent. McCullers v. Gateway Charter School, 2005:Nov. 9

SEC dismissed a complaint alleging that a board member violated N.J.S.A. 18A:12-24(b) and (c) when he attended an executive session meeting where his brother's hiring in the position of cafeteria manager was discussed. No evidence was presented that his brother's employment was discussed in executive session or that the board member exerted and influence over the hiring. The board member did not vote on his brother's hiring. Dority v. Palumbo, 2006:July 25

SEC dismissed a complaint alleging that a board member violated N.J.S.A. 18A:12-24.1 (d), (e), (f), (g), (h), and (i) of the Code of

Ethics for School Board Members when she had various conversations, including emails, with the superintendent, assistant superintendent and high school principal regarding the high school math department. O'Breza v. Badaracco, 2006:July 25

Board members violated the School Ethics Act, N.J.S.A. 18A:12-24.1(c) (failure to confine Board action to policy making, planning and appraisal) and (d)(failure to work with fellow board members to see that schools are well run) when they met with officers of the teachers' association without knowledge of the board or CSA, to discuss concerns that the association brought to their attention. The meeting was a factor in the superintendent's decision to retire. The Commissioner agreed with SEC's recommended penalty of censure for new board member who had not yet attended new board member orientation program, and suspension for a month for the other board member. Gartland and Picardo, 2006:June 12

Board trustee violated N.J.S.A. 18A:12-24(b) by voting on bill lists that included payments to her husband's cleaning and maintenance company. Trustee had a personal/financial involvement in the company owned by her husband that would reasonably be expected to impair her objectivity. Trustee removed from board. Funches v. Gateway Charter School, 2005:Nov. 2

School Ethics Commission found that board member took private action that may compromise the board, in violation of N.J.S.A. 18A:12-24(e), when he sent an unauthorized letter to a private donor that revealed board technology plans that had not been approved. Reprimand ordered due to member's inexperience and absence of board policy. Freilich v. Washington Twp., 2005:May 2

Board of Trustees president violated N.J.S.A. 18A:12-24.1(c) and (d) when he lectured teachers about student discipline and threatened to handle suspensions himself. McCullers v. Gateway Charter School, 2005:Nov. 9

School Ethics Commission determined that board member failed to provide accurate information, in violation of N.J.S.A. 18A:12-24(g), when the member mailed a letter to a board donor implying that the letter was written on behalf of the board and implying that the board had approved a technology plan when it had not. Freilich v. Washington Twp., 2005:May 2

Board of Trustees president violated N.J.S.A. 18A: 12-24.1(b) by intervening in a dispute between two children and disregarded a child's IEP based behavior modification plan. McCullers v. Gateway Charter School, 2005:Nov. 9

Board of Trustees president violated N.J.S.A. 18A:12-24.1(c) by failing to confine his actions to policy making, planning and appraisal and (d) by administering the schools when he made direct contact with a charter school employee to ask him to explain a scheduling mix-up after having received an explanation from the Charter School

Lead Person. McCullers v. Gateway Charter School, 2005:Nov. 9

Board of Trustees president violated N.J.S.A. 18A:12-24.1(e) by failing to recognize that authority rests with the board when he sent an e-mail to all trustees unilaterally dismissing the board secretary from his position. McCullers v. Gateway Charter School, 2005:Nov. 9

Board member violated N.J.S.A. 18A:12-24.1(j) of the Code of Ethics when she made an ethnically derogatory remark about a student project. Board member failed to refer complaints to chief school administrator before raising the issue in a public meeting. Jackson v. Galloway Community Charter, 2006:Jan. 24

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws pertaining to the schools when he conducted a closed session meeting of the board without giving the public adequate notice as required pursuant to the OPMA. McCullers v. Gateway Charter School, 2005:Nov. 9

Board member violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics when she made an ethnically derogatory remark about a student project. Statement hindered school personnel in the proper performance of their duties because the statement created a hindrance in the teacher's ability to move forward with the curriculum of the Holocaust as required pursuant to N.J.S.A. 18A:35-28. Jackson v. Galloway Community Charter, 2006:Jan. 24

Board trustee violated N.J.S.A. 18A:12-24(c) when she voted to approve the bid of her husband's cleaning and maintenance company where son was an employee of the company. Trustee had a personal involvement in ensuring the employment of her son. Trustee removed from the board. Funches v. Gateway Charter School, 2005:Nov. 2

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) when he knowingly hired an uncertified business administrator without board approval and had him serve as board secretary and treasurer. McCullers v. Gateway Charter School, 2005:Nov. 9

Commissioner reprimanded board member for a violation of N.J.S.A. 18A:12-24.1(g) by failing to maintain the confidentiality of matters that could needlessly injure individuals or the schools, when he obtained confidential information of suspended students and transmitted that information via e-mail to other board members by taking private action that could have compromised the board. Zilinski v. Bloomfield Bd. of Ed., 2005:Nov. 23

Commissioner reprimanded board member for a violation of N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board, when he obtained confidential information of suspended students and transmitted that information via e-mail to other board members. Zilinski v. Bloomfield Bd. of Ed., 2005:Nov. 23

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) and (b) when he failed to submit documents to DOE in a timely fashion causing the school to be placed on probation and jeopardizing the educational welfare of the students. McCullers v. Gateway Charter School, 2005:Nov. 9

Board member violated N.J.S.A. 18A:12-24.1(b) of the Code of Ethics when she made an ethnically derogatory remark about a student project. Board member's statement failed to fulfill her responsibility to support the educational welfare of students. Jackson v. Galloway Community Charter, 2006:Jan. 24

School Ethics Commission determined that board member did not violate N.J.S.A. 18A:12-24(c) when he voted on a bill list that included reimbursement to himself for aid-in-lieu of transportation. Board member's vote did not benefit him any more than other parents receiving aid-in-lieu of transportation. Freilich v. Washington Twp., 2005:May 2

Board of Trustees president violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws pertaining to the schools when he sent an e-mail to all trustees dismissing the board secretary from his position in the absence of tenure charges. McCullers v. Gateway Charter School, 2005:Nov. 9

Indemnification

Commissioner determined that board member was not entitled to indemnification pursuant to N.J.S.A. 18A:12-20, defense of a civil action, where he used his position as a local police officer to obtain confidential information on district employees without board authority and disseminated that information to fellow board members. Complaint did not arise out of or in the course of his performance of official duties. Gunther v. Howell Twp. Bd. of Ed., 2005:September 16, affirmed State Board, 1/4/06

On remand: Commissioner accepts SEC recommendation for a reprimand for late filing of disclosure statements as expanded record shows on remand, that the respondent did, in fact file the statemnts prior to the Commissioner's decision, albeit without the Commissioner's knowledge. Bonds, 2006:May 10

Board member's spouse's Workers' Compensation claim against the school district was an inconsistent interest precluding board membership under N.J.S.A. 18A:12-2. Where the spouse's claim existed when the board member assumed office, his membership on the board was susceptible to being declared void. Commissioner further held that the provisions of N.J.S.A. 18A:12-2 do not apply to board candidates whose conflict is capable of being cured prior to seating if the candidate is elected. (See Thomas v. Edwards State Board, November 3, 1993) Commissioner did not remove respondent from his position on the board. Barnegat Twp. Bd. of Ed. v. Houser, 2007:July 30

School Ethics Act

SEC determined that board member did not violate N.J.S.A. 18A:12-24.1(e), by taking private action that could have compromised the board when he informed the superintendent that two student-athletes have been involved in drug use. Doren v. Mason, 2006:Sept. 26

SEC determined that board member did not violate N.J.S.A. 18A:12-24.1(g), by failing to maintain confidentiality where the member spoke with the superintendent about allegations of drug use by two student-athletes. Doren v. Mason, 2006:Sept. 26

SEC held that N.J.S.A. 18A:12-24.1(c), does not require collect deliberation and decision making. The statute merely requires board members to confine their actions to policy making, planning, and appraisal, and to help frame policies and plans only after the board has consulted with those who may be affected by them. Doren v. Mason, 2006:Sept. 26

Commisioner upheld SEC decision that found probable cause to credit the allegation that board member violated N.J.S.A. 18A:12-24(c), by voting to appoint his brother to a paid position within the district. (Garcia, SEC, 2006: Oct. 24) Reprimand imposed. (Garcia, Commr., 2006: Dec. 8)

SEC noted that it had no jurisdiction over alleged violations of the Uniform Memorandum of Agreement. No evidence that the board member failed to make decisions in terms of the educational welfare of the children and dismissed the complaint. Doren v. Mason, 2006:Sept. 26

SEC could not find that board member violated N.J.S.A. 18A:12-24.1(g), by failing to maintain the confidentiality of matters where the publisher of a community newsletter obtained confidential information from the victims of incidents of theft, and not the board member. D'Alessandro v. Sonnier, 2006:Oct. 24

Absent a determination by a court of law or administrative agency that the board member failed to enforce all laws, rules and regulations of the State Board of Education, or court orders pertaining to the schools, or a finding that the board member attempted to bring about changes through illegal or unethical procedures, the SEC could find no violation of N.J.S.A. 18A:12-24.1(a). Doren v. Mason, 2006:Sept. 26

SEC found no probable cause to credit the allegation that board member violated N.J.S.A. 18A:12-24(a), by having an interest in a business organization that was in substantial conflict with the proper discharge of her public duties. Board member did not own more than 10% of the profits, assets or stock of a business. D'Alessandro v. Sonnier, 2006:Oct. 24

SEC found no probable cause to credit the allegation that board member violated N.J.S.A. 18A:12-24(a), by engaging in a business,

transaction or professional activity that was in substantial conflict with the proper discharge of her public duties. No eveidence was presented that would demonstrate board member's involvement in a community newsletter that was critical of board members. D'Alessandro v. Sonnier, 2006:Oct. 24

SEC found no probable cause to credit the allegation that board member violated N.J.S.A. 18A:12-24.1(a), by failing to uphold enforce all rules and regulations of the State Board of Education and court orders pertaining to the schools, or to bring about desired changes only through legal and ethical procedures. No finding from a court or administrative agency of a violation was presented. Absent such proof, the SEC could not determine that board member had violated N.J.S.A. 18A:12-24.1(a). D'Alessandro v. Sonnier, 2006:Oct. 24

SEC could not find that board member violated N.J.S.A. 18A:12-24(e) by talking private action that could compromise the board where her husband published a community newsletter that was critical of board members and administrators. D'Alessandro v. Sonnier, 2006:Oct. 24

SEC determined that board member did not violate N.J.S.A. 18A:12-24.1(j), by failing to refer all complaints to the chief school administrator where there was no evidence to show that board member acted on his own or failed to refer complaints to the chief school administrator. Doren v. Mason, 2006:Sept. 26

Board president did not violate N.J.S.A. 18A:12-24.1 by failing to bring about changes according to legal and ethical procedures where he allegedly failed to abide by the Uniform Memorandum of Agreement between the local board of education and local police department. Complainants failed to indicate the changes sought by the board member. Doren v. Mason, 2006:Sept. 26

SEC could not find that board member violated N.J.S.A. 18A:12-24.1(j), by failing to refer all complaints to the chief school administrator where board member's husband published statements of victims of theft in a community newsletter. No evidence that board member was aware of the complaints. D'Alessandro v. Sonnier, 2006:Oct. 24

SEC determined that Code of Ethics for Board Members does not apply to the superintendent due to the fact that the code requires members to refrain from administrative duties. Doren v. LaPrete, 2006:Sept. 26

SEC determined that while a brother is not defined as an immediate family member, a brother is a relative as defined in N.J.S.A. 18A:12-23. SEC also noted that a board member has a personal involvement in a matter that could impair his objectivity where he votes to appoint his brother to a paid position within the district. (Garcia, SEC,

2006: Oct. 24) Reprimand imposed. (Garcia, Commr., 2006: Dec. 8)

SEC determined that a written note to the board secretary during executive session requesting that the board member's affirmative public vote be changed to an abstention was insufficient to rectify the improper vote taken during the public meeting. Motion to change vote must be conducted in a public meeting so as to allow the public to observe the conflict of interest and the change in the vote. A vote at a public meeting may not be changed outside of a public meeting. (Garcia, SEC, 2006: Oct. 24) Reprimand imposed. (Garcia, Commr., 2006: Dec. 8)

SEC determined that neither a candidate for board office nor a former board member are subject to the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Gorman v. Sarno, 2006:Oct. 24

SEC declined to award sanctions where complaint was loged against a board member for alleged conduct that occurred while he was a candidate for board office. Gorman v. Sarno, 2006:Oct. 24

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Flores, SEC 2008: Dec. 16). Commissioner affirmed penalty recommendation. (I.M.O. Flores, Commr., 2009: Jan. 26).

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Banos-Shim, SEC: 2008: Dec. 16). Commissioner affirmed penalty penalty recommendation. (I.M.O. Banos-Shim, Commr., 2009: Jan. 26).

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Fox, Commr., 2006: Dec. 11)

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Antine, Commr., 2006: Dec. 11)

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Dooley-Malloy, Commr., 2006: Dec. 12). Board member censured for failure to timely file disclosure statement. District cited for failure to process statements when filed. (Dooley-Malloy, Commr., 2007:April 27).

SEC could not find that board member violated N.J.S.A. 18A:12-24.1(i), by failing to support and protect personnel in the proper discharge of their duties where board member husband published derogatory

information about staff in a community newsletter. D'Alessandro v. Sonnier, 2006:Oct. 24

Commissioner rejected SEC penalty recommendation of removal; determined penalty of reprimand appropriate for board member who had not attended training until just prior to Commissioner's decision. (Feldsott, Commr., 2007:Nov. 14)

Commissioner adopted School Ethics Commission penalty recommendation of public censure where board member unilaterally pressured school secretary to provide resumes of candidates for employment. Board member also obtained key to an administrator's locked office in order to review additional resumes and engaged in an argument that disputed the working environment. (Polinik, Commr., 2008:March 10)

The SEC dismisses allegations that a board member violated N.J.S.A. 18A:12-24.1(d), (e), (f), (g) and (j) of the Code of Ethics for School Board Members. The letter he wrote to the editor, while critical of the administration, neither: rose to the level of administering the schools nor holding himself out as representing the board. Nor was there any evidence that he aligned himself with a political group called the Sussex/Wantage Taxpayers Association, or that he made statements during a Board meeting about unilaterally changing the curriculum, or that he disrupts the running of the district by questioning every purchase. (Delbury, Commr., 2007:December 6) State Board granted

Board members did not violate N.J.S.A. 18A:12-24.1(f) of the School Ethics Act (using school for the gain of friends) when they hired a superintendent. Although seven of the nine Board members worked either directly or indirectly under the supervision of the superintendent candidate's brother, the board conducted a lengthy search process using NJSBA and the Board invoked the Doctrine of Necessity when it hired the superintendent. Thomas v. Rodriguez, 2007:June 26

Appellate Division upheld State Board of Education removal of board member who had filed a complaint against the board alleging a violation of a consent order regarding his disabled child. The complaint disqualified the member from continuing in office, despite the conduct-based exception contained in the School Ethics Act. A member must be qualified for office before his conduct can be regulated. Sea Isle City Bd. of Ed. v. Kennedy, 393 N.J. Super. 93 (App. Div. 2007). Certif. granted 192 N.J. 478 (2007) Sept. 5, 2007(2007 N.J. LEXIS 1076)

The court granted the school board's motion to dismiss an action instituted against it by developers of property. The developers claimed that a successful legal action brought earlier by the Board of Education to enjoin the sale of certain city-owned land to the Plaintiff developers, which resulted in a restraining order against the sale of

the site and prompted the City to rescind its development, proximately caused the loss of the developer's development agreement with the city. The developers claimed further that the board's action was motivated by the personal political considerations of the board. Rodriguez vs Fajardo, 2007:July 3

SEC found, upon rehearing a matter on remand from the State Board, that the Board member's act of signing a certification recounting what transpired at a Planning Board meeting in order to bolster the board's interest in a school ethics case against a former board member, did not constitute private action; even if it had, there was no evidence it could have compromised the board; no violation of N.J.S.A. 18A:12-24.1(e). (I/M/O Chiego, SEC 2009:March 24 (on remand))

Given respondent's resignation from the Board, her eventual filing of the necessary disclosure statements, and her inactivity during the second half of 2005, the Commissioner deems a reprimand to be the appropriate penalty for the late filing, and admonishes respondent for her dilatoriness, which has resulted in a waste of administrative and adjudicative time at the local, county and State levels. (Harrison-Bowers, Commr. 2007:Aug. 8)

Commissioner found that the appropriate penalty for the respondent's failure to attend training in a timely manner is a reprimand, so as to admonish him for disregarding the law and causing waste administrative and adjudicative time at both State and local levels. (Padilla, Commr., 2007:Nov. 14)

SEC determined that board members violated 18A:12-24(b) and (c) when they voted to appoint their personal attorney as board solicitor. Commissioner modified SEC's penalty due to prior ethics infraction. (Davis & Jackson, Commr., 2003: Feb. 27). Commissioner Stay denied (Davis & Jackson, Commr., 2003: March 11).

Commissioner found that the appropriate penalty for the respondent's failure to attend training in a timely manner is a reprimand, so as to admonish him for disregarding the law and causing wasted administrative and adjudicative time at both State and local levels. (Langston, Commr., 2007:Nov. 14)

Commissioner found that the appropriate penalty for the respondent's failure to attend training in a timely manner is a reprimand, so as to admonish him for disregarding the law and causing wasted administrative and adjudicative time at both State and local levels. (Luna, Commr., 2007:Nov. 14)

Pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. Doren v. Mason, 2006:Sept. 26

Commissioner concurred with the penalty of removal recommended by the SEC and additionally admonished the respondent for failing to

attend the required training, in that such disregard of the law resulted in a waste of administrative and adjudicative time at both State and local levels. (Cubas, Commr., 2007:Nov. 14)

State Board of Education granted School Ethics Commission and Commissioner motions to participate in appeal of reprimand of board member. ESC board member voted to award contract to county technical institute where she was employed as superintendent. (Lobosco, St. Bd. decision on motion, 2006: June 7). Affirmed by the State Board. (Lobosco, St. Bd., 2006: Oct. 4

Complainant failed to show that board president did not uphold all laws, rules and regulations of the State Board, pursuant to 18A:12-24(a), where board president accepted an application to fill a board vacancy after the deadline for accepting applications had passed. No evidence as to what law was broken by accepting a late application. (Sovelove, SEC, 2005: Sept. 26).

SEC only has authority over the School Ethics Act, absent a determination by a court of law or administrative agency that board president violated a law by accepting a late application to fill a board vacancy, the SEC cannot find that board president violated 18A:12-24.1(a). (Sovelove, SEC, 2005: Sept. 26).

Complainant failed to show that board president took private action that could compromise the board when the board president sent a letter to town council with board approval. SEC noted that action approved by the board could not be private action. (Sovelove, SEC, 2005: Sept. 26).

Commissioner ordered reprimand of educational services commission board member who voted to award contract to county technical institute where she was employed as superintendent, in violation of N.J.S.A. 18A:12-24.1(c). (Lobosco, SEC, 2005: Nov. 22); (Lobosco, Commr. 2006: Jan 10). (Lobosco, St. Bd. decision on motion, 2006: June 7). Affirmed by the State Board. (Lobosco, St. Bd., 2006: Oct. 4).

SEC found no violation of the SEA where board president failed to advise the public that the superintendent's contract was up for renewal and failed to act at a public meeting after failure of an administrative solution. Kupferman v. Becker, 2006:Sept. 26

Commission does not have jurisdiction over allegations of a violation of N.J.A.C. 6:3-1.3 which requires boards of education to discuss the Act annually at a regularly scheduled public meeting. Pursuant to N.J.S.A. 18A:12-29(a), the Commission has jurisdiction to hear complaints alleging a violation of the Act or the Code of Ethics. Therefore, the Commission dismissed the complainant's allegation that the respondent violated N.J.A.C. 6:3-1.3. Kupferman v. Becker, 2006:Sept. 26

The SEC noted that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of

Ethics for School Board Members. In considering a motion to dismiss, the SEC must consider the facts in the light most favorable to the non-moving party. Kupferman v. Becker, 2006:Sept. 26

The SEC dismissed a complaint that alleged that the board president violated N.J.S.A. 18A:12-24.1(c) because, as Board president, she did not solicit public input on the renewal of the superintendent's contract. CSA's contract was not a "plan" therefore, thre was no statutroy requirement to solicit public input into the CSA's contract. Kupferman v. Becker, 2006:Sept. 26

Board president did not violate N.J.S.A. 18A:12-24.1(j), when she failed to the act at a public meeting on complaints once an administrative solution has failed. The Commission has consistently found a violation of N.J.S.A. 18A:12-24.1(j) only in those matters where a board member has acted on a complaint without referring the complaint to the chief administrator officer. Kupferman v. Becker, 2006:Sept. 26

SEC determined that the School Ethics Act N.J.S.A. 18A:12-24.1 does not apply to superintendents. Definitions of board member and administrator at N.J.S.A. 18A:12-23 make clear that superintendent is not considered a member of the board for purposes of the Act. Doren v. LaPrete, 2006:Sept. 26

Board member reprimanded for failing to timely file disclosure statement. (Hurst, Commr., 2006: Dec. 12).

SEC declined to award sanctions due to a breach of confidentiality. No evidence that the complaint was commenced, used or continued in bad faith solely for the purpose of harassment, delay or malicious injury. Doren v. LaPrete, 2006:Sept. 26

Commissioner concurred with the penalty of removal recommended by the SEC and additionally admonished the respondent for failing to attend the required training, in that such disregard of the law resulted in a waste of administrative and adjudicative time at both State and local levels. (Boxley, Commr., 2007:Nov. 14)

School Ethics Commission determined that 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. (Weeden, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Weeden, Commr., 2008: Feb. 1).

Board member to be suspended for failing to attend mandatory training and to be summarily removed if training is not completed by date certain. (Dooley-Malloy, Commr., 2006: Dec. 12). Board member censured for failure to timely file disclosure statement. District cited for failure to process statements when filed. (Dooley-Malloy, Commr., 2007:April 27).

The Commission advised that a board member would violate N.J.S.A. 18A:12-24(b) 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. SEC Advisory Opinion, A06-08. (June 10, 2008)

State Board granted Commissioner's motion to participate. (Polinik, St. Bd., 2008: June 18)

SEC found that board member violated N.J.S.A. 18A:12-24(d), (e), (i), and (j) of the Code of Ethics for Board Members when he voiced questions directly to reporters without first allowing for an administrative solution. (Delbury, SEC, 2007: Oct. 30). Commissioner adopted recommended penalty of censure. (Delbury, Commr., 2007: Dec. 6.); State Board grants DAG's motion to participate in board member's appeal of his censure. (Delbury, St. Bd. 2008:March 19). State Board affirmed Commission's decision and Commissioner's penalty recommendation. I.M.O. Delbury, 2009:Aug. 10

The Commission determined that board member did not have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest in violation of N.J.S.A. 18A:12-24(a) of the School Ethics Act where he participated in the executive session consideration of a resolution to hire a parent who had previously filed a complaint against the board member's spouse, where that spouse previously taught the parent's child. Board member abstained from voting. (Goitiandia, SEC, 2007: Dec. 18.)

The Commission determined that board member did not act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he had an interest, or a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c) of the School Ethics Act where he participated in the executive session consideration of a resolution to hire a parent who had previously filed a complaint against the board member's spouse, where that spouse previously taught the parent's child. Board member abstained from voting. (Goitiandia, SEC, 2007: Dec. 18.)

The Commission determined that board member did not fail to recognize that authority rests with the board of education and made no personal promise nor took any private action that may have compromised the board in violation of N.J.S.A. 18A:12-24(e) of

the School Ethics Act where he participated in the executive session consideration of a resolution to hire a parent who had previously filed a complaint against the board member's spouse, where that spouse previously taught the parent's child. Board member abstained from voting. (Goitiandia, SEC, 2007: Dec. 18.)

The Commission determined that board member did not surrender his independent judgment to special interest or partisan political groups or use the schools for personal gain or for the gain of friends in violation of N.J.S.A. 18A:12-24(f) of the School Ethics Act where he participated in the executive session consideration of a resolution to hire a parent who had previously filed a complaint against the board member's spouse, where that spouse previously taught the parent's child. Board member abstained from voting. (Goitiandia, SEC, 2007: Dec. 18.)

The Commission determined that board member did not reveal confidential matters that would needlessly injure individuals or the schools in violation of N.J.S.A. 18A:12-24(g) of the School Ethics Act where he distributed a complaint filed against the board member's wife by a parent/job applicant in the executive session consideration of a resolution to hire that parent where the board member's spouse previously taught the parent's child. Board member abstained from voting. (Goitiandia, SEC, 2007: Dec. 18.)

The Commission determined that board member did appropriately consider superintendent's employment recommendation as required by N.J.S.A. 18A:12-24.1(h) of the School Ethics Act where the recommended employee had previously filed a complaint against the board member's wife, who was a teacher in the district. Board rejected superintendent's recommendation after board member distributed a copy of the complaint during executive session discussion of superintendent's recommendation. (Goitiandia, SEC, 2007: Dec. 18.)

School Ethics Commission determined that 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. (Napolitani, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Napolitani, Commr., 2008: Feb. 1).

Commissioner rejected SEC penalty recommendation where personal difficulties lead to late filing of disclosure statement for school administrator. (Cole, Commr., 2006: Dec. 12).

SEC determined that board member did not act in a matter in which she had a personal involvement that could impair her objectivity in violation of N.J.S.A. 18A:12-24(c) where the member voted to appoint her brother's attorney as board solicitor. (Stewart, SEC, 2007: Jan. 23).

Commission determined that where board member allegedly posted confidential employee health information on a community website, complainant failed to demonstrate that respondent violated N.J.S.A. 18A:12-24.1(d) by administering the schools. Respondent did not direct staff to post the information to the website. Commission recommended a six-month suspension on related matters. (Delbury, SEC, 2008: Nov. 25). Commissioner adopted penalty recommendation. (Jacobs, Commr., 2009: Jan. 9).

School Ethics Commission determined that 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. (Dineen, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Dineen, Commr., 2008: Feb. 1).

School Ethics Commission determined that 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 censure. (Goetze, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Goetze, Commr., 2008: Feb. 1).

School Ethics Commission determined that 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 suspension until statements are filed and removal if statements are not filed within 30 days. (Peterson, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Peterson, Commr., 2008: Feb. 1).

Board member exerted unauthorized pressure on board administration, Superintendent and new board members, with regard to his spouse's application for a position within the District; allegations deemed admitted for failure to appear at hearing; SEC recommended censure for violations of N.J.S.A. 18A:12-24(b)(using position to secure unwarranted advantage); N.J.S.A. 18A:12-24(f); (using public office to secure financial gain for a member of his immediate family; N.J.S.A. 18A:12-24.1(e) (taking private action that could compromise the board); N.J.S.A. 18A:12-24.1(d) (administering schools); and N.J.S.A. 18A:12-24.1(f) (using schools for personal gain); censure ordered. deTolla, 2008:Dec. 11

School Ethics Commission determined that 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 suspension until statements are filed and removal if statements are not filed within 30 days. (Munay, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Munay, Commr., 2008: Feb. 4).

School Ethics Commission determined that 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. (Fayter, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Fayter, Commr., 2008: Feb. 4).

School Ethics Commission determined that 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. Davenport, SEC, 2007: Dec. 18. Commissioner adopted penalty recommendation. Davenport, Commr., 2008: Feb. 5.

School Ethics Commission determined that 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. (Osorio, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Osorio, Commr., 2008: Feb. 5).

School Ethics Commission determined that 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 censure. (Dannelly, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Dannelly, Commr., 2008: Feb. 19).

School Ethics Commission determined that 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. (Wyatt, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Wyatt, Commr., 2008: Feb. 6).

School Ethics Commission determined that 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. (Houck, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Houck, Commr., 2008: Feb. 6).

School Ethics Commission determined that 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. (Watt, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Watt, Commr., 2008: Feb. 1).

SEC found that complainant failed to establish that board member violated N.J.S.A. 18A:12-24.1(g) by failing to maintain confitential metters where board member contacted local news reported and disclosed allegedly confidential student discipline information. The

information had been previously disclosed and was therefore no longer confidential. (Mota v. Belino, SEC, 2008: Dec. 16).

Complainant failed to demonstrate that board president failed to confine his actions to policy making, planning and appraisal, pursuant to 18A:12-24.(c), where sent a letter to the town council with board approval. (Sovelove, SEC, 2005: Sept. 26).

SEC failed to find that respondent board member violated N.J.S.A. 18A:12-24.1(i) by failing to protect and support school personnel in the proper performance of their duties where board member, via e-mail, questioned the qualifications of candidates recommended by the superintendent. SEC found that respondent's statements/questions directed to the Superintendent simply did not, alone, rise to the level of a violation. (Gallon, SEC, 2008: Dec. 16).

Board member reprimanded for failing to file disclosure statement in a timely manner. (Brazille, Commr., 2006: Dec. 12).

SEC failed to find that respondent board member violated N.J.S.A. 18A:12-24.1(h) by failing to vote for the best qualified personnel available where board member, via e-mail, questioned the qualifications of candidates recommended by the superintendent. SEC found that respondent's statements/questions directed to the Superintendent simply did not, alone, rise to the level of a violation. (Gallon, SEC, 2008: Dec. 16).

Board member removed for failing to filing annual disclosure statement. Removal also based on late filing previous year. (Pope, Commr., 2006: Dec. 13). See also, (Pope, Commr., 2006: Jan. 27).

SEC failed to find that respondent board member violated N.J.S.A. 18A:12-24.1(g) by failing to maintain confidential matters or providing inaccurate information where board member, via e-mail, questioned the qualifications of candidates recommended by the superintendent. No evidence that confidential information was disclosed where e-mail was sent directly to the superintendent, nor was the information inaccurate. (Gallon, SEC, 2008: Dec. 16).

SEC failed to find that respondent board member violated N.J.S.A. 18A:12-24.1(d) by administering the schools where board member, via e-mail, questioned the qualifications of candidates recommended by the superintendent. SEC found that the respondent's statements/questions directed to the Superintendent simply would not rise to the level of administering the schools. (Gallon, SEC, 2008: Dec. 16).

Commissioner reprimanded board member who failed to fle required disclosure statement in a timely manner. (Day, Commr., 2006: Dec. 13).

SEC failed to find that respondent board member violated N.J.S.A. 18A:12-24.1(c) by failing to confine his actions to policy making, planning, and appraisal where board member, via e-mail,

questioned the qualifications of candidates recommended by the superintendent. SEC found that the statements/questions directed to the Superintendent were in furtherance of business that was before the Board and could well fall within the respondent's planning and appraisal functions. (Gallon, SEC, 2008: Dec. 16).

Commissioner reprimanded board member for late filing of annual disclosure statement. (Cole, Commr., 2006:Dec. 14).

SEC failed to find probable cause that board member violated N.J.S.A. 18A:12-24.1(j) by failing to refer all matters to the chief school administrator for an administrative solution when his son became the victim of harassment and the board member met with the building principal about the incident. SEC found that board member met with principal as a parent and not as a board member. (Gonzalez, SEC, 2008: Dec. 16).

Commission determined that where board member allegedly posted confidential employee health information on a community website, complainant failed to demonstrate that respondent violated N.J.S.A. 18A:12-24.1(b) by failing to make decisions in terms of the educational welfare of the children. Commission recommended a six-month suspension on related matters. (Jacobs, SEC, 2008: Nov. 25). Commissioner adopted penalty recommendation. (Jacobs, Commr., 2009: Jan. 9).

SEC determined that complainant failed to establish that board member violated N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board where board member allegedly left the dais to verbally confront a candidate for a board vacancy. SEC dismissed for failure to provide any legally competent evidence where complainant failed to appear at the OAL hearing, but submitted three affidavits from witnesses. (Sarno, SEC, 2008:Dec. 16).

Commission determined that where board member allegedly posted confidential employee health information on a community website, complainant failed to demonstrate that respondent violated N.J.S.A. 18A:12-24.1(c) by failing to confine his board action to policy maknig, planning, and appraisal. Posting the information was not a board action. Commission recommended a six-month suspension on related matters. (Delbury, SEC, 2008: Nov. 25). Commissioner adopted penalty recommendation. (Jacobs, Commr., 2009: Jan. 9).

SEC found that complainant failed to prove that respondent violated N.J.S.A. 18A:12-24.1(c) by failing to confine his board action to policymaking, planning, and appraisal where respondent provided his personal opinion of an incident involving students to a local newspaper reporter. No board action taken. (Mota v. Belino, SEC, 2008: Dec. 16).

Commission determined that where board member allegedly posted confidential employee health information on a community website, respondent violated N.J.S.A. 18A:12-24.1(i) by failing to protect and support school personnel in the proper performance of their duties. The posting of this confidential information regarding a staff member's medical condition undermined that staff member's ability to effectively execute his or her duties. Commission recommended a six-month suspension. (Delbury, SEC, 2008: Nov. 25). Commissioner adopted penalty recommendation. (Jacobs, Commr., 2009: Jan. 9).

Commission determined that where board member allegedly posted confidential employee health information on a community website, respondent violated N.J.S.A. 18A:12-24.1(g) by failing to maintain confidential matters. A reasonable board member would have known that personal information, particularly information related to the removal of a staff member for hospitalization due to a medical concern, was confidential. Commission recommended a six-month suspension. (Delbury, SEC, 2008: Nov. 25). Commissioner adopted penalty recommendation. (Jacobs, Commr., 2009: Jan. 9).

Commission determined that where board member allegedly posted confidential employee health information on a community website, respondent violated N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board. Respondent had no board authority to post the information and such posting exposed the board to possible adverse consequences, including litigation. Commission recommended a six-month suspension. (Delbury, SEC, 2008: Nov. 25). Commissioner adopted penalty recommendation. (Jacobs, Commr., 2009: Jan. 9).

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. (Grimsley, SEC, 2007: Jan. 22). Commissioner adopted penalty recommendation. (Grimsley, Commr., 2008: Feb. 19).

School Ethics Commission determined that 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. (Stivala, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Stilava, Commr., 2008: Feb. 11).

School Ethics Commission determined that 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. (Grace, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Grace, Commr., 2008: Feb. 11).

School Ethics Commission determined that 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. (Arbolino, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Arbolino, Commr., 2008: Feb. 7).

School Ethics Commission determined that 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. (Moros, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Moros, Commr., 2008: Feb. 7).

School Ethics Commission determined that 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. (Moxie, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Moxie, Commr., 2008: Feb. 7).

School Ethics Commission determined that 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. (Joshi, SEC, 2007: Dec. 18). Commissioner adopted penalty recommendation. (Joshi, Commr., 2008: Feb. 7).

Board member reprimanded for failing to timely file disclosure statement. (Walilko, Commr., 2006: Dec. 12).

SEC failed to find probable cause that board member violated N.J.S.A. 18A:12-24(c) by acting in his official capacity in a matter where he had a personal involvement that created a benefit to him or his family. Board member spoke to building principal about a harassment incident involving his son and another student as a parent, and not as a board member. (Gonzalez, SEC, 2008: Dec. 16).

State Board set aside censure previously set by set and affirmed by Commissioner. (Chiego, State Board, 2007:Aug. 1) State Board granted Motion to Supplement the Record with a certification from the board president that appellant had filed certification at the board's behest and in furtherance of its interests and that the board president did not view the filing as a private action. (Chiego, St. Bd., 07: June 6) (decision on motion). Commissioner affirmed

SEC penalty recommendation of censure. (Chiego, Commr., 2006: June 16)

School Ethics Commission Acting Commissioner motions to participate in appeal of two-month suspension of board member granted. Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members in the School Ethics Act when she took private action in confronting a member of the public in a verbal and physical manner regarding his comments during the public comment session at a board meeting. State Board upholds two-month suspension, (Talty, St. Bd. 2006: Nov. 1).

Board member sent an email to the superintendent, criticizing the superintendent's handling of a matter involving the board member's spouse and asking for an accounting of the superintendent's personal leave, copying the entire board of education. The email was sent to the superintendent just hours before a scheduled disciplinary hearing. The SEC accepted the conclusions of the Administrative Law Judge and found that the board member violated N.J.S.A. 18A:12-24 (b) and (c) of the Code of Conduct and N.J.S.A. 18A:12-24.1 (c) and (i) of the Code of Ethics for School Board Members. Kanaby v. Hillsborough Bd. of Ed., 2007:Sept. 10

SEC found that board member violated the School Ethics Act where she failed to file personal/realtive and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended suspension until statements were filed; removal if not filed within 30 days of Commissioner's decision or censure if filed prior to Commissioner's decision. (SEC v. Arrasure, SEC, 2008:December 16)

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Erezuma, SEC 2008:December 16)

SEC found that board member violated the School Ethics Act where he failed to file personal/relative and fainancial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Rivera, SEC:2008:December 16)

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended suspension until statements were filed; removal if not filed within 30 days of Commissioner's decision or censure if

filed prior to Commissioner's decision. (SEC v. King, SEC, 2008:December 18)

Commissioner dismissed petition alleging board member violated N.J.A.C. 6:3-6.5 or 6.6 where board members took possession of a student file found abandoned in a district building. (East Rutherford, Commr., 2009:April 15)

School Ethics Commission determined that 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. (Davenport, SEC, 2007:December 18). Commissioner adopted penalty recommendation. (Davenport, Commr., 2008:February 5)

The Commission dismissed a complaint alleging various violations of the Code of Conduct for School Board Members where board president allegedly violated the Open Public Meetings Act, by conducting "secret meetings" to discuss public matters and the School Ethics Act by voting to approve the appointment of the board member's employer as the designated depository for school funds. (Sarno, SEC, 2008:April 1)

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, SEC 2008:April 1)

SEC found that board member violated the School Ethics Act where he failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Waller, SEC, 2008:December 16)

Board member reprimanded for violation of the School Ethics Act. Board president voted to approve payments to a charter school at which he was an employee. (Stewart, Commr., 2008:October 9)

SEC dismisses complaint against board member alleging violations of N.J.S.A. 18A:12-24.1(e)(private action to harm the board) and (g) (provide accurate information). 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 who was experiencing marital problems with his spouse (a district employee) and who filed a complaint against her for criminal mischief and so notified the board, did not violate the School Ethics Act where, although his wife was subsequently

suspended and demoted, there was no evidence that his actions were the reason for her suspension and demotion. Nor was there evidence that his actions were the reason for the layoff of her daughter.There was no showing that he had used his position to secure unwarranted privileges or advantages. (Sol Pineiro-Gonzalez, SEC, 2007:May 22)

Board member suspended for failure to attend New Board Member Orientation in the first year of the board member's first term. Suspension to continue until training is completed. If training is not completed by November 15, board member will be summarily removed from office. (Roethel, Commr., 2008:September 10)

Commissioner reprimanded board member that failed to file a personal/relative and financial disclosure statement within 30 days of taking office pursuant to N.J.S.A. 18A:12-25 and 18A:12-26 of the School Ethics Act. See subsequent decision at, (Pope, Commr., 2006: Dec. 13)

Board member removed for failure to attend New Board Member Orientation in the first year of the board member's first term. (Lang, Commr., 2008:September 11)

The Commission advised that a board member would violate N.J.S.A. 18A:12-24(b) 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. SEC Advisory Opinion, A06-08.

Former board member is subject to the School Ethics Act if the board member was on the board at the time the complaint was filed; however, the only available penalties for a former board member are reprimand or censure. (McCann v. Harris, SEC 2008: May 27)

SEC finds that while a former board member did not did not violate either N.J.S.A. 18A:12-24.1(e) or (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 is 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) and should follow the SEC's previous findings regarding recusal. (McCann v. Harris, SEC 2008: May 27)

CSA did not violate 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 for School Board Members only applied to board members and not to the CSA; complainant therefore did not sustain his burden of proof. 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)

Board member violated N.J.S.A. 18A:12-24.1(d)(administering the schools) 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 violation of N.J.S.A. 18A:12-24(b)(unwarranted privileges) or N.J.S.A. 18A:12-24.1(f)(surrender personal judgment for gain of friends). (In the Matter of Graves, Pleasantville Board of Education, SEC 2008: May 5, 2008). (Graves, Commr., 2008:July 10)

Commissioner affirmed SEC decision finding a violation of the code of ethics where board member attended a meeting on behalf of the board without board consent, urged an employee to leave the district, and refused to cooperate in an affirmative action investigation. (Brown, Commr., 2009:April 15)

SEC determined that board member acted in his official capacity a matter where he had a direct financial involvement that might reasonably be expected to impair his objectivity or independence of judgment in violation of 18A:12-24(c) by remaining in an executive session meeting where the board discussed tenure charges against a supervisoor of the board member's spouse, even where the board member did not participate in the discussion. (I.M.O. Filipek, SEC, 2008: June 24)

Board member removed for failure to attend New Board Member Orientation in the first year of the board member's first term. (Jefferson, Commr., 2008:September 10)

Board member removed for failure to attend New Board Member Orientation in the first year of the board member's first term. (Stuller, Commr., 2008:September 10)

Board member censured for failure to attend New Board Member Orientation in the first year of the board member's first term. Decision not to seek a second term rendered moot SEC's recommendation to remove her from the board. (Smith, Commr., 2008:September 11)

Commissioner determined that a board member is responsible for ensuring the accuracy of his entire certification and he must be publicly held accountable for the consequences of any inaccuracies. (Chiego, Commr., 2006: June 16) Reversed on other grounds (Chiego, State Board, 2007: Aug. 1)

The Commissioner adopts SEC's determination that a board member violated the Ethics Act by administering the schools, by taking private action that could compromise the board, by failing to protect and support the principal and superintendent in the performance of their duties, and by failing to refer all complaints to

the chief school administrative officer. Yafet v. Hillside Bd. of Ed., 2009:May 15

Commissioner censured board member who violated SEA when she spoke to an administrator and appeared at a personnel committee meeting when she was not a member to speak about the demotion and transfer of her cousin by marriage. (In the Matter of Graves, Pleasantville Board of Education, SEC 2008: May 5, 2008). (Graves, Commr., 2008, July 10)

The Commission dismissed 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. No evidence that this action, if in fact true, was connected to any special interest or partisan political groups. (Currie, SEC, 2008:April 1)

Commission found no probable cause to credit allegations that board member violated N.J.S.A. 18A:12-24.1(f) by using his public office for personal gain when he sought a grade adjustment for his child; N.J.S.A. 18A:12-24.1(j) creates an exception for board members acting on behalf of immediate family members. Complainant ordered to pay $500.00 for filing frivolous complaint. (Young, SEC, 2009:January 27)

Board member suspended for failure to attend New Board Member Orientation in the first year of the board member's first term. Suspension to continue until training is completed. If training is not completed by November 15, board member will be summarily removed from office. (White, Commr., 2008:September 10)

Board member suspended for failure to attend New Board Member Orientation in the first year of the board members's first term. Suspension to continue until training is completed. If training is not completed by November 15, board member will be summarily removed from office. (Ferraire, Commr., 2008:September 10)

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Belosario, SEC, 2008:December 16)

SEC found that board member violated the School Ethics Act where he failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended suspension until statements were filed; removal if not filed within 30 days of Commissioner's decision on cesnure if filed prior to Commissioner's decision. (SEC v. Moore, SEC, 2008:December 16)

Acting Commissioner's decision to suspend school official set aside. Matter remanded to Acting Commissioner to determine whether, given the fact that completed disclosure statements had been filed, to accept SEC recommendation that reprimand was the appropriate sanction. Bonds v. State-Operated School District of Newark, 2006:May 3

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Burich, SEC, 2008:December 16)

SEC found that board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he submitted an article, signed as board president, to the editor of a local newspaper without having first received board approval. Numerous other allegations were dismissed. SEC recommended penalty of censure. (Dericks, SEC, 2009:February 24)

SEC found that board member violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members when he sent a letter to the State Board President, Executive County Superintendent and Board President suggesting that the superintendent allowed his administrative staff to violate board policy. Numerous other allegations were dismissed. SEC recommended the penalty of censure. (Hollander, SEC, 2009:February 24)

Board member did not violate N.J.S.A. 18A:12-24.1(e)(private action that may compromise the board) or (g) (providing accurate information) when he wrote a letter to the newspaper containing personal attacks on, and his personal opinions about, a community activist. The SEC ruled that the letter was private action without sufficient nexus to a potential for compromising the work of the board; however the SEC cautions board members that they should not express their personal opinions while using the designation of "board member" unless the member also states that the letter is not authorized by the board. Benson v. Gearity, 2008:June 24

SEC found that board member violated the School Ethics Act where he failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Fuentes, SEC, 2008:December 16)

Commission determined that no probable cause existed to credit allegations that a board member involved himself in a matter in which he had a personal involvement that could have created a benefit where the board member met with the building principal

regarding the discipline imposed on a student for assaulting the board member's son. (Gonzalez, SEC, 2008:December 16)

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Negron-Morales, SEC, 2008:December 16)

Board member threatened a member of the public with profanity at its board meeting, a private action that could compromise the board, violative of N.J.S.A. 18A:12-24.1(e). Any time a board member reacts in a threatening manner toward a member of the public attending a board meeting, it has the potential to compromise the board. The threat was also one of the most egregious violations of the public trust that a board member could commit. SEC recommended one year suspension for the board member. (Atallo, SEC, 2007:July 24). Commissioner reduced penalty to three month suspension as being inconsistent with prior decisions and insufficiently supported.

SEC found that board member violated the School Ethics Act where he failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Doria, SEC, 2008:December 18)

Commissioner adopted SEC penalty recommendation of censure for board member who remained in closed session while tenure charges against the building principal were discussed. Board member's spouse was supervised by building principal. (I.M.O. Filipek, Comm'r., 2008: July 23)

Board member suspended for failure to attend New Board Member Orientation in the first year of the board member's first term. Suspension to continue until training is completed. If training is not completed by November 15, board member will be summarily removed from office. (Adornati, Commr., 2008:September 10)

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Polite-Cabailero, SEC, 2008:December 16)

Board member threatened a member of the public with profanity at as board meeting, a private action that could compromise the board, violative of N.J.S.A. 18A:12-24.1 (e). Any time a board member reacts in a threatening manner toward a member of the public attending a board meeting, it has the potential to compromise the

board. The threat was also one of the most egregious violations of the public trust that a board member could commit. SEC recommended one year suspension for the board member. (Atallo, SEC, 2007:July 24). Commissioner reduced penalty to three month suspension as being inconsistent with prior decisions and insufficiently supported.

Board member removed for failure to attend New Board Member Orientation in the first year of the board member's first term. (Hintz, Commr., 2008:September 11)

SEC found that board member violated the School Ethics Act where she failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Gillard, SEC, 2008:December 16)

SEC found that board member violated the School Ethics Act where he failed to file personal/relative and financial disclosure statements required by N.J.S.A. 18A:12-25 and 26 in a timely manner. SEC recommended reprimand where disclosure statements were filed after the Order to Show Cause issued. (SEC v. Taylor, SEC, 2008:December 16)

Commission determined that former board member violated N.J.S.A. 18A:12-24.1(c) by failing to confine his board action to policy-making, planning and appraisal while participating as a member of the district staffing team when he developed detailed staff interviewing documents and directed their implementation without consulting with administration. Former board member censured. (Dericks v. Schiavoni, SEC, 2009:April 28)

SEC dismisses matter without prejudice in light of civil defamation matter pending on same issue and in light of preclusion to consider ethics matters pending in other forum (N.J.S.A. 18A:12-32); CSA brought complaint against board member who spoke before the board and sent letters out to the public criticizing the CSA's performance and threatened his job if he didn't withdraw his complaint. SEC granted the CSA's request to dismiss without prejudice to bring matter back after civil matter is resolved. Saxton v. Belsky, SEC 2009: Sept. 22.

SEC dismisses complaint and counterclaim/third party complaints without prejudice to the right to re-file where during the pendency of the complaint, the complainant was not reelected and subsequently died; only her personal representative, and not the board or another board member, had standing to maintain the suit. (Hakim, SEC 2009:March 24)

SEC dismisses complaint filed against board members who voted to censure the CSA at a meeting and at a work session voted to rescind the resolution. SEC does not have the authority to review board actions where there is no allegation that the members were conflicted, but where the challenge is to the substance or subject of the board action. SEC has authority to sanction individuals, not the Board as an entity, nor may it set aside a Board's determination. Dericks et al. v. Johnson et al., SEC 2009: Oct. 27.

The SEC upheld allegations that board member violated N.J.S.A. 18A:12-24.1(d), (e) and (i) when he administered the district, took private action that could have compromised the board, and failed to support the Interim CSA in the proper performance of his duties, by intervening in the Interim CSA's directive to cancel a mock election, and insisting that the interim CSA not discipline the principal. The SEC dismissed allegations under N.J.S.A. 18A:12-24.1(c), (g) and (j) that he failed to refer to complaints to the CSA; that his meeting with a Senator and his comments to the press about board litigation constituted private action that could compromise the board. John v. Gordon, 2009:Oct. 27

SEC determined thata complainant failed to prove that board member violated N.J.S.A. 18A:12-24.1(a) by failing to uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Complainant failed to present a "copy of a final decision from any court of law or administrative agency of this State" finding that the respondent failed to enforce all laws, rules, and regulations of the State Board of Education. Myers v. Barksdale v. Plainfield Bd. of Ed., 2009:April 28

Board member who was campaign manager for opponent of city Mayor, posted a message online disclosing information about the Mayor's children who attend the district schools, with the intention of securing an unwarranted advantage for the Mayor's opponent in the upcoming mayoral election. SEC finds violation of N.J.S.A. 18A:12-24(b) and orders reprimand. I/M/O Jose Ybarra, SEC 2009: Oct. 27

SEC determined that board members did not violate the School Ethics Act with respect to actions taken at two board meetings. Board members did not violate N.J.S.A. 18A:12-24.1(a) (b) (c) (f) and (g) when they moved to "disclose the public and financial burden" to the district, particularly the legal fees, regarding an interim order by the GRC finding an unlawful denial of an OPRA request. The GRC matter was ultimately withdrawn. Board members did not violate N.J.S.A. 18A:12-24.1 (f) and (g) with respect to the political group FT Vote. There was no showing that the board members had surrendered their independence of judgment or used

the schools for personal gain. Burdick v. Digiambattista and Weiss, 2009:Aug. 25

Board member who shared with a lame duck board member a copy of an anonymous letter containing allegations against him and the CSA, prior to advising the board of the same at its meeting, did not violate N.J.S.A. 18A:12-24.1(a), (e) or (g) of the Ethics Act. Mott v. McDonnell, SEC 2009: Oct. 27

Board member who shared a copy of an anonymous letter containing allegations against the CSA with him prior to the board deciding what actions to take, did not violate N.J.S.A. 18A:12-24.1(a), (e) or (g) of the Ethics Act. Mott v. Cooke, SEC 2009: Oct. 27.

Administrator who facilitated the charter school's requisition of services from his company and failed to disclose his personal interest in the company on disclosure form violated N.J.S.A. 18A:12-25; SEC orders censure, the strongest penalty that it can recommend to a school official who is no longer employed in the position where the violation occurred. I/M/O RaShun Stewart, SEC 2009: Oct. 27.

Commissioner affirms SEC's penalty of public censure for Board President who took private action capable of compromising the Board by submitting a letter to the editor dealing with Board matters, in response to an article appearing a few days earlier, without the prior review and consent of the Board; fact that he conferred with Board counsel no excuse. Letters written by other board members did not violate the Ethics Act. (Dericks, Commr., 2009: August 18)

SEC determined that board member/president, who was employed by the Department of Education as County Supervisor for Child Study for Salem and Cumberland Counties, did not violate the School Ethics Act by virtue of her employment. She did not violate N.J.S.A. 18A:12-24(c) as she was a board member in Gloucester County, not in either of the counties that she covered as part of her employment. She did not violate N.J.S.A. 18A:12-26 as her financial disclosure form was not filled out improperly and she did not violate N.J.S.A. 18A:12-24.1(g) as she did not provide inaccurate information on the financial disclosure form. (Herrschaft v. Ciancaglini, SEC 2009: July 28)

Commission found that probable cause did not exist to credit allegations that board member violated N.J.S.A. 18A:12-24.1(b) by using his board position to secure unwarranted advantages. Board member issued press release immediately prior to the annual school election, however the press release did not speak to the board member's candidacy for office. (LiaBraaten v. Emory, SEC, 2009:April 28)

Commission determined that board president did not violate various provisions of the School Ethics Act when she spoke with a board member's employer about the board member's actions pertaining to district property. No evidence was found that such contact had the ability to compromise the board. (Le Munyon v. Loughlin, SEC 2009:May 27)

Board member failed to attend first year first term training. SEC recommends to the Commissioner that the respondent be suspended from the board until demonstrating completion of the orientation program, and further recommends that the board member/trustee be removed from the Board if the orientation program is not completed by November 14, 2009. Should the respondent complete the training prior to the Commissioner's issuance of a final decision in this matter, the SEC recommends that the respondent be censured for failing to timely attend the orientation program. (I/M/O Dianna Whittaker, Hi Nella Bd. of Ed., Camden County, T07-09nb, 7/28/09)

Appellate Division reverses State Board decision that suspended a board member for one year for threatening a member of the public at a public board meeting. Court says the State Board erred in upholding the SEC's rejection of the ALJ's credibility determinations. Although the SEC was entitled to reject the ALJ's factual determinations, it was required to defer to her credibility determinations that the board member had not in fact threatened a member of the public at the meeting. In re Atallo, 2009 N.J. Super. Unpub. LEXIS 606 (App. Div. March 20, 2009)

Commission determined that board did not violate various provision of the Code of Ethics for School Board Members where the board trustees voted to appoint a staff member to a position for which he was not certified. (Lovett and Fussell v. Asbury, SEC, 2009:April 28)

Board member violated the School Ethics Act by taking action that went beyond policy making, planning and appraisal and administered the schools by creating and developing a detailed and all-encompassing staffing process and becoming directly involved in the functions and responsibilities of the Superintendent during the hiring of a school principal. Commissioner affirms SEC decision that respondent violated N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members, and adopts SEC's recommended penalty of censure. Sciavoni, Commr. 2009:September 15

Board member failed to attend training during first year of first term of office. Board member suspended until required training is completed. If training is not completed by November 14, 2009, board member shall be summarily removed from office. Torres, Commr. 2009: September 14

Commission found that board member did not violate N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board when she failed to reveal a prior professional relationship between the newly appointed interim superintendent and the board attorney. (Myers v. Barksdale, SEC, 2009:May 27)

Board member failed to attend training during first year of first term of office. Because board member would have completed training if August training had not been cancelled, board member censured. If training is not completed by November 14, 2009, board member shall be summarily removed from office. Marancik, Commr. 2009: September 14

Commission determined that insufficient competence evidence existed to credit allegations that board member violated N.J.S.A. 18A:12-24.1(g) by failing to provide accurate information in school matters where he allegedly provided false information to an investigator from the Office of Fiscal Compliance. Myers v. Cox v. Plainfield Bd. of Ed., 2009:May 27

Commission found insufficient cause to credit the allegation that the regional board member violated the School Ethics Act. Regional board member voted on proposed budget for submission to the voters while his wife was employed as a school nurse within the district. (Luthman v. Longo, SEC, 2009:June 23)

Commission determined that insufficient competence evidence existed to credit allegations that board member violated N.J.S.A. 18A:12-24.1(g) by failing to provide accurate information in school matters where he allegedly provided false information to an investigator from the Office of Fiscal Compliance. (Myers v. Cox, SEC 2009:May 27)

SEC determined that board member/president did not violate the School Ethics Act, particularly N.J.S.A. 18A:12-24.1(f) when he issued a letter of apology to the high school gay-straight alliance regarding statements made at a board meeting. Board policy authorized the president to speak on behalf of the board. The board president's statements to the press did not violate N.J.S.A. 18A:12-24.1(g) as the allegedly inappropriate statements were made at a public meeting and could not be deemed confidential. (Armenti v. Reca, SEC, 2009: July 28 (Robbinsville))

The Appellate Division determined that a planning board member who lived with her boyfriend, the principal of the engineering firm that employed the planning board engineer, must disqualify herself from applications in which the board's engineer reviews the application and provides recommendations to the board. Randolph v. City of Brigantine Planning Board, 963 A.2d 1224; 2009 N.J. Super. LEXIS 25 (App. Div. 2009). 405 N.J. Super 215

SEC dismisses an ethics complaint against incumbent board member, finding that neither her providing an opinion to the press supportive of reduced government, nor sending a letter supportive of regionalization signed "board president" (but couched in the first person, "I") to the Executive County Superintendent (ECS), constituted "board action" and thus did not violate N.J.S.A. 18A:12-24.1(c)(confining "board action" to policy making). Nor did these acts constitute private action thata could harm the board under N.J.S.A. 18A:12-24.1(e) as she neither made personal promises nor purported to speak on behalf of either Board. Shinevar and Beslow v. Oradell Bd. of Ed., 2009:March 24

Commission dismisses complaint where the respondents allegedly violated N.J.S.A. 18A:12-24.1(a) because they failed to timely submit their 2009 personal/relative and financial disclosure statements in accordance with N.J.S.A. 18A:12-25 and 26. Complainant failed to carry their burden of proof. Bouyer v. Owens SEC, 2009 Dec. 15

Commission dismisses complaint where the respondents allegedly violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f) and (h) for violating board policy and for failing to maintain objectivity. SEC has no jurisdiction to consider whether a board member violated board policy, nor was there any decision from a court or administrative agency showing that he failed to enforce school laws or bring about changes through unethical or illegal procedures. Bouyer v. Walker SEC, 2009 Dec. 15

Commission finds no probable cause to credit the allegations that the respondent school administrator violated N.J.S.A. 18A:12-24(b) and (e), when she allegedly accepted a gift from a vendor, then recommended that the Board contract with the vendor, which benefited the respondent's daughter. No probable cause found; the gift did not necessarily motivate her recommendation; nor were her official duties to make recommendations nor were unwarranted privileges involved. . Commission dismisses the complaint. Spearman v. Lassiter SEC, 2009: Dec. 15

Commission finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (e) and (f) as well as N.J.S.A. 18A:12-24(a), (b), (c), (d) and (g) when she attended a meeting at which the subject of SROs (school resource officers) was discussed and she negotiated for these positions and salaries although her husband is a police officer and serves as the SRO and D.A.R.E. (Drug Abuse Resistance Education) officer in the District. Additionally respondent is alleged to have violated the Act where she initially voted for her employer to be the depository of the district but then immediately changed her vote to an abstention. No probable cause found. Taylor v. Mitchell, 2009:Dec. 15

Commission finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), (f), (g) and (h) where his architectural firm has undertaken no work for the Board. Commission finds complaint frivolous, imposes fine of $500.00. Rogers v. Somjen SEC, 2009: Dec. 15

Commission dismisses complaint specifically alleging that the respondents violated N.J.S.A. 18A:12-24(a), (b) and (c) in the adoption of the district nepotism policy to eliminate the requirement to seek approval from the Executive County Superintendent when promoting employees who are relatives of Board members or the CSA where complaint alleged that board members should have abstained from voting on the nepotism policy because they had "immediate family members" employed in the District. Chamberlin v. Bencivengo, 2009:Nov. 24

Commission finds no probable cause to credit the allegations that board president violated various provisions of the School Ethics Act and Code of Ethics when he allegedly approved salary increases without public notice and hearing. Commission dismisses the complaint. Rosenwald v. Lawson SEC, 2009: Nov. 24

Board member failed to attend training during first year of first term of office. Board member suspended until required training is completed. If training is not completed by November 14, 2009, board member shall be summarily removed from office. Whittaker, Commr. 2009: September 14

Commission finds no probable cause to credit the allegations that the administrator violated N.J.S.A. 18A:12-24(b) of the Act when he allegedly made illegal appointments; was appointed to the position of Assistant Superintendent without proper credentials; stole public funds and made administrative decisions relevant to public education without proper certification. Commission dismisses the complaint. Valdes v. Caputo SEC, 2009: Nov. 24

The SEC found no probable cause to credit numerous allegations of ethics violations made by a parent against six board members for the middle school's practice of locking bathrooms between each class period; board president duly relied on the administration to address the complainant's concerns, responded to parent's letter only after consulting with the Superintendent and the Board's counsel; it was the administration that responded to the complainant's concerns without interference from the Board members. (Wittreich, SEC 2009:March 24)

SEC dismisses complaint brought against four board members by Administrative Systems Support Technician alleging members violated N.J.S.A. 18A:12-24.1(h) and (i) when they voted to transfer her to a secretary position; SEC found no proof that board members failed to appoint the best qualified personnel after considering CSA recommendation; failed to appoint the best

qualified person, or to support personnel in proper performance of their duties. (Jenkins-Buwa, SEC 2009:March 24)

Board member is reprimanded for posting online "private" information – to which he had access by virtue of his position as a school board member – about the mayor to discredit him before the election to the benefit of the mayor's opponent, for whom the respondent served as campaign manager. Ybarra, Commr. 2009:Dec.14.

Commissioner concurs with penalty of censure for charter school administrator who knowingly filed disclosure statement with false information but was no longer employed by the charter school; his actions implicated very purpose of ethics act where he used school for personal gain by failing to disclose that he facilitated the charter school's purchase of services from a company he owned. Matter of Stewart, Commr. 2009: Dec 11

Acting Commissioner's decision to suspend school official set aside. Matter remanded to Acting Commissioner to determine whether, given the fact that completed disclosure statements had been filed, to accept SEC recommendation that reprimand was the appropriate sanction. Bonds v. Newark, 2006:May 3

School board appointments made by outgoing mayor were invalid and violated *N.J.S.A.* 18A: 12-7 and 8; one board member's term was invalid as he was already a sitting member when he was appointed to another seat on the Board, and the other appointment violated the express terms of *N.J.S.A.* 18A:12-8 as he was appointed to a full term outside of the statutory time of April 1-15; however, appointment did not violate *N.J.S.A.* 40:73-5 as that is applicable only to "second class cities." Roque, Commr 2011:September 19.

BOARD SECRETARY

Termination of business manager/board secretary by charter school was reasonable where employee had left work without permission and was uncooperative (99:Nov. 15, Mezzacappa)

BOARDS OF EDUCATION—Actions by

Action of board in not placing child who was possible being retained, in lottery for French immersion program, was not arbitrary or unreasonable. (02:Oct. 25, J.L.D.)

Administrators may exercise discretion in deciding whether to notify parents or seek parental consent prior to questioning students. (99:Aug. 13, M.N.)

Allegations of retaliatory discharge for political activity not proven. Secretary position riffed due to budgetary constraints, not political reasons. Bello v. Lyndhurst Bd. of Ed., 344 N.J. Super. 187 (App. Div. 2001).

All employee arguments were without sufficient merit. Employee failed to assert her tort and contract claims in a timely manner. Tenure issues and enforcement of DOE approved settlement were disputes arising under the school laws and properly before the Commissioner of Education. (Grompone, App. Div. unpub. Op. Dkt. No. A-4219-98T5, Feb. 22, 2001, aff'g Law Div., Monmouth County, Dkt. No. L-2819-96, June 9, 1997) See also Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

Assault: two day suspension for holding student's head in urinal upheld; board did not act unreasonably. (02:June 12, T.M.)

Authority

Standard of review is whether the school board's decision was arbitrary, capricious or unreasonable. (03:June 5, T.B.R.)

A board of education has no authority to censure one of its members; discipline for conduct that violates Ethics Act may only be through the School Ethics Commission. Indemnification for board member denied, as board's censure proceeding was not a "legal proceeding" under indemnification statute. Case involved board censure of board member who, during student walkout in protest of Governor Christie's funding cuts, went to the school during the walkout and allegedly verbally harassed school administrators as she disagreed with their approach to acquiesce in the walk-out and focus on student safety. Castriotta, Commr 2011: May 18.

The language of N.J.S.A. 18A:38-7.8 is clear and unambiguous concerning residency of students on military base, and thus once district became designated under that provision, it became obligated to provide a free public education to all school age children residing on base, regardless of any intent district might have harbored to limit its responsibility to Navy dependents only. Any relief to be afforded to district must come from the Legislature and not from the Commissioner or the courts. Tinton Falls Board of Educ. v. Colts Neck Board of Educ., No. A-1908-11T1 (App.Div. Oct. 22, 2012)

Commissioner, on remand from Appellate division, directs that the authority to issue *Rice* notice to the CSA rests with the board president, or with a majority of the full board membership pursuant to a petition, similar to the procedure for calling a special meeting. *Persi v. Woska,* Commissioner 2014:June 17.

Board acted reasonably in assigning one bus stop for children who share time between divorced parents (alternate weeks) residing in separate residences in the same school district. Assigning one seat on one bus route was a reasonable policy, neither arbitrary nor capricious. (03:June 5, T.B.R.)

Board impermissibly denied the requests of three administrators (vice principals) to attend the NJEA convention, in violation of statute, N.J.S.A. 18A:31-2.

Administrators' personal days were restored and any salary, benefits and emoluments were retroactively compensated. (03:May 28, Newark)

Board of education possesses the statutory right to promote or place pupils enrolled in its schools according to the prescription of its own rules. Commissioner directs that either the regulation be re-written to reflect district practices or that the district conform its practices to the regulation as written. Concerning placement, Commissioner, concludes that the district did not act in an arbitrary, capricious or unreasonable manner in placing pupil in the sixth grade. It is well established that when a board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. (03:Sept. 2, O.S., matter remanded to ALJ for further determinations, Commissioner decision on remand 04:July 7, aff'd St. Bd. 04:Nov. 3)

Board policy against distribution of religious gifts in classroom was not unconstitutional where kindergarten student wished to hand out proselytizing pencils and evangelical candy canes to classmates in classroom during the school day. No prohibition present against distributing gifts outside the classroom or after school. Court also found no violation of NJLAD. Walz v. Egg Harbor Twp Bd. of Ed., 187 F.Supp. 2d 232 (D.N.J. 2002), aff'd 2003 U.S. App. LEXIS 18148 (3d Cir. NJ., Aug. 27, 2003)

Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

Board's decision not to change bus stop was not unreasonable or discriminatory; board relied on current practice and its expert's traffic analysis, and children were not treated differently than others similarly situated. (98:Aug. 28, Lemma)

Board's decision not to grant waiver under tuition policy should have been put to a vote by board; Commissioner orders that board take formal action. (98:Oct. 29, M.M.)

Board's decision to locate child's bus stop at the bottom of street not arbitrary, capricious or unreasonable. (03:March 5, B.S., appeal dismissed for failure to perfect, St. Bd. 03:June 4)

Board's policy to restrict valedictorian and salutatorian to those pupils who have competed for all four years, was reasonable. (99:June 16, P.A.)

Boards of educatin may make application to a New Jersey court for an order of forfeiture, consistent with Ercolano and N.J.S.A. 2C:51-2. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002)

Class trip: policy prohibiting students who have been suspended from participating in class trip not unreasonable. (02:June 12, T.M.)

Commissioner denies the issuance of $12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)

Commissioner orders the issuance of $19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Commissioner remands to ALJ for further findings on relationship between English language proficiency test and admissions policy and practices in placement of student to 6th or 7th grade. Commissioner directs that either the regulation be re-written to reflect district practices or that the district conform its practices to the regulation as written. Concerning placement, Commissioner, concludes that the district did not act in an arbitrary, capricious or unreasonable manner in placing pupil in the sixth grade. It is well established that when a board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. (03:Sept. 2, O.S., matter remanded to ALJ for further determinations, Commissioner decision on remand 04:July 7, aff'd St. Bd. 04:Nov. 3)

Controversy over board placing superintendent on paid two-week administrative leave was not moot where CSA alleged that such action caused harm to his reputation as it could reasonably be inferred action was taken for disciplinary reasons. (Reversed and remanded St. Bd. 03:May 7, Carrington)

Emergent relief denied in dispute over transportation contracts. (03:April 3, Seman-Toy, Inc.)

Emergent relief denied in tuition matter for early childhood education in Abbott district where collective bargaining agreement permitted employees to send children for free but state regulation only allows pupils residing in district to attend program. (03:April 22, S.A.)

Exclusion from graduation and prom: Decision to exclude student from graduation and prom for lateness and lying about it while being on disciplinary probation for shoplifting was not arbitrary, capricious or unreasonable; emergent relief denied. (02:June 14, Bush)

Expulsion: removal of student from regular education program constituted expulsion; subsequent hearing and provision of alternative education cured potential due process violation. Emergent relief denied. Decision on motion. (02:June 24, C.L.)

Graduation: Board's decision to not let student graduate upheld where student had over 30 absences yet board policy allowed only 14. Board did not act in arbitrary, capricious or unreasonable manner in application of policy. Board notified student one year earlier that he might not receive credit due to unexcused absences. Student failed to take courses offered by school to restore his credit. Student encouraged to go to college following completion of GED. Emergent relief denied. (03:Aug. 14, Wimbish

(M.W.), aff'd St. Bd. 03:Sept. 11, request for oral argument denied and matter aff'd St. Bd. 04:Feb. 4)

Graduation: Board policy to deny attendance at graduation to student who fails to satisfactorily complete State and district academic requirements upheld. Emergent relief denied. Decision on motion. (02:June 19, K.Mc.)

Hit list: Board policy requiring psychological or psychiatric clearance of student after student found with hit list of teachers he was angry at was not arbitrary, unreasonable or capricious. (02:June 13, T.L.)

Local board cannot require legal guardianship for residency purposes nor delegate its authority to hold hearing and make determination under the residency statute, N.J.S.A. 18A:38-1, to determine eligibility to attend school in the district. (01:Dec. 13, J.M., aff'd St. Bd. 02:April 3)

Local board within proposed charter school's region of residence need not file motion to intervene in appeal of denial of charter school application as party respondent status already conferred through operation of N.J.S.A. 18A:36A-4(c) and (d) as well as N.J.A.C. 6A:11-2.1(a). (02:Jan. 11, Jersey Shore Charter School, St. Bd. Decision on motion, 02:April 3)

Lottery program used to select kindergarten pupils for French immersion program was not arbitrary or done in bad faith, despite district's failure to include in the advertisement that fact that selection would be made from students who appeared at registration; however, Commissioner advises Board to improve communication to avoid misunderstandings with respect to immersion program availability and deadlines. (02:Oct. 24, D.M.L., aff'd St. Bd. 03:April 2) See also, emergency relief denied, expedited hearing ordered. (02:July 30, D.M.L.)

Motion for stay denied in dispute over change in district policy requiring payment of tuition by non-resident employees for their children to attend in-district preschool program. (St. Bd. 03:July 2, S.A.)

Appeal of summary judgment motion concerning appointment of school board attorney affirmed for the reasons substantially expressed in District Court Opinion. Gallagher v. Atlantic City Board of Ed No. 10-1808 (3d. Cir. March 31, 2011)

Emergent Relief application dismissed concerning board's decision to deny participation in awards ceremony due to student's absence for 19 days due to illness. Student failed to appear at hearing without explanation. Guarini, Cmmr, 2012: July 16

Petitioner challenged Board's decision to transfer her from the position of school psychologist assigned to the child study team to a newly created elementary school psychologist position. Although petitioner knew of her reassignment in June 2011, she did not submit her appeal until November 10, 2011, which is beyond the 90 day limitation period. Petition dismissed as untimely. Bruno, Cmmr 2012: Aug. 9

Board's decision to not hire long time district employee as Director of Student Personnel Services was neither arbitrary nor capricious. Board members' decision was based on the fact that employee had served in her current position, Department Chairperson of Basic Skills, for less than one year;

the break in continuity would not be in the best interests of the students. Other concerns, including experience in the area, were expressed as well. It was demonstrated that each board member made a rational and reasonable decision regarding the hiring of the person for the position in question. Correnti, Commissioner, 2012:October 25

Candidates

Elected candidate with Appellate Division claim against the board files Stipulation of Dismissal. Commissioner finds no inconsistent interest, no relief to be granted and dismisses petition of appeal without reaching merits of ALJ decision. (03:June 2, Margadonna)

N.J.S.A. 18A:12-2 applies to board members, not candidates. A victorious school board candidate who cured any conflicts prior to commencement of his or her term of office would not be disqualified from board membership. (03:June 2, Margadonna)

CEPA (Conscientious Employee Protection Act)

Retaliation can be established by adverse employment decisions; criticism of employees and their exclusion from a meeting and school management team did not constitute reprisal. (00:July 10, Wooley)

Code of Ethics

SEC determined that board member violated N.J.S.A. 18A:12-24.1(g) by failing to provide accurate information and failing to act in concert with fellow board members when she sent a letter to the county superintendent alleging that a classroom was substandard, despite DOE approval of the district's use of the classroom. Commissioner agreed with recommended penalty of reprimand. (03:Aug. 21, Zimmerman)

SEC determined that board member violated N.J.S.A. 18A:12-24.1(e) by taking private action that could have compromised the board when she sent a letter to the county superintendent regarding the adequacy of a classroom. Commissioner agreed with recommended penalty of reprimand. (03:Aug. 21, Zimmerman)

SEC determined that board member violated N.J.S.A. 18A:12-24.1(j) when, in a letter to the superintendent requesting the demotion of the assistant superintendent, he copied the subordinates of the assistant superintendent. Commissioner agreed with recommended penalty of reprimand. (03:Aug. 19, Santiago)

SEC found that board of education president administered the schools, in violation of N.J.S.A. 18A:12-24.1(d) when she nominated, interviewed and recommended the hiring of candidates for employment. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)

SEC found that board of education president failed to confine her board actions to policy-making, planning and appraisal in violation of N.J.S.A. 18A:12-24.1(c), and administered the schools in violation of N.J.S.A. 18A:12-24.1(d), when she gave direction to district

employees without consulting with the superintendent. Commissioner agreed with Commission's removal recommendation. (03:Aug. 14, Hankerson)

SEC found that board of education president failed to confine her board actions to policy-making, planning and appraisal in violation of N.J.S.A. 18A:12-24.1(c), when she proposed the termination of two employees without a recommendation from the superintendent. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)

SEC found that board of education president failed to consider recommendation of the superintendent, in violation of N.J.S.A. 18A:12-24.1(h), when she had applicants come before the board for appointment without the superintendent's recommendation. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)

SEC found that board of education president failed to hold confidential all matters pertaining to the schools which if disclosed, would needlessly injure individuals or the schools, in violation of N.J.S.A. 18A:12-24.1(g), when she discussed the superintendent's nonrenewal with a subordinate. Commissioner adopted SEC's removal recommendation. (03:Aug. 14, Hankerson)

SEC found that board of education president took private action, in violation of N.J.S.A. 18A:12-24.1(e), when she precluded the superintendent from making opening remarks during staff orientation on the first day of school. Commissioner agreed with SEC's removal recommendation. (03:Aug. 14, Hankerson)

Conflicts of interest

Board member cannot abstain from matters where he pursued a claim to special education entitlements on behalf of his son pursuant to School Ethics Commission opinion based on N.J.S.A. 18A:12-24(j), because N.J.S.A. 18A:12-2 is a disqualifying statute. (05:June 30, Sea Isle City)

Board member could not remain on board where emancipated son, residing in the home, filed Notice of Tort claim against district, alleging that district failed to provide T&E education. In his role as a board member, he would inevitably hear and see things that would bear upon his son's lawsuit. (05:June 8, Palmyra)

Board member removed where adult son, residing in board member's home, filed notice of tort claim against the district, despite the fact that adult son paid rent and was not claimed by board member as dependent for tax purposes. (05:June 8, Palmyra)

Board member who filed petition with Commissioner for indemnification was not thereby disqualified from board membership, even where the board member was seeking indemnification which is discretionary, not statutory; the primary purpose of the claim for which indemnification was sought served important public

objectives, namely the board member's ability to attend board meetings in safety. (99:Feb. 16, Walsh)

Board member, wife and adult son residing in the home, acted as a "single family unit" for N.J.S.A. 18A:12-2 analysis. Fact that wife handled family's financial affairs and had all direct dealings with son, could not insulate board member from conflict. (05:June 8, Palmyra)

Board member's pending claim in a worker's compensation matter against the board was an inconsistent interest pursuant to N.J.S.A.18A:12-2 necessitating removal from office. (99:April 26, Tullo)

Commissioner determined that N.J.S.A. 18A:12-24(j) was not intended to be the means or standard for determining the qualification of board members. (05:June 30, Sea Isle City)

Commissioner need not find that board member actively shared privileged information with his adult son who had filed a Tort Claims Notice in order to find a violation of *N.J.S.A.* 18A:12-2. By virtue of his position as a board member, he is placed in a "situation of temptation" to serve his own interest to the prejudice of the public. (05:June 8, Palmyra)

Conflict of interest statute applies to board membership, not candidacy. (02:June 14, Berlin)

Elected candidate with Appellate Division claim against the board files Stipulation of Dismissal. Commissioner finds no inconsistent interest, no relief to be granted and dismissed Petition of Appeal without reaching merits of ALJ decision. (03:June 2, Margadonna)

Ethics Commission found that first board member violated the Ethics Act by presenting a vendor's employee to a second board member who was running for borough council and who, in the presence of the first member, solicited a donation from the employee for his campaign for borough council. Employee perceived the solicitation as a threat against the vendor's existing contract with the school district. Commissioner agreed with the Ethics Commission that the first board member should be censured for attempting to use her office to secure unwarranted privileges for herself or others. (02:Sept. 23, Ferraro)

Newly elected board member ordered to decide whether to drop her employment claim against the district or not be seated as board member at reorganization. ALJ suggests, but Commissioner does not specifically adopt, that conflict of interest applies to candidacy as well as membership. (Decision on motion, 03:April 25, Margadonna)

Notice of Tort Claim sufficient to be a disqualifying interest under N.J.S.A. 18A:12-2. (02:June 14, Berlin)

N.J.S.A. 18A:12-2 applies to board members, not candidates. A victorious school board candidate who cured any conflicts prior to

commencement of his or her term of office would not be disqualified from board membership. (03:June 2, Margadonna)

Petitioner's motivation in filing a conflict-of-interest complaint pursuant to *N.J.S.A.* 18A:12-2, does not control the determination of whether a violation of law has occurred. (05:June 8, Palmyra)

Prohibited interest found where board member's emancipated son, residing in the home and paying rent, filed Notice of Tort Claim against district. Indirect financial benefit to board member were damage award would be used to offset costs of undergraduate education. (05:June 8, Palmyra)

School Ethics Commission found probable cause to credit allegations of board member's violation of the School Ethics Act, N.J.S.A. 18A:12-24(b) and (e). In the presence of the accused member, a second member, who was campaigning for election to borough council, solicited a campaign donation from a vendor's employee and implicitly threatened non-renewal of the vendor's service contract with the district. Members subsequent conversation with the employee pertaining to the donation contributed to the SEC finding of a violation of the Act in the member's attempt to use his position to secure unwarranted privileges for others and in soliciting a campaign contribution with knowledge that it was given with the knowledge that it would affect him in his official duties. Commissioner accepted SEC's recommendation of censure. (02:Nov. 4, Gallagher, SEC Decision, Commissioner Decision)

The School Ethics Commission's conclusion that *N.J.S.A.* 18A:12-24(j) carves out an exception to the Ethics Act where a board member pursues his own interests in matters involving the board, cannot create an exception to N.J.S.A. 18A:12-2. (05:June 30, Sea Isle City)

The School Ethics Commission's opinion that a board member's pursuit of a particular claim would not constitute a violation of the School Ethics Act does not mean that the existence of such a claim would not disqualify the board member pursuant to N.J.S.A. 18A:12-2. (05:June 30, Sea Isle City)

Where board member claimed that the board denied his son's educational entitlements, board member has a disqualifying interest pursuant to N.J.S.A. 18A:12-2, despite the School Ethics Commission opinion authorizing such an interest pursuant to N.J.S.A. 18A:12-24(j). (05:June 30, Sea Isle City)

While the School Ethics Commission has authority to interpret the School Ethics Act, the Commissioner retains authority to adjudicate board member qualification pursuant to N.J.S.A. 18A:6-9 and is not bound by the Commission's interpretation in applying a school law. (05:June 30, Sea Isle City)

Drug Policy

Board acted reasonably when, pursuant to policy adopted pursuant to N.J.S.A. 18A:40A-8 through –21, it required a high school student who was at a "senior cut day" party where extensive drinking had taken place, to be referred to SAC Core Team for further investigation into possible chemical dependency, even though there was no evidence that she consumed any alcohol. (00:June 12, D.B.)

Board was directed to revise its policies to reflect proper responsibilities under law governing pupils suspected of drug/alcohol use. (00:Sept. 21, Graceffo, aff'd with modification St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2402-01T5, April 8, 2003)

Duties and Powers

A board member who was a complainant against parents as well as the subject of complaints made by parents before the board, was properly excused from closed session discussions about those complaints. (04:Dec. 10, Beck)

Access to personnel materials: Board must ensure that individual board member's access to personnel information is confined to that necessary for the performance of essential board member duties; however, Commissioner has no jurisdiction over teacher's invasion of privacy claim for sanctions against individual board member who accessed her personnel records. Board action was not arbitrary and capricious when it investigated complaint but could not ascertain veracity of allegations. (01:May 7, Ciambrone, aff'd as modified, St. Bd. 04:Oct. 6)

Access to personnel materials: Emergent relief granted to board member seeking access to resumes and applications of all employment candidates; board may not limit access to only those considered by personnel committee; however, board has full authority to place reasonable restrictions on times and places for review of materials. (99:August 31, Beatty, underlying matter settled 99:Dec. 6)

Admissions policy – requiring pupil to attain certain age by October 1 cutoff date as condition for admission to first grade lawful exercise of board's discretionary authority. (00:July 13, N.R., aff'd St. Bd. 00:Nov. 1)

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Board of education and planning board disagreed over whether planning board had authority to preclude board of education's land acquisition. Commissioner dismissed without prejudice due to expiration of statute of limitations and rejected ALJ's determination that ministerial decisions of the Office of School Facilities Financing must meet the same standards for quasi-judicial determinations as state agencies. (02:Aug. 29, Eastampton Twp., settlement approved, motions granted and matter remanded, St. Bd. 03:Jan. 8, on remand, approval of boards application to construct athletic fields still valid, 03:April 14)

Censure: Board member appealed board's censure of him for violating board policy when he spoke to media after closed session discussing potential ethics complaints against him. Policy that required five-day notice to board prior to releasing board information did not violate First Amendment rights. (00:Jan. 18, Crystal)

Censure of board member: board did not act arbitrarily or capriciously when it censured board member for speaking to the media about ethical complaints discussed in closed session, without providing advance notice required by board's policy. (00:Jan. 18, Crystal)

Coach's determination not to award petitioner MVP award for cross-country track was not unreasonable. (00:Sept. 11, J.M., aff'd St. Bd. 01:Jan. 3)

Commissioner adopted ALJ's summary judgment dismissal, pursuant to N.J.A.C. 1:1-1.3(a), of consolidated complaints alleging the board acted arbitrarily, capriciously and unreasonably in adopting a redistricting plan. (03:Aug. 14, Marlboro)

Free speech: Fair public comment by board members concerning other public figures and on matters of public concern involving the operation of the schools is protected speech. (00:July 10, Wooley)

Kindergarten Program – Denial of admission to special French immersion kindergarten program was not arbitrary, capricious or unreasonable where student did not meet criteria for admission and criteria developed and applied in fair and reasonable manner. (03:March 14, C.C.L.)

Matter remanded to Commissioner for determination of local board's total annual per pupil cost after petitioner fails to demonstrate domicile in district. (St. Bd. 02:Jan. 2, K.D.)(See also, amount of tuition aff'd as clarified, St. Bd. 03:Dec. 3, K.D.)

NJSBA dues: all boards are required by the clear, unequivocal language of N.J.S.A. 18A:6-50 to pay dues to the New Jersey School Boards Association; board ordered to pay back dues for 7 years. (00:Feb. 3, Wyckoff)

Process chosen by board with respect to core curriculum changes, including elimination of woodshop, was proper. (99:June 1, Pequannock)

Representations of administrator to indicted assistant principal that he would be entitled to indemnification and back pay if he were to resign and successfully complete PTI, did not bind the board. (01:Aug. 30, Busler, aff'd St. Bd. 02:Feb. 6, clarified by Lopez, St. Bd. 04:Nov. 3)

Grades

Board neither exceeded its authority nor violated pupil's constitutional or due process rights when it upheld teacher's assignment of a zero grade for pupil's failure to delete from assignment references associated with drug use and drug culture; relying on Hazelwood, held that gravamen of case is pedagogical control. It was within the province of the teacher and school administrators to view the paper as advocating or at least making light of illegal drug use; no substantial first amendment issue raised. (99:Oct. 18, J.L., aff'd St. Bd. 00:Feb. 2, aff'd App. Div. unpub. op. Dkt. No. A-3787-99T5, June 19, 2001, certification denied, 170 N.J. 207 (2001))

Parent's claims that grading policy would result in wrong person being selected as Valedictorian and Salutatorian are dismissed; parent had no standing, claims were moot and petition was not timely filed. (St. Bd. 04:Feb. 4, Johns, aff'g Commissioner 03:Nov. 17, S.J.)

Indemnification

Board of education not obligated to indemnify teacher who successfully defended criminal harassment charge brought by student. Charge did not arise out of the performance of the duties and responsibilities of a high school English, journalism and drama teacher. (03:Jan. 3, Brothers)

Kindergarten program

Board's decision to abolish half-day, four-year old kindergarten program in favor of full-day five-year old program, was lawful and took into account sound economics; board could transfer funds among line items and program categories of its budget; Sunshine Law violations were cured. (00:Jan. 18, Sherman, aff'd St. Bd. 00:June 7)

Denial of admission to special French immersion kindergarten program was not arbitrary, capricious or unreasonable where student did not meet criteria for admission and criteria developed and applied in fair and reasonable manner. (03:March 14, C.C.L.)

Liability

Board of education was properly granted summary judgment in parent's 1983 action in son's death in residential school where board did not violated IDEA by placing child in school without IEP as parents agreed to placement. Tallman v. Barnegat Bd. of Ed., 2002 U.S. App. LEXIS 19051, ____ F.3d ____ (3d Cir. 2002), decided August 21, 2002.

Surviving spouse of contractor who was killed while installing drainage pipe for high school athletic field entitled to attempt to discover evidence regarding construction projects between district and architect that had potential bearing on district's general supervisory responsibilities on construction projects in attempt to establish that district breached duty of care by failing to supervise contractor's company. Pfenninger v. Hunterdon Central Regional High School, 167 N.J. 230 (2001).

Where common law remedies have been preserved in contract, an owner who terminates the contract because it believes that the contractor has materially breached cannot be deemed to have forfeited its right to prove the breach and the resultant damages due to failure to follow the contractual termination procedures, thereby losing the benefit of the conclusiveness of the architect's certificate. Ingrassia Constr. Co. v. Vernon Twp. Bd. of Ed., 345 N.J. Super. 130 (App. Div. 2001).

District not liable under NJ Tort Claims Act where district did not create dangerous condition. No showing that public employee created divots on field that led to leg injury. District fulfilled duty to make sure that field was inspected and reasonably free of hazardous conditions. Failure to record its inspections, or maintain records of them, does not transform their actions into palpably unreasonable conduct. Maybloom v. Jackson Bd. of Educ., No. A-5906-09T3 (App. Div. March 3, 2011)

Y.G. filed a complaint seeking damages pursuant to the Child Sexual Abuse Act (CSAA), N.J.S.A. 2A:61B-1, against a former middle school teacher who sexually abused her. A public day school is not a "household" for purposes of the CSAA, despite standing in loco parentis. Complaint dismissed. Y.G. v. Teaneck Bd. of Educ., No. A-5146-09T2 (App. Div. April 19, 2011)

Board permitted to file claim in insurance rehabilitation proceeding in Illinois. Contractor was terminated from project and surety entered into agreement with board to finish project. Surety then became insolvent. Judge properly dismissed board's counterclaim for liquidated damages, in accordance with comity and full faith and credit, in accordance with the principles in the Uniform Insurers Liquidation Act (the "Act"), N.J.S.A. 17:30C-1 to -31. *Am.*

Motorists Ins. Co. v. N. Plainfield Bd. of Educ., 2013 N.J. Super. Unpub. LEXIS 2714 (App.Div. Nov. 12, 2013)

Summary judgment granted to board when Student allegedly slipped and fell on a wet floor in her elementary school cafeteria. Plaintiff presented no evidence that the school custodian, principal, guidance counselor, or security guard knew of the wet floor before plaintiff slipped. Plaintiff did not notice there was water on the floor until after she fell and noticed that her hands were wet. It is just speculation that the custodian left the floor in a slippery condition or that the adults saw that it was wet before plaintiff fell. The proofs were so one-sided that defendant must prevail as a matter of law. *Parker v. Stokes Elem. Sch.*, 2013 N.J. Super. Unpub. LEXIS 2786 (App.Div. Nov. 19, 2013)

OPMA/Sunshine Law

A board member who was a complainant against parents as well as the subject of complaints made by parents before the board, was properly excused from closed session discussions about those complaints. (04:Dec. 10, Beck)

Policy

Absent a clear showing of abuse of discretion (i.e. bad faith and an utter failure to consider the consequences), the Commissioner may not substitute his own judgment for that of a school board with respect to a redistricting decision. This applies even if the selected redistricting plan is not the best of all available options, or if it is based on erroneous conclusions. (99:May 13, Harrison, aff'd St. Bd. 99:Oct. 6)

Board did not act improperly by not conducting suspension/expulsion proceedings mandatory under N.J.S.A. 18A:37-2.1, where administrators did not believe that incidents involving threats to teachers constituted criminal assaults, where Board took measured discipline against pupils, and where teachers' appeal of discipline did not allege assault. (01:Aug. 20, Knight, aff'd with clarification St. Bd. 02:Jan. 2)

Board member appealed board's censure of him for violating board policy when he spoke to media after closed session discussing potential ethics complaints against him. Policy that required five-day notice to board prior to releasing board information did not violate First Amendment rights. (00:Jan. 18, Crystal)

Board's policy forbidding employees from possessing cellular phones and pagers during preparation and instructional periods is constitutional; policy does not implicate free speech/association, and is neither vague nor overbroad. (00:June 12, North Bergen)

Elective band program that operated by lottery selection for most popular instruments, did not deprive student of T&E or violate the EEO code, N.J.A.C. 6A:7; nor did fact that lottery was conducted

secretly warrant conclusion that it was arbitrary or conducted in a biased fashion. (05:Jan. 13, E.M.C. III)

PIP: Board's policies mandating the inclusion of district goals in the development of Professional Improvement Plan (PIP) did not violate N.J.A.C. 6:3-4.3 by circumscribing role of teacher; however, PIP must also contain teacher's individual goals, and district responsibilities. (01:May 18, Kinnelon)

Policy: Board could adopt new policy of not accepting non-resident tuition students; not bound by prior practice of permitting siblings (99:Sept. 3, J.S., aff'd St. Bd. 00:Jan. 5)

Policy: Board's policy requiring pupils who leave the district mid-year to pay tuition was not arbitrary or capricious, even though some districts may permit students in such circumstances to remain free of charge. (99:Sept. 23, J.B., aff'd St. Bd. 00:Jan. 5)

Policy giving students from some, but not all, constituent districts of a regional board a meaningful choice to attend the high school they wanted, was not illegal "discrimination"; there is no constitutional right to receive an education in a specific school house in the district; the policy was valid exercise of board's discretion and was not arbitrary and capricious; board's motion for summary judgment granted. (99:March 10, Piccoli)

Policy: not arbitrary for policy to preclude district pupils who attend a vocational technology school paid for by the district, to participate in awards for scholarships donated to the district. (00:Sept. 25, S.G.)

Policy that required board member to provide 5 days' notice to board prior to speaking to media, did not violate due process or free speech; policy exempted members who issue a disclaimer that they are speaking as private citizens and who do not disseminate private material. (00:Jan. 18, Crystal)

Policy requiring notice of employee's arrest to be made only by employee and only to employee's immediate supervisor within 48 hours would be impossible to satisfy in a number of circumstances and would therefore be arbitrary, capricious and unreasonable. Wachendorf v. Department of Corrections, 2005:July 14

The $55 fee established by the Township of Edison for duplicating the minutes of the Township Council meeting onto a computer diskette is unreasonable and unsanctioned by the explicit provisions of OPRA; the actual cost of copying onto the diskette is far less than $55. The imposed fee creates an unreasonable burden upon plaintiffs' right of access under OPRA and is not rationally related to the actual cost of reproducing the records. The judgment of the Law Division is reversed. 384 N.J. Super. 136 (App Div 2006) Libertarian Party of Central New Jersey v. Murphy, 2006:March 23

Commissioner determined that board did not act arbitrarily, capriciously or unreasonably when it imposed a requirement that parent notify school administrators of his presence in the school building when a sign-in sheet was not available. McCann v. South Plainfield Borough, 2006:Feb. 10

Appellate Division affirmed State Board, Commisioner and ALJ determination that certified school nurse was not required to be physically present when non-certified nurse was providing services. Petition for certification denied. Ramsey Teachers Assn. v. Bd. of Ed. of Ramsey, March 23, 2006, 186 N.J. 364 (2006)

Commissioner upheld application of board policy requiring visitors to sign in at the main office when visiting a school building. Parent was not precluded from participating in school activities. McCann v. South Plainfield Borough, 2006:Feb. 10

Plaintiff religious organizations, which established that the policy of the school district prohibiting plaintiffs from distributing or posting flyers at school violated their rights under the First Amendment, were awarded, pursuant to 42 U.S.C.S. § 1988, attorney's fees, costs, and expenses; $ 207,403.05 in fees, together with $ 2,056.65 in costs and expenses, for a total of $ 209,459.70. The total hours reasonably expended by plaintiffs' counsel for purposes of the lodestar calculation was 954.87, 108.01 hours less than requested; hourly rates were $275.00 for attorneys and $60.00 for paralegals. Child Evangelism Fellowship v. Stafford Twp., 2004:Oct. 15

Commissioner dismisses as time barred by N.J.A.C. 6A:3-1.3, a suit by sports club that alleged the school district arbitrarily classified the club as a "Group Four" organization pursuant to the Board's facilities usage policy, requiring it to pay a fee. Mustang Travel, 2011:Dec. 1 (Mountainside)

Tenured teachers and speech therapists employed on an hourly basis by county special services school district to provide services in non-public schools alleged in consolidated suit that their hours for the 2010-2011 school year were improperly reduced by respondent in violation of their tenure and seniority rights, and should have been done according to seniority. Commissioner finds that board's reduction of hours did not constitute a RIF as described in N.J.S.A. 18A:28-9 since there was never any entitlement to a particular number of hours; no violation of tenure rights or OPMA. Kourtesis, 2011:Dec 5 (Bergen Co Spec Serv) (consolidated)

Board's drug testing policy was flawed to the extent it did not provide the level of specificity required by the regulations. Nevertheless, the policy was not violative of the statute, which was more narrowly drawn than the regulations. Application of the policy to student was not arbitrary, unreasonable, or capricious. K.Q. & L. v. Bd. of Educ. of the Gateway Reg'l High Sch. Dist., No. A-4282-10T4(App.Div. Apr. 16, 2012)

Board's Option II policy for physical education does not violate *N.J.S.A.* 18A:26-2. Use of grading information received from non-physical education certificated coaches as the essential source of grades for students participating in "Option II" violated the law. *Bernards Twp. Ed Ass'n.*, Commissioner 2014:May 5.

Policy Litigation

Commissioner concurs with ALJ that sending district board members are not entitled to vote on the selection of a board attorney. (Evans, Commr. 2007:May 1, State Board affirms 2007:November 7) (See related case, Gallagher v. Atlantic City Bd. of Ed., Civil No. 08-3262, 2009 U.S. Dist. Lexis 16548 -board violated attorney's procedural dueprocess rights. (D. N.J. Feb. 27, 2009).

Board proved tenure charges of unbecoming conduct against tenured secretary. Secretary, on several occasions, left work early without permission, failed to heed Board policy prohibition against selling commercial items, despite warnings, and used disrespectful and unprofessional language. Suspension for six months and loss of salary increment deemed appropriate penalty. (McCain, Commr. 2007:July 16, aff'd St. Bd. 2007:December 5)

District did not violate First Amendment rights of parent by restricting him while on school property and banning him from communicating with coaches. Further, challenge to board policy that is in conformance with Open Public Meetings Act dismissed. (Cunningham vs Lenape Regional BOE, 2007:June 25

Commissioner upheld board of education decision denying student the ability to participate in graduation exercises. Board's decision was based on long-standing policy prohibiting students who had not met all graduationrequirements from participating in graduation exercises. ALJ's order was received by the Commissioner just before the graduation ceremony with insufficient time to review the audio tape or issue a final decision, making the issue moot. (J.Z. o/b/o C.Q., Commr., 2007:July 23)

The delay of three years from the conducting of a parent survey to the implementation of its student uniform policy, did not render the policy invalid where the community had consented and the requirements of N.J.S.A. 18A:11-8, including those with regard to disadvantaged students, were met. (Dare, Commr. 2007:May 18)

Court holds that teacher's as-applied challenge to the board's mailbox policy (requiring permission to distribute personal correspondence through the mailboxes) and section 1983 cause of action are not barred by res judicata and may proceed as these were not addressed on their merits by the Court of Appeals in Policastro I; however Court grants motions to dismiss overbreadth challenge as it was already addressed in Policastro I, and to dismiss

vagueness claim, as it could have been brought in Policastro I. Policastro v. Tenafly Bd. of Educ., Civ. No. 09-1794 (DRD), 2009 U.S. Dist. LEXIS 64461 (D. N.J. July 30, 2009) (not for publication)

Board did not act arbitrarily in discontinuing courtesy transportation to domestic violence shelter that operates before and after-school daycare; dismisses petition by daycare center as board's decision resulted from periodic rotation of bus routes under its uniformly applied policy, to achieve cost efficiencies. (Strengthen our Sisters, Commr. 2009:July 8)

Matter dismissed as moot in board challenge to 2002 reduction in extraordinary special education aid. Board argued that 50% reduction based on memorandum was violative of the Administrative Procedures Act. No demonstration that aid reduction has had a continuing impact on the board. (Board of Education of the Township of East Brunswick vs New Jersey State Department of Education, Commissioner, 2006:May 3

Preliminary injunction was granted to religious organizations who provided voluntary religious instruction allowing their materials and parental permission slips to be distributed; a school district's previous denials of access to distribution scheme by religious groups were viewpoint discrimination. Child Evangelism Fellowship of N.J. v. Stafford Twp. Sch. Dist., 233 F. Supp.2d 647; (D.N.J. 2002), aff'd 2004 U.S. App. LEXIS 21473 (3d Cir. N.J., Oct. 15, 2004)

Public funds

Board does not have the statutory authority to improve property of the municipality, and improperly expended public funds to improve sidewalk owned by municipality, to jointly develop and construct a recreational field; Division of Finance must recover from school board all state aid received on the amount appropriately disbursed. (00:Feb. 26, Wildwood Crest)

Qualifications

Residency

Board member undergoing divorce found to be bona fide resident and qualified as board member under N.J.S.A. 18A:12-3 even though he does not always stay overnight at the marital home. No evidence of interest to change residence. (01:June 22, Cohen, decision on remand 00:Dec. 28)

Commissioner affirmed district's non-residency determination. Parent failed to appear and failed to respond. Parent petition dismissed with prejudice. Remanded to OAL for tuition reimbursement. (05:April 7, H.R.)

Commissioner affirmed district's non-residency determination. Parent failed to show that children resided with him after a divorce. Divorce decree failed to outline custody.

Testimony that three children lived with two adults in a two-bedroom condominium was not credible in light of district's surveillance. (05:April 8, A.O.L.)

Commissioner affirmed district's non-residency determination. Parent failed to show that children resided with him after a divorce. Order of $16,116.66 in tuition payments set aside due to lack of support in the record. (05:April 8, A.O.L.)

Commissioner determined after parent's separation, two children reside with father outside the district and one child resided with mother in district. Parents ordered to remove the two non-resident children and to pay tuition in the amount of $46.02 per day. (05:May 28, D.O.)

Commissioner dismissed parent's Petition of Appeal, contesting board's determination of non-residency. Tuition denied for SY 02-03 and 03-04 for lack of proof. Tuition ordered for $48.70 per child per diem for 04-05. (05:April 29, J.W.A.)

Commissioner upheld district's determination of non-residency pursuant to N.J.S.A. 18A:38-1(b)(2). District carried its burden through surveillance, a lack of parental cooperation and the return of certified mailing to parent's alleged residence. (05:April 7, B.M.)

Commissioner upheld district's determination of non-residency pursuant to N.J.S.A. 18A:38-1(b)(2). No credible evidence that district retaliated against parent for complaining of a lack of cultural enrichment activities during Black History month. Tuition assessed in the amount of $10,832.78. (05:April 7, B.M.)

Commissioner upheld district's determination of non-residency pursuant to N.J.S.A. 18A:38-1(b)(2). Parent's testimonial evidence conflicted with documentary evidence leading to the conclusion that it was not credible. Tuition assessed in the amount of $10,832.78. (05:April 7, B.M.)

No facts warrant tolling of 90-day period under N.J.A.C. 6A:3-1.3(d); challenge to mayor's appointment of nonresident to fill vacancy on board is dismissed; moreover, appointee vacated seat rendering issue moot. (02:Jan. 7, Barnes)

Parent's Petition of Appeal contesting board's determination of non-residency dismissed for failure to appear. Tuition ordered for $13,769.35. (05:May 2, L.G.)

Parent's Petition of Appeal contesting board's determination of non-residency dismissed, with prejudice, for failure to prosecute. Tuition ordered for $14,125.32. (05:April 19, C.M.)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Removal—attendance at meetings

Commissioner rejects board member's application for emergent relief; rejects law judge's conclusion that board acted arbitrarily in removing board member for missing 4 consecutive meetings where board member was legitimately ill during one meeting thereby breaking the consecutive chain; no likelihood of success shown because law is unsettled regarding statutory intendment of "three consecutive meetings" and regarding whether good cause is required for each individual absence or for the period of absence. (99:March 8, Smith, decision on motion, matter withdrawn 99:August 18)

Suit against board of education for failing to suspend/expel student who assaulted staff member dismissed for failure to prosecute. (04:July 8, Hamilton Twp. Ed. Assn.)

Though New Jersey has a statute providing that a public entity was not liable for the criminal acts of a public employee, allegations of board's negligence implicated a duty upon the Board encompassing an obligation to protect the students from the harm caused by the principal, and the state had strong public policy of protecting students from sexual abuse. Court rules that where board did not implement effective reporting procedures and disregarded critical information concerning acts of abuse by principal, the Tort Claims Act requires apportionment between the negligent public entity and the intentional tortfeasor. Matter remanded to Law Division for trial on apportionment of damages. Frugis v. Bracigliano, 351 N.J. Super. 328 (App. Div. 2002), aff'd in part, rev'd and rem'd in part, 177 N.J. 250 (2003)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

Use and administration of placement test for kindergarten French language immersion program not arbitrary, capricious or unreasonable. (03:March 14, G.L.L.)

BOND REFERENDUM

Bond referendum could not be challenged after 20-day limit, even though late filing was based on erroneous information provided by DOE. Misinformation not provided by board of education. No equitable considerations to warrant extension of time. (98:Nov. 17, Pursell)

Challenge to bond referendum dismissed. Town ordinance restricting distribution of first amendment material between 8 p.m. and 9 a.m. was valid and fairly and constitutionally enforced. Vote of 9/14/99 stands and school addition may be built. (White v. O'Malley, Law Division, Monmouth County, Dkt. No. L-4664-99, January 12, 2000.)

Special bond referendum election results of January 27, 2000 set aside as null and void. Superintendent of schools cancelled referendum election because of snowfall and held rescheduled election two days later. Notice was given through radio stations, newspapers and community posting. Decision to reschedule was improper as decision making process and notice to the public was improper. New election ordered. (In the Matter of the Special Election held on Thursday, January 27, 2000 in the Borough of Butler School District, Law Division, Morris County, March 1, 2000.)

BUDGETS

Although funding for a program is eliminated pursuant to voter rejection and subsequent governing body or board of school estimate review, a board must nonetheless take affirmative action to formally abolish any positions which may be impacted by such elimination. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Board did not act according to its responsibility when it failed to abolish a position, in the wake of a budget defeat and the municipality's failure to restore funding for that position. Commissioner will not grant relief that compels a school board to fill a position which, by law, it does not have the authority to fund. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Board may not modify its base budget for expenditures that were rejected by the voters and not restored by the municipality. (99:Dec. 21, Marsh, aff'd St. Bd. 00:Oct. 4)

Board's decision to establish full-day kindergarten program was lawful and took into account sound economics; board could transfer funds among line items and program categories of its budget pursuant to N.J.S.A. 18A:22-8.1. (00:Jan. 18, Sherman, aff'd St. Bd. 00:June 7)

Citizen's challenge to board actions following defeat of public question on expending funds for football program dismissed. Actions by board in subsequent years to contract with non-profit corporation for the provision of football program did not contravene results of a public vote taken during 2001, since proposal was only applicable to the 2001-02 school year. (04:Jan. 8, Arnone)

Commissioner determined that pursuant to N.J.S.A. 18A:22-5, board of school estimate majority consists of a combined majority of the constituent municipalities, not a separate majority of each municipality. (05:May 9, Maplewood Twp., aff'd St. Bd. 05:Sept. 7)

District correctly calculated its net T&E budget based on perceived errors in prior budgets. Budget review process does not require the reconciliation of projected and actual enrollment figures. (05:Jan. 10, Lamkin)

Failure to Agree

Above the Box – Budgets in Excess of the Maximum T&E Budget

(02:June 19, Freehold Regional)(02:June 19, Manchester Regional)(02:June 19, Somerset Hills Regional)(03:June 26, Freehold Regional)(03:September 23, Manchester

Regional)(03:June 26, Shore Regional)(05:June 17, Passaic County Manchester Regional)

In the Box – Budgets at or Below the Maximum T&E Budget

(01:June 18, Penns Grove-Carneys Point Regional)(03:June 26, Penns Grove-Carneys Point Regional)(04:June 25, Penns Grove-Carneys Point Regional)

Failure to Certify

Above the Box – Budgets in Excess of the Maximum T&E Budget

(01:June 15, Keansburg)

Below the Box – Budgets Below the Minimum T&E Budget

(03:June 26, Brick Twp.)(05:June 17, Woodlynne)

In the Box – Budgets at or Below the Maximum T&E Budget

(01:June 27, East Newark)

Items appearing in a base budget in one year may be submitted as a separate proposal in a subsequent year. (05:Jan. 10, Lamkin)

90-day rule – Application

Commissioner applied 90-day rule to dismiss student's Petition of Appeal seeking credit for subjects passed despite 45 days of absence, promotion to 12th grade and attorney's fees relating to an assault charge brought by the district. (05:April 25, Giannetta)

Commissioner rejected initial decision that applied the 90-day rule to dismiss superintendent's appeal of his dismissal. Notwithstanding written notice of nonrenewal from the board president, initial decision failed to clearly demonstrate that board made a lawful determination of nonrenewal. Matter remanded to OAL for expedited hearing as to whether board complied with N.J.S.A. 18A:17-20.1 and OPMA. (05:May 20, Drapczuk, aff'd St. Bd. 05:Oct. 19)

Purchase of land: board may purchase land from surplus without passing referendum, so long as voters pass on budget that includes line item reflecting such appropriation of surplus. (00:Aug. 2, Fairfield, St. Bd. rev'g 00:Feb. 17)

Restoration of Reductions

Above the Box – Budgets in Excess of the Maximum T&E Budget

Any transfers between budget lines addressed in the decision must receive prior written approval from the county superintendent upon written request and demonstration of need. (03:Sept. 5, Bogota)

Burden of proof on board to demonstrate that budget reductions would have a negative impact on the stability of the district. (98:Nov. 6, Lodi)(00:June 30, Middletown)(01:July 6, Pine Hill)(01:July 19, Moorestown)(01:Aug. 2, Kearny)(02:Aug. 5, Winfield)(03:Sept. 5, Bogota)

Burden of proof on board to demonstrate that restoration was necessary as reductions would negatively impact the

stability of the district given the need for long-term planning and budgeting. (05:March 16, Washington Twp.)

The Appellate Division affirmed the interpretation given by the Commissioner in its declaratory judgment, as affirmed by the State Board of Education, of the interpretation of N.J.S.A. 18A:22-5, which defines a necessary majority for action by the Board of School Estimate (BSE), the body that reviews the school district's budget. Township of Maplewood v. Township of South Orange Village, 390 N.J. Super __600 (App. Div. 2007) 2007 N.J. Super. LEXIS 57.

State Board denies Motion to Supplement the Record in township appeal of $ 5,170,982 in restoration of budget reductions by the Department of Education. Certification and credentials of state's interim fiscal monitor are not material to the issues presented on appeal. DAG's motion to participate on behalf of Commissioner is granted, St. Bd. 2007: March 7 (decision on motion). (Willingboro, St. Bd. 2007:June 6)

Reductions restored

Commissioner lacked the statutory authority to increase the tax levy beyond the original amount proposed to the voters. (01:July 6, Pine Hill)

Commissioner restores $907,785 of $1,200,700 budget reduction; $158,756 through reallocations and $749,209 in general fund taxes. $450,000 restored to surplus; reductions would have left district with an unreserved fund balance deficit of $31,210. Surplus restoration was less than 3% of budget. Funds restored to teachers' salaries and tuition accounts; reductions would have impacted the board's ability to fulfill its contractual obligations. (98:Nov. 6, Lodi)

Commissioner restores $900,000 of $1,425,000 general fund tax levy reductions. $407,500 was available for reallocation but was offset by $680,905 in anticipated budget shortfalls, for a net shortfall of $273,405. $200,000 in debt service levy reduction was not within the authority of the governing body and was restored. (00:June 30, Middletown)

Commissioner restores $240,889 of $386,000 budget reduction, all through tax levy. Restorations were mostly in the areas of staff salaries, social security and unemployment, utilities and construction and transportation services. An additional $172,972 was reallocated by the SDOE to address the

district's budget deficit, restore surplus to a level necessary for fiscal stability and fund a SBA position from 10/03 through 6/04. (03:Sept. 5, Bogota)

Commissioner restores full $800,000 of general fund tax levy reductions. While Commissioner agreed with $481,215 of governing body's reductions and found an additional $236,000 in revenue through reallocations, the board's salary accounts shortfalls needed all of the revenue. (01:July 6, Pine Hill)

Commissioner restores $195,962 of $901,025 general fund tax levy reductions. Additional revenues of $110,000, reallocation of $20,000 in surplus and reallocation of $100,000 in general fund expenses were identified. (01:July 19, Moorestown)

Commissioner restores $131,553 of $1,794,005 general fund tax levy reductions, mostly in the areas of health benefits and plant maintenance. (01:Aug. 2, Kearny)

Commissioner restores $1,925,030 of $3,153,636 contested budget reductions; $1,228,606 through restoration of general fund tax levy, $696,326 through reallocation from appropriation and revenue line items and appropriation of $538,126 in fund balance from current year unexpended balances. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (04:July 23, Monroe Township)

Reductions sustained

Commissioner sustains $145,111 of $386,000 budget reductions, mostly in salaries, health benefits and athletic supplies. (03:Sept. 5, Bogota)

Commissioner sustains $292,915 of $1,200,700 budget reductions, mostly in health benefits and substitute salaries. (98:Nov. 6, Lodi)

Commissioner sustains $525,000 of $1,425,000 in budget reductions. (00:June 30, Middletown)

Commissioner sustains $705,063 of governing body's reductions, mostly in construction services and tuition. (01:July 19, Moorestown)

Commissioner sustains $1,662,452 of $1,794,005 in budget reductions, mostly in the areas of salary and capital reserve. (01:Aug. 2, Kearny)

Commissioner sustains $1,925,030 of $3,153,636 contested tax levy reductions. These reductions, some of

which were offset by reallocations from appropriation and revenue line items and fund balance, would not adversely affect the district's ability to provide T&E or maintain stability. (04:July 23, Monroe Township)

Commissioner sustains entire $530,854 of contested tax levy reductions. Board contended restorations were necessary in light of the district's new high school facility and phase in of ninth grade students. These reductions, some of which were offset by reallocation of fund balance, were within the thoroughness standards and would not adversely affect the district's stability, given the need for long term planning and budgeting. (05:March 16, Washington Twp.)

Commissioner sustains full $150,000 of budget reductions, primarily in the areas of supervisor salary and benefits and a reallocation of funds. (02:Aug. 5, Winfield)

Surplus

Commissioner restores $1,925,030 of $3,153,636 contested budget reductions; $1,228,606 through restoration of general fund tax levy, $696,326 through reallocation from appropriation and revenue line items and appropriation of $538,126 in fund balance from current year unexpended balances. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (04:July 23, Monroe Township)

Council appropriation of $150,000 from surplus to budgeted fund revenue sustained. Other revenues, including additional state aid brought surplus back to 3%. (05:March 16, Washington Twp.)

No appropriation of surplus, including the additional $102,972 made available through reallocation, can be made during the 2003-2004 school year without prior written approval from the county superintendent. (03:Sept. 5, Bogota)

Surplus restoration of $450,000 was less than 3% of budget. (98:Nov. 6, Lodi)

$20,000 of surplus was reallocated, bringing surplus down to 3% of the general fund budget. (01:July 19, Moorestown)

$172,972 was reallocated by the SDOE to address the district's budget deficit, restore surplus to a level

necessary for fiscal stability ($380,841, slightly less than 3%) and fund a SBA position from 10/03 through 6/04. (03:Sept. 5, Bogota)

In the Box – Budgets at or Below the Maximum T&E Budget

Burden of proof on board to demonstrate that restoration was necessary for T&E in accordance with the efficiency standards or on the grounds that the reductions would negatively impact the stability of the district. (98:Aug. 14, Bayonne, aff'd State Board 99: Feb. 3) (98:Sept. 9, North Brunswick) (98:November 24, Manasquan) (02:Aug. 5, Kingsway Regional) (02:Aug. 5, Delanco) (02:Sept. 19, Clifton) (02:Dec. 17, Deptford Twp.)(05:Sept. 6, Monroe Twp.)

Reductions restored

Commissioner restores $1,682,690 of $5,785,583 budget reduction; $150,000 through reallocation and $1,532,690 in general fund taxes. Restorations to salary line items made on the basis of need to fulfill existing contractual obligations and in consideration of the statewide trends in collective bargaining. Restorations made to special education tuition line items and operations and maintenance, given the age of the board's facilities. (98: Aug. 14, Bayonne, aff'd State Board 99: Feb. 3)

Commissioner restores $1,013,877 of $2,185,039 contested budget reductions; all through reallocation from other general fund appropriations including surplus. Restorations included three full time teachers, home instruction, two special education teachers, three new special education aides, a librarian and associated health benefits. No restoration of tax levy needed. (05:Sept. 6, Monroe Twp.)

Commissioner restores $230,000 of $570,000 budget reduction; all in general fund taxes. Board had asked for $342,000 in restorations. Restorations made to salary line items for necessary new positions and capital outlay and construction services as necessary for health and safety of students. (98:Sept. 9, North Brunswick)

Commissioner restores $40,625 of $167,000 budget reductions, all through reallocation of surplus. No tax levy adjustment necessary. Monies restored to staff training and salary accounts. (98:November 24, Manasquan)

Commissioner restores $41,473 of $70,125 contested budget reductions, mostly in the areas of salaries and benefits. (02:Aug. 5, Delanco)

Commissioner restores $514,632 of $2,000,000 budget reductions, mostly in salaries and surplus. (02:Sept. 19, Clifton)

Reductions sustained

Commissioner sustains $4,102,893 of $5,785,583 budget reductions, mostly in salaries and benefits. (98:Aug. 14, Bayonne, aff'd State Board 99:Feb. 3)

Commissioner sustains $111,700 of reductions applied for restoration, all in salary line items. (98:Sept. 9, North Brunswick)

Commissioner sustains $126,375 of $167,000 budget reductions, mostly in equipment and fund balance accounts. (98:Nov. 24 Manasquan)

Commissioner sustains full $700,000 budget cut in land and improvements, no adverse impact on district's stability given the need for long-term planning and budgeting. (02:Aug. 5, Kingsway Regional)

Commissioner sustains $28,652 of $70,125 in contested budget reductions, $18,311 of which was accomplished through general fund reallocations, the balance mostly in workers comp accounts. (02:Aug 5, Delanco)

Commissioner sustains $1,485,368 of $2,000,000 in general fund tax levy reductions, mostly in the areas of supplies and salaries. (02:Sept. 19, Clifton)

Commissioner sustains entire $2,185,039 of tax levy reductions. Commissioner restores $1,013,877 of $2,185,039 contested budget reductions; all through reallocation from other general fund appropriations including surplus. Restorations included three full time teachers, home instruction, two special education teachers, three new special education aides, a librarian and associated health benefits. No restoration of tax levy needed. (05:Sept. 6, Monroe Twp.)

Commissioner sustains full $1,160,028 in budget reductions. While $418,458 in governing body reductions cannot be sustained, this amount can be fully funded through other reallocations. (02:Dec. 17, Deptford Twp.)

Surplus

No surplus reallocated as June 30 balance was 2.2% of general fund budget. (98:Aug. 14, Bayonne, aff'd State Board 99: Feb. 3)

No surplus reallocated as June 30 balance was less than 3% of the proposed general fund budget. (98:Sept. 9, North Brunswick)

Over $1.57 million estimated as excess surplus over 2%. Even after board's appropriation of $848,037 more than $700,000 of excess surplus available. $652,877 of estimated excess surplus appropriated to fund restored budget reductions. Commissioner restores $1,013,877 of $2,185,039 contested budget reductions; all through reallocation from other general fund appropriations including surplus. No restoration of tax levy needed. (05:Sept. 6, Monroe Twp.)

Reallocation of $278,960 in general fund appropriations and revenue into surplus because of board's low level of surplus, less than one percent. (02:Dec. 17, Deptford Twp.)

Surplus of $40,625 reallocated as board's unreserved general fund surplus balance was greater than 3% of proposed general fund budget. (98:Nov. 24 Manasquan)

Surplus of $232,000 restored as governing body reductions would leave the board with 0.4% of general fund budget in surplus. Because of the low level of surplus, any appropriation of surplus will require county superintendent approval. (02:Sept. 19, Clifton)

Surplus levels below one percent cannot be condoned or supported by the Department of Education. Because of the low level of surplus, any appropriation of surplus will require county superintendent approval. (02:Dec. 17, Deptford Twp.)

Below the Box – Budgets Below the Minimum T&E Budget

Any transfers between budget lines addressed in the decision must receive prior written approval from the county superintendent upon written request and demonstration of need. (03:June 26, Hammonton)(03:June 26, Woodbine)(03:June 26, Bound Brook)

Automatic review must occur even where board votes not to appeal the reductions. (98:Sept. 24, Egg Harbor Twp.) (98:Dec. 11, Belleville)(98: Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29,

North Bergen) (98: Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy)(02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Mullica Twp.) (02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 26, Chesilhurst)

Board of education budgets that are reduced below the minimum T&E budget are subject to automatic review by the Commissioner to determine whether such reductions will adversely affect the ability of the district to provide T&E or the stability of the district given the need for long term planning and budgeting. (98:Feb. 26 Wallington, aff'd State Board 98: July 1) (98:Sept. 24, Egg Harbor Twp.) (98:Oct. 7, Sayreville) (98:Oct. 8, Mt. Ephriam)(98:Dec. 11, Belleville)(98: Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98: Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:June 12, Newfield) (00:June 14, Palmyra) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy)(02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Clayton) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19,

Monroe Twp.) (02:June 19, Mullica Twp.) (02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 25, Pittsgrove Twp.)(02:June 26, Chesilhurst) (02:June 26, Hammonton)

Board of education budgets that are reduced below the minimum T&E budget by the municipality and which are contested by the board of education, are subject to automatic review by the Commissioner to determine whether such reductions will adversely affect the ability of the district to provide T&E or the stability of the district given the need for long term planning and budgeting. (03:June 26, Hammonton)(03:June 26, Woodbine)(03:June 26, Corbin City)(03:June 26, Mullica Township)(03:June 26, Bound Brook)(04:July 23, Monroe Township)(05:June 17, Bellmawr)

Burden of proof on governing body to demonstrate that reductions would not adversely effect the district's ability to provide T&E or negatively impact the district's stability. (98:Feb. 26 Wallington, aff'd State Board 98: July 1) (98:Sept. 24, Egg Harbor Twp.) (98:Oct. 7, Sayreville) (98:Oct. 8, Mt. Ephriam)(98:Dec. 11, Belleville)(98: Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98: Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:June 12, Newfield) (00:June 14, Palmyra) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy)(02:June 19, Berkeley Twp.) (02:June 19, Bound Brook) (02:June 19, Brick Twp.) (02:June 19, Clayton) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Monroe Twp.) (02:June 19, Mullica Twp.) (02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow

Twp.)(02:June 19, Woodlynne) (02:June 25, Pittsgrove Twp.)(02:June 26, Chesilhurst) (02:June 26, Hammonton)(03:June 26, Hammonton)(03:June 26, Woodbine)(03:June 26, Corbin City)(03:June 26, Mullica Township)(03:June 26, Bound Brook)(04:July 23, Monroe Township)(05:June 17, Bellmawr)

Districts with general fund budgets that are below the T&E minimum, which do not contest the budget cuts made by their municipalities, are not subject to Commissioner review. N.J.A.C. 6A:23-8.10(e)(1)(i). See Cliffside Park, Clayton, Freehold Borough, Prospect Park, Eastampton, North Bergen, Haledon and Upper Pittsgrove – 2003. See Absecon, Clayton, Guttenberg, Hammonton, North Bergen, Northfield and Woodlynne – 2004. See Commercial Township, Guttenberg, Lawrence, and Weymouth – 2005.

Reductions restored

Commissioner restores $436,201 of $507,872 budget reductions; all through general fund tax levy. Governing body failed to demonstrate that cuts would not negatively impact T&E. (98:Feb. 26, Wallington, aff'd State Board 98: July 1)

Commissioner restores $44,556 of $400,000 in budget reductions through reallocation of surplus. No additional tax levy. Automatic review even though board of education voted to accept the reductions. (98:Sept. 24, Egg Harbor Twp.)

Commissioner restores $75,000 in reductions funded through an appropriation of fund balance. Governing body reduced board's proposed surplus to $18,220, less than 1% of the proposed general fund budget. (98: October 8, Mt. Ephraim)

Commissioner restores $120,000 in reductions to general fund tax levy in areas of capital outlay, tuition and general fund balance. (00:June 12, Newfield)

Commissioner restores $50,000 in general fund tax levy through a reallocation of surplus, reducing surplus to 0.8% of general fund budget. Reduction could not be sustained and ensure the stability of the district given the need for long term planning and budgeting. (00:June 14, Palmyra)

Commissioner restores full $467,178 of governing body reductions to general fund tax levy. Governing body did not show clear and convincing evidence that the reductions would not adversely affect the district's ability to provide T&E and/or affect the district's stability. (02:June 19, Clayton)

Commissioner restores $339,970 of $700,470 in budget reductions in unreserved general fund balance. Reductions would bring surplus balance down to 0.76% of budgeted general fund appropriations. (02:June 19, Monroe Twp.)

Commissioner restores $307,911 of $906,968 budget reductions. (02:June 25, Pittsgrove Twp.)

Commissioner restores $737,000 of $880,000 budget reductions, mostly in salary accounts. (02:June 26, Hammonton)

Commissioner restores $227,000 of $686,000 contested budget reductions, all through general fund tax levy. Restored areas included 2 full-time employees, grade 1-5, reallocation of a full-time employee for kindergarten, and restoration of a full-time Italian teacher and a .5 math teacher at the high school level. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Hammonton)

Commissioner restores $73,221 of $120,101 contested budget reductions by the council, all through the general fund tax levy. Restored areas included health and safety items, employee benefits, sending tuition and library staff. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Woodbine)

Commissioner restores $824,968 of $1,421,015 contested budget reductions by the council, $324,123 through restoration of tax levy reductions and $500,845 by reallocations including $432,600 in fund balance, which was determined to be available from current year unexpended balances and additional receipts. Council's cuts were in the areas of salary and benefit accounts, tuition, student support services and payment of lease purchase principal. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Bound Brook)

Commissioner restores entire $69,000 of contested budget reductions by the council, all through the general

fund tax levy. Council's cuts were totally in the area of student tuition. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Corbin City)

Commissioner restores entire $84,316 of contested budget reductions by the council, $47,316 through restoration of tax levy reductions and $37,000 by reallocation of fund balance from additional revenues anticipated to be earned through interest on bond proceeds. Council's cuts were in the areas of salary accounts, maintenance and operations and purchased services. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Mullica Township)

Reductions Sustained

Commissioner, pursuant to automatic review, agrees with board's decision not to apply for full restoration of budget reductions, as the uncontested budget reductions (vice principal, supplies and food service transfer) did not adversely affect the district's ability to provide T&E or negatively impact the district's stability. (03:June 26, Hammonton)

Commissioner, pursuant to automatic review, agrees with board's decision not to apply for restoration of budget reductions as reductions did not adversely affect the district's ability to provide T&E or negatively impact the district's stability. (98:Dec. 29, Berlin Borough) (98:Dec. 29, Deerfield Twp.) (98:Dec. 29, Glassboro) (98:Dec. 29, Hopewell Twp.) (98:Dec. 29, Monroe Twp.) (98:Dec. 29, North Bergen) (98:Dec. 29, Stafford Twp.) (98: Dec. 29, Upper Freehold Regional) (99:June 21, Hunterdon County Polytech) (99: June 21, Hardwick Twp.) (99: July 2, Weymouth Twp.) (99:Aug. 4, Bayonne) (00:Aug. 7, Absecon) (00:Aug. 2 Commercial Twp.) (00:Aug. 7 North Bergen) (00:Aug. 7, Pittsgrove) (00:Aug. 7, Seaside Heights) (01:June 26, Deptford Twp.) (01:June 26, Egg Harbor Twp.) (01:June 26, Glassboro) (01:June 26, Monroe Twp.) (01:June 26, North Bergen) (01:June 26, Sayreville) (01:June 26, South Amboy) (02:June 19, Berkeley Twp.) (02:June 19, Bound

Brook) (02:June 19, Brick Twp.) (02:June 19, Egg Harbor Twp.) (02:June 19, Gloucester Twp.) (02:June 19, Greenwich Twp.) (02:June 19, Lacey Twp.) (02:June 19, Little Egg Harbor Twp.) (02:June 19, Mantua Twp.) (02:June 19, Mullica Twp.)(02:June 19, North Bergen) (02:June 19, Somers Point) (02:June 19, South Amboy) (02:June 19, Union Beach) (02:June 19, Upper Twp.) (02:June 19, Winslow Twp.)(02:June 19, Woodlynne) (02:June 26, Chesilhurst)

Commissioner sustains $87,141 of $493,342 budget reductions; mostly in supplies, salaries and food service. (98:Feb.26, Wallington, aff'd State Board 98: July 1)

Commissioner sustains $335,434 of $400,000 in budget reductions upon automatic review. Board had voted not to appeal the reductions. (98:Sept. 24, Egg Harbor Twp.)

Commissioner sustains $300,000 of reductions through appropriation of surplus by council. No automatic review. Original budget had been approved by county supt. as sufficient for T&E and no reductions were made in any spending plan. (98:Oct. 7, Sayreville)

Commissioner sustains $12,185 of reductions. Reduction would not adversely affect the district's ability to provide T&E or negatively impact the district's stability. (98:December 11, Belleville)

Commissioner sustains $360,500 in governing body reductions, mainly in underestimated local revenues. (02:June 19, Monroe Twp.)

Commissioner sustains $599,047 of $906,968 in budget reductions. (02:June 26, Pittsgrove Twp.)

Commissioner sustains $143,000 of $880,000 in budget reductions mostly in insurance, general administration and communication/telephone. (02:June 26, Hammonton)

Commissioner sustains $553,500 of $686,000 contested budget reductions. Two full-time employees, grades 6-8 and 8.5 full-time employees, grades 9-12, would not adversely affect the district's ability to provide T&E or maintain stability. (03:June 26, Hammonton)

Commissioner sustains $46,890 of $120,101 contested budget reductions all in the area of library staff. These reductions would not adversely affect the

district's ability to provide T&E or maintain stability. (03:June 26, Woodbine)

Commissioner sustains $596,047 of $1,421,015 contested budget reductions by the council. $824,968 in restoration of budget reductions partially accomplished through reallocation of $500,845, including $432,600 in fund balance, resulting in a tax levy restoration of $324,123. $1,241,878 in tax levy reductions were sustained. Council's cuts were in the areas of salary and benefit accounts, tuition, student support services and payment of lease purchase principal. Governing body demonstrated by clear and convincing evidence that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of the district's overall operations. (03:June 26, Bound Brook)

Commissioner sustains entire $42,641 of contested tax levy reductions by the council. While these reductions to tuition line items to CSSD and Regional Day Schools could not be supported, the $220,000 deposit into capital reserve from anticipated excess surplus could be reduced by $42,641 without adversely affecting the district's ability to provide T&E or maintain stability. (05:June 17, Bellmawr)

Surplus

Commissioner restores $50,000 in general fund tax levy through a reallocation of surplus, reducing surplus to 0.8% of general fund budget. Reduction could not be sustained and ensure the stability of the district given the need for long term planning and budgeting. (00:June 14, Palmyra)

Commissioner restores $20,000 in general fund balance. Reductions would reduce surplus to 1.6% of general fund budget. (00:June 12, Newfield)

Commissioner restores entire $84,316 of contested budget reductions by the council, $47,316 through additional tax levy and $37,000 by reallocation of fund balance from additional revenues anticipated to be earned through interest on bond proceeds. Council's cuts were in the areas of salary accounts, maintenance and operations and purchased services. Governing body failed to demonstrate that cuts would not adversely affect the district's ability to provide T&E and/or adversely affect the stability of

the district's overall operations. (03:June 26, Mullica Twp.)

Commissioner restores full $460,178 in budget reductions. District's surplus prior to reductions was below 0.5% of budgeted general fund appropriations. (02:June 19, Clayton)

Commissioner reduces general fund balance by $55,000 to bring surplus down to 3% of budgeted general fund appropriations. (02:June 19, Monroe Twp.)

Commissioner sustains $596,047 of $1,421,015 contested budget reductions by the council. $824,968 in restoration of budget reductions partially accomplished through reallocation of $500,845, including $432,600 in fund balance, resulting in a tax levy restoration of $324,123. $1,241,878 in tax levy reductions were sustained. Council's cuts were in the areas of salary and benefit accounts, tuition, student support services and payment of lease purchase principal. Governing body demonstrated by clear and convincing evidence that cuts would not adversely affect the stability of the district's overall operations. (03:June 26, Bound Brook)

Commissioner sustains entire $42,641 of contested tax levy reductions by the council. While these reductions to tuition line items to CSSD and Regional Day Schools could not be supported, the $220,000 deposit into capital reserve from anticipated excess surplus could be reduced by $42,641 without adversely affecting the district's ability to provide T&E or maintain stability. (05:June 17, Bellmawr)

Surplus cut of $10,141 sustained. Amount was above the generally acceptable level of 3%. (98:Feb. 26, Wallington, aff'd State Board 98: July 1)

Restoration of $44,566 in reductions funded through reallocation of surplus. (98:Sept. 24, Egg Harbor Twp.)

Surplus of less than 1% of proposed budget deemed insufficient to meet emergencies. (98:Oct. 8 Mt. Ephraim)

Tax levy reduction of $400,000 accomplished by appropriation of surplus. (01:June 26, Sayreville)

Board of School Estimate in Type I district not required to provide statement of reasons for reduction; procedural requirements under N.J.S.A. 18A:22-37 do not apply to Type I districts. (98:Aug. 14, Bayonne, aff'd St. Bd. 99:Feb. 3)

Where Board of School Estimate reduced budget submitted at or below the box, board of education must demonstrate that amount reduced is necessary for T & E or that the stability of the district required restoration. (98:Aug. 14, Bayonne, aff'd St. Bd. 99:Feb. 3)

School budget process explained. (05:Jan. 10, Lamkin)

BUS DRIVERS

Commissioner upholds the Department's determination to suspend a bus driver's school bus endorsement for six months pursuant to N.J.S.A. 18A:39-28 et seq. after an alleged incident in which a child was left on her school bus in July 2011. Driver unreasonably relied on bus aide's representation that the bus was empty at the end of the route, despite her statutory obligation to visually inspect the bus and the fact that she admitted that she had not observed her bus aide walk the aisle and perform the mandated visual inspection of the bus. Rodriguez, Commr 2012: May 3.

Bus driver failed to discover that a child remained on her bus; she failed to inspect bus at the end of her route in a manner that would ensure that she would see a child who was still on her bus; petitioner's argument that there was no roster of student names nor head count available to her does not excuse petitioner from her obligation. Six month suspension of school bus "S" endorsement on her driver's license is affirmed. *Herzog*, Commr 2013:Feb. 26

Commissioner affirms DOE's determination to suspend driver's bus endorsement pursuant to *N.J.S.A.* 18A:39-29 after child was left on the school bus. *McKenney*, Commr 2013:Feb 5

CAMPAIGN LITERATURE

Absentee ballot recipients received election fliers from the board of education encouraging them to "vote yes" on a bond referendum. Matter dismissed as untimely. Bond referendum challenges subject to 20-day rule rather than 90-day rule. No equitable considerations to warrant extension. (98:Nov. 17, Pursell)

School bond referendum information (community relations information book) did not unfairly advocate any position. (99:Oct. 5, Adams, aff'd St. Bd. 00:May 3)

CANDIDATES

Elected school board candidate with Appellate Division claim against the board files stipulation of dismissal. Commissioner finds no inconsistent interest. (03:June 2, Margadonna)

N.J.S.A. 18A:12-2 applies to board members, not candidates. A victorious school board candidate who cured any conflicts prior to the commencement of his

or her term of office would not be disqualified from board membership. (03:June 2, Margadonna)

CAPITAL PROJECT

The Commissioner determined that work on respondent's parking lot constituted a capital improvement as opposed to a repair and was therefore to be excluded from the tuition rate calculated pursuant to the sending-receiving relationship contract between the two districts. (05:March 23, Lincoln Park, aff'd St. Bd. 05:Sept. 7)

CEIFA

CEIFA: Middle income school districts and taxpayers alleged that school funding system caused disparate tax burdens violating Equal Protection and T&E provisions of the New Jersey Constitution. Court held that school districts, as creatures of the State, lacked standing to bring either T&E or equal protection claims against the State. Taxpayers had standing to bring such a challenge but did not set forth viable T&E or equal protection claims. Court held that CEIFA did not violate the State's Equal Protection clause. Staubus v. Whitman, 339 N.J. Super. 38 (App. Div. 2001), affirming Law Division, Mercer County, unpub. Op. Dkt. No. L-1456-98. Certification denied, 171 N.J. 442 (2002).

CEIFA's stabilization aid provisions are constitutional. Wildwood argued that the CEIFA stabilization aid figures were premised upon QEA figures that had been declared unconstitutional by the New Jersey Supreme Court. QEA was declared unconstitutional as applied to "special needs" school districts of which Wildwood was not one. No evidence that Wildwood's school budgets decreased as a result of CEIFA's stabilization provisions. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001), aff'g St. Bd. 00:June 7, aff'g Commissioner 00:Jan. 10. See also, Wildwood v. Loewe, App. Div. unpub. Op. Dkt. No. A-5337-97T1 and Wildwood v. Klagholz, App. Div. unpub. Op. Dkt. No. A-6811-97T1, decided Feb. 17, 1999, certification denied 160 N.J. 477 (1999).

Stabilization aid growth limit imposed by CEIFA, although inextricably woven with constitutional issue of thorough and efficient education, requires fact-finding by commissioner of education who has particular expertise in interpreting and applying CEIFA. Wildwood Bd. of Ed. v. Loewe and New Jersey Dept. of Ed., unpublished App. Div. opinion Dkt. No. A-5377-97T1 and A-6811-97T1 (consolidated), Feb. 17, 1999, certif. denied, 160 N.J. 477 (1999) See also, CEIFA's stabilization aid provisions declared constitutional. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001), aff'g St. Bd. 00:June 7, aff'g Commissioner 00:Jan. 10.

CEPA

Appellate Division reverses and remands trial court order of summary judgment in matter involving complaint of former Supervisor of Curriculum and

Instruction against her employer board of education and its superintendent, in which plaintiff supervisor alleged that her termination violated the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to - 8. The record contains genuine issues of material fact about whether her termination was causally related to the discharge of her obligations as the affirmative action officer, specifically preparation of the CEP report, and precluded entry of summary judgment in favor of defendants. Hallanan v. Twp. of Fairfield Bd. of Educ., DOCKET NO. A-2585-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 969, Decided May 2, 2012.

Appellate Division reverses trial court ruling in Conscientious Employee Protection Act (CEPA) matter. Employee demonstrated a nexus between the adverse employment action of non-renewal of his annual contract and his complaints about both the safety of a school bus and the working conditions in the garage. The record was replete with direct and circumstantial evidence that employee's contract non-renewal was directly related to his complaints to the MVC and PEOSH. Appellate Division also reversed the motion judge's determination to dismiss the count in the complaint seeking punitive damages. Punitive damages may be awarded against public entities pursuant to *N.J.S.A.* 34:19-2(a). Our Supreme Court in *Abbamont*, *supra*, noted that there is no specific provision of CEPA that precludes punitive damages against public employers. 138 *N.J.* at 426. Because the Legislature intended CEPA claims to be treated like common-law tort actions, punitive damages should be determined by a jury as the trier of fact. *Id.* at 432-33. *Dukin v. Mount Olive Twp. Bd. of Educ.*, DOCKET NO. A-2585-12T1 (App. Div. January 27, 2014)

CERTIFICATION

Acquisition

Burden of establishing entitlement to certification/endorsement is on applicant beyond a preponderance of the competent and credible evidence. (00:Oct. 2, Avellino, aff'd St. Bd. 01:March 7)

Certification denial on basis of conviction for homicide, upheld. (99:Sept. 13, Bilal)

Certification denied. Disqualified due to 1990 CDS possession conviction. Evidence of rehabilitation not permitted. (02:May 20, Garvin)

Denial of application for issuance of School Administrator Certificate of Eligibility was not arbitrary; applicant did not have proper preparation (99:June 30, Flaherty)

Denial of supervisor endorsement by State Board of Examiners upheld. Masters Degree obtained from American State University, an institution neither approved nor accredited. Petitioner not qualified for administrative certification with a supervisor's endorsement. (02:April 1, Dominianni)

Part-time home instruction teacher was hired to a full-time position by board of education. Thereupon she completed 11 hours of professional development. Board of education refused to credit the hours because they were not performed in accordance with a professional improvement plan developed as part of the prior year's Annual Performance Report. Commissioner affirmed ALJ's dismissal of teacher's complaint. (02:Nov. 21, Bowens)

Examiners denied the appeal of an applicant for certification because he lacked the requisite undergraduate GPA of 2.5 or greater. Candidate may attempt to meet the requirements with a baccalaureate or post-baccalaureate end-of-program GPA of 2.75 or greater. (Harris, Exam, 2006: April, 5)

In a challenge to the disallowance of tuition charges for salaries and benefits to nine teachers who had failed to obtain emergency certification before commencing employment at the private school for the disabled, the Commissioner held that DOE is equitably estopped as it had not acted promptly on the applications for such certification. The Office of Licensing is to issue the appropriate emergency certificates and backdate them. Also, DOE must reconsider the disallowance of tuition. (Search day Program vs New Jersey Department of Education (DOE), 2006:June 2)

Commissioner adopted Initial Decision denying certification as a Teacher of the Handicapped despite the fact that the candidate worked in the district for several years under an emergency certificate. Candidate's undergraduate grade-point average was below the sate mandate and candidate did not complete a matriculated program of study in a state-approved post-baccalaureate college program. In additiona, no single college recommended him for certification as required under current regulations. (Maslin, Commr., 2008:April 14)

Examiners denied certificate to teacher candidate who earned 2.49 GPA instead of 2.50. Examiners declined to credit applicant one one-hundredth of a point based on life experiences since college. Candidate had option to present a graduate degree GPA or the GPA from a State-approved post-baccalaureate program in excess of 2.75. (Synder, Examiners 2007: March 30)

Examiners revoked the teaching and administrative certificates of a former business administrator who plead guilty to charges of theft by failure to make lawful disposition of property. (Hayden, Examiners, 2007: April 2).

Upon interlocutory review, motion to compel deposition of sole witness at State Board of Examiners certification hearing granted. No undue hardship, minimal expense. Kandell, St. Bd. 2006: May 3. Examiners had previously

reversed ALJ order compelling deposition of sole witness to events in complaint. (Kandell, Exam, 2006: Jan. 30)

Teacher certification application denied because of prior criminal conviction. While applicant had a Certificate of Relief from Disabilities from New York, the certificate was not the equivalent of an expungement of his criminal record. (Sain, Exam, 2006: April 5)

Examiners denied petitioning teacher's appeal seeking Teacher of social Studies Certificate of Eligibility and Teacher of Students with Disabilities Certificate of Eligibility. Teacher candidate had insufficient credits. All Emergency Teacher of the handicapped certificates lapsed on August 31, 2006. (Piccoli, Examiners, 2007: Feb. 22).

Examiners declined to backdate teacher candidate's certificate of eligibility to September 2005 because she did not possess a provisional certification for the entire 2005-06 school year. (Platzner, Examiners, 2007: Feb. 22).

Examiners denied eligibility to teacher candidate who failed to maintain 2.75 GPA. Candidate may either submit a baccalaureate or post-baccalaureate end-of-program GPA in excess of 2.74 or must have undergraduate university re-calculate the teacher candidate's GPA. (Savage, Examiners, 2007: Feb. 22).

Alternate route teacher is provisionally certified by virtue ofparticipation in alternate program and therefore enjoys dueprocess rights analogous to other non-tenured teachers(87:1803, Griskey, rev'd St. Bd. 88:August 3)

Provisional teacher claims that board's failure to renew his contract violated his contract violated laws and regulation governing provisional teachers, and discriminated against him. Matter is dismissed as it involves the same claims or arose out of claims that were dismissed by the Commissioner in previous litigation and on appeal in Superior Court. The teacher's contrived attempts to classify his claims in different terms or to name different individuals as respondents are rejected. (El Hewie, Commissioner 2008: November 13) (El Hewie, Commr., 2008:April 10) (Consolidated cases)

On remand from the Commissioner, Examiners determined that applicant, who received two "insufficient" ratings, could not both request an additional provisional year and also appeal the "insufficient" ratings; the regulations permit one or the other. (Muench, Examiners, 2007: Jan. 9)

Examiners determined that applicant for principal certification did not satisfy the State's criteria in several respects. (Braker, Exam, 2006: July 24)

Examiners denied applicant's request for order to show cause seeking to restrain the denial of her standardcertificate application; she fails to

demonstrate irreparable harm, has no settled legal right to her certificate and it is unlikely that she will prevail on the merits in light of separate pending matter in which she allegedly used physical force against a student while employed under an emergency certificate. (Jones, Exam. 2006: July 25)

Examiners determined that applicant was ineligible for teacher certification for failure to achieve 2.5 GPA; her option now is to present a 2.75 GPA from a graduate degree or post-bac program. (Roberts, St. Exam, 2006: July 25)

Commissioner vacated the board of education's head basketball coach appointment. Appointed head coach was not properly certified, the first criteria of N.J.A.C. 6A:9-5.19. Additionally, qualified, certified applicants existed and no application for waiver to the county superintendent was made or granted. Commissioner declined to appoint a new coach as the potential new coach was not a party to the proceeding nor was his appointment requested as part of the relief. (Paterson Eastside, Commr., 2007:July 13)

Examiners determined that applicant was ineligible for teacher certification for failure to achieve 2.5 GPA; her option now is to present a 2.75 GPA from a graduate degree or post-bac program. (Donegan, Bd. Exam. 2006: July 25)

State Board of Examiners denies appeal from candidate who appealed determination of ineligibility for teaching certificate for failure to possess the requisite 2.75 GPA. (Tucker, Exam. 2006: September 26)

Appeal of denial of school counselor certificate denied. Applicant had not satisfied the regulatory prerequisites for school counselor certification. (McLeod, Exam, 2006: September 22)

Examiners determined that applicant for principal certification of eligibility did not satisfy the State's criteria that a master's degree be from an accredited institution; Pacific Western University did not fit the criteria. (Nicolas, Exam., 2006: July 25)

Examiners ruled that teacher was ineligible for certification since she failed to demonstrate that her grades met the prerequisite 2.50 GPA; her only options now are to present a 2.75 GPA from a graduate degree, or convince Rutgers to recalculate her GPA including courses taken at other institutions.(Camargo-Wahba, Exam, 2006: April 5)

Commissioner determined to reject that portion of Examiner's decision denying teacher/candidate the opportunity to seek provisional employment in an alternate district following two insufficient ratings where Examiners did not advise teacher/candidate that her available remedies under N.J.A.C. 6A:9-17.18(c) and (d) were mutually exclusive. Commissioner remanded to Examiners because the Examiners made a choice for the teacher/candidate that effectively foreclosed her from any opportunity for a hearing

on the merits. Such a decision was unreasonable under the circumstances. Matter remanded to Examiners for consideration of the merits. (Muench, Commr., 2007: Jan. 9)

Commissioner remanded matter to Examiners to determine whether teacher/candidate maintained the right to petition the Examiners for an approval of an opportunity to seek provisional employment in a different district pursuant to N.J.A.C. 6A:9-17.18(d) after teacher/candidate received two insufficient ratings in her current district. (Muench, Commr., 2007: Jan. 9)

Commissioner determined that petitioning teacher/candidate failed to show good cause to waive the 60 day limitations period that allows a candidate to challenge a disapproved or two insufficient recommendations pursuant to 6A:19-17.18(a). (Muench, Commr., 2007: Jan. 9)

Examiners determined that teacher was not eligible for renewal of preschool through grade 3 provisional certificate, where applicant's third provisional certificate had lapsed and applicant had not fulfilled coursework requirements of the Alternate Route program. (Price, Exam., 2006: July 25)

Examiners voted to block application in light of disqualifying offense identified by Criminal History Unit; if matter is expunged Examiners will reconsider. (Givens, Exam, 2006: April 5)

Teacher of Elementary Certificate of Eligibility with Advanced Standing suspended pending resolution of criminal charges. Teacher arrested for endangering the welfare of children for spanking one of her children to discipline him; admitted into PTI on reduced charge of child neglect. If charges are resolved in her favor, she will notify the State Board of Examiners for appropriate action. Futrell, Exam. 2007: January 25 (Futell, Exam, Order of Suspension, 2007: Jan. 25)

Appellate Division affirms State Board's determination that board wrongly terminated a tenured teacher coordinator of cooperative industrial education on grounds of lack of proper certification, where he held an obsolete certificate of "employment orientation" and a 1982 certificate in skilled trades; the certifications in fact enabled him to teach basic level courses that he was in fact teaching such as shop, maintenance and repair with carpentry emphasis, and industrial technology; App. Div. also affirms State Board's reduction of back-pay to $140,167.24, reflecting period time that he would have been subject to RIF and on preferred eligibility list. Ziegler v. Bayonne Bd. of Ed. App. Div.

Commissioner approved vacation of order to show cause. (Grant-Rauschkolb, Commr., 2007:Aug. 23)

Alternate Route

Endorsement as substance awareness coordinator denied by State Board of Examiners where applicant's participation in after-school program did not satisfy intensive training required through alternate route program. (00:Oct. 2, Avellino, aff'd St. Bd. 01:March 7)

Application for alternate route certification is denied; applicant who graduated before September 1, 2004 did not have GPA of 2.5 from approved program. (04:Sept. 8, Aiello)

Educational Media Specialist: Person who performed duties of Educational Media Specialist but did not possess appropriate certification, not entitled to tenure or employment in the district. (96:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

Employment Disqualification

Disqualified custodian entitled to hearing before board of education to demonstrate evidence of rehabilitation, where predecessor statute to N.J.S.A. 18A:6-7.1 allowed such a hearing, because board failed to submit criminal history background check to DOE at the time of initial appointment. Successor statute did not provide for rehabilitation. (05:May 26, Nunez)

Endorsements

An endorsement is not invalidated simply because it is no longer issue. (99:Nov. 29, Ziegler)

Entitlement to technology coordinator by art teacher who was reduced from full to part-time, cannot be evaluated without remand to determine appropriate endorsement for this position. (00:July 27, Holloway)

State Board of Examiners did not revoke certificate, as there was no proof that teacher purposefully misrepresented the status of her certificate. Petition of appeal was time barred as per 90-day rule. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1, Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01:Dec. 5. See also, 02:March 4. No relaxation required. Determination of State Board of Examiners not necessary to pursue tenure rights claim. Aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5, June 2, 2003.

State Board of Examiners must not issue standard certificates to provisional teachers who have not yet demonstrated compliance with regulatory requirements. (St. Bd. 03:April 2, Englewood on the Palisades) See App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001 remanding to the State Board on the issue of staff certification.

Tenured teacher was summarily dismissed for fraudulently serving in current assignment for which she did not possess valid endorsement; although board should have filed tenure charges, petition is barred by 90-day rule. (99:Dec. 20, Osman, aff'd St.

Bd. 00:May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1, Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01:Dec. 5. See also, 02:March 4. No relaxation required. Determination of State Board of Examiners not necessary to pursue tenure rights claim. Aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5, June 2, 2003.

Whether teacher's Employment Orientation endorsement permitted him to teach district's industrial arts courses and whether he was improperly terminated for lack of appropriate certification, to be determined on remand by examination of actual job responsibilities. (99:Nov. 29, Ziegler) On remand, held that classes at issue were subject area vocational courses requiring appropriate specialized certification and thus beyond the scope of the Employment Orientation endorsement. (03:Dec. 22, Ziegler) State Board reverses, given the nature of employment orientation, which provides an introduction to the basic skills required in a variety of trades, the holder of a skilled trades endorsement, regardless of the particular experience which qualified him or her for that endorsement, is authorized by virtue of such certification to teach employment orientations. Board directed to reinstate petitioner with back pay and emoluments, less mitigation. Matter remanded to Commisisoner on issue of damages. (St. Bd. 05:July 6, Ziegler, motion to reconsider denied, St. Bd. 05:Sept. 7)

RIFd assistant superintendent entitled to District Director of Elementary Education position. While assistant superintendent is a separately tenurable position, the positions are substantially similar; both have the same line of authority, perform district-wide functions and have the same job requirements. Board ordered to appoint petitioner to the DDDE position together with back pay, seniority rights, tenure rights and all other rights and benefits to which he is entitled. Kaprow vs Board of Education of Berkeley Township, 2006:August 2

As regulations differentiate between County Apprenticeship Coordinator (CAC) endorsement and Coordinator of Industrial Education (CIE) endorsement, a teacher possessing only the CIE endorsement did not acquire tenure in the CAC position in which he served under a waiver permitting the district to hire a less-than-fully certified person. Thus his service could not be construed as tenure-eligible service. (Lagrutta, Commr., 2007:June 7, affirmed State Board 2007:November 7)

Board did not violate tenured physical education teacher's tenure/seniority rights, and followed N.J.S.A. 18A:28-9 thru -13, when it terminated her position and created the position of Health and Physical Education Teacher which requires endorsements in both

subject areas; teacher had been given opportunity, but failed, to obtain health endorsement. Francin, 2009: August 20.

One year suspension of teaching certificate ordered for non-tenured teacher who, claiming abysmal teaching environment in the charter, resigned to take another teaching job without providing required 60-day notice to charter school; he failed to put the interests of his students before his own interests by his sudden resignation that could not help but be disruptive to his students' education; suspension to commence at the conclusion of the 2011-2012 school year in order to avoid disruption in the education of respondent's current students. Matter of Suspension of Certificate of Creekmur, Commr 2012:Jan 4. » OAL Decision

Teacher had not met requirements for additional endorsement as a Teacher of Students with Disabilities (TSD) through the alternate route program; regulations require that an applicant for the TSD endorsement receive a verification of program completion from an institution of higher education. McQuilken, Commr 2012:Jan 27

Commissioner affirms Examiners denial of request for the issuance of a Teacher of Career and Technical Education: Carpentry Certificate of Eligibility for failure to attain a passing score on the required Praxis I exam. Cea v. Examiners, Commr 2012: Jan 30

Commissioner affirms Department's determination to suspend for 6 months a school bus driver's school bus endorsement pursuant to N.J.S.A. 18A:39-28 after incident in which a child was left on the school bus because driver failed to conduct the mandated visual inspection at the end of his route. Department was directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement pursuant to N.J.S.A. 18A:39-28 et seq., and to notify petitioner's employer that he is ineligible for the period of suspension for continued employment as a school bus driver. Graham, Commr 2012:Jan 30

Commissioner affirms Office of Criminal History Review's determination to suspend for six months the driver's school bus endorsement for leaving a kindergarten student on the bus for 3 minutes after a 12:15 drop-off at an elementary school. ALJ had found that the endorsement should not be suspended due to ambiguity in definitions, "end of transportation route" nor "vicinity of the school bus" and based on mitigating circumstances; however Commissioner determines that "end of route" pursuant to N.J.S.A. 18A:39-26 terminates at the point where all of the children in a particular group leave the bus to enter their school and before the driver moves on to her next route, and remorse cannot mitigate the severity of the breach. Klein, Commr 2012: Feb 2.

Commissioner confirms the State Board of Examiners denial of candidate's application for the issuance of a Principal Certificate of Eligibility (PCE). She had not met requirement of N.J.A.C. 6A:9-

12.5(a)1iii, that she complete a post-master's program; petitioner had to meet the requirement that she complete a post-master's program, not just acquire credits toward completion of the program. Crespo, 2012: Commr March 28.

Given unusual procedural history of certification deficiencies for which teacher was not given proper notice, along with subsequent satisfactory performance, revocation of certificate is not proper, even though certificate issued erroneously. (St. Bd. 03:April 2, Englewood on the Palisades) See App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001 remanding to the State Board on the issue of staff certification.

Provisional Teacher Training: Charter school directed to implement provisional teacher training program for teacher holding provisional certificate and to demonstrate that training program meets regulatory requirements. (St. Bd. 99:March 17, Englewood on the Palisades, charter school placed on probationary status and directed to submit remedial plan for provisional training program, St. Bd. 99:June 2, remanded to St. Bd. Of Examiners, St. Bd. 99:Dec. 1) (See State Board 03:April 2, Englewood on the Palisades) and App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001, remanding to the State Board on the issue of staff certification.

Psychologist who had been serving on emergency certificate could not have been offered position for the following year where district filled the position with a certified individual prior to August 1; emergency certificates can only be issued after August 1, and where district is unable to employ a suitable certified individual. (02:Oct. 7, Sniffen)

Reinstatement of certificate that teacher had voluntarily surrendered after his second entry into PTI for sexual misconduct with students, denied, where he failed to demonstrate rehabilitation and was dishonest. (01:Nov. 5, Arminio)

Private vendors – Subcontracting

ALJ denied contractor's motion for a stay of the board's contract award to competitor. Contractor asserted that the Department of Labor wrongfully suspended his right to engage in public contract projects during the pendency of his debarment proceedings before that department. (02:Aug. 22, Framan)

Despite authorizing resolution, board did not hire any uncertified instructors from Berlitz to teach foreign languages. Matter dismissed as moot. (02:April 19, Morris)

Required

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Computers: Special endorsement is not usually required to teach computer courses; RIF'd teacher with K-12 music endorsement not entitled to elementary computer position because she did not

possess elementary endorsement. (99:Nov. 3, Adler, rev'd St. Bd. 00:July 5)

In-class support instructor; assignment of social worker/substance awareness coordinator who did not possess teaching certificate to be in-class support instructor did not violate law. Board admonished for not taking greater care to outline instructor's role from the outset. (01:June 7, Possien-Kania, decision on remand from 99:Aug. 9)

In school suspension assignment was a teaching staff position requiring teaching certificate; back pay ordered for tenured teacher who, upon RIF, was entitled to position but not appointed. (99:Nov. 29, Lewis, on remand)

Question of whether English teacher who possessed English endorsement but neither reading nor elementary endorsements, was improperly assigned to teach remedial reading, remanded for further proceedings. (01:April 20, Middlesex)

Standard Certificate Eligibility: Candidates must possess provisional certificate and complete a State-approved training program to be eligible. (St. Bd. 03:April 2, Englewood on the Palisades) See App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001 remanding to the State Board on the issue of staff certification.

Whether positions of dropout prevention coordinator and coordinator of health and social services as authorized by Abbott regulations, N.J.A.C. 6A:24-1.4(h), are positions requiring certification, will depend on the duties assigned thereto by the local district; here, particular duties required educational services certificate; county Superintendent must review for proper endorsement. (01:Aug. 16, Passaic, aff'd with modification, St. Bd. 01:Dec. 5, emergent relief denied St. Bd. 02:Feb. 6, aff'd App. Div. unpub. op. Dkt. No. A-1975-01T2, November 27, 2002)

State Board denies motion to supplement record in State Board of Examiner's certificate revocation proceedings where teacher submitted false credentials. On appeal to State Board, matter reversed and remanded on issue of whether teacher knowingly submitted false credentials. (St. Bd. dec. on motion, 05:July 6, Carney, rev'd and remanded St. Bd. 05:Nov. 2)

State Board of Examiners properly denied petitioner's application for a supervisor's certificate as the masters and doctoral degrees he earned were from unaccredited out-of-state institutions not recognized under any reciprocal agreements with the NJDOE. (04:July 7, Nicolas)

Restoration

State Board grants DAG request to remand matter back to State Board of Examiners for further review. State Board of Examiners had revoked appellant's county substitute credential because of aggravated assault conviction but had been unaware that appellant had been admitted into pre-trial intervention program. (Kaufman, St. Bd. 2007:May 2)

Examiners adopted a three-year suspension of the certificate of English teacher who resigned while tenure charges of unbecoming conduct and insubordination were pending. (Suabedissen, Exam, 2009: May 11)

State Board granted teacher's request for certification after revocation, indicating that he may submit an application for a new certificate. IMO the Certificate of Martin, Exam 2009: Sept. 22.

Examiners grants teacher's request for certification after revocation, indicating that he may submit an application for a new certificate. IMO the Certificate of Staton, Exam 2009: Sept. 17.

Commissioner denies application for recertification of teacher whose certificate had been revoked in 1992 as a condition of PTI for charges of criminal sexual contact against students and misconduct in office; the doctrine of res judicata applies as the petitioner had applied to State Board of Examiners for recertification in 1999 and had been denied after a full hearing and a ruling by the Commissioner. Moreover, the application of administrative code provisions that were adopted after he reentered PTI did not violate ex post facto law; ex post facto laws only apply to criminal matters, not regulatory laws governing teacher licensure. Armino, Commr. 2009:Dec. 7

Teacher who pled guilty to charges of theft of government funds had Teacher of the Handicapped certificate revoked.(Robinson, Exam, 2006: March 8)

Suspension

Certificate suspended for nine months where teacher, albeit overwhelmed by her situation, expressed no concern for elementary school pupils when she resigned "effective immediately" just two weeks into the year. (01:Nov. 26, Brown, aff'd with modification St. Bd. 02:June 5)

Commissioner determined that revocation of teacher's certification for failure to provide 60-days prior notice should commence as of the date of the Final Decision and not the date of the teacher's resignation. (05:Oct. 27, Wenzel)

Failure to provide adequate notice of resignation warranted one year's suspension of certificate. (05:March 2, Incalcaterra)(05:March 29, Farran)

Notice of resignation: board's acceptance of guidance counselor's resignation given with only 2 weeks notice, did not mean that it consented to waiving the 60 days' notice; Commissioner was authorized under N.J.S.A. 18A:26-10 to suspend her certificate for one year. (02:Oct. 25, Green)

Notice of resignation: suspension of special education teacher's certificate for one year ordered pursuant to N.J.S.A. 18A:26-8, N.J.S.A. 18A:26-10 and N.J.A.C. 6:11-3.8 where teacher gave only 12 days notice of resignation because teacher had secured alternative

employment as police officer and provided no compelling mitigating factors warranting a shorter suspension. (01:June 1, Montalbano)

Notice of resignation: where teacher failed to give full 60-days as required by contract, Commissioner was authorized under N.J.S.A. 18A:26-10 to suspend her certificate for one year. (00:June 19, McFadden)

Settlement approved in matter seeking suspension of certificate for one year for failure to provide proper notice of resignation. (03:June 9, Robbie)

Settlement; certification suspended for six months for failure to give 30 days' notice pursuant to N.J.S.A. 18A:26-10. (01:Nov. 9, Blitz)

Settlement under N.J.S.A. 18A:26-10 requiring suspension of certificate for one year for abandonment of position, approved. (01:Sept. 28, Savage)

Teacher's certificate suspended for one year for failure to give proper notice of resignation. Engaged in unprofessional conduct. N.J.S.A. 18A:26-10. (02:April 29, Owens)

Teacher's certificate suspended for one year where social worker sat around doing personal business and thereby constructively abandoned her duties, without giving 60 days' notice; board could also withhold unpaid salary. (99:July 16, Lawnside)

Teacher's failure to provide 60 days' contractual notice of resignation resulted in finding of unprofessional conduct and suspension of certificate for 1 year pursuant to N.J.S.A. 18A:26-10; negative evaluation triggering emotional distress no excuse. (99:May 24, Falco)

Teacher's failure to provide 60 days' contractual notice of resignation resulted in finding of unprofessional conduct and suspension of certificate for 1 year pursuant to N.J.S.A. 18A:26-10; poor working conditions no excuse. (98:Sept. 25, Verbesky)

Examiners revoked the teaching certificate of a special education teacher after he was convicted of official misconduct and forfeited his public employment. Examiners determined that teacher's acts of official misconduct by submitting inaccurate tutoring vouchers was inexcusable for any individual, teacher or not. (Costales, Bd. Exam. 2006: May 10)

School psychologist's certificate is suspended for one year pursuant to N.J.S.A. 18A:26-10 and N.J.S.A. 18A:28-8 for providing only 18 days' notice of resignation from his position to accept another job; although ALJ would have limited suspension to three months, Commissioner disagrees. (Capshaw, Commr. 2007:June 12)

State Board remands to State Board of Examiners the Appellate Division reversal of determination to revoke teaching certificates following breach of testing protocols by principal. Black, St. Bd. 2005:May 4.

Examiners revoked the county substitute certification of teacher who had been convicted of possession of CDS and had forfeited his public office. Examiners determined that an individual whose offense was so great that he is barred from public office should not be permitted to retain the license that authorizes such service nor should he be able to hold himself out as a teacher. (Brodman, Exam, 2006: Nov. 8)

State Board of Education reverses the State Board of Examiners' decision to revoke the certificates of the teacher's Teacher of Nursery School and Teacher of Elementary School certificates. There was no proof that teacher had urged victimized students to hit others; nor was forcing a student to mix chocolate milk with her lunch and then eat the mixture as a mode of discipline a serious enough infraction to warrant revocation of her certificate, especially where her increments had already been withheld by the district. The State Board ordered the teacher's certificates to be reinstated. (Troublefield, Exam, 2006: March 8, aff'd St. Bd. 2007:Jan 3)

Supervisor of Testing and Assessment, who held a Ph.D. but no certificate, must be removed from position where job duties included staff guidance and training; although the board did not require certification in the job description and improperly assigned her to a positin for which she was not certified, the board was not equitably estopped from denying her tenure. (Ramaswami, Commr., 2009:May 1)

Examiners revoked the multiple certificates of elementary school teacher based upon 1973 burglary conviction despite 30 years of successful performance. (Messino, Exam. 2006: June 12)

Examiners revoked the teaching certificate of an elementary school teacher who had pleaded guilty to attempting to endanger the welfare of a child. Teacher failed to respond to the Order to Show Cause. (Diamante Exam, 2006: Nov. 8)

Examiners revoked the certificate of tenured elementary school teacher for slapping student and puncturing his neck with a chair after the student threw a book at her. (Tyson, Exam. 2006: June 12)

Teacher of Elementary Certificate of Eligibility with Advanced Standing suspended pending resolution of criminal charges. Teacher arrested for endangering the welfare of children for spanking one of her children to discipline him; admitted into PTI on reduced charge of child neglect. If charges are resolved in her favor, she will notify the State Board of Examiners for appropriate action. Futrell, Exam. 2007: January 25 (Futell, Exam, Order of Suspension, 2007: Jan. 25)

Tenured English and Journalism teacher resigned without providing the 60-day notice required by her contract and by N.J.S.A. 18A:28-8. Teaching certificate suspended for one year from the date of the decision. (Kovalovich, Commr., 2007:August 10)

Examiners ordered two-year certificate suspension of a tenured special education teacher for assaulting a special education student. (Kendrick, Exam. 2006:June 12)

Examiners summarily revoked the Teacher of English and Teacher of Speech and Dramatics certificates of a teacher who had been convicted of lewdness and disqualified from public service. Despite teacher's assertion that he pleaded guilty erroneously without the benefit of counsel in an attempt to quickly resolve the matter, Examiners determined that the undisputed fact of the offense and disqualification constituted conduct unbecoming a certificate holder. (Mullay, Exam, 2006: Nov. 8)

Examiners rejected an applicant's appeal of her provisional teacher rating as untimely. Examiners also rejected applicant's motion to relax the time limits of her appeal as being without good cause. (Mann-Rennie, Exam, 2006: April 5)

Examiners accepted the proposed settlement in Docket No. 0405-287. (Owen, Exam, 2006: Jan. 20)

Examiners determined that teacher had engaged in conduct unbecoming a certificate holder, relying on student testimony as corroboration of other components of proof of inappropriate touching and classroom language. Examiners suspended teacher's teacher of English and Teacher of Speech and dramatics certificates for two years. Mangan, Exam, 2006: March 8), affirmed St. Bd. 2006:Dec. 6

Examiners accepted the surrender of teacher's sertificates with the full force and effect of a revocation.(Mandel, Exam, 2006: Jan 20).

Examiners accepted the surrender of teacher's certificates with the force and effect of a revocation.(Mancuso, Exam, 2006: Jan. 20)

Commissioner ordered one-year suspension of teaching certificate of kindergarten teacher who failed to give 60 days notice before resigning. (I.M.O. Hemerick, Commr., 2008: Jan. 9).

Examiners summarily revoked the County Substitute credential of a teacher who was convicted of criminally attempting to endanger the welfare of children. (Weiss, Exam, 2006: Nov. 8)

Examiners summarily revoked the Teacher of Elementary School certificate of Eligibility of a teacher who had pleaded guilty to attempted sexual assault and distribution of child pornography. (Vespignani, Exam, 2006: Nov. 8).

Examiners modified the Initial Decision and revoked the Elementary School and Teacher of French Certificates of Eligibility of a teacher who misrepresented that she possessed a Teacher of Spanish Certificate of Eligibility when obtaining a public school teaching position. (Stasiuk, Exam, 2006: Nov. 8)

Junior High School teacher certificate revoked due to conviction on charge of criminal sexual contact. Gambone, Exam. 2007: January 25

Examiners summarily revoked the Teacher of Social Studies and Teacher of Elementary School certificates of a teacher who had been arrested for possession of CDS and pled guilty to a disorderly persons offense. Teacher failed to respond to the Order to Show Cause. (Rogers, Exam, 2006: Nov 8)

Examiners summarily revoked the teaching certificates of a social studies teacher who pleaded guilty to extortion under color of official law and tax evasion. Teacher failed to respond to Order to Show Cause. (Janiszewski, Exam, 2006: Nov. 8)

Examiners summarily revoked the Teacher of Elementary School certificate of a teacher who pleaded guilty to endangering the welfare of a child. Teacher never denied that he had pled guilty and had been ordered to forfeit his teaching certificates as a condition of probation. Examiners determined that the offense and forfeiture represented just cause for revocation. (Quinn, Exam, 2006: Nov. 8)

State Board affirmed Examiners decision on certificate revocation. ALJ's decision provided an appropriate basis for finding that appellant's testimony was not credible and conformed with the legal requirements for assessing credibility of witness testimony. (Kersaint, St. Bd. 2007:Oct. 17)

Examiners summarily revoked the Teacher of Elementary School Certificate of Eligibility of a non-tenured teacher who had been terminated for threatening a student and having a positive drug test result. Teacher failed to respond to the Order to Show Cause. (McNeill, Exam, 2006: Nov. 8)

Examiners summarily revoked the County Substitute credential of a teacher who had been convicted of theft and disqualified from holding public office. Teacher responded to Order to Show Cause stating that he did not contest the revocation proceedings and disqualification from public employment. Examiners determined that a crime of dishonesty was contemplated by the Legislature when it sought to protect students from contact with individuals who it deemed to be a danger to them. Krieger, Exam, 2006: Nov. 8)

Examiners summarily revoked the County Substitute credential of a teacher who had been convicted of aggravated assault and disqualified from holding public office. Examiners determined that a crime of violence was contemplated by the Legislature when it sought to protect students from contact with individuals who it deemed to be a danger to them. (Kaufman, Exam, 2006: Nov. 8)

Examiners revoked the teaching certificate of a music teacher who had previously pleaded guilty to child abuse. Teacher failed to respond to the Order to Show Cause. Bruno, Exam, 2006: Nov. 8

Decision of State Board of Examiners to revoke, following dismissal of teacher on tenure charges of unbecoming conduct, must be based

on independent review of record and can include additional evidence (87: August 5, Ahern, St. Bd.) (87: August 5, Gwaley, St. Bd. rev'g 87: March 26) (86:668, Hamilton-Moore, aff'd St. Bd. 88: March 4)

Board of Examiners revokes elementary and handicapped certificates of teacher who pled guilty in criminal court to unauthorized use of a computer (disorderly persons offense) where ALJ also found teacher had engaged in unbecoming conduct including affording young students unfettered access to the internet, showing his class pornographic web sites, using profanity, and engaging in violent behavior. Grendysa, Examiners 2008:Jan. 17.

Board of Examiners revoked elementary certificate of teacher whose breach of security procedures in administering the GEPA test removed her ability to serve as a role model for students; her decision to resign and refrain from teaching in a public school district pending the resolution of her certification hearing did not warrant the imposition of a lesser penalty. (Karis, Examiners 2008: Jan 17). State Board reversed State Board of Examiners decision revoking teacher's certificates. Teacher in this matter did not provide direct assistance to students in breaching test security protocals. Teaching certificcates suspended for remainder of the school year. (Karis, St. Bd., 2008: June

Board of Examiners revokes elementary certificate of teacher whose violation of testing procedures in administering the NJ ASK test to affect test results removed his ability to serve as role model for students, and where district incurred extra expense to re-administer portions of test. Mascuch, Examiners 2008:Jan 17.

Examiners revoked the certificates of a non-tenured teacher who passed sexually suggestive notes to a student. (Nieves, Exam, 2006: March 8)Affirmed St. Bd. 2006:Dec.6.

Board of Examiners agrees with the ALJ that the teacher/co-owner of Abbott preschool did not have knowledge or consent to improper payroll accommodation to another staff member, and affirmed dismissal of the case against her. Natalini, Examiners 2008:Jan 17.

Examiners summarily revoked the teaching certificates of an elementary school teacher who pleaded guilty to endangering the welfare of a child. Teacher failed to respond to the Order to Show Cause. (Gudewitz, Exam, 2006: Nov. 8)

Examiners upheld decision to deny Teacher of English as a Second Language certification. Although applicant began coursework before the change in regulations, she did not apply for ESL certification until after the changed regulations had been adopted. Because applicant did not pass a written English language proficiency test, she was

not eligible for an ESL Certificate of Eligibility. (Dougherty, Exam, 2006: Nov. 4)

State Board reversed the decision of the State Board of Examiners to revoke the certificate of a teacher for a hearing, to permit the teacher to present evidence in mitigation of her actions in slamming a door on a student's fingers; a hearing on the papers was not enough. (Certificates of V.R., St. Bd. 2007:Dec. 5)

Examiners accepted settlement agreement calling for revocation of teaching certificates. (Marshall, Exam. 2006: May 5)

State Board of Examiners accepted settlement agreement calling for revocation of teaching certificates. I.M.O. Marshall, Bd. Exam. 2006: May 5.

State Board of Examiners declined to revoke the certificates of an art teacher for using Ph.D. and Ed.D. after her name. Teacher had no interest in depicting herself as a holder of advanced degrees; rather, the district was concerned with teacher's use of the degrees' initials after her name. Teacher's conduct did not rise to the level of unbecoming. Examiners clarified that in all proceedings involving the suspension or revocation of teaching certificates pursuant to N.J.A.C. 6A:9-17.5, the correct standard of proof is a preponderance of the competent, credible evidence. I.M.O. Mesh, Bd. Exam. 2006: May 10.

State Board of Examiners determined that teacher's arrest and possible disqualification for endangering the welfare of a minor by allegedly possessing child pornography, represented just cause to suspend his certificates pursuant to N.J.A.C. 6A:9-17.5 until the criminal charges were resolved in his favor. I.M.O. Peters, Bd. Exam. 2006: May 10.

State Board of Examiners declined to suspend or revoke the certificates of a physical education teacher who accidentally bumped heads with and reflexively cursed a student who called the teacher by an inappropriate nickname. I.M.O. Schiavo, Bd. Exam. 2006: May 10.

State Board of Examiners accepted settlement agreement calling for revocation of teaching certificates. I.M.O. Vaughn, Bd. Exam. 2006: May 5.

State Board of Examiners determined to revoke the certificates of a teacher who became certified 18 years after having been convicted of lewdness, a disqualifying offense. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. I.M.O. Blatnik, Bd. Exam. 2006: June 12.

State Board of Examiners determined that teacher's entry into PTI for official misconduct and the court-ordered surrender of his teaching licenses for engaging in sexual relations with a student constitutes

conduct unbecoming a certificate holder. I.M.O. Deb, Bd. Exam. 2006: June 12.

Examiners revoked the certificates of an ESL and Spanish teacher who pleaded guilty to sexual assault and was ordered to forfeit her public office. I.M.O. Gallagher, Bd. Exam. 2006: June 12.

Appellate Division affirms judgment of conviction entered in the Law Division on appeal de novo on the municipal court record, R. 3:23-8(a), memorializing the finding that he was guilty of violating N.J.S.A. 2C:14-4a, lewdness graded as a disorderly persons offense. Appellate Division also affirmed the simultaneous order which provided that, as a result of the conviction, in addition to the sentence imposed, he forfeit his board of education employment. State of New Jersey and Bergenfield Board of Education vs Stratos Mandalakis, 2007:April 19

After teacher entered into a settlement agreement with the district which was approved by the Commissioner, State Board of Examiners revoked his certificates for engaging in unbecoming conduct by placing ice cubes down student's blouse. I.M.O. Chavez, Bd. Exam. 2006: May 10.

Examiners ordered revocation of certificate of teacher of handicapped who plead guilty to possession of CDS; evidence of rehabilitation was irrelevant. (I.M.O. Dillard, Exam, 2006 March 8)

Examiners accepted settlement agreement calling for revocation of teaching certificates. (Vaughn, Bd. Exam. 2006: May 5)

Examiners determined that teacher exercised poor judgment in supervising two different groups of students by not placing the groups in positions where he could view them simultaneously in order to prevent roughhousing between students. This poor judgment did not warrant the suspension or revocation of his teaching certificates.(Barnes, Exam, 2006: May 10).

Examiners ordered revocation of charter school teacher's Elementary School Certificate of Eligibility, where the teacher had choked a student and received a disapproved rating in the Provisional Teacher Program (PTP); his contentions of rehabilitation and successful subsequent employment were irrelevant. (Young, Exam. 2006: July 24)

Examiners accepts surrender of teaching certificates with the force and effect of revocation. (Fuller, Exam. 2006: July 24).

Examiners accepts surrender of teaching certificates with the force and effect of revocation. (Murray, Exam. 2006: July 24).

Examiners determined to revoke the certificates of a teacher who became certified 18 years after having been convicted of lewdness, a disqualifying offense. An individual whose offense is so great that he or she is barred from service in public schools should not be

permitted to retain the certificate that authorizes such service. (Blatnik, Examiners, 2006: June 12).

Stated Board reduced two-year suspension of certificates issued by Board of Examiners to teacher with otherwise unblemished record to one-year, where teacher authorized salary payments to an employee's son rather than to the employee, to assure that the payments would not disqualify the employee from receiving her husband's social Security benefits; actions, were dishonest although well-intentioned. Confessore, St Bd. decision

State Board of Examiners determined that there was no evidence of conduct unbecoming where principal/supervisor of charter school recommended the appointment of a consultant who used that appointment to improperly increase his pension eligibility. I.M.O. Featherson, Bd. Exam. 2006: June 12.

Examiners declined to revoke the certificates of an art teacher for using Ph.D. and Ed.D. after her name. Teacher had no interest in depicting herself as a holder of advanced degrees; rather, the district was concerned with teacher's use of the degrees' initials after her name. Teacher's conduct did not rise to the level of unbecoming. Examiners clarified that in all proceedings involving the suspension or revocation of teaching certificates pursuant to N.J.A.C. 6A:9-17.5, the correct standard of proof is a preponderance of the competent, credible evidence. Mesh, Exam. 2006: May 10).

Teaching staff member's teacher, supervisor and principal/supervisor certificates suspended for four years. Elementary principal had engaged in unbecoming conduct when she drove a first grade student who had had an asthma attack to the student's baby sitter's apartment and left the student without assuring that the baby sitter was present. DYFS sustained a finding of neglect and county prosecutor charged principal with second degree endangerment, leading to PTI. (Fairbanks, Exam. 2006: September 21)

State Board of Examiners accepted relinquishment of certificates. (Torres, Exam, 2006: Sept. 26)

State Board of Examiners accepted relinquishment of certificates. (Smith, Exam, 2006: Sept. 27).

County substitute credential revoked. 1979 conviction for receiving stolen property was a crime involving theft and dishonesty that disqualified applicant from service in the public schools. (Harvin, Exam. 2006: September 21)

Teaching staff member's teacher of music certificate of eligibility with advanced standing and teacher of music certificate revoked due to conviction of possession of child pornography. (Lapetina, Exam, 2006: Sept. 21).

Examiners determined to revoke certificates of teacher who, away from school ground after school hours, made a

local men's store employee an unwilling witness to his masturbation on several occasions. (Jordan, Exam, 2008: Feb. 21)(Jordan, Commr., 2008: Aug. 13) (Jordan, St. Bd., 2008: March 31) (Motion for emergent relief denied).

State Board of Education affirms decision of State Board of Examiners to revoke administrative and instructional certificates. Administrator had resigned from position after numerous staff members had filed complaints against him while he was employed in the district, alleging defamation, harassment, inappropriate sexual behavior, intimidation and threatening behavior. Ferreira, Exam, Oct. 13, 2005

State Board of Education affirmed State Board of Examiners two-year suspension of appellant's teaching certificates for conduct unbecoming a teacher. Matter involved DYFS substantiated allegations of sexual misconduct at an overnight field trip to the Penn Relays. (Younger, St. Bd., 2006: Jan. 4) Appellate Division affirms, finding that the State Board's determination was supported by the record and was not arbitrary, capricious nor unreasonable. (I.M.O. the Suspension of the Certificates of Corey Younger By the State Board of Examiners, No. A-2800-05T32800-05T3 (App. Div. Nov. 15, 2006) (slip op.).

State Board of Examiners accepted settlement agreement calling for revocation of teaching certificates. I.M.O. Kurdilla, Bd. Exam. 2006: May 5.

State Board of Education affirmed State Board of Examiners decision that revoked teacher's certificate. Matter involved submission of false insurance claims to the SHBP and splitting proceeds with psychologist. (Subsequently remanded by App. Div. on due process grounds).(Toler, Examiners, 2004: Dec. 29);Toler, aff'd by St Bd, 2005: July 1 (Toler v. Examiners, remanded by No. A-5847-04 (App. Div. March 30, 2006)

State Board of Examiners revoked the teaching certificate of a special education teacher after he was convicted of official misconduct and forfeited his public employment. Examiners determined that teacher's acts of official misconduct by submitting inaccurate tutoring vouchers was inexcusable for any individual, teacher or not. I.M.O. Costales, Bd. Exam. 2006: May 10.

Examiners revoked the teaching certificate of physical education teacher who pleaded guilty to endangering the welfare of a child by photographing sexual activity. Teacher failed to respond to the Order to Show Cause. (Digioacchino, Exam, 2006: Nov 8)

State Board of Examiners revoked teacher's certificate. Matter involved submission of false insurance claims to the SHBP and splitting proceeds with psychologist. (Toler, St Bd on remand from App. Div., 2006: May)

Examiners determined that teacher's arrest and possible disqualification for endangering the welfare of a minor by allegedly possessing child pornography, represented just cause to suspend his certificates pursuant to N.J.A.C. 6A:9-17.5 until the criminal charges were resolved in his favor. (Peters, Examiners 2006: May 10). Teacher failed to respond to Order to Show Cause so Examiners revoked her certificates. (Peters, Examiners 2007: April 2).

Examiners declined to suspend or revoke the certificates of a physical education teacher who accidentally bumped heads with and reflexively cursed a student who called the teacher by an inappropriate nickname. (Schiavo, Exam. 2006: May 10).

State Board of Examiners determined that teacher exercised poor judgment in supervising two different groups of students by not placing the groups in positions where he could view them simultaneously in order to prevent roughhousing between students. This poor judgment did not warrant the suspension or revocation of his teaching certificates. DYFS findings of neglect did not allege that the teacher engaged in unbecoming conduct or other just cause for certification suspension or revocation. I.M.O. Barnes, Bd. Exam. 2006: May 10.

State Board of Examiners did not suspend or revoke the certificates of a physical education teacher who broke student's wrist while blocking the student's attempted lay-up on basketball court. Teacher's conduct did not rise to the level of unbecoming conduct. I.M.O. Bozinta, Bd. Exam. 2006: May 10.

Appellate Division affirms decision of the State Board of Education, which affirmed the determination of the State Board of Examiners revoking teacher's instructional certifications as a Teacher of Social Studies, Teacher of Elementary School, and Teacher of the Handicapped. In the Matter of the Revocation of the Certificates of Laurie Rosen, 2007:April 3

Examiners accepted settlement agreement calling for revocation of teaching certificates. (Kurdilla, Exam. 2006: May 5).

Examiners revoked the school social worker certificates of a teacher who had pled guilty to endangering the welfare of a child. (Simon, Examiners, 2007: March 30).

State Board of Examiners revoked the certificate of a K-5 teacher who had been convicted of manufacturing/distributing a CDS and possession of a CDS on school property and had been ordered to forfeit public office. I.M.O. Green, Bd. Exam. 2006: June 12.

Examiners revoked the certificate of a K-5 teacher who had been convicted of manufacturing/distributing a CDS and possession of a CDS on school property and had been ordered to forfeit public office. (Green, Exam. 2006: June 12).

Examiners determined DYFS findings of neglect did not allege that the teacher engaged in unbecoming conduct or other just cause for certification suspension or revocation. (Barnes, 2006:May 10)

State Board grants DAG request to remand matter back to State Board of Examiners for further review. State Board of Examiners had revoked appellant's county substitute credential because of aggravated assault conviction but had been unaware that appellant had been admitted into pre-trial intervention program. (Kaufman, St. Bd. 2007:May 2)

State Board modifies penalty of State Board of Examiners; rather than revocation of certificate as ordered by State Board of Examiners, teacher's certificate is suspended for two years, for the unbecoming conduct of engaging in horseplay including placing ice cubes down student's blouse. (After teacher entered into a settlement agreement with the district which was approved by the Commissioner, Examiners revoked his certificates for engaging in unbecoming conduct by placing ice cubes down student's blouse.) (Chavez, Exam, 2006: May 10).

Examiners did not suspend or revoke the certificates of a physical education teacher who broke student's wrist while blocking the student's attempted lay-up on basketball court. Teacher's conduct did not rise to the level of unbecoming conduct. (Bozinta, Examiners. 2006: May 10).

Upon Appellate Division remand, matter referred to OAL on issue of mitigation of the revocation sanction for kissing a student. (Fox, St. Bd. 2007:Sept. 20)

After tenure charges had been settled, and teacher/administrator resigned, Examiners modified the Initial Decision of the ALJ to include revocation of teaching certificates as well as administrator's certificates. Administrator/Teacher had engaged in inappropriate conduct with teachers he had been supervising. (Mazzarella, Examiners, 2007:March 2, aff'd St. Bd. 2007:Sept. 5).

Examiners suspended the teaching certificates of a special education teacher for one year for engaging in inappropriate sexual language in the classroom and for engaging in conversations with students about his fictional homosexual lover and offering to rub a student's testicles after the student received a groin injury. (Skerbitz, Examiners, 2007: March 2, affirmed State Board 2007:August 1)

Examiners denied the appeal of a teacher candidate who failed to obtain a 2.5 GPA. Candidate may submit proof of 2.75 GPA from graduate degree or post-baccalaureate certification program. (Maier, Examiners, 2007: Feb. 22).

Examiners revoked the certificate of gym teacher who had pled guilty to charges of harassment by offensive touching. Tapp was fined and ordered to forfeit her teaching position. Tapp was also forever disqualified from holding any office or position of honor, trust or

profit under this State or any of its administrative or political subdivisions pursuant to N.J.S.A. 2C:51-2d. (Tapp, Examiners, 2007: April 2)

Examiners revoked the Secondary School Teacher of English certificate of teacher who had been terminated pursuant to tenure charges of inefficiency. Teacher failed to correct her inefficiencies and failed to respond to revocation proceedings. (Graham, Examiners, 2007: April 2)

Examiners revoked the county substitute certificate of teacher who had been arrested on charges of aggravated sexual assault. Teacher failed to respond to Order to Show Cause so charges were deemed admitted. (Sorrell, Examiners 2007: April 2).

Examiners revoked certificates of gym teacher who had been convicted of assault by auto and subsequently disqualified from public service pursuant to N.J.S.A. 18A:6-7.1. (Scalzo, Examiners 2007: April 2).

Examiners revoked the certifications of teacher who had been convicted of conspiracy to commit arson and disqualified from public service. (Richardson, Examiners 2007: April 2)

Examiners accepted the voluntary surrender of principal/supervisor certificate with the full force and effect of a revocation. (Reinoso, Examiners 2007: April 24).

Examiners accepted voluntary surrender of certificates for a one-year period of suspension. (Hayes, Examiners, 2007: April 24)

Pursuant to N.J.S.A. 18A:26-10, Commissioner declined to suspend the teaching certificates for failing to provide 60-day notice of resignation. District failed to prove that the teacher ceased to perform his duties before the end of the contractual term and board did not consent to the resignation. Fesolowich vs Terranova Group t/a Chapel Hill Academy, 2006:Sept. 14

Examiners determined that teacher's entry into PTI for official misconduct and the court-ordered surrender of his teaching licenses for engaging in sexual relations with a student constitutes conduct unbecoming a certificate holder. (Deb, Examiners, 2006: June 12).

Examiners voted to accept the voluntary surrender of certificates with the full force and effect of revocation. (Clothier, Examiners, 2007: March 5).

Examines revoked the certificate of certificate of a junior high school teacher based on his 2003 guilty plea to criminal sexual conduct. (Gambone, Examiners, 2007: Jan. 25).

Examiners determined that there was no evidence of conduct unbecoming where principal/supervisor of charter school recommended the appointment of a consultant who used that appointment to improperly increase his pension eligibility. (Featherson, Examiners, 2006: June 12).

Examiners suspended the Teacher of Elementary Certificate of Eligibility with Advanced Standing, of holder arrested and charged with endangering the welfare of children, pending the resolution of the criminal matters.(Futrell, Examiners, 2007: Jan. 25)

State Board of Examiners revoked the certificate of tenured elementary school teacher for slapping student and puncturing his neck with a chair after the student threw a book at her. I.M.O. Tyson, Bd. Exam. 2006: June 12

After reviewing the comprehensive criminal history, Examiners accepted the voluntary forfeiture of county substitute certificate with full force and effect of revocation. (Karas, Examiners 2007:April 24)

State Board of Examiners ordered two-year certificate suspension of a tenured special education teacher for assaulting a special education student. I.M.O. Kendrick, Bd. Exam. 2006: June 12

Examiners revoked the certificates of an ESL and Spanish teacher who pleaded guilty to sexual assault and was ordered to forfeit her public office. (Gallagher, Exam. 2006: June 12).

State Board of Examiners revoked the multiple certificates of elementary school teacher based upon 1973 burglary conviction despite 30 years of successful performance. I.M.O. Messino, Bd. Exam. 2006: June 12.

On remand from the Appellate Division, the State Board of Education remanded to State Board of Examiners for consideration of appellant's claim that he was unfairly singled out by the SBE. (Toler, Examiners, 2004: Dec. 29); (Toler, aff'd by St Bd, 2005: July 1); (Toler v. Examiners, remanded by No. A-5847-04 (App. Div. March 30, 2006)

Examiners revoked the certificate of a social studies teacher who was convicted on two counts of criminal sexual contact. (I.M.O. the Certificates of Calandrillo, Exam, 2009: June 22)

In reviewing evidence of rehabilitation, Board of Examiners determined that the purpose of a hearing before the Examiners is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." Examiners revoked the certificate of certificate holder who was convicted of theft by failure to make a required disposition as a 2nd degree crime. (I.M.O. the Certificates of Lemme, Exam, 2009: May 11)

Examiners revoked certificate of social studies teacher who was disqualified from public service in 1994 and 1996 for possession of CDS, despite the fact that teacher did not obtain certificate of eligibility until 2007. (I.M.O. Pietrangelo, Exam, 2009: May 11)

Teacher of Elementary School and Teacher of Nursery School certificates revoked following tenure dismissal for corporal punishment and unbecoming conduct for slamming her classroom door on the

fingers of a student causing him injury. IMO Certificates of V.R., Exam 2009: Dec 2

Teacher of Psychology and Teacher of Elementary School certificates of eligibility, and Teacher of Elementary School, Teacher of Psychology and Teacher of Spanish certificates revoked following his entrance into pre-trial admission program. IMO Certificates of Brandt, Exam 2009:Dec. 2.

Elementary certificate revoked following plea of guilty to two counts of Endangering the Welfare of a Child in the third degree. IMO Certificates of Bowler, Exam 2009:Dec 2

Teacher of Music certificate revoked following plea of guilty to official misconduct. In this instance, plea to Official Misconduct represents a fraction of his egregious behavior that warrants revocation. IMO Certificates of Vann, Exam 2009: Dec 2

Legislative delegation to the Board of Examiners regarding oversight of teaching certificates was not intended to be constrained solely by reference to criminal conduct and convictions. The Board's oversight is not controlled exclusively by N.J.S.A. 18A:6-7.1's automatic disqualifiers or N.J.S.A. 2C:51-2's forfeiture-upon-conviction provision. Case involved teacher masturbating in a store, a petty disorderly persons offense. In re Certificates of Kevin Jordan, 2009 N.J. Super. Unpub. LEXIS 2439 (App.Div. Oct. 5, 2009)

Tenure settlement rejected where teacher allegedly pushed disruptive child against wall; seriousness of charge requires greater explanation especially in light of agreement that matter of his certificate not be referred to State Board of Examiners-- and thus did not meet Cardonick standards. Alvarez, Commr. 2009: September 4

Teacher of Earth Science certificate revoked following plea of guilty to charges of Aggravated Sexual Assault and Endangering the Welfare of a Child. IMO Certificates of Gentile, Exam 2009: Dec 2

Tenured science teacher dismissed. Unbecoming conduct included failing to control his temper, exercising poor judgment, making disparaging remarks about students, allowing his feelings of frustration and anger to overwhelm his professional demeanor, and engaging in behaviors which caused staff members to feel physically threatened. Matter referred to the State Board of Examiners for further proceedings. Taylor, Commr. 2009: September 21

Examiners declined to issue certificate to teacher who had previously forfeited his teaching certificate as part of a plea agreement with the county prosecutor. (I.M.O. the Certificates of Arminio, Exam, 2009: May 11)

Examiners revoked the certificate of teacher who pleaded guilty to aggravated criminal sexual contact. (I.M.O. the Certificates of Fetter, Exam, 2009: June 22)

Examiners revoked the certificate of teacher who had been disqualified from public service for a conviction of indecent exposure. (I.M.O. the Certificate of Franco, Exam, 2009: June 22)

Examiners revoked the certificate of elementary teacher who pled guilty to theft by deception and was forever barred from holding any office or position of honor, trust or profit under this state or any of its administrative or political subdivisions pursuant to N.J.S.A. 2C:51-2c. (I.M.O. the Certificate of Gurtov, Exam, 2009: June 22)

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificates of Welch, Exam, 2009: June 22)

Examiners accepted one-year suspension of teacher of the handicapped certificates proposed by teacher after Division of Youth and Family Services (DYFS) investigation substantiated allegations of physical abuse. (I.M.O. the Teaching Certificate of Berkowitz, Exam, 2009: May 11)

Teacher of Social Studies and Teacher of the Handicapped certificates revoked following settlement of tenure charges for conduct unbecoming where teacher used school computer visible to students to send and receive sexually explicit and racist e-mails during his instructional time, sent negative e-mails concerning the district and its students and visited a strip club during lunchtime of an in-service day and returned to school late with the smell of alcohol on his breath. IMO Certificates of Howarth, Exam 2009: Dec 2.

Tenured teacher gave insufficient notice of resignation. Certificate suspended for one year pursuant to N.J.S.A. 18A:28-8. MacGillivray, Commr. 2009: September 14

Settlement agreement rejected. An unidentified person signed the Agreement on behalf of the Board, neither the file nor the agreement includes a copy of the Board resolution approving the settlement and designating such individual to sign the agreement on its behalf; nor, in the alternative, is the agreement signed by the Board attorney, who is the Board's duly authorized representative in litigation. Brown, Commr. 2009: September 15

Teacher of the Handicapped certificate revoked following plea of guilty to charges of Assault By Auto and Driving While Impaired. IMO Certificates of Deckert, Exam 2009: Dec 2

Certificate of non-tenured elementary charter school teacher is suspended for one year for unprofessional conduct under N.J.S.A. 18A:26-10 and N.J.S.A. 18A:28-8 where she resigned as an elementary school

teacher on insufficient notice; she assumed risk that school would not receive her notice during its summer closing. (Suspension of the Certificate of Stokes, Commr., 2009:July 17)

School Administrator, Principal/Supervisor, Teacher of Health Education and Teacher of Physical Education certificates suspended for a period of two years after principal failed to take action when two middle school students reported to him that a teacher at the school was engaging in cyber sex and phone sex with a middle school student. IMO Certificates of Johnson, Exam 2009: Dec 2

Teacher of Music certificate revoked following conviction for offensive touching. IMO Certificates of Provanzana, Exam 2009: Dec 2

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificate of Kereks, Exam, 2009: May 11)

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificates of Zisa, Exam, 2009: May 11)

Examiners revoked teacher of the handicapped certificate of teacher who was disqualified from public service by the Commissioner of Education for possession of CDS. (I.M.O. the Certificate of Hanania, Exam, 2009: May 11)

Examiners revoked the certificates of a teacher who had been convicted of attempting to solicit commercial sex with a person under the age of 18. (I.M.O. the Certificates of Clark, Exam, 2009: May 11)

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificates of Darden, Exam, 2009: May 11)

Teacher of Technology Education certificate of eligibility revoked following conviction for Endangering the Welfare of a Child, IMO Certificates of Corvino, Exam 2009:Dec 2

Teacher of Elementary School certificate of Eligibility revoked following report by DCF, where charges substantiated that teacher grabbed the student by the neck and choked him for approximately ten seconds, causing his face to turn red. IMO Certificates of Troutman, Exam 2009: Dec 2

Teacher of Elementary School certificate revoked following conviction of lewdness. IMO Certificates of Coleman, Exam 2009:Dec 2.

Examiners revoked certificate of teacher following that teacher's loss of tenure subsequent to a tenure hearing by the Commissioner of Education. Loss of tenure and loss of certificate based on improper touching. (I.M.O. the Certificate of Gilmore, Exam, 2009: May 11)

Examiners revoked teacher of the handicapped certificate of tenured Juvenile Justice Commission teacher who was dispossessed of tenure rights for possession of CDS. (I.M.O. Guarni, Exam, 2009: May 11)

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificates of Engelson, Exam, 2009: June 22)

Teacher of Physical Education certificate revoked following conviction for lewdness. IMO Certificates of Rosenberg, Exam 2009: Dec 2

State Board revokes elementary certificate of teacher who agreed to forfeit his certificate with the force and effect of a revocation after pleading guilty to endangering the welfare of a child. IMO the Certificate of Newman, Exam 2009: October 22.

Where teacher had employed limited self-defense commensurate with the level of attack by a student and the Department of Children and Families' finding of abuse is reversed, actions cannot be considered conduct unbecoming; Examiners takes no action to revoke the teacher's certificates. IMO the Certificates of L.H., Exam 2009:Sept. 17

Teacher who was disqualified from teaching due to conviction for Terroristic threats had his general business and elementary certificates revoked. IMO the Certificates of Layton, Exam 2009: Sept. 17.

State Board granted teacher's request for certification after revocation, indicating that he may submit an application for a new certificate. IMO the Certificate of Martin, Exam 2009: Sept. 22.

Teacher's conviction for production and distribution of child pornography provides just cause to take action against her math and elementary certificates, notwithstanding that none of her students was involved. IMO the Certificate of Schneider, Exam 2009: Sept. 17.

Examiners grants teacher's request for certification after revocation, indicating that he may submit an application for a new certificate. IMO the Certificate of Staton, Exam 2009: Sept. 17.

State Board revokes elementary certificate of eligibility with advanced standing, biological science certificate of eligibility with advanced standing, and biological science certificate, after pleading guilty to endangering the welfare of a child and Court-ordered forfeiture of her certificates. IMO the Certificate of Defeo, Exam 2009:October 22.

Examiners revokes certificates of teacher holding provisional elementary certificate and certificates of eligibility in law enforcement, elementary and handicapped education, who pled to one count of Theft By Deception, notwithstanding his contentions of rehabilitation. IMO Certificates of Holman, Exam 2009: Sept. 17

State Board revokes elementary certificate of eligibility and elementary certificate of eligibility with advanced standing of teacher who plead guilty to sexual assault and endangering the welfare of a child and was therefore disqualified from service under N.J.S.A. 18A:6-7.1. IMO the Certificate of Monsolono, Exam 2009: October 22.

SEC revokes handicapped and supervisor certificate and principal certificate of eligibility of teacher who has been convicted of and disqualified from service in the public schools under N.J.S.A. 18A:6-7.1 for endangering the welfare of a child. IMO the Certificate of Williams, Exam 2009: Sept. 17.

State Board revokes elementary certificate of teacher who agreed to forfeit his certificate with the force and effect of a revocation after pleading guilty to endangering the welfare of a child. IMO the Certificate of Newman, Exam 2009: October 22.

Substitute credential revoked for teacher convicted of arson. IMO the Certificate of Peters, Exam 2009: Oct. 22. Examiners orders that teacher's landscaping certificate of eligibility and landscaping certificate be suspended for two years pursuant to a settlement agreement between Examiners and teacher charged with criminal sexual contact who entered PTI program. IMO the Certificate of Stanziale, Exam 2009: Oct. 22.

Examiners revoked the certificate of business teacher who pled guilty to charges of computer criminal activity-theft and harassment and was ordered by the sentencing court to resign from his tenured teaching position and to surrender his teaching certificates during the period of his probation. Unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant; here teacher committed theft and harassment against students and their families. (I.M.O. the Certificates of Naylor, Exam, 2009: June 22)

Biology teacher voluntarily relinquished his certificate after tenure charges were certified to the Commissioner based on the teacher's alleged use of district computers to access pornographic websites. (I.M.O. the Certificates of O'Neil, Exam, 2009: June 22)

Commissioner denies application for recertification of teacher whose certificate had been revoked in 1992 as a condition of PTI for charges of criminal sexual contact against students and misconduct in office; the doctrine of res judicata applies as the petitioner had applied to State Board of Examiners for recertification in 1999 and had been denied after a full hearing and a ruling by the Commissioner. Moreover, the application of administrative code provisions that were adopted after he reentered PTI did not violate ex post facto law; ex post facto laws only apply to criminal matters, not regulatory laws governing teacher licensure. Armino, Commr. 2009:Dec. 7

Examiners revoked certification of physical education teacher who had been convicted of aggravated sexual assault, criminal sexual conduct, and official misconduct and had been disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et seq. I.M.O. the Certificates of Umosella, Exam, 2009: June 22

Examiners denied teacher's motion for a stay of the judgment suspending her teaching certificates for one year, pending appeal to the Commissioner of Education. Teacher failed to meet Crowe v. DeGoia standards. (I.M.O. the Certificates of Megargee, Exam 2009: June 22)

Conviction for aggravated assault warranted revocation of certificate. IMO Certificates of Gonzalez, Exam 2009: Sept. 17

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificates of Ingenito, Exam, 209: June 22)

Social studies teacher convicted in N.J. and Pa. for crimes that involved sexual assaults against a minor; is disqualified from service in the public schools; State Board revokes her teacher certificates. IMO the Certificates of Brekne, Exam 2009: Sept. 17.

Examiners revoked the certificate of elementary teacher who was convicted of identity theft and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq. Evidence of rehabilitation was not pertinent to the purpose of demonstrating circumstances or facts to counter the charges set forth in the Order to Show Cause. (I.M.O. the Certificate of Lowenstein-Mase, Exam, 2009: June 22)

Where criminal charges were dismissed after completion of PTI, Examiners vacates suspension of certificate and takes no further action against it. IMO the Certificates of Futrell, Exam 2009: Sept. 17

Examiners revokes certificates of teacher of health, physical education and driving education who was dismissed on tenure charges due to unbecoming conduct and insubordination despite an otherwise unblemished record. IMO the Certificates of Hill, Exam 2009: Sept. 17.

Teacher holding Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in June 2008, and a Teacher of Health and Physical Education Provisional certificate, issued in October 2008 agrees to forfeit her certificates as the result of a criminal investigation into her conduct, which did not result in criminal charges. IMO theCertificates of Flanagan, Exam 2009: Sept 17.

State Board dismisses charter school's appeal of denial of application, for failure to file a brief to perfect the appeal. (Rites of Passage Preparatory Charter, St. Bd. 2008:April 16)

Respondent violated N.J.S.A. 18A:26-10 when she informed board that she would not report for duty, and refused to teach for sixty days or until such time as a replacement could be secured. Commissioner imposed one year suspension of certificates. I/M/O Certificates of Sierpowski, 2011 Commr July 14

Time within which petitioner could have applied for reconsideration of the 2007 revocation has expired, and that petitioner may not be recertified unless he satisfies the current requirements for a teacher of students with disabilities endorsement. Petition was dismissed. Staton, Commr, 2011 Aug. 31

Commissioner affirms State Board of Examiners' order revoking teacher of elementary school in grades K-5 certificate of eligibility with advanced standing and teacher of elementary school in grades K-5 certificate; rejects argument that revocation was too severe a penalty based on teacher's documented psychiatric illness that she alleges contributed to her conduct, as Examiners was aware of the illness, provided her due process and record supported revocation. Merkakis, Commr 2011: Sept 19. (appeal of SBE decision)

Commissioner upholds the determination of the State Board of Examiners to deny petitioner's application for a Certificate of Eligibility (CE) as a Teacher of Mathematics, where he failed to meet minimum grade point average (GPA) requirements; neither waiver of, nor substitution for, requirements of passing score, are permitted under N.J.A.C. 6A:9-17.16. Mandelbaum, Commr 2011:September 23.

Commissioner affirms determination by DOE Criminal History Review that bus driver's school bus endorsement must be suspended for 6 months pursuant to N.J.S.A. 18A:39-28 after she left two children on her bus in September 2010 after failing to conduct the mandated visual inspection at the end of her route. Lazo, Commr 2011:September 26.

Teacher appeals suspension of certificates following settlement of tenure charges and resignation from district for filing a claim of abuse, pursuant to N.J.S.A. 9:6-8.9 that did not involve sexual or harmful conduct and was not filed immediately. Teacher admitted he did not have reason to suspect his colleague abused students and acted in "anger" because he was "upset" by his colleague's criticism of his work. In separate appeals, teacher argued that Board of Examiners decision was arbitrary, capricious and not supported by the record. Court affirmed determination of Board of Examiners that suspension for conduct unbecoming was warranted, and the findings do not establish grounds to afford teacher statutory immunity. Teacher was estopped from pursuing separate suit against same parties alleging that he was entitled to statutory immunity. Paraskevopoulos v. State Bd. of Examiners (In re

Certificates of Paraskevopoulos), No. A-1026-10T2, A-3657-10T2(App.Div. Apr. 18, 2012)

State Board of Examiners revoked Teacher of the Handicapped certification in 2009 following guilty plea for Assault by Automobile, N.J.S.A. 39:4-50, and Driving While Intoxicated. Appeal is out of time as final decisions of the Board of Examiners shall be filed within 30 days of the filing date of the decision from which appeal is taken. Filing appeal two years later is well beyond the 30 days. Deckert, Cmmr 2012:Aug 7.

Appellant was found guilty of insubordination towards his administrative superiors and inappropriate behavior towards students, parents and colleagues – the latter behavior having included a physical altercation with a fellow teaching staff member constituting unbecoming conduct warranting revocation of certificates. Claim that behavior caused by depression lacked factual support. Decision of Board of Examiners to revoke certificates upheld. Taylor, Cmmr 2012: Aug. 17

Teacher

Previously existing regulation, N.J.S.A. 6:11-3.6(g), controls restoration of certification, where original regulation, allowing for restoration, expired after revocation of teacher's certificates. New regulation, N.J.A.C. 6A:9-17.10, did not apply retroactively. (05:May 24, Tierney)

State Board of Examiners may not refuse to reinstate a revoked certificate where the petitioning teacher has demonstrated rehabilitation without a hearing. No allegation that teacher had been disqualified from employment, or is a danger to children. (05:May 24, Tierney)

Teacher entitled to certification reinstatement after they were revoked by the State Board of Examiners subsequent to his voluntary surrender of those certificates as part of a settlement of tenure charges, pursuant to N.J.A.C. 6:11-3.6(g). (05:May 24, Tierney)

Where State Board of Examiners has deemed an applicant for certification restoration rehabilitated, it could not require him to apply for an updated certificate where many active teachers have not been required to update their certificates, notwithstanding that State Board of Examiners had ceased issuing that certificate. (05:May 24, Tierney)

Technology coordinator position required an elementary education endorsement, where computer strategies were geared to the substantive curriculum areas such as language arts and social studies, and as a vehicle for teaching core curriculum standards. (01:Nov. 26, Holloway)

Reinstatement of certificate that teacher had voluntarily surrendered after his second entry into PTI for sexual misconduct with students, denied, where he failed to demonstrate rehabilitation and was dishonest. (01:Nov. 5, Arminio)

Settlement; certification suspended for six months for failure to give 30 days' notice pursuant to N.J.S.A. 18A:26-10. (01:Nov. 9, Blitz)

Vice principal served for 5 years on misrepresentation that she held principal certification; district's negligence in checking did not excuse her dishonesty; tenure rights never attached as contract was void ab initio; employment relationship is dissolved as of date district was notified by county office. (00:Feb. 2, Desmond)

Commissioner concurs with the Administrative Law Judge that charter school math teacher is subject to a one-year suspension of his teaching certificate for violating N.J.S.A. 18A:26-10 when, without the consent of school administrators or the board of trustees, he ceased to perform his duties before the expiration of the term of his employment. An express contract and a contract implied in fact existed between the parties. Galgano, Commissioner 2011: March 21

Petition for certification denied. Tuck-Lynn v. State-Operated Sch. Dist. of Newark, 207 N.J. 189; 23 A.3d 414 (2011)(July 14)

Employee serving as substance awareness counselor (SAC) failed to meet the requirements for a SAC endorsement to his Educational Services certificate; although he held a SAC Certificate of Eligibility, was hired as a substance awareness counselor, acquired a provisional certificate as a SAC, completed a residency in accordance with N.J.A.C. 6A:9-13.2(e), and his residency supervisor recommended him as "approved" for standard certification as a SAC, board of Examiners was correct to deny him the standard certification as he failed to satisfy the third requirement of N.J.A.C. 6A:9-13.2(e), *i.e.*, completion of a graduate curriculum approved by the Department of Education. Ruiz, 2011: Dec. 23

Where principal challenged Board's determination that other principals had greater seniority than he when he was terminated in a RIF, Commissioner determined that when he was hired as a principal he possessed a certificate of eligibility as a principal, but had not obtained the provisional certificate until later; he was somehow allowed to work as a principal with only a certificate of eligibility even though this is prohibited by law; his seniority did not accrue until he obtained his provisional certificate, and therefor had less seniority than any other principal retained by respondent Board. Feldman, 2011:Dec. 23 (Branchburg)

The Court affirms the decision of the Department of Education approving the recommendation of the State Board of Examiners that the teaching and supervisory teaching certificates of former middle school teacher be permanently revoked because he engaged in a longstanding "inappropriate and reprehensible," albeit not sexual, personal relationship" with two 14-year old female students. The department found that Castell's misconduct was sufficiently intertwined with his teaching responsibilities as to require the revocation of his certificates. The panel reject teacher's arguments that the agency decision was unsupported by the substantial and credible evidence and that the penal was excessive and unwarranted. In re

Certificates of Castel, No. A-1552-10T1, (App. Div. Feb. 21, 2012) (per curiam) (unpublished).

Petition for Certification of the judgment in A-001279-09 denied. Egg Harbor Twp. Bd. of Educ. v. Schaeffer Nassar Scheidegg Consulting Eng'rs, LLC, C-848 September Term 2011, 069944, 210 N.J. 479 (2012) 45 A.3d 984 (2012) decided June 19, 2012

Petition for certification of the judgment in A-003426-09 denied. Novembre v. Snyder High Sch., C-904 September Term 2011, 070141, 210 N.J. 262 (2012); 43 A.3d 1168 (2012); Decided May 22, 2012

Petition for certification of the judgment in A-001739-10 denied. Briel v. Board of Educ. of Madison, C-976 September Term 2011, 070227, SUPREME COURT OF NEW JERSEY, 210 N.J. 263 (2012); 43 A.3d 1168 (2012); Decided May 22, 2012.

Petition for certification of the judgment in A-002460-05 denied Bacon v. New Jersey State Dep't of Educ., C-902 September Term 2011, 070079, SUPREME COURT OF NEW JERSEY, 210 N.J. 218 (2012); 42 A.3d 890 (2012); Decided May 7, 2012.

Acting Commissioner affirms that State Board of Examiners' order revoking Teacher of English certificate, Teacher of Elementary School certificate, and his Teacher of Students With Disabilities Certificate of Eligibility. Teacher had sent and received entirely inappropriate emails, largely involving matters related to sex and personal relationships, but, importantly, also including references, both of a general and a particular nature, to students, while at school and on school equipment and on the school account. Teacher's conduct was inappropriate and involved "an apparent breach of trust regarding personal information about a student that had in some manner come into [the teacher's] possession." His conduct negated his status as a role model for students. IMO Certificates of Voza, Exam. 2012: January 19.

Commissioner dismisses as untimely the appeal of pro-se petitioner, who initially submitted a procedurally deficient appeal of the denial of his application for principal and school business administrator endorsements for failure to meet the requirements in N.J.A.C. 6A:9-12.5 and N.J.A.C. 6A:9-12.7; he did not submit a proper petition until approximately three months after the applicable ninety-day rule expired, and there was no compelling reason to relax the rule. DeMario, Commr 2012: May 11.

Pro-se petitioner untimely filed his appeal of the Examiners' May 2011 denial of his application for issuance of a School Counselor certificate. Petition is time-barred under the ninety-day rule and no compelling reason was presented for relaxation of the rule. Petition is dismissed. Benson, Commr 2012: June 27

Pro-se petitioner untimely appealed the Examiners' September 2010 denial of his application for issuance of Teacher of Students with Disabilities and Teacher of Elementary School (K-5) instructional certificates. Petition is time-barred under the ninety-day rule and no compelling reason was

presented for relaxation of the rule. Petition is dismissed. Evans, Commr 2012: June 27.

Evidence failed to demonstrate that non-tenured math teacher is guilty of ceasing to perform her duties before the expiration of the term of her employment within the meaning of N.J.S.A. 18A:26-10, as to justify the suspension of her teaching certificate; where teacher did not receive an offer or a notice of nonrenewal by the statutory date; even acknowledging that the absence of a nonrenewal letter constituted an offer of employment, she did not timely accept said offer by May 15 so as to create a contract. She was not offered a contract until August by which time she was actively pursuing an employment opportunity elsewhere and declined to return to employment with the board; had the Board wanted her to be committed to teach, it could have required her to take action to either accept or decline a written contract of employment before August 2010. Matter of Certificate of Carreno, Commr 2012:June 14 (Bergen Cty Vo Tech)

Commissioner affirmed State Board of Examiners order revoking Teacher of Nursery School and Teacher of Elementary School certificates, of teacher who resigned from her teaching position after the district filed tenure charges alleging unbecoming conduct and other just cause in regard to her conduct toward students. Examiners found Judge Bass' recommendation for a two-year suspension of the certificates to be too lenient, noting that actions in humiliating and frightening young students in front of their peers cannot and should not be lightly dismissed. Record adequately supported SBE determination, which was not arbitrary, capricious or unreasonable. Unbecoming conduct was a pattern of conduct over a 13 year period from 1995 – 2008 which frightened and humiliated her kindergarten-age students including calling a student an idiot; directing other students to shout out the "idiot of the day;" angrily grabbing and brusquely moving students; yelling at the students; and bringing students to tears. Pitcher, Comm'r, 2012: September 13 See also IMO Certificates of Pitcher, Exam 2012:April 2.

Commissioner finds that the Board of Examiner's suspension of elementary teacher's certificate for one year was not supported by the evidence in the record and was unduly harsh. Modifies penalty to suspension for 2 months. While board proved that teacher's behavior was at times inappropriate, and that she violated administrative directive and school policy, the conduct did not establish that she is unfit to discharge the duties of her position, and her prior record contained several positive evaluations which the Board specifically recognized as an otherwise untarnished career. *Matter of Gleim*, Commr 2012: Dec 21 (appeal of Board of Examiners).

Commissioner affirms Examiners decision to revoke certificates of administrator who signed a consent order in Superior Court permanently barring his employment in New Jersey public schools or school systems; administrator argued that had signed consent order merely to allow him to enter a PTI program, and did not realize that signing would put his

certificates at risk. *Matter of Revocation of Administrative Certificates of Gallon*, Commr 2013:Jan 28

Teacher's certificate is suspended for one year for unprofessional conduct pursuant to N.J.S.A. 18A:26-10 and N.J.A.C. 6A:9-17.9 in light of teacher's failure to deny charges that she resigned her position on inadequate notice. *Matter of Suspension of Certificates of Normyle*, Commr 2013:Jan 30.

Commissioner affirms denial of employee's request that State Board of Examiners amend its meeting minutes to exclude any reference to actions taken with respect to her. *Kavazanjian*, Commr 2013:Feb 5

Petitioner did not establish that the SBE's decision to deny her application for a Supervisor endorsement was arbitrary, capricious or unreasonable, and the SBE's denial of her request to extend the time for consideration of her application for a Principal Certificate of Eligibility under the regulatory provisions that were in place in January 2008 was appropriate, as she missed the deadline for submission under the former requirements and must apply under the current requirements of N.J.A.C. 6A:9-12.5. *Hutchinson v. Examiners*, Commr: 2013:May 15.

Commissioner dismisses matter as moot, where pro-se petitioner challenged the determination of the Examiners that he had not met the requirements for a principal certificate. However, subsequent to the filing of the appeal, petitioner obtained a Principal's Certificate of Eligibility. *Nkam v. Examiners*, Commr 2013: June 24.

Commissioner affirms State Board of Examiners' (SBE's) revocation of Elementary School, Teacher of Nursery School, and Teacher of the Handicapped Certificates, where the appellant engaged in chronic and excessive absenteeism and tardiness, unbecoming conduct, and insubordination. Record amply supported the SBE's assessment of the appellant's conduct, which included a pattern of inappropriate and unprofessional conduct not suitable to a school environment, and the penalty was not based on any one fact but rather the totality of the appellant's conduct. Nothing in the record suggests that the decision was arbitrary, capricious or unreasonable. *Revocation of Certificates of True*, Commr 2013:May 29.

Commissioner upholds State Board of Examiners' (SBE's) revocation of the teacher's Teacher of Music Certificate of Eligibility with Advanced Standing and Teacher of Music Certificates, where the teacher admits that after consuming alcohol he displayed a rifle to two youths and told them to get off his property, after which the rifle was accidentally discharged approximately 200 feet from the trespassers. As a result of the incident, the appellant was convicted of several misdemeanor criminal offenses in Pennsylvania. SBE did not simply base its decision on the criminal disqualification but expressly stated it would have revoked his certificates even if the criminal disqualification were overturned as the incident warranted removal. *Revocation of Certificates of Kelly*, Commr 013:May 29.

Commissioner affirms the determination of the New Jersey State Board of Examiners that the facts underlying the revocation of appellant's teaching and administrative certificates in the State of New York warrant revocation of his New Jersey teaching and supervising certificates, where the Board of Examiners learned of the revocation of appellant's New York certificates after due process and plenary hearing, for touching and kissing a student. *Matter of Revocation of Certificates of Landa*, 2013: Nov. 6 . (see also, Exam (SBE) Decision)

Teacher's entering into a plea agreement in Hudson County Superior Court – which agreement provided that she would be permanently barred from public employment in New Jersey – warranted the revocation of her teaching certificates; Commissioner will not disturb the determination of the New Jersey State Board of Examiners and dismisses teacher's appeal. *Matter of Revocations of Certificates of Guerra*, 2013:Nov 4. (see also, Exam (SBE) Decision)

Commissioner affirms ruling of New Jersey State Board of Examiners to revoke appellant's certificate, and rejects argument that Examiners Board should have conducted an analysis or considered the underlying circumstances concerning the nature of the conduct at issue, other than the reliance on the fact that appellant was convicted for assault by motor vehicle and wandering, and that he consented to a permanent bar from public employment. Commissioner notes that appellant was afforded the necessary due process before his certificates were revoked. *Matter of Certificates of Windelried*, 2013:Dec 16. (see also, Exam (SBE) Decision)

Order to show cause issued suspending teaching certificate for unprofessional conduct pursuant to N.J.S.A. 18A:26-10 and N.J.A.C. 6A:9-17.9 – for resigning position on inadequate notice. Respondent failed to respond and the allegation is deemed admitted. Certificate is suspended. *I/M/O Certificates of Washer*, Commr 2014: Feb 12

Certificates suspended for one year where teacher engaged in conduct unbecoming after she arranged for a meeting between the 15 year old student and a 28 year old man with whom she was not related, without principal or parental authorization. Contact between the two had actually been forbidden by parent. Teacher put student at risk by facilitating 1) her absence from a class which she should have been taking and 2) her socialization with a grown man whose behavior toward her had not been wholesome. Teacher should have understood that it was reckless to facilitate a meeting between a 15 year old girl and a 28 year old man who was not a family member. Nor is the fact that student may have advocated for said social encounter relevant to this controversy. She is a minor. *Sloan*, Commr 2014: Feb 12

Learning Disabilities Teaching Consultant's teaching certificate was suspended for one year for unprofessional conduct in accordance with N.J.S.A. 18A:26-10 for failure to honor the terms of her employment agreement with the district. LDTC resigned her position six weeks after she began working in the district without the district's consent and without the

proper 60 day notice. The purpose of N.J.S.A. 18A:26-10 is to provide notice to the school district that a member of its teaching staff will not complete the terms of his or her teaching agreement, thereby allowing the district time to arrange for a suitable replacement without adversely impacting students. The ALJ concluded that this action constituted unprofessional conduct warranting a one-year suspension of respondent's teaching certificate. Commissioner concurred. *IMO Suspension of the Teaching Certificate of Monica Schvanberg,* Commissioner 2014: March 5

Music teacher appeals revocation of her certificates ofTeacher of Music Certificate of Eligibility and Teacher of Music Certificate, arguing that Commissioner should reject the Board's decision revoking her certificates and impose the two year suspension of her certificates that was recommended by the Administrative Law Judge. Request denied as appellant received due process and the Board's decision is supported by sufficient credible evidence in the record and is not arbitrary, capricious, or unreasonable. *In Matter of Certificates of P.S.*, Commissioner 2014:May 2

Where teacher resigned on inadequate notice, and she did not deny allegation, her certificate was properly suspended for a period of one year from the date of the filing of this decision. *Matter of Suspension of Certificate of August-Washington*, Commissioner 2014:May 13.

Certificate suspended where teacher failed to provide adequate notice of resignation and failed to answer order to show cause; allegations deemed admitted; certificate suspended for a period of one year from the date of the filing of this decision. *Matter of Suspension of Certificate of Norward,* Commissioner 2014:June 6.

Commissioner will not disturb action by State Board of Examiners in revoking certificates; rejects arguments a video recording of the incident at issue in this case should not have been admitted into evidence because it was not properly authenticated or that the Commissioner should reject the Board's decision revoking his certificates and impose a two year suspension of his certificates. Affirms. *Matter of the Certificates of Salaam,* Commissioner 2014:June 6.

Commissioner suspends respondent's teaching certificate for a year for unprofessional conduct pursuant to N.J.S.A. 18A:26-10 and N.J.A.C. 6A:9-17.9 for resigning his position without giving the notice required by his contract with petitioner. *McNair,* Commissioner 2014:June 6.

Teacher ask DOE to remove from its website the decisions revoking her substitute certificate in 1998 due to criminal matter which had since been expunged; she had recently been reissued a teaching credential and wanted her prior history deleted; Commissioner denies her request; the Board of Examiners' action denying her request was not arbitrary, capricious or contrary to law; moreover, the Board of Examiners made a good faith effort to accommodate her by removing from the decision any references

to the "specifics" of the 1994 incident which precipitated the revocation of her substitute teaching credential. *Gaba,* Commissioner 2014:June 10.

Commissioner upholds the decision of the State Board of Examiners to deny teacher's application for certification as a Learning Disabilities Teacher-Consultant. Refusal to substitute her experience as a private school teacher for the requisite standard instructional certification was arbitrary, capricious and unreasonable. The Examiners argued that petitioner has never participated in the Provisional Teacher Program, successful completion of which is required pursuant to N.J.A.C. 6A:9-8.3 *et seq.* in order to obtain standard certification in New Jersey. Marcinek v. Examiners, Commissioner 2014:June 25.

Commissioner ordered the suspension of teacher's certificate for one year, pursuant to N.J.S.A. 18A:26-10 for failure to provide the proper contractual notice when the teacher resigned from the school district with only 11days notice. *IMO Suspension of the Teaching Certificate of Lawanna McClease*, Commissioner, 2014: July 16

Commissioner affirmed the State Board of Examiners (SBE) determination that petitioner had not met the requirements for certificates of eligibility (CE) for the School Administrator and Principal endorsements. Petitioner had not completed the required 300 hour intern experience for a CE as principal. Commissioner determined that the SBE determination was neither arbitrary, capricious nor unreasonable. *Waale*, Commissioner 2014: July 14

Commissioner affirmed the State Board of Examiners (SBE) determination that petitioner had not met the requirements for the Teacher of Students with Disabilities endorsement to his Instructional Certificate. Petitioner had not completed the requisite number of credits needed for issuance of the certification. Commissioner determined that the SBE determination was neither arbitrary, capricious nor unreasonable. *Hart,* Commissioner, 2014: July 29

Commissioner affirmed the State Board of Examiners (SBE) determination revoking teaching staff member's School Social Worker Certificate. SBE had modified the ALJ's recommended two year suspension to a full revocation. SBE revoked the appellant's certificate based on the ALJ finding that the appellant exposed his penis to a coworker on school grounds, and made other unwelcomed comments to four other female staff members. Notwithstanding the appellant's positive interactions with the students, the SBE determined that, on balance, his inappropriate conduct with other staff members warrants the revocation of his certificate. Commissioner determined that the SBE determination was not arbitrary, capricious or unreasonable. *Holloway*, Commissioner, 2014: August 5

Commissioner upheld determination of State Board of Examiners to revoke the certificate of a tenured Teacher of the Handicapped who submitted false fraudulent supervisor certificate in pursuit of an administrative position. Testimony that co-workers falsified certificate as a joke was not deemed

incredible (I.M.O. Revocation of the Certificate of Bonsu, Commr: 2014, Dec. 5).

Commissioner ordered the board to notify the Motor Vehicle Commission to suspend a bus driver's school bus endorsement for six months after she failed to appear to contest a proposed suspension for leaving a child on the school bus (Castillo v. N.J. Dept. of Educ., CHRU: Commr, 2014, Dec. 1).

Commissioner upheld Board of Examiners determination that applicant lacked sufficient 20 of the "liberal arts" academic credits necessary to obtain a certificate of eligibility with advanced standing required pursuant to *N.J.A.C.* 6A:9-8.1(b)(3). Petitioning teacher candidate contested the Board of Examiners' refusal to credit 20 special education/education course hours as liberal arts hours Professional or vocational teacher preparation courses may not be substituted for the required liberal arts hours. (Walder v. N.J. Dept. of Educ., Board of Examiners: Commr., 2014 Dec. 29)

CHARTER SCHOOLS

Appeal dismissed an untimely challenging Commissioner's approval of application for operation of charter school. State Board is without authority to enlarge statutory thirty-day appeal window. (St. Bd. 05:May 4, Ecole de la Mer French Immersion Charter School)

Appeal of denial of charter dismissed after failure to file brief. (St. Bd. 01:May 2, New World Charter School, appeal dismissed for failure to perfect)

Certification issues remanded to State Board. Final charter approval granted. Any certification problems with staff does not negate the grant of charter; matter remanded by State Board to State Board of Examiners for review. IMO Final Grant of Charter to Englewood on the Palisades Charter School, App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001, remanding to the State Board on the issue of staff certification. See also, final approval granted by Commissioner (98:Sept. 16), State Board remands for previously ordered racial assessment, teacher certification determination, headperson employment. (98:Dec. 2), Commissioner finds no certification deficiencies (98:Dec. 14), Commissioner reports on demographic study; all 15 students minorities, positive impact on racial balance in existing Englewood schools. (99:Feb. 16) State Board revokes final approval, did not meet certification requirements, probationary status. (99:July 2)

Challenge that charter school enrollment was racially imbalanced dismissed. District's allegations of racial imbalance were based on an inapplicable standard and an erroneous understanding of the Charter School Program Act and decisional law. (03:May 22, Unity Charter, aff'd App. Div. 00:July 13, Dkt. No. A-4212-98T1)

Charter school applications met requirements of the Charter School Program Act; Commissioner has authority to grant conditional approval of charter applications; Charter School Program Act does not violate right to

thorough and efficient education; charter schools not required to comply with traditional school laws; Charter School Program Act does not unconstitutionally permit use of public funds for private purposes; and Charter School Program Act does not violate procedural due process or equal protection. Engelwood on the Palisades, et als., 320 N.J. Super. 174 (App. Div. 1999), aff'd with modification 164 N.J. 316 (2000); see also I/M/O Final Grant of Charter to Englewood on the Palisades Charter School, for approval of final grant of charter App. Div. unpub. op. Dkt. No. A-2692-99T1 (May 23, 2001) remanded to State Board on staff certification issues. See also, final approval granted by Commissioner (98:Sept. 16), State Board remands for previously ordered racial assessment, teacher certification determination, headperson employment. (98:Dec. 2), Commissioner finds no certification deficiencies (98:Dec. 14), Commissioner reports on demographic study; all 15 students minorities, positive impact on racial balance in existing Englewood schools. (99:Feb. 16) State Board revokes final approval, did not meet certification requirements, probationary status (99:July 2).

Charter school housed in facility where bathroom facilities have not been specified and where there is social club that serves alcohol will not be approved until compliance with regulations is demonstrated. (St. Bd. 99:Feb. 3, Unity Charter School, parties directed to file additional briefs, St. Bd. 99:April 7, grant of final approval of charter affirmed with direction, St. Bd. 99:July 7, Commissioner directed to develop and implement security plan, St. Bd. 99:Aug. 4)

Charter school must comply with all statutes and regulations that apply. Commissioner must verify that charter schools have complied with all requirements before issuing certificate of use pursuant to N.J.S.A. 18A:36A-10. St. Bd. remands back to Commissioner. (St. Bd. 98:Nov. 4, Teaneck Community Charter School)(St. Bd. 98:Nov. 4, Unity Charter School)(Cert. Denied 165 N.J. 468.

Charter school regulations do not constitute unfunded mandate. (St. Bd. 01:May 2, Green Willow Charter School)

Commissioner denies motion for stay of determination denying final approval for Jersey Shore Charter School; facility information is incomplete, school failed to submit copies of personnel certifications and information regarding fiscal accounting practices. (Letter decision 04:Sept. 2, In the Matter of the Final Grant of the Application of the Jersey Shore Charter School) See also, student enrollment data unacceptably low based on approved projections, concern over lack of criminal background checks and facility deficiencies. (04:Sept. 8, In the Matter of the Final Grant of the Application of the Great Falls Charter School, motion for stay denied, St. Bd. 04:Oct. 6, denial of charter aff'd, St. Bd. 05:Jan. 19)

Commissioner determined that appointment of new trustees was valid, despite the lack of a formal vote as required by the charter school's bylaws. The trustees' lack of dissent at the time of appointment and subsequent "acclimation" in the annual report precluded the trustees from taking a

vote to ratify the original appointment. Therefore, the board's failure to ratify was moot. Trustees ordered to be reinstated to their positions. (05:April 19, O'Hearn)

Commissioner determined to reinstate two trustees. Despite defects in their initial appointment, trustees failed to follow adopted bylaws to remove trustees from positions acquired through board acclamation. (05:April 19, O'Hearn)

Commissioner's review of charter school applications must include analysis of racial impact of granting application. If segregation would occur by grant, commissioner must use full powers to avoid segregation and cannot wait until after charter has been approved. Englewood on the Palisades, et als., 164 N.J. 316 (2000); aff'g with modification 320 N.J. Super. 174 (App. Div. 1999); see also I/M/O Final Grant of Charter to Englewood on the Palisades Charter School, for approval of final grant of charter App. Div. unpub. op. Dkt. No. A-2692-99T1 (May 23, 2001) remanded to State Board on staff certification issues. See also, final approval granted by Commissioner (98:Sept. 16), State Board remands for previously ordered racial assessment, teacher certification determination, headperson employment. (98:Dec. 2), Commissioner finds no certification deficiencies (98:Dec. 14), Commissioner reports on demographic study; all 15 students minorities, positive impact on racial balance in existing Englewood schools. (99:Feb. 16) State Board revokes final approval, did not meet certification requirements, probationary status (99:July 2).

Commissioner, on remand, rejects settlement agreement that would create a racially tiered lottery system for selection of new charter school students. Nothing on the record that would warrant such a remedy. (03:May 22, Unity Charter)

Conditional approval granted: charter granted conditioned on receiving funding indicated in application. (St. Bd. 01:May 2, Green Willow Charter School)

County Superintendent directed to file written report on location and type of bathroom facilities as well as the location where alcoholic beverages are stored in building containing social club and charter school. (St. Bd. 99:Feb. 3, Unity Charter School, parties directed to file additional briefs, St. Bd. 99:April 7, grant of final approval of charter affirmed with direction, St. Bd. 99:July 7, Commissioner directed to develop and implement security plan, St. Bd. 99:Aug. 4)

Denial of charter: appeal of denial of charter dismissed for failure to perfect within time limit. (St. Bd. 01:June 6, Ibrahim Charter School)

Denial of charter: charter school application fails to address N.J. Core Curriculum Content Standards; irregularities in financial plan. (St. Bd. 99:April 7, Galloway Educational Meridian Charter School)

Denial of charter: failure to file briefs on appeal after initial denial will result in dismissal. (St. Bd. 00:July 5, Liberty Academy Charter School, appeal dismissed for failure to perfect)

Denial of charter: failure to file complete detailed application with relevant financial data and cash flow statements will result in denial of charter. (St. Bd. 99:March 3, Ibrahim Charter School)

Denial of charter: where application shows lack of understanding of educational equity and access, weakness in plans to serve at-risk and special education pupils and assessing curriculum, application is properly denied. Jersey Shore Charter School, St. Bd. 02:July 2. (See also 02:Jan. 11, Jersey Shore Charter School, St. Bd. Decision on motion, 02:April 3)

Emergency relief granted to parents seeking bus transportation to charter school, pending outcome on the merits. (99:Dec. 27, A.J.G.)

Emergent relief denied: charter school failed to meet Crowe standard when it failed to demonstrate a likelihood of success on appeal of revocation of charter. (St. Bd. 01:June 27, Greenville Community Charter School)

Failure to obtain an appropriate facility will result in denial of final approval to operate. (00:Sept. 1, Newark Prep, appeal dismissed for failure to perfect, St. Bd. 00:Dec. 6)

Final grant of charter approved. Commissioner of Education and State Board did consider the racial impact, reasonably found that school did not create illegal racial imbalance. IMO Final Grant of Charter to Englewood on the Palisades Charter School, App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001, remanding to the State Board on the issue of staff certification. See also, final approval granted by Commissioner (98: Sept. 16), State Board remands for previously ordered racial assessment, teacher certification determination, headperson employment. (98: Dec. 2), Commissioner finds no certification deficiencies (98: Dec. 14), Commissioner reports on demographic study; all 15 students minorities, positive impact on racial balance in existing Englewood schools.(99: Feb. 16) State Board revokes final approval, did not meet certification requirements, probationary status (99: July 2)

Given unusual procedural history of certification deficiencies for which teacher was not given proper notice, along with subsequent satisfactory performance, revocation of certificate is not proper, even though certificate issued erroneously. (St. Bd. 03:April 2, Englewood on the Palisades) See App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001, remanding to the State Board on the issue of staff certification.

Local Board within proposed charter school's region of residence need not file motion to intervene in appeal of denial of charter school application as party respondent status already conferred through operation of N.J.S.A. 18A:36A-4(c) and (d) as well as N.J.A.C. 6A:11-2.1(a). (02:Jan. 11, Jersey Shore Charter School, St. Bd. Decision on motion, 02:April 3)

Motion granted for Commissioner's participation in appeal of contingent approval of charter. (St. Bd. 03:May 7, Jersey Shore Charter School, motion granted to supplement record, St. Bd. 03:June 4, motion to intervene granted, St. Bd. 03:July 2, motion to dismiss or place matter in abeyance denied due to concerns over racial balance and fiscal impact, St. Bd.

03:Nov. 5, Commissioner ordered to supplement record with additional enrollment and racial impact information, St. Bd. 04:March 3)

Motion to stay Commissioner's decision to revoke charter, denied. (01:June 25, Greenville)

Neither the Charter School Program Act nor implementing regulations provide local board with right to hearing prior to issuance of a charter or grant of renewal application. Red Bank Community Charter School, St. Bd. 02:June 5. (See also, 01:Dec. 14; decision on motion, 02:Jan. 22, motion for stay denied, St. Bd. 02:April 3)

Nonrenewal of charter: charter will not be renewed where there is low enrollment, instability in school governance, poor standardized testing achievement, concern over fiscal solvency, and lack of accountability in measuring student progress. (St. Bd. 01:Aug. 1, Samuel DeWitt Academy Charter School)

Provisional Teacher Training: Charter school directed to implement provisional teacher training program for teacher holding provisional certificate and to demonstrate that training program meets regulatory requirements. (St. Bd. 99:March 17, Englewood on the Palisades, charter school placed on probationary status and directed to submit remedial plan for provisional training program, St. Bd. 99:June 2, remanded to St. Bd. Of Examiners, St. Bd. 99:Dec. 1) See State Board 03:April 2, Englewood on the Palisades and App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001 remanding to the State Board on the issue of staff certification.

Renewal of charter: decision to renew charter and expand school will not be stayed where local board fails to meet Crowe standards; board has not demonstrated for purposes of motion the specific effect of the charter school, as opposed to other causes, or that its existence has resulted in an impermissible impact on the racial composition of the district's public schools. (01:Dec. 14, Red Bank Community Charter School, dec. on motion, 02:Jan. 22, motion for stay denied, St. Bd. 02:April 3, aff'd St. Bd. 02:June 5, matter remanded to St. Bd. for hearing on whether charter school policies or practices exascerbate racial/ethnic balance, App. Div. 04:March 17, matter remanded to Commissioner for proceedings consistent with court's order, St. Bd. 04:May 5)

Renewal of Charter denied: Neither Charter School Program Act nor implementing regulations permit probationary period before denying renewal request. Evidence of weak student achievement, lack of alignment with Core Curriculum Content Standards, declining enrollment and failure to implement corrective action plan sufficient to warrant closure of school. Greater Trenton Area Academic and Technology Charter School, St. Bd. 02: May 1.

Revocation: charter properly revoked where school fails to correct ongoing safety concerns, does not correct governance structure to conform with law, docks certified teaching staff, fails to incorporate core curriculum content standards and fails to implement effective discipline policies. (St. Bd. 01:Aug. 1, Greenville Community Charter School)

Revocation: charter will be revoked where board of trustees fails to select and hire lead person, faculty and staff and fails to review curriculum, develop plan to demonstrate academic progress, stabilize enrollment, develop or adopt critical policies, follow GAAP accounting or submit budget for 2001-02 school year. (01:Aug. 10, Russell Academy Charter School, dec. on motion 01:Aug. 30, dec. on motion, St. Bd. 01:Nov. 7, aff'd St. Bd. 01:Dec. 5, motion for clarification denied St. Bd. 02:March 6)

Revocation of charter: charter will be revoked where school does not operation in compliance with its charter or state laws and regulation, and experiences a steady decline in enrollment over course of academic year. (01:June 14, College Preparatory Academy Charter School, decision on motion 01:Aug. 14, decision on motion, St. Bd. 01:Sept. 5, aff'd St. Bd. 01:Oct. 3)

Salary policy: Charter school is not bound by the salary policy in its charter application as these are only a guide; only the board of trustees can establish a salary policy, and not the founders who prepared the application; therefore, no amendment to the school's charter was necessary. (02:Feb. 11, Pleasantech, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0375-02T3, Dec. 5, 2003)

Settlement proposing remedy employing race as paramount factor in determining which students may be admitted to the charter school is set aside as there is absence of proofs that the school does not in fact represent a racial cross-section of the community's school age population, or that there is a negative impact on the composition of the district's schools, or that if such an infirmity exists, the remedy proposed is specifically tailored to address it; moreover, such proposed remedy is tantamount to changing the school's charter. (02:Jan. 11, Morris)

Statutory and regulatory framework for charter schools imposes on districts the dual requirement to pay directly to charter school both 90% of local per pupil levy as well as transportation costs. (99:March 30, Teaneck Community Charter School)

Stay of revocation of charter, denied; unlikely to prevail on the merits. (01:Aug. 14, College Prep Academy, letter opinion)

Termination of business manager/board secretary by charter school was reasonable where employee had left work without permission and was uncooperative (99:Nov. 15, Mezzacappa)

Thirty-day limit for filing appeal to State Board pursuant to N.J.S.A. 18A:6-28 is jurisdictional. August 3, 1998 App. Div. order vacated and Trenton Board of Education's motion for remand denied. International Charter School of Trenton (Granville), App. Div. order on motion Dkt. No. A-004932-97T1, Sept. 15, 1998)

When a proposed charter school completes all of the requirements for the granting of a charter, including N.J.A.C. 6A:11-2.1, the granting of the charter will be approved. (St. Bd. 99:March 3, Teaneck Community Charter School)

Where charter school fails to provide appropriate documentation showing that they have complied with N.J.S.A. 18A:36A-1, the State Board will remand to Commissioner for further determinations. See State Board

03:April 2, Englewood on the Palisades) and App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001 remanding to the State Board on the issue of staff certification. See also, final approval granted by Commissioner (98: Sept. 16), State Board remands for previously ordered racial assessment, teacher certification determination, headperson employment. (98: Dec. 2), Commissioner finds no certification deficiencies (98: Dec. 14), Commissioner reports on demographic study; all 15 students minorities, positive impact on racial balance in existing Englewood schools.(99: Feb. 16) State Board revokes final approval, did not meet certification requirements, probationary status (99: July 2).

Application/Renewal Litigation

Plaintiff alleged that charter school demoted and terminated him based on his race and national origin and in retaliation for his complaints of racial discrimination, in violation of the First and Fourteenth Amendments. District court found that the arbitration clause in Plaintiff's employment contract did not waive his right to a judicial forum for his Section 1981 and 1983 claims. Defendants' motion to dismiss denied. Samukai v. Emily Fisher Charter Sch. of Advanced Studies, Civil Action No. 06-1370, 2007 U.S. Dist. LEXIS 7164, Decided January 29, 2007.

Appeal dismissed as untimely challenging Commissioner's approval of application for operation of charter school. State Board is without authority to enlarge statutory thirty-day appeal window. Ecole de la mer French Immersion Charter School, St. Bd. 2005:May 4.

State Board grants Commissioner's motion to reply to Charter School's appeal of the denial of its application for a charter; (Camden Environmental Charter, St. Bd. 2008:April 16); State Board dismissed charter school's petition to supplement the record with the scoring rubrics of an unaffiliated charter school; (Camden Environmental Charter, St. Bd., 2008: June 18).

State Board grants Commissioner's motion to reply to Charter School's appeal of the denial of its application for a charter. (Trenton Education Charter School, St. Bd. 2008:April 16)

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Applicant charter school submitted enrollment and budgetary information that demonstrated that it met the contingencies established in the Acting Commissioner's letter granting it contingent approval to

operate a charter school and has demonstrated its capability to operate a charter school in the 2006-07 school year. In the Matter of the Refusal to Grant Final Approval to Charter School Application of the Benchmark Academy Charter School, St. Bd. 2006:Sept. 20. (Decision by the Acting Comm'r, 2006: August 31; decision on motion o/b/o St. Bd. 2006: Sept. 1; order issued by the Appellate Division, 2006: Sept. 7; remanded by the St. Bd. 2006: Sept. 13)

Examiners upheld decision to deny Principal Certificate of Eligibility because applicant failed to take the appropriate Praxis test. While applicant had taken and passed the appropriate test in 2004, the results were not submitted until after testing requirements had changed. (Jones, Exam, 2006: Nov. 8).

State Board dismisses (for failure to perfect) the charter school's appeal of the denial of its application for lateness. (Winslow, St. Bd. 2007: Dec. 5)

Commissioner affirms NJDOE Office of Compliance Investigation (OCI) directive, requiring charter school to return federal grant funds in the amount of $354,765.04 spent in violation of bidding requirements under public school contracts law; bidding violation must be viewed against the backdrop of a misleading grant application and submissions that veiled the fact that the funds – which were intended for school rehabilitation – were being used for the design and construction of buildings and facilities that did not yet exist. Oceanside Charter, Commr. 2009:Dec. 17.

Appellate Division affirms Commissioner's dismissal of petition challenging charter school settlement of school construction finance related litigation. Board of trustees' decision was neither arbitrary nor capricious and was entitled to deference. Crapelli v. Bd. of Trs. of the Red Bank Charter Sch., (A-6216-07T3) 2009 N.J. Super. Unpub. LEXIS 1656 (App Div. June 23, 2009).

Commissioner concurs with penalty of censure for charter school administrator who knowingly filed disclosure statement with false information but was no longer employed by the charter school; his actions implicated very purpose of ethics act where he used school for personal gain by failing to disclose that he facilitated the charter school's purchase of services from a company he owned. Matter of Stewart, Commr. 2009: Dec 11

State Board grants Commissioner's motion to reply to Charter School's appeal of the denial of its application for a charter; (Camden Environmental Charter, St. Bd. 2008:April 16); State Board dismissed charter school's petition to supplement the record with the scoring rubrics of an unaffiliated charter school; Camden Environmental Charter, St. Bd., 2008: June 18).

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for personal gain by failing to disclose that he facilitated the charter school's purchase of services from a company he owned. Matter of Stewart, Commr. 2009: Dec 11

Commissioner's decision ordering charter school to repay grant funds to NJDOE, was neither arbitrary nor capricious where charter school violated the New Jersey Public School Contracts Law. Charter school awarded a contract for design services, and a contract for "green" consulting services, without bidding or passing a resolution relying on an exception to the public bidding requirement. Oceanside Charter Sch. v. New Jersey State Dep't of Educ. Office of Compliance Investigation, NO. A-2528-09T2, 2011 N.J. Super. LEXIS 8 (App. Div. January 14, 2011) Approved for Publication January 14, 2011.

Appellate Division affirmed Commissioner's approval of charter school. Board of education argued that charter school had not met its requirement of 90% enrollment as of the applicable date and was thus ineligible to receive final approval. Commissioner did not abuse his discretion in relaxing the enrollment requirement and in granting approval to Hatikvah to operate a charter school for an initial four-year period commencing July l, 2010. In re Approval of Hatikvah Int'l Acad. Charter Sch., DOCKET NO. A-5977-09T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 3144, Decided December 21, 2011, Certification denied by In re Approval of Hatikvah Int'l Charter Sch., 2012 N.J. LEXIS 389 (N.J., Mar. 26, 2012)

Commissioner grants summary judgment to board and holds that there is no legal prohibition against a board of education spending public funds in efforts to defeat a charter school including zoning challenges and lobbying activities, and issuing public statements in opposition to the establishment of a charter school; however, such authority is not unfettered, and must be in furtherance of a *legitimate* board interest; opposition to an application of a charter school is circumscribed by N.J.S.A. 18A:36A-4c, but they are not prohibited from challenging implementation issues, as was the case here. Princeton International Academy Charter Sch., Commr 2012:April 2.

Appellate Division affirmed Commissioner's denial of charter school application. The DOE noted its concerns regarding special populations, assessments, facilities, governance, and admissions. In addition, as per the local school superintendent, the application had conflicting information regarding course requirements, did not fully address New Jersey's revised high school graduation requirements, and failed to specify a process for curriculum development in the nine areas of New Jersey's core curriculum content standards. Quest failed to demonstrate that

Commissioner's decision was arbitrary, capricious or unreasonable. In re Proposed Quest Acad. Charter Sch. of Montclair Founders Group, DOCKET NO. A-3005-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1129, Decided May 22, 2012.

Matter remanded to Commissioner for further proceedings where charter schools that would have been impacted by appeal were given no formal notice. State Board of Education position needs to be formalized and confirmed before court can examine validity of regulation, and sparse content of the Commissioner's letter provides none of the reasons for denial of the district's petition that have been crafted on appeal concerning N.J.A.C. 6A:23A-22.4(e), a regulation which states that the Commissioner has the discretion to authorize a district to pay a lower per-pupil rate if the charter school spends significantly less than budgeted and has accumulated a sizable surplus. *Piscataway Twp. Bd. of Educ. v. Cerf*, No. A-3202-11 (App. Div. Apr. 2, 2013)

The arbitrary, capricious, or unreasonable standard of review was applicable to the New Jersey Commissioner of Education's decision to grant or deny a charter school application under N.J.S.A. 18A:36A-4(c); The decision to deny appellant's charter school application was amply supported by the record and was not arbitrary, capricious, or unreasonable; No error in relying on an existing desegregation order as a factor to consider in rejecting the application, as Commissioner was obligated to assess the racial impact that a charter school would have on the district and to avoid segregation resulting from the grant of a charter school application; Commissioner properly considered unsolicited letters from local citizens and relied on her own expertise in assessing the viability of the proposed charter school. In re Proposed Quest Acad. Charter Sch. of Montclair Founders Group, 216 *N.J.* 370 (N.J. 2013)

In a suit brought by public schools challenging the Commissioner's grant of charters to two new schools, the court affirms the grants the new schools were not online internet schools but used a blended teaching methodology that combined in-person, face-to-face teaching and online instruction by means of internet materials; also, while the legislature may not have contemplated the use of internet-based teaching when the Charter School Act was passed, the Act cannot be read narrowly as only allowing methods that were in existence at its inception; the Legislature intended to include advances in technology. In re Grant of a Charter to the Merit Preparatory Charter Sch. of Newark, 435 *N.J. Super*. 273 (April 9, 2014)

Commissioner rejected OFAC investigation conclusion that Executive Director of charter school acted without charter school's

knowledge and tried to thwart OFAC's investigation. While Executive Director worked in two public school districts and three charter schools, all positions were part-time. Commissioner cautioned charter school to improve its business practices and administrative oversight, ensure its contracts are properly memorialized and that all records are secure and accessible. Commissioner expressed his concern that Executive Director may have contracted with more employers than she could properly serve. *Vineland Public Charter School*, Commissioner 2014: April 4

Commissioner finds that Assistant Commissioner had the authority to deny charter school its request to expand from serving elementary children in grades K-5 to providing programs for both elementary and middle school students in grades K-8; Assistant Commissioner was Commissioner's authorized designee, and proper appeal is not to the OAL but to the appellate division; emergent relief denied. *Hatikvah International Academy Charter*, Commissioner 2014:May 13.

Commissioner denies emergent appeal from Assistant Commissioner's determination denying charter's renewal application and request for stay pending final determination to keep the school open. Commissioner finds that Assistant Commissioner had the authority to deny renewal; Assistant Commissioner was Commissioner's authorized designee, and proper appeal is not to the OAL but to the appellate division. *D.U.E. Season Charter*, Commissioner 2014: May 13.

Charter challenged NJDOE denial of additional "planning year" in which to secure final approval to operate a Hebrew immersion charter school, contending that the Department treated it differently from other charter school applicants, and that its decision to deny the additional planning year was arbitrary and capricious. Commissioner finds that there was ample factual support for DOE's determination that Shalom lacked the capacity to successfully operate a charter school; was a thoughtful and thorough judgment of the merits of Shalom's application. Schools that were successful in obtaining an additional year recognized on their own that they were unready to receive students prior to DOE's site visit, *or* were partnered with a recognized organization that had previously been successful in opening and operating a charter school, *or* were located in an underserved community; none of these factors applied to Shalom Academy. *Shalom Academy Charter*, Commissioner 2014:May 19.

CHILD ABUSE

District Court granted defendant school district's motion to dismiss claims arising out of child abuse reporting because under New Jersey law, N.J.S.A. 9:6-8.10, the School Defendants were required to report allegations of child abuse to DYFS and, pursuant to N.J.S.A. 9:6-8.13, were entitled to statutory immunity from any civil or criminal liability for reporting allegations of child abuse to DYFS or testifying in any judicial proceeding. Melleady v. Blake, Civil No. 11-1807 (NLH/KMW), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 144834, Decided December 15, 2011.

Appellate Division reversed decision of Acting Commissioner of Department of children and Families that special education teacher had neglected D.G., a student in her class, within the definition of N.J.S.A. 9:6-8.21(c)(4)(b) by failing to properly supervise student. Teacher had mistakenly left six year old autistic student at fast food restaurant while on class trip to theater. Appellate Division found that Acting Commissioner erred in her application of the law to the facts and thus the determination of substantiated child neglect was unsupportable. While the Appellate Division did not condone teachers's failure to follow the head count policy, it concluded, under the circumstances that arose at the time, that teacher, although negligent, was not grossly negligent or reckless. Department of Children & Families v. M.A., DOCKET NO. A-5085-09T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2917, Decided December 1, 2011.

CHILD STUDY TEAM

Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (02:Dec. 2, Trigani)

Board of education conducted a valid reduction in force when it eliminated its basic child study team and contracted with a jointure commission for the provision of basic child study team services. No violation of petitioners' tenure rights occurred. (04:Dec. 20, Becton Ed. Assn., aff'd St. Bd. 05:May 4)

Psychologist who had been riffed had no tenure entitlement to employment with ESU that was under contract with board to supply child study team services on a case-by-case basis; distinguished from Shelko where county special services school district assumes operation of and responsibility for entire special education program. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

CHOICE

Commissioner dismisses with prejudice the petition of parent who appealed Board's decision not to accept her son under the School Choice program, where she failed to appear at the hearing. *L.D., o/b/o minor child, D.F. v. Bd of Ed of Bound Brook*, Commr 2012: Dec 10.

Commissioner grants the petition of Mine Hill seeking clarification of its responsibility to pay for the private school placement of a special education student who lives in neighboring district but who attends the Mine Hill schools as a "choice student." Disagreeing with the ALJ's finding that the matter should be dismissed on the basis of *res judicata* and noting that an ALJ's 2011 order in the instant case was never submitted to the Commissioner for review and therefore was not a final ruling capable of triggering *res judicata*; and that subsequent to the 2011 order, N.J.A.C. 6A:12-9.1(b) was amended to clarify the financial responsibilities of the choice and sending district in the provision of services to choice students who require a private day or residential school, the Commissioner held that the sending district has fiscal responsibility but the choice district is required to contribute any State aid received for such a student and the sending district is responsible for the balance. *Mine Hill*, 2013: Commr Feb.11

Commissioner upheld board of education determination to reject student application for admission into Upper Freehold Regional's Advanced Mathematics and Algebra Academy (Academy), an Interdistrict Public School Choice Program. Board, after previously accepting student, rejected the application based on a series of factors, including the late notice of necessary accommodations and the financial and administrative burden that the district would have to assume if it were to accept the student. By the time the district was provided with the student's complete IEP in May 2013 and had the opportunity to review it, the district's budget for the upcoming school year had been set and there was limited time to secure a qualified instructor. A district may reject the application of a classified student if that student's IEP would create an undue financial or administrative burden on the district. The Board's decision to reject the application was not unreasonable. *R.N. o/b/o A.N.*, Commissioner, 2014: August 14

CIVIL PROCEDURE - RULES

Condition precedent of exhaustion of administrative remedies is limited to claims where plaintiffs are seeking relief that is also available under the IDEA. Therefore, a plaintiff cannot demand relief not available under the IDEA, such as money damages, where the typical relief under the IDEA would provide an adequate remedy in order to avoid exhaustion. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006)).

District Court granted in part, preliminary injunction where parents demonstrated that public interest favored compliance with the requirements of the IDEA. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).

Age is not a protected class under 42 U.S.C. 1981, therefore, because plaintiff failed to show that he was a member of a protected class, court dismissed plaintiff's age discrimination claim. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

Court dismissed plaintiff's claim, pursuant to 20 U.S.C. 6301 that the district violated NCLB by failing to hire qualified teachers because the statute did not confer a private right of action. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

District Court denied parents contempt motion due to lack of authority to hold a party in contempt of another trinubal's order. District Court did not have inherent authority to re-dress violations of ALJ orders entered in a different forum. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).

Matter was initially dismissed by ALJ for lack of prosecution. Commissioner found that parent was unable to find the hearing site on the day of the hearing. Matter remanded to ALJ because parent provided explanation for her non-appearance. (L.C., Commr., 2008: Aug. 14)

District Court denied parents contempt motion where portions of original order were unclear and district's efforts seeking clarification were denied. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).

Commissione rejected and remanded settlement agreement where the agreement did not dismiss the action against the Dept. of Ed. nor did it contain the signature of the Attorney General or designee. (Piscataway Twp. Bd. of Ed., Commr., 2008: Aug. 18)

District Court granted in part, preliminary injunction where parents demonstrated a potential harm that could not be addressed by a legal or equitable remedy following a trial. The Court found irreprable injury in the continuing denial of educational services. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

Court dismissed plaintiff's Freedom of Information Act claim, pursuant to 5 U.S.C. 522, that the NJ Division On Civil Rights failed to respond to his request because the Division is not a federal agency and is therefore not required to comply with the statute. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

District Court determined that preliminary injunctive relief is an extraordinary remedy and should only be granted in limited circumstances. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

Third Circuit's review of an order granting the motion to dismiss is plenary. When reviewing a 12(b)(6) dismissal, the Court must accept as true all well-pled factual allegations in the complaint and view those allegations in the light most favorable to the plaintiff. In a § 1983 action, "the plaintiffs are entitled to relief if their complaint sufficiently alleges deprivation of any right secured by the Constitution." However the Court need not credit "bald assertions" or "legal conclusions." "[L]egal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." Anspach v. City of Philadelphia Dept. of Public Health, No. 05-3632 (3d Cir., Sept. 21, 2007), 2007 U.S.

Court dismissed plaintiff's Age Discrimination claims against district employees because as board employees, they were not employers. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

Court dismissed plaintiff's 42 U.S.C. 1983 action because he failed to show that he was deprived of federal a right, privilege or immunity where district determined not to hire him. Plaintiff had must demonstrate a legitimate claim of entitlement to employment, not just a unilateral expectation. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

If a suit for monetary damages is permissible, it should be commenced after all educational avenues have been pursued. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006)).

Court declined to exert jurisdiction of plaintiff's state law claims pursuant to 28 U.S.C. 1367(c) for lack of subject matter jurisdiction. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

Where the unavailability of the decisions of the State Board of Examiners affected the teacher's right to due process, and the State Board of Examiners' action was stayed by the State Board of Education, such a stay would remain in effect unless vacated by the State Board of Education. (Confessore, Exam, Order of Suspension, 2005: Nov. 9) (Confessore, St Bd. Decision on motion, 2006: Jan 4).

Third Circuit determined that parents waived that portion of complaint that alleged a breach of the right to familial privacy by failing to address the allegation as a separate violation in their brief. Anspach v. City of Philadelphia Dept. of Public Health, No. 05-3632 (3d Cir., Sept. 21, 2007), 2007 U.S. App. Lexis 22527.

NJ Supreme Court held Charitable Immunities Act only immunizes against simple negligence and does not protect the charitable organization against other forms of aggravated wrongful conduct. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

On motion to dismiss for failure to state a claim upon which relief can be granted pursuant to FED. R. CIV. P. 12(b)(6), court is required to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and to view them in the light most favorable to the non-moving party. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

A possible source of liability against a municipality under section 1983 is if an unconstitutional policy could be inferred from a single decision taken by the highest officials responsible for setting policy in that area of the government's business. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

A municipality can be sued directly under section 1983 if it is alleged to have caused a constitutional tort through a policy, ordinance, regulation or officially adopted decision that has been promulgated by the municipality's officers. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

When the previous adjudication takes place in a state administrative setting, later claims in federal court are not barred. The Supreme Court has held that neither 28 U.S.C. 1738 nonfederal common law principles of res judicata require deference to administrative proceedings. The parties are only precluded relitigating facts that were found by the administrative agency but may contest the legal conclusions of those agencies. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

A party opposing summary judgment cannot rest upon the mere allegations or denials of the adverse party's pleading, but must respond with affidavits or depositions setting forth specific facts showing that there is a genuine issue for trial. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Parent's claim for loss of consortium was dismissed because such claims are not cognizable under section 1983. State law claims for loss of consortium were not dismissed. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Age is not one of the protected classes pursuant to 42 U.S.C. 2000(e), therefore the court dismissed plaintiff's age discrimination claim. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

Summary judgment is appropriate when the materials of record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Carmichael v. Pennsauken Twp. Bd. of Educ., No. 05-0513, 2006 U.S. Dist. Lexis 85447 (D.N.J. Nov. 27, 2006).

In an expulsion hearing, the district's refusal to allow expert testimony regarding the manifestation determination did not amount to a deprivation of due process. Student was allowed to cross-examine witnesses, and to enter the testimony of his own witnesses. Due process requires at least rudimentary protections against unfair or mistaken findings and arbitrary exclusion from school. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

On motion to dismiss for failure to state a claim upon which relief can be granted pursuant to FED. R. CIV. P. 12(b)(6), a complaint should be dismissed only if the alleged facts, taken as true, fail to state a claim. The question is whether the claimant can prove any set of facts consistent with his allegations that will entitle him to relief, notwhether that person will ultimately prevail. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Diaz v. South Brunswick Bd. of Educ., No. 05-4667, 2006 U.S. Dist. Lexis 87056 (D.N.J. Nov. 30, 2006).

Court determined that in order to obtain a preliminary injunction, the moving party must show (1) it has a likelihood of success on the merits, (2) it will suffer irreparable harm if the injunction is denied, (3) granting preliminary relief will not result in even greater harm to the non-moving party, and (4) the public interest favors such relief. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist.

District Court granted, in part, preliminary injunction ordering district to conduct a functional behavioral assessment where issue was not the wisdom of the ALJ order, but whether the district complies with that order. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

District Court granted, in part, preliminary injunction ordering district to provide compensatory education to student for lost hours of home-based ABA related services. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon

Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

In order to establish a prima facie case under 42 U.S.C. 2000(e) and 42 U.S.C. 1981, a plaintiff must show that he is a member of a protected class, was qualified for the employment position, and was not selected for that position under circumstances that give rise to an inference of unlawful discrimination. Dunleavy v. NJ Div. On Civil Rights, 2006 U.S. Dist Lexis 92346, No. 06-0554 (D.N.J. Dec. 20, 2006).

Where parents of a regular education student failed to contest the district's manifestation determination of no disability, a federal court is barred from revisiting that determination due to the parent's failure to exhaust their administrative remedies. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ. P. 56. Rule 56(e) requires that when a motion for summary judgment is made, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. See id.; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

Under the IDEA, plaintiffs must exhaust their administrative remedies before proceeding with a civil action in federal court. However, parents may bypass the administrative process where exhaustion would be futile or inadequate or where the issue presented is purely a legal question. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006)).

Commissioner remanded matter where parent demonstrated that it would be contrary to the interests of justice to deprive petitioner of the opportunity to have the merits of her case decided. (S.H., Commr., 2006: Dec. 1). (S.H., Commr., 2007: June 13).

NJ Supreme Court held that the law of agency did not prevent private residential school from being held liable for the acts of employees outside the scope of their employment. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

Commissioner denial of Motion to Stay student suspension denied. Crowe v. DeGoia standards not met. Student will receive passing grades and expulsion hearing is to be held in five days. D.E. Jr. vs Board of Education of the Borough of Bound Brook, 2006:June 7

Commissioner denial of Motion to Stay student suspension denied. Crowe v. DeGoia standards not met. Student will receive passing grades and expulsion hearing is to be held in five days. R.M.B. and R.B. vs Board of Education of the Borough of Bound Brook, 2006:June 7

The Commissioner determined that State Board of Education's adoption – on September 8, 2006 – of rules establishing a mechanism for refund of excess surplus to sending districts, and the Department's October 20, 2006 application of that rule to 2004-05 balances for all special services

districts, including BCSSD mooted district's petition. Commissioner action, where State Board has already spoken would cause the Commissioner to engage in improper rulemaking through her decision in this matter. Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313 (1984). (Pemberton, Commr., 2007: April 12).

Commissioner's jurisdiction over petition seeking to void the results of a bond referendum was mooted due to board's decision to hold a new election. Rasmussen vs Upper Freehold Regional, 2007:Feb. 28

Commissioner's jurisdiction over petition seeking to void the results of a bond referendum was mooted due to board's decision to hold a new election. Rasmussen vs Upper Freehold Regional, 2007:Feb. 28

State Board set aside censure previously set by and affirmed by Commissioner. (Chiego, State Board, 2007: Aug. 1) State Board granted Motion to Supplement the Record with a certification from the board president that appellant had filed certification at the board's behest and in furtherance of its interests and that the board president did not view the filing as a private action. (Chiego, St. Bd., 07: June 6) (decision on motion). Commissioner affirmed SEC penalty recommendation of censure. (Chiego, Commr., 2006: June 16)

In the law, "arbitrary" and "capricious" means having no rational basis. *** Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.*** (citations omitted) Bayshore Sew. Co. v. Dep't of Envt. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974). (Camden, Commr., 2006: Dec. 28)

Commissioner noted that in challenging the credibility determinations of an ALJ, petitioner bears the burden of presenting transcripts relevant to the exceptions filed so that the Commissioner might assess the judge's findings. Such is the case because the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." N.J.S.A. 52:14B-10(c). Asaro vs Moonachie Borough Bd. of Ed., 2006:Dec. 22 NJ Supreme Court held that private school is a person pursuant to the Child Sexual Abuse Act. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

Burford abstention was appropriate on plaintiffs' claim that defendants' failure to comply with the Comprehensive Educational Improvement and Financing Act (CEIFA), N.J. Stat. Ann. § 18A:7F-1 et seq., violated plaintiffs' equal protection rights. Defendants moved to dismiss because timely and adequate state court review was available, and federal court review of the matter would have interfered with the state's efforts to regulate an area

predominated by state interests, state aid for public education under N.J. Stat. Ann. § 18A:7F-1 et seq. If the court were to grant the relief sought by plaintiffs, it would directly interfere with the state's efforts to assess the needs of its school districts. Washington Township Board of Education, Mercer County vs Lucille Davy, Commissioner of Education and the State, 2007:Oct. 10

Mayor and Council lack standing to challenge attendance boundaries of school district. Further, filing violated 90-day rule, no justification for relaxation of rule. (Howell Township, Commr., 2006: Dec 5).

NJ Supreme Court held that private school can be a household pursuant to the Child Sexual Abuse Act where school has amenities characteristic of both a school and a home. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

Commissioner determined that the head of an agency "may not reject or modify any findings of fact as to issues of credibility . . . unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. (Morris, Commr., 2006: Dec 1). (Morris, Commr., 2008:September 4) See subsequent case, on calculation of the increment, reversing Commissioner of Education's calculation, App. Div. unreported decision (A-0823-08T2, July 15, 2009)

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Commissioner determined that ALJ review of Dept. of Ed. disallowance of salaries for tuition assessment purposes from a private school for the disabled was not limited to an arbitrary, capricious, or unreasonable standard because the review was not of a final decision by the Appellate Division, which has limited review authority. Instead, the ALJ's findings are entitled to benefit from the evidence and testimony of a plenary hearing (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

Council determined that Dept. of Ed. regulation N.J.A.C. 6A:14-47.(a)(2) violated the constitutional prohibition against new unfunded mandates, Art. VIII Sect. 2. para. 5 of the NJ Constitution. Regulation reduced the age span in special education classes for four years to three. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Council determined that county special services districts had standing to challenge new regulation where they had an "obvious, albeit indirect, interest in the effect upon others of statutory and administrative regulations." (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Appeal of Commissiner decision dismissed for failure to serve comlpaint on board attorney. (D.T. Commr., 2003: Oct. 29) (Affirmed St. Bd. 2005:

Feb. 2) (Affirmed App. Div. May 12, 2006) DOCKET NO. A-3629-04T) (Certif. denied, 188 N.J. 352 (2006)).

Commissioner determined that provisional teacher was out of time to assert that the district's failure to properly evaluate during the first two years of her employment warranted her restoration after she was non-renewed. (Miller, Commr., 2006: Nov. 16).

District Court dismissed board's application to file an untimely appeal where "Pioneer factors" were not met. Risk to plaintiff of prejudice was substantial; the length of delay and its potential impact on the judicial proceedings weighed against the moving party; the board had the ability to control the delay; and failed to demonstrate good faith. L.J. v. Audubon Bd. of Ed., No. Civil 06-5350, 2009 U.S. Dist. Lexis 31473 (D. N.J. April 13, 2009). See related proceeding at L.J. v. Audubon Bd. of Ed., No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337 (D.N.J. February 19, 2008). L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding

Where student is 16 years of age and the district is required to provide FAPE to disabled children between the ages of 3 and 21, time remains for a determination as to whether the student was deprived of a FAPE and if so, whether the student is entitled to compensatory education beyond the age of 21.(A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006).

School Ethics Commission Acting Commissioner motions to participate in appeal of two-month suspension of board member granted. Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members in the School Ethics Act when she took private action in confronting a member of the public in a verbal and physical manner regarding his comments during the public comment session at a board meeting. State Board upholds two-month suspension. (Talty, St. Bd. 2006: Nov. 1).

State Board is without authority to enlarge the time specified in N.J.A.C. 6A:4-1.5(a) to file an appeal. (Cerebral Palsy League, St. Bd. 2007:Jan. 3)

District court found no reason to disturb ALJ finding that 10 hours per week of home instruction would not enable disabled students to receive meaningful educational benefits proportional to her educational potential. District was therefore required to reimburse the costs of her unilateral placement in a private school so long as that placement was appropriate under the IDEA. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

District Court dismissed pro se complaint without prejudice for the second and final time. Complaint failed to set forth (1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, and (2) a short and plain statement of the claim showing that Plaintiff is entitled to relief. Gadsden v. N.J. Ed. Assn. et al. No. 07-4861 (D. N.J., Dec. 4, 2007), 2007 U.S. Dist. Lexis 89000.

District Court determined that construction vendor failed to establish a substantive due process violation by failing to show that school districts conduct locking contractor's employees out of the worksite "shocked the conscience" or "interfered with rights implicit in the concept of ordered liberty". Moreover, contractor did not possess any property right that was protected by procedural due process. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93867. District Court determined that 5th Amendment did not govern claims of seizure by state actors i.e. the school district. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93867.

District Court determined that 4th Amendment did not govern claims of seizure against school district. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93867.

District court held that summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The movant bears the initial burden of showing that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Once the movant has met this prima facie burden, the non-movant must "set out specific facts showing a genuine issue for trial." Fed.R.Civ.P. 56(e)(2). A non-movant must present actual evidence that raises a genuine issue of On motion, District Court dismissed Title I and II ADA claims against individual defendants because individuals may not be liable under Titles I or II of the ADA. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468.

On motion, District Court dismissed Title III of the ADA claims against individual defendants because an individual may only be liable under Title III if he owns, leases, or operates a school which is a place of public accommodation; the school has the power to make the accommodation, not the individuals. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468.

On motion, District Court determined that parents could file an amended complaint for special education matter and amendments must be permitted absent undue delay, unfair prejudice, bad faith, dilatory motive, or futility of amendment. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior

decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468.

Upon the filing of parent complaint amended to include only parental NJLAD claims, the District Court determined that parents did not have a viable claim because they were not the aggrieved party. On motion, District Court determined that parents could continue to appear pro se to prosecute parental rights under IDEA on their own behalf, so long as parents filed amended complaint asserting parental claims only, asserting the way in which defendant school district injured the parents, the legal rights violated, distinctly from son's claims. Parents could also hire an attorney to prosecute both parental and/or child's claims Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468.

Upon the filing On motion, 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 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468.

Upon the filing of parent complaint amended to include only parental NJLAD claims, the District Court determined that parents did not have a viable claim because they were not the aggrieved party. Woodruff v. Hamilton Twp. Public Schools, No. Third Circuit held that school districts need not maximize the potential of their disabled students. However, the district must provide more than a trivial educational benefit and is required to provide significant learning and confer meaningful benefit. Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

Third Circuit held that District Court must afford "due weight" to the ALJ's determination. Those findings are to considered prima facie correct and if a reviewing court fails to adhere to them, it is obliged to explain why. Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

NJ Supreme Court held Charitable Immunities Act only immunizes against simple negligence and does not protect the charitable organization against negligent supervision. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

District court held that a reviewing court derives its authority to reduce an IDEA reimbursement award for a unilateral placement from its grant of discretion under 20 U.S.C. 1415(i)(2)(A) to fashion such relief as it determines is appropriate. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Motion to consolidate final decision and interlocutory decision in school district of residence matter granted. Interlocutory decisions are subject to review by the State Board upon appeal of a final decision from the Commissioner even if an application for interlocutory review had not been made or if the application had been denied.(Neptune, St. Bd. 2006:June 7)

District bears the burden of demonstrating that FAPE was provided to a special education child and must show that the individualized education program offered was reasonably calculated to enable the child to receive meaningful educational benefits proportionate to her educational potential. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

In an IDEA case, the court must review the ALJ's decision under a modified version of de novo review. Under this standard, the court must make its own findings by a preponderance of the evidence but must also afford 'due weight' to the ALJ's determination. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Commissioner determined that she did not have jurisdiction over Office of Special Education (OSEP) complaint invstigation appeals and dismissed petitions without prejudice. Commissioner held that OSEP decisions are final agency decisions and as such, are appealable to the Appellate Division of the Superior Court. (Lenape Regional High School District, Commr., 2006: Oct. 16).

Commissioner determined that district's absence as a party in delinquency proceedings did not bar the use of issue preclusion doctrine by the district, where district sought to use the findings of those proceedings as a basis to impose short-term suspension against student. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Third Circuit determined that public health center did not coerce unemancipated minor into taking contraceptives that could abort an unplanned pregnancy. Staff of the health center did not become involved in student's reproductive health decisions. Anspach v. City of Philadelphia Dept. of Public Health, No. 05-3632 (3d Cir., Sept. 21, 2007), 2007U.S. App. Lexis 22527.

Commissioner determined that district use of juvenile court records was not improper in responding to parent appeal of short-term suspension. N.J.S.A. 2A:4A-60(A)(6) allows disclosure of family court proceeding records to agency with an interest in the case where the request is made through counsel. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Commissioner determined that district use of juvenile court records was not improper in responding to parent appeal of short-term suspension. N.J.S.A. 2A:4A-60(c)(2) allows disclosure of delinquency proceeding records to agency which filed the complaint; building principal filed criminal complaint alleging that student brought knife onto school grounds. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Commissioner determined that district use of juvenile court records was not improper in responding to parent appeal of short-term suspension. Parent waived any right to have evidence from delinquency proceeding excluded by attaching those records to petition of appeal. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Commissioner upheld summary judgment decision of ALJ where parent failed to raise material issues of fact; bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Third Circuit determined that public health center did not violate parent's constitutional rights when it failed to notify parents that unemancipated daughter sought the morning after pill. Anspach v. City of Philadelphia Dept. of Public Health, No. 05-3632 (3d Cir., Sept. 21, 2007), 2007 U.S. App. Lexis 22527.

Third Circuit determined that public health center did not mislead unemancipated minor into taking the morning after contraceptive against her religious practices where student did not ask about the potential effects of the morning after pill on a potentially fertilized ovum nor did she inform clinic staff that her religious beliefs would prevent her from taking the pills if they prevented the implantation of a potentially fertilized ovum. Anspach v. City of Philadelphia Dept. of Public Health, No. 05-3632 (3d Cir., Sept. 21, 2007), 2007 U.S. App. Lexis 22527.

Where parents rejected public school's 9th grade IEP, enrolled student in a private high school, then sought tuition reimbursement from the district, District Court granted school district motion to supplement the record with testimony of private high school teachers to demonstrate the sufficiency of public school's 9th grade IEP. R.P., V.P. and E.P. v. Ramsey Bd. of Ed., Civil No. 06-CV-5788, 2008 U. S. Dist. Lexis 70884.

District court held that parents unreasonable actions hindered the placement process and warranted a reduction in the amount the district had to reimburse for parents unilateral placement in a private school for the disabled. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

The Commissioner "may not reject or modify any findings as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." N.J.S.A. 52:14B-10 (c). (Young, Comm'r, 2008: Aug. 18).(affirmed: In re Young, (A-0309-08T3) 2009 N.J. Super. Unpub. LEXIS 1686 (App. Div. June 25, 2009.)

Commissioner determined that while there may be no specific rule in the New Jersey Administrative Code addressing the conversion of motions-to-dismiss into motions for summary disposition, it is allowed in the New Jersey Rules of Court, see, R. 4:6-2. and N.J.A.C. 1:1-1.3(a) allows ALJs to follow court rules where no specific administrative rule addresses a

particular issue. (K.L. and K.L. o/b/o minor children M.L. and C.L., Commr., 2008: July 23)

District Court found that the standard of review for a Rule 12(b)(6) motion to dismiss is whether the factual allegations are enough to raise a right to relief above the speculative level. Plaintiff must plead sufficient facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

District Court found that parents were not required to exhaust their administrative remedies in federal 1983 and 504 claims. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

District Court found that it was not required to defer jurisdiction over 1983 and 504 claims to the NJ Commissioner of Education because those claims do not involve resolution of issues that have been placed within the special competence of the NJ Dept. of Ed. Additionally, the claims did not arise under the "school laws of New Jersey". M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

District Court found that parents who refuse IDEA services need not exhaust their administrative remedies under the IDEA prior to bringing 1983 or 504 claims where district has no knowledge of the child's disabilities and relief under the IDEA is unavailable. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

Court granted district's summary judgment motion to dismiss parents' 42 U.S.C. 1983 claims where parents claimed a per quod right to maintain an action for deprivation of liberty as the parent of a child molested by a district employee. Court also dismissed parents' loss of consortium claims. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

When a plaintiff moves for summary judgment subsequent to a district court decision without submitting any new evidence, the motion for summary judgment is essentially an appeal of the administrative decision and is simply the procedural vehicle for asking the judge to decide the case on the administrative record. D.L. and K.L. on behalf of J.L. v. Springfield Bd. of Ed., No 05-5129, 2008 U.S. Dist. Lexis 17727 (D. N.J. March 6, 2008).

In reviewing an IDEA case, the district court's decision is based on the preponderance of the evidence. M.S. v. Mullica Twp., Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

Commissioner determined that trier of fact, as part of his or her assessment of credibility, will evaluate whether the testimony can be accepted as probable in the circumstances – given "common experience and observation of mankind." citing Spagnuolo v. Bonnett, 16 N.J. 547, 554-55 (1954), et. al.). (Young, Comm'r, 2008: Aug. 18).(affirmed: In re Young, (A-0309-08T3) 2009 N.J. Super. Unpub. LEXIS 1686 (App. Div. June 25, 2009.)

District Court denied school district's motion to dismiss for lack of subject matter jurisdiction where parents claimed section 504 discrimination in a matter where school district placed non-classified child in an alternative placement without due process. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

District court determined that parents' per quod damages resulting from negligent injuries to a minor child are limited to loss of services, earnings, and medical expenditures, and do not include loss of companionship. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

Commissioner determined that discrepancies in date testimony given by student did not destroy his credibility, therefore, ALJ's credibility determination was not arbitrary, capricious or unreasonable. (Young, Comm'r, 2008: Aug. 18). (affirmed: In re Young, (A-0309-08T3) 2009 N.J. Super. Unpub. LEXIS 1686 (App. Div. June 25, 2009.)

Court granted district's summary judgment motion to dismiss parents' respondeat superior claim against the district where board employee sexually abused a student. A municipal entity may not be held liable under 42 U.S.C. 1983 on a respondeat superior theory. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

An administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to due deference and will prevail so long as it is not unreasonable. However, a court is not bound by an agency's legal conclusions. Sea Isle City Bd. of Ed. v. Kennedy, 393 N.J. Super. 93 (App. Div. 2007)(2007 N.J. LEXIS 1076)

The Third Circuit determined that the trial court's unfavorable views of plaintiff did not originate from an extrajudicial source and therefore did not merit recusal nor was it timely where plaintiff was aware of grounds for recusal but did not act until the trial court issued an adverse ruling. Allen v. Parkland School District, No. 06-1560, 2007 U.S. Dist. App. LEXIS 9671 (3d Cir. April 27, 2007).

Third Circuit determined that it had jurisdiction & matter was not moot where teacher was successful at trial level. Review of matter was not moot because appellant/teacher was likely to be rehired as coach for the next school year. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d 656(March 2, 2009.))

Commissioner determined that ALJ did not abuse her discretion in determining that students were not domiciled in district despite the facts that district never requested such a relief. (K.L. and K.L. o/b/o minor children M.L. and C.L.,Commr., 2008: July 23)

Commissioner determined that parents were estopped from seeking a residency determination before the board when parents chose to appeal

superintendent's determination directly to the Commissioner. (K.L. and K.L. o/b/o minor children M.L. and C.L., Commr., 2008: July 23)

On motion, District Court determined that parents could file an amended complaint for special education matter and amendments must be permitted absent undue delay, unfair prejudice, bad faith, dilatory motive, or futility of amendment. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468. Upon the filing of parent complaint amended to include only parental due process claims, the District Court determined that parents did not have a viable claim because the due process right belonged to child,

Third Circuit determined that a complaint, in the employment discrimination context, should "plausibly suggest" that the pleader is entitled to relief. Bell Atlantic Copr. V. Twombly, 127 S. Ct. 1955 ((3d Cir, 2007). Wilkerson v. New Media Technology charter School, No. 07-1305 (3d Cir. April 9, 2008), 2008 U.S. App. Lexis 7526.

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009).

Commissioner determined that board was not precluded from certifying tenure charges where IAIU had dismissed charges of inappropriate sexual contact as unfounded. (Young, Comm'r, 2008: Aug. 18).(affirmed: In re Young, (A-0309-08T3) 2009 N.J. Super. Unpub. LEXIS 1686 (App. Div. June 25, 2009.)

Where plaintiff failed to designate treating physician as an "expert witness" by the court-ordered deadline, the exclusion of expert witnesses is an appropriate sanction for violation of a discovery or other pre-trial order. Witness testimony allowed as to diagnosis and methodology in reaching that diagnosis, but not as to expert causation testimony that went beyond his treatment. Allen v. Parkland School District, No. 06-1560, 2007 U.S. Dist. App. LEXIS 9671 (3d Cir. April 27, 2007).

Statute of Limitations tolled while student pursued administrative remedies. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006).

District Court dismissed parent's IDEA, ADA, and Rehabilitation Act claims due to the parents' failure to exhaust their administrative remedies where district allegedly failed to provide proper notice of parents' procedural rights. Parental compliance with the administrative exhaustion requirement may not be excused absent a showing that the district's technical failure to comply with IDEA provisions resulted in a substantial deprivation. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., April 8, 2008), 2008 U.S. Dist. Lexis 29304.

District Court dismissed parent's FERPA claim because FERPA has no private right of action, nor is Section 1983 a proper vehicle for a FERPA claim. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., April 8, 2008), 2008 U.S. Dist. Lexis 29304.

District Court declined to enforce tentative settlement agreement between district and special education parents where agreement was conditioned upon board approval which was never obtained. 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).

Because the District Court's review of an IDEA summary judgment motion is based on the court's own ascertainment of the preponderance of the evidence, many IDEA claims do not fall within the summary judgment standard of "no genuine issues of material fact." The Court therefore essentially conducts a bench trial based on a stipulated record. M.S. v. Mullica Twp. Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

District Court determined that in IDEA cases, the standard of review differs from that in typical cases. The District Court applies a modified de novo review and is required to give due weight to the ALJ's factual findings. Where the District Court departs from those findings, the court must explain why in order to avoid the impression that it is substituting its own notions of sound educational policy for those of the agency it has reviewed. 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 reviewing an IDEA case, the district court applies a "modified de novo" review standard and is required to give due weight to the factual findings of the ALJ. The Court must defer to the factual findings unless it can point to contrary non-testimonial extrinsic evidence on the record. M.S. v. Mullica Twp. Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

Upon interlocutory review, motion to compel deposition of sole witness at State Board of Examiners certification hearing granted. No undue hardship, minimal expense. Kandell, St. Bd. 2006: May 3. Examiners had previously reversed ALJ order compelling deposition of sole witness to events in complaint. Kandell, Exam, 2006: Jan. 30).

Court denied plaintiff's motion to amend complaint where plaintiff parents proposed to modify complaint to include a life coach for disabled student where parents and student had moved out of the district. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

In reviewing a summary judgment motion, the trial court does not weigh the evidence to determine the truth of the matter, the trial court's role is to determine whether there is a genuine issue for trial. Leang v. Jersey city Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

The elements of a retaliation claim under 42 USC 1983 is the same under the First Amendment or the Rehabilitation Act of 1973. In both cases, the plaintiff

must show 1) that they engaged in a protected activity, 2) that the retaliatory action would deter a person of ordinary firmness from exercising their rights, and 3) a causal connection between the protected activity and the retaliation. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Court declared parents motion to order district to revise IEP moot where parents moved out of state. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

State Board determined that it was the ultimate administrative decision maker and fact-finder in school matters. State Board review of Commissioner decisions is not limited to an abuse of discretion standard. (Charapova, Commr. 2006:Dec, reversed St. Bd. 2007:August 1)

When drawing all reasonable inferences in favor of the non-moving party in a summary judgment motion, the courts must disregard all evidence that a jury is not required to believe, including testimony of interested witnesses. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

In considering a motion for summary judgment, the court should believe the uncontested testimony unless it is inherently implausible even if the testimony is from an interested witness. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Plaintiffs complaint was grounded in violation of the IDEA. Allegations of violations of the ADA, Section 504, the 14th Amendment and the NJ Constitution could not be used as a tool to avoid the requirement of exhaustion of administrative remedies. The court dismissed non-IDEA claims, without prejudice, pending the exhaustion of administrative remedies. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006).

An appellate court exercises plenary review over the legal as opposed to the factual conclusions of the district court reached in reviewing an administrative determination. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Plaintiffs waived the possibility of monetary damages pursuant to Section 504 where they made no claim, failed to argue the point in a subsequent motion, and failed to raise the issue of monetary damages. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

In asserting a 42 U.S.C. 1983 claim, the party asserting the claim must allege facts showing that a public employee's conduct violated a constitutional right and that the right is so clearly established that it would be clear to a reasonable person that his conduct was unlawful. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Court granted district's summary judgment motion to dismiss parent's claims of intentional and negligent infliction of emotional distress. Parents did not witness assault against their daughter. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

District Court determined that plaintiff/student alleged sufficient facts to allege a civil conspiracy where student was allegedly the victim of child sexual abuse on school grounds. Nunnery v. Salesian Missions Inc. 2008 U.S. Dist. Lexis 31207 (D. N.J. April 15, 2008).

Court dismissed district's motion for summary judgment under the NJ Tort clams Act where student's allegations of sexual abuse against the district arose out of negligent hiring and/or supervision and not from the crime or willful misconduct of the alleged abuser who was employed as a campus monitor. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

Court denied parents motion to amend complaint to include additional years of allegedly inappropriate placement where parents failed to exhaust their administrative remedies for the additional years. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Court denied district's motion for summary judgment where parents presented evidence showing that district policies concerning reporting child abuse and sexual harassment were not implemented. Court held that a triable issue of fact existed as to whether the district's alleged acts and omissions constituted deliberate indifference, or established a custom, policy, or practice that caused the student constitutional harm pursuant to 42 U.S.C. 1983. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

3rd Circuit has noted that the requirements imposed pursuant to section 504 substantially duplicate the state's affirmative obligation under the IDEA. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Court denied parents' motion to amend complaint based on parents' undue delay. Parents' waited over two years to file motion to amend and only then in response to district's summary judgment motion to dismiss. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

To demonstrate a causal connection in a 42 USC 1983 retaliation claim, a plaintiff must prove either an unusually suggestive temporal proximity between the protected activity and the retaliating or a pattern of antagonism coupled with timing to establish a causal link. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Examiners denied teacher's motion for a stay of the judgment suspending her teaching certificates for one year, pending appeal to the Commissioner of Education. Teacher failed to meet Crowe v. DeGoia standards. (I.M.O. the Certificates of Megargee, Exam 2009: June 22)

District Court denied parents contempt motion due to lack of authority to hold a party in contempt of another trinubal's order. District Court did not have inherent authority to re-dress violations of ALJ orders entered in a different forum. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).

Commissioner denies application for recertification of teacher whose certificate had been revoked in 1992 as a condition of PTI for charges of criminal sexual contact against students and misconduct in office; the doctrine of res judicata applies as the petitioner had applied to State Board of Examiners for recertification in 1999 and had been denied after a full hearing and a ruling by the Commissioner. Moreover, the application of administrative code provisions that were adopted after he reentered PTI did not violate ex post facto law; ex post facto laws only apply to criminal matters, not regulatory laws governing teacher licensure. Armino, Commr. 2009:Dec. 7

In a civil rights action in which plaintiff charges Board with "reverse race discrimination and arbitrary and capricious hiring practices," her attorney sought to strike the board's answer for failure to provide discovery until the eve of the trial. Trial judge struck board's answer with prejudice "based upon fundamental litigation fairness." Appellate court rules that, as the trial judge's decision was not directly linked to a rule providing for the sanction imposed, striking the board's answer with prejudice was an abuse of discretion requiring reversal; involuntary termination of a civil action due to discovery delinquencies is not just a last resort, it must be preceded by a scrupulously indulgent effort to evaluate even a venal or stone walling litigant's discovery efforts, as long as that analysis can be accomplished fairly to both sides. *Mora v. Pleasantville Bd. of Ed.*, No. A-3396-12T4, 2013 N.J. Super. Unpub. LEXIS 2524 (App. Div. October 21, 2013)

It is the accepted practice in this Circuit and in the Federal Court System generally that a party must request and receive an entry of default from the Clerk prior to moving for default judgment before the Court." Under Rule 55, plaintiff failed to do so, therefore, plaintiff's motion for default judgment is denied without prejudice. *Mears v. Bd. of Educ. of the Sterling Reg'l High Sch. Dist.*, 2013 U.S. Dist. LEXIS 167624 (D.N.J. Nov. 26, 2013).

CIVIL RIGHTS - Generally

District Court determined that individual defendants were immune from plaintiff's negligence claim where such defendants were protected by the Tort Claims Act, because the alleged injury to a disabled child occurred within the scope of the individual defendants' employment. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

Commissioner determined that board did not discriminate against parent who was excluded from participating in classroom parties as a "room parent" where board policy delegated the management of classroom parties to the local PTA and where PTA policy required membership in the PTA as a pre-

condition for approval as a "room parent". (M.E.C., on behalf of minor children, C.C., K.C., and E.C., Commr., 2009: Jan. 12)

District Court determined that plaintiff pleaded sufficient facts to defeat a R.12(b)6 motion to dismiss for failure to state a claim upon which relief may be granted, where plaintiff alleged that private school for the disabled retaliated against her for pursuing her 1st Amendment rights. Private school defendants were not eligible for qualified immunity at this stage, but denial of immunity was without prejudice. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

Court denies district's motion for reconsideration of its decision denying in part district's motion for summary judgment, in a matter alleging district violations of the student's rights to due process, equal protection and under the LAD, and Civil Rights Act , when it acted with deliberate indifference to a racially hostile environment by transferring student to an alternative placement after he had been the victim of several racially harassing incidents. Lee v. Lenape Valley Reg'l Bd. of Educ., Civil Action No. 06-CV-4634 (DMC), 2009 U.S. Dist. LEXIS 76997 (D. N.J. August 26, 2009) (not for publication)

The State is relieved of prior remedial court orders concerning public school funding in Abbott districts as the New Jersey School Funding Reform Act of 2008 (SFRA), is constitutional under the Thorough and Efficient Education Clause, N.J. Const. art. VIII, § 4, para. 1 and may be applied in Abbott districts, with the following caveats: State must provide school funding aid during 2009 and the next two years at the levels required by SFRA's formula each year, and formula's weights and other operative parts must be reviewed after three years of implementation. Abbott v. Burke, 199 N.J. 140, 2009 N.J. LEXIS 420(May 28, 2009).

Parent alleged that the district was deliberately indifferent to a racially hostile environment when the district transferred E.L. to an alternative placement after he had been the victim of several racially harassing incidents. Motion for summary judgment denied for claims under due process and equal protection clauses, 42 U.S.C. §1983, Law Against Discrimination, and Civil Rights Act. Student's claims of deliberate indifference under Title VI are dismissed because Title VI requires a showing of intentional discrimination. Lee o/b/o/ E.L., v. Lenape Valley Reg'l Bd. of Ed., Civil No. 06-CV-4634, 2009 U.S. Dist. Lexis 26788, (D. N.J. March 31, 2009).

In the context of a peer sexual harassment suit, the Court held that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for 42 U.S.C. §1983 suits as a means of enforcing constitutional rights. Absent contrary evidence, Congress intended Title IX to allow for parallel and concurrent 42 U.S.C. §1983 claims. Fitzgerald v. Barnstable School Comm., 129 S. Ct. 788 (2009).

Division on Civil Rights issued a Finding of Probable Cause against the Board of Education in Franklin Township, Gloucester County, for allegedly not taking sufficient steps to end the race-based bullying of a student that went

on for nearly four years. Although the board had a harassment, intimidation and bullying policy, there was insufficient evidence to show that the board took meaningful steps and fully explored the entire range of responses envisioned by the policy, given the significant duration and type of harassment. Le v. Franklin Twp, April 12, 2011(DCR Docket No. PH05RE-03029)

The Director, Division on Civil Rights ordered the Toms River Regional Board of Education to pay a former student more than $68,000 for pain and suffering, plus interest, after concluding that the school district failed to take reasonable actions to remedy a hostile educational environment and stop persistent bullying of the student based on his perceived sexual orientation, in violation of the NJLAD. The Director affirmed the ALJ determination that the Toms River district's counseling-based handling of students who subjected L.W. to verbal harassment, physical assault and what the Supreme Court described as repeated "molestation" was ineffective and failed to protect him. The Toms River regional district was ordered to pay L.W. $50,000 plus $ 18,116.98 in interest and pay a $10,000 statutory penalty. L.W. v. Toms River Board of Education, February 25, 2013

Secaucus Board of Education has agreed to pay a severely disabled student $30,000 to resolve allegations it deliberately caused the student to miss out on her middle school graduation ceremony in 2012 by failing to notify her mother of the opportunity. No admission of wrongdoing. Settlement also includes agreement to provide proper notification -- via postal correspondence or e-mail -- to all students with disabilities regarding graduation ceremonies and other special events, and to notify the students' case managers, and to provide staff-wide training in the NJLAD, with a particular emphasis on how the LAD relates to student participation in events and activities. Settlement also included an invitation for the student to participate in the 2013 graduation ceremony, but mother declined. Civil Rights Settlement(August 1, 2013)

Cape May Vo Tech has agreed to overhaul the admissions practices of the Cape May County Technical High School (CMCT) to give students with disabilities a fair opportunity to attend, following DCR investigation into why almost no students with disabilities were enrolled in the CMCT's full-time program. The settlement with DCR requires Cape May to use objective criteria in its admissions procedures, precludes asking if a student is classified as having a disability, precludes reviewing an applicant's health record, IEP, Section 504 Plan without permission from a parent. Requires notice and training. Civil Rights Settlement (June 25)

Under a settlement agreement, Old Bridge Board agreed to $75,000 payout to resolve allegations the school district did not effectively address alleged harassment and bullying of the former student that went on for approximately four years, took place on the school bus and on the Internet, and included name-calling, derogatory comments and physical contact, and focused on student's perceived sexual orientation and Jewish faith.

May have been as many as 50 students who she alleged participated in bullying her son at one time or another; in some instances, no action was taken because administrators were unable to obtain reliable information about who was involved; in other cases 12 students received discipline ranging from a verbal warning to after-school detention to in-school suspension. Division's Finding of Probable Cause cited Old Bridge schools for dealing with the problem only through "after-the-fact" discipline, without any prevention measures or attempts at broader outreach to students. Settlement also requires schools to have and distribute to all staff, parents and students a written anti-discrimination policy, a written discrimination complaint procedure, and a written policy on student harassment, intimidation and bullying, and to implement a bias-based harassment prevention program that includes an awareness component for all students at the middle and high school levels, and an awareness and training component for all staff and administration, and is to be separate from any prevention program designed to address bullying generally. (Sept 18, 2013)

Director of DCR dismisses complaint against school district and administrators by teacher with lupus; there was no failure to provide her with reasonable accommodations for her disability, nor did they subject her to a hostile work environment based on her disability or retaliate against her for requesting accommodations in violation of the NJLAD. C.B. v. Paterson and Santana, (4/21/14).

District Court determined that former teacher failed to assert facts sufficient to find that the mayor engaged in a conspiracy to limit school district employees to a specific religion. *El-Hewie v. Paterson Pub. Sch. Dist.*, No. 13-5820 (D.N.J. Sept. 16, 2014)

Settlement agreement entered into by the district awarded $75,000 to an African-American victim of bullying and allocated $2,500 to the creation of an anti-bullying awareness program to be used in the 2014-15 school year. The allegations of bullying included race-based name calling that lasted from 3rd through 6th grades. The Division opined that responding to individual incidents of harassment may not be sufficient where district administrators are aware of an overall pattern of harassment. *Franklin Parent/Guardian o/b/o/ Minor v. Franklin Township Bd. of Educ.*, DCR 2014:August 11.

CIVIL SERVICE

Supreme Court affirms Appellate Division dismissal of employee's complaint, but modifies the rationale. The paid vacation leave provisions of the New Jersey Civil Service Act, N.J.S.A. §§ 11A:1-1 to 11A:12-6, apply to career service, non-teaching staff employees of school districts which have

adopted Civil Service for their non-certificated employee, such as the 10 month food service worker in the case in question. The Act and its implementing regulations establish a floor for the amount of leave to be provided to such school district employees. The employee received more than the statutory minimum paid vacation leave, pursuant to a local collective bargaining agreement. Headen v. Jersey City Bd. of Educ., A-17 September Term 2011, 068598, SUPREME COURT OF NEW JERSEY, 212 *N.J.* 437; 55 *A.3d* 65; Decided November 15, 2012, Reconsideration granted by, in part, Amended by Headen v. Jersey City Bd. of Educ., 2013 N.J. LEXIS 10 (N.J., Jan. 8, 2013)

Civil Service Act's vacation leave provisions apply to a career service, non-teaching staff employee who works on a full-time ten-month basis for a school district that opted to be part of the civil service system; however, the CNA provides her with more than that minimum amount guaranteed by statute, even assuming that legal holidays are not included in the calculation. Headen v. Jersey City Bd. of Educ., __*N.J.* ___(2013), 2013 N.J. LEXIS 10 (Decided November 15, 2012, revised January 11, 2013)

CLERKS AND SECRETARIES

Jurisdiction: Commissioner questions whether he has jurisdiction over increment withholding of noncertified clerk within a bargaining unit; ALJ ruling that the board acted arbitrarily is set aside, and matter remanded on jurisdictional issue (99:Oct. 28, North Bergen)

COACHES

Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

Board's reasons for failing to renew coach (less than satisfactory performance) were not arbitrary, capricious or unreasonable, and board followed requirements of N.J.S.A. 18A:27-4.1; therefore, the nonrenewal stands. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)

N.J.S.A. 18A:27-4.1 did not preempt or repeal N.J.S.A. 34:13A-24 nor was N.J.S.A. 34:13A-24 unconstitutional delegational of governmental power to arbitrator; PERC determination that employee has right to arbitrate board'' decision not to renew his extracurricular coaching contract. Jackson Twp. Bd. of Ed. v. Jackson Ed. Assn., 334 N.J. Super. 162 (App. Div. 2000); certif. den. 165 N.J. 678 (2000)

Non-renewal of head coach's coaching contract was not arbitrary and capricious, nor in violation statute or code. (00:March 6, Cohen)

Teaching staff member does not accrue tenure as a coach; a board may discontinue a coaching assignment at its discretion. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)

Tenured teacher's coaching position is not governed by notice of non-renewal protections set forth in N.J.S.A. 18A:27-10 or N.J.A.C. 6:3-1.20. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)

The employment of coaches is a managerial decision of the board and not subject to the tenure law. (03:Jan. 31, Miller)

Board of education erred when it hired a tennis coach who was not properly certificated. Person was not properly credentialed as she only possessed a Certificate of Eligibility with Advanced Standing (CEAS). A board of education must hire a qualified and certificated applicant for a coaching position unless such a person does not exist; the Board erred in hiring an applicant who was not fully certified, but instead possessed only a CEAS. Board should have hired the petitioner, a three year incumbent, for the coaching position, as he was the only qualified and certified applicant for the position. Former tennis coach compensated with the stipend he would have received had he been hired as tennis coach. Rulon, Commissioner 2013: October 7

CODE OF ETHICS

Holding matters confidential, N.J.S.A. 18A:12-24.1(g)

Board member violated Act when he sought out and disclosed confidential employee information to citizen; reprimand ordered. (03:March 6, Pizzichillo)

Board member violated Act when he sought out and disclosed confidential student information to the board; censure ordered. (02:July 16, Vickner, motions to supplement record and compel production of documents denied St. Bd. 02:Dec. 4, motions for reconsideration and for oral argument denied, St. Bd. 03:March, decision of SEC and Commissioner aff'd St. Bd. 03:July 2)

CODE OF ETHICS

Private action that may compromise the board, N.J.S.A. 18A:12-24.1(e)

Board member violated Act when he sought out and disclosed confidential employee information to citizen; reprimand ordered. (03:March 6, Pizzichillo)

Board member violated Act when he sought out and disclosed confidential student information to the board; censure ordered. (02:July 16, Vickner, motions to supplement record and compel production of documents denied St. Bd. 02:Dec. 4, motions for reconsideration and for oral argument denied, St. Bd. 03:March 5, decision of SEC and Commissioner aff'd St. Bd. 03:July 2)

COLLECTIVE BARGAINING LITIGATION

Court holds that teacher's as-applied challenge to the board's mailbox policy (requiring permission to distribute personal correspondence through the mailboxes) and section 1983 cause of action are not barred by res judicata and may proceed as these were not addressed on their merits by the Court of Appeals in Policastro I; however Court grants motions to dismiss overbreadth challenge as it was already addressed in Policastro I, and to dismiss vagueness claim, as it could have been brought in Policastro I. Policastro v. Tenafly Bd. of Educ., Civ. No. 09-1794 (DRD), 2009 U.S. Dist. LEXIS 64461 (D. N.J. July 30, 2009) (not for publication)

Disciplinary actions are not negotiable, State v. Local 195,IFPTE, 179 N.J. Super. 146 (App. Div. 1981) certif. denied 89 N.J. 433 (1982) but see CWA v. PERC, 193 N.J.658 (App. Div. 1984).

The Supreme Court reversed the Appellate Court below, in holding that the mid-term termination of a custodian was arbitrable under the procedures contained in the collectively negotiated agreement (CNA). Held that language need not parrot that of Pascack Valley to require arbitration; and individual contract terms will yield where they conflict or diminish right to arbitration set forth in CNA. Mount Holly Twp. Bd. of Educ. v. Mount Holly Twp. Educ. Ass'n, 199 N.J. 319(2009) (June 24, 2009)

Appellate Division affirmed Law Division decision confirming an arbitration award that board improperly used 1/187 instead of 1/200 in determining daily rate of pay for ten month salaried certificated employees. E. Brunswick Bd. of Ed., 2009 N.J. Super. Unpub. LEXIS 3050 (App. Div. Dec.15, 2009).

Non-tenured custodian dismissed by the board. Refused to submit to a medical examination as Superintendent attempted to verify, pursuant to Article 10A of the collective bargaining agreement, the legitimacy and scope of petitioner's claimed inability to work due to continuing illness, after a four-month absence from employment. Refusal to submit to the directed examination was an act of insubordination constituting good cause, under the collective bargaining agreement, for dismissal prior to the expiration of his individual employment contract. Commissioner lacked jurisdiction, petition dismissed. Jeannette, Commr. 2009: September 16

Order of the trial court compelling the Board to reinstate employee reversed. Order enforced judgment affirming arbitrator's decision to set aside board's termination. Appellate Division, April 17, 2009, reversed trial court and reinstated board's termination. Matter is pending before the New Jersey Supreme Court. Linden Bd. of Ed. v. Linden Ed. Ass'n, Docket No. A1331-08T3, App. Div., unpublished, December 7, 2009.

Appellate Division vacates Chancery Division order restraining arbitration of dispute regarding school district obligation to provide health benefits to employees working between 20 and 32 hours per week and directs arbitration in accordance with the CBA. Berlin Borough Bd. of Educ. v. Berlin Teachers' Ass'n, (A-4715-07T2) 2009 N.J. Super. Unpub. LEXIS 1123 (App Div. May 13, 2009)

Appellate Court per curiam upholds PERC's determination requiring the union to refund $300 of the sums deducted from an employee's pay by the Teaneck Board of Education for representation fees in lieu of dues; that the Teaneck Board deducted on behalf of Local 97 from employees' pay; Local 97 did not meet its burden of proof with respect to the allocation of per capita taxes. Jacobs v. Teamsters Local 97, Op. Div. unpublished decision (A-5778-07, July 17, 2009)

The Supreme Court reversed the Appellate Division and confirmed an arbitrator's authority to consider discipline other than termination of a custodian, where the parties' collective bargaining agreement did not define "just cause" and where arbitrator believed that the board's action to terminate a custodian who cleaned while girls were changing clothes in the room, was disproportionate to the gravity of the misconduct, and imposed the suspension. The Court remanded the case to the trial court for reinstatement of the arbitration award.Linden Bd. of Educ. v. Linden Educ. Ass'n, 2010 N.J. LEXIS 507 (June 8, 2010) reversing Linden Bd. of Educ. v. Linden Educ. Ass'n, (A-1236-07T3,)

Trial court did not err in vacating an arbitration award that would reverse the state monitor's RIF of twenty-two non-tenured special education aides; the award ignores monitor's function to implement policies to achieve sound fiscal management of the District, and is contrary to existing law and public policy; fact that there was no "just cause" for termination under the contract was irrelevant because a RIF is not arbitrable; award must be vacated as a "mistake of law." Pleasantville Board of Education v. Pleasantville Education Association, App. Div. unpublished decision (A-2123-08T3 Aug. 25, 2009)

The Appellate Court refused to interfere with an arbitration award requiring the Manalapan-Englishtown Board to place a reinstated teacher on the top of the salary guide where she had been prior to taking a disability retirement nearly 20 years ago. Manalapan-Englishtown Regional Board of Education v. Manalapan –Englishtown Education Association, App. Div unpublished opinion (App. Div. A-3515-06T1 and A-3138-07T1, July 28, 2009) (See related litigation, Klumb v. Manalapan-Englishtown Regional Board of Education, 199 N.J. 14 (2009) (May 11, 2009)).

Commissioner lacked jurisdiction to determine whether the board properly placed a teacher on the salary guide upon her return from maternity leave; the matter should have been brought to arbitration through the procedures set forth in the collective bargaining agreement. (Wachtel, Commr., 2009:May 22)

The Supreme Court reversed the Appellate Court below, in holding that the mid-term termination of a custodian was arbitrable under the procedures contained in the collectively negotiated agreement (CNA). Held that language need not parrot that of Pascack Valley to require arbitration; and individual contract terms will yield where they conflict or diminish right to arbitration set forth in CNA. Mount Holly Twp. Bd. of Educ. v. Mount Holly Twp. Educ. Ass'n, 199 N.J. 319(2009) (June 24, 2009)

Appellate Court affirms PERC's denial of board's requests to restrain arbitration and vacate the arbitration award requiring the board to place a teacher at top of salary guide, in a matter where the Commissioner had ordered the district to reinstated the teacher to the board's employment many years after she took disability retirement. Manalapan-Englishtown Reg'l Bd. of Educ. v. Manalapan-Englishtown Educ. Ass'n, (A-3515-06T1; A-3138-07T1) 2009 N.J. Super. Unpub. LEXIS 1980 (App. Div. July 28, 2009)(see related matter, Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). related matter)

Court denies district's request to vacate an arbitration Award and Order entered in favor of New Jersey Building Laborers' Statewide Benefit Funds and its Trustees finding that board failed to make required employee benefit contributions to the Funds in violation of a collective bargaining agreement. N.J. Bldg. Laborers Statewide Benefit Funds & the Trustees thereof v. Newark Bd. of Educ., No. 12-cv-7233 (DMC) (MF), , 2013 U.S. Dist. LEXIS 90423 (D.N.J. June 27, 2013) not for publication

Court denies motion to enforce settlement agreement; court lacked subject matter jurisdiction because the Court's Order of Dismissal did not incorporate the terms of the settlement. Stanton v. Deptford Twp. Bd. of Educ., No. 11-2525 (JHR-JS), 2013 U.S. Dist. LEXIS 89634 (D. N.J. June 26, 2013)

COLLECTIVE NEGOTIATIONS

Authority

ALJ held that physical education teacher's lunch hours need not coincide with student lunch times. The decision to assign lunch hours, where not addressed in the collective bargaining agreement, fell within managerial prerogative, so long as the schedule is consistent with statute and code provisions. Commissioner agreed that teacher failed to show board of education schedule was outside the scope of their discretion or otherwise improper. (02:Nov. 18, Morris Ed. Assn.)

PERC laws authorize suspension of tenured teacher without pay for minor discipline if so negotiated by board and union representative; not an illegal reduction in salary. (00:July 13, Tave, letter to counsel, aff'd St. Bd. 00:Nov. 1)

Jurisdiction

Commissioner does not have jurisdiction over matters arising under the collective bargaining agreement. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

Pre-judgment Interest

ALJ concluded that school district's RIF of two teachers was wrongful due to the district's failure to credit the teachers' prior military history. ALJ awarded pre-judgment interest to one teacher where the teacher identified the omission to the district in writing prior to his dismissal, finding constructive bad faith in the termination for failure to properly credit the teacher's prior military service. In addition, the ALJ ordered pre-judgment interest in that the district conceded that salary was wrongfully withheld from teacher. ALJ also precluded district from deducting unemployment compensation benefits from teacher's back-pay awards, and Ordered the teachers to file before the Department of Labor to determine compensation for July and August, if any. Finally, ALJ denied the award of consequential damages as exceeding the authority of the commissioner. Commissioner agreed with ALJ, but modified the decision to limit ALJ's award of pre-judgment interest to the difference between back-pay to be received and unemployment compensation received. Commissioner determined that teachers should arrange to reimburse Dept. of Labor, Division of Unemployment Compensation directly, without having the district deduct such amount from the back-pay award. State Board modifies dates of prejudgment interest. (02:Sept. 30, Scott, aff'd with modification, St. Bd. 04:June 2)

Where board could not obtain discovery about parents' financial affairs, from parents who, pursuant to earlier Commissioner decision, owed board back tuition for illegal attendance of pupil, prejudgment interest would be calculated by Court Rule rather than administrative code provision. (00:June 23, Livingston)

Salary: it is a violation of tenure law to, upon negotiation of new collective bargaining agreement, reduce salary of teachers who were paid higher salary under continuation of expired collective bargaining agreement; board may freeze teachers' salaries until new salary guide "catches up." (98:Aug. 6, Schalago-Schirm, aff'd St. Bd. 98:Dec. 2)

COMMISSIONER OF EDUCATION

Attorney Fees

Commissioner is without the statutory authority to award attorney fees. (04:March 18, W.C.K.)

Authority

Commissioner could not substitute his own judgment for the board's; the Commissioner may determine that the board had no reasonable basis for hiring an assistant superintendent who did not have appropriate certification and could set aside the board's action, but the Commissioner may not hire another person instead, as this would usurp the board's authority to hire personnel. (03:Dec. 23, Farmer)

Commissioner determined that pursuant to N.J.S.A. 52:14B-10(c), the ALJ's credibility determinations are entitled to the Commissioner's deference. (05:May 28, D.O.)

Commissioner has no authority in a tenure dismissal matter, to order teacher to attend training classes (99:Aug. 4, Motley, aff'd St. Bd. 99:Dec. 1)

Commissioner only has authority to order re-employment upon the conduct of a contested case, after the board has had an opportunity to defend against disqualified custodian's claim for reinstatement, and then only after custodian had successfully demonstrated rehabilitation. (05:May 26, Nunez)

Counsel fees: Commissioner has no authority to order. (01:May 7, North Arlington)

Court reviewed appropriate allocation of specific responsibilities between the Commissioner of Education and the Englewood School District in relation to the development and implementation of a voluntary plan that is designed to achieve an appropriate racial balance and educational quality by means of magnet and specialty schools. Court determines that the Commissioner and State Board retain the ultimate responsibility for developing and directing implementation of a plan to redress the racial imbalance. Bd. of Ed. of Borough of Englewood Cliffs v. Bd. of Ed. of City of Tenafly, 170 N.J. 323 (2002), aff'g 333 N.J. Super. 370 (App. Div. 2000), certification granted in part, 166 N.J. 604 (2000), aff'g St. Bd. final decision 98:Oct. 7.

Damages: The Commissioner may award money damages in limited situation; has no authority to award punitive damages or counsel fees, although he may award lost earnings or restore an increment that was improperly withheld. (03:Dec. 23, Farmer)

In a *nunc pro tunc* disqualification hearing, disqualified custodian was limited to evidence of rehabilitation available at the time of his initial application because the application would have concluded before the endof the year in which it was filed. (05:May 26, Nunez)

With respect to petitioner's claim for "comparative" and punitive damages, it is well established that the Commissioner lacks

authority to award money damages or monetary sanctions that constitute compensation for "damages" other than lost earnings or restoring an increment that has been improperly withheld. See Dunn v. Elizabeth Bd. of Ed., 96 N.J.A.R.2d (EDU) 279, 281 (Citing McLean v. Bd. of Ed. of Glen Ridge, 177 S.L.D. 311) (05:June 16, Klumb, motion for stay denied, Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

Commissioner has no authority to award attorney's fees in an education controversy. (Compass Group USA, Commr., 2007: Dec. 7)

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). See below:Commissioner lacks authority to award monetary damages or monetary sanctions that constitute compensation for damages other than lost earnings or restoring an increment that has been improperly withheld.

State Board dismisses Board's appeal for failure to perfect, leaving Commissioner's decision intact. Commissioner had noted that in rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. (N.J.S.A. 52:14B-10(c)). (Poston, St. Bd. 2007:April 4)

Commissioner may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious, unreasonable, or are not supported by sufficient credible evidence in the record. N.J.S.A. 52:14B-10(c). (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). See below: Commissioner denied reinstated tenured teacher's claims to pre-judgment interest on salary during the time the board refused to re-instate her to her former position. No showing of "bad faith" by the board.

Commissioner vacated the board of education's head basketball coach appointment. Appointed head coach was not properly certified, the

first criteria of N.J.A.C. 6A:9-5.19. Additionally, qualified, certified applicants existed and no application for waiver to the county superintendent was made or granted. Commissioner declined to appoint a new coach as the potential new coach was not a party to the proceeding nor was his appointment requested as part of the relief. (Paterson Eastside, Commr., 2007:July 13)

Neither N.J.S.A. 18A:37-3 nor any other statute authorizes the Commissioner to award counsel fees to a school district arising out of its pursuit of disciplinary action against a student. (Licciardi, Commissioner 2008: December 5)

Commissioner agreed with ALJ that petitioner parent had wantonly and willfully violated the ALJ's Prehearing Discovery Order. Petitioner's assertions were incredible and unbelievable. Board's motion for sanctions was granted with the appropriate remedy being deemed suppression of the claim and dismissal of the petition. (L.A. and C.A. o/b/o P.M.A., Commr., 2007:July 18)

Commissioner lacks authority to address alleged violations of NJEA contract and unfair labor practice claims. Those issues are properly addressed by PERC. (Klumb, Commr., 2005: June 16). Petitioner motion to supplement the record denied as being non-material. (Klumb, St. Bd., 2005: Nov. 2). Affirmed. (Klumb, St. Bd., 2006: Jan. 4). Petition for certification granted, Klumb v. Manalapan-Englishtown Bd. of Ed., 196 N.J. 600 (2008)

Board of trustees acted reasonably in voting to approve the settlement that resolved lawsuits filed against the charter school by two creditors to recover monies owed in connection with the construction/renovation project undertaken by the charter school foundation. (Crapelli, Comm'r., 2008:May 15).

In a residency determination the Commissioner determined that the district was not entitled to rely on the board attorney's representations regarding a residency investigation conducted during the previous school year. District required to produce the investigation report or testimony of the investigator. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan 8). State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency.

Settlement of tenure charges approved for tenured teacher accused of insubordination and unbecoming conduct. Two weeks after communications among attorneys and the court indicated that parties had agreed to settlement, teacher refused to sign settlement agreement, having changed her mind. Enforcement motion denied as Commissioner does not have jurisdiction to enforce settlements. (Jones, Commr. 2007:August 9)

Given respondent's resignation from the Board, her eventual filing of the necessary disclosure statements, and her inactivity during the second half of 2005, the Commissioner deems a reprimand to be the appropriate penalty for the late filing, and admonishes respondent for her dilatoriness, which has resulted in a waste of administrative and adjudicative time at the local, county and State levels. (Harrison-Bowers, Commr. 2007:Aug. 8)

Parent failed to prove that district's ineligibility determination was arbitrary or capricious where guardian submitted a notarized affidavit indicating that the child no longer resided with the guardian contrary to parent's assertions. Commissioner may defer to the credibility determinations made by the ALJ who had the opportunity to observe the demeanor of witnesses. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan. 8, aff'd St. Bd. 2007:June 6).

Tenured special education teacher was dismissed from his teaching position with the New Jersey State Juvenile Justice Commission following his arrest for alleged possession of heroin and failure to timely report his arrest and criminal charge for drug related activity in violation of the JJC's Drug Free Workplace Policy. Such conduct constituted conduct unbecoming a teaching staff member, particularly in a position such as his where he teaches children, many of whom are involved with illicit drugs. (Guarni, Commr. 2007:July 23)

Commissioner dismissed matter as moot where parents withdrew child from district after district petitioned the Commissioner to assess the child who was gifted in math and science but deficient in language arts. (R.O. and R.O. on behalf of minor child R.O., Commr., 2008: Feb. 5)

Exercise of discretionary powers by a local board of education, or state district superintendent, may not be upset unless patently arbitrary, or without reasonable basis. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

Given respondent's resignation from the Board, her eventual filing of the necessary disclosure statements, and her inactivity during the second half of 2005, the Commissioner deems a reprimand to be the appropriate penalty for the late filing, and admonishes respondent for her dilatoriness, which has resulted in a waste of administrative and adjudicative time at the local, county and State levels. (Harrison-Bowers, Commr. 2007:Aug. 8)

Commissioner's scope of review is limited to determining whether the underlying facts were as those which the finder of fact at the district level found and whether it was unreasonable for the board or district superintendent to make a conclusion based on those facts. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). See below: Commissioner denied attorney's fees absent express statutory authority for such an award. (Klumb, Commr., 2005: June 16). Petitioner motion to supplement the record denied as non-material.

Commissioner dismisses parent's request that district place her son in the school of her choice because the school in which he was placed did not meet AYP under the No Child Left Behind Act; the NCLBA contains no provision for individuals to enforce the notice, transfer or SES provisions; enforcement action is vested solely in the Secretary of Education. (F.R.P., Commissioner 2008: December 8)

Suit challenging the validity of the regulations that set standards for payments in lieu of unused sick and vacation leave to school district business administrators was rejected. Further regulations on nepotism upheld. Commissioner's power was not in material conflict with any statute and did not set forth an unauthorized extension of power. New Jersey Ass'n of Sch. Bus. Officials v. Davy, 409 N.J. Super. 467 (App.Div. 2009)

The salary cap did not exceed the authority delegated to the Commissioner by the Legislature in N.J.S.A. 18A:7-1 to -16 (L. 2007, c. 63, §§ 42-58) or violate the Separation of Powers Clause, N.J. Const. art. III, par. 1; The cap on salary does not conflict with the authority of a local school board to fix its superintendent's salary, N.J.S.A. 18A:17-19; application of the salary cap to superintendents whose contracts expired on June 30, 2011 is not precluded by N.J.S.A. 18A:17-20.1 or -20.2; The Commissioner did not violate the rulemaking provisions of the Administrative Procedure Act. N.J.S.A. 52:14B-1 to -24, by directing the ECSs to suspend review of renegotiated contracts pending adoption of the salary caps. There is nothing arbitrary, capricious or unreasonable in the Commissioner's effort to rein in spending with salary caps based on enrollment. New Jersey Ass'n of Sch. Adm'rs v. Cerf, ___ N.J. Super. ___ (App.Div. Oct. 25, 2012)

Issuance of Bonds

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

Moot: The Commissioner does not decide moot cases, such as where, in a challenge by an unsuccessful candidate to employment, the appointee resigns and the job is restructured. (03:Dec. 23, Farmer)

Only the Commissioner or an assigned Assistant Commissioner may hear and determine disputes arising under the education laws. (St. Bd. 00:May 3, Pleasantech Academy Charter School Ed. Assn., remanded to Commissioner)(See also subsequent decisions 02:Feb. 11, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0375-02T3, Dec. 5, 2003)

The Commissioner may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent and credible evidence in the record. (04:Aug. 19, Shinkle, aff'd St. Bd. 04:Dec. 1)

Commissioner has statutory authority to delegate inspection of accounts to the Office of Compliance. (97:June 3, Middle Twp., aff'd St. Bd. 98:Oct. 7, remanded App. Div. 99:June 4, remanded St. Bd. 00:June 7)

Conflict of Interest

Elected candidate with Appellate Division claim against the board files Stipulation of Dismissal. Commissioner finds no inconsistent interest, no relief to be granted and dismisses Petition of Appeal without reaching merits of ALJ decision. (03:June 2, Margadonna)

Contempt

School business administrator was not in contempt for disobeying a restraining order, by virtue of his failure to prohibit local districts from withdrawing from joint purchasing agreement. (01:Aug. 8, DeHart)

Contractual provision for counsel fees in a school construction matter may be decided by the Commissioner of Education. (03:June 9, Middletown)

Credibility

Commissioner adopted ALJ's credibility determination, according great weight to the finder of fact who observed the witnesses first-hand, pursuant to N.J.S.A. 54:14B-10(c). (03:Aug. 8, Community Charter School)

Credibility determinations: the administrative law judge has the greatest opportunity to observe the demeanor of witnesses and assess their credibility; his credibility determination is entitled to the Commissioner's deference. (02:Feb. 25, King)(04:Aug. 19, Shinkle, aff'd St. Bd. 04:Dec. 1)

Damages

Commissioner denies emergent relief to pro se parent of 7-year old student who was suspended for violent disruptive behavior and placed on long-term suspension with home instruction; certain issues were mooted by board's agreement to return student to classroom and provide expedited assessments by CST; the request for parent's lost

wages, childcare expenses and other damages are denied as outside of Commissioner's authority; nor is there any basis to grant attorney's fees. (B.G., Comm'r., 2008:May 20).

Petitioner's claim for payment of accrued vacation/personal days and health insurance waiver deemed moot. Payment in full for post-judgment interest made entire matter moot. (Kaprow, Commr., 2007:July 23, affirmed St. Bd. 2007:December 5)

Date 90 day period begins to run

Action to suspend teacher's certification after his immediate resignation without notice; 90 days began to run from date board took official action on teacher's resignation. (99:May 24, Falco)

Formal board action and direct notice by board are not absolute prerequisites to triggering 90-days; formality of notice is irrelevant where goals of notice are achieved. (99:Dec. 16, Gloucester, aff'd with clarification St. Bd. 00:Aug. 2) (see also St. Bd. 00:June 7, Gloucester)

Ninety-day period for filing a petition of appeal commences when the petitioner learns of facts that would enable him to file a timely claim or, in other words, when the plaintiff learns or reasonably should learn of the state of facts which may equate in law with a cause of action. (Remanded to Commissioner, St. Bd. 03:Nov. 5, Eisenberg)

Not tolled by filing of PERC claim. (98:Nov. 30, AFT)

Period ran from date teacher received notice from carrier of termination of her compensation benefits, even though her attorney did not receive notice, no justification for 10-month delay in challenging district's charging sick days for work-related injury. (99:December 23, Mello)

Period ran from date that union had knowledge of the number of positions that board was seeking to full when board approved the postings of positions; did not run from actual date the positions were posted or from start of selection process to fill positions. (98:Nov. 30, AFT)

Psychologist challenging non-renewal failed to file claim within 90 days of learning by letter that his contract would not be renewed; Commissioner rejects teachers' argument that 90-day period begins after receipt of written notice of determination after Donaldson hearing pursuant to N.J.S.A. 18A:27-3.2. (02:Oct. 7, Sniffen)

Pupil's claim that board did not hold expulsion hearing within 21 days, dismissed along with other allegations, as untimely pursuant to N.J.A.C. 6:24-1.2(c); 90 days began to run when board found him guilty of assault and advised him of suspension. (99:March 23, J.O.)

Recall rights for teaching staff members on preferred eligibility lists are inchoate until board makes appointment; period ran from date of appointment. (01:June 22, Barca)

RIF'd tenured administrator should have filed her claim within 90 days of learning that a non-tenured individual was appointed to a position to which she was claiming entitlement; dismissed for failure to comply with 90-day rule. (02:July 22, Love)

Student's challenge to board's suspension for possession of paging device was dismissed as untimely: 90 days began to run from date pupil or her attorney heard board's vote, and not from letter subsequently sent to parents from board. (98:Sept. 30, S.W.)

Teacher claimed that when board charged her sick days for a work related injury, it violated N.J.S.A. 18A:30-2.1. A letter advising her that her absence would be treated as if due to personal illness and not work-related injury leave, served as final notice and immediately triggered the 90 days. That time period was not tolled by her filing a Workers Compensation claim. Even if an alleged work-related injury also is the subject of a worker's compensation petition, any school law claim under N.J.S.A. 18A:30-2.1 must still be filed within ninety days of the board's denial. (05:Jan. 20, Abercrombie, parties ordered to supplement the record on appeal, St. Bd. 05:May 4, St. Bd. affirms Commissioner decision for the reasons expressed therein, 05:July 6)

Time limit of 90 days began to run from the date teacher's contract expired, even where teacher believed that a letter he sent to the Director of the Office of Licensing and Academic Credentials satisfied the filing requirements; petition dismissed as untimely filed. (99:Feb. 22, Atkin, aff'd St. Bd. 99:July 7; aff'd App. Div. unpub. op. Dkt. No. A-128-99T1, December 15, 2000)

Time limit of 90 days began to run from time teacher's contract expired, even where teacher believed that filing for use of union provided legal services stopped 90-day period; petition dismissed as untimely filed. (99:Feb. 22, Atkin, aff'd St. Bd. 99:July 7; aff'd App. Div. unpub. op. Dkt. No. A-128-99T1, Dec. 15, 2000)

Time limit of 90 days began to run from time teacher received letter advising him of the withholding of his increment, even where during first month of that period he believed he would not be offered reemployment; petition dismissed as untimely filed. (99:Feb. 22, Freyberger)

Declaratory ruling

Challenge to school board's actions prior to student's suicide presented posed true controversy between adverse parties; declaratory ruling was appropriate. (99:Aug. 13, M.N.)

Commissioner declines request. Will not issue advisory opinion on matter in the abstract. (02:April 19, Morris)

Matter of whether certified teaching positions in fee-based, extended day kindergarten program were tenure-eligible is not ripe not for relief, but is better suited for declaratory ruling pursuant to Commissioner's discretion under N.J.A.C. 6A:3-2.1; teachers

ordered to amend their petition to proper format. (01:Aug. 6, Brown)

Dismissal

Board of education and planning board disagreed over whether planning board had authority to preclude board of education's land acquisition. Commissioner dismissed without prejudice due to expiration of statute of limitations and rejected ALJ's determination that ministerial decisions of the Office of School Facilities Financing must meet the same standards for quasi-judicial determinations as state agencies. (02:Aug. 29, Eastampton Twp., settlement approved, motions granted and matter remanded, St. Bd. 03:Jan. 8, on remand, approval of boards application to construct athletic fields still valid, 03:April 14)

Counterclaim; Failure to answer counterclaim has same effect as failure to file answer; all allegations are deemed admitted. (99:March 23, R.D.F., appeal dismissed for failure to perfect, St. Bd. 99:July 7)

Failure to appear and failure to submit explanation. Matter dismissed. (02:June 26, C.C.)

Petition dismissed for failure to file in a timely manner. (St. Bd. 00:Aug. 2, Engle, aff'g Commissioner 00:March 30, aff'd App. Div. unpub. op. Dkt. No. A-344-00T3, Nov. 14, 2001)

Standard for granting motion for involuntary dismissal of case, discussed. (99: Dec. 20 Osman, aff'd St. Bd. 00: May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1 Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01: Dec. 5 See also, (02: March 4) No relaxation required. Determination of State Board of Examiners not necessary to pursue tenure rights claim. Aff'd St. Bd. (02: Aug. 7) aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5 June 2, 2003.

Suit challenging retention of student in the fifth grade dismissed for failure to file in a timely manner. Petitioners failed to set forth legal or factual basis for waiving timely filing requirement. (04:July 21, M.N. and E.Y.)

Emergent Relief

Crowe v. DeGoia standard met. Board ordered to allow out of district student to attend junior prom as date of district student. Petitioners experienced severe personal inconvenience sufficient to constitute irreparable harm. (03:May 2, L.J.)

Denied in dispute over transportation contracts. (03:April 3, Seman-Toy, Inc.)

Denied in pupil admission matter. Crowe v. DeGioia test not met. (02:March 25, F.P.T.)

Denied in pupil transfer matter. Crowe v. DeGioia test not met. (02:April 18, C.P.)

Denied in student discipline matter. Crowe v. DeGioia test not met. (02:April 18, A.G.K.)

Denied in tuition matter for early childhood education in Abbott district where collective bargaining agreement permitted employees to send children for free but state regulation only allows pupils residing in district to attend program. (03:April 22, S.A.)

Denied. Student failed to prove that district acted unreasonably in transfer of student from day high school program to twilight alternative school. District did not act inappropriately with respect to student's disciplinary record or grades. (03:June 19, L.R.R.)

Emergent relief denied. Board decision prohibiting student from walking in graduation ceremony because she had not passed the math portion of the HSPA upheld. (03:June 20, Ratto)

Emergent relief denied. Board decision to not name graduating student as "distinguished student speaker" upheld. Student was not eligible for honor as did not attend Academy of Biological and Environmental Sciences for all four of her high school years. Board criteria for determining "distinguished student speaker" reasonable and fair. (03:June 18, K.R.C.)

Emergent relief denied in construction bidding matter. Crowe v. DeGioia test not met. (02:April 30, McCann Acoustics)

Emergent relief denied in dispute over whether work on receiver's parking lot constitutes a capital expenditure and not includible in the tuition cost or work is maintenance and therefore includible in cost of tuition. (03:March 21, Lincoln Park, decision on motion)

Emergent relief granted. Board's action prohibiting student from walking at high school graduation reversed. Decision was arbitrary, capricious and unreasonable. (03:June 20, C.M.)

Emergent relief granted. In contract dispute over irregularities in award of bid, contractor met Crowe standards. (03:Sept. 8, Control Building Services, stay issued, St. Bd. 04:Oct. 22, stay clarified prohibiting rebidding of custodial service contracts including opening of bids, St. Bd. 04:Oct. 25, aff'd and stay lifted, Commissioner ordered to ensure integrity of rebidding process and submit report to State Board on failures of original bidding process. St. Bd. 04:Dec. 1)

Granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program such as home instruction, pending final disposition of expulsion proceedings. (02:March 22, S.R.R.)

Granted in dispute over tenure laws and *Abbott* regulations. (03:March 6, Sanchez, aff'd St. Bd. 03:June 4)

Stay of the termination of Abbott preschool education contract denied. (01:Aug. 8, Craig)

Employee/Personnel Litigation

Salary/Salary Guide

Commissioner determined that district may recoup salary overpayment discovered nin years after the board erroneously placed teacher on the salary guide for two successive years. No evidence that the board was negligent in pursuing its claim or that respondent was prejudiced by the long delay. (05:May 26, Sarcone)

Equitable Estoppel

Application of order from 18 years ago that would have permitted severance of sending-receiving relationship, was barred by laches and waiver, but not equitable estoppel. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1, on remand to Commissioner, negative racial impact precludes severance, 04:Dec. 15, decision on remand aff'd, St. Bd. 05:May 4)

Judicial estoppel: Parents were judicially estopped from asserting claim of residency in district where they had taken inconsistent position in previous litigation; summary judgment granted; parents ordered to pay back tuition. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)

Non-tenured teacher was estopped from obtaining withdrawal or stay of her pending discrimination claim before OAL to pursue an appeal of the dismissal of concurrent Superior Court matter; parties had almost completed the administrative hearing. (01:May 25, Stewart-Rance)

Requirements of equitable estoppel are knowing misrepresentation, and detrimental reliance on that misrepresention, which reliance is reasonable. (98:July 17, Powell, et al., appeal dismissed St. Bd. 98:Nov. 4)

Indispensable Party

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Judicial Notice

Commissioner may take official notice of "judicially noticeable facts" if he discloses basis and gives parties reasonable opportunity to contest the material. (97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1, see motion for emergent relief denied 97:Sept. 25)

Jurisdiction

CEPA: Commissioner does not reach question of jurisdiction over CEPA retaliation claims. (00:June 12, Cheloc)

Commissioner declines to exert primary jurisdiction over consolidated matter regarding whether teacher can be relieved of his tenure due to epilepsy; Division on Civil Rights should make initial determination of teacher's claim of discrimination, retaliation and failure to accommodate; Commissioner will thereafter determine tenure dismissal matter. (01:Sept. 14, Ford, order of consolidation and predominant interest)

Commissioner determined that district lacked authority to place questions pertaining to school prayer, a bible-based curriculum and voting rights for convicted felons on a school elections ballot. (05:Dec. 21, Camden)

Commissioner determined that she was without authority to adjudicate state or federal constitutional issues and dismissed remanded petition for lack of jurisdiction. (05:Dec. 21, Camden)

Commissioner does not have jurisdiction over matters arising under the collective bargaining agreement. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

Commissioner has jurisdiction in dispute over violation of school business administrator tenure laws. (St. Bd. 02:June 5, Haberthur)

Commissioner had jurisdiction to enforce agreement between district and parent for tuition payment in residency dispute; to require separate Law Division filing would be pointless and wasteful. (00:Jan. 18, J.A.D.)

Commissioner had no jurisdiction over contractual matter regarding janitor, not arising from statute. (01:June 11, Camden)

Commissioner had no jurisdiction over disciplinary increment withholding where PERC had exercised jurisdiction and arbitration award had been entered. (00:Feb. 15, Montgomery)

Commissioner had no jurisdiction over petition filed by members of public claiming board failed to heed their complaints about a school custodian; if petitioners had filed tenure charges with board, Commissioner would have jurisdiction, but no charges had been filed; if custodian is not tenured, Commissioner has no jurisdiction over disciplinary issue. (00:Jan. 3, Parisi)

Commissioner had predominant interest in, and should exercise jurisdiction over school law issue of whether teacher working part-time after return from medical leave should have been reassigned to a full-time position upon her request, after district reorganization. Hearing before ALJ should also address issues of motive and reasonable accommodation. Matter should then be transmitted to Division on Civil Rights for determination of whether LAD was violated, and for appropriate relief. (01:May 10, Fleming)

COMMISSIONER OF EDUCATION

Commissioner had subject matter jurisdiction to hear superintendent's contract claims. (01:June 5, Howard, aff'd St. Bd. 01:Nov. 7, aff'd App. Div. unpub. op. Dkt. Nos A-1699-01T1 and A-2584-01T1, October 11, 2002)

Commissioner has no authority to award reimbursement for educational costs and counsel fees. (99:Dec. 23, E.A., footnote 1, aff'd St. Bd. 00:April 5)

Commissioner has no jurisdiction over purely contractual disputes. (98:July 17, Vitacco)

Commissioner has no jurisdiction to award legal costs. (00:Jan. 3, Parisi)

Commissioner has primary jurisdiction over contract disputes arising under the school laws. Archway sought payment for educational services rendered to Pemberton Twp. Board. Commissioner entitled, in exercise of plenary jurisdiction over school law matters, to resolve administrative issues before court exercised jurisdiction. Archway Programs v. Pemberton Twp. Bd. of Ed., 352 N.J. Super. 420 (App. Div. 2002)

Commissioner rejected superior court order dismissing tenure charges, noting that the dismissal of tenure charges lies within the exclusive jurisdiction of the Commissioner. (05:June 9, Cook)

Conscientious Employee Protection Act (CEPA), Federal Family and Medical Leave Act (FMLA), tort and breach of contract claims properly brought before Superior Court. Snedeker v. Long Branch Bd. of Ed., unpublished opinion, App. Div. Dkt. No. A-844-98T1, Jan. 29, 1999.

Department of Education had predominant interest in a joint decision of the Commissioner and the Merit System Board, with regard to tenure charges involving question of whether the district had made a reasonable accommodation of DHS teacher's physical disability. (01:Dec. 31, Megargee, aff'd St. Bd. 02:May 1, motion to settle record granted, St. Bd. 03:Jan. 8)

Charges of misconduct by the administrative law judge and/or board counsel are not within the jurisdiction of the Commissioner of Education. Matters must be brought to the director of the OAL or the Office of Attorney Ethics. (D.T. Commr., 2003: Oct. 29) (Affirmed St. Bd. 2005: Feb. 2) (Affirmed App. Div. May 12, 2006) DOCKET NO. A-3629-04T) (Certif. denied, 188 N.J. 352 (2006)).

The proper place to appeal the county superintendent's determination with regard to educating homeless children following a determination of the last known residence of the children's mother, is with the Division of Finance in the Department of Education pursuant to N.J.A.C. 6A:17-2.8(b) and N.J.A.C. 6A:23-5.2(d-f). The Commissioner lacks jurisdiction for failure of the board to exhaust its administrative remedies. (West Orange, Commr. 2007:May 31)

IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (J.B., Commr., 2003: March 5).

Commissioner has jurisdiction to hear and determine controversies and disputes arising under the school laws pursuant to N.J.S.A. 18A:6-9. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

Settlement of tenure charges approved for tenured teacher accused of insubordination and unbecoming conduct. Two weeks after communications among attorneys and the court indicated that parties had agreed to settlement, teacher refused to sign settlement agreement, having changed her mind. Enforcement motion denied as Commissioner does not have jurisdiction to enforce settlements. (Jones, Commr. 2007:August 9)

Commissioner does not have jurisdiction over contractual bidding dispute arising between vendor and municipality for security facilities; school board only tangentially involved.. Matter dismissed. (Integrated Security Technology, Inc., Commr., 2007:Nov. 7)

Rationale provided by the petitioning school district in its renewed request for leave to withdraw the tenure charges satisfied the six standards required by N.J.A.C. 6A:3-5.6(a), and provides satisfactory explanations concerning: the district's need for a teacher to provide educational services to students on long-term suspension; why the respondent would be suitable for this position; and how her reassignment would best serve the public interest. Request to withdraw tenure charges granted. (Swaminathan, Commr. 2007:July 5)

Board member threatened a member of the public with profanity at its board meeting, a private action that could compromise the board, violative of N.J.S.A. 18A:12-24.1(e). Any time a board member reacts in a threatening manner toward a member of the public attending a board meeting, it has the potential to compromise the board. The threat was also one of the most egregious violations of the public trust that a board member could commit. SEC recommended one year suspension for the board member. (Atallo, SEC, 2007:July 24). Commissioner reduced penalty to three month suspension as being inconsistent with prior decisions and insufficiently supported.

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SEC, 2007:July 24). Commissioner reduced penalty to three month suspension as being inconsistent with prior decisions and insufficiently supported.

Commissioner of Education had no jurisdiction over Family Part Judge's order in juvenile delinquency matter for DYFS to place the student in at KidsPeace as part of his probationary sentence, with the district of residence to pay for the educational placement. (Neptune, Commr., 2006:March 23)

Petitioners who filed with the Commissioner alleging that their child's application for admission to the Governor's School of Engineering and Technology was rejected on the basis of racial discrimination, could not simply transfer the matter to the Division on Civil Rights (DCR) as if originally filed with that agency; rather, they must file new complaint with DCR while instant complaint is held in abeyance. (J.C., Commr. 2007:June 12)

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. Commissioner had previously determined, and State Board affirmed, that Commissioner lacked jurisdiction over Office of Special Education appeals.

Commissioner dismisses parent's petition for reimbursement for summer chemistry class their daughter had taken after failing chemistry; their petition was barred by the 90-day rule as the 90 days began to run as of the district's decision in May 2006 not to investigate or correct the alleged mistreatment of S.B. by her chemistry teacher; even absent a timeliness problem the Commissioner did not have jurisdiction to award consequential damages. (T.B. and M.B., Commr. 2007:May 24, aff'd St.Bd. 2007: Sept. 5)

Commissioner determined that she lacked jurisdiction over the unauthorized use of compensatory time by district administrators. Because the board relied upon New Jersey Labor and Workers Compensation Law as well as the Federal Fair Labor Standards Act to secure relief the Commissioner lacked jurisdiction. (North Brunswick Twp. Bd.of Ed., Commr., 2008:March 27)

Father's request for emergent relief to have child removed from private school in which her mother placed her in 2006 or 2007 and enrolled in the school district, is denied. Standards for emergent relief not met. The child's current enrollment precludes a finding of irreparable harm, and petitioner has not demonstrated a settled right, let alone a likelihood that his claim can succeed. The correct forum for this claim is Superior Court, Family Division.

Commissioner has no jurisdiction under the school laws to adjudicate custody rights, or to order a non-party parent to transfer her child from private school to a public school. R.C., Commr. 2009: October 7

In motion seeking to amend the complaint involving special education dispute, court will allow equal protection, right to privacy, and NJLAD claims to move forward. M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 83419 (D.N.J. Sept. 11, 2009) See also M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 93643 (D.N.J. Sept. 11, 2009)

Commissioner lacked jurisdiction to decide mother's claim for emergent relief based on allegations of racism, retaliation and other improper motives involving district's placement of her son at alternative school following an alleged assault; since mother disenrolled student, Commissioner lacks jurisdictional authority to grant relief. R.W. o/b/o A.W., Commr. 2009:Dec. 2.

Commissioner dismisses petition filed by non-tenured athletic director who claims his contract was improperly terminated, as case involves issues of contract interpretation over which the Commissioner has no jurisdiction; summary judgment granted. McGriff, Commr. 2009: Nov. 6

Exhaustion of Remedies Doctrine

Stabilization aid growth limit imposed by CEIFA, although inextricably woven with constitutional issue of thorough and efficient education, requires fact-finding by commissioner of education who has particular expertise in interpreting and applying CEIFA. Wildwood Bd. of Ed. v. Loewe and New Jersey Dept. of Ed., unpublished App. Div. opinion Dkt. No. A-5377-97T1 and A-6811-97T1 (consolidated), Feb. 17, 1999, certif. denied, 160 N.J. 477 (1999) See also, CEIFA's stabilization aid provisions declared constitutional. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001), aff'g St. Bd. 00:June 7, aff'g Commissioner 00:Jan. 10.

Superior Court has jurisdiction over dispute involving board's refusal to issue diploma to student for disciplinary reasons even though student did not exhaust administrative remedies. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union County), Jan. 8, 1999.

Failure to provide discovery pursuant to prehearing order; petitioner's matter is dismissed. (98:Aug. 5, Crivelli et al., aff'd St. Bd. 98:Dec. 2; aff'd App. Div. unpub. op. Dkt. No. A-2898-98T2, Feb. 8, 2000)

Final agency review of ALJ's recommendation for sanction is within sole purview of Director of OAL. (03:Nov. 20, T.L.S.)

Five-day suspension of non-tenured custodian was outside Commissioner's jurisdiction. Remedy lies within the confines of negotiated agreement. (02:March 14, Heminghaus)

IDEA: IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

In matters concerning the School Ethics Act, Commissioner's jurisdiction is limited to reviewing the sanction to be imposed following a violation of the Act by the School Ethics Commission. (02:April 18, Russo)

Monetary sanctions for failure to complete discovery: the Commissioner is not the agency heard for purposes of review of sanctions; board's request must be reviewed by Director of OAL. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein St. Bd. 00:June 7)

No Commissioner jurisdiction over federal Title VII or Title IX claims regarding athletic team tryouts. (02:May 3, D.H.)

No jurisdiction over board member's request that board be barred from considering grievance filed by union against board member because Commissioner not authorized to enforce or interpret collective bargaining agreement. (01:April 26, Settle)

No jurisdiction over issue of whether child's proper name in school records should reflect father's recent paternity order; issue of child's name should be part of pending matter in Family Division (99:June 25, Barlow)

No jurisdiction over petition by teacher employed by Juvenile Justice Commission because, as state employee, claim arises under the Civil Service laws, and not the education laws. (01:April 19, Morelli, letter opinion)

No jurisdiction over sunshine law issue because not ancillary to claim arising under school law. (01:April 26, Settle)

Question of a counselor's duty to disclose confidential communications is outside of Commissioner's jurisdiction. (99:Aug. 13, M.N.)

School laws not at issue in matter of termination of contract between early childhood program provider and Abbott district. Had contract dispute involved termination for failure to provide early childhood education services, matter would be cognizable before the Commissioner. (02:May 30, Craig/Trenton)

Settlement agreement: Commissioner has no jurisdiction over term in settlement agreement which is contingent upon satisfaction of conditions by another agency, namely Division of Pensions. (99:Sept. 21, Swallow)

Settlement rejected. Exceptions reveal that amicable resolution had not been reached. Commissioner has no jurisdiction over 504 plan. Settlement must be confined to those areas over which the Commissioner has jurisdiction. (02:March 11, P.E.W.)

Subpoenas: DOE staff cannot not be compelled by subpoena to provide testimony regarding DOE's position with regard to Core Curriculum Standards or other controversies where they have no knowledge of facts giving rise to dispute; subpoena quashed. (98:Dec. 3, M.C.)

Sunshine Law: Commissioner has jurisdiction over Sunshine Law issue only if ancillary to claims arising under school law. (00:Jan. 3, Parisi)

Where employee was not a teaching staff member for which the Commissioner has jurisdiction to review increment withholdings, nor was she a member of a collective bargaining unit which would provide a mechanism for resolving such disputes, the Commissioner would consider claim of retaliation; held that board did not act improperly. (00:June 12, Cheloc)

Mootness

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Commissioner determined that 18 year-old's due process petition was moot where NJ Dept. of Human Services Office of Education (OOE) asserted the matter had been previously resolved via settlement. (05:June 24, L.P.)

Not moot; question of whether social worker/substance coordinator who did not possess teacher certificate was improperly assigned to in-class support instructor position, was capable of repetition yet evading review; remanded. (99:Aug. 9, Possien-Kania, 01:June 7, decision on remand)

Motion to Compel: Motion to Compel dismissed as moot. (St. Bd. 00:July 5, Keaveney)

90-day rule

Commissioner determined that principal's petition following an initial order of restoration, alleging that the district violated her tenure rights by re-assigning her to principal position, but without commensurate responsibilities, was not timely filed. Commissioner noted that enforcement of administrative agency orders may be sought pursuant to *R.* 4:67-6. (05:Sept. 29, Mazzeo)

Commissioner dismissed former principal's complaint alleging that the terms of the district's offer of re-employment was offered in bad faith so as to circumvent his tenure and seniority rights as untimely. (05:Oct. 27, Taylor)

Commissioner dismissed teacher's complaint alleging that her non-renewal by the board constituted a violation of her tenure rights as untimely. 90-day period commenced upon district's initial notice

of non-renewal, not subsequent confirmation. No prejudice to teacher where notice of non-renewal was signed by district associate superintendent. (05:Oct. 28, Suarez)

District petition asserting a miscalculation in student population should result in a retroactive adjustment of state aid, failed to survive DOE motion for summary judgment dismissal. Petition precluded by operation of the 90-day Rule for two of the contested years. No demonstration of a "continuing violation of public rights" because district did not claim that students' were deprived of their right to T&E nor had district identified the violation of any protected right. (05:June 2, Milford)

90 days began to run from date teacher was apprised of number of sick days left in the school year as she knew then that the board had charged her sick days against her absence for an allegedly work-related injury. (05:Jan. 12, Wilkerson)

Ninety days started to run from the date teacher had reason to know of the mistake in the board minutes from 35 years agao, and not from the date the board refused to amend those minutes; attempts to negotiate with the board to amend the minutes to reflect that in 1969 she had requested leave, and had not resigned, did not toll the period of limitations. (04:Nov. 29, Rabenou)

Not relaxed: Teacher who filed challenge to increment withholding 99 days after notice, was not entitled to relaxation of 90-day rule; a showing of emotional stress alone, without a showing of incapacity, did not justify relaxation. (04:May 3, Dickerson)

Rule was applied where employee seeking indemnification waited five months from board's denial of his claim before pursuing claim in Superior Court, and waited an additional six years before filing with the Commissioner after the Superior Court dismissed the complaint on jurisdictional grounds; nor was the matter a statutory right outside of the 90-day rule. (05:Feb. 2, Parlavecchio, aff'd St. Bd. 05:July 6)

Work-related injury: rule not relaxed. Even if an alleged work-related injury is also the subject of a worker's compensation action, the employee must file a petition before the Commissioner of Education within 90 days of the board's denial of benefits in order to preserve any related claim, including a claim under N.J.S.A. 18A:30-2.1. (05:Jan. 20, Abercrombie, parties ordered to supplement the record on appeal, St. Bd. 05:May 4, St. Bd. affirms Commissioner decision for the reasons expressed therein, 05:July 6)

90-day rule – Application

Applying for legal services provided by union does not constitute grounds for relaxation of 90-day rule. (99:Feb. 22, Atkin, aff'd St. Bd. 99:July 7, aff'd App. Div. unpub. op. Dkt. No. A-128-99T1, Dec. 15, 2000)

Lavin waiver of 90-day rule did not apply where statutory provision that preserved employee benefits in regional district dissolution was not a "statutory entitlement" but rather was predicated on services rendered. (99:Dec. 8, Balwierczak, aff'd St. Bd. 00:May 3)

Letter to Director of Office of Licensing and Academic Credentials does not constitute grounds for relaxation of the 90 day rule. (99:Feb. 22, Atkin, aff'd St. Bd. 99:July 7, aff'd App. Div. unpub. op. Dkt. No. A-128-99T1, December 15, 2000)

No merit to custodians' claim that their salary level pursuant to dissolution of regional district and transfer to constituent district was a "statutory entitlement" (Lavin) not governed by the 90-day rule. Claim for correction on salary guide is out of time. (99:Dec. 8, Balwierczak)

Notwithstanding application of 90-day rule, board must still pay tuition owed to private school for handicapped. (03:March 14, Caldwell-West Caldwell)

Petition dismissed for failure to file in a timely manner. (St. Bd. 00:Aug. 2, Engle, aff'g Commissioner 00:March 30, aff'd App. Div. unpub. op. Dkt. No. A-344-00T3, Nov. 14, 2001)

Petition of appeal was time barred as per 90-day rule. (99: Dec. 20 Osman, aff'd St. Bd. 00: May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1 Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01: Dec. 5 See also, (02: March 4) No relaxation required. Determination of State Board of Examiners not necessary to pursue tenure rights claim. Aff'd St. Bd. (02: Aug. 7) aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5 June 2, 2003.

Petition to invalidate 1990 settlement agreement regarding inefficiency charges and increment withholding untimely filed. Parties' obligations under settlement agreement were to be completed by the end of the 1990-1991 school year. Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0221-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

Petitioner dismissed when not timely filed in matter alleging pupil records violations and failure to make middle school basketball team because of perceived disability. (04:April 5, L.E.A.)

Petitioners' status as pro se litigants in dispute over student's status as Most Valuable Player, letter of appeal sent to wrong division and then following advice of Bureau of Controversies and Disputes constituted petition of appeal filed in a timely manner. (99:June 1, J.M., reversed and remanded St. Bd. 99:Nov. 3)

Teacher out of time to challenge district's charging sick days for work-related injury pursuant to N.J.S.A. 18A:30-2.1; attempts to resolve the claim through negotiation do not toll the time; 90 days ran from

the date teacher knew she was being charged for the sick days. (03:April 14, Gillespie)

Tenured teacher was summarily dismissed for fraudulently serving in current assignment for which she did not possess valid endorsement; although board should have filed tenure charges, petition is barred by 90-day rule. (99: Dec. 20 Osman, aff'd St. Bd. 00: May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1 Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01: Dec. 5 See also, (02: March 4) No relaxation required. Determination of State Board of Examiners not necessary to pursue tenure rights claim. Aff'd St. Bd. (02: Aug. 7) aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5 June 2, 2003)

The rate at which retired employees of constituent district of dissolved regional were entitled to reimbursement for unused sick leave was a contractual, and not a statutory issue; therefore, they were barred by 90-day rule. (01:July 9, Nadasky, appeal dismissed St. Bd. for failure to perfect 01:Oct. 3)

90-day rule - Relaxation

All employee arguments were without sufficient merit. Employee failed to assert her tort and contract claims in a timely manner. Tenure issues and enforcement of DOE approved settlement were disputes arising under the school laws and properly before the Commissioner of Education. (Grompone, App. Div. unpub. op. Dkt. No. A-4219-98T5, Feb. 22, 2001, aff'g Law Division, Monmouth County Dkt. No. L-2819-96, June 9, 1997) See also Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

District was time-barred from avoiding payment for current year to vocational magnet school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

90-day rule was unduly harsh; waived so parent may demonstrate a pattern of past inappropriate behavior by teachers toward her son, including teacher's accusation that pupil copied other pupil's homework and detention therefor. (00:Sept. 18, C.C.)

No relaxation in appeal of district's failure to bestow upon child the MVP Award for cross country; no constitutional or significant public interest questions. (99:June 1, J.M., aff'd St. Bd. 01:Jan. 3)

No relaxation in matter involving staff selection process upon dissolution of regional district, where union had notice of a cause of action on three occasions but slept on its rights. (98:Nov. 30, AFT)

No relaxation of 90-day rule in matter involving transfer of student from regular to alternative education program. Student suspended for assault and possession of weapon. No compelling or extraordinary

circumstances. No deprivation of educational program. (03:May 15, K.C.)

No relaxation of 90-day rule when teacher sought to rescind her resignation. A showing of emotional stress alone, without the showing of genuine incapacity, is not enough to toll the time period for appeal. (03:May 1, Unangst)

No relaxation of 90-day rule where parent sought to appeal disciplinary expulsion with offer of transfer to alternative program seven months after board action. (03:May 20, J.G.)

No relaxation where employees allegedly injured on the job claimed the district wrongfully deducted sick days from their sick leave banks in violation of N.J.S.A. 18A:30-2.1. (98:July 17, Powell et al., appeal dismissed St. Bd. 98:Nov. 4)

No relaxation where petitioner files a petition seeking enforcement of tenure rights over 10 months after notification by Board that he was not entitled to position. (98:Aug. 27, Lanzi, aff'd St. Bd. 98:Dec. 2)

Not relaxed: Teacher who filed challenge to increment withholding 99 days after notice, was not entitled to relaxation of 90-day rule; a showing of emotional stress alone, without a showing of incapacity, did not justify relaxation. (04:May 3, Dickerson)

Petition of appeal was time barred as per 90-day rule. (99: Dec. 20 Osman, aff'd St. Bd. 00: May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1 Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01: Dec. 5 See also, (02: March 4) No relaxation required. Determination of State Board of Examiners not necessary to pursue tenure rights claim. Aff'd St. Bd. (02: Aug. 7) aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5 June 2, 2003.

Relaxation justified where propriety of school board's actions surrounding student's suicide involved issues of significant public interest and underlying rationale of 90 day rule is unaffected as petition does not seek monetary damages; to dismiss mother's petition would result in injustice. (99:Aug. 13, M.N.)

Relaxation not warranted. Petitioner not required to establish that she did not fraudulently acquire English endorsement in order to pursue her tenure rights claim. No ruling from State Board of Examiners necessary. Decision on remand. (02:March 4, Osman, aff'd St. Bd. (02: Aug. 7) aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5 June 2, 2003. See also, Petition of appeal was time barred as per 90-day rule. (99: Dec. 20 Osman, aff'd St. Bd. 00: May 3, aff'd in part, remanded to the State Board in part, App. Div. unpub. op. Dkt. No. A-5517-99T1 Oct. 17, 2001, remanded to the Commissioner for consideration of relaxation of 90-day rule, St. Bd. 01: Dec. 5)

Relaxation ordered in light of compelling public interest; board's refusal to honor obligation to pay tuition to vo-tech school because it disagrees with prevailing law, cannot be countenanced. (99:Dec. 16, Gloucester, remanded St. Bd. 00:June 7, aff'd with clarification, St. Bd. 00:Aug. 2)

Relaxation unwarranted where teacher claimed stress prevented her meeting deadline. (00:Sept. 11, Bland-Carter)

Relaxation warranted (00:May 22, Neptune)(00:Feb. 3, Wyckoff)

Relaxation would have been warranted where board sought suspension of teacher's certificate after his resignation without required notice. (99:May 24, Falco)

Settlement agreement of tenure charges would not be set aside when challenged 5 years after its entry; fact that Superior Court order transferred matter to Commissioner did not affect application of 90-day rule; relaxation not justified. (00:Feb. 28, Grompone, aff'd St. Bd. 00:Aug. 2, aff'd App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002)

Teacher fails to challenge non-renewal within 90 days of notification; petition dismissed. (00:Sept. 11, Wise, aff'd St. Bd. 01:Jan. 3)

The Commissioner dismissed a parent's appeal of board decision to deny credit to student for 43 days absence, resulting in the student's 11th grade retention. Appeal was untimely and parent proffered no constitutional issues or issues of significant public interest to warrant relaxation of the rule. (05:April 25, Giannetta)

Nonappearance

Failure of pro se petitioner to appear at hearing warranted dismissal, where petitioner was in communication with the law judge on other matters and failed to contact the judge about rescheduling the hearing. (02:Feb. 7, D.P.)

Failure to appear and failure to submit explanation. Matter dismissed. (02:June 26, C.C.)

Pleadings

Motion to amend pleadings is denied, as there is no authority for pleading amendment subsequent to issuance of initial decision. (01:Oct. 15, Ryan, aff'd for reasons expressed therein, St. Bd. 02:March 6)

Pre-judgment interest

Commissioner did not find that board deliberately violated the statute, acted in bad faith or acted from other improper motive, therefore teacher was not entitled to prejudgment interest where board improperly failed to restore her after her recovery from a disability. The Commissioner also observed that a claim for post-judgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to N.J.A.C. 6A:3-1.17(c)2. 05:June 16, Klumb, motion for stay denied, Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

No prejudgment interest awarded. No finding that actions taken in bad faith or in deliberate violation of the law. (04:March 18, W.C.K.)

Where board could not obtain discovery about parents' financial affairs, from parents who, pursuant to earlier Commissioner decision, owed board back tuition for illegal attendance of pupil, pre-judgment interest would be calculated by Court Rule rather than administrative code provision. (00:June 23, Livingston)

Pro se: Parents with many complaints against district failed to follow even minimal standards regarding parties, allegations, and relief sought; dismissed for failure to state a claim upon which relief may be granted. (00:Aug. 14, L.C.)

Post-judgment interest

Commissioner did not find that board deliberately violated the statute, acted in bad faith or acted from other improper motive, therefore teacher was not entitled to prejudgment interest where board improperly failed to restore her after her recovery from a disability. The Commissioner also observed that a claim for post-judgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to N.J.A.C. 6A:3-1.17(c)2. (05:June 16, Klumb, motion for stay denied, Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

No post-judgment interest awarded, requisite time period as per code had not passed. (04:March 18, W.C.K.)

Post-judgment interest may be awarded when a respondent has been determined through adjudication to be responsible for a judgment, but has failed to satisfy the claim within 60 days of the award. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein St. Bd. 00:June 7)

Procedural Issues

Commissioner determined that *res judicata* applied to bar petitioner from re-litigating his permanent disqualification from possession of a New Jersey teaching certificate. (05:Oct. 7, Krupp)

Commissioner determined that the proper standard of proof in a tenure dismissal matter is a preponderance of the credible evidence. (05:Dec. 12, Molokwu)

Commissioner dismissed parent complaint seeking clarification of district drug testing policy where parent failed to produce any evidence on the need to clarify the policy or provide additional training to employees on enforcement. (05:Dec. 7, K.K.)

Commissioner dismissed parent complaint seeking expungement of pupil record of suspension based on positive drug test. District policy required retention of such records only until the end of school year in which incident occurred. (05:Dec. 7, K.K.)

Commissioner dismissed parent complaint seeking expungement of pupil record of suspicion-based drug testing. District policy required

retention of such records only until the end of school year in which incident occurred. (05:Dec. 7, K.K.)

Commissioner rejected initial decision that parent request for transportation services was moot due to child's graduation from middle school. Matter is not moot where potential for recurrence exists. (05:Nov. 2, T.F.S.)

Commissioner rejected initial decision that relied on dictum contained in an appellate division concurring decision. (05:Dec. 6, Emmett)

Commissioner reversed NJDOE's determination, denying reimbursement of administrative costs associated with remedial services for disabled students pursuant to N.J.S.A. 18A:64-19.1 (Chapter 193). NJDOE's rejection of administrative expenses after 25 years of accepting represented a new policy or rule that had not been properly promulgated according to the Administrative Procedures Act. (05:Oct. 21, Monmouth-Ocean ESC)

Despite fact that delays in appeal of board denial of transportation services were attributable to parents, no reasonable purpose would be served in requiring parents to file a new petition where identical circumstances would result in a second request for transportation for a second child. (05:Nov. 2, T.F.S.)

In appealing board determination of non-residency pursuant to N.J.S.A. 18A:38-1(b)(2) to Commissioner, petitioning parents failed to appear. N.J.A.C. 1:1-14.4(a) requires one day stay of proceedings, if after appropriate notice, neither party nor representative appears at a scheduled proceeding, before returning the matter to the transmitting agency for appropriate disposition. (05:Dec. 5, Hamilton Twp.)

Commissioner dismissed appeal of tenured custodian who asserted prejudice where the second administrative law judge reviewed transcripts instead of conducting an entirely new hearing after first judge recused himself. (McCullough, Commr., 2006: Feb. 17) Request to supplement the record denied (McCullough, State Board, 2006: Oct. 4) Request to take official notice of the audio cassette tape of the OAL hearing denied. (McCullough, State Board, 2006: Dec. 6) State Board affirmed, January 3, 2007. Dismissed with prejudice for failure to appear. (McCullough, Commr., 2007: Feb. 22)

Matter involving appointment of principals dismissed for lack of prosecution. (Herron, Commr., 2007:August 13)

Petitioners who filed with the Commissioner alleging that their child's application for admission to the Governor's School of Engineering and Technology was rejected on the basis of racial discrimination, could not simply transfer the matter to the Division on Civil Rights (DCR) as if originally filed with that agency; rather, they must file new complaint with DCR while instant complaint is held in abeyance. (J.C., Commr. 2007:June 12)

Two non-tenured teaching staff members sought reemployment, alleging that their termination was not for stated budgetary reasons. While petition was time-barred and was dismissed, Commissioner noted that where a non-tenured teacher challenges a board of education's decision to terminate her employment on the grounds that the stated reasons are not supported by the alleged facts, she is entitled to litigate the question only if the facts she alleges, if true would constitute a violation of constitutional or legislative-conferred rights. (Middletown, Commr., 2007:August 16)

Pursuant to N.J.S.A. 18A:7G-12, Commissioner ordered the issuance of $800,000 in bonds to address various health and safety issues. District had three unsuccessful bond referenda defeated by the voters. (Milford, Commr., 2008:October 24)

Case addressed the date on which teacher's cause of action accrued on his claim that he was entitled to a position after a 2003 RIF. The Commissioner held that his cause of action accrued on December, 2006 during previous litigation, wherein he had been put on notice by the board's brief on remand for back pay that his rights could have been violated. (The teacher had argued that his claim did not arise until the Commissioner's final decision on remand on the matter of his entitlement to back pay.) Therefor, his December 2007 claim was dismissed as untimely filed. (Ziegler, Commissioner 2008:November 3)

State Board affirms the decision of the Acting Commissioner to dismiss the matter as moot. Local association alleged that board procedures subcontracting custodial, maintenance and bus transportation services for the 2002-03, 2003-04 and 2004-05 school years violated public bidding laws. (Lyndhurst, St. Bd. 2007:May 2)

State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of limitations. (Bradford, St. Bd. 2007:June 6)

Motion to compel production of personnel file and minutes of board meeting in appeal of non-renewal denied. Motion filed nearly four years after initial petition filing with Commissioner and nearly a year after filing appeal with State Board. No explanation given for delay. (Anderson, St. Bd. 2007:May 2)

Commissioner rejected settlement where board failed to submit resolution demonstrating board approval and designating appropriate individual to sign the settlement or attorney signature. Remanded for revision of the settlement agreement. (J.B. and D.B. o/b/o/ minor children, Commr., 2008: July 24)

Commissioner agreed with ALJ that petitioner parent had wantonly and willfully violated the ALJ's Prehearing Discovery Order. Petitioner's assertions were incredible and unbelievable. Board's motion for sanctions was granted with the appropriate remedy

being deemed suppression of the claim and dismissal of the petition. (L.A. and C.A. o/b/o P.M.A., Commr., 2007:July 18)

Commissioner determined that six month limit on employment suspensions found in N.J.S.A. 4A:2-2.4 is inapplicable in tenure dismissal proceedings. Tenure proceedings are not governed by the regulations of the civil service. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

Commissioner denied tuition reimbursement to parent who removed students to a nearby district and paid non-resident tuition where the district of residence barred parent from district property without prior approval. Parent unilaterally removed the children from the district before appealing the district's action to the Commissioner. (Kelly, Commr. 2007: Jan. 3).

Board's non-renewal of technology teacher upheld. Action was based on evaluations and public comment and was not arbitrary, capricious, or unreasonable. (Wallace, Commr., 2008:October 30)

Certificate of math teacher suspended for a year pursuant to N.J.S.A. 18A:26-10 for unprofessional conduct by failure to provide 60 days notice prior to resignation from the district. (Alpine, Commr., 2008:September 23)

Staff member's duties in the new position of Supervisor of Student Personnel Services/Guidance fell within the scope of the Director of School Counseling Services endorsement, which the staff member did not possess. Board directed to take action necessary to conform its delivery of student personnel/guidance services to applicable law governing staff certification, subject to review and approval by the Acting Executive County Superintendent. (Perri, Commr., 2008:September 10)

State Board denies leave to appeal the Commissioner's denial of motion for interlocutory review of the ALJ's denial of motion to compel answers to student's latest set of interrogatories, in student suspension case involving a student with a knife. (R.O. o/b/o R.O., St. Bd., 2006: March 1) (Decision on Motion). (R.O., St. Bd. 2007:Oct. 17)

Tenured vice principal who was transferred from a 12-month high school vice principal position to a 10-month elementary school vice principal position alleged that the transfer was retaliatory, in bad faith and would result in a lesser future salary expectation. Vice principal began his new position on August 31, but did not file his petition until December 2006, beyond the 90-day limitation period. Even if petition were not time barred, previous case law has established that future increases in salary or salary expectation are not appropriate factors in considering the validity of a transfer. Petition was dismissed. (Wilbeck, Commr., 2007:July 9)

Petitioner's claim for payment of accrued vacation/personal days and health insurance waiver deemed moot. Payment in full for post-

judgment interest made entire matter moot. (Kaprow, Commr., 2007:July 23, affirmed St. Bd. 2007:December 5)

State Board grants Commissioner's motion to reply to Charter School's appeal of the denial of its application for a charter; (Camden Environmental Charter, St. Bd. 2008:April 16); State Board dismissed charter school's petition to supplement the record with the scoring rubrics of an unaffiliated charter school; (Camden Environmental Charter, St. Bd., 2008: June 18).

State Board grants Commissioner's motion to reply to Charter School's appeal of the denial of its application for a charter. (Camden Career Education Charter, St. Bd. 2008: April 16) State Board dismissed charter school's petition to supplement the record with the scoring rubric of similar charter school. (Camden Career Education Charter School, St. Bd., 2008: June 18)

Town council did not abuse its discretion when it considered Abbott Bordered District Aid "Rim aid" in making its determination regarding reduction of the school district's proposed base tax levy. (Hillside, Commr. 2008:September 19)

State Board of Education granted School Ethics Commission and Commissioner motions to participate in appeal of reprimand of board member. ESC board member voted to award contract to county technical institute where she was employed as superintendent. (Lobosco, St. Bd. decision on motion, 2006: June 7). Affirmed by the State Board. (Lobosco, St. Bd., 2006: Oct. 4).

Motion for Emergent Relief for approval to continue application process as a private school for the disabled denied. Petitioner cannot prevail on the merits of the claim and is seeking an exception to the requisites of the process which is not granted to other applicants. Approval would go the Office of Special Education Programs to grant preferential treatment compromising the integrity of the application process. (Y.E.S., Commr., 2007:August 15)

Collateral estoppelCollateral estoppel bars petition (83: September 26, Kulik,aff'd on other grounds St. Bd. 84: February 1) (84:January 17, Sallette)Doctrine may be used in tenure hearing to estop a teacher from denying facts which sustained convicti

Amicus curiae, tenure hearing, motion to intervene under N.J.A.C. 6:24-1.7 by citizens of district denied by Commissioner citing,Casey v. Wale, 63 N.J. Super. 355 (Cty. Ct. 1960) (83:973, Ziobro)

Hearsay, admissible if reliable, sensational hearsay by studentsduring tenure hearing is inadmissible. (84:143, Michaels)

School Ethics Commission Acting Commissioner motions to participate in appeal of two-month suspension of board member granted. Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members in the School Ethics Act when she took private action in confronting a member of the public in a verbal

and physical manner regarding his comments during the public comment session at a board meeting. State Board upholds two-month suspension. (Talty, St. Bd. 2006: Nov. 1).

Commissioner upheld board of education decision denying student the ability to participate in graduation exercises. Board's decision was based on long-standing policy prohibiting students who had not met all graduation requirements from participating in graduation exercises. ALJ's order was received by the Commissioner just before the graduation ceremony with insufficient time to review the audio tape or issue a final decision, making the issue moot. (J.Z. o/b/o C.Q., Commr., 2007:July 23)

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Commissioner deferred to credibility findings of ALJ because as a finder of fact, the ALJ has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16)

Commissioner determined that mayor lacked standing to challenge the Department's District Factor Grouping of the school district. (Reiman, Commr 2005: Dec. 27).

Res judicata, collateral estoppel, the single-controversy doctrine and the like may apply to administrative agencies in appropriate situations to prevent needless litigation, avoid duplication, reduce unnecessary burdens of time and expenses, and for basic fairness. (El Hewie, Commissioner 2008: November 13)(El Hewie, Commr., 2008:April 10) (Consolidated cases)

Matter deemed moot in case where parent whose residency was based on a month-to-month lease, abandoned her petition of appeal challenging the authority of the Board to require her to file a monthly certification of residency to have her two children retain continuing eligibility to attend Port Republic schools. Moreover, her claim was moot because she had removed her children from the school. (D.B., Comm'r., 2008:June 19).

DOE did not engage in unlawful rulemaking when it revised the methodology used to calculate state aide where the original methodology was unquestionably erroneous. (Lacey, Commr. 2005: Jan. 14)

Despite fact that delays in appeal of board denial of transportation services were attributable to parents, no reasonable purpose would be

served in requiring parents to file a new petition where identical circumstances would result in a second request for transportation for a second child. (See also (T.F.S., Commr., 2006: Aug. 4)(T.F.S. State Board, 2007: April 4))(Aff'd St. Bd. 2008:February 20)

Board's claim that DOE engaged in unlawful rulemaking in its effort to rectify erroneous method of calculating state aid, is dismissed; although recalculation of state aid should have been accomplished through rulemaking, the district sought to return to original, erroneous state aid figures, which also should have been accomplished through rulemaking; therefore no relief could be afforded to the board. (St. Bd. 05: May 4, Lacey, aff'g ultimate determination of Comm'r, 2005: Jan. 14).

Commissioner determined that borough was barred from challenging the Department of Education's District Factor Grouping because the borough was a creature of the state. (Reiman, Commr 2005: Dec. 27).

Veteran bus driver unsuccessfully challenged the imposition under N.J.S.A. 18A:39-28 of a 6-month suspension of school bus endorsement when she left a student on the bus at end of route. (Garner, Commr., 2009:May 1)

Board properly exercised its right to non-renew a teacher who allegedly sexually harassed a colleague. (OAL decision not yet available on-line); however, Commissioner rejects board's argument that teacher failed to exhaust administrative remedies by not requesting a Donaldson hearing. (Korba, Commissioner 2008:December 15)

Commissioner determined that petitioning education association and custodial employees lacked standing to pursue alleged violations of the Public School Contracts Law where petitioners challenged the out-sourcing of custodial services. Lyndhurst Education Association, Commr. 2005: Sept. 9.

Where, after ample notice, a parent failed to answer the board's petition seeking tuition reimbursement for the ineligible attendance of her children in the district's schools, the Commissioner ordered that the parent pay back tuition in the amount of $29,303.08. (Hamilton, Comm'r., 2008: June 25).

Commissioner rejected initial decision that parent request for transportation services was moot due to child's graduation from middle school. Matter is not moot where potential for recurrence exists. (See also (T.F.S., Commr., 2006: Aug. 4)(T.F.S. State Board, 2007: April 4))(Aff'd St. Bd. 2008:February 20)

Examiners denied teacher's motion for a stay of the judgment suspending her teaching certificates for one year, pending appeal to the Commissioner of Education. Teacher failed to meet Crowe v. DeGoia standards. (I.M.O. the Certificates of Megargee, Exam 2009: June 22)

Private school for students with disabilities unsuccessfully appealed the DOE's revocation of its preliminary approval to operate; the school had not fulfilled the conditions contained in the settlement of prior litigation between itself and the DOE with regard to average daily enrollment. (Kentwood Academy, Commr., 2009:July 27)

Parent failed to prosecute her appeal on daughter's behalf; Commissioner orders $12,535.56 in tuition for period of daughter's illegal attendance. (M.Y., Commr., 2009:August 4)

Provisional teacher filed civil rights claim alleging discrimination in his non-renewal. Plaintiff's section 1983 claim fails, but section 1981 claims are remanded for hearing on preclusive effect that ALJ determinations have on state law claims. El-Hewie v. Bergen County, 2009 U.S. App. LEXIS 20689 (3d Cir. N.J. Sept. 17, 2009)(not precedential)

North Brunswick's challenge to the Somerset County Executive County Superintendent's determination that it was the district of origin for the children of a particular family, is dismissed as not timely filed. Bd. of Educ. of N. Brunswick v. Bd. of Educ. of Somerville, (A-6082-07T2) 2009 N.J. Super. Unpub. LEXIS 1390 (App. Div. June 8, 2009).

Commissioner orders docketing of judgment with Superior Court for back tuition award be corrected to reflect correct spelling of names. Rutherford, Commr. 2009: Dec. 7.

Commissioner approves the settlement agreement for a phase out of the severance of a sending-receiving relationship between Newfield and Buena –Commissioner noted that all statutory requirements were satisfied, and that there had been a feasibility study and public comments. Newfield, Comm'r. Supplemental decision, 2009: June 11. See also, Commissioner stating that in an uncontested application for severance, procedural requirements in N.J.A.C. 6A:3-6.1 must be followed prior to severance, and ordering further proceedings accordingly. Newfield, Comm'r. 2009: March 11.

Pursuant to N.J.A.C. 6A:3-2.1, Commissioner has sole discretion to entertain a petition for a declaratory ruling. State Board will not disturb absent an abuse of discretion. (St. Bd. 03:Aug. 6, Passaic County Elks)

Residuum rule

Even where affidavit was incomplete, Commissioner finds pupil entitled to education based on credibility of resident's testimony; hearsay was admissible where it contained residuum of credibility (99:Oct. 28, U.S.K.)

Retroactivity

Commissioner remands question of whether regulations are to apply retroactively (time-of-decision rule) or prospectively. (99:Dec. 23, Highlands)

Rulemaking

N.J.S.A. 18A:6-4 grants to the Commissioner the authority to delegate to the Office of Compliance the ability to inspect the Board's fiscal accounts; no violation of Administrative Procedures Act. (00:Feb. 26, Wildwood Crest)

Settlement Agreements

All employee arguments were without sufficient merit. Employee failed to assert her tort and contract claims in a timely manner. Tenure issues and enforcement of DOE approved settlement were disputes arising under the school laws and properly before the Commissioner of Education. (Grompone, App. Div. unpub. op. Dkt. No. A-4219-98T5, Feb. 22, 2001, aff'g Law Div., Monmouth County Dkt. No. L-2819-96, June 9, 1997) See also Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

Petition to invalidate 1990 settlement agreement regarding inefficiency charges and increment withholding untimely filed. Parties' obligations under settlement agreement were to be completed by the end of the 1990-1991 school year. Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

Settlements

Agreement to terms of the settlement by all parties, including the board of education, must be accomplished prior to Commissioner approval. (03:July 24, Bogdany)

Parties act at their own peril if they effectuate the terms of a settlement prior to approval by the Commissioner. (02:June 26, Magaw)

Settlement approved. (02:March 18, Berman-Dalcero)(02:March 15, Y.F.)(02:March 25, Miller)(02:April 1, R.J.N.)(02:April 11, R.N.)(02:April 12, E.K. and D.H.)(02:April 17, Avellino)(02:April 22, Sanchez)(02:April 22, Turrell)(02:April 22, B.G.)(02:May 14, Arena)(02:May 17, D.F.)(02:May 24, Baker)(02:May 24, Irvington)(02:May 24, Plainfield/VIF)(03:March 14, Freeman)(03:March 18, Richardson)(03:May 13, Wheaton)(03:May 15, Allen)(03:May 19, Scherba)(03:May 22, M.B.)(03:June 2, McDay)(03:June 3, Kearny)(03:June 9, Robbie)(03:June 12, Mesko)(03:July 17, Evans)(03:July 17, S.H.)(03:July 17, Servedio)(03:July 18, Zimic)(03:July 24, Bogdany)(03:July 24, Evigan)(03:July 24, M.O.)

Settlement approved. Comports with Cardonick standard. (02:March 13, Brewer)(02:March 25, Rieger)(02:April 8, DeWoody)(02:May 7, DiManche)

Settlement approved in matter involving board contract with Sylvan Learning Center and labor relations issues. (03:June 12, Camden Education Association)

Settlement approved in matter regarding Abbott district request for additional state aid. (02:April 18, East Orange)(02:April 29, Vineland)

Settlement approved in matter seeking suspension of certificate for one year for failure to provide proper notice of resignation. (03:June 9, Robbie)

Settlement approved in residency matter. Tuition remitted by parent. (03:July 24, M.O.)

Settlement approved in student discipline matter. (02:April 18, W.O.L.)

Settlement approved in tenure matter. Meets with Cardonick standard. (03:May 15, Allen)(03:June 3, Kearney)(03:July 18, Zimic)

Settlement approved in workers compensation matter. (03:June 2, McDay)(03:July 17, Evans)(03:July 17, Servedio)(03:July 24, Menstrasi)

Settlement approved with caveat. Terms of settlement cannot supercede statute. (02:May 24, M.N.)

Settlement contains nothing regarding the terms of the parties' agreement. Commissioner converts settlement into withdrawal. (03:May 19, Roxbury)

Settlement rejected. Absent a motion to seal the record for good cause shown, neither Commissioner nor any other individual can be bound to confidentiality. Commissioner decisions are a matter of public record. (03:May 5, Justiniano, settlement accepted on remand, 03:Nov. 20)

Settlement rejected. Exceptions reveal that amicable resolution had not been reached. Commissioner has no jurisdiction over 504 plan. Settlement must be confined to those areas over which the Commissioner has jurisdiction. (02:March 11, P.E.W.)

Settlement rejected for failure to spread upon the record a reasonably specific explanation of why serious charges of corporal punishment and sexual harassment should not be pursued and how dismissal of charges would serve the public interest. (03:Dec. 22, Crowell)

Settlement rejected. No board ratification of settlement. Remanded to OAL. (03:May 5, Justiniano)

Settlement rejected. Terms do not meet Cardonick standard. Parties envision that matter will not be forwarded to State Board of Examiners or that board will not cooperate in such proceedings. Matter remanded. (02:May 10, McHarris, settlement approved on remand 00:Oct. 18)

Standing

Commissioner adopted ALJ's decision to dismiss complaint for lack of standing, where complainant alleged the district was improperly paying for the criminal background checks of certain applicants in violation of N.J.S.A. 18A:6-4.14, 18A:6-7.2 and 18A:39-19.1. Complainant did not live in the district and had not applied for a position with the district. (03:Aug. 8, Nathanson)

Commissioner determined that petitioning education association and custodial employees lacked standing to pursue alleged violations of the *Public School Contracts Law* where petitioners challenged the out-sourcing of custodial services. (05:Sept. 9, Lyndhurst Education Association)

Current lessor of property to school district does not have standing to challenge Commissioner's approval of lease-purchase agreement between district and another lessor where current lessor shows that approval of agreement is detrimental to its interests. (01:Oct. 16, In Re Approval of the Lease in Newark, decision on motion, 01:Dec. 26, St. Bd. Dec. on motion 02:Feb. 6, rev'd St. Bd. 02:June 5, motion for reconsideration denied St. Bd. 02:Aug. 7)

District has standing to mount a challenge on constitutional grounds to state statutes where statute, or agency's interpretation thereof, adversely affects the district's proprietary interest in a specific fund, such as state aid. (00:Oct. 10, Bayonne)

District whose pupils are allowed to attend vocational school's magnet program had standing to mount challenge against vocational school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

Education Association lacked standing to pursue challenge to board's elimination of woodshop courses from curriculum without formal board action; no likelihood of harm to Association or one of its members (99:June 1, Pequannock)

Parent had no standing as taxpayers to bring claim that board's grading policy would result in wrong person being selected as Valedictorian or Salutatorian, where her son was not in the running for either of these. (St. Bd. 04:Feb. 4, Johns, aff'g Commissioner 03:Nov. 17, S.J.)

Parents had no standing to challenge board policy with regard to restricting enrollment in algebra class, where their son was in fact already enrolled and he cannot assert any potential injury as a result of an unfavorable decision; a moving party cannot rely only on a public interest; he must assert some personal connection between himself and the public interest he alleges to represent. (04:Dec. 29, D.H.)

Parents of students attending charter school had standing to challenge local board's decision to send its pupils to out-of-district school in New York; controversy has potential to recur until students graduate. (01:Nov. 19, K.S.R.)

Prior to seeking reinstatement, disqualified custodian must name board as an indispensable party pursuant to N.J.A.C. 6A:3-1.3. (05:May 26, Nunez)

Teacher had no standing to bring complaint that the board failed to follow state guidelines in its implementation of the Special Review Assessment (SRA), as she was not an "interested party" pursuant to N.J.A.C. 6A:3-1.2. (01:Oct. 15, Ryan, aff'd for reasons expressed therein, St. Bd. 02:March 6)

Summary judgment

Standard of review for Summary Judgment motion is whether there exists a genuine issue of a challenged material fact that requires the Commissioner to consider whether the competent evidential materials, viewed most favorable to the non-moving party, are sufficient to permit rationale fact finder to find in favor of the nonmoving party. (00:March 24, Markowski, aff'd St. Bd. 00:July 5, citing Brill, 142 N.J. 520 (1995)

The Commissioner has no authority to award counsel fees. (04:Sept. 3, Control Building Services, stay issued, St. Bd. 04:Oct. 22, stay clarified prohibiting rebidding of custodial service contracts including opening of bids, St. Bd. 04:Oct. 25, aff'd and stay lifted, Commissioner ordered to ensure integrity of rebidding process and submit report to State Board on failures of original bidding process. St. Bd. 04:Dec. 1)

Parent who contested student's grade in Algebra II failed to appear at hearing and gave no reason for nonappearance. Petition dismissed with prejudice. F.D. o/b/o F.D., Commissioner 2011: March 29

Commissioner has jurisdiction to decide whether the termination of petitioner's employment was a violation of her tenure and due process rights under N.J.S.A. 18A:6-1 et seq. Commissioner has jurisdiction over all controversies arising under the school laws pursuant to N.J.S.A. 18A:6-9; Tenured secretary is not seeking to enforce an earlier 2008 settlement agreement but is seeking an order finding that the Board violated her tenure and due process rights, which is well within the Commissioner's jurisdiction. The board is using the earlier settlement agreement as a defense to the tenure rights/due process charge. The Commissioner determined that the proper course of action is to consolidate this matter with the tenure charges currently pending at the OAL, and accordingly remanded the case for further proceedings. Robinson, Commissioner 2011: April 4

COMPULSORY ATTENDANCE

Home schooling parent, in second cause of action, challenged board's decision to send first and second grade students to school leased from and located in neighboring school district, claiming that use of facility violated New Jersey compulsory attendance and residency laws. Commissioner found that claims were without merit and precluded by the entire controversy doctrine and her withdrawal of her child from the public schools. Edmondson, Commissioner 2011: March 18

CONDEMNATION

Court affirms in part, reverses in part, and remands for further proceedings, in condemnees' appeals of several aspects of the Law Division's refusal to award what they claim are sufficient damages and expenses that they allegedly incurred when plaintiff Board of Education was forced to terminate its initial attempt to acquire a unique condominium property in Newark. *Essex County Voc. Schs. Bd. of Educ. v. New United Corp.*, No. A-1873-12T2 (App. Div. April 8, 2014)

CONFLICT OF INTEREST

Appellate court affirms Law Division order granting request for former board president and former Acting Superintendent to reimburse the District $63,622, where the Board had paid that amount from district funds to a law firm that filed and prosecuted a civil action, against fictitious entities only, on defendants' behalf, until the trial court enjoined the Board from further funding the lawsuit. The trial court determined that the lawsuit primarily involved personal claims filed on behalf of defendants and the lawsuit had not been authorized by the Board, which violated OPMA and constituted a conflict of interest that required restitution. Rivera v. Elizabeth Bd. of Educ., 2013 N.J. Super. Unpub. LEXIS 116 (App. Div. Jan 18, 2013).

Board member not disqualified from board membership under *N.J.S.A.* 18A:12-2 by virtue of receiving unemployment benefits as a result of her former employment as a student aide in the school district. *Masciocchi*, Commr, 2013: April 11

Commissioner determined that a board member's position as Deputy Chief of Police does not preclude him from serving as a member of the Board. Fact that law enforcement is a party to the memorandum of agreement with the school district was not the type of contract that created a conflict of interest---as it was not a commercial or employment contract. The decision contains some useful analysis and review of legal rulings. No inherent conflict between respondent's duties as Deputy Police Chief and his responsibilities as a Board member. Board member abstained on issues that could create appearance of conflict – such as the issue of remuneration for police officers who provide security at school events, and the discipline of a Kearny student who had been arrested. *Doran v. King*, Commr 2013:June 17.

Board member had impermissible conflict of interest as either an owner or employee of a company that has provided vehicle maintenance services to the Board since at least 2004. Disqualifying conflict of interest was cured and mooted when the conflict with the Truck Center was terminated on June 30, 2013. Board member not required to forfeit his seat on the board. *Westwood Regional School District*, Commissioner 2014: April 7

CONSCIENTIOUS EMPLOYMENT PROTECTION ACT

Trial court properly denied defendant's motion to dismiss an indictment charging her with official misconduct, in violation of *N.J.S.A.* 2C:30-2(a), and theft of public documents, in violation of *N.J.S.A.* 2C:20-3 and 2C:20-2(b)(2)(g), based on her activity of allegedly taking confidential student records to assist her attorney in the prosecution of civil employment discrimination claims against her employer because she did not have an absolute right to take the records. Case law did not establish a bright-line rule decriminalizing such conduct. Court applied balancing test and stated that applying Quinlan analysis to the documents before the court, we find ourselves in agreement with the distinction that the trial court drew. Plaintiff's act of taking the documents was not protected and that the employer was free to terminate her for doing so. *State v. Saavedra*, 433 *N.J. Super.* 501 (App.Div. 2013)

Disciplined employee's CEPA claims dismissed. No evidence that the actions taken by defendants were motivated by plaintiff's asbestos or other complaints, or retaliatory as a result thereof. Plaintiff's contentions are fraught with hearsay, speculation, self-serving assertions or unsubstantiated conjecture. Plaintiff's suggestion that the various disciplinary actions, work assignments, or comments to him resulted from retaliation for his whistleblowing activity, rather than being exactly what they purport to be -- an attempt to appropriately discipline an employee who is resistant to authority -- lacks material basis. An objective reading of the evidential record reflects plaintiff was appropriately disciplined for real infractions, and that plaintiff overreacted to perceived slights. Adverse employment actions do not qualify as retaliation under CEPA 'merely because they result in a bruised ego or injured pride on the part of the employee.' *Kownacki v. Saddle Brook Bd. of Educ.*, No. A-5548-11T4 (App. Div. May 8, 2014)

Appellate Division affirms jury's rejection of CEPA claim where transportation coordinator alleged that firing was because of problems she discovered with district busses, reverse the entry of JNOV on the tortious interference claim against the other defendants. The case is consequently remanded for a trial on damages. On remand, the trial court shall give further consideration to the affirmative defense of non-mitigation, viewed in the fuller context of evaluating plaintiff's overall efforts to secure and maintain other employment up through the time of the forthcoming

damages trial. *Warrick v. Parsippany-Troy Hills Bd. of Educ.*, No. A-6035-11T2 (App. Div. June 9, 2014)

District Court denied Board's motion to dismiss for failure to state a claim despite employee's supervisory role, which included disclosing and objecting to the activities of subordinates. Employee had reasonable belief that Board's alleged refusal to discipline the relative of a board member was in violation of law, rule, or regulation. *Bergland v. Gray,* Dkt. No. 14-1972; (D.N.J. Oct. 17, 2014)

CONSENT ORDER

Consent order rejected; remanded for correction of deficiencies. J.C., Commr 2012: Jan 11 (Fort Lee)

CONSPIRACY

District court determined that non-tenured principal, who alleged that the board and other officials used their public positions to punish the principal and manufactured false disciplinary charges against her, supported the allegations with sufficient facts to defeat a motion to dismiss. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 16, 2014)

In determining board's motion to dismiss, the district court found no indication that, in allegedly diverting public funds to private religious schools or discriminating against women, neither the superintendent, president, nor board attorney acted in their official capacity so as to engender the protection of the "intracorporate conspiracy doctrine." The doctrine bars claims that are related to a defendant's actions that made in an official capacity. *Yuli v. Lakewood Bd. of Educ*, Dkt. No. 13-4617; (D.N.J. Oct. 16, 2014)

CONSTITUTIONAL ISSUES

Board's policy forbidding employees from possessing cellular phones and pagers during preparation and instructional periods is constitutional; policy does not implicate free speech/association, and is neither vague nor overbroad. (00:June 12, North Bergen)

Commissioner adopted ALJ's decision that petitioner lacked standing to pursue U.S. Constitution and Federal Law claims, where taxpayer failed to establish that he suffered an injury from which he is legally protected by the U.S. Constitution or Federal Laws. Petitioner alleged the district spend public monies to implement an unconstitutional courtesy busing policy. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner disagreed with ALJ's finding that petitioner lacked standing to pursue state constitutional claims, where petitioner established that as a resident taxpayer, he was directly affected by the annual expenditure of $2 million for the courtesy busing of district students. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner does not sustain parents' argument that method of communicating notice of lottery used to select pupils for French immersion program: program violated equal protection; however, Commissioner advises Board to improve communication to avoid misunderstandings with respect to immersion program availability and deadlines. (02:Oct. 24, D.M.L., aff'd St. Bd. 03:April 2) See also, emergency relief denied to parent claiming that lottery access to French immersion program violates school law; expedited hearing ordered. (02:July 30, D.M.L.)

Commissioner found that petitioner failed to demonstrate an Establishment Clause violation, where district used public funds to provide gender segregated courtesy busing to students attending gender segregated private schools. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner found that petitioner failed to establish a violation of the NJLAD where district courtesy busing policy provided for separate buses for girls and boys attending religious schools that were segregated based upon gender. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner found that petitioner failed to meet his burden of presenting specific facts that district courtesy busing policy provided for separate buses for girls and boys attending religious schools that were segregated based upon gender. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Free speech: Fair public comment by board members concerning other public figures and on matters of public concern is protected speech. (00:July 10, Wooley)

No violation of Constitution, Law Against Discrimination or Equal Protection Clause in statute permitting board to provide subscription and courtesy busing to public school pupils who live non-remote, but not to private school pupils who live non-remote (99:Sept. 29, M.J.K.D.)

CONTRACTS OF EMPLOYMENT

Professional Development

Part-time home instruction teacher was hired to a full-time position by board of education. Thereupon she completed 11 hours of professional development. Board of education refused to credit the hours because they were not performed in accordance with a professional improvement plan developed as part of the prior

year's Annual Performance Report. Commissioner affirmed ALJ's dismissal of teacher's complaint. (02:Nov. 21, Bowens)

Teacher who worked as a temporary replacement during unexplained absence of another teacher, but without a written contract, or formal approval of the school board pursuant to N.J.S.A. 18A:27-1, had no right to continued employment even if contrary representations had been made to him. (01:Jan. 25, Vincenti, appeal dismissed for failure to perfect, St. Bd. 01:June 6)

In challenge to board's award of contract to lowest bidder, Commissioner finds that lowest bidder's submission, that included a food service equipment subcontractor which had an expired Certification of Prequalification from the School Development Authority (SDA), contained an unwaivable, material defect. Nor could a bidder substitute itself to perform that work, even though bidder was appropriately classified; case law holds that contractors cannot substitute subcontractors after the bid has been awarded, and the bid instructions required bidders to identify their subcontractors and certify that they would use them. H&S Construction, Commr 2011:May 23. (Woodland Park)

Breach of contract counterclaims by a board of education against a contractor involving the construction of a running track were properly dismissed by the district court, because the delivered track met the contract specifications, and the contractor was not liable for costs incurred as a result of an inaccurate survey by a company after the track was completed. Boro Constr. Inc. v. Lenape Reg'l High Sch. Bd. Of Ed. No.11-1200 (3d Cir. Sept 19, 2011)(not precedential)

Board did not act in an arbitrary, capricious or unreasonable manner as alleged by unsuccessful bidder, when it awarded the bid for voice, data and telecommunication services to another bidder. Commissioner finds that Board properly evaluated proposals in accordance with the methodology described in the RFP, and in all ways complied with the requirements of Public School Contracts Law; the winning proposal received the highest score of all the interested vendors, and provided the maximum benefit to the District. Business Automation Technologies, Commr 2012: Feb 10 (Bernards Twp)

Commissioner upholds decision by Department of Education Office of Fiscal Accountability and Compliance that board of education violated the Public School Contracts Law and must return $326,004.47 in state aid. Commissioner finds that Board improperly failed to solicit bids when it awarded a contract for construction management to Tri-Tech Engineering (Tri-Tech) that exceeded the two-year provision of N.J.S.A. 18A:18A-42. The multi-year exception for "any single project" pursuant to N.J.S.A. 18A:18A-42(k) did not apply as the subsequent work was for a different project approved by the voters, and upon the expiration of the two year contract any further payments were made without the solicitation of bids. Nutley, Commr 2012:Feb 27

Board did not violate the Public School Contracts Law when it awarded a contract for school uniforms to a vendor in 2006, and finds unwarranted the Department of Education, Office of Compliance Investigation's demand that petitioner refund State aid in the amount of $594, 217.10. Although the winning vendor was not the lowest bidder, it submitted the lowest bid that complied with the criteria set forth in the bid specification documents. Elizabeth Bd. Of Ed., Commr 2012:March 29,

Court reverses in part and affirms in part, an order finding that construction company doing renovations did not materially breach a settlement agreement entered into between the parties, that the settlement agreement was binding, and compelling the parties to participate in a non-judicial arbitration proceeding. Remanded for a new trial to permit introduction of extrinsic evidence of the circumstances surrounding the formation of the settlement agreement as it pertains to scarification of the drainage basin in order to ascertain materiality of the breach. Thomas Co. v. Tamburro Bros. Constr. Co, NO. A-5345-10T3, 2012 N.J. Super. Unpub. LEXIS 1810 (App. Div. July 27, 2012)

Appellate Division affirms trial court grant of summary judgment to board of education in matter involving employment contract dispute with school psychologist. Plaintiff contended that the judge erred by failing to consider parole evidence to interpret her employment contracts with the Board. Appellate Division disagreed. The contract terms were unambiguous, making plaintiff's assertions insufficient to warrant disregarding the clear language of the employment contracts. Vigneri v. Point Pleasant Beach Bd. of Educ., DOCKET NO. A-1219-11T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2670, Decided December 7, 2012.

Commissioner denies petition by resident and professional association to compel the school board to call for the forfeiture of a bid bond posted by a bus company that had posted the bond when submitting a bid for transportation services; and to compel the insurance company to pay the bond over to the district. As the bus company was not the lowest responsible bidder (its bid was non-responsive to the specifications as it failed to provide evidence of its ability to obtain the required insurance-- a material condition of the bid---and as the insurance certificate referenced in its bid did not name the bidder, but rather named other companies) there was no basis to warrant the forfeiture of the bid bond, which was posted to guarantee that a contract would be executed if the bid was accepted. Garden State School Bus Contractors and Pribyl v. Millstone Bd. of Ed., et al., Commr 2012 Nov. 2.

CONSTRUCTION

Court upholds ruling that board of education was not entitled to indemnification. Electrical company, Smith, claimed that delays in construction project caused it to incur large expenses; where project management company had gone bankrupt during project, and the successor company, AMIC,

assumed obligations. Court finds AMIC was not obligated to defend and indemnify the Board against Smith's claims, and affirms the orders under review that, at various points and in various ways, denied the Board indemnification from AMIC. Under the contract language, the Board may not recover defense costs incurred in defending allegations of its own independent fault. Nor was the Board entitled to an award under the frivolous litigation statute, or to an award of counsel fees and costs as damages for Smith's alleged breach of contract. P.J. Smith Elec. Contrs. v. N. Plainfield Bd. of Educ., No. A-1853-11T1, 2013 N.J. Super. Unpub. LEXIS 2346 (App. Div. September 25, 2013)(unpublished)

COUNCIL ON LOCAL MANDATES

State Police failure to increase coverage when municipality reduced the hours of part-time local police coverage did not constitute an unfunded mandate. In re Complaint filed by the Township of Blairstown, CLM 2011: July 8

Board President alleged that NJ Laws 2010, chapter 122, portions of which are known as the "Anti-Bullying Bill of Rights is an unfunded mandate. In re Complaint filed by the Allamuchy Township Board of Education (9-11).

CLM dismissed the complaint for lack of jurisdiction. The Springfield Board of Education filed a complaint with the Council alleging that N.J.S.A. 18A:39A-1 and 1a impose unfunded mandates insofar as they "increased the amount local boards of education are required to pay for the transportation of nonpublic school students . . . without a corresponding increase in state aid specifically earmarked for this transportation." N.J.S.A. 18A:39-1, enacted in 1967 and last amended in 1990, mandates that school districts provide transportation to both public and nonpublic school students attending school within specified distances; it also directs that the per pupil payment for nonpublic school transportation shall be determined as set forth in N.J.S.A.18A:39-1a and that if transportation cannot be provided at that cost, the district must make the required payment to the parent or other legal custodian of the nonpublic school student. The Council determined that it did not have jurisdiction to consider the issues projected in the complaint because the challenged statutes were enacted prior to January 17, 1996. See N.J. Const. Art. VIII, §2, par 5(a); N.J.S.A. 52:13H-2. In the Matter of a Complaint Filed by the Springfield Township Board of Education CLM 2012: February 15

COUNTY SUPERINTENDENT

County superintendent has the authority to determine appropriate certification for a position. (96:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

County superintendent is dismissed as a party to a residency matter involving question of homelessness, where parent fails to participate as a party.

Parent who acquires residence as temporary measure after being homeless, but remains for over two years, establishes permanent residence for purposes of educating her children. (01:Dec. 5, Pine Hill)

CRIMINAL BACKGROUND CHECKS

Appeal dismissed for failure to perfect for failure to file brief following disqualification for possession of marijuana. (St. Bd. 03:June 4, Tuohy)

Commissioner adopted ALJ's decision to dismiss complaint for lack of standing, where complainant alleged the district was improperly paying for the criminal background checks of certain applicants in violation of N.J.S.A. 18A:6-4.14, 18A:6-7.2 and 18A:39-19.1. Complainant did not live in the district and had not applied for a position with the district. (03:Aug. 8, Nathanson)

Commissioner determined that physician hired as a consultant to review medical records of students seeking medical/environmental based transfers did not require a criminal history background check pursuant to N.J.A.C. 6A:16-2.1 because physician was a consultant, not school physician. (05:April 10, Tuttle)

Petitioner disqualified from employment and teaching certificate due to 1990 conviction for possession of CDs. No evidence of rehabilitation permitted. (02:May 20, Garvin)

Petitioner permanently disqualified from employment as a result of convictions for tax evasion. N.J.S.A. 18A:6-7.1(g) intended to apply to persons employed with boards of education, not just to applicants. District may employ persons only on emergent basis with Commissioner approval pending completion of background for up to three months. Matter referred to State Board of Examiners for revocation of certification. (St. Bd. 03:Oct. 1, Marano)

The mere fact that someone has been disqualified from school employment pursuant to N.J.S.A. 18A:6-7.1 does not mean automatic revocation of teacher's license. There is a statutory right to challenge accuracy of record. Matter referred to Commissioner for a determination on disqualification from employment. (St. Bd. 04:March 3, Scocco, Commissioner determined that possession of CDS was disqualification from employment, 04:March 11, certificates revoked, St. Bd. 04:Aug. 4)

Defendant's convictions arose from the shooting death of a police officer while defendant was at a school seeking vengeance for students assaulting his sister. "The first link in the tragic chain of events that led to the death of a police officer was forged in the context of a seemingly banal event: an altercation between two teenaged girls who attended the same high school, one of whom is defendant's sister." Court affirmed conviction of second degree reckless manslaughter, but reversed and remanded on other counts. State v. Tindell, 417 N.J. Super. 530 (App. Div. 2011) (Jan. 7)

Student had knife in her backpack on school bus in violation of N.J.S.A. 2C:39-5(e)(2) ; judge imposes residential placement and a one-year probationary term, in light of lengthy criminal record and fact that she had received at-home rehabilitative services for over two years without altering her conduct. State ex rel. L.W., NO. A-3103-08T4, 2011 N.J. Super. Unpub. LEXIS 118 (App. Div. January 18, 2011)

This case arose from a melee at a Paterson high school that spilled out into the adjoining streets and culminated when a group of students beat Hector Robles to death. In connection with those events, defendant was convicted of: second-degree conspiracy to commit aggravated assault, second-degree reckless manslaughter, third-degree endangering an injured victim fourth-degree riot, and third-degree simple assault. Conviction affirmed, sentence remanded. State v. Williams, 2011 N.J. Super. Unpub. LEXIS 50 (App. Div. January 7, 2011)

Former teacher challenged Criminal History Review Unit's determination that he was permanently disqualified from employment in New Jersey schools due to his criminal convictions in Pennsylvania on two counts of recklessly endangering another person (REAP), one count of possessing instruments of crime, one count of disorderly conduct, and two counts of simple assault. Convictions stemmed from a criminal complaint that petitioner fired a rifle toward two teenagers on his property. Rejecting the initial decision of the ALJ, Commissioner determined that, given the facts and circumstances, petitioner's Pennsylvania conviction for REAP

(recklessly endangering another person) constituted a crime involving the use of force or threat of force to or upon a person as contemplated in *N.J.S.A.* 18A:6-7.l(c)(1). Petition was dismissed. *Kelly,* Commissioner, 2014: August 21

CRIMINAL MATTERS

Appellate Division affirms trial court denial of motion to dismiss indictment. Following denial of motion, defendant pled guilty to one count of invasion of privacy and was sentenced to a suspended sentence of 18 months imprisonment and fines and penalties. Matter involved defendant, after ending of dating relationship with teacher, sending nude pictures of teacher to superintendent of schools and to school at which teacher taught. State v. Parsons, DOCKET NO. A-3856-10T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2972, Decided December 8, 2011.

In criminal matter involving allegations that former school librarian committed aggravated sexual assault on a special education student in the school bathroom, sought post-conviction-relief, alleging ineffective assistance of counsel, prosecutorial misconduct, and newly discovered evidence. Court held that evidence that the purported victim was assigned an aide who accompanied him throughout the day at school constituted newly discovered evidence that likely would have changed the outcome of the trial if it had been presented to the jury; a new trial was warranted on all charges. State v. Nash, 212 N.J. 518 (2013) 2013 N.J. LEXIS 79 (January 22, 2013)

Former Mayor was convicted of Hobbs Act extortion and Travel Act bribery for accepting money from an insurance broker in exchange for agreeing to influence members of the board of education to refrain from putting the school district's insurance contract up for competitive bidding. United States v. Bencivengo, No. 13-1836 (3d Cir. April 23, 2014)

CURRICULUM

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Core Curriculum Standards

DOE staff cannot not be compelled by subpoena to provide testimony regarding DOE's position with regard to Standards; subpoena quashed. (98:Dec. 3, M.C.)

Lottery program used to select kindergarten pupils for French immersion program was not arbitrary or done in bad faith, despite district's failure to include in the advertisement that fact that selection would

be made from students who appeared at registration; however, Commissioner advises Board to improve communication to avoid misunderstandings with respect to immersion program availability and deadlines. (02:Oct. 24, D.M.L., aff'd St. Bd. 03:April 2) See also, emergency relief denied to parent claiming that lottery access to French immersion program violates school law; expedited hearing ordered. (02:July 30, D.M.L.)

Process chosen by board with respect to core curriculum changes, including elimination of woodshop, was proper (99:June 1, Pequannock)

Elective band program that operated by lottery selection for most popular instruments, did not deprive student of T&E or violate the EEO code, N.J.A.C. 6A:7; fact that lottery was conducted secretly did not warrant conclusion that it was arbitrary or conducted in a biased fashion. (05:Jan. 13, E.M.C. III)

Emergent relief to parents seeking placement in gifted and talented program, denied. (99:March 4, Mullane)

Use and administration of placement test for kindergarten French language immersion program not arbitrary, capricious or unreasonable. (03:March 14, G.L.L.)

The Commissioner affirmed DOE's determination, made during fiscal monitoring of the private school's budget, that the cost of a trip to a Broadway play hould be disallowed from the private school's final approved tuition rate charged to the public school district even though it was consistent with students' IEPs and the core curriculum standards; as the cost of these tickets was unnecessarily expensive and above what would be incurred by an ordinarily prudent person in the administration public funds, given the availability of less costly alternatives to achieve the desired educational benefit. Forum School vs New jersey Department of Education (NJDOE), 2006:May 4

CUSTODIANS

Board could not reduce salary of tenured custodians when it abolished their positions as head custodian and reassigned them to other custodial positions. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:March 1; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)

Board failed to prove, by a preponderance of the credible evidence, that custodian's absenteeism was excessive; a custodian is not held to the same attendance requirements as a teacher. Loud abusive response to principal's questions constitutes unbecoming conduct. Suspension ordered. (02:Sept. 6, McCullough, aff'd St. Bd. 03:April 2)

Board proved unbecoming conduct charges against custodian for unauthorized absence from worksite and several instances of failing to clock out at end

of shift. Employee directed to forfeit salary already withheld. (03:Sept. 15, Williams)

Custodian appointed on fixed term contracts; rights not violated when board non-renewed (00: Jan. 6, Cromwell, aff'd St. Bd. 00: June 7) Parties amicably resolve disputed issues, appeal dismissed with prejudice, App. Div. unpub. op. Dkt. No. A-6138-99T2, July 30, 2001.

In dispute over right of board of education to non-renew custodial/maintenance contracts and the employee's right to be disciplined only for just cause, matter would proceed to arbitration. Employees bear the initial burden of proof that they were terminated for cause. If the employee fails to carry the burden, the right to grieve is foreclosed due to the nature of the term of employment. Camden Bd. of Ed. v. Alexander, 352 N.J. Super. 442 (App. Div. 2002).

Recoupment of salary overpayment mistakenly made to tenured custodians does not violate tenure rights. (94:Dec. 21, Trenton, reversed St. Bd. 99:Dec. 1)

Salary level of custodians transferred to constituent district from regional pursuant to regional dissolution; challenge dismissed as untimely under 90-day rule. (99:Dec. 8, Balwierczak, aff'd St. Bd. 00:May 3)

Where collective bargaining agreement provided for custodian tenure after three years, statute requires that such tenure extend to all types of custodial assignments including stockroom worker custodian and chief janitor. Tenure status does not attach to particular subcategories of janitor and thus abolition of custodial position requires board to RIF custodial employee based on overall seniority as custodian. (99:Oct. 7, Atlantic City, aff'd St. Bd. 00:March 1; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)

DAMAGES - Attorneys' Fees

Neither N.J.S.A. 18A:37-3 nor any other statute authorizes the Commissioner to award counsel fees to a school district arising out of its pursuit of disciplinary action against a student. (Licciardi, Commissioner 2008: December 5)

Plaintiffs entitled to reasonable attorneys' fees in the amount of $574,244.60 as prevailing party in case concerning First Amendment issues arising from board's enforcement of dress code policy. Sypniewski v. Warren Hills Reg'l Bd. of Educ., 2006 U.S. Dist. LEXIS 39285 (D.N.J. May 18, 2006)

Commissioner determined that board was not entitled to attorney's fees as contemplated by a settlement agreement where district did not prevail because parents did not dispute lack of residency. The ALJ acknowledged a lack of enforcement power to award fees and costs, leaving that decision to the superior court judge who retained jurisdiction. (Port Republic, Commr., 2007: Oct. 9).

Although an employee's claims against the school district under the ADA after a work-related accident, were dismissed by the district court in their

entirety on summary judgment, the district court did not abuse its discretion when it denied the district's motion for attorney fees and sanctions as the employee evidently suffered from some sort of medical condition and his claim was not wholly without foundation. 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.Weisberg v. Riverside Twp. Bd. of Ed., No. 05-4190, 2008 U.S. App. LEXIS 1057 (3d. Cir. January 11, 2008)(not precedential)

District Court ordered a witness to appear for a deposition where she had failed to appear on several prior occasions. The Court reserved its decision as to whether to award attorney's fees for the failure to appear. Swangin v. Edison Twp. Public Schools, No. 07-1809, 2008 U.S. Dist. Lexis 17710 (D. N.J. March 7, 2008).

After being the prevailing party in a Rehabilitation Act of 1973, claims for attorney's fees denied. The "fee request is so grossly exaggerated and absurd that the request shocks the conscience of the court." M.G. v. E. Reg'l High Sch. Dist., 2009 U.S. Dist. LEXIS 98631 (D.N.J. Oct. 21, 2009)

District Court substantially reduced attorney's fees of prevailing party where special education attorney could not substantiate entitlement to an hourly rate of $400 per hour, and where records reflected excessive billing. L.J. individually and by his Parents V.J. and Z.J., v. Audubon Bd. of Ed., Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

DECLARATORY JUDGMENT

Tenure acquisition: teachers assigned to an extended-day kindergarten program could not acquire tenure or seniority credit for service in that program even though they were required to hold teaching certificates and otherwise treated them like teachers, since the nature of the employment was related to quality child care and not T & E, and the Board did not adopt the curriculum. (02:Oct. 24, Brown)

DEFAMATION

Principal's filing of criminal trespass complaint against school custodian who refused to leave school building is absolutely privileged as against custodian's defamation claim even if allegations in complaint were false. Pitts v. Newark Board of Education, 337 N.J.Super. 331 (App. Div. 2001)

Plaintiff's motion to remand common law defamation claim to New Jersey Superior Court and decline to exercise supplemental jurisdiction granted. All other matters have been settled. Court concluded that the remand

satisfies the principles of judicial economy, convenience, and fairness to the litigants. Denuto v. Sayreville Bd. of Educ., Civil Action No. 10-1211 (PGS), 2013 U.S. Dist. LEXIS 99984 (D.N.J July 17, 2013).

DEREGIONALIZATION

Distribution of Assets

Deviation from asset distribution scheme approved by Supreme Court in Union County Regional justified based on facts in Lower Camden Regional dissolution. (03:May 2, Lower Camden Regional)

Each building district to make asset distribution payments to each non-building district in five equal annual installments. (03:May 2, Lower Camden Regional)

Lack of agreement of the parties to depart from the statutory scheme not determinative in the Union County court's analysis. (03:May 2, Lower Camden Regional)

Most equitable allocation was to divide total liquid assets among the four non-building districts in proportion to the percentages of school taxes paid to former regional district. (03:May 2, Lower Camden Regional)

School district involvement in sending-receiving relationship not a quantifiable asset that must be factored into the asset distribution plan. (03:May 2, Lower Camden Regional)

The statute does not prevent assets from being altered between the time of the county superintendent report and final dissolution. Nothing in the statute requires the preservation of the assets of any constituent district prior to dissolution. (97: December 18, In the Matter of the Distribution of Assets and Liabilities upon the Dissolution of the Union County Regional High School District #1 (Kenilworth II), aff'd State Board 98:April 1, aff'd in part, rev'd in part, App. Div. unpub. op. Dkt. No. A-4553-97T5, April 15, 1999) Reversed for findings of fact and conclusions on claim that county superintendent failed to define "shared and rotated assets" as including furniture, equipment and personal property removed from Brearley High School. Aff'd in all other respects.

Until the date of dissolution, the grounds, buildings, furnishings, and equipment remain in the possession of the regional district, which can employ these resources for the purposes of operating the school district. (97:June 20, In the Matter of the Distribution of Assets and Liabilities upon the Dissolution of the Union County Regional High School District #1 (Kenilworth I) , aff'd State Board 97: Nov. 5)

Where dissolution is conditioned on a distribution of assets different from the statutory scheme, Board of Review so acknowledges in its

decision and will direct that ballot question be so drafted. Because no method of distribution of liquid assets was specified in the question placed before the voters, the assets should be distributed in accordance with the statute. (97: May 5, In the Matter of the Distribution of Assets and Liabilities upon the Dissolution of the Union County Regional High School District #1 (Mountainside), aff'd State Board 98: July 1, aff'd App. Div. unpub. op. Dkt. No. A-7438-97T1, Oct. 1, 1999, certification granted 164 N.J. 189 (2000) See Supreme Court decision 168 N.J. 1 (2001), rev'd and remanded to State Board with directions that liquid assets be divided between the two constituent districts that were not deeded real estate. Statutory scheme allows for deviation.

Payment for accumulated sick leave is not protected under N.J.S.A. 18A:13-64 either as a tenure right or an "other similar benefit" under that provision. Compensation for purposes of N.J.S.A. 18A:13-64 has implicitly been defined as "salary." Payment for accumulated sick leave is a contractual benefit subject to collective negotiations. (04:April 30, Clark (Allen), aff'd St. Bd. 04:Sept. 1)(04:Dec. 2, Aragona, aff'd St. Bd. 05:June 1)

DISABILITIES, PUPILS WITH (See also SPECIAL EDUCATION)

Board of education was properly granted summary judgment in parent's 1983 action in son's death in residential school where board did not violate IDEA by placing child in school without IEP as parents agreed to placement. Tallman v. Barnegat Bd. of Ed., 2002 U.S. App. LEXIS 19051, ____ F.3d ____ (3d Cir. 2002), decided August 21, 2002.

Consolidated disciplinary and special education matter dismissed. Board acted for the benefit of the larger school population in matter regarding marijuana and weapon possession when parent refused to cooperate in special education evaluation. Appeal was untimely; seven months after student was expelled. (03:May 20, J.G.)

Counsel fees available to "prevailing party" plaintiffs in challenge to special education regulations and amendments where they prevailed on 8 of their 60 challenges. IDEA attorney fees provision applies to challenges to regulations governing children with disabilities. Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001), certification denied 174 N.J. 193 (2002)

Court affirms denial of request for attorney's fees under IDEA. Parents sought reinstatement of child in high school, following suspension and assessment of educational needs of child. Parents who achieve favorable interim relief may be entitled to prevailing party attorney's fees as long as the interim relief granted derived from some determination on the merits. ALJ's interim order granting relief not determination on merits. J.O. v. Orange Twp Bd. of Ed., 287 F.3d 267 (3d. Cir. 2002).

IDEA: IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

New Jersey education law, which differentiates between non-public school students and home schooled students with respect to providing funds for speech therapy is constitutional, but in the context of the facts of this case, was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not his home. This service was offered to other nonpublic students at the public school; to deny a home schooled the service was a denial of equal protection. While home schooled students are not entitled to special education and related services under the IDEA, they are entitled to their "equitable share of public funds" for speech therapy services. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)

Parents not entitled to reimbursement for independent evaluation fee as they failed to initially consult with board of education as required under N.J.A.C. 6A:14-2.5c. Question of fact existed as to whether board had acceded to all items in settlement agreement prior to the start of litigation. K.R. v. Jefferson Twp. Bd. of Ed., 2002 U.S. Dist. LEXIS 13267, decided June 25, 2002.

Petitioners, private schools for the disabled, not barred from utilizing straight-line depreciation on a stepped-up basis to calculate rental costs for tuition rate purposes. Straight-line depreciation is an actual allocated cost of ownership. (02:Yale School)

School board had standing and an express right of action under the IDEA to seek reimbursement of an autistic child's residential placement from the State Division of Developmental Disabilities and the State Department of Education. S.C. v. Deptford Twp. Bd. of Ed., 213 F.Supp. 2d 452 (D. N.J. 2002)

Severely disabled pupil in residential placement for which district had been sharing the cost, was no longer domiciled in New Jersey and thus district had no obligation under IDEA to provide FAPE; change of domicile occurred "incrementally" and was effective when parent's intention to return to New Jersey had become a mere hope for the future. (98:Aug. 3, K.W.)

While 90-day rule does not apply to special education matters, seven month delay in filing appeal of combined disciplinary and special education matter was untimely, even under Bernardsville. Semester was over, summer had passed, student was in another semester in another district. (03:May 20, J.G.)

While the law requires that the IEP provide a FAPE in the LRE, it did not require that the board provide the best education in exactly the manner dictated by parents. Child receiving little benefit locally. Court ordered placement at one of placements identified by ALJ. M.A. v. Voorhees Twp. Bd. of Ed., 202 F. Supp. 2d 345 (D. N.J. 2002)

Discovery

Appellate Division affirmed trial court denial of motion to suppress evidence of a telephone call between teacher and former student. Teacher was charged with first-degree aggravated sexual assault N.J.S.A. 2C:14-2(a)(2)(b)),

second-degree sexual assault (§ 2C:14-2(c)(4)), and third-degree endangering the welfare of a child (N.J.S.A. 2C:24-4(a)). Court concluded that defendant had no expectation of privacy in his cell phone number, which had been given to the student, was included in the school staff directory and to multiple parties and students in connection with a school trip which defendant had chaperoned. School's SRO acted reasonably in requesting and obtaining the number from the principal's secretary. State v. DeFranco, 426 N.J. Super. 240 (App. Div. 2012); 43 A.3d 1253 (App. Div. 2012); Decided June 8, 2012.

Appellate Division found that trial court erred in appointing a discovery master in an action brought by a former board of education employee under the LAD and CEPA. In actions of these types, the trial judge must consider the remedial nature of the litigation as well as the ability of litigants to absorb the costs of such relief. The appointment of a discovery master in fee-shifting remedial cases may impose a cost burden on litigants that creates a de facto bar to their access to the justice system. Matter reversed and remanded. Zehl v. City of Elizabeth Bd. of Educ. 426 N.J. Super. 129 (App. Div. 2012); 43 A.3d 1188 (App. Div. 2012), Decided May 31, 2012.

ALJ properly denied teacher's application for disability benefits. Rejects arguments that she was deprived of her right to a full and fair hearing, that the ALJ relied upon stale evidence; that the ALJ wrongly found that she was able to perform her past relevant work and that the ALJ failed to consider a doctor's evaluation. Benson v. Comm'r of Soc. Sec., 2012 U.S. Dist. LEXIS 106553 (July 31, 2012)

DISCRIMINATION

Abolition of position of Organizational Development Specialist was not arbitrary, and did not violate Law Against Discrimination because decision motivated by fiscal crisis; may be entitled to compensation for unused sick or personal days if provided by policy or agreement to reimburse for unused vacation days. (01:March 7, Wellins)

Age discrimination matter settled. (98:Oct. 14, McCarthy)

Allegations of retaliatory discharge for political activity not proven. Secretary position riffed due to budgetary constraints, not political reasons. Bello v. Lyndhurst Bd. of Ed., 344 N.J. Super. 187 (App. Div. 2001)

Board policy against distribution of religious gifts in classroom was not unconstitutional where kindergarten student wished to hand out proselytizing pencils and evangelical candy canes to classmates in classroom during the school day. No prohibition present against distributing gifts outside the classroom or after school. Court also found no violation of NJLAD. Walz v. Egg Harbor Twp. Bd. of Ed., 187 F.Supp. 2d 232 (D.N.J. 2002), aff'd 2003 U.S. App. LEXIS 18148 (3d Cir. N.J., Aug. 27, 2003)

Commissioner had predominant interest in, and should exercise jurisdiction over school law issue of whether teacher working part-time after return from medical leave should have been reassigned to a full-time position upon her request, after district reorganization. Hearing before ALJ should also address issues of motive and reasonable accommodation. Matter should then be transmitted to Division on Civil Rights for determination of whether LAD was violated, and for appropriate relief. (01:May 10, Fleming)

No discrimination, retaliation or Sunshine Law violation found; no tangible, adverse employment action alleged by staff members, just conclusory allegations unsupported by any facts. (00:July 10, Wooley)

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Third Circuit Court of Appeals found that a reasonable fact finder could not find a conspiracy to deprive petitioner of his civil rights where board determined not to promote petitioner to the position of Assistant Operational Supervisor after placing him in that position temporarily. (Taylor v. Cherry Hill Bd. of Ed., unpublished opinion, App. Div. Dkt. No. 02-3738, Jan. 13, 2004)

Third Circuit Court of Appeals held that petitioner, in a discriminatory employment practice complaint, failed to establish that the board's reason for not hiring him was pretextual or motivated by racial animus, where testimony revealed that petitioner was not promoted because he lacked "leadership qualities." (Taylor v. Cherry Hill Bd. of Ed., unpublished opinion, App. Div. Dkt. No. 02-3738, Jan. 13, 2004)

Third Circuit Court of Appeals held that the passage of five years from the time petitioner engaged in the protected activity of filing a civil rights claim and his termination precluded petitioner from establishing the requisite casual link to demonstrate retaliatory actions by the board, where board failed to promote, but did not demote, harass, falsely discipline or fire petitioner during the intervening five year period. (Taylor v. Cherry Hill Bd. of Ed., unpublished opinion, App. Div. Dkt. No. 02-3738, Jan. 13, 2004)

Where employee failed to produce evidence of "background circumstances" suggesting that his employer discriminated against the majority, district court properly granted summary judgment to employer on reverse discrimination claim. Devito v. Bd. of Ed. City of Newark, 2002 U.S. App. LEXIS 3352, ____ F.3d ____ (3d Cir. 2002), decided February 5, 2002.

Former school administrator fails to establish first amendment retaliation and reverse discrimination in violation of Title VII, Sections 1981 and 1983, on basis that she was paid less than an African-American administrator, reprimanded while African-American personnel were not, retaliated against for requesting counsel in response to a written reprimand, and that

she was constructively terminated. None of the alleged discriminatory instances would have compelled a reasonable person in this situation to resign, and pay disparity was tied to numerous factors, including seniority, professional certifications, and budgetary concerns. Mieczkowski v. York City Sch. Dist., 2011 U.S. App. LEXIS 3307 (3d Cir. Feb. 18, 2011) (not precedential)

Court affirms district court's grant of summary judgment in favor of school district and various administrators; parents failed to prove that middle school racially discriminated against a student in violation of Title VI , 42 U.S.C. § 2000d et seq.; Title IX or § 1981. Individual defendants have no liability under title VI; the combined actions and incidents did not rise to the level of severe and pervasive harassment required under Davis v. Monroe, nor did school act with deliberate indifference as administrators disciplined children following several incidents and implemented a racial sensitivity program; nor did statements and false accusations made by classmates, or teacher's comment that student not tell lies, amount to retaliation; nor was there any evidence of sexual discrimination, or purposeful discrimination under §1981. Whitfield v. Notre Dame Middle Sch., 2011 U.S. App. LEXIS 841 (3d Cir. January 12, 2011) (not precedential)

Court dismisses parent's pro se appeal seeking relief under six provisions of federal law, : (1) 18 U.S.C. § 241 l(2) 18 U.S.C. § 242; (3) the No Child Left Behind Act (4) "42-21-IV-2000" (5) 42 U.S.C. § 1981 ; and (6) 42 U.S.C. § 1983. She alleges that the child did not receive fair or equal treatment as other students, allegedly as a result of racial discrimination. Court affirms District Court's dismissal of her action as a parent cannot assert claims in federal court on behalf of her minor child, and the claims asserted on parent's own behalf are insufficient as a matter of law. Watson v. Wash. Twp., 2011 U.S. App. LEXIS 1437 (3d Cir. January 24, 2011) (not precedential)

Court dismisses claims by school bookkeeper that board of education terminated her employment because she became pregnant, had to miss work to serve on a jury, and suffered from a serious back injury. Court dismisses without prejudice gender discrimination claim because, although pregnancy is a "prohibited consideration" for employment purposes under the NJLAD, she failed to satisfy fourth prong of gender discrimination claim that she was preplaced by non-pregnant person. She failed to demonstrate a violation of the Jury System Improvement, 28 U.S.C. § 1875, because she alleges only that she served on a jury in state court. With regard to claims based on her back injury, Court dismisses Plaintiff's ADA claim for failure to exhaust administrative remedies as she voluntarily withdrew her EEOC charge without receiving a right-to-sue letter. Although NJLAD does not require a plaintiff to exhaust administrative remedies, she failed to demonstrate that the board sought someone else to perform her job after they terminated her employment. Schwinge v. Deptford Twp. Bd. of

Educ., No. 09-5964 (RBK/JS), 2011 U.S. Dist. LEXIS 16610 (D. N.J. February 17, 2011) (not for publication)

African American woman, a nontenured teacher, files race discrimination/retaliation suit against Board of Education, CSA, principal and Human Resources Director, for nonrenewal of her contract. Court grants motion to dismiss § 1981 claims, as a private right of action against state actors cannot be implied under § 1981. § 1983 claims are time barred by 2 year statute of limitations, which began to run the day the discrete act occurred and was communicated to her, namely the May 2 when she was notified by hand-delivered letter that she would be deemed nonrenewed. Court declines to exercise supplemental jurisdiction over Clark's remaining state law claims (NJ LAD, discrimination, retaliation, and aiding and abetting) and does not decide whether these are time-barred; dismisses these without prejudice. Court denies leave to amend the complaint as this would be futile in light of court's rulings. Clark v. Winslow Twp. Bd. of Educ., No. 10-4342 (JEI/AMD), 2011 U.S. Dist. LEXIS 12981, (D.N.J. February 9, 2011)

Matter arose from allegation that district treated student in a discriminatory manner by disciplining him for possessing a knife. Court declines to grant parent's motion for reconsideration of ruling that denied parent's motion to amend and granted school board's request for sanctions in the amount of $4,500.00 (a portion of the board counsel's attorney fees) for repeated claims already foreclosed by previous lawsuits. O.R. v. Hutner, 2011 U.S. Dist. LEXIS 4341 (D.N.J. January 18, 2011) (not for publication)

Petition for certification is denied, with regard to ruling dismissing unsuccessful employment candidate's complaint of racial discrimination under the NJLAD. Gerald v. Hopewell Valley Reg'l Sch. Dist., 2011 N.J. LEXIS 141 (January 18, 2011)

Court reverses lower ruling that held that because teacher in related District Court matter could not surmount the First Amendment's "adverse employment action" threshold for purposes of a Section 1983 Free Speech claim, he similarly cannot vault the LAD's and CEPA's supposed higher bar. Court remands further proceedings in matter where physical education teacher in alternative school for behaviorally challenged students, claims he suffered adverse employment consequences after repeatedly complaining to administrators about physical threats and abuse by students. Nead v. Union County Educ. Servs. Comm'n, A-3149-09T1, 2011 N.J. Super. Unpub. LEXIS 128 (App. Div. January 20, 2011).

District court's grant of summary judgment affirmed in favor of district respondents on discrimination claims that districts violated Section 504 of the Rehabilitation Act, Title II of the ADA and IDEA by not providing special education services to student. There are insufficient allegations that these district defendants withheld from student any educational services or benefits they owed to him because of his disabilities and that they excluded student from any school programs or activities available to other

students. Dutkevitch v. PA Cyber Charter Sch., No. 09-2393 (3d Cir. M.D. Pa. July 21, 2011). (not precedential)

District court's grant of summary judgment affirmed in favor of district respondent on age, race discrimination and retaliation claims. While plaintiff established *prima facie* claim of race discrimination, district proffered non-discriminatory reasons to hire someone other than plaintiff. Others had more experience or had demonstrated greater knowledge of position. Norman v. Reading Sch. Dist., No. 10-2147 (3d Cir. E.D. Pa. Aug. 2, 2011) (not precedential)

Third Circuit remands to District Court for determination on whether a Pennsylvania Charter School can sue under Section 1983, following claims that local district which revoked school's charter, discriminated against it, parents and students of the charter school. Third Circuit determines that charter school is not a political subdivision but leaves it to lower court to determine exact relationship with state to determine capacity to sue the state. Pocono Mt. Charter Sch. v. Pocono Mt. Sch. Dist., No. 10-4478 (3d Cir. M.D. Pa. Aug. 25, 2011) (not precedential)

In suit alleging race discrimination caused by school district, court dismisses all claims against township. One plaintiff's claims are dismissed in entirety for failing to file a notice of tort claim. Section 1981 claims dismissed with prejudice as to all school district defendants claims for intentional and negligent infliction of emotional distress permitted to continue for minor students' claims.) A v. Gloucester Twp. No. 10-4062 (D.N.J. July 21, 2011

In employment discrimination suit, federal court declines to exercise supplemental jurisdiction over state law claims. Judicial economy, convenience, and fairness do not balance in favor of exercising supplemental jurisdiction. Remand to state court granted. Schwinge v. Deptford Twp. Bd. of Educ., No. 09-5964 (D.N.J. July 28, 2011)

Appellate Division affirms trial court's grant of summary judgment as to Supervisor of Special Services' failure to accommodate in violation of the LAD claim but reversed as to retaliation claim. Employee's claim that the Board retaliated against him by withholding money from his paycheck was sufficient to survive summary judgment. Formica v. Atlantic City Bd. of Educ., No. A-2505-09T2, 2011 N.J. Super. Unpub. LEXIS 2091 (App. Div. August 2, 2011).

Court affirms evidentiary ruling following trial judgment in favor of the defendant school district on former district administrator's claim that district's credit and payment for only 25% of his unused, accrued sick leave was racial discrimination. It was not error for court to exclude evidence of historic inequality in pay between employees of different races, where employee failed to exercise his opportunity to challenge this ruling on his first appeal, and where the court had discretion to find that the probative value of the evidence was outweighed by the potential for prejudice and confusion. Houston v. Easton Area School Dist, , No. 10-4330 (3d Cir. Sept 13)(E.D. Pa.)(not precedential)

Court dismisses disability discrimination suit under Rehabilitation Act, ADA, and NJLAD, brought against school board, nurse and principal by parent whose 3-year old developed a peanut allergy and was advised he could no longer participate in the free Child Development Lab, due to a concern that his safety could not be ensured A.E. v. Freehold Reg'l High Sch. Dist. Bd. of Educ., Civil Action No. 11-2923 (JAP), 2012 U.S. Dist. LEXIS 23265, (D.N.J. Feb. 23, 20123) (not for publication)

Third Circuit affirms district court grant of summary judgment for defendant who was alleged to have terminated plaintiff from substitute position because of ancestry. Plaintiff did not marshal any evidence or make any showing on the merits of his claims. Filings instead consist largely of plaintiff's extraneous assertions about the United States educational system in general and his "Gravity Buoyancy Technology." Nacer v. Caputo, No. 12-1052 (3d Cir. N.J. Apr. 19, 2012)

Third Circuit affirms dismissal of complaint as sanction for failing to give court valid mailing address. Plaintiff had alleged discrimination in employment at NJDOE. McLaren v. N.J. State Dept. of Educ., No. 11-4585 (3d Cir. N.J. Mar. 1, 2012)

Board actions were not arbitrary, capricious or unreasonable, where the board appointed a Board attorney to investigate a grievance that a vice principal filed after being denied a promotion. The vice principal's grievance claimed racial and gender discrimination, as well as improper favoritism by the superintendent, and was filed with the Board's affirmative action officer – who recused herself from investigating this matter because she had served on the interview committees that had rejected the petitioner for promotion. N.J.A.C. 6A:7-1.5(a)(2)(iii) does not require that the affirmative action officer personally conduct any grievance investigation and thus the superintendent and the affirmative action officer retain the discretion to discharge their duties; a dissatisfied grievant may file a formal complaint with the Division of Civil Rights, as the petitioner rightfully did. Plummer, 2012: April 20.

Third Circuit Court affirmed the District Court's grant of summary judgment in favor of defendants, school district, principal, superintendent, and athletic director, in matter by tenured teacher who was former cheerleading coach alleging hostile work environment and retaliation under Title VII and the New Jersey Law Against Discrimination (NJLAD), and retaliation under the First Amendment; she could not show intentional discrimination regarding the hiring of an untenured teacher instead of her as the affirmative-action officer as tenure status was not a stated job qualification, and the other teacher was well liked, and the principal's revocation of a promise to re-hire her for the coaching job did not show intent. Title VII and NJLAD retaliation claims failed because she was denied the affirmative-action officer job before she participated in the protected activities, and the school had repeatedly rejected her previous coaching applications before she spoke at the board meeting. The First Amendment retaliation claim also failed. White v. Cleary, 2013 U.S. App.

LEXIS 2552 (Feb. 6, 2013, 3d Cir) (not precedential)(Monmouth Regional)

Pennsylvania public school district does not violate the Constitution when it sets teacher salaries based, in part, on prior in-state teaching experience. Third Circuit affirms district court's ruling; district's failure to fully credit teacher's out-of-state teaching experience did not violate his right to interstate travel under the Privileges and Immunities Clause or deny him equal protection of the law. The district's classification was based on the location of teaching experience, not duration of residency such that teacher was treated no differently than lifelong residents of the state and strict scrutiny did not apply. The district's experience-based salary classification was sufficiently tied to the legitimate state purpose of promoting an efficient and effective public school system to pass the rational basis test. Connelly v. Steel Valley Sch. Dist., 2013 U.S. App. LEXIS 1882 (3d. Cir. Jan 24, 2013) (precedential)

Parent who was barred from attending district's home game lost appeal of district court's denial of injunction; 1983 suit against Pa. school district alleged various constitutional violations arising from the district's operation of a basketball program, where parent sent a number of emails to coaches complaining about alleged favoritism toward white players, and where principal informed the parent that his emails violated the district's parent/spectator guidelines and barred the parent from attending the next home game. The guidelines did not prohibit criticism, but regulated the time, place, and manner in which such concerns were expressed. Circuit Court affirms district court's judgment. Blasi v. Pen Argyl Area Sch. Dist., 2013 U.S. App. LEXIS 2095 (Jan 30, 2013, 3rd Cir) (not precedential)

Appellant, who had lost an earlier employment discrimination lawsuit against the school district, subsequently alleged that she was targeted in retaliation for her failed lawsuit by individuals staring at her, driving by her house, calling her and hanging up, and, directing a racial slur at her. She sought relief pro se in district court; district court dismissed her civil rights complaints; Circuit Court summarily affirms, as the appeal does not present any viable constitutional claims; facts alleged did not show causal connection. White v. Camden Bd. of Ed, No. 12-3743, 43, 2013 U.S. App. LEXIS 12708, No. 12-3743 (3d Cir. June 20, 2013) (not precedential)

School district's motion to vacate clerk's entry of default judgment in matter involving employee allegations of racial discrimination, harassment and defamation of character granted. Given the strong presumption in this Circuit against judgment by default and the strong presumption in favor of trial on the merits, vacating default under the circumstances presented in this case was appropriate. Paris v. Pennsauken Sch. Dist., No.12-7355 (NLH/JS), 2013 U.S. Dist. LEXIS 112280 (D.N.J. August 9, 2013).

Teacher who claimed she was discriminated on basis of age from Newark Public Schools and on basis of her disability was entitled to appointment of pro

bono counsel for the limited purpose of advising and consulting her on the strengths and weaknesses of her case for the purpose of attending a settlement conference; if the settlement conference is unsuccessful pro bono counsel has satisfied his/her obligations and will be permitted to withdraw. Roome v. Newark Pub. Schs., No. 2:12-cv-04484 (CCC)(JAD), 2013 U.S. Dist. LEXIS 136165 (D.N.J. September 23, 2013)(not for publication)

Court dismisses parent's request for injunction. Parents alleged that NJSIAA's decision to deny waiver of the NJSIAA eight semester rule as pertains to their autistic son's request to play a fifth year of competitive football as place kicker in Brick Township High School, violates the Americans with Disabilities Act. While Court disagrees with NJSIAA and concludes that granting a waiver would be a reasonable accommodation under the ADA, nonetheless, it denies the waiver because there was no finding as required under the ADA that the student was denied an equal opportunity to play competitive football, via a waiver of eligibility rules, by reason of his disabilities; rather, meaningfully participated in Brick's football program for four consecutive years, and district provided him the same opportunities afforded to every other student on the football team. Starego v. N.J. State Interscholastic Ath. Ass'n, *2013 U.S. Dist. LEXIS 128406 (D. N.J. Sept 9, 2013)*

School Principal alleges that Superintendent sent e-mail messages inappropriately inviting her to share hotel room, and made other inappropriate comments of sexual nature in her presence directed at other women, in violation of Title VII § 1983, and NJLAD, and seeks damages under New Jersey common law for intentional infliction of emotional distress. Motion to dismiss granted in part, and denied in part. Hostile work environment claims under Title VII and NJLAD survive. Although there is conflicting precedent, the Court dismisses with prejudice her Title VII claim against the Superintendent in his official capacity as he is not the employer. Court finds that retaliation claim under Title VII or the NJLAD was sufficiently plead and not precluded or barred by earlier administrative action as OAL had no jurisdiction. Plantiff's § 1983 claim against the Board is dismissed without prejudice. Intentional infliction of emotional distress claim is barred by NJ Tort Claims Act as she has not alleged permanent loss of a bodily function, permanent disfigurement, or dismemberment, nor medical expenses exceeding $3,600.00. Defendant's motion for more definite statement is denied. Stallone v. Camden County Tech. Schs. Bd. of Educ., No. 12-7356 (RBK/JS), 2013 U.S. Dist. LEXIS 131082 (D.N.J. September 13, 2013) (not for publication)

Court grants Plaintiff's application to proceed *in forma pauperis* where plaintiff alleges that district failed to issue him a high school diploma in violation of his rights under the Fourteenth Amendment to the Constitution even after he met the New Jersey high school graduation requirements which resulted in, *inter alia*, Plaintiff's loss of income, loss of employment opportunities, loss of professional reputation, and prevented Plaintiff from

pursuing his dream of being accepted into college and becoming a professional basketball player in the NBA. Court dismisses complaint without prejudice, for failure to allege facts sufficient to demonstrate that Plaintiff can maintain a plausible claim for relief. Crisdon v. Camden City Bd. of Educ., No. 13-4427 (NLH/KMW), (D.N.J. October 11, 2013) 2013 U.S. Dist. LEXIS 147115.

Court dismisses in part, grants in part, request to amend complaint in matter brought by student who had been victim of illegal sexual relationship with student teacher. Proposed amendments would set forth facts showing that Defendants had actual notice of the sexual relationship to sustain claims under Section 1983 and Title IX; (2) the New Jersey Tort Claims Act does not bar liability for negligent hiring or supervision in the face of an employee's criminal or willful conduct; and (3) the NJLAD provides a cause of action against Defendants for sexual harassment of a public school student. E.K. v. Massaro, Civ. No. 12-2464 (ES) (D.N.J. October 7, 2013) 2013 U.S. Dist. LEXIS 144579(unpublished)

Court declines to dismiss claims of discrimination brought by former employee who claimed district discriminated against him because of his Puerto Rican/Dominican background under Title VII and retaliation under Title VII and CEPA; court grants motion to dismiss claims alleging County Local Finance Board and New Jersey School Ethics Act violations, as well as all claims against named individuals. Gonzalez v. Bergen County Tech. Schs, Civil Action No. 2:12-00615 (WJM) (D.N.J. 2014)(April 11, 2014)

In matter affirming enforceability of a settlement agreement entered into to resolve a wrongful termination and discrimination matter, court denies motion for reconsideration of the Memorandum Opinion. Daponte v. Barnegat Twp. Sch. Dist., Civil Action No. 12-4016 (MAS) (D.N.J. April 2, 2014) not for publication

The court denied motion to reopen a case after de novo review of all papers, trial and telephone status conference transcripts, court opinion; the parties entered into an enforceable Settlement Agreement in this matter. Daponte v. Barnegat Twp. Sch. Dist, Civil Action No. 12-4016 (MAS) (DEA) (D.N.J. March 31, 2014) not for publication

Two years after his employment by the Board ended, former Assistant Superintendent alleges that the Board violated NJLAD when it constructively discharged him because of his Caucasian race to ensure the hiring of African-Americans in the district, and replaced him with an African-American woman. Court grants board's motion for summary judgment; plaintiff failed to identify specific admissible facts and affirmative evidence creating a genuine issue for trial with respect to the first element of his prima facie case - that the Board is the unusual employer that discriminates against the majority. Nor was he constructively discharged. Kirschling v. Atl. City Bd. of Educ., Civil Action No. 11-4479 (NLH/JS) (D.N.J. March 31, 2014).

Court grants board's motion for summary judgment, where Education Enforcement Officer brought claims of reverse employment

discrimination on account of race for defendants' failure to rehire him after he was terminated following a RIF; no evidence shows that failure to hire him was motivated by his race and without such evidence, plaintiff cannot overcome defendants' legitimate reasons for hiring the two highest ranked candidates. Further, EEO's spoliation sanctions are denied; although defendants are at fault for not being able to locate their notes, plaintiff presented no evidence to prove that defendants intentionally destroyed the interview notes, and is not seriously prejudiced by the lack of notes since he was able to depose the interviewers. Thompson v. Bridgeton Bd. of Educ., Civil Action No. 12-6864 (NLH-JS) (D.N.J. March 27, 2014)

Case alleging violation of Americans with Disabilities Act dismissed where plaintiff failed to prove all required elements. To plead a claim under Title I of the ADA, Plaintiff must allege facts making it plausible that he (1) has a 'disability,' (2) is a 'qualified individual,' and (3) has suffered an adverse employment action because of that disability. Even if Plaintiff has a disability, Plaintiff's Complaint does not allege the latter two elements. To plead a claim under Title II of the ADA, Plaintiff must allege facts suggesting that (1) he is a qualified individual; (2) with a disability; (3) he was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability." Plaintiff's Complaint does not allege facts suggesting that he is a qualified individual nor does it allege that the Board refused to certify him as a substitute teacher by reason of his disability. As such, Plaintiff's Title II ADA claim does not satisfy the above first and fourth elements. Accordingly, the Court dismisses claim without prejudice. *Mboya v. N.J. Dep't of Educ.*, State Bd. of Exam'rs, No. 14-853 (D.N.J. June 2, 2014)

Default order vacated where there was delay in sending paperwork to insurance carrier and where defendants have meritorious defense in case alleging race discrimination. *Nash v. S. Orange Maplewood Bd. of Educ.*, No. 14-3718 (D.N.J. Aug. 14, 2014)

Petitioner claimed that the Board engaged in systematic racial discrimination by placing Hispanic and minority children in inclusion classes that were conducted with less academic rigor than non-inclusion classes. No evidence presented to show that disruption occurred in the classroom due to disabled or inclusion students. No evidence presented regarding contention that respondents engaged in systematic racial discrimination by placement of students in inclusion classes. Petitioner failed to present sufficient evidence to permit this matter to go to a hearing; petition dismissed. *M.R. o/b/o B.R.*, Commissioner 2014: July 11

DISQUALIFICATION

Teacher is permanently disqualified from employment in any position within a school district as a result of his 1989 criminal conviction in South Carolina on charges of possession of cocaine; his pardon in 2002 does not remove his criminal record. New Jersey courts have no jurisdiction to expunge South Carolina convictions and thus his argument that his record be deemed purged because New Jersey allows the expungement of convictions for simple possession of controlled substances, fails. Palmer, Commr 2011:September 22.

Commissioner affirms DOE's Office of Criminal History Review that fourth grade teacher is permanently disqualified from employment based on her guilty plea to assault by auto, a third degree crime, where she was driving recklessly while intoxicated, and caused serious bodily injury (disapproving of Parshelunis to the extent it is inconsistent).Markakis, Commr 2011:September 1.

Substitute custodian is disqualified from employment as his criminal history record check revealed two convictions for drug offenses; the statute applies prospectively, and contains no waiver or appeal process to determine whether an individual is rehabilitated. Accordingly, the ALJ affirmed the respondent's action to disqualify petitioner from school employment, and dismissed the petition. *Michaels*, Commr 2013:Jan 28

DRESS CODE

Student wore a Jeff Foxworthy T-shirt to school that was inscribed with "redneck" jokes and suspended pursuant to school district's racial harassment policy. Third Circuit reversed the District Court's refusal to enjoin enforcement of the school district's racial harassment policy. Third Circuit agreed that the school district had a duty to regulate student behavior that materially disrupts class work, involves substantial disorder or invades the rights of others. However, an undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Where a district can point to a well-founded expectation of disruption, based on past incidents of similar speech, a restriction on speech may pass constitutional muster. Sypniewski v. Warren Hills BOE, 307 F.3d 243 (3rd Cir. 2003), reversing 2001 U.S. Dist. LEXIS 25388, September 7, 2001.

DRUG TESTING

Court upholds constitutionality of random drug and alcohol testing program for all students who participated in extracurricular activities and for those who possess school parking permits. Court held policy clearly constitutional under the U.S. Constitution and N.J. Constitution. Court noted that

students' expectations of privacy were reduced in a public school setting; testing was done with minimal intrusion on students' privacy while maintaining their personal dignity; the need for the testing was paramount as there was a necessity to reduce the major drug problem in the school. Joye v. Hunterdon Central Regional High School Bd. of Ed., 176 N.J. 568 (2003), aff'g 353 N.J. Super. 600 (App. Div. 2002), rev'g Superior Court of New Jersey, Law Division, Somerset County, Judge Guterl, Dkt. No. HNT-C-14031-00 (January 4, 2001)

Random drug testing: Temporary restraining order issued requiring school district to cease implementation of policy on random drug testing of pupils who park on campus or are involved in athletics or other extra-curricular activities. Court concluded that policy invades pupils' right to privacy under New Jersey State Constitution. Joye v. Hunterdon Central Regional High School Bd. of Ed., 176 N.J. 568 (2003), aff'g 353 N.J. Super. 600 (App. Div. 2002), rev'g Superior Court of New Jersey, Law Division, Somerset County, Judge Guterl, Dkt. No. HNT-C-14031-00 (January 4, 2001)

Settlement of tenure dismissal charges includes agreement to submit to random drug testing. (99:May 10, Howard)

Vice principal not dismissed, but is permanently reduced on salary guide for mishandling pupils suspected of being under influence of alcohol or drugs. (00:Sept. 21, Graceffo, aff'd with modification St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2402-01T5, April 8, 2003)

District did not violate rights of school bus driver when it dismissed her for refusing to submit to submit to the random drug and alcohol test or complete a SAP ; Court grants district's motion for summary judgment on all seven counts: constitutional violations of privacy, equal protection, due process, unreasonable search and seizure, tortious violation of privacy, intrusion and false light, negligence/intentional misrepresentation/invasion of privacy/defamation, wrongful termination, breach of implied contract, discrimination under NJLAD and due process as well as state claims of defamation, slander, liable, and false light invasion of privacy. Freeman v. Middle Twp. Bd. of Educ., 2012 U.S. Dist. LEXIS 121195 (D.C. N.J. Aug. 27, 2012) (not for publication).

DUE PROCESS

On remand from the Appellate Division, the State Board of Education remanded to State Board of Examiners for consideration of appellant's claim that he was unfairly singled out by the SBE (Toler, Examiners, 2004: Dec. 29); Toler, aff'd by St Bd, 2005: July 1); (Toler v. Examiners, remanded by No. A-5847-04 (App. Div. March 30, 2006)

Commissioner's scope of review in matters involving NJSIAA is appellate in nature, the Commissioner may not overturn an action by NJSIAA absent a finding that NJSIAA acted in a patently arbitrary, capricious or unreasonable manner – nor may she substitute her judgment for that of

NJSIAA, even if she would decide differently in a de novo hearing – where due process has been provided and where there is adequate basis for the decision finally reached. (Leap Academy University Charter School, Commr., 2007: April 3).

Certiorari denied where non-tenured teacher asserted that his non-renewal violated 42 U.S.C. 1983 and 1981. Bradford v. Township of Union Public Schools, 2006 U.S. LEXIS 4030, (May 22, 2006)

Commissioner determined that the Thorough and Efficient clause of the New Jersey Constitution mandated system of equal educational opportunity not equitable tax burdens. (Reiman, Commr 2005: Dec. 27).

Plaintiff alleged that charter school demoted and terminated him based on his race and national origin and in retaliation for his complaints of racial discrimination, in violation of the First and Fourteenth Amendments. District court found that the arbitration clause in Plaintiff's employment contract did not waive his right to a judicial forum for his Section 1981 and 1983 claims. Defendants' motion to dismiss denied. Samukai v. Emily Fisher Charter Sch. of Advanced Studies, Civil Action No. 06-1370, 2007 U.S. Dist. LEXIS 7164, Decided January 29, 2007.

Board proved tenure charges of unbecoming conduct against tenured secretary. Secretary, on several occasions, left work early without permission, failed to heed Board policy prohibition against selling commercial items, despite warnings, and used disrespectful and unprofessional language. Suspension for six months and loss of salary increment deemed appropriate penalty. (McCain, Commr. 2007:July 16, aff'd St. Bd. 2007:December 5)

Upon interlocutory review, motion to compel deposition of sole witness at State Board of Examiners certification hearing granted. No undue hardship, minimal expense. Kandell, St. Bd. 2006: May 3. Examiners had previously reversed ALJ order compelling deposition of sole witness to events in complaint. (Kandell, Exam, 2006: Jan. 30).

Motion for Emergent Relief for approval to continue application process as a private school for the disabled denied. Petitioner cannot prevail on the merits of the claim and is seeking an exception to the requisites of the process which is not granted to other applicants. Approval would go the Office of Special Education Programs to grant preferential treatment compromising the integrity of the application process. (Y.E.S., Commr., 2007:August 15)

School district was properly granted summary judgment on teacher's 42 U.S.C.S. § 1981 racial discrimination claim because record lacked evidence that would allow factfinder to reasonably infer that 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. Ronald Burnett vs School District of Cheltenham Township, 2007:Sept. 20

Commissioner determined that non-certificated employees are first required to request a written statement of reasons for non-renewal and a Donaldson

hearing in order to be entitled to claim a due process denial. (Ruby, II, Commr., 2007: Jan. 22).

A state employee who made public statements as a function of his employment duties could not claim 1st Amendment protection in those statements. Employee was performing employment duties when he wrote a memo regarding the proper disposition of a pending criminal matter. The First Amendment did not prohibit discipline based on the employee's expressions made pursuant to official responsibilities. Remanded for further proceedings. When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. Garcetti vs Ceballos, 2006:May 30

District Court found that parents failed to plead sufficient facts to raise a reasonable expectation that discovery would reveal evidence that the district deprived student of due process rights where parents did not disclose the student behavior that lead to his expulsion in the pleadings. Substantive due process claim dismissed without prejudice. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

Commissioner determined that student faced with short-term suspension is not entitled to due process protections that included a hearing before the board of education, or a written explanation of the reason for the short-term suspension. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

District Court found that plaintiff parent failed to sufficiently plead his case where facts did not demonstrate a violation of the equal protection clause. Count that generally alleged a violation of New Jersey Laws and Regulations failed to provide adequate notice of the specific statutes and regulations alleged to have been violated. Both counts dismissed without prejudice. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

Commissioner found no due process violation where student's representative was not allowed to call or cross-examine witnesses; student had admitted to possessing a firearm on school property. (D.H. o/b/o/ G.H., Commr., 2007: April 5).

While Appellate Division concluded that the State Board of Examiners was justified in determining summarily that the teacher participated in conduct unbecoming a teacher, it remanded the matter to permit further proceedings limited to the teacher's claim that he was selectively and unfairly singled out for revocation of his teaching certificate. (I.M.O. Toler, No. A-5847-04 (App. Div. March 30, 2006)). (Toler, Examiners, 2004: Dec. 29).

Commissioner restores increment withheld from tenured mathematics supervisor. Petitioner proved that board's withholding was arbitrary, capricious and unreasonable and motivated by personal animosity of her supervisor. No independent evaluation was done by the board and the reasons set forth by the supervisor were largely without merit. (Kohn, Commr., 2007:July 19)

Board's motion to dismiss granted in appeal of ALJ's dismissal of plaintiff's due process complaint regarding student suspensions. Complaint deemed insufficient for failure to allege facts related to the suspensions and failure to propose a remedial plan. M.S.-G v. Lenape Reg'l High Dist. Bd. of Educ., Civil Action No. 06-cv-02847 (JHR), 2007 U.S. Dist. LEXIS 5414, Decided January 24, 2007.Court of appeals affirmed the dismissal of parents' challenge to the suspension of their disabled son; the parents' complaint failed to conform to the IDEA's pleading standards. M.S.-G v. Lenape Reg'l High Sch. Dist. Bd. of Educ., No. 07-1567, 2009 U.S. App. LEXIS 604

The State Board of Education directs the State Board of Examiners to make its decisions available (Confessore, Exam, Order of Suspension, 2005: Nov. 9 (Confessore, St Bd. decision on motion, 2006: Jan 4).(Confessore, Exam, Order of Suspension, 2006: Jan. 27).(Confessore, St Bd. 2006: March 1).

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Motion to dismiss denied. Plaintiff alleged facts sufficient to state a conspiracy between the local education association and superintendent of schools such that the local education association could be considered as acting under the color of state law for the purposes of § 1983 liability. The allegations raised were sufficient to allege that the local 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 Educ., Civil Action No. 05-70(NLH), 2007 U.S.

Court denies district's motion for reconsideration of its decision denying in part district's motion for summary judgment, in a matter alleging district violations of the student's rights to due process, equal protection and under the LAD, and Civil Rights Act , when it acted with deliberate indifference to a racially hostile environment by transferring student to an alternative placement after he had been the victim of several racially harassing incidents. Lee v. Lenape Valley Reg'l Bd. of Educ., Civil Action No. 06-CV-4634 (DMC), 2009 U.S. Dist. LEXIS 76997 (D. N.J. August 26, 2009) (not for publication)

In matter arising out of one staff member's suspension and the other's dismissal, the court granted 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, (D. N.J. Aug. 26, 2008)(not for publication); reconsideration

District court dismisses action filed by transferred maintenance worker and spouse, former teacher's aide, alleging deprivation of rights under the NJ LAD, Sec. 1983, the fourteenth amendment and retaliation regarding his transfer and her non-renewal. Spoliation of videotape evidence claim dismissed. Aurelio v. Bd. of Educ., No. 06-3146 (JLL), 2009 U.S. Dist. LEXIS 52759 (D. N.J. June 23, 2009)affirmed by Aurelio v. Bd. of Educ., 2010 U.S. App. LEXIS 7069 (3d Cir. N.J. Apr. 6, 2010)

Computer technician brings Section 1983 action against board for firing him. Court finds (after thorough analysis) that he was provided the procedural due process required under Mathews and Loudermill. Edward Biliski v. Red Clay Consolidated School District, 2009 U.S. App. LEXIS 16683 (3d Cir. Del., July 29, 2009) (Precedential)

District Court determined that board of education violated board attorney's procedural due process rights where board permitted sending-district representatives to vote on the attorney's appointment to the receiving district. Board members were not entitled to legislative immunity because sending-district participation was beyond parameters established by the Legislature and therefore the appointment was not procedurally legislative. Gallagher v. Atlantic City Bd. of Ed., Civil No. 08-3262, 2009 U.S. Dist. Lexis 16548 (D. N.J. Feb. 27, 2009).

High school music teacher alleged that his contract non-renewal constituted First Amendment Retaliation under 42 U.S.C. § 1983 and age discrimination pursuant to the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621 et seq. and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. No evidence was presented, either direct or circumstantial, that cast sufficient doubt on the board's articulated reasons for refusing to renew Plaintiff's employment contract. Summary judgment was granted as to all claims. Saia v. Haddonfield Area Sch. Dist., Civil Action No. 05-2876, 2007 U.S. Dist. LEXIS 67018, (D. N.J. September 10, 2007)

Board's motion to dismiss granted in appeal of ALJ's decision denying plaintiffs reimbursement of costs associated with placement at private educational institution. Board had provided an IEP that would provide FAPE and a meaningful educational benefit. Plaintiffs had failed to engage in IEP process in good faith. E.G. v. Lakeland Reg'l High Sch. Bd. of Educ., Civil Action No. 05-3607 (GEB), 2007 U.S. Dist. LEXIS 4274, Decided January 22, 2007.

District Court determined that no fundamental right to a public education is protected under the federal constitution. However, the 14th Amendment requires a rational review of an infringement of the right to a public education granted to state residents under the state constitution. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

Appellate Division reversed trial court, determining that plaintiff's substantive due process cause of action under the New Jersey Civil Rights Act, a non-tenured gym teacher who was terminated pursuant to an employment

contract should have been dismissed at the conclusion of plaintiff's case. Plaintiff had no cognizable property right entitled to substantive due process protection. Matter was remanded for entry of judgment in favor of the school district. Plaintiff was a non-tenured physical education teacher who had been dismissed pursuant to a contractual 30-day termination clause. Trial court's judgment was in the amount of $175,286.75, including $31,392.63 in damages and pre-judgment interest and $ 143,894.12 in counsel fees. Filgueiras v. Newark Pub. Schs, 426 N.J. Super. 449 (App. Div. 2012) ; 45 A.3d 986 (App. Div. 2012); Decided June 18, 2012.

Motion to dismiss denied. Plaintiff sufficiently alleged a malicious abuse of process claim that demonstrates Defendant's allegedly coercive ulterior motives. The "further acts" following the issuance of process include:(1) protracting the tenure litigation for false, pretextual, and spurious reasons in order to prolong and heighten the personal cost to Plaintiff; (2) Assigning plaintiff to "a rubber room" when his cross examination was scheduled to begin; (3) Opposing Plaintiff's admission into Pretrial Intervention; (4) Attempting to undo Plaintiff's expungement after he was found not guilty in the criminal matter; and (5) Filing a DYFS complaint after Plaintiff's acquittal of criminal charges. *Melillo v. Elizabeth Bd. of Educ*., Civil Action No. 11-4887 (SDW) (MCA), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 182018, Decided, December 27, 2012.

Substitute teacher who was arrested based on allegation of physical assault upon a student and ultimately acquitted of all charges, was afforded due process despite the fact that the arresting officer failed to interview all potential witnesses. *Jenkins v. Orange Police Dept.*, Dkt. No. 2:11-1555; (D.N.J. Sept. 29, 2014)

DYFS

Child placed in out-of-state facility by State agency: Presumption of correctness of address provided by DYFS, was rebutted by board of education; parent did not reside in district on date child was placed by DYFS. (01:Feb. 8, Morris Hills)

District in which student lived, albeit for a few weeks, prior to placement by DYFS in a Skill Development Home, was the district of residence responsible for the student's educational costs. N.J.S.A. 18A:7B-12b, N.J.A.C. 6A:23-5.2. (03:June 18, Wallkill Valley, settlement approved St. Bd. 04:Feb. 4)

Division of Development Disabilities Law, together with school funding law and laws regarding disabled students, compel the conclusion that where a classified pupil is placed by DDD in a group home, district of residence is responsible not only for tuition, but also for transportation costs; district

where group home is located is not responsible. West Windsor-Plainsboro, App. Div. unpub. op. Dkt. No. A-4919-01T1, July 1, 2003, reversing St. Bd. 02:April 3 and 00:Sept. 5.

DYFS established that teacher committed sexual abuse upon student, and teacher's name will therefore be retained on DYFS's central registry. DYFS v. B.B., App. Div. unpub. op. Dkt. No. A-4146-01-T2. See also, local district's withholding of increment and certification of tenure charges upheld. Teacher dismissed from employment. (St. Bd. 04:Dec. 1, B.B.)

DYFS' failure to notify district of its placement decision deprived district of opportunity to participate in decision; remanded for determination of whether such failure affects district's responsibility for cost of placement, as regulations no longer require participation of district of residence in placement of classified pupil. (99:Dec. 23, Highlands)

DYFS has no obligation to conduct independent investigation of residence but may rely on information received from the Department of Human Services. (99:March 22, Newark v. Dept of Ed.)

DYFS placement: Pursuant to N.J.S.A. 18A:7B-12(b), board was district of residence for classified child because child lived with his mother prior to DYFS placement and because mother currently resides in the district. (99:Dec. 23, Highlands)

School district of residence, under both new and repealed regulation, has the responsibility for non-residential special education costs of pupil placed by DYFS in approval residential private school. (00:Sept. 11, Highlands)

EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT (EFCFA)

Commissioner denies the issuance of $12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)

Commissioner orders the issuance of $19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Educational Facilities Construction and Financing Act (EFCFA) does not violate the State Constitution's Debt Limitation Clause (Clause), N.J. Const., Art. VIII, § 2, ¶ 3. Appellate Division affirmed the Law Division's ruling that while the State Constitution's Debt Limitation Clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay without prior approval by public referendum, the Clause is not violated here because successive Legislatures are not bound to make the appropriations to pay on the bonds. Lonegan; Stop the Debt.com v. State of New Jersey, 341 N.J. Super. 465 (App. Div. 2001)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

EDUCATIONAL SERVICES COMMISSIONS

Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (00:Jan. 2, Anders, settlement approved St. Bd. 02:Jan. 2)(02:Dec. 2, Trigani)

Board violated N.J.A.C. 6:28-3.1 and Elson by subcontracting LDTC services to Ed. Services Commission as substitute during LDTC's sabbatical leave. (98:Oct. 5, South Amboy)

Educational Services Commission must refund DOE $90,709 in unused Chapter 192-93 funds with interest earned. Chapter 192-93 funds that were borrowed from that account to fund salary differential payments under TQEA had to be repaid. (99:April 16, Middlesex County)

N.J.S.A. 18A:46-25 does not authorize jointure commission to contract with participating board of education to provide guidance services to non-handicapped students. Boards can county establish educational services commissions under N.J.S.A. 18A:46-14 to provide a broad range of services to handicapped and non-handicapped students. Colantoni v. Long Hill Bd. of Ed., 329 N.J. Super. 545 (App. Div. 2000)

The State has no duty to subrogate itself to the losses by embezzlement suffered by an Educational Services Commission. (99:Feb. 5, Middlesex County)

ELECTIONS

Ballot: A candidate for board of education is not entitled to use a professional title ("Dr.") preceding his name on the ballot unless authorized to do so by statute or unless using the professional title is necessary to protect the voting public from confusion or deception. Sooy v. Gill, 340 N.J. Super. 401 (App. Div. 2001)

Literature

Flyers encouraging "vote yes;" matter dismissed as untimely. (98:Nov. 17, Pursell)

Referenda

Appeal of decision to not hold a referendum on school prayer and Bible-based curricula dismissed and remanded to Commissioner, pro se petitioner improperly brought appeal directly to State Board. (St. Bd. 05:Aug. 3, I/M/O Inclusion of Certain Questions on the Ballot for the April 2005 Camden School Election)

Commissioner denied petition seeking a cease and desist order where district had already taken corrective action and recurrence was

unlikely where district allowed an article supporting the school budget to be printed in the school paper and distributed in violation of N.J.S.A. 18A:42-4. (05:May 18, Bonette)

Purchase of land: board may purchase land from surplus without passing referendum, so long as voters pass on budget that includes line item reflecting such appropriation of surplus. (00:Aug. 2, Fairfield, St. Bd. rev'g 00:Feb. 17)

Timeliness: Bond referenda could not be challenged after 20 day limit, even though late filing was based on misinformation given by DOE; equitable estoppel did not apply as misrepresentation was error, and not supplied by school board. (98:Nov. 17, Pursell)

Results

Challenge to absentee ballots. Election sought to be set aside due to misconduct in the absentee ballot process that allegedly resulted in 28 illegal votes being case. The court upheld 26 of the 28 absentee ballot votes and upheld the election results. (Simonsen and Lino v. Bradley Beach Board of Education, et al., Law Division, Monmouth County, Dkt. No. L-2288-98, July 8, 1998.)

Challenge to bond referendum dismissed. Town ordinance restricting distribution of first amendment material between 8 p.m. and 9 a.m. was valid and fairly and constitutionally enforced. Vote of 9/14/99 stands and school addition may be built. (White v. O'Malley, Law Division, Monmouth County, Dkt. No. L-4664-99, January 12, 2000.)

School board election results in Spring Lake set side as a legal voter was rejected sufficient to affect the outcome of the election. A new election was ordered between the two effected candidates. (Kirk and Phoebus v. French, Bradshaw, Ulrich, Spring Lake Board of Education and Monmouth County Board of Elections, Law Division, Monmouth County, Dkt. No. L-2267-98, July 6, 1998.)

School bond referendum information (community relations information book) did not unfairly advocate any position. (99:Oct. 5, Adams, aff'd St. Bd. 00:May 3)

ELEC executed Consent Order with candidates for alleged violations of N.J.S.A. 19:44A-1, et seq and accepted $534.00 in fines. (Foley, ELEC, 2001: Oct. 18).

State Board affirms Commissioner's July 6, 2007 ruling that school board improperly spent funds, and Deputy Commissioner's remedy of $88,373 deduction from the board's 2006-07 school budget as a result of the Board having improperly expended 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. (Abbott Funds/Elizabeth,

ELEC clarified the penalties to be paid by candidates and treasurer. Enhanced penalty for repeat offender.(Maynard, ELEC, 2003: Jan. 29).

Appellate Division affirmed Board of Review denial of permission to conduct a withdrawal referendum; withdrawal would result in an excessive debt burden for River Edge and would interfere with maintenance of an efficient system of education in that district without excessive costs. In Re: Petition For Authorization To Conduct A Referendum On The Withdrawal Of The Borough Of Oradell From The River Dell Regional School District, 406 N.J. Super. 198 (App. Div. 2009).

Board of education erred when it disqualified a candidate's nominating petition because the candidate was unregistered to vote when she assented to the candidate's acceptance and oath of allegiance, even though she properly registered to vote before timely filing her nominating petition. Board was directed to accept the nominating petition. Algarin v. Haledon, 408 N.J. Super. 266 (L. Div. 2009)(Passaic Cty, April 1 2009) (approved for publication June 25)

Citizen contended that the Board violated N.J.A.C. 6A:23A-5.2(e) when it hired a consulting firm to allegedly launch a campaign to pass the Board's school budget. Petitioner argued that the Board should be enjoined from compensating the firm and should be required to reimburse monies already paid to the consultant. The ALJ found, and the Commissioner agreed that N.J.A.C. 6A:23A-5.2(e) prohibits promotional efforts to advance a particular position on school elections or any referenda; that there was no evidence that the board presented any one-sided, biased promotion; and "bare-bones" allegation of misconduct could have been uncovered in discovery, which petitioner elected to forego; summary decision is unwarranted. Louie, Commr 2012:May 17(Glassboro)

EMERGENT RELIEF

Commissioner denies emergent relief to pro se parent of 7-year old student who was suspended for violent disruptive behavior and placed on long-term suspension with home instruction; certain issues were mooted by board's agreement to return student to classroom and provide expedited assessments by CST; the request for parent's lost wages, childcare expenses and other damages are denied as outside of Commissioner's authority; nor is there any basis to grant attorney's fees. (B.G., Comm'r., 2008:May 20).

State Board affirms Commissioner's denial of petitioner's motion for emergency relief requesting that he prevail because of extended delay in issuance of the ALJ initial decision. (El-Hewie, St. Bd. 2008:April 16)

Motion for emergent relief denied for failure to meet Crowe v De Gioia standards; (Z.A. o/b/o minor child J.K., St. Bd., 2008: May 22).

State Board denied emergent relief in matter involving revocation of teaching certificates. (Jordan, Commr., 2008: Aug. 13) (Jordan, St. Bd., 2008: March 31) (Motion for emergent relief denied).

Commissioner reinstates and denies parent's application for emergent relief claiming that restrictions placed on her access to school property are unlawful and make it impossible for her to send her 8-year old child to school; Commissioner grants board's counterclaim for interim judgment requiring the parent to send her son to the district school or some other school; Commissioner directs Board to initiate truancy proceedings if parent fails to provide schooling for her son within a week. A.M.M. o/b/o G.M., Commr. 2009:Nov. 30.

Commissioner lacked jurisdiction to decide mother's claim for emergent relief based on allegations of racism, retaliation and other improper motives involving district's placement of her son at alternative school following an alleged assault; since mother disenrolled student, Commissioner lacks jurisdictional authority to grant relief. R.W. o/b/o A.W., Commr. 2009:Dec. 2.

Commissioner determined that student's emergent relief application appealing discipline imposed against her was not moot even though prom and graduation ceremony had already occurred. Emergent relief application also requested that her disciplinary record be cleared. Moreover, a lack of success during an emergent relief application does not deprive the student of the right to plenary hearing on the merits (Jackson v. Morris School District: Commr: 2014, Nov. 24).

Commissioner determined that ALJ was not entitled to rely on the Commissioner's analysis in the underlying emergent relief petition in that the burden of proof in an emergent relief petition is distinguishable from that in a plenary hearing (AAA School v. Passaic County Ed. Svcs. Commn: Commr, 2014, Dec. 18).

EMINENT DOMAIN

Included within the Eminent Domain Act's scheme is the mandate that a condemnor engage in bona fide negotiations with the owner of real property prior to filing a complaint. The Eminent Domain Act further imposes on a government entity seeking condemnation the overriding obligation to deal forthrightly and fairly with property owners in condemnation actions. When government is unwilling or unable to comply with N.J.S.A. 20:3-6, dismissal of its condemnation complaint is not a product of a hyper-technical application of the law. The condemning authority's obligation to conduct good faith negotiations does not end with the furnishing of a written appraisal. Affirmed in part and remanded for dismissal without prejudice. . New United Corp. v. Essex County Vocational-Technical Bd. of Educ., No. A-2014-10T2, A-2302-10T2 (App.Div. Apr. 3, 2012)

EMPLOYEE/PERSONNEL LITIGATION

ADA

Although an employee's claims against the school district under the ADA after a work-related accident, were dismissed by the district court in their entirety on summary judgment, the district court did not abuse its discretion when it denied the district's motion for attorney fees and sanctions as the employee evidently suffered from some sort of medical condition and his claim was not wholly without foundation. 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.Weisberg v. Riverside Twp. Bd. of Ed., No. 05-4190, 2008 U.S. App. LEXIS 1057 (3d. Cir. January 11, 2008)(not precedential)

Where parties agreed that tenured kindergarten teacher was injured in an accident arising out of her course of duties, Commissioner determined that board improperly charged days against her accrued but unused sick leave where board failed to provide a reasonable accommodation upon teacher's request to return to duty. Chism, Commr., 2009: Jan. 7.

Appellate Division affirms State Board's determination that board wrongly terminated a tenured teacher coordinator of cooperative industrial education on grounds of lack of proper certification, where he held an obsolete certificate of "employment orientation" and a 1982 certificate in skilled trades; the certifications in fact enabled him to teach basic level courses that he was in fact teaching such as shop, maintenance and repair with carpentry emphasis, and industrial technology; App. Div. also affirms State Board's reduction of back-pay to $140,167.24, reflecting period time that he would have been subject to RIF and on preferred eligibility list. Ziegler v. Bayonne Bd. of Ed. App. Div.

Benefits

The court upholds P.L. 2010, Chapters 1 - 3, against an array of challenges lodged at the numerous provisions but particularly at Chapter 2's 1.5% base salary contribution for health benefits and the imposition on municipal employees of changes to SHBP negotiated by State employees. The court finds that P.L. 2010 is a valid exercise of legislative authority and does not contravene any statutory or constitutional provisions: it does not violate Article I, Par. 19 of the N.J. Constitution, the EERA, nor the Reform Act; (2) does not impair contract obligations; (3) does not constitute unconstitutional "special legislation"; (4) is not void for vagueness; (5) does not violate Equal Protection; (5) is not a tax; (6) does not run afoul of the Bill Origination Clause of the New Jersey Constitution; (7) is not a "Taking" under the Fifth Amendment of the U.S. Constitution; and (8) comports with both Procedural and Substantive Due Process of the United States Constitution. N.J. State Firefighters' Mut. Benevolent Ass'n et al v. Dept. of Treasury, et al , 2011 N.J. Super. Unpub. LEXIS 154 (Law Div. January 19, 2011)(Mercer Cty)

The Court held that the provision of P.L. 2010, Chapter 2, Section 8, which imposes any changes to SHBP negotiated by the majority representatives for State employees on all State and local employees, does not violate the

Due Process requirements in the Fifth and Fourteenth Amendments to the United States Constitution, does not interfere with the Constitutional right to organize under Article I, Paragraph 19 of the New Jersey Constitution, and is not void for vagueness. Accordingly, the court grants defendant's motion to dismiss the complaint with prejudice. Communs. Workers of Am. v. Dep't of Treasury, 2011 N.J. Super. Unpub. LEXIS 316 (Law Div. Jan 19, 2011). (Mercer Cty)

CEPA/Retaliatory Discharge

Motion for reconsideration denied. No manifest injustice to be prevented due to recently discovered newspaper articles. Veggian v. Camden Bd. of Educ., Civil Action No. 05-0070, 2006 U.S. Dist. LEXIS 79242, (D. N.J. October 31, 2006)

District court dismissed teacher's "whistleblower" claim of retaliation where the teacher failed to show that the allegedly protected speech addressed a matter of public concern. (Carmichael v. Pennsauken Twp. Bd. of Educ., No. 05-0513, 2006 U.S. Dist. Lexis 85447 (D.N.J. Nov. 27, 2006)).

Board's motion for Rule 11 sanctions dismissed for failure to serve opposing counsel before filing the motion with the Court. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

3rd Circuit dismissed appeal of substitute teacher who alleged that the district engaged in various civil rights violations when it determined to reduce his services to the district after the teacher filed a complaint. Roberts v. Newark Public Schools, No. 05-5405, 2007 U.S. Dist. App. LEXIS 9529, (3d Cir. April 25, 2007).

After careful examination of the record in light of the issues raised, the Court affirmed the lower court's involuntary dismissal for lack of evidence/merit, of portions of an employee's complaints in several consolidated actions involving harassment/discrimination claims of intentional infliction of emotional distress, due process, age discrimination, and retaliation. Eunice Belcher vs Trenton School District Board of Education, Commr. 1/22/2007

Teacher's conduct in accompanying a student to therapy sessions was not protected by the First Amendment against infringement by school officials because there was no intent to convey a message supporting special education nor that the teacher's interactions with the student could be understood as conveying such a message. The teacher's actions did not constitute protected activity for purposes of a retaliation claim under 29 U.S.C.S. § 794 of the Rehabilitation Act. Sallie K. Montanye vs Wissahickon School District, et. al., Commr. 2/22/2007

High school music teacher alleged that his contract non-renewal constituted First Amendment Retaliation under 42 U.S.C. § 1983 and age discrimination pursuant to the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621 et seq. and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. No evidence was presented, either direct or circumstantial, that cast sufficient doubt on the board's articulated reasons

for refusing to renew Plaintiff's employment contract. Summary judgment was granted as to all claims. Saia v. Haddonfield Area Sch. Dist., Civil Action No. 05-2876, 2007 U.S. Dist. LEXIS 67018, (D. N.J. September 10, 2007)

Court affirmed district court dismissal of teacher's 42 U.S.C.S. §§ 1981 , 1983, 1985(3), tort, and breach of collective bargaining agreement and breach of fair representation claims against union and school district because they were time-barred. As to Title VII claims, teacher failed to show that district's proffered reason for firing him, financial improprieties, was pretextual. Teacher had filed suit three years after receiving a termination notice. Dr. Basant Chatterjee vs Philadelphia Federation of Teachers School District of Philadelphia, et. al., Commr. 1/24/2007

Employee demonstrated a retaliatory employment action where board suspended and terminated employee for alleged purchasing policy violations but did not suspend and/or teminate other employees for those same violations. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

Public school employers were improperly granted summary judgment on principal's First Amendment retaliation claim. Employers' failure to renew the employee's employment contract constituted adverse employment action for purposes of employee's First Amendment retaliation claim for "whistleblowing" activities. Principal's resignation occurred only after notification that employer planned to non-renew his contract. Non-renewal was actionable conduct; a demotion in title and salary. Lapinski v. Bd. of Educ., No. 04-1709, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 163 Fed. Appx. 157, 2006 U.S. App. LEXIS 1989, Filed January 24, 2006.

Former teacher files CEPA claim that board retaliated against him because he told students to complain about method of punishment used by vice principal; Court finds that his actions could constitute "objecting" to the punishment under CEPA, denies Board's motion to dismiss for failure to state a claim, and permits matter to go forward. Rivera v. Camden Bd. of Ed., 634 F. Supp. 2d 486, 2009 U.S. Dist. LEXIS 58634 (July 10, 2009).

In summary judgment motion by teacher who claimed that the board retaliated against him for raising attention to safety and other issues, by requiring him to undergo psychiatric examination, and claiming they violated CEPA and his civil and First Amendment rights, court denies board's motion to dismiss the CEPA and First Amendment claims; negligence and conspiracy claims are dismissed. Blevis v. Lyndhurst Bd. of Educ., 2009 U.S. Dist. LEXIS 89908 (D.N.J. Sept. 25, 2009)

In matter arising out of one staff member's suspension and the other's dismissal, the court granted 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, (D. N.J. Aug. 26, 2008)(not for publication); reconsideration Appellate Division affirms trial court's summary judgment dismissal of school principal's CEPa claims of retaliation when board reprimanded and suspended him. Brown v. N.B. Bd. of Educ., (A-2501-07T2, 2009 N.J. Super. Unpub. LEXIS 596 (App. Div. March 20, 2009).

Court granted partial summary judgment in favor of the school district, in a matter arising out of a teacher's allegations that she experienced retaliation and a hostile work environment after reporting an alleged grade-fixing scheme at a district school. The Court found that her reporting was done as a public employee, not as a private citizen, and thus, free speech rights did not protect her communications from employer discipline. Union's motion for summary judgment regarding teacher's claim for breach of fair representation is denied. Veggian v. Camden

District court grants summary judgment to board anddismisses action filed by transferred maintenance worker and spouse, former teacher's aide, alleging deprivation of rights under the NJ LAD, Sec. 1983, the fourteenth amendment and retaliation regarding his transfer and her non-renewal. Spoliation of videotape evidence claim is rejected. Aurelio v. Bd. of Educ., No. 06-3146 (JLL), 2009 U.S. Dist. LEXIS 52759 (D. N.J. June 23, 2009), affirmed by Aurelio v. Bd. of Educ., 2010 U.S. App. LEXIS 7069 (3d Cir. N.J. Apr. 6, 2010)

Civil Rights

District Court awarded attorney fees to school board attorney who was the prevailing party in a frivolous § 1983 action. Federal claims were instituted as a pretext to duplicate claims that were already in litigation in state court. Moran v. Southern Regional High School District Board Of Education, 2006 U.S. Dist. LEXIS 21100 (DNJ, April 10, 2006)

District court dismissal affirmed. Because civil service employee did not produce evidence to establish a causal connection between his First Amendment expression and his termination, his retaliation claim failed. County asserted that employee was fired for abandoning his job. Employee's due process rights were not violated when county withheld pay without a hearing. Employee had not performed any services for county in over two years and had agreed to cease receiving a paycheck and seek other work. Juan C. Espinosa, Maureen Roig-Espinosa vs County of Union, State of New Jersey, PBA Union county, Commr. 1/9/2007

District court dismissal affirmed. Because civil service employee did not produce evidence to establish a causal connection between his First Amendment expression and his termination, his retaliation claim failed. County asserted that employee was fired for abandoning his job. Employee's due process rights were not violated when county withheld pay without a hearing. Employee had not performed any services for county in over two years and had agreed to cease receiving a paycheck and seek other work. Juan C. Espinosa, Maureen Roig-Espinosa vs County of Union, State of New Jersey, PBA Union county, 1/9/2007

A teaching job applicant's federal claims were properly dismissed. 42 U.S.C.S. §§ 2000e-2(a), 1981, did not provide relief for alleged age discrimination. Issue preclusion applied to bar applicant's previously-litigated ADEA claim. 5 U.S.C.S. § 552 did not apply to state agency. The No Child Left Behind Act did not create a private right of action. Harry Dunleavy vs State of New Jersey, Montville Bd of Ed., Commr. 10/16/2007 42 U.S.C.S. § 12202 of Title II of the ADA was an abrogation of state sovereign immunity and thus, a disabled inmate's challenge to the conditions of his confinement under Title II of the ADA was not barred by the Eleventh Amendment. United States vs Georgia, Commr. 1/10/2006

Public school employers were improperly granted summary judgment on principal's First Amendment retaliation claim. Employers' failure to renew the employee's employment contract constituted adverse employment action for purposes of employee's First Amendment retaliation claim for "whistleblowing" activities. Principal's resignation occurred only after notification that employer planned to non-renew his contract. Non-renewal was actionable conduct; a demotion in title and salary. Lapinski v. Bd. of Educ., No. 04-1709, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 163 Fed. Appx. 157, 2006 U.S. App. LEXIS 1989, Filed January 24, 2006.

Commissioner determined that teacher was not entitled to indemnification for the reasonable legal fees and costs of her defense against a criminal complaint filed against her where criminal matter was dismisse pursuant to her successful completion of PTI. (Lonky, Commr., 2008: July 7)

Pursuant to 42 U.S.C. 1983, a plaintiff must show 1) the conduct complained of was committed by a person acting under color of law; and 2) the conduct deprived the plaintiff of rights guaranteed by the United States Constitution. (Carmichael v. Pennsauken Twp. Bd. of Educ., No. 05-0513, 2006 U.S. Dist. Lexis 85447 (D.N.J. Nov. 27, 2006)).

Employee demonstrated a retaliatory employment action where board suspended and terminated employee for alleged purchasing policy violations but did not suspend and/or teminate other employees for those same violations. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

District court judgment affirmed. School district and superintendent were properly granted summary judgment in elementary principal's action alleging that her suspension without pay and termination proceedings violated due process. State secretary of education's decision to review record of school board proceedings without additional live testimony did not violate due process and principal could challenge secretary's ruling in state appeal. . Belas v. Juniata County Sch. Dist., No. 05-4385 , 2006 U.S. App. LEXIS 25793, (3d. Cir. October 18, 2006)

Commissioner determined that teacher was entitled to indemnification for the reasonable legal fees and costs of her defense against the two civil lawsuits filed against her. (Lonky, Commr., 2008: July 7)

A state employee who made public statements as a function of his employment duties could not claim 1st Amendment protection in those statements. Employee was performing employment duties when he wrote a memo regarding the proper disposition of a pending criminal matter. The First Amendment did not prohibit discipline based on the employee's expressions made pursuant to official responsibilities. Remanded for further proceedings. When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. Garcetti vs Ceballos, Commr. 5/30/2006

Where allegations of age discrimination made in teacher hiring, age discrimination claims under the ADEA and New Jersey Law Against Discrimination failed because pretext was not established; defendants heavily weighted the quality of the demonstration lesson. Dunleavy v. Mount Olive Twp., No. 05-3922, (3d Cir. June 2, 2006) affirming Dunleavy v. Mount Olive Twp., 2005 U.S. Dist. LEXIS 16040 (D.N.J., July 29, 2005)

Court affirms summary judgment against school district concerning violations of the ADEA among other laws. The district court determined that the teachers had submitted evidence tending to cast doubt on the school district's reason for its employment decisions, chiefly that the younger teachers hired had teaching certifications that were much rarer, and in greater demand, than those of the teacher-plaintiffs. Heller vs Elizabeth Forward School District, 5/31/2006

Motion to dismiss denied. Plaintiff alleged facts sufficient to state a conspiracy between the local education association and superintendent of schools such that the local education association could be considered as acting under the color of state law for the purposes of § 1983 liability. The allegations raised were sufficient to allege that the local 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 Educ., Civil Action No. 05-70(NLH), 2007 U.S.

District Court determined that $250/hour was a reasonable fee in defending against federal constitutional claims, given the customary fee in the District of New Jersey and the attorney's experience. Court awarded attorney $9496.31 in fees and costs. Attorney was forced to defend against frivolous federal constitutional claims. Moran vs Southern Regional High School District, 4/10/2006

District Court held that confidentiality in tenure dismissal proceeding is a state statutory right. A federal constitutional right cannot be created by a state statutory provision. Disclosure of terms contained in a settlement agreement regarding employee's resignation was a breach the agreement or of a statutory provision, not a violation of the employee's constitutional right to privacy. Consequently, employee's 1983 claims were brought

without a viable legal foundation entitling defendant to an award of attorney fees. Moran vs Southern Regional High School District, 4/10/2006

Plaintiff alleged that charter school demoted and terminated him based on his race and national origin and in retaliation for his complaints of racial discrimination, in violation of the First and Fourteenth Amendments. District court found that the arbitration clause in Plaintiff's employment contract did not waive his right to a judicial forum for his Section 1981 and 1983 claims. Defendants' motion to dismiss denied. Samukai v. Emily Fisher Charter Sch. of Advanced Studies, Civil Action No. 06-1370, 2007 U.S. Dist. LEXIS 7164, Decided January 29, 2007.

Court affirmed district court dismissal of teacher's 42 U.S.C.S. §§ 1981 , 1983, 1985(3), tort, and breach of collective bargaining agreement and breach of fair representation claims against union and school district because they were time-barred. As to Title VII claims, teacher failed to show that district's proffered reason for firing him, financial improprieties, was pretextual. Teacher had filed suit three years after receiving a termination notice. Dr. Basant Chatterjee vs Philadelphia Federation of Teachers School District of Philadelphia, et. al., 1/24/2007

School district was properly granted summary judgment on teacher's 42 U.S.C.S. § 1981 racial discrimination claim because record lacked evidence that would allow factfinder to reasonably infer that 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. Ronald Burnett vs School District of Cheltenham Township, 9/20/2007

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. Pursuant to N.J.S.A. 18A:36-19 and N.J.A.C. 6A:32-2.1, the records are student records which must be returned to the Board as the counselor is no longer assigned educational responsibility for these students. (Welty, Comm'r., 2008:May 12).

At-will employment clause in district's employment contract did not allow board to terminate employee for exercising his 1st Amendment right to Freedom of Speech. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12

Court holds that teacher's as-applied challenge to the board's mailbox policy (requiring permission to distribute personal correspondence through the mailboxes) and section 1983 cause of action are not barred by res judicata and may proceed as these were not addressed on their merits by the Court of Appeals in Policastro I; however Court grants motions to dismiss overbreadth challenge as it was already addressed in Policastro I, and to dismiss vagueness claim, as it could have been brought in Policastro I. Policastro v. Tenafly Bd. of Educ., Civ. No. 09-1794 (DRD), 2009 U.S. Dist. LEXIS 64461 (D. N.J. July 30, 2009) (not for publication)

To establish that a defendant acted under color of state law, a plaintiff must show that the defendant exercised power possessed by virtue of state law and made possible only because the defendant was clothed with the authority of state law. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

The fact that an employee mistakenly believed that a public contract required public bidding did not detract from the fact that the public contract was a matter of public concern for 1st Amendment analysis purposes. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

District Court's grant of summary judgment in favor of school district affirmed. Secretary alleged that she was denied promotions and ultimately constructively discharged on the basis of race. Denial of a promotion is generally a discrete event whose consequences are immediate and require a prompt response under Title VII; secretary did not demonstrate a pattern or practice of continuing discrimination allowing her to avoid the 300-day time limit. No evidence that proffered reason for termination was pretextual or that racial animus was a motivating factor. Taylor v. Brandywine Sch. Dist., No. 05-4803, 2006 U.S. App. LEXIS 24643, (3d. Cir. September 29, 2006)

Motion for reconsideration denied. No manifest injustice to be prevented due to recently discovered newspaper articles. (Veggian v. Camden Bd. of Educ., Civil Action No. 05-0070, 2006 U.S. Dist. LEXIS 79242, (D.N.J. October 31, 2006))

Court determined that for 1st Amendment purposes, allegation of "bid rigging" in the public contracting process was a matter of public concern. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

In order for an employee to claim that he has engaged in protected speech, the speech must involve a matter of public concern, his interest in the speech must outweigh the state's interest in promoting the efficient delivery of public services, and that the speech was a motivational factor in the allegedly retaliatory employment action. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

To establish a 42 U.S.C. 1983 claim, a plaintiff must demonstrate that the offending conduct was committed by a person acting under color of state law and that the conduct deprived the plaintiff of rights, privileges, or immunities guaranteed by the federal constitution or state laws. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

Certiorari denied where non-tenured teacher asserted that his non-renewal violated 42 U.S.C. 1983 and 1981. Bradford v. Township of Union Public Schools, 2006 U.S. LEXIS 4030, (May 22, 2006)

Summary judgment motion granted to school district in matter involving allegations of age and gender discrimination by school district, county board of freeholders and county police academy regarding police officer

certification training of school district educational enforcement officer. Employee did not knowingly and substantially assist in the alleged discriminatory activities. King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243 (JBS), 2006 U.S. Dist. LEXIS 73606, (D. N.J. September 29, 2006). See also, King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. Nov.14, 2007), 2007 U.S. Dist. Lexis 84063.

While a public employee has the constitutional right to speak publicly on matters of public concern without fear of retaliation, a public employer also has the right to exercise control over its workforce and has an interest in efficiently providing public services without disruption from its employees. (Scott v. East Orange Bd. of Ed., No 01-4171, 2006 U.S. Dist. Lexis 93723 (D.N.J. Dec. 12, 2006)).

Provisional teacher filed civil rights claim alleging discrimination in his non-renewal. Plaintiff's section 1983 claim fails, but section 1981 claims are remanded for hearing on preclusive effect that ALJ determinations have on state law claims. El-Hewie v. Bergen County, 2009 U.S. App. LEXIS 20689 (3d Cir. N.J. Sept. 17, 2009)(not precedential)

Lunch aid claims that board reduced her hours, transferred her to another school, and terminated her due to her race in violation of Title VII. Court dismisses on board's motion for summary judgment as aid fails to make a prima facie showing of an inference of discrimination, and because she is unable to prove that the board's reasons for taking the alleged adverse actions were pretextual. Mentor v. Hillside Bd. of Educ., Civil No. 08-CV-1173 (DMC), 2009 U.S. Dist. LEXIS 68174 (D. N.J. August 5, 2009) (not for publication)

Computer technician brings Section 1983 action against board for firing him. Court finds (after thorough analysis) that he was provided the procedural due process required under Mathews and Loudermill. Edward Biliski v. Red Clay Consolidated School District, 2009 U.S. App. LEXIS 16683 (3d Cir. Del., July 29, 2009) (Precedential)

District court grants summary judgment to board anddismisses action filed by transferred maintenance worker and spouse, former teacher's aide, alleging deprivation of rights under the NJ LAD, Sec. 1983, the fourteenth amendment and retaliation regarding his transfer and her non-renewal. Spoliation of videotape evidence claim is rejected. Aurelio v. Bd. of Educ., No. 06-3146 (JLL), 2009 U.S. Dist. LEXIS 52759 (D. N.J. June 23, 2009) affirmed by Aurelio v. Bd. of Educ., 2010 U.S. App. LEXIS 7069 (3d Cir. N.J. Apr. 6, 2010)

In matter brought by assistant principal seeking damages under the Family and Medical Leave Act and New Jersey's Law Against Discrimination.for Board's refusal to renew his contract, court upholds order requiring disclosure of his psychological records to board. Levine v. Voorhees Bd. of Educ., 2009 U.S. Dist. LEXIS 78851 (D.N.J. Sept. 1, 2009) (subsequent proceedings Dec. 23, 2009, 2009 U.S. Dist. LEXIS 119263)

In summary judgment motion by teacher who claimed that the board retaliated against him for raising attention to safety and other issues, by requiring him to undergo psychiatric examination, and claiming they violated CEPA and his civil and First Amendment rights, court denies board's motion to dismiss the CEPA and First Amendment claims; negligence and conspiracy claims are dismissed. Blevis v. Lyndhurst Bd. of Educ., 2009 U.S. Dist. LEXIS 89908 (D.N.J. Sept. 25, 2009)

Contracts

Principal's alleged "blackballing" of substitute teacher did not violate implied covenant of good faith and fair dealing because substitute teacher was an "at will" employee. Roberts v. Newark Public Schools, No. 05-5405, 2007 U.S. Dist. App. LEXIS 9529, (3d Cir. April 25, 2007).

Board's termination of teacher who possessed elementary teaching certificate did not violate her tenure rights as she had never acquired tenure where she had been employed as media specialist -- first as a long term substitute for a teacher on leave, and then under an emergency certificate -- and where she taught Character Education, a subject for which no certificate is required. Matter remanded for findings with regard to whether there was an entitlement to 60-days' notice of termination. (Boyce, Commr. 2007:May 21)

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 declines to address ALJ's conclusion that a mid-term termination of a teacher does not require statement of reasons or hearing as with a nonrenewal. (Martell-Dimaio, Comm'r., 2008:May 9).

Provisional teacher claims that board's failure to renew his contract violated his contract violated laws and regulation governing provisional teachers, and discriminated against him. Matter is dismissed as it involves the same claims or arose out of claims that were dismissed by the Commissioner in previous litigation and on appeal in Superior Court. The teacher's contrived attempts to classify his claims in different terms or to name different individuals as respondents are rejected. (El Hewie, Commissioner 2008: November 13)(El Hewie, Commr., 2008:April 10) (Consolidated cases)

Principal did not tortiously interfere with substitute teacher's economic relationship with the school district by allegedly "blackballing" teacher. Principal had the authority to exclude substitute teachers from his school. Roberts v. Newark Public Schools, No. 05-5405, 2007 U.S. Dist. App. LEXIS 9529, (3d Cir. April 25, 2007).

Supreme Court reversed Appellate Division, holding that although a public employee representative's grievance was untimely filed, an arbitrator properly considered it under "continuing violation" doctrine, as representative argued that each time board of education failed to provide

paid health insurance benefits to part-time professional employees working more than 20 hours, there was separate violation of the parties' collective negotiations agreement. Appellate Division had ruled grievance was untimely filed and that arbitrator had exceeded his authority by applying the "continuing violation" doctrine. Board of Educ. of the Borough of Alpha v. Alpha Educ. Ass'n, 190 N.J. 394(2006),

Commissioner vacated the board of education's head basketball coach appointment. Appointed head coach was not properly certified, the first criteria of N.J.A.C. 6A:9-5.19. Additionally, qualified, certified applicants existed and no application for waiver to the county superintendent was made or granted. Commissioner declined to appoint a new coach as the potential new coach was not a party to the proceeding nor was his appointment requested as part of the relief. (Paterson Eastside, Commr., 2007:July 13)

GRC determined that since no records relevant to the OPRA request existed, there would not be an unlawful denial of access. Records requested included superintendent's salary for the 2006-2007 school year, cost of a car provided to the superintendent, any additional compensation paid to the superintendent and any compensation from the Grants Administration to the superintendent. Donohue v. Salem County Vocational Technical High School GRC Docket No. 2006-164, Decided November 15, 2006.

Matter involving appointment of principals dismissed for lack of prosecution. (Herron, Commr., 2007:August 13)

Commissioner determined that N.J.S.A. 40:8A-1 et seq regarding subcontracted services of a business administrator is separate and distinct from N.J.S.A. 18A:17-24.1, which controls the shared services of a business administrator. Board need not vcomply with both statutes. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7).

Petitioner's claim for payment of accrued vacation/personal days and health insurance waiver deemed moot. Payment in full for post-judgment interest made entire matter moot. (Kaprow, Commr., 2007:July 23, affirmed St. Bd. 2007:December 5)

District court judgment affirmed. School district and superintendent were properly granted summary judgment in elementary principal's action alleging that her suspension without pay and termination proceedings violated due process. State secretary of education's decision to review record of school board proceedings without additional live testimony did not violate due process and principal could challenge secretary's ruling in state appeal. . Belas v. Juniata County Sch. Dist., No. 05-4385 , 2006 U.S. App. LEXIS 25793, (3d. Cir. October 18, 2006)

Appellate Division determined that home instruction teacher was not eligible for unemployment benefits because she had "reasonable assurance" that she would be offered employment for the upcoming school year. Ashner v. Board of Review, A-2509-04 (App. Div. June 13, 2006) (unpublished slip op. at 4).

Appellate Division dismissed complaint alleging that transfer of physical education teacher was disciplinary in nature because the teacher refused to perform after-school bus duty, asserting that such duty was a violation of the collective bargaining agreement. Court held that transfer was for operational and staffing concerns more than discipline. Old Bridge Twp Education Assn v. Old Bridge Twp. BOE, A-5245-04 (App. Div. June 30, 2006) (unpublished slip op. at 6).

State Board affirms Commissioner decision upholding board's decision to subcontract board secretary and school business administrator position in favor of Interlocal Services Agreement with county vocational district. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7). Affirmed, No. A-5555-05 (App. Div. Aug. 7, 2007) (slip op. at 17). Cert. denied, 193 N.J. 222 (2007).

Non-tenured clerk, without contract providing for 60 days' notice of termination, entitled to pay until end of school year (79:29, Jones aff'd St. Bd. 79:29)

Order of the trial court compelling the Board to reinstate employee reversed. Order enforced judgment affirming arbitrator's decision to set aside board's termination. Appellate Division, April 17, 2009, reversed trial court and reinstated board's termination. Matter is pending before the New Jersey Supreme Court. Linden Bd. of Ed. v. Linden Ed. Ass'n, Docket No. A1331-08T3, App. Div., unpublished, December 7, 2009.

The Supreme Court reversed the Appellate Court below, in holding that the mid-term termination of a custodian was arbitrable under the procedures contained in the collectively negotiated agreement (CNA). Held that language need not parrot that of Pascack Valley to require arbitration; and individual contract terms will yield where they conflict or diminish right to arbitration set forth in CNA. Mount Holly Twp. Bd. of Educ. v. Mount Holly Twp. Educ. Ass'n, 199 N.J. 319(2009) (June 24, 2009)

Board's use of a private contractor rather than a school employee to provide speech language services to a classified minor child was challenged. School district speech therapist received no loss of pay or benefits as a result of this decision. As there was no allegation of any violation of tenure, seniority rights, or any other school law rights, the matter was dismissed for lack of jurisdiction. Long Beach Island Education Association, Commr. 2009: October 13

Appellate Division vacates Chancery Division order restraining arbitration of dispute regarding school district obligation to provide health benefits to employees working between 20 and 32 hours per week and directs arbitration in accordance with the CBA. Berlin Borough Bd. of Educ. v. Berlin Teachers' Ass'n, (A-4715-07T2) 2009 N.J. Super. Unpub. LEXIS 1123 (App Div. May 13, 2009)

Non-tenured custodian dismissed by the board. Refused to submit to a medical examination as Superintendent attempted to verify, pursuant to Article 10A of the collective bargaining agreement, the legitimacy and scope of petitioner's claimed inability to work due to continuing illness, after a four-month absence from employment. Refusal to submit to the directed

examination was an act of insubordination constituting good cause, under the collective bargaining agreement, for dismissal prior to the expiration of his individual employment contract. Commissioner lacked jurisdiction, petition dismissed. Jeanette, Commr. 2009: September 16

The Supreme Court reversed the Appellate Division and confirmed an arbitrator's authority to consider discipline other than termination of a custodian, where the parties' collective bargaining agreement did not define "just cause" and where arbitrator believed that the board's action to terminate a custodian who cleaned while girls were changing clothes in the room, was disproportionate to the gravity of the misconduct, and imposed the suspension. The Court remanded the case to the trial court for reinstatement of the arbitration award.Linden Bd. of Educ. v. Linden Educ. Ass'n, 2010 N.J. LEXIS 507 (June 8, 2010) reversing Linden Bd. of Educ. v. Linden Educ. Ass'n, (A-1236-07T3,)

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Criminal History Background

State Board grants DAG request to remand matter back to State Board of Examiners for further review. State Board of Examiners had revoked appellant's county substitute credential because of aggravated assault conviction but had been unaware that appellant had been admitted into pre-trial intervention program. (Kaufman, St. Bd. 2007:May 2)

Examiners revoked the certificates of an ESL and Spanish teacher who pleaded guilty to sexual assault and was ordered to forfeit her public office. I.M.O. Gallagher, Bd. Exam. 2006: June 12.

Applicant's failure to submit an array of supporting evidence including letters of corroboration and character attestation from supervisors, co-workers, teachers, clergy, long-time acquaintances or persons with whom the candidate shared a relationship of particular trust; certificates of completion of drug, alcohol or self-help programs; copies of diplomas, transcripts or other indicators of educational attainment; and evidence of involvement in community and volunteer programs weighed against restoration to maintenance worker's position. (Nunez, St. Bd. 2007:July 18)

Commissioner rejected maintenance worker's application for restoration where ALJ lacked a basis to conclude that maintenance worker had no contact with children. (Nunez, St. Bd. 2007:July 18)

Commissioner terminated school security guard based on 2003 remedial review of criminal history. Security guard had been employed prior to 1998 change in criminal history statute, but district failed to request criminal history review upon hire. Standards in effect at the time of the review are to be applied, not those in effect when security guard was first hired. (Cidoni, Commr., 2006: Feb. 27).

On remand, the Commissioner rejected ALJ's finding that petitioning maintenance worker had demonstrated rehabilitation finding that the maintenance worker had offered no witnesses or documents to corroborate his rehabilitation testimony. (Nunez, St. Bd. 2007:July 18)

State Board of Examiners determined to revoke the certificates of a teacher who became certified 18 years after having been convicted of lewdness, a disqualifying offense. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. I.M.O. Blatnik, Bd. Exam. 2006: June 12.

Commissioner determined that applicant for restoration's remorse and good behavior during incarceration had no bearing of the seriousness of the illegal conduct. The Commissioner's responsibility is to ensure that students are provided with environments that are free from the influence of alcohol and other drugs. (Nunez, St. Bd. 2007:July 18)

State Board of Examiners determined that teacher's entry into PTI for official misconduct and the court-ordered surrender of his teaching licenses for engaging in sexual relations with a student constitutes conduct unbecoming a certificate holder. I.M.O. Deb, Bd. Exam. 2006: June 12.

Teacher of Elementary Certificate of Eligibility with Advanced Standing suspended pending resolution of criminal charges. Teacher arrested for endangering the welfare of children for spanking one of her children to discipline him; admitted into PTI on reduced charge of child neglect. If charges are resolved in her favor, she will notify the State Board of Examiners for appropriate action. Futrell, Exam. 2007: January 25

State Board of Examiners revoked the certificate of tenured elementary school teacher for slapping student and puncturing his neck with a chair after the student threw a book at her. I.M.O. Tyson, Bd. Exam. 2006: June 12.

State Board of Examiners determined that teacher's arrest and possible disqualification for endangering the welfare of a minor by allegedly possessing child pornography, represented just cause to suspend his certificates pursuant to N.J.A.C. 6A:9-17.5 until the criminal charges were resolved in his favor. I.M.O. Peters, Bd. Exam. 2006: May 10.

Substitute teacher appeals ruling that he is automatically disqualified from school employment pursuant to N.J.S.A. 18A:6-7.1 (c) following his guilty plea to assault by auto or vessel under N.J.S.A. 2C:12-1c(2). Commissioner holds that a 4th degree crime of assault by auto involving drunk driving and a resulting injury cannot be deemed to approach the level of intentional crimes that are enumerated as automatic disqualifiers. (Parshelunis, Commissioner 2008: November 25)

Teacher certification application denied because of prior criminal conviction. While applicant had a Certificate of Relief from Disabilities from New York, the certificate was not the equivalent of an expungement of his criminal record. (Sain, Exam, 2006: April 5).

Commissioner determined that disqualified security guard was not entitled to demonstrate evidence of rehabilitation where he failed to truthfully respond to subsequent re-appointment applications that he had been convicted of a crime. (Cidoni, Commr., 2006: Feb. 27).

State Board of Examiners revoked the multiple certificates of elementary school teacher based upon 1973 burglary performance. I.M.O. Messino, Bd. Exam. 2006: June 12.

State Board of Examiners ordered two-year certificate suspension of a tenured special education teacher for assaulting a special education student. I.M.O. Kendrick, Bd. Exam. 2006: June 12

Commissioner terminated school security guard based on false information. Security guard indicated that he had not been convicted of any crime, but had in fact been convicted of possessing a concealed weapon without proper license. Such a conviction was not a minor licensing violation. (Cidoni, Commr., 2006: Feb. 27).

State Board of Examiners revoked the certificate of a K-5 teacher who had been convicted of manufacturing/distributing a CDS and possession of a CDS on school property and had been ordered to forfeit public office. I.M.O. Green, Bd. Exam. 2006: June 12.

Currently incarcerated tenured teacher, convicted of aggravated sexual assault, endangering the welfare of a child, and criminal sexual conduct, sought reinstatement to his position, with back pay and benefits. Petitioner's suspension without pay, beginning on September 14, 1999, was valid and proper; petitioner has been either under indictment, convicted, or had tenure charges certified against him since that time. Petitioner's convictions included crimes that require automatic forfeiture of his tenured teaching position. Petition was dismissed. Hilkevich, Commr. 2009: October 15

Discrimination

Motion for summary judgment granted to Spanish teacher on his claim that the school district violated the Family Medical Leave Act ("FMLA") by refusing to allow him to return to work after a medical leave of absence that he took because of severe anxiety attacks caused by harassment about his open homosexuality; However, summary judgment denied with regard to his claims of retaliation and wrongful termination in violation of the Family Medical Leave Act ("FMLA") and the New Jersey Law Against Discrimination ("NJLAD") as general issues of material fact existed. (No. 04-5100 (JBS), 2006 U.S. Dist. LEXIS 46648, (D.N.J. June 28, 2006)).

State Board reversed the Commissioner's determination that the date the 90-day period for filing was not the date the teacher received the "blanket" nonrenewal letter as determined by the ALJ, but rather the date she learned that similarly-situated colleagues were being recalled but she was

not. Therefore, the teacher's petition was deemed untimely by the State Board. Teacher was aware of allegedly discriminatory conduct prior to her non-renewal. Decision on motion. (Charapova, Commr. 2006:Dec. 6, reversed St. Bd. 2007:August 1)

Third Circuit determined that non-renewals of both at-will employees and employees with a fixed termination date is an "employment action" for title VII purposes and as such, can be deemed to violate Title VII if done for an impermissibly discriminatory reason. Wilkerson v. New Media Technology charter School, No. 07-1305 (3d Cir. April 9, 2008), 2008 U.S. App. Lexis 7526.

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. 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, Commr., 2007: Oct. 15, aff'd St. Bd. 2008: May 21). Motion to supplement the record denied. (Varjian, St. Bd. 2008:Feb. 20)

While Appellate Division concluded that the State Board of Examiners was justified in determining summarily that the teacher participated in conduct unbecoming a teacher, it remanded the matter to permit further proceedings limited to the teacher's claim that he was selectively and unfairly singled out for revocation of his teaching certificate. (Toler, Examiners, 2004: Dec. 29); (Toler, aff'd by St Bd, 2005: July 1

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The Court of Appeals affirmed the summary judgment order in favor of board and administrators in this age discrimination matter by a 60-year old applicant whose application was rejected in favor of younger applicants, applying the burden shifting framework for assessing cases under the ADEA, the court found that the teacher had established a prima facie case of age discrimination, but could not show that the school district's offer of a legitimate, non-discriminatory reason for not hiring him was a pretext. (Dunleavy v. Montville Twp. Bd. of Educ., No. 05-4078, (D.N.J. Aug. 17, 2006))

High school music teacher alleged that his contract non-renewal constituted First Amendment Retaliation under 42 U.S.C. § 1983 and age discrimination pursuant to the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621 et seq. and the New Jersey Law Against Discrimination,

N.J.S.A. 10:5-1 et seq. No evidence was presented, either direct or circumstantial, that cast sufficient doubt on the board's articulated reasons for refusing to renew Plaintiff's employment contract. Summary judgment was granted as to all claims. Saia v. Haddonfield Area Sch. Dist., Civil Action No. 05-2876, 2007 U.S. Dist. LEXIS 67018, (D. N.J. September 10, 2007)

District Court's grant of summary judgment in favor of school district affirmed. Secretary alleged that she was denied promotions and ultimately constructively discharged on the basis of race. Denial of a promotion is generally a discrete event whose consequences are immediate and require a prompt response under Title VII; secretary did not demonstrate a pattern or practice of continuing discrimination allowing her to avoid the 300-day time limit. No evidence that proffered reason for termination was pretextual or that racial animus was a motivating factor. Taylor v. Brandywine Sch. Dist., No. 05-4803, 2006 U.S. App. LEXIS 24643, (3d. Cir. September 29, 2006)

Third Circuit determined that protected activity under Title VII includes opposition to unlawful discrimination Wilkerson v. New Media Technology charter School, No. 07-1305 (3d Cir. April 9, 2008), 2008 U.S. App. Lexis 7526.

Third Circuit determined that failure to rehire can constitute 1st Amendment retaliation where non-tenured teacher alleged that she was non renewed for refusing to participate in a "libations" ceremony and complaining about the ceremony. Wilkerson v. New Media Technology charter School, No. 07-1305 (3d Cir. April 9, 2008), 2008 U.S. App. Lexis 7526.

Appellate Division held that attorney letter indicating that matter had been settleted was not a substitute for the exercise of discretionary authority by the board. Proposed settlements are not binding until the board has given its approval. Mazzeo v. Barnegat BOE, A-2202-05 (App. Div. June 6, 2006) (unpublished slip op. at 8).Certification denied Sept. 6, 2006, 188 N.J. 354 (2006).

Where allegations of age discrimination made in teacher hiring, age discrimination claims under the ADEA and New Jersey Law Against Discrimination failed because pretext was not established; defendants heavily weighted the quality of the demonstration lesson. Dunleavy v. Mount Olive Twp., No. 05-3922, (3d Cir. June 2, 2006) affirming Dunleavy v. Mount Olive Twp., 2005 U.S. Dist. LEXIS 16040 (D.N.J., July 29, 2005)

Appellate Division held that the settlement of litigation involves the exercise of discretionary authority by the board. Proposed settlements are not binding until the board has given its approval. Mazzeo v. Barnegat BOE, A-2202-05 (App. Div. June 6, 2006) (unpublished slip op. at 8).Certification denied Sept. 6, 2006, 188 N.J. 354 (2006).

Motion for reconsideration denied. No manifest injustice to be prevented due to recently discovered newspaper articles. (Veggian v. Camden Bd. of Educ.,

Civil Action No. 05-0070, 2006 U.S. Dist. LEXIS 79242, (D. N.J. October 31, 2006))

Summary judgment motion granted to school district in matter involving allegations of age and gender discrimination by school district, county board of freeholders and county police academy regarding police officer certification training of school district educational enforcement officer. Employee did not knowingly and substantially assist in the alleged discriminatory activities. King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243 (JBS), 2006 U.S. Dist. LEXIS 73606, (D. N.J. September 29, 2006). See also, King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. Nov.14, 2007), 2007 U.S. Dist. Lexis 84063.

District Court granted summary judgment in favor of board of education where plaintiff's failure to complete a special law enforcement officer training program due to alleged discriminateion, could not have been the basis for the board's removal where plaintiff failed to complete basic officer training program. King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. Nov.14, 2007), 2007 U.S. Dist. Lexis 84063. See also, King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. September 29, 2006), 2006 U.S. Dist. LEXIS 73606.

Plaintiff alleged that charter school demoted and terminated him based on his race and national origin and in retaliation for his complaints of racial discrimination, in violation of the First and Fourteenth Amendments. District court found that the arbitration clause in Plaintiff's employment contract did not waive his right to a judicial forum for his Section 1981 and 1983 claims. Defendants' motion to dismiss denied. Samukai v. Emily Fisher Charter Sch. of Advanced Studies, Civil Action No. 06-1370, 2007 U.S. Dist. LEXIS 7164, Decided January 29, 2007.

Third Circuit determined that District Court properly dismissed non-renewed teacher's failure to accommodate a sincerely held religious belief. Plaintiff/teacher never informed district of her objection to a "libations" ceremony. Wilkerson v. New Media Technology Charter School, No. 07-1305 (3d Cir. April 9, 2008), 2008 U.S. App. Lexis 7526.

District Court dismissed pro se complaint without prejudice for the second and final time. Complaint failed to set forth (1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, and (2) a short and plain statement of the claim showing that Plaintiff is entitled to relief. Gadsden v. N.J. Ed. Assn. et al. No. 07-4861 (D. N.J., Dec. 4, 2007), 2007 U.S. Dist. Lexis 89000.

District Court dismissed pro se complaint where plaintiff failed to comply with the 90-day rule contained in 28 U.S.C. 1915(e)(2)(B). Gadsden v. N.J. Ed. Assn. et al. No. 07-4861 (D. N.J., Dec. 4, 2007), 2007 U.S. Dist. Lexis 89000.

Third Circuit determined that employment action against at-will or fixed termination date employees may violate Title VII if the employee is not renewed or terminated for a prohibited discriminatory reason. Wilkerson

v. New Media Technology Charter School, No. 07-1305 (3d Cir. April 9, 2008), 2008 U.S. App. Lexis 7526.

In matter brought by assistant principal seeking damages under the Family and Medical Leave Act and New Jersey's Law Against Discrimination.for Board's refusal to renew his contract, court upholds order requiring disclosure of his psychological records to board. Levine v. Voorhees Bd. of Educ., 2009 U.S. Dist. LEXIS 78851 (D.N.J. Sept. 1, 2009) (subsequent proceedings Dec. 23, 2009, 2009 U.S. Dist. LEXIS 119263)

In a matter brought by special education teacher challenging his termination during a RIF under the Law Against Discrimination and the Veterans' Tenure Act, the Court reverses grant of partial summary judgment in favor of the district on the teacher's VTA claim. The factual record precluded summary judgment on the VTA claim, and the jury's findings on the LAD claim did not necessarily encompass a finding that would be fatal to the VTA claim. Vitale v. Atlantic County Special Services School District, No. A-1675-07(App. Div. January 12, 2009).

Provisional teacher filed civil rights claim alleging discrimination in his non-renewal. Plaintiff's section 1983 claim fails, but section 1981 claims are remanded for hearing on preclusive effect that ALJ determinations have on state law claims. El-Hewie v. Bergen County, 2009 U.S. App. LEXIS 20689 (3d Cir. N.J. Sept. 17, 2009)(not precedential)

Appellate Division affirmed jury verdict at trial court level finding that plaintiff had not proven his claim of employment discrimination and that plaintiff was not performing his duties in an acceptable manner. Bruno v. N.B. Bd. of Educ., (A-1543-07T1) 2009 N.J. Super. Unpub. LEXIS 1488, (App. Div. April 15, 2009.)

Employee's claim that Board violated the NJLAD because of cancer following his return from medical leave was unfounded. Assignment to other courses and different classroom had rational basis supported in the record. Claim dismissed. Varjian v. Midland Park Bd. of Ed., 2009 N.J. Super. Unpub. LEXIS 2464 (App.Div. Sept. 28, 2009)

District Court dismissed employee's discrimination claims filed against college and labor union under 29 U.S.C.S. §185(a), the Labor Management Relations Act, for lack of subject matter jurisdiction. The Act excluded "political subdivision" from the definition of employer. Because the college was a political subdivision, both the college and labor union fell within the political subdivision exception to jurisdiction. Watford v. Union County College, Civil No. 06-5542, 2009 U.S. Dist. Lexis 9661, (D. N.J. Feb. 10, 2009).

Lunch aid claims that board reduced her hours, transferred her to another school, and terminated her due to her race in violation of Title VII. Court dismisses on board's motion for summary judgment as aid fails to make a prima facie showing of an inference of discrimination, and because she is unable to prove that the board's reasons for taking the alleged adverse actions were pretextual. Mentor v. Hillside Bd. of Educ., Civil No. 08-CV-

1173 (DMC), 2009 U.S. Dist. LEXIS 68174 (D. N.J. August 5, 2009) (not for publication)

56 year-old music teacher who was non-renewed in third year alleged violation of NJLAD which court dismissed. District showed that teacher had problems with discipline. Further, hiring a qualified candidate with less experience in light of job performance deficiencies does not constitute evidence of discrimination. Dorfman v. Pine Hill Bd. of Educ., 2009 U.S. App. LEXIS 21427 (3d Cir. N.J. Sept. 30, 2009) (not precedential)

Cheerleading coach brings suit alleging subjected to a hostile work environment and retaliation due to sex discrimination. After viewing the facts in the light most favorable to the plaintiff, the plaintiff has not provided any factual assertions of intentional discrimination by defendants. White v. Cleary, No. 09-4324 (D.N.J. Mar. 16, 2012)

Employment discrimination case dismissed where pro se plaintiff who was a substitute in district alleges discrimination in termination following altercation with student. Complaint alleged race and gender discrimination under Title VII; age discrimination under the ADEA; disability discrimination under the ADA; and violation of the IDEA. Plaintiff does not present a cogent legal argument to this Court. It is well settled that if an appellant fails to comply with the requirements to set forth an issue raised on appeal and to present an argument in support of it the appellant normally has abandoned and waived that issue on appeal and it need not be addressed by the court. The District Court correctly concluded that petitioner failed to set forth any facts that would support a claim of discrimination under Title VII; failed to exhaust his administrative remedies for his age, gender, and disability discrimination claims, lacked standing to litigate an IDEA claim, and made no attempt to remedy the defects in his complaint, despite notice and his familiarity with the pleading requirements. Jones v. Camden City Bd. of Educ., No. 12-1323 (3d Cir. Oct. 1, 2012)

Matter remanded back to district court for further fact-finding over whether female basketball referee was discriminated against on the basis of sex when she was not assigned officiating duties at any boys' basketball games. Plaintiff alleged violations of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq., and the New Jersey Law Against Discrimination. *Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 *F.3d* 114 (3d Cir. 2013)

District's motion for summary judgment granted where plaintiff's claims of violation of the New Jersey Law Against Discrimination ("NJLAD"), the First Amendment and New Jersey Constitution and the Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-2(e). Plaintiff also asserts state law claims for breach of contract and tortious interference with economic gain and employment. District had legitimate reasons for nonrenewing secretary's contract. *Goldberg v. Egg Harbor Twp. Sch. Dist., No. 11-1228* (D.N.J. Mar. 28, 2013)

On the basis of her disability, auditorily-impaired paraprofessional alleged that district failed to renew her contract, failed to accommodate her disability during her subsequent employment in another capacity, retaliated against her for complaining about the lack of accommodation, and did not hire her for another available position. Plaintiff asserts claims against Defendant for allegedly violating the Americans with Disabilities Act, and the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1. While Plaintiff may proceed with her ADA-based claims, the statute of limitations has lapsed for the state law claims. *Golembeski v. Moorestown Twp. Pub. Sch.,* No. 11-02784 (D.N.J. Mar. 13, 2013)

In matter where coordinator of gifted program (John Hopkins) is terminated after 5 years by board and sues board, union and union president, alleging Section 1983 violations, NJLAD discrimination on basis of age and ethnicity, wrongful discharge, breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference with contract, the court dismisses claims against union and union president as there was no contractual relationship between employee and union. *Hillenbrand v. Hoboken Bd. of Educ., 2013 U.S. Dist. LEXIS 77452No. 13-598 (D.N.J. June 3, 2013)* (not for publication)

Summary judgment in favor of school district upheld in discrimination case where it was alleged that district officials forced teacher to retire. Plaintiff failed to establish a prima faciae case of discrimination. *Lovett v. Flemington-Raritan Reg'l Bd. of Educ*., 2013 N.J. Super. Unpub. LEXIS 2683 (App. Div. Nov. 6, 2013)

Court finds sufficient credible evidence in the record to support Board's finding that physical education teacher did not qualify for ordinary disability retirement. *Wunder v. Teachers' Pension & Annuity Fund*, No. A-4527-12 (App. Div. July 17, 2014)

Unpaid leave of absence under FMLA constitutes continued employment for purposes of tenure accrual. The FMLA seeks to return the employee to the same position that he or she was in before the leave, treating the leave itself not as a cessation, but instead as a temporary pause in the ongoing working relationship. To therefore punish an employee by denying her tenure she had earned over three years of continuous employment and satisfactory evaluations simply because she took the leave that her employer granted her, would not serve the purpose of the FMLA. Matter remanded to Commissioner for determination of seniority rights and any entitlement to relief. *Kolodziej v. Board of Educ. of S. Reg'l High Sch. Dist.*, 436 *N.J. Super*. 546 (App. Div. 2014)

Disqualification

Teaching staff member's teacher of music certificate of eligibility with advanced standing and teacher of music certificate revoked due to conviction of possession of child pornography. (Lapetina, Exam, 2006: Sept. 21).

Commissioner determined that disqualified security guard was not entitled to demonstrate evidence of rehabilitation where he failed to truthfully

respond to subsequent re-appointment applications that he had been convicted of a crime. (Cidoni, Commr., 2006: Feb. 27).

Junior High School teacher certificate revoked due to conviction on charge of criminal sexual contact. Gambone, Exam. 2007: January 25

Teacher of Elementary Certificate of Eligibility with Advanced Standing suspended pending resolution of criminal charges. Teacher arrested for endangering the welfare of children for spanking one of her children to discipline him; admitted into PTI on reduced charge of child neglect. If charges are resolved in her favor, she will notify the State Board of Examiners for appropriate action. Futrell, Exam. 2007: January 25

Substitute teacher appeals ruling that he is automatically disqualified from school employment pursuant to N.J.S.A. 18A:6-7.1 (c) following his guilty plea to assault by auto or vessel under N.J.S.A. 2C:12-1c(2). Commissioner holds that a 4th degree crime of assault by auto involving drunk driving and a resulting injury cannot be deemed to approach the level of intentional crimes that are enumerated as automatic disqualifiers. (Parshelunis, Commissioner 2008: November 25)

State Board of Education reverses the State Board of Examiners' decision to revoke the certificates of the teacher's Teacher of Nursery School and Teacher of Elementary School certificates. There was no proof that teacher had urged victimized students to hit others; nor was forcing a student to mix chocolate milk with her lunch and then eat the mixture as a mode of discipline a serious enough infraction to warrant revocation of her certificate, especially where her increments had already been withheld by the district. The State Board ordered the teacher's certificates to be reinstated. (Troublefield, Exam, 2006: March 8, aff'd St. Bd. 2007:Jan 3)

State Board of Examiners did not suspend or revoke the certificates of a physical education teacher who broke student's wrist while blocking the student's attempted lay-up on basketball court. Teacher's conduct did not rise to the level of unbecoming conduct. I.M.O. Bozinta, Bd. Exam. 2006: May 10.

State Board of Examiners determined that teacher exercised poor judgment in supervising two different groups of students by not placing the groups in positions where he could view them simultaneously in order to prevent roughhousing between students. This poor judgment did not warrant the suspension or revocation of his teaching certificates. DYFS findings of neglect did not allege that the teacher engaged in unbecoming conduct or other just cause for certification suspension or revocation. I.M.O. Barnes, Bd. Exam. 2006: May 10.

Junior High School teacher certificate revoked due to conviction on charge of criminal sexual contact. Gambone, Exam. 2007: January 25

Commissioner reverses the Department's ruling of disqualification, finding that teacher's violation in 1997 of the FD&C Act regarding GHB is not an offense involving a CDS warranting disqualification from school employment under N.J.S.A. 18A:6-4.13 et seq. and 18A:6-7.1 et seq., as the substance was not classified as a controlled dangerous substance

(CDS) by the federal government until March 2000. (Brigham, Commr. 2007:May 15)

Teacher certification application denied because of prior criminal conviction. While applicant had a Certificate of Relief from Disabilities from New York, the certificate was not the equivalent of an expungement of his criminal record (Sain, Exam, 2006: April 5).

Teacher who fraudulently received unemployment benefits during the time she was employed, would be required to repay the benefits wrongfully received, as well as a fine and a one-year disqualification; she was not entitled to any set-off for the period during which she was truly unemployed but did not apply for unemployment benefits. No. A-4346-05T24346-05T2 (App. Div., Sept. 18, 2007).

Teacher unsuccessfully argued that her earlier conviction for abusing her own child should not disqualify her under N.J.S.A. 18A:6-7.1, from serving as Parent Center Educator. The Commissioner determined that while she does not have regular contact with students, she is present in school buildings while school is in session and there is potential access to students without safeguards; current position falls under purview of statute. (Chavis v. NJDOE, Comm'r., 2008: May 30).

Commissioner terminated school security guard based on false information. Security guard indicated that he had not been convicted of any crime, but had in fact been convicted of possessing a concealed weapon without proper license. Such a conviction was not a minor licensing violation. (Cidoni, Commr., 2006: Feb. 27).

Commissioner terminated school security guard based on 2003 remedial review of criminal history. Security guard had been employeed prior to 1998 change in criminal history statute, but district failed to request criminal history review upon hire. Standards in effect at the time of the review are to be applied, not those in effect when security guard was first hired. (Cidoni, Commr., 2006: Feb. 27).

State Board revokes elementary certificate of eligibility and elementary certificate of eligibility with advanced standing of teacher who plead guilty to sexual assault and endangering the welfare of a child and was therefore disqualified from service under N.J.S.A. 18A:6-7.1. IMO the Certificate of Monsolono, Exam 2009: October 22.

SEC revokes handicapped and supervisor certificate and principal certificate of eligibility of teacher who has been convicted of and disqualified from service in the public schools under N.J.S.A. 18A:6-7.1 for endangering the welfare of a child. IMO the Certificate of Williams, Exam 2009: Sept. 17.

Legislative delegation to the Board of Examiners regarding oversight of teaching certificates was not intended to be constrained solely by reference to criminal conduct and convictions. The Board's oversight is not controlled exclusively by N.J.S.A. 18A:6-7.1's automatic disqualifiers or N.J.S.A. 2C:51-2's forfeiture-upon-conviction provision. Case involved teacher masturbating in a store, a petty disorderly persons offense. In re

Certificates of Kevin Jordan, 2009 N.J. Super. Unpub. LEXIS 2439 (App.Div. Oct. 5, 2009)

Social studies teacher convicted in N.J. and Pa. for crimes that involved sexual assaults against a minor; is disqualified from service in the public schools; State Board revokes her teacher certificates. IMO the Certificates of Brekne, Exam 2009: Sept. 17.

Appellate Division affirms decision of the Commissioner of Education concluding that petitioner is disqualified from teaching in the New Jersey Public Schools by operation of N.J.S.A. 18A:6-7.1.Chavis v. N.J. State Dep't of Educ., (A-5862-07T1) 2009 N.J. Super. Unpub. LEXIS 1118 (App Div. May 13, 2009).

Examiners revoked certification of physical education teacher who had been convicted of aggravated sexual assault, criminal sexual conduct, and official misconduct and had been disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et seq. I.M.O. the Certificates of Umosella, Exam, 2009: June 22

Evaluations

State Board dismisses Board's appeal for failure to perfect, leaving Commissioner's decision intact. Commissioner had directed board to arrange for anger management training, conflict resolution and handling difficult and disruptive students where such issues were evident, but did not support tenure dimsissal. (Poston, St. Bd. 2007:April 4)

State Board of Examiners determined that teacher exercised poor judgment in supervising two different groups of students by not placing the groups in positions where he could view them simultaneously in order to prevent roughhousing between students. This poor judgment did not warrant the suspension or revocation of his teaching certificates. DYFS findings of neglect did not allege that the teacher engaged in unbecoming conduct or other just cause for certification suspension or revocation. I.M.O. Barnes, Bd. Exam. 2006: May 10.

State Board affirms decision of the State Board of Examiners to revoke teacher's instructional certification as a Teacher of Social Studies, Teacher of Elementary School and Teacher of the Handicapped. (Rosen, Examiners, 2005: Sept. 22).

Appellate Division determined that the Institutional Abuse Investigation Unit of the N.J. Dept. of Human Services acted appropriately in issuing findings that teacher's disciplinary conduct was unjustified and inappropriate despite it's determination that allegations of abuse were unfounded. However, Court found that the Unit inappropriately sent letters to teacher and superintendent and ordered that they be amended to provide more information and to clarify that the findings were not binding upon the district. I.M.O. Physical Abuse Concerning A.I., 393 N.J. Super. 114 (App. Div. 2007).

Commissioner determined that district's failure to evaluate provisional teacher during the first two years of her employment was tangential to the issue of whether she acquired tenure. (Miller, Commr., 2006: Nov. 16).

Commissioner determined that tenure eligibility began when teacher acquired her provisional certificate. (Miller, Commr., 2006: Nov. 16).

Commissioner determined that termination of a non-tenured provisional teacher was not against public policy where district allowed he to teach as a substitute in the district for six months, failed to evaluate her, and dismissed her within days of the date on which she would have acquired tenure. "It is settled that employment contracts of non-tenured public school teachers which contain provisions for termination by either party upon a specified number of days notice may be terminated in accordance with the terms of the contract without the need to demonstrate good cause." (Miller, Commr., 2006: Nov. 16).

Appellate Division affirmed Commissioner's decision upholding teacher of mathematics' non-renewal by the board. School district's lack of full compliance with the mentoring and evaluation program did not prevent non-renewal. The Commissioner decision was overwhelmingly grounded in substantial credible evidence in the record as a whole, and was not arbitrary, capricious or unreasonable. The court found the decision to be a fair and reasonable implementation of applicable law and legislative policies. El-Hewie v. Bd. of Ed. Voc. Sch. Dist., 2009 N.J. Super. Unpub. LEXIS 3116 (App. Div. Dec. 24, 2009.)

Non-renewal of non-tenured teacher's contract was not arbitrary, capricious or unreasonable and will be upheld, regardless of whether the procedures for observing and evaluating the teacher were adhered to; however, she is entitled to compensation for twelve days of work she performed after her contract had expired. Tuck-Lynn, Commr. 2009: Nov. 20.

Forfeiture

State Board of Examiners determined that teacher's entry into PTI for official misconduct and the court-ordered surrender of his teaching licenses for engaging in sexual relations with a student constitutes conduct unbecoming a certificate holder. I.M.O. Deb, Bd. Exam. 2006: June 12.

State Board of Examiners revoked the certificate of a K-5 teacher who had been convicted of manufacturing/distributing a CDS and possession of a CDS on school property and had been ordered to forfeit public office. I.M.O. Green, Bd. Exam. 2006: June 12.

State Board of Examiners revoked the teaching certificate of a special education teacher after he was convicted of official misconduct and forfeited his public employment. Examiners determined that teacher's acts of official misconduct by submitting inaccurate tutoring vouchers was inexcusable for any individual, teacher or not. I.M.O. Costales, Bd. Exam. 2006: May 10.

Examiners revoked the certificates of an ESL and Spanish teacher who pleaded guilty to sexual assault and was ordered to forfeit her public office. I.M.O. Gallagher, Bd. Exam. 2006: June 12.

Tenured physical education teacher, who had tenure charges pending, was found guilty of third degree witness tampering and second degree official misconduct and, by order of the court, forfeited her public employment

with the district pursuant to N.J.S.A. 2C:51-2, effective December 18, 2008. The tenure charges were dismissed as moot, and the matter was transmitted to the State Board of Examiners for appropriate action against respondent's certificates. Painter, Commr. 2009: September 29

State Board revokes elementary certificate of eligibility with advanced standing, biological science certificate of eligibility with advanced standing, and biological science certificate, after pleading guilty to endangering the welfare of a child and Court-ordered forfeiture of her certificates. IMO the Certificate of Defeo, Exam 2009:October 22.

Currently incarcerated tenured teacher, convicted of aggravated sexual assault, endangering the welfare of a child, and criminal sexual conduct, sought reinstatement to his position, with back pay and benefits. Petitioner's suspension without pay, beginning on September 14, 1999, was valid and proper; petitioner has been either under indictment, convicted, or had tenure charges certified against him since that time. Petitioner's convictions included crimes that require automatic forfeiture of his tenured teaching position. Petition was dismissed. Hilkevich, Commr. 2009: October 15

State Board revokes elementary certificate of teacher who agreed to forfeit his certificate with the force and effect of a revocation after pleading guilty to endangering the welfare of a child. IMO the Certificate of Newman, Exam 2009: October 22.

Teacher agreed to forfeit teaching certificates with the force and effect of a revocation and all attendant consequences in the resolution of pending criminal charges. (I.M.O. the Certificates of Ingenito, Exam, 209: June 22)

Examiners revoked the certificate of elementary teacher who was convicted of identity theft and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq. Evidence of rehabilitation was not pertinent to the purpose of demonstrating circumstances or facts to counter the charges set forth in the Order to Show Cause. (I.M.O. the Certificate of Lowenstein-Mase, Exam, 2009: June 22)

State Board revokes elementary certificate of teacher who agreed to forfeit his certificate with the force and effect of a revocation after pleading guilty to endangering the welfare of a child. IMO the Certificate of Newman, Exam 2009: October 22.

Teacher holding Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in June 2008, and a Teacher of Health and Physical Education Provisional certificate, issued in October 2008 agrees to forfeit her certificates as the result of a criminal investigation into her conduct, which did not result in criminal charges. IMO theCertificates of Flanagan, Exam 2009: Sept 17.

Commissioner determined that teacher's demands under the LAD would significantly limit the board's lawful discretionary authority to operate and manage the schools within the district. (Varjian, Commr., 2007: Oct. 15,

aff'd St. Bd., 2008: May 21). Motion to supplement the record denied. (Varjian, St. Bd. 2008:Feb. 20)

LAD

Appellate Division held that attorney letter indicating that matter had been settleted was not a substitute for the exercise of discretionary authority by the board. Proposed settlements are not binding until the board has given its approval. Mazzeo v. Barnegat BOE, A-2202-05 (App. Div. June 6, 2006) (slip op. at 8).Certification denied Sept. 6, 2006, 188 N.J. 354 (2006).

District court granted summary judgment in favor of district where teacher claimed the district engaged in discriminatory retaliation by failing to appoint him to a coaching position after the teacher filed harassment charges against several students. (Carmichael v. Pennsauken Twp. Bd. of Educ., No. 05-0513, 2006 U.S. Dist. Lexis 85447 (D.N.J. Nov. 27, 2006)).

Where allegations of age discrimination made in teacher hiring, age discrimination claims under the ADEA and New Jersey Law Against Discrimination failed because pretext was not established; defendants heavily weighted the quality of the demonstration lesson. Dunleavy v. Mount Olive Twp., No. 05-3922, (3d Cir. June 2, 2006) affirming Dunleavy v. Mount Olive Twp., 2005 U.S. Dist. LEXIS 16040 (D.N.J., July 29, 2005)

Summary judgment motion granted to school district in matter involving allegations of age and gender discrimination by school district, county board of freeholders and county police academy regarding police officer certification training of school district educational enforcement officer. Employee did not knowingly and substantially assist in the alleged discriminatory activities. King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. September 29, 2006), 2006 U.S. Dist. LEXIS 73606. See also, King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. Nov.14, 2007), 2007 U.S. Dist. Lexis 84063.

High school music teacher alleged that his contract non-renewal constituted First Amendment Retaliation under 42 U.S.C. § 1983 and age discrimination pursuant to the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621 et seq. and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. No evidence was presented, either direct or circumstantial, that cast sufficient doubt on the board's articulated reasons for refusing to renew Plaintiff's employment contract. Summary judgment was granted as to all claims. Saia v. Haddonfield Area Sch. Dist., Civil Action No. 05-2876, 2007 U.S. Dist. LEXIS 67018, (D. N.J. September 10, 2007)

District Court granted summary judgment in favor of board of education where plaintiff's failure to complete a special law enforcement officer training program due to alleged discriminateion, could not have been the basis for the board's removal where plaintiff failed to complete basic officer training program. King v. Cape May County Bd. of Freeholders, Civil

Action No. 04-4243, (D. N.J. Nov.14, 2007), 2007 U.S. Dist. Lexis 84063. See also, King v. Cape May County Bd. of Freeholders, Civil Action No. 04-4243, (D. N.J. September 29, 2006), 2006 U.S. Dist. LEXIS 73606.

In matter brought by assistant principal seeking damages under the Family and Medical Leave Act and New Jersey's Law Against Discrimination.for Board's refusal to renew his contract, court upholds order requiring disclosure of his psychological records to board. Levine v. Voorhees Bd. of Educ., 2009 U.S. Dist. LEXIS 78851 (D.N.J. Sept. 1, 2009) (subsequent proceedings Dec. 23, 2009, 2009 U.S. Dist. LEXIS 119263)

District court grants summary judgment to board and dismisses action filed by transferred maintenance worker and spouse, former teacher's aide, alleging deprivation of rights under the NJ LAD, Sec. 1983, the fourteenth amendment and retaliation regarding his transfer and her non-renewal. Aurelio v. Bd. of Educ., No. 06-3146 (JLL), 2009 U.S. Dist. LEXIS 52759 (D. N.J. June 23, 2009) affirmed by Aurelio v. Bd. of Educ., 2010 U.S. App. LEXIS 7069 (3d Cir. N.J. Apr. 6, 2010)

Mitigation

Board violated supervisor's tenure rights when it eliminated his position and appointed a non-tenured person as supervisor of early childhood education. Board was ordered to provide back pay and emoluments, mitigated by income received. (Savage, Comm'r., 2008: May 23).

Pensions

State Board of Examiners determined that there was no evidence of conduct unbecoming where principal/supervisor of charter school recommended the appointment of a consultant who used that appointment to improperly increase his pension eligibility. I.M.O. Featherson, Bd. Exam. 2006: June 12.

Commissioner determined that science teacher was entitled to credit for up to five years for non-teaching experience directly related to the assigned teaching position and up to four years credit for active military service with honorable discharge. Credit not retroactive, credit computed from the date the petitioner filed his petition with the Department. Neely, Commr., 2009: Jan. 5.

On remand, Commissioner determined that teacher, the subject of an invalid RIF, who was also suspended pursuant to tenure charges was entitled to back pay from the 121st day of suspension until date her disability pension commenced. (Parise, Commr., 2007: April 11). (Parisi, Commr. 2005: June 10) Re-remanded on other matters.

Commissioner determined that science teacher was entitled to credit for up to five years for non-teaching experience directly related to the assigned teaching position and up to four years credit for active military service with honorable discharge. Commissioner directed the Board to adjust petitioner's salary guide placement to reflect his military service credit. Neely, Commr., 2009: Jan. 5.

Commissioner disallowed the cost of increased pension benefits of private school for the disabled. Benefits were paid under the school's Social Security

Integration Pension Benefit plan. Audit findings showing that benefits paid to four of petitioner's employees did not meet the equitable standard of distribution required by N.J.A.C. 6A:23-4.5(a)23. Commissioner concludes that these expenses are disallowed. Argument of equitable estoppel can only be invoked to prevent manifest injustice; does not allow petitioner to ignore regulations. (Deron, Commr., 2007: March 7, aff'd St. Bd., 2007: Aug. 1).

Appellate Division affirms decision of the TPAF Board of Trustees granting the application for involuntary ordinary disability retirement benefits filed by the board of education on behalf of the employee. The Board adopted the ALJ recommendations that the employee suffered from a serious psychiatric disorder and was totally and permanently disabled from performing regular and assigned teacher duties. Starling v. Teachers' Pension & Annuity Fund, (A-0450-07T1) 2009 N.J. Super. Unpub. LEXIS 486, (March 18, 2009.

PERC

Supreme Court reversed Appellate Division, holding that although a public employee representative's grievance was untimely filed, an arbitrator properly considered it under "continuing violation" doctrine, as representative argued that each time board of education failed to provide paid health insurance benefits to part-time professional employees working more than 20 hours, there was separate violation of the parties' collective negotiations agreement. Appellate Division had ruled grievance was untimely filed and that arbitrator had exceeded his authority by applying the "continuing violation" doctrine. Board of Educ. of the Borough of Alpha v. Alpha Educ. Ass'n, 190 N.J. 394(2006),

Appellate Division dismissed complaint alleging that transfer of physical education teacher was disciplinary in nature because the teacher refused to perform after-school bus duty, asserting that such duty was a violation of the collective bargaining agreement. Court held that transfer was for operational and staffing concerns more than discipline. Old Bridge Twp Education Assn v. Old Bridge Twp. BOE, A-5245-04 (App. Div. June 30, 2006) (unpublished slip op. at 6).

Court granted partial summary judgment in favor of the school district, in a matter arising out of a teacher's allegations that she experienced retaliation and a hostile work environment after reporting an alleged grade-fixing scheme at a district school. The Court found that her reporting was done as a public employee, not as a private citizen, and thus, free speech rights did not protect her communications from employer discipline. Union's motion for summary judgment regarding teacher's claim for breach of fair representation is denied. Veggian v. Camden

District Court dismissed employee's discrimination claims filed against college and labor union under 29 U.S.C.S. §185(a), the Labor Management Relations Act, for lack of subject matter jurisdiction. The Act excluded "political subdivision" from the definition of employer. Because the college was a political subdivision, both the college and labor union fell

within the political subdivision exception to jurisdiction. Watford v. Union County College, Civil No. 06-5542, 2009 U.S. Dist. Lexis 9661, (D. N.J. Feb. 10, 2009).

Idaho's ban on political payroll deductions, as applied to local governmental units, does not infringe the unions' First Amendment rights. Ysursa v. Pocatello Ed. Assn., ___U.S. ___2009, 2009 U.S. LEXIS 1632 (U.S. Feb. 24, 2009)(No. 07-869)129 S. Ct. 1093; 172 L. Ed. 2d 770.

Non-renewal did not constitute discipline. Appellate Division affirms Chancery Division order, which restrained arbitration of the board of education's decision not to renew school bus driver's employment contract. Freehold Reg'l High Sch. Dist. Bd. of Educ. v. N.J. Educ. Ass'n, (A-4130-06T1) 2009 N.J. Super. Unpub. LEXIS 1099 (App Div. May 8, 2009.)

Physical/Psychological 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., Commr., 2007: Dec. 5)

Increment withholding was a bona fide personnel decision altering teacher's work status. Teacher's psychiatric injury caused by her personalized responose to the bona fide decision cannot be regarded as arising out of employment. Therefore, pursuant to N.J.S.A. 18A:30-2.1, teacher is not entitled to full salary and benefits without loss of sick leave. (Hogan, Comm. 2006: Sept. 8).

Commissioner determined that tenured teacher's refusal to discuss the inclusion of special education students within the physical sciences curriculum had an impact on the students of the class such that psychological examination for deviation from normal mental health was warranted. (Lyndhurst Bd. of Ed., Commr., 2007: Dec. 5)

Teacher's actual job stresses arising from appropriate evaluations of her sub-par performance established conditions sufficiently stressful to contribute to the development of a mental disorder. However, teacher's entitlement to worker's compensation disability cannot be triggered by legitimate criticism in an evaluation. Merited criticism is common to all occupatins and cannot be fairly considered to be a cause and conditio characteristic of or peculiar to a particular occupation or place of employment as required by N.J.S.A. 34:15-31. (Hogan, Comm. 2006: Sept. 8).

Motion to appeal magistrate's order denying amendment of pleadings and inclusion of supplemental report denied. Board motion for summary judgment on due process claim regarding N.J.S.A. 18A:16-2 physical examination for teacher fitness for duty granted. Federal and state courts have found that there is no procedural due process violation when N.J.S.A. 18A:16-2 is properly implemented. Phillips v. Greben, Civil Action No. 04-5590 (GEB), 2006 U.S. Dist. LEXIS 78419, (D. N.J. October 27, 2006)

Commissioner determined that tenured teacher's refusal to work cooperatively with peers and follow the directives of supervisors was evidence of deviation from normal mental health such that physical and psychological examinations were warranted. (Lyndhurst Bd. of Ed., Commr., 2007: Dec. 5)

Commissioner determined that because N.J.S.A. 18A:16-2 provides for a psychiatric exam when "there is evidence of deviation from normal…mental health," the burden is upon the one challenging it. There is a presumption of the constitutional sufficiency of a legislative enactment; and the onus of a showing contra is on him who interposes the challenge. Hart v. Scott, 50 N.J.L. 585 (E. & A. 1888); State v. Dolbow, 117 N.J.L. 560 (E. & A. 1937); Sears, Roebuck & Co. v. Camp, 124 N.J. Eq. 403 (E. & A. 1938). (Lyndhurst Bd. of Ed., Commr., 2007: Dec. 5)

Commissioner determined that board is not required to show that a deviation from normal mental health affects a teacher's ability to teach, discipline, or associate with children. Pursuant to N.J.S.A. 18A:16-2, the board has the authority to direct the employee to undergo a psychiatric evaluation if it perceives that the employee is manifesting behavior that deviates from normal health. (Lyndhurst Bd. of Ed., Commr., 2007: Dec. 5)

Commissioner determined that board demonstrated sufficient evidence of deviation from normal mental health and that tenured science teacher failed to rebut that showing. (Lyndhurst Bd. of Ed., Commr., 2007: Dec. 5)

Non-tenured custodian dismissed by the board. Refused to submit to a medical examination as Superintendent attempted to verify, pursuant to Article 10A of the collective bargaining agreement, the legitimacy and scope of petitioner's claimed inability to work due to continuing illness, after a four-month absence from employment. Refusal to submit to the directed examination was an act of insubordination constituting good cause, under the collective bargaining agreement, for dismissal prior to the expiration of his individual employment contract. Commissioner lacked jurisdiction, petition dismissed. Jeannette, Commr. 2009: September 16

In matter brought by assistant principal seeking damages under the Family and Medical Leave Act and New Jersey's Law Against Discrimination.for Board's refusal to renew his contract, court upholds order requiring disclosure of his psychological records to board. Levine v. Voorhees Bd. of Educ., 2009 U.S. Dist. LEXIS 78851 (D.N.J. Sept. 1, 2009) (subsequent proceedings Dec. 23, 2009, 2009 U.S. Dist. LEXIS 119263)

Commissioner dismisses teacher who failed to respond to charges, noting that teacher showed such evidence of deviation from normal mental health that the Board placed him on paid leave pending the results of a psychiatric evaluation and that he has not cooperated in securing such an evaluation to ascertain his ability to return to his teaching position. Tenure Hearing of Kous, Commr. 2009: July 17.

In summary judgment motion by teacher who claimed that the board retaliated against him for raising attention to safety and other issues, by requiring

him to undergo psychiatric examination, and claiming they violated CEPA and his civil and First Amendment rights, court denies board's motion to dismiss the CEPA and First Amendment claims; negligence and conspiracy claims are dismissed. Blevis v. Lyndhurst Bd. of Educ., 2009 U.S. Dist. LEXIS 89908 (D.N.J. Sept. 25, 2009)

Board's order for psychiatric and physical examination of teacher who was behaving erratically upheld. Bd. of Ed.of Lyndhurst v. Blevis, 2009 N.J. Super. Unpub. LEXIS 2524 (App.Div. Oct. 8, 2009)

Religion

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer did not violate teacher/coach's due process rights as being unconstitutionally vague. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011.

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer did not infringe on teacher/coach's freedom of speech rights, as a public employee, where teacher/coach bowed his head during student initiated grace said before a team meal and took a knee during student-initiated locker room prayer. Teacher/coach's symbolic speech did not touch upon matters of public concern. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L.

Third Circuit determined that where an official at a public school does not have a First Amendment right to expression, the board's policy need not be reasonably related to a legitimate educational interest. However, in this matter, the district had a reasonable interest in preventing Establishment Clause violations. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011.

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer was not vague. The policy contained a description of the prohibited conduct that was sufficient to provide proper notice. No evidence that "men of common intelligence must necessarily guess at its meaning". Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d 656(March 2, 2009.))

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer did not infringe on teacher/coach's freedom of speech rights. Teacher/coach's symbolic speech did not touch upon matters of public concern. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third

Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d 656(March 2, 2009.))

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer was not overbroad. The policy had an immense number of valid applications and the district had a compelling interest in compliance with the Establishment Clause. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d 656(March 2, 2009.))

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer did not infringe on teacher/coach's right to freedom of association where his conduct was a violation of the Establishment Clause. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d 656(March 2, 2009.))

Third Circuit determined that teacher/coach's participation in student-initiated prayer, when viewed in light of his previous 23 years of conduct, violated the Establishment Clause by endorsing religion. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d 656(March 2, 2009.))

Third Circuit determined that district policy prohibiting faculty from leading or participating in student prayer did not infringe on teacher/coach's right to academic freedom where the teacher/coach's in-class conduct that included participating in student-initiated prayer was deemed inappropriate by the district. Teacher/coach had a right to express disagreement with the policy, but no right to violate the policy. Borden v. East Brunswick Twp. Bd. of Ed., No. 06-3890 (3d Cir April 15, 2008), 2008 U.S. App. Lexis 8011. (Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. Borden v. Sch. Dist. of E. Brunswick, 129 S. Ct. 1524; 173 L. Ed. 2d

Resignation

School psychologist's certificate is suspended for one year pursuant to N.J.S.A. 18A:26-10 and N.J.S.A. 18A:28-8 for providing only 18 days' notice of resignation from his position to accept another job; although ALJ would have limited suspension to three months, Commissioner disagrees. (Capshaw, Commr. 2007:June 12)

Public school employers were improperly granted summary judgment on principal's First Amendment retaliation claim. Employers' failure to renew the employee's employment contract constituted adverse employment action for purposes of employee's First Amendment retaliation claim for "whistleblowing" activities. Principal's resignation occurred only after

notification that employer planned to non-renew his contract. Non-renewal was actionable conduct; a demotion in title and salary. Lapinski v. Bd. of Educ., No. 04-1709, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 163 Fed. Appx. 157, 2006 U.S. App. LEXIS 1989, Filed January 24, 2006.

Tenured English and Journalism teacher resigned without providing the 60-day notice required by her contract and by N.J.S.A. 18A:28-8. Teaching certificate suspended for one year from the date of the decision. (Kovalovich, Commr., 2007:August 10)

Commissioner determined that tenured vocational education teacher's unilateral resignation during the pendancy of the matter rendered the tenure charges moot and therefore dismissed tenure charges. (03: Feb. 6, I.M.O. Jenkins)

Examiners adopted a three-year suspension of the certificate of English teacher who resigned while tenure charges of unbecoming conduct and insubordination were pending. (Suabedissen, Exam, 2009: May 11)

Tenured teacher gave insufficient notice of resignation. Certificate suspended for one year pursuant to N.J.S.A. 18A:28-8. MacGillivray, Commr. 2009: September 14

Court affirms Merit System Board's action to affirm Newark School District's decision to resign teacher's aide not in good standing and to remove her from employment, for taking unapproved absence from work for five or more consecutive days and chronic absenteeism; also, she could not argue ineffective assistance of counsel. 2008 N.J. Super. Unpub. LEXIS 1151 (May 28, 2008); Petition for certification denied, Irvin v. Newark Sch. Dist., 199 N.J. 133 (April 23, 2009.)

Tenure settlement rejected where teacher allegedly pushed disruptive child against wall; seriousness of charge requires greater explanation especially in light of agreement that matter of his certificate not be referred to State Board of Examiners-- and thus did not meet Cardonick standards. Alvarez, Commr. 2009: September 4

A charter school teacher who wishes to resign prior to the expiration of the contract must provide notice under her contract pursuant to N.J.S.A. 18A:26-10. Charter school teacher who resigned her position on week's notice was guilty of unprofessional conduct and had her certificate suspended for one year. (Van Pelt, Commr., 2009:May 29)

Teacher who, after one week in the classroom was overwhelmed and rendered ill by the challenges in the urban district and by personal issues, and who resigned his position as a sixth grade math teacher without consent or notice required under the contract, was guilty of unprofessional conduct under N.J.S.A. 18A:26-10. Commissioner orders certificate suspended for one year. (Orban, Commr., 2009:June 11)

GRC must conduct an in camera review of resignation letter, law firm invoice and executive session meeting minutes in order to determine the validity of the Custodian's assertion that the redactions constitute information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

(Kupferman v. Long Hill Township Board of Education, No. 2007-213 (GRC August 11, 2009))

Retirement

Notwithstanding the requirement set forth in N.J.A.C. 17:2-6.3 prohibiting a change in a pension benefit beyond 30 days after an application was approved, the Board of Trustees of the Public Employees' Retirement System, for good cause shown, had the inherent power to reopen its own proceeding to consider the requested relief. 383 N.J. Super. 410 (App Div 2006)

Commissioner determined that board violated its contractual obligation toward retiring/resigning teachers' when it unilaterally accelerated the retirement/resignation dates of tenured employees. Board ordered to reimburse employees for verified medical, dental and prescription drug expenses incurred during the portion of the 60-day notice period when their health insurance was cancelled. (Bloomfield, Commr., 2008:December 22)

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). See below, Commissioner determined that tenured teacher who had retired on disability, was entitled to be reinstated to her prior position when she recovered from the disqualifying disability. (Klumb, Commr., 2005: June 16).

Court affirms TPAF's denial of teacher's request to have her retirement date approved retroactive to October 1, 2005, the month after she turned 60; she was on notice that she could retire at age 60 and chose not to file her application at that time although she was not employed in New Jersey, despite that, unfortunately, she may not have understood that there is no financial gain to delayed receipt of retirement benefits after age 60. Goldstein v. TPAF, App. Div. unpublished decision (A-4496-07, July 6, 2009)

Appellate Court affirms PERC's denial of board's requests to restrain arbitration and vacate the arbitration award requiring the board to place a teacher at top of salary guide, in a matter where the Commissioner had ordered the district to reinstated the teacher to the board's employment many years after she took disability retirement. Manalapan-Englishtown Reg'l Bd. of Educ. v. Manalapan-Englishtown Educ. Ass'n, (A-3515-06T1; A-3138-07T1) 2009 N.J. Super. Unpub. LEXIS 1980 (App. Div. July 28, 009)(see related matter, Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). related matter)

Appellate Division affirms decision of the TPAF Board of Trustees granting the application for involuntary ordinary disability retirement benefits filed by the board of education on behalf of the employee. The Board adopted the ALJ recommendations that the employee suffered from a serious

psychiatric disorder and was totally and permanently disabled from performing regular and assigned teacher duties. Starling v. Teachers' Pension & Annuity Fund, (A-0450-07T1) 2009 N.J. Super. Unpub. LEXIS 486, (March 18, 2009.

Salary/Salary Guide

Commissioner determined that the amount of employees earnings, as evidenced by the employee's "W-2" statements were relevant to the application of NJSA 18A:6-14's substituted employment provision, employee's salary was not independently ascertainable by the ALJ and "W-2's" were the most reliable way of establishing outside income. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

Commissioner determined that amount of substituted income received by teacher during the period of his suspension was not clearly ascertainable without his W-2 forms. (Shinkle, Commr., 2004: Aug. 19).

Commissioner upheld increment withholding of tenured teacher pursuant to N.J.S.A. 18A:29-14. Teacher failed to demonstrate the existence of a hostile work environment where administrators observed pesistent classroom management and lesson organization problems. Teacher was responosible for improving her performance and was given numerour recommendations on how to do so. (Hogan, Comm. 2006: Sept. 8).

Commissioner determind that teacher's failure to produce rsalary ecords warrants the inference that they are unfavorable to respondent's position in opposoiton to the board's petition to recoup salary payments pursuant to N.J.S.A. 18A:6-14. Wild v. Roman, 91 N.J. Super 410 (App. Div. 1966); Hickman v. Pace, 82 N.J. Super 483 (App. Div. 1964). The prerogative to draw such an inference is not limited to a jury; the trier of fact in a non-jury case may also do so. Robinson v. Equitable Life Assur. Soc. of United States, 126 N.J. Eq. 242 (E. & A. 1939); Series Publishers v. Greene, 9 N.J. Super 166 (App. Div. 1950).

Teachers employed by State of New Jersey in its departments and agencies are not entitled to military service credit for compensation purposes pursuant to N.J.S.A. 18A:29-11 because the statute grants such credits only to teachers employed by local school districts, regional boards of education and county vocational school districts. In re Military Serv. Credit for State Teachers, 2005 N.J. Super. LEXIS 185 (App. Div. 2005).

Tenured vice principal who was transferred from a 12-month high school vice principal position to a 10-month elementary school vice principal position alleged that the transfer was retaliatory, in bad faith and would result in a lesser future salary expectation. Vice principal began his new position on August 31, but did not file his petition until December 2006, beyond the 90-day limitation period. Even if petition were not time barred, previous case law has established that future increases in salary or salary expectation are not appropriate factors in considering the validity of a transfer. Petition was dismissed. (Wilbeck, Commr., 2007:July 9)

Commissioner determined that board impermissibly reduced secretary's compensation when it transferred her from a 10-month to a 12-month position. Despite an increase in salary, secretary's rate of compensation was reduced from $192.57 to $184.64 in violation of her tenure right against reduction in compensation. (East Rutherford Ed. Assn., o/b/o Dolinsky, Commr., 2009:March 31)

Commissioner determined that board was entitled to recumbent of $312, 347.46 where teacher suspended pursuant to tenure charges failed to provide proof income from substituted employment. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

Board violated supervisor's tenure rights when it eliminated his position and appointed a non-tenured person as supervisor of early childhood education. Board was ordered to provide back pay and emoluments, mitigated by income received. (Savage, Comm'r., 2008: May 23).

Commissioner granted district petition to recoup seven years of salary payments to employee who had been suspended pursuant to tenure charges. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

Appellate Division affirmed Law Division decision confirming an arbitration award that board improperly used 1/187 instead of 1/200 in determining daily rate of pay for ten month salaried certificated employees. E. Brunswick Bd. of Ed., 2009 N.J. Super. Unpub. LEXIS 3050 (App. Div. Dec.15, 2009).

Non-renewal of non-tenured teacher's contract was not arbitrary, capricious or unreasonable and will be upheld, regardless of whether the procedures for observing and evaluating the teacher were adhered to; however, she is entitled to compensation for twelve days of work she performed after her contract had expired. Tuck-Lynn, Commr. 2009: Nov. 20.

District suspension of teacher without pay was wrongful because under N.J.S.A. 18A:6-14, board may only suspend without pay if tenure charges have been filed or employee has been indicted; therefore, board must return pay withheld and provide prospective pay until certification of tenure charges or indictment; Commissioner declines to consolidate issue with separate pending matter involving whether teacher may perform his teaching duties while the criminal charges are pending. Flynn, Commr 2009: August 3

Appellate Division affirms Commissioner decision that teacher who sustained a work-related injury that prevented her from performing her extra-curricular duties as a field hockey coach, was not entitled to payment of her coaching stipend because the term "full salary," as used in N.J.S.A. 18A:30-2.1, refers only to the compensation received for teacher's full-time teaching position, and not to a part-time coaching salary. Daganya v. Board of Educ. of Twp. of Old Bridge, 2009 N.J. Super. Unpub. LEXIS 2973 (App. Div. Dec. 8, 2009.)

A teacher, including a substitute teacher, is not entitled to unemployment benefits for the period between successive academic years, or during a vacation or

recess when the teacher has "reasonable assurance" that she will be returning to work. Here, as the substitute's name was placed on the list of substitute teachers for the next academic year, she was not entitled to benefits over the summer; however, the Court did not disturb the factual determination of the Board of Review that dates in early September and late June fell within the school year during which she was eligible for unemployment benefits. Washington Twp. Bd. of Ed. v. Bd. of Review, No. A3405-07 (App. Div. Feb. 10,

Appellate Division affirms Board of Review denial of unemployment benefits claimed by per diem substitute school teacher for the summers of 2006 and 2007. Aranguren v. Bd of Review and Ocean County Voc. Tech. School, Docket No. A0802-08T3, App. Div., unpublished, Nov. 5, 2009.

Where petitioning district sustained its burden of showing that there was substitute income to recoup, respondent teacher had a burden to show that his substitute earnings were less than the amount asserted by the district. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

Speech

Motion to dismiss denied. Plaintiff alleged facts sufficient to state a conspiracy between the local education association and superintendent of schools such that the local education association could be considered as acting under the color of state law for the purposes of § 1983 liability. The allegations raised were sufficient to allege that the local 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 Educ., Civil Action No. 05-70(NLH), 2007 U.S.

3rd Circuit dismissed appeal of substitute teacher who alleged that the district engaged in various civil rights violations when it determined to reduce his services to the district after the teacher filed a complaint. Roberts v. Newark Public Schools, No. 05-5405, 2007 U.S. Dist. App. LEXIS 9529, (3d Cir. April 25, 2007).

In determining whether a person is a public figure in a defamation claim, the court must consider whether the alleged defamation involves a public controversy and the nature of the complainant's participation in the controversy. Diaz v. South Brunswick Bd. of Educ., No. 05-4667, 2006 U.S. Dist. Lexis 87056 (D.N.J. Nov. 30, 2006).

Participants in a public controversy become "limited purpose public figures" when they have thrust themselves to the forefront of particular public controversies in order to influence the resolution of that controversy. Diaz v. South Brunswick Bd. of Educ., No. 05-4667, 2006 U.S. Dist. Lexis 87056 (D.N.J. Nov. 30, 2006).

Voluntary injection into a public controversy can be assumed from the performance of purposeful acts that propel an individual into a public

controversy. Diaz v. South Brunswick Bd. of Educ., No. 05-4667, 2006 U.S. Dist. Lexis 87056 (D.N.J. Nov. 30, 2006).

Where employee injected herself into a public controversy by soliciting media attention by appearing on two national talk shows, she became a limited public figure for the purposes of her defamation claim against the district. Diaz v. South Brunswick Bd. of Educ., No. 05-4667, 2006 U.S. Dist. Lexis 87056 (D.N.J. Nov. 30, 2006).

Court holds that teacher's as-applied challenge to the board's mailbox policy (requiring permission to distribute personal correspondence through the mailboxes) and section 1983 cause of action are not barred by res judicata and may proceed as these were not addressed on their merits by the Court of Appeals in Policastro I; however Court grants motions to dismiss overbreadth challenge as it was already addressed in Policastro I, and to dismiss vagueness claim, as it could have been brought in Policastro I. Policastro v. Tenafly Bd. of Educ., Civ. No. 09-1794 (DRD), 2009 U.S. Dist. LEXIS 64461 (D. N.J. July 30, 2009) (not for publication)

Idaho's ban on political payroll deductions, as applied to local governmental units, does not infringe the unions' First Amendment rights. Ysursa v. Pocatello Ed. Assn., ___U.S. ___2009, 2009 U.S. LEXIS 1632 (U.S. Feb. 24, 2009)(No. 07-869)129 S. Ct. 1093; 172 L. Ed. 2d 770.

Court of Appeals affirms District Court's grant of summary judgment in favor of school district et al. on former employee's claims that the school district violated the First Amendment, the ADA, and the Rehabilitation Act by refusing to renew his bus driver contract allegedly in retaliation for his advocacy on behalf of a student with disabilities. Where an employee speaks in a way that is wholly within the scope of his employment and responsibilities, such speech is not protected from disciplinary actions under the First Amendment. Isler v. Keystone Sch. Dist., No. 08-3853, 2009 U.S. App. (3d Cir. May 29, 2009) (not precedential)

Court does not grant motion to dismiss claims by former school psychologist against district, administrators and board members for retaliatory discharge under CEPA, l free speech violations under § 1983 or common law wrongful discharge; psychologist alleges she was terminated after complaining to her supervisors and others about repeated violations of New Jersey laws meant to protect students in special education, as well as other laws. Court notes that on free speech claim as it is not clear whether she spoke as a citizen or as an employee, the court must resolve reasonable inferences in her favor on a motion to dismiss. Michel v. Mainland Regional School District, Commr. July 30, 2009

In matter arising out of one staff member's suspension and the other's dismissal, the court granted 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, (D. N.J. Aug. 26, 2008)(not for publication); reconsideration

In summary judgment motion by teacher who claimed that the board retaliated against him for raising attention to safety and other issues, by requiring him to undergo psychiatric examination, and claiming they violated CEPA and his civil and First Amendment rights, court denies board's motion to dismiss the CEPA and First Amendment claims; negligence and conspiracy claims are dismissed. Blevis v. Lyndhurst Bd. of Educ., 2009 U.S. Dist. LEXIS 89908 (D.N.J. Sept. 25, 2009)

Former teacher files CEPA claim that board retaliated against him because he told students to complain about method of punishment used by vice principal; Court finds that his actions could constitute "objecting" to the punishment under CEPA, denies Board's motion to dismiss for failure to state a claim, and permits matter to go forward. Rivera v. Camden Bd. of Ed., 634 F. Supp. 2d 486, 2009 U.S. Dist. LEXIS 58634 (July 10, 2009).

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). See below:Commissioner determined that tenured teacher who had retired on disability, was entitled to be reinstated to her prior position when she recovered from the disqualifying disability. (Klumb, Commr., 2005: June 16).

Substance Abuse

State Board of Examiners revoked the multiple certificates of elementary school teacher based upon 1973 burglary conviction despite 30 years of successful performance. I.M.O. Messino, Bd. Exam. 2006: June 12.

As formerly disabled teacher was declared by New Jersey Teacher's Pension and Annuity Fund to have recovered sufficiently to return to teaching, under N.J.S.A. § 18A:66-40(a), school district was required to reinstate her to the next opening in the position from which she was retired, so long as her credentials for that position remained in effect. Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). See below: Commissioner determined that an administrative agency's determination is not binding when it conflicts with judicial interpretation. (Klumb, Commr., 2005: June 16). Petitioner motion to supplement the record denied.

Worker's Compensation

Commissioner determined that in order to waive an entitlement to sick leave benefits, there must be awareness that a person has a right to seek benefits under N.J.S.A. 18:30-2.1 at the time of settlement. (Ford, Commr, 2008: Aug. 21).

Commissioner determined that 18A:30-2.1 provides for benefits to an employee for injuries or death sustained "by accident arising out of and in the course of employment," The term "accident" has traditionally been construed to include all work-related episodes and events resulting in injury, and

indeed all unexpected injuries, whether or not unusual strain or exertion was involved and whether or not there was a direct impact. (Ford, Commr, 2008: Aug. 21).

Commissioner determined that when a worker is injured on the job the primary jurisdiction over claims for work-related injuries is with the Division of Workers' Compensation. N.J.S.A. 18A:30-2.1 serves to complement compensation benefits for a strictly limited time period. See Forgash v. Lower Camden County Sch., 208 N.J. Super. 461, 466 (App. Div. 1985). For that reason, if there is a matter pending before Workers' Compensation Court, the OAL matter is placed on the inactive list until the resolution of the compensation matter. (Ford, Commr, 2008: Aug. 21).

Teacher returning to teaching on a part-time basis following a work-related injury was eligible for benefits under N.J.S.A. 18A:30-2.1 through mid-May 2005; the fact that her workers' compensation benefits had stopped upon her voluntary return to part-time service in March 2005, did not affect her eligibility for benefits for 1 year. (Schuenemann, Commr., 2007:May 9)

Commissioner does not accept petitions invoking N.J.S.A. 18A:30-2.1 until a determination has been made by the Workers' Compensation Court (WC Court) that the subject injury was received in the line of duty, or a settlement has been reached in the WC Court by the parties without a determination of work-related causation, or a determination has been made that the claim constitutes an exception to the rule that the Commissioner defer jurisdiction until the WC Cout makes its findings. (Chomsky, Commr., 2008:September 8)

Commissioner determined that teacher failed to demonstrate that development of her cyst was a work-related injury where injury was purportedly received during a professional development yoga class. (Ford, Commr, 2008: Aug. 21).

Teacher's petition that the board violated the prohibition against reducing sick leave time for absence due to work-related injury under N.J.S.A. 18A:30-2.1, is dismissed as untimely; he failed to file within the 90 day period. (Straszewski, Commr., 2009:May 5)

Appellate Division affirms workers' compensation judge's dismissal of teacher's claim for benefits related to asthma and pulmonary disease, as she failed to satisfy her burden of proof by objective medical evidence that occupational conditions caused her medical problems. Thomas v. Newark School System, App. Div. unpublished decision (A-4877-07, A-4877-07T14877-07T1, July 16, 2009)

Appellate Division affirms workers compensation decision which awarded 22.5% of partial total disability arising from a work-related spinal injury and dismissed two employee claims. Thomas v. Newark Bd. of Educ., (A-4365-07T3) 2009 N.J. Super. Unpub. LEXIS 852, (App. Div. March 30, 2009.)

Appellate Division affirms Commissioner decision that teacher who sustained a work-related injury that prevented her from performing her extra-curricular duties as a field hockey coach, was not entitled to payment of

her coaching stipend because the term "full salary," as used in N.J.S.A. 18A:30-2.1, refers only to the compensation received for teacher's full-time teaching position, and not to a part-time coaching salary. Daganya v. Board of Educ. of Twp. of Old Bridge, 2009 N.J. Super. Unpub. LEXIS 2973 (App. Div. Dec. 8, 2009.)

Commissioner dismisses teacher's petition for restoration of sick time for injuries sustained in the course of employment pursuant to N.J.S.A. 18A:30-2.1; matter had been placed on inactive list pending settlement of Workers Compensation matter, and her counsel notified the Commissioner that the matter had been settled in Worker's Compensation Court. Bradley, Commr. 2009: Nov. 6.

Summary judgment affirmed for school district where employee voluntarily signed a separation agreement waiving her right to sue district. Gregory v. Derby School Dist. No. 10-1504 (3d Cir. March 21, 2011)

Motions to dismiss granted in part and denied in part in suit by former principal against district alleging retaliation and fraudulent misrepresentation, among other claims. *Rotante v. Franklin Lakes Bd. of Educ.*, No. 13-3380 (D.N.J. July 31, 2014)

Case dismissed alleging wrongful discharge, retaliatory discharge, intentional infliction of emotional distress, and breach of contract without prejudice. *Borrello v. Elizabeth Bd. of Educ.*, No. 14-3687 (D.N.J. July 17, 2014)

Plaintiff's claims alleging violation of First amendment rights, NJLAD withstand summary judgment in employment claim. *Giles v. Lower Cape May Reg'l Sch. Dist. Bd. of Educ.*, No. 12-05688 (D.N.J. Aug. 1, 2014)

EMPLOYEE SPEECH

Pennsylvania DOE high ranking official, who wrote article criticizing funding cuts and was then suspended and resigned, claims constructive discharge in retaliation for exercising First Amendment; Circuit Court affirms district court's grant of summary judgment to DOE, finding that the article was not protected speech because, although written as a citizen on a matter of public concern, its potential detriment to close working relationships and potential to interfere with the regular operation of the Department significantly outweighed her interest in free speech. Hara v. Pa. Dept of Ed., No 11-4115, 2012 U.S. App. LEXIS 17066 (3d Cir Aug. 15, 2012) (not precedential)

Teacher failed to establish prima facie case of discrimination; he failed to present evidence that school terminated his employment as a substitute teacher on the basis of his race. Koger v. Allegheny Intermediate Unit, No. 12-1815, 2012 U.S. App. Lexis 18220 (3d Cir.) (August 28, 2012)

Court affirms trial court's dismissal of French teacher's discrimination claim under NJLAD, as record contains plaintiff teacher's admissions of tardiness, failure to control his classroom, and failure to adhere to school policy. Further, the documentation supporting hiss termination resulted

from a lawful RIF and his ineligibility for a grant of tenure was uncontroverted. His disagreement with his performance reviews or duty assignments does not reflect he was subjected to a hostile work environment. No facts support breach of good faith, and he failed to use the grievance procedures contained in the CNA. Diallo v. E. Orange Bd. of Ed., No. A-4460-10T1, 2012 N.J. Super. Unpub. LEXIS 2048 (App. Div. Aug. 28, 2012)

EMPLOYMENT DISQUALIFICATION

A conviction for possession of drug paraphernalia is a disqualifying offense as per Appellate Division ruling; question of whether bus driver was rehabilitated after 1997 conviction is dismissed as moot as he effectively abandoned his claim by failure to answer or appear. (04:Sept. 9, R.J.B., aff'd St. Bd. 04:Dec. 1)

Alternate route candidate was disqualified from school employment based on her conviction for death by auto which, while at the tie was a third degree crime, constituted a disqualifying offense because it was equivalent to second degree crime of vehicular homicide under amended criminal statute. (01:Oct. 1, Howard, appeal dismissed for failure to perfect. St. Bd. 02:Feb. 6)

Bus Driver: Convictions for drug possession and other offenses sufficient for disqualification under N.J.S.A. 18A:6-7.1, petitioner demonstrates progress toward rehabilitation but fails to do so by clear and convincing standard. (98:Oct. 23, J.A.R., aff'd St. Bd. 99:Feb. 3)

Commissioner determined that a teacher's 1995 conviction pursuant to 18 U.S.C.A. Section 1344 for bank fraud, prior to his becoming a teacher, was substantially equivalent to theft by deception, a crime of the third degree or above. Disqualification was appropriate pursuant to N.J.S.A. 18A:6-7.1(c)3. (05:April 15, Caucino)

Commissioner determined that teacher's conviction for bank fraud, pursuant to 18 U.S.C.A. §1377, permanently disqualified him from school or other educational employment pursuant to N.J.S.A. 18A:6-7.1. Federal statute was substantially similar to state statute. (05:April 15, Caucino)

Insufficient demonstration of rehabilitation

Fingerprint search of custodian revealed murder conviction in 1966; seriousness of offense and contact with pupils outweighs early release from prison, steady employment and strong ties in community. (98:Feb. 27, J.G., aff'd St. Bd. 99:June 2; aff'd App. Div. unpub. op. Dkt. No. A-6114-98T5, June 23, 2000)

Possession by bus driver of drug paraphernalia was a disqualifying offense under N.J.S.A. 18A:39-19.1. (99:March 8, J.W., aff'd St. Bd 99:May 5; aff'd App. Div. unpub. op. Dkt. No. A-5481-98T3, June 12, 2000)

Possession of drugs, drug paraphernalia and burglary offenses were disqualifying offenses pursuant to N.J.S.A. 18A:6-7.1. (98:Oct.

23, J.A.L., appeal dismissed for failure to perfect, St. Bd. 99:Jan. 6)

Motor Vehicle offense (teacher driving while in possession of marijuana), which was downgraded from drug possession offense, is not a disqualifying offense under N.J.S.A. 18A:6-7.1; statute is limited to offenses likely to be revealed by criminal history background check, which does not include motor vehicle offenses. (01:Dec. 10, Novak)

1998 amendments: N.J.S.A. 18A:6-7.1 as amended does not permit demonstration of rehabilitation, but only the right to challenge the accuracy of the criminal record. (01:Oct. 1, Howard, appeal dismissed for failure to perfect, St. Bd. 02:Feb. 6)

Petitioner disqualified from employment as county substitute following drug convictions. (St. Bd. 03:Oct. 1, Weingarten)

District's motion to dismiss granted where plaintiff fails to state a claim against the district for the actions of an individual teacher concerning an improper relationship with a student. Graham v. Huevel, No. 10-1268, (D.N.J. March 28, 2011)

District Court reverses protective order and compels deposition. If plaintiff is healthy enough to work, then she is healthy enough to sit through deposition with reasonable breaks that take into account her condition. Toorzani v. Elmwood Park Bd. of Educ, No. 09-4262 (D.N.J. March 23, 2011)

N.J.S.A. 18A:6-7.1 is clear in its requirement that a school cannot employ a staff member if that individual has a disqualifying criminal history record; petitioner's criminal history record check revealed at least nine convictions for crimes which are permanently disqualifying for employment in schools; the statute applies prospectively, and contains no waiver or appeal process to determine whether an individual is rehabilitated. Perry, 2011 Commr. Aug 17.

Termination due to a RIF is upheld; Commissioner had found that board followed proper procedures and where employee worked as a secretary for only one year during her 11 and a half years with the district, and otherwise duties were of an aide. As such, petitioner did not have secretarial tenure under *N.J.S.A.* 18A:17-2. Rejects her that argument that she did not receive notice of a possible layoff from her position as required by the Open Public Meetings Act. *White v. Board of Educ. of Glassboro, 2013 N.J. Super. Unpub. LEXIS 1400 No. A-4711-11T3 (App.Div. June 10, 2013)*

Commissioner affirms ALJ's determination that State properly determined, pursuant to *N.J.S.A.* 18A:12-1.2, that individual is permanently disqualified from holding the office of member of a school board as a result of his criminal conviction in South Carolina on charges of possession of cocaine; the conviction was not expunged and it remains on his record; plain language of *N.J.S.A.* 18A:12-1.2 warrants petitioner's disqualification despite his argument that he was pardoned by the South Carolina Department of Probation, Parole and Pardon Services as a pardon

does not remove the record of the conviction. *Palmer v. NJDOE,* 2013:June 5.

Custodian asserts claims of age and disability discrimination under the New Jersey Law Against Discrimination, N.J. Stat. Ann. § 10:5-1 et seq. ("NJLAD"), violations of the federal Family and Medical Leave Act, 29 U.S.C. § 2611 ("FMLA"), breach of contract, and violations of his Fifth and Fourteenth Amendments. Board asserted that termination was for excessive absenteeism. For the reasons stated herein, the Court finds that Plaintiff has failed to offer evidence in support of his NJLAD age and disability discrimination, FMLA, contract, and constitutional claims that would create a genuine dispute of material fact for trial. Motion granted. *Walters v. Carson*, 2013 U.S. Dist. LEXIS 178249, 1-2 (D.N.J. Dec. 19, 2013)

EMPLOYMENT LITIGATION

School principal files claims against board and Superintendent, of fraudulent inducement to sever employment relationship, breach of contract, tortious interference with contractual relations and prospective economic advantage, tenure law violation, and First Amendment retaliation, based on allegations that the Superintendent falsely claimed to have filed a grievance against him and forced his retirement in retaliation for the principal's comments about the superintendent that were allegedly made in confidence to the board during a closed meeting, and apparently leaked. Claims seeking purely equitable relief such as reinstatement do not require a notice of claim and will not be dismissed on that basis; however, many claims are dismissed for failure to file notice of claim, vague allegations, etc. Retaliation count permitted to proceed. Plaintiff may file amended complaint where indicated. Motion to Dismiss is granted in part and denied in part, the Board's Motion to Dismiss is granted in part and denied in part, Plaintiff's Cross-Motion for Leave to File a Notice of Claim is denied, and Plaintiff's Motion to Amend/Correct Complaint is granted in part and denied in part. *Rotante v. Franklin Lakes Bd. of Educ.* Civil Action No. 13-3380 (JLL) (D.N.J. March 26, 2014) not for publication

Court dismisses complaints involving a series of terminations of employment and denials of applications for employment; plaintiff alleged that some two dozen defendants violated his rights under Title VII, ADEA; handicap discrimination in violation of the Rehabilitation Act; and equal-access protections. *El-Hewie v. Paterson Pub. Sch. Dist.,* Civil Action No. 13-5820 (KM) (D.N.J. March 24, 2014)

Plaintiff complaints did not rise to the level of wrongdoing under the Whistleblower Law, 43 Pa. Cons. Stat. § 1422, because the Pennsylvania School Code was too vague and subjective to serve as the basis for a valid whistleblower complaint. *Anderson v. Bd. of Sch. Dirs. of the Millcreek Twp. Sch. Dist.*, Nos. 13-2116 and 13-4161 (3d Cir. Pa. 2014)

Plaintiff appeals from an order of the District Court granting summary judgment to School District on his complaint of age discrimination in violation of federal law. Plaintiff established a prima facie case of age discrimination. School District offered a legitimate, nondiscriminatory reason for declining to hire him. Plaintiff failed to rebut the School District's proffered reason for not hiring him, and thus summary judgment for the School District was appropriate. *Landmesser v. Hazleton Area Sch. Dist.*, No. 14-1188 (3d Cir. Pa. 2014)

EQUAL PROTECTION

New Jersey education law, which differentiates between non-public school students and home schooled students with respect to providing funds for speech therapy is constitutional, but in the context of the facts of this case, was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not his home. This service was offered to other nonpublic students at the public school; to deny a home schooled the service was a denial of equal protection. While home schooled students are not entitled to special education and related services under the IDEA, they are entitled to their "equitable share of public funds" for speech therapy services. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)

School district student assignment redistricting plan was consonant with the Equal Protection Clause and passed constitutional muster. While the decision makers had discussed race, the plan did not select students based on racial classifications, did not use race to assign benefits or burdens in the school assignment process, did not apply the plan in a discriminatory manner, and did not have a racially discriminatory purpose. Strict scrutiny did not apply; rather the appropriate test of the redistricting plan was rational basis, which the district met. The plan was reasonably related to the goals of (a) equalizing the two high school populations, (b) minimizing travel time and transportation costs, (c) fostering educational continuity, and (d) fostering walkability. District Court Order affirmed. Doe v. Lower Merion Sch. Dist., No. 10-3824, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 665 F.3d 524 (3rd Cir. 2011); Decided December 14, 2011.

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time and transportation costs, (c) fostering educational continuity, and (d) fostering walkability. District Court Order affirmed. Doe v. Lower Merion Sch. Dist., No. 10-3824, 665 F.3d 524 (3rd Cir. 2011); Decided December 14, 2011. Writ of Certiorari denied. Doe v. Lower Merion Sch. Dist., No. 11-1135, SUPREME COURT OF THE UNITED STATES, 567 *U.S.*

Non-tenured principal demonstrated sufficient facts to defeat a motion to dismiss file by the board where the principal alleged that the board allegedly orchestrated false disciplinary proceedings, refused to provide necessary funding, and intentionally understaffed the high school and otherwise treated her and other female staff members negatively because of gender. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 16, 2014) (2012) 80 U.S.L.W. 3690, Decided June 18, 2012

EQUITABLE ESTOPPEL

Did not apply to require school board to accept sibling of non-resident tuition student although parents relied on representations that siblings would be accepted; board's decision was justified in light of overcrowding and absence of knowing misrepresentation or "manifest injustice" (99:Sept. 3, J.S., aff'd St. Bd. 00:Jan. 5)

Estoppel does not apply to a person who is not a party to the proceeding or an agent of that party. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)

EQUITABLE ESTOPPEL

Judicial estoppel: Parents were judicially estopped from asserting claim of residency in district where they had taken inconsistent position in previous litigation; summary judgment granted; parents ordered to pay back tuition. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)

Tenure acquisition: teachers assigned to a day care program could not acquire tenure or seniority credit for service in that program; tenure cannot be acquired through equitable estoppel, even though teachers were required to hold teaching certificates and otherwise treated like teachers. (02:Oct. 24, Brown)

EQUIVALENCY AND WAIVER

Child Study Team Services: Waiver invalid for district that wanted to contract out basic child study team services to private vendor; such waiver contradicts legislative intent. (St. Bd. 00:May 5, Miller)

Equivalency denied: School psychologist shall not be granted equivalency as guidance counselor because the positions require different certifications. Certification process is critical to providing thorough and efficient education. (St. Bd. 01:Aug. 1, Phillipsburg Education Association)

Equivalency granted to allow retired teachers to serve as mentors despite prohibition in N.J.A.C. 6:11-14.5. Motion to transfer jurisdiction to Commissioner denied. Motion to dismiss granted for failure to file notice within statutory time limit. (St. Bd. 04:Jan. 7, Berkeley Heights)

Evaluation: Application granted to permit evaluation of tenured staff members through action research, peer coaching and portfolio assessment. Appeal filed. Settlement proposed and approved. (St. Bd. 02:Nov. 6, South Brunswick)

Evaluation: Equivalency invalidated allowing alternative method of evaluating tenured teaching staff members. Equivalency did not provide an equivalent degree of evaluation and oversight comparable to or as effective as that in state regulation. Commissioner ordered to do a review of all such waivers previously granted and apply State Board decision prospectively. (St. Bd. 05:May 4, Franklin)

Substitute teacher: District shall not be granted waiver to allow those with county substitute certificate to serve more than 20 consecutive days. (St. Bd. 00:May 3, Middletown)

The certification process is critical to assuring the provision of a thorough and efficient education. An equivalency or waiver cannot properly be granted when T & E might be compromised. (St. Bd. 99:March 3, Guttenberg Education Association) See also (St. Bd. 00:May 3, Middletown; St. Bd. 01:Aug. 1, Phillipsburg Education Asssociation)

The determination to grant or deny an equivalency or waiver is a final decision of the Commissioner and any appeals must be made to the State Board of Education. (St. Bd. 04:Jan. 7, Berkeley Heights)

Waiver of N.J.A.C. 6A:23-4.3 denied. School was serving only 4 students. N.J.A.C. 6A:23-4.3 was developed "due [to] the Department's serious concerns about the high number of separate placements for students with disabilities in New Jersey. The Department's intent is to encourage the development of programs that are consistent with the mandate to provide services in the least restrictive environment and in the most cost effective and efficient manner." (St. Bd. 05:July 6, Occupational Center of Union County)

World Language Instruction: Equivalency granted to board to employ Berlitz instructors as full-time world language instructors not permitted where only certification is that of county substitute. (St. Bd. 99:March 3, Guttenberg Education Association)

ETHICS ACT

Act in Concert with Fellow Board Members

Board member violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members, when she took private action that could compromise the board, sending letters under her title as Board President and not acting in concert with her fellow board members. Board member's letter referred to a "substandard kindergarten classroom" with no windows and ventilation and an "obvious fire code violation." SEC recommended the penalty of reprimand. Commissioner agrees. (03:Aug. 21, Zimmerman)

Charter school trustee violated N.J.S.A. 18A:12-24.1(c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24(b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10) Stay denied by Commissioner. (03:Dec. 11) State Board affirms with respect to termination, reverses as to hiring, directs reinstatement of trustee and penalty of reprimand. (04:Sept. 1, Schaeder)

Activity in substantial conflict with duties

Reprimand imposed against board member who voted to approve payments to a preschool that had a contract with the board and in which he held an interest (notes for the sale of his shares). (03:Dec. 15, Hodges)

Administering the schools

Charter school member violated N.J.S.A. 18A:12-24.1(b)(c) and (d) by acting as a "one member board" and unilaterally terminating staff

and hiring trustee who had resigned from board of trustees expressly for purpose of being paid for technology services he had previously supplied as a volunteer. (03:Nov. 10, Schaeder, motion for SEC participation granted, St. Bd. 04:March 3, rev'd in part, St. Bd. 04:Sept. 1)

Three board members violated N.J.S.A. 18A:12-24.1(a), (c) (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Edy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

Although board minutes may have been in error, where board minutes reflected that charter school trustee voted on the hiring and salary approval of his son, and where the trustee failed to read those minutes prior to approving them, he was determined to be in violation of the personal involvement aspect of N.J.S.A. 18A:12-24(c). The public has a right to rely on minutes of a public meeting. (05:Jan. 14, Hatchett)

Board member censured for representing the borough council rather than the school board in a matter before the board of education. (03:March 31, Gass)

Board member fraudulently obtained an advisory opinion from SEC misleading SEC into believing the situation posed was his when it was actually that of another board member. Violation of public trust. SEC recommends and Commissioner concurs with board member's removal from board of education. (02:Dec. 3, Ordini, SEC motion to participate granted, St. Bd. 03:Feb. 5, aff'd for the reasons expressed therein, St. Bd. 03:May 7)

Board member gave resume to Account Manager at Blue Cross/Blue Shield after serving on board's Finance Committee which recommended new health insurance provider – Blue Cross/Blue Shield. Board member hired by Blue Cross/Blue Shield. No findings that board member used his position for unwarranted privileges or advantages. Poor judgment shown.

(Complaint dismissed C33-96, 97:Oct. 28, Mercer, appeal dismissed St. Bd. 00:Feb. 2)

Board member used her position to secure unwarranted privilege for another when, using her official title, she requested a delay in the release of a Commissioner decision. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated the Act when he called an employee at home and became angry when he was informed that the employee had not sent out the reports he had requested. SEC recommended the penalty of reprimand. Commissioner agreed. (04:April 12, Fischer)

Board member violated the Act when she voted on three separate occasions to approve bill lists that contained bills from a printing company owned by her husband and for which she worked. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member who served as a paid substitute nurse during an emergency shortage of nurses, while she also served as a member of the board, violated N.J.S.A. 18A:12-24(d); this statute applies to casual employment as well as regular employment; however she did not act with intent to obtain unwarranted privileges and did not violate section (b). Reprimand ordered. (05:Jan. 14, Wenzel)

Censure reversed for board member who voted on a collective bargaining agreement negotiated with the same statewide union (NJEA) to which be belonged. (St. Bd. 00:March 1, Pannucci, reversing N.J.A.R.2d (EDU) 339)

Commissioner accepts SEC and ALJ's recommended penalty of reprimand. SEC had accepted the ALJ's findings of fact and the conclusions of law that the respondent violated *N.J.S.A.* 18A:12-24(b) of the Act and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members. By using her position on the Board, the respondent was able to gain access to a forum for her son that was not afforded to other such candidates, who had to endure the conventional application and vetting processes, thereby violating *N.J.S.A.* 18A:12-24(b). Respondent's actions also violated *N.J.S.A.* 18A:12-24.1(f), which prohibits a Board member from "using the schools for personal gain or the gain of friends" and ceding the member's independent judgment "for the gain of friends." The respondent sought gain for her son, "surely within the group contemplated as 'friends.'" But for the respondent's position as a board member, her son would not have been able to avail himself of the benefits offered under this "internship." It is of no moment that the "unwarranted privilege" was not obtained. It is enough that the respondent sought to benefit her son. *IMO Barbara Garrity*, Commissioner, 2014: October 14. See also *IMO Barbara Garrity, Holmdel Board of Education, Monmouth County*, C24-13, SEC, 2014: August 26

Advisory Opinions

Board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-31 when he fraudulently obtained an Advisory Opinion from the SEC,

misleading the SEC into believing that the situation he posed was his when it was actually the situation of another board member; used his position to secure unwarranted privileges and advantages for himself. Board member used the advisory opinion information to file a complaint against the other board member. SEC found that the board member violated the public trust and recommended that the board member be removed. The Commissioner agreed. (02:Dec. 3, Ordini) Stay denied by Commissioner (03: Jan.8) Aff'd State Board (03: May 7)

Advisory Opinions – Public

A board member whose brother held a maintenance position in the district and was a member of the local education association could not participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Assistant Superintendent who had ownership interest in local day care center violated N.J.S.A. 18A:12-24 (b) by using his position to secure unwarranted privileges or advantages when he set forth that district would have to use all local day care centers, sent letter to district residents promoting his day care center using his title, acted contrary to SEC's second advisory opinion letter. SEC recommends one month suspension. Commissioner agrees; orders one month suspension without pay. (00: June 16, Confessore, aff'd State Board, 01:October 3)

Board member in one building K-8 school district whose spouse is a teacher in the district may fully participate in initial appointment of superintendent, principal and vice principal, including discussion and voting. Once administrators are hired and become supervisors of spouse, board member must recuse himself from future employment issues regarding these individuals such as performance reviews, contract negotiations or promotions. SEC Advisory Opinion A10-00, June 27, 2000.

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member who had simple wills and powers of attorney prepared for her and her spouse by the board attorney would violate the act if she were to vote on the reappointment of the board attorney or the attorney's bills. No financial involvement as usual fee paid. Personal involvement existed. Attorney had served as board member's personal counselor and may provide opinions that favor board member's viewpoint. SEC cautioned against private representations of board members. SEC Advisory Opinion A03-01 – April 22, 2001.

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member, with brother-in-law teaching in another school district and a member of the same statewide union with which the board was negotiating, would not violate the Act by participating in negotiations. Doctrine of Necessity should not be invoked for negotiations committee when there are three persons without conflicts. SBA with conflict could provide technical assistance. SEC Advisory Opinion A14-02 – November 15, 2002.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiating beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board members on sending district board of education, who have immediate family members employed in a school district that receives the board's students, may not vote on the tuition contract with the receiving school district. See, In the Matter of Bruce White, 2001 S.L.D. September 10. SEC Advisory Opinion A05-02 – April 2, 2002.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board members who are employed as teachers in other school districts and who are represented by the same statewide union with which the board is negotiating may not be members of the negotiations team, may not establish negotiations parameters or be present in closed session when negotiations updates are presented to the board. Board members so situated may be apprised o the terms of the contract after the tentative memorandum of agreement has been reached, discuss same in closed session and vote on the agreement. SEC Advisory Opinion A14-00, November 28, 2000.

Board members who have spouses employed in the district as full-time teacher aides, where teacher aides are not members of the teachers' association, would violate the Act if they were to negotiate and vote on the teachers' association collective bargaining agreement. Spouses/teacher aides historically received salary increases no less than that of the teachers' association. Board member whose spouse is a teacher aide, who is also board president, may appoint chairperson and members of the negotiations committee without violating the Act. SEC Advisory Opinion A01-01 – October 23, 2001.

Board members with an out-of-district union affiliation could participate in a grievance hearing where the issue in question was not covered by the collective bargaining agreement and was a matter of past practice. A board member whose daughter worked in the district could not participate as she could be affected by the outcome of the grievance. SEC Advisory Opinion A22-98, December 22, 1998.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board member's spouse was a teacher in another school district. Not union member, no NJEA affiliation, no representation fee, no agency shop clause, but received benefit of the contract. Board member may not participate on negotiations committee. Recent amendment/Pannucci decision does not change SEC position. SEC Advisory Opinion A02-00, March 28, 2000.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Charter school trustee could not simultaneously serve on board of education from which charter school receives students. Former board members may be trustees and provide expertise. See A22-96, February 1997. SEC Advisory Opinion A13-98, July 31, 1998.

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

May law firm that represents school district represent charter school located in the same school district. No opinion issued. School attorney is not a school official. SEC has no jurisdiction. SEC Advisory Opinion A15-99 – November 23, 1999.

Non-voting members of a charter school board of trustees may neither be employees of, nor vendors of, services to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except for training. SEC Advisory Opinion A14-98, July 31, 1998.

School business administrator could continue to serve as a member of NJASBO if his employing board were to participate in an NJASBO sponsored investment program. SEC Advisory Opinion A05-98, November 24, 1998.

Superintendent would violate the Act if he were to accept funding from a district vendor (travel, meals and accommodations) to a vendor-sponsored conference where the superintendent was making a presentation. SEC Advisory Opinion A14-03 – August 14, 2003.

Attorneys

Board member who had simple wills and powers of attorney prepared for her and her spouse by the board attorney would violate the act if she were to vote on the reappointment of the board attorney or the attorney's bills. No financial involvement as usual fee paid. Personal involvement existed. Attorney had served as board member's personal counselor and may provide opinions that favor board member's viewpoint. SEC cautioned against private representations of board members. SEC Advisory Opinion A03-01 – April 22, 2001.

Board members violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24 (c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

May law firm that represents school district represent charter school located in the same school district. No opinion issued. School attorney is not a school official. SEC has no jurisdiction. SEC Advisory Opinion A15-99 – November 23, 1999.

Attorney advice

Board members violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24 (c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in discussions and voted on matters concerning lease that the church in which he served as a deacon had with the board. Personal involvement that impaired objectivity found. Acted against attorney advice – aggravating factor. SEC recommends censure. Commissioner agrees. (99:May 24, Coleman)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Budgets

Board member violated N.J.S.A. 18A:12-24 (c) (indirect financial interest) and N.J.S.A. 18A:12-24 (g) (represented council's interests before the board) by serving as a "consultant" to the borough but actually serving as the borough's financial officer while a member of the board and by his continuing employment with the borough while remaining on the board of education. Board member deliberated and voted on the district budget despite SEC's cautioning prior decision that he should not participate in budget matters. See (98: Nov. 24) SEC would have recommended removal but for member's resignation upon the Commission's finding of probable cause. SEC recommended most severe available penalty of censure. Commissioner agreed. (03:March 31, Gass)

Business relationships

Assistant Superintendent who had ownership interest in local day care center violated N.J.S.A. 18A:12-24 (b) by using his position to secure unwarranted privileges or advantages when he set forth that district would have to use all local day care centers, sent letter to district residents promoting his day care center using his title, acted contrary to SEC's second advisory opinion letter. SEC recommends one month suspension. Commissioner agrees; orders one month suspension without pay. (00:June 16, Confessore, aff'd State Board 01:October 3)

Board member position and employment as youth outreach worker were not inherently incompatible; must abstain from matters concerning the employing corporation. Board member violated N.J.S.A. 18A:12-24 (c) by voting to contract for pre-K services with the corporation with which he was employed; financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Board member's employment did not involve pre-K. SEC recommends censure. Commissioner agrees. (00:July 13, Arocho)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member who was vice president of Commerce National Insurance Services, a subsidiary of Commerce Bancorp, violated N.J.S.A. 18A:12-24(c) when she voted in favor of Commerce Bank being the paying agent for the board's bond issue. Indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommends reprimand. Commissioner agrees. (00:Nov. 27, Haines)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board member violated N.J.S.A. 18A:12-24 (a) when he had an interest in a preschool that contracted with the board and when he voted to approve payment to the preschool. SEC recommends penalty of reprimand. Commissioner agrees. (03:Dec. 15, Hodges)

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04:Oct. 29, Pirillo)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in the discussion and voted on the resolution to continue the appointment of his employer, a bank, as the depository of monies for the board of education; personal involvement that created a benefit to the board member. SEC recommends penalty of reprimand. Considered fact that board member advised that he would not vote on matters related to the bank in the future. Commissioner agrees. (02: Jan. 31, Carpenter, State Board affirms 02:May 1)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member violated N.J.S.A. 18A:12-24(c) when she voted to approve a bill list that contained a bill of her employer. Settlement agreement reached. Board member inadvertently violated the Act. SEC recommends penalty of reprimand. Commissioner agrees. (01:July 27, Jackson)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

Campaign Contributions

ALJ found that Board member violated N.J.S.A. 18A:12-24 (b) and (e) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC accepted the Initial Decision of the ALJ and recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (03:Sept. 22, Keelen)

Board member violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24 (e) (solicited campaign contribution with intent to influence) when she invited a school district vendor employee to a meeting for the purpose of soliciting a $1000 donation to a board member's campaign for borough council. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommends highest penalty available, censure, as respondent was now a former board member. Commissioner agrees. (02:Sept. 23, Ferraro)

Board members violated N.J.S.A. 18A:12-24.1 (f) and (j) when they surrendered their independent judgment concerning the district's food service contractor to a special interest group, the local education association, which supported their candidacy and opposed renewal of the contract. One board member violated the code of ethics when she took her complaints directly to the media instead of first giving the administration an opportunity to address them. SEC recommends penalty of censure. Commissioner agrees (03: Dec. 19, Kroschwitz II and Sturgeon)

Campaign Involvement

Board member violated N.J.S.A. 18A:12-24 (b) when he endorsed a candidate for municipal council through a mailing of letters to members of the community. The letterhead, envelope, and contents of the letter could mislead recipients to believe that the endorsement was in his official capacity as board president. By so doing he used his position as board president to secure unwarranted privileges and advantages for the candidate. SEC recommended the penalty of reprimand. Commissioner agreed. (04:Nov. 17, DeMeo)

Board member violated N.J.S.A. 18A:12-24 (b) when she appropriated school district mailing labels, containing student names, identification numbers and homeroom numbers in order to mail campaign literature; used her position to obtain unwarranted privileges and advantages for herself and others. SEC recommends penalty of censure. Commissioner agrees. (02:April 18, Russo)

Board members violated N.J.S.A. 18A:12-24 (c) when they voted to reappoint auditor after auditing firm employee served as campaign treasurer and firm's address was campaign address. Relationship that is more than casual or collegial constitutes a personal involvement. Mitigating circumstances – attorney advice, auditors for several years. SEC recommends reprimand. Commissioner agrees but stays penalty until State Board rules on the appeal. (98:March 4, Longo, aff'd St. Bd. 1999 S.L.D. July 9)

Campaign Literature

Board member violated N.J.S.A. 18A:12-24(b) when he posted flyers supporting his re-election in the board administrative building. Settlement Agreement, wherein parties agreed to penalty of censure, adopted by SEC. Commissioner approved. (02:Dec. 16, Shepherd)

Board member violated N.J.S.A. 18A:12-24 (b) when she appropriated school district mailing labels, containing student names, identification numbers and homeroom numbers in order to mail campaign literature; used her position to obtain unwarranted privileges and advantages for herself and others. SEC recommends penalty of censure. Commissioner agrees. (02:April 18, Russo)

Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, when she printed and distributed a flier during her reelection campaign which contained incomplete fiscal information regarding the board's budget, compromising the board's ability to pass its budget. SEC recommended the penalty of censure because the public should be aware that the board member provided incomplete information regarding the potential tax increase. (05:March 23, Quinn)

Candidate Endorsement

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiations beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board member violated N.J.S.A. 18A:12-24(b) when he endorsed a candidate for municipal council through a mailing of letters to members of the community. The letterhead, envelope, and contents of the letter could mislead recipients to believe that the endorsement was in his official capacity as board president. By so doing he used his position as board president to secure unwarranted privileges and advantages for the candidate. SEC recommended the penalty of reprimand. Commissioner agreed. (04:Nov. 17, DeMeo)

Charter Schools

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Charter school board of trustees member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Dec. 1, Perez)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05:November 9, McCullers)

Charter school trustee could not simultaneously serve on board of education from which charter school receives students. Former board members may be trustees and provide expertise. See A22-96, February 1997. SEC Advisory Opinion A13-98, July 31, 1998.

Charter school trustee removed for failure to file complete disclosure statements; ample time given to trustee to correct deficiencies. (01:Jan. 19, Hill)

Charter school trustee removed for failure to file, did not respond to either the SEC or Commissioner. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (99:Aug. 31, Cornwell)

Charter school trustee reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local county and state educational officials. (03:Dec. 22, Simmons)(03:Dec. 22, Charlton)(03:Dec. 22, Cupo)(04:Dec. 1, Simmons)

Charter school trustee suspended for 30 days for failure to file disclosure form. Automatic removal if failure to file within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Logan)(01:Nov. 16, Helle)(01:Nov. 15, Kendall)(02:Dec. 13, Featherson)

Charter school trustee suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Reprimand if disclosure forms filed prior to the filing date of Commissioner's decision as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 22, Roig)(03:Dec. 22, Tullo)(03:Dec. 22, Santiago)(03:Dec. 22, Williams)(03:Dec. 22, Wilson)(03:Dec. 22, Dunkins)

Charter school trustee suspended for 30 days for original failure to file and subsequent filing of scantily completed disclosure form. Automatic removal from board if failure to file acceptable disclosure form within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Dixon)

Charter school trustee violated N.J.S.A. 18A:12-24(c) where the minutes of the meeting reflected that he voted on the hiring of his son and he voted to approve the minutes, notwithstanding credible testimony that he abstained. Public should be able to rely on the minutes. By so acting he received the personal benefit of ensuring that his son received employment. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Hatchett)

Commissioner rejects SEC recommendation to suspend, until such time as training was completed, charter school trustee who did not attend board member training within the first year of her first term. Trustee registered for October 2004 training but did not attend. SEC recommended decision is inconsistent with prior decisions in this area. No articulated reasons by SEC for not recommending removal, if training is not completed by a date certain. Trustee suspended pending completion of training by January 2005. If trustee does not attend one of the two January training sessions, she shall be summarily removed from office as of January 30, 2005. (04:Dec. 9, Rios)(04:Dec. 10, Paniagua)(04:Dec. 13, Torres)(04:Dec. 13, Graham)(04:Dec. 13, Mason-Griffin)

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

Filing Disclosure Forms

Removal

SEC recommends charter school trustee be suspended until she files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state educational officials. (06:Jan. 24, Harrison-Bowers)

Reprimand

Charter school trustee reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local county and state educational officials. Trustee did not respond to either SEC or Commissioner. (06:Jan. 27, Young)

SEC recommends charter school trustee be suspended until she files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 24, Harrison-Bowers)

Suspension

SEC recommends charter school trustee be suspended until she files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 24, Harrison-Bowers)

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

May law firm that represents school district represent charter school located in the same school district. No opinion issued. School attorney is not a school official. SEC has no jurisdiction. SEC Advisory Opinion A15-99 – November 23, 1999.

Non-voting members of a charter school board of trustees may neither be employees of, nor vendors of, services to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except for training. SEC Advisory Opinion A14-98, July 31, 1998.

SEC recommends automatic removal if charter school board of trustee member fails to attend January 2004 training. Missed training due to illness. Commissioner agrees and orders additional reprimand for failure to abide by the requirements of the School Ethics Act, causing administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 18, Jackson)

SEC recommends removal of charter school trustee who failed to attend training. Board member never responded to either the SEC or the Commissioner. Commissioner agrees, orders trustee removed. (02:Sept. 5, Jubilee)

SEC recommends suspension of charter school board of trustees member who failed to attend training with automatic removal if fails to attend January 2004 training. Commissioner agrees, orders suspension pending attendance at January training, removal if failure to attend. (03:Dec. 18, Muhammad)(03:Dec. 22, Hunter)(03:Dec. 22, Frohling)(03:Dec. 22, Sutton)(03:Dec. 23, Gaines)(03:Dec. 23, Charlton)

SEC request for removal of charter school trustee for failure to file declined. Disclosure statements filed with county office but not timely transmitted to SEC. (99:Aug. 27, Richardson)(99:Aug. 27, Moore)(99:Aug. 27, Ludwigsen)

Training

Removal

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that he was unable to attend training because of prior personal and professional commitments and was registered for training in March 2006. (05:Nov. 9, Candio)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member never responded to either the SEC or Commissioner. (05:Nov. 3, Repella)

Suspension

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that he was unable to attend training because of prior personal and professional commitments and was registered for training in March 2006. (05:Nov. 9, Candio)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member never responded to either the SEC or Commissioner. (05:Nov. 3, Repella)

Children

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members with an out-of-district union affiliation could participate in a grievance hearing where the issue in question was not covered by the collective bargaining agreement and was a matter of past practice. A board member whose daughter worked in the district could not participate as she could be affected by the outcome of the grievance. SEC Advisory Opinion A22-98, December 22, 1998.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Code of Conduct

N.J.S.A. 18A:12-24(a)

A board member whose brother held a maintenance position in the district and was a member of the local education association could not participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

Board member violated N.J.S.A. 18A:12-24 (a) when he had an interest in a preschool that contracted with the board and when he voted to approve payment to the preschool. SEC recommends penalty of reprimand. Commissioner agrees. (03:Dec. 15, Hodges)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 2004.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Commission determined that a parent failed to prove that the board fail to uphold and enforce all laws, rules and regulations of the State Board violation of N.J.S.A. 18A:12-24(a) where board did not protect her right to communicate with the teachers of her special needs child. Commission determined that the parent had no greater right to communicate with teachers than parents of no-special needs students. (SEC 05:April 4, Bastin)

Commission determined that the board's failure to follow its own policies and procedures was not a failure to uphold and enforce all laws, rules and regulations of the State Board violation of N.J.S.A. 18A:12-24(a). Local board policies are not policies of the State Board, therefore, there is no statutory penalty for the local board's failure to comport with board policies. (SEC 05:April 4, Bastin)

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

Non-voting members of a charter school board of trustees may neither be employees of, nor vendors of, services to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except for training. SEC Advisory Opinion A14-98, July 31, 1998.

School business administrator could continue to serve as a member of NJASBO if his employing board were to participate in an NJASBO sponsored investment program. SEC Advisory Opinion A05-98, November 24, 1998.

N.J.S.A. 18A:12-24(b)

ALJ found that Board member violated N.J.S.A. 18A:12-24 (b) and (e) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC accepted the Initial Decision of the ALJ and recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (03:Sept. 22, Keelen)

Assistant Superintendent who had ownership interest in local day care center violated N.J.S.A. 18A:12-24 (b) by using his position to secure unwarranted privileges or advantages when he set forth that district would have to use all local day care centers, sent letter to district residents promoting his day care center using his title, acted contrary to SEC's second advisory opinion letter. SEC recommends one month suspension. Commissioner agrees; orders one month suspension without pay. (00:June 16, Confessore, aff'd State Board 01:October 3)

Board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-31 when he fraudulently obtained an Advisory Opinion from the SEC, misleading the SEC into believing that the situation he posed was his when it was actually the situation of another board member; used his position to secure unwarranted privileges and advantages for himself. Board member used the advisory opinion information to file a complaint against the other board member. SEC found that the board member violated the public trust and recommended that the board member be removed. The Commissioner agreed. (02:Dec. 3, Ordini, Stay denied by Commissioner 03:Jan.8, aff'd State Board 03:May 7)

Board member violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24 (e) (solicited campaign contribution with intent to influence) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (02:Nov. 6, Gallagher)

Board member violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24 (e) (solicited campaign contribution with intent to influence) when she invited a school district vendor employee to a meeting for the purpose of soliciting a $1000 donation to a board member's campaign for borough council. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommends highest penalty available, censure, as respondent was now a former board member. Commissioner agrees. (02:Sept. 23, Ferraro)

Board member violated N.J.S.A. 18A:12-24(b) when he posted flyers supporting his re-election in the board administrative building. Settlement Agreement, wherein parties agreed to penalty of censure, adopted by SEC. Commissioner approved. (02:Dec. 16, Shepherd)

Board member violated N.J.S.A. 18A:12-24 (b) when she appropriated school district mailing labels, containing student names, identification numbers and homeroom numbers in order to mail campaign literature; used her position to obtain unwarranted privileges and advantages for herself and others. SEC recommends penalty of censure. Commissioner agrees. (02:April 18, Russo)

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board member violated N.J.S.A. 18A:12-24 (b) when he asked the board's SBA to intercede for him in acquiring an unsecured loan from the bank, which held the Board's accounts. Attempted to secure unwarranted privileges for himself. SEC recommends penalty of censure. Commissioner agrees. (98:Feb. 9, James)

Board member violated N.J.S.A. 18A:12-24 (b) when he endorsed a candidate for municipal council through a mailing of letters to members of the community. The letterhead, envelope, and contents of the letter could mislead recipients to believe that the endorsement was in his official capacity as board president. By so doing he used his position as board president to secure unwarranted privileges and advantages for the candidate. SEC recommended the penalty of reprimand. Commissioner agreed. (04:Nov. 17, DeMeo)

Board member violated N.J.S.A. 18A:12-24(b) when, using her official title, she requested a delay in the release of an SEC decision regarding a member of her board of education; unwarranted privilege for another board member. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member voted on expense reimbursement concerning husband's employment with board. SEC found probable cause as to violations of N.J.S.A. 18A:12-24 (b) and (c) Settlement approved. Three-month suspension. (99:June 10, Harris)

Board members violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24 (c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to

confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

Charter school trustee violated N.J.S.A. 18A:12-24.1 (c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24 (b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10, Stay denied by Commissioner 03:Dec. 11, State Board affirms with respect to termination, reverses as to hiring, directs reinstatement of trustee and penalty of reprimand, 04: Sept. 1, Schaeder)

Commissioner accepts the SEC's recommendation that reprimand was the appropriate penalty when a board member provided an unwarranted privilege and advantage to a municipal council candidate, by endorsing a candidate for municipal council through a mailing of letters to members of the community where the letterhead, envelope and contents of the letter could mislead recipients to believe that the endorsement was made in the board member's official capacity of board president. (04:Nov. 17, DeMeo, appeal dismissed for failure to perfect, St. Bd. 05:Feb. 2)

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

N.J.S.A. 18A:12-24(c)

A board member whose brother held a maintenance position in the district and was a member of the local education association could not participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member, chair of personnel committee, violated N.J.S.A. 18A:12-24(c) when he twice made motions to pass resolutions that resulted in the appointment of his wife to two positions in the district; financial involvement that might reasonably be expected to impair objectivity. SEC recommends censure. Commissioner agrees. (00:July 10, Sipos)

Board member in one building K-8 school district whose spouse is a teacher in the district may fully participate in initial appointment of superintendent, principal and vice principal, including discussion and voting. Once administrators are hired and become supervisors of spouse, board member must recuse himself from future employment issues regarding these individuals such as performance reviews, contract negotiations or promotions. SEC Advisory Opinion A10-00, June 27, 2000.

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member position and employment as youth outreach worker were not inherently incompatible; must abstain from matters concerning the employing corporation. Board member violated N.J.S.A. 18A:12-24 (c) by voting to contract for pre-K services with the corporation with which he was employed; financial involvement that might

reasonably be expected to impair his objectivity or independence of judgment. Board member's employment did not involve pre-K. SEC recommends censure. Commissioner agrees. (00:July 13, Arocho)

Board member violated N.J.S.A. 18A:12-24 (c) (indirect financial interest) and N.J.S.A. 18A:12-24 (g) (represented council's interests before the board) by serving as a "consultant" to the borough but actually serving as the borough's financial officer while a member of the board and by his continuing employment with the borough while remaining on the board of education. Board member deliberated and voted on the district budget despite SEC's cautioning prior decision that he should not participate in budget matters. See (98:Nov. 24) SEC would have recommended removal but for member's resignation upon the Commission's finding of probable cause. SEC recommended most severe available penalty of censure. Commissioner agreed. (03:Mar. 31, Gass)

Board member violated N.J.S.A. 18A:12-24 (c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02:July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in discussions and voted on matters concerning lease that the church in which he served as a deacon had with the board. Personal involvement that impaired objectivity found. Acted against attorney advice – aggravating factor. SEC recommends censure. Commissioner agrees. (99:May 24, Coleman)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in the discussion and voted on the resolution to continue the appointment of his employer, a bank, as the depository of monies for the board of education; personal involvement that created a benefit to the board member. SEC recommends penalty of reprimand. Considered fact that board member advised that he would not vote on matters related to the bank in the future. Commissioner agrees. (02:Jan. 31, Carpenter, State Board affirms 02:May 1)

Board member violated N.J.S.A. 18A:12-24 (c) when he voted on a bill list, which included his spouse's expense reimbursement. Voted to approve minutes that reflected disputed vote. SEC recommends reprimand. Commissioner agrees. (98:August 26, Levine)

Board member violated N.J.S.A. 18A:12-24(c) when he voted on payment of tuition to Vo-Tech Board where he was employed as a principal; indirect financial involvement that might reasonably be expected to impair his objectivity. Board member was no longer member of board. SEC recommends penalty of censure. Commissioner agrees. (01: Sept. 10, White)

Board member violated N.J.S.A. 18A:12-24(c) when he was present for two executive session meetings where his brother's appointment to a teaching staff member position was discussed and when he made two comments during one of the executive sessions; personal involvement that created a benefit. SEC recommended the penalty of censure. Commissioner disagrees, finding that the penalty of censure was disproportionately severe. Commissioner orders penalty of reprimand. (04:Sept. 8, Pettinelli)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member violated N.J.S.A. 18A:12-24(c) when she participated in board meetings in which her brother-in-law's property was discussed. Personal involvement, which impaired objectivity, found. SEC recommends reprimand. Commissioner agrees. (99:Feb. 9, Mallette)

Board member violated N.J.S.A. 18A:12-24(c) when she voted to approve a bill list that contained a bill of her employer. Settlement agreement reached. Board member

inadvertently violated the Act. SEC recommends penalty of reprimand. Commissioner agrees. (01:July 27, Jackson)

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04:Oct. 29, Pirillo)

Board member violated N.J.S.A. 18A:12-26 (a) (3) when she failed to include the Bd. of Ed. as a source of prepaid expenses for conference attendance and N.J.S.A. 18A:12-24 (c) when she voted on a bill list including a reimbursement to her and her husband and a tuition payment to a school where her husband was employed; indirect financial involvement found. SEC recommends censure. Commissioner agrees. (02:Sept. 6, Dunckley)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception. SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05:May 2, Freilich)

Board member voted on expense reimbursement concerning husband's employment with board. SEC found probable cause as to violations of N.J.S.A. 18A:12-24 (b) and (c). Settlement approved. Three-month suspension. (99:June 10, Harris)

Board member who had simple wills and powers of attorney prepared for her and her spouse by the board attorney would violate the act if she were to vote on the reappointment of the board attorney or the attorney's bills. No financial involvement as usual fee paid. Personal involvement existed. Attorney had served as board member's personal counselor and may provide opinions that favor board member's viewpoint. SEC cautioned

against private representations of board members. SEC Advisory Opinion A03-01 – April 22, 2001.

Board member who was vice president of Commerce National Insurance Services, a subsidiary of Commerce Bancorp, violated N.J.S.A. 18A:12-24(c) when she voted in favor of Commerce Bank being the paying agent for the board's bond issue. Indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommends reprimand. Commissioner agrees. (00:Nov. 27, Haines)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15, C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00:June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Board member, with brother-in-law teaching in another school district and a member of the same statewide union with which the board was negotiating, would not violate the Act by participating in negotiations. Doctrine of Necessity should not be invoked for negotiations committee when there are three persons without conflicts. SBA with conflict could provide technical assistance. SEC Advisory Opinion A14-02 – November 15, 2002.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiations beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board members on sending district board of education, who have immediate family members employed in a school district that receives the board's students, may not vote on the tuition contract with the receiving school district. See In the Matter of Bruce White, 2001 S.L.D. September 10. SEC Advisory Opinion A05-02 – April 2, 2002.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board members violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24 (c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Board members violated N.J.S.A. 18A:12-24 (c) when they voted to reappoint auditor after auditing firm employee served as campaign treasurer and firm's address was campaign address. Relationship that is more than casual or collegial constitutes a personal involvement. Mitigating circumstances – attorney advice, auditors for several years. SEC recommends reprimand. Commissioner agrees but stays penalty until State Board rules on the appeal. (98: March 4, Longo, aff'd St. Bd. 1999 S.L.D. July 9)

Board members who are employed as teachers in other school districts and who are represented by the same statewide union with which the board is negotiating may not be members of the negotiations team, may not establish negotiations parameters or be present in closed session when negotiations updates are presented to the board. Board members so situated may be apprised of the terms of the contract after the tentative memorandum of agreement has been reached, discuss same in closed session and vote

on the agreement. SEC Advisory Opinion A14-00, November 28, 2000.

Board members who have spouses employed in the district as full-time teacher aides, where teacher aides are not members of the teachers' association, would violate the Act if they were to negotiate and vote on the teachers' association collective bargaining agreement. Spouses/teacher aides historically received salary increases no less than that of the teachers' association. Board member whose spouse is a teacher aide, who is also board president, may appoint chairperson and members of the negotiations committee without violating the Act. SEC Advisory Opinion A01-01 – October 23, 2001.

Board members with an out-of-district union affiliation could participate in a grievance hearing where the issue in question was not covered by the collective bargaining agreement and was a matter of past practice. A board member whose daughter worked in the district could not participate as she could be affected by the outcome of the grievance. SEC Advisory Opinion A22-98, December 22, 1998.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board member's spouse was a teacher in another school district. Not union member, no NJEA affiliation, no representation fee, no agency shop clause, but received benefit of the contract. Board member may not participate on negotiations committee. Recent amendment/Pannucci decision does not change SEC position. SEC Advisory Opinion A02-00, March 28, 2000.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by

administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05:November 9, McCullers)

Charter school trustee violated N.J.S.A. 18A:12-24(c) where the minutes of the meeting reflected that he voted on the hiring of his son and he voted to approve the minutes, notwithstanding credible testimony that he abstained. Public should be able to rely on the minutes. By so acting he received the personal benefit of ensuring that his son received employment. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Hatchett)

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

Negotiations participation limitations regarding union affiliation does not apply to retired members of a union. Nexus is too remote. SEC Advisory Opinion A13-99, September 28, 1999.

Prohibition on negotiations participation does not extend to emancipated child with out of district same statewide union affiliation. Immediate family members only. SEC Advisory Opinion A13-99, September 28, 1999.

School business administrator could continue to serve as a member of NJASBO if his employing board were to participate in an NJASBO sponsored investment program. SEC Advisory Opinion A05-98, November 24, 1998.

The Commission determined that a board member did not take action that might be expected to impair his objectivity in violation of N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that included a $375.50 reimbursement for aid in lieu of transportation for himself. N.J.S.A. 18A:12-24(h) excused the apparent conflict because the member was qualified to receive the reimbursement and the aid in lieu amount was set by statute. No greater gain accrued to the member than to any other member of the group receiving aid in lieu of transportation. (05:April 4, Freilich)

N.J.S.A. 18A:12-24(d)

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member violated N.J.S.A. 18A:12-24 (d) when she was paid as a substitute school nurse while serving as a board member. While she was assisting the district in an emergency situation, such employment is reasonably expected to prejudice her independence of judgment in the exercise of official duties. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Wenzel)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions or purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

N.J.S.A. 18A:12-24(e)

ALJ found that Board member violated N.J.S.A. 18A:12-24 (b) and (e) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC accepted the Initial Decision of the ALJ and recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (03:Sept. 22, Keelen)

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiations beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board member violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24 (e) (solicited campaign contribution with intent to influence) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (02:Nov. 6, Gallagher)

Board member violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24 (e) (solicited campaign contribution with intent to influence) when she invited a school district vendor employee to a meeting for the purpose of soliciting a $1000 donation to a board member's campaign for borough council. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommends highest penalty available, censure, as respondent was now a former board member. Commissioner agrees. (02:Sept. 23, Ferraro)

Commission determined that a board member took private action that violated N.J.S.A. 18A:12-24(e) by sending an unauthorized letter to a private donor. The letter implied board approval and released information that had not been acted on by the board. (SEC 05:April 4, Freilich)

Superintendent would violate the Act if he were to accept funding from a district vendor (travel, meals and accommodations) to a vendor-sponsored conference where the superintendent

was making a presentation. SEC Advisory Opinion A14-03 – August 14, 2003.

N.J.S.A. 18A:12-24(f)

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04:Oct. 29, Pirillo)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board members who are employed as teachers in other school districts and who are represented by the same statewide union with which the board is negotiating may not be members of the negotiations team, may not establish negotiations parameters or be present in closed session when negotiations updates are presented to the board. Board members so situated may be apprised of the terms of the contract after the tentative memorandum of agreement has been reached, discuss same in closed session and vote on the agreement. SEC Advisory Opinion A14-00, November 28, 2000.

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board member's spouse was a teacher in another school district. Not union member, no NJEA affiliation, no representation fee, no agency shop clause, but received benefit of the contract. Board member may not participate on negotiations committee. Recent amendment/Pannucci

decision does not change SEC position. SEC Advisory Opinion A02-00, March 28, 2000.

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

N.J.S.A. 18A:12-24(g)

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member violated N.J.S.A. 18A:12-24 (c) (indirect financial interest) and N.J.S.A. 18A:12-24 (g) (represented council's interests before the board) by serving as a "consultant" to the borough but actually serving as the borough's financial officer while a member of the board and by his continuing employment with the borough while remaining on the board of education. Board member deliberated and voted on the district budget despite SEC's cautioning prior decision that he should not participate in budget matters. See (98: Nov. 24) SEC would have recommended removal but for member's resignation upon the Commission's finding of probable cause. SEC recommended most severe available penalty of censure. Commissioner agreed. (03:Mar. 31, Gass)

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

N.J.S.A. 18A:12-24(j)

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Code of Ethics for School Board Members

Board member failed to support and protect school personnel in the proper performance of their duties when he called an employee at home and became angry when he was informed that the employee had not sent out the reports he had requested. SEC recommended the penalty of reprimand. Commissioner agreed. (04:April 12, Fischer)

Board member took private action that could compromise the board when he called an employee at home and became angry when he was informed that the employee had not sent out the reports he had requested. SEC recommended the penalty of reprimand. Commissioner agreed. (04:April 12, Fischer)

N.J.S.A. 18A:12-24.1(a)

Board member failed to uphold all laws when he attempted to bring about a change through illegal and unethical procedures when he asked a secretary to remove an item from the agenda and when it was not removed, told the person hired that she did not have a job when the Board had clearly approved the appointment. SEC recommends removal. (SEC 04:Sept. 30, Palmer, penalty aff'd, Comm. 04:Nov. 12, motion to participate granted St. Bd. 05:March 2, aff'd as to violation and penalty, request for oral argument denied, St. Bd. 05:May 4)

Board member violated N.J.S.A. 18A:12-24.1 (a) and (e) of the Code of Ethics for School Board Members, when he told an administrative staff member to remove personnel items from the agenda and commented to the newly appointed employee that she did not have a job after the board approved her employment. By so doing he failed to uphold and enforce all laws and tried to bring about a change through illegal and unethical procedures. SEC recommended the penalty of removal. Commissioner agreed. (04:Nov. 12, Palmer, State Board affirms 05:May 4)

Board member's act in advising a newly appointed staff member that her appointment was void although the CSA had recommended the appointment and the board had approved it; and his attempt to pull an item from the agenda behind closed doors to circumvent the Sunshine Law, constitute attempts to bring about change through illegal and unethical procedures. Commissioner adopts recommendation for removal. (04:Nov. 12, Palmer)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his

own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for

two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

N.J.S.A. 18A:12-24.1(b)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

N.J.S.A. 18A:12-24.1(c)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain

checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

Charter school trustee violated N.J.S.A. 18A:12-24.1 (c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24 (b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10, Stay denied by Commissioner 03:Dec. 11, State Board affirms with respect to termination, reverses as to hiring, directs reinstatement of trustee and penalty of reprimand, 04:Sept. 1, Schaeder)

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

N.J.S.A. 18A:12-24.1(d)

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

Charter school trustee violated N.J.S.A. 18A:12-24.1 (c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24 (b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10, Stay denied by Commissioner 03:Dec. 11, State Board affirms with respect to termination, reverses as to hiring, directs reinstatement of trustee and penalty of reprimand 04:Sept. 1, Schaeder)

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

N.J.S.A. 18A:12-24.1(e)

Board member took private actions that compromised the Board when he asked a secretary to remove an item from the agenda and when it was not removed, told the person hired that she did not have a job when the Board had clearly approved the appointment. SEC recommends removal. (SEC 04:Sept. 30, Palmer, penalty aff'd, Comm. 04:Nov. 12, motion to participate granted, St. Bd. 05:March 2, aff'd as to violation and penalty, request for oral argument denied, St. Bd. 05:May 4)

Board member violated N.J.S.A. 18A:12-24 (c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02:July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24.1 (a) and (e) of the Code of Ethics for School Board Members, when he told an administrative staff member to remove personnel items from the agenda and commented to the newly appointed employee that she did not have a job after the board approved her employment. By so doing he failed to uphold and enforce all laws and tried to bring about a change through illegal and unethical procedures. SEC recommended the penalty of removal. Commissioner agreed. (04:Nov. 12, Palmer, State Board affirms 05:May 4)

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union

president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception. SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05: May 2, Freilich)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by organizing confidential information containing the names of students suspended from October to November 2004 on an Excel spreadsheet and failed to hold the information confidential when he accidentally transmitted the information to all board members as an attachment to an email. SEC recommended the penalty of reprimand. Commissioner agreed. (05:November 23, Zilinski)

Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, when she printed and distributed a flier during her reelection campaign which contained incomplete fiscal information regarding the board's budget, compromising the board's ability to pass its budget. SEC recommended the penalty of censure because the public should be aware that the board member provided incomplete information regarding the potential tax increase. (05:Quinn)

Board member violated N.J.S.A. 18A:12-24.1 (e) of the Code of Ethics for School Board Members, when she, using school equipment, copied and distributed to certain school staff, a letter that contained false and demeaning information regarding fellow board members; she took private action that could compromise the board. SEC recommended penalty of reprimand. Commissioner agreed. (03:April 14, Schmidt)

Board member violated N.J.S.A. 18A:12-24.1 (e) (took private action that could compromise the board) and (g) (failed to hold confidential certain personnel documents) of the Code of Ethics for School Board Members when he revealed confidential employee documents to a member of the public. Board member believed that public discussion of employee made the records public. SEC recommended penalty of reprimand. Commissioner agreed. (03:Mar. 6, Pizzichillo)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception. SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05:May 2, Freilich)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when she took private action that could compromise the board, sending letters under her title as Board President and not acting in concert with her fellow board members. Board member's letter referred to a "substandard kindergarten classroom" with no windows and ventilation and an "obvious fire code violation". SEC recommended the penalty of reprimand. Commissioner agreed. (03:August 21, Zimmerman)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (i) of the Code of Ethics for School Board Members, when he called an employee at home and became angry when the employee said that she did not send him the reports he had requested. Board member took private action that could compromise the board and did not support district personnel in the proper performance of their duties. SEC recommends penalty of reprimand. Commissioner agrees. (04:April 12, Fischer)

Board member's attempt to pull an item from the agenda, and his act in advising a newly appointed staff member that her appointment was void after the board had approved the appointment; were private actions that compromised the board, and failed to recognize that authority rests with the board. (04:Nov. 12, Palmer) Commissioner adopts recommendation for removal.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

No probable cause found that board member violated (e) where board member endorsed a candidate for municipal council with letterhead and envelopes bearing his official title of board president; however, this violated other section of School Ethics Act. (04:Nov. 17, DeMeo)

N.J.S.A. 18A:12-24.1(f)

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiations beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board members violated N.J.S.A. 18A:12-24.1 (f) and (j) when they surrendered their independent judgment concerning the district's food service contractor to a special interest group, the local education association, which supported their candidacy and opposed renewal of the contract. One board member violated the code of ethics when she took her complaints directly to the media instead of first giving the administration an opportunity to address them. SEC recommends penalty of censure. Commissioner agrees (03: Dec. 19, Kroschwitz II and Sturgeon)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

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Board member violated N.J.S.A. 18A:12-24 (c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02:July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Board member violated N.J.S.A. 18A:12-24.1 (e) (took private action that could compromise the board) and (g) (failed to hold confidential certain personnel documents) of the Code of Ethics for School Board Members when he revealed confidential employee documents to a member of the public. Board member believed that public discussion of employee made the records public. SEC recommended penalty of reprimand. Commissioner agreed. (03:March 6, Pizzichillo)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by organizing confidential information containing the names of students suspended from October to November 2004 on an Excel spreadsheet and failed to hold the information confidential when he accidentally transmitted the information to all board members as an attachment to an email. SEC recommended the penalty of reprimand. Commissioner agreed. (05:November 23, Zilinski)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception.

SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05:May 2, Freilich)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when she took private action that could compromise the board, sending letters under her title as Board President and not acting in concert with her fellow board members. Board member's letter referred to a "substandard kindergarten classroom" with no windows and ventilation and an "obvious fire code violation." SEC recommended the penalty of reprimand. Commissioner agreed. (03:August 21, Zimmerman)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

N.J.S.A. 18A:12-24.1(h)

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks

for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception. SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05: May 2, Freilich)

N.J.S.A. 18A:12-24.1(i)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (i) of the Code of Ethics for School Board Members, when he called an employee at home and became angry when the employee said that she did not send him the reports he had requested. Board member took private action that could compromise the board and did not support district personnel in the proper performance of their duties. SEC recommends penalty of reprimand. Commissioner agrees. (04:April 12, Fischer)

N.J.S.A. 18A:12-24.1(j)

Board members violated N.J.S.A. 18A:12-24.1 (f) and (j) when they surrendered their independent judgment concerning the district's food service contractor to a special interest group, the local education association, which supported their candidacy and opposed renewal of the contract. One board member violated the code of ethics when she took her complaints directly to the media instead of first giving the administration an opportunity to address them. SEC

recommends penalty of censure. Commissioner agrees (03: Dec. 19, Kroschwitz II and Sturgeon)

Board member violated N.J.S.A. 18A:12-24.1 (j) of the Code of Ethics for School Board members, when he wrote a letter to the superintendent requesting a demotion of the assistant superintendent and copied the assistant superintendent's subordinates, among other parties. Did not wait for an administrative solution. SEC recommended the penalty of reprimand. Commissioner agreed. (03:Aug. 19, Santiago)

Commissioner adopted SEC recommendation to reprimand board member for failure to file a personal/relative disclosure statement, pursuant to N.J.S.A. 18A:12-25 and/or an annual financial disclosure statement required by N.J.S.A. 18A:12-26. (04:Feb. 11, Seigel)

Confine board action to policy making, planning and appraisal, N.J.S.A. 18A:12-24.1(c)

Board members who visited the district's kitchen after hearing complaints about its cleanliness, did not violated this section, as visit could be viewed as an "appraisal" to inform her vote on whether to renew food service contract. (03:Dec. 19, Kroschwitz)

Conflict of interest

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Disclosure Forms

Failure to file, filing of incomplete form – suspension, then reprimand or removal

SEC recommends board member be suspended until he files a complete disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member did not file form, then filed incomplete form after order to show cause. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time

to be wasted by local, county and state education officials. (06:Jan. 27, Bonds)

Failure to file—Removal

Board member removed for failure to file, did not respond to either the SEC or Commissioner. Commissioner admonishes board member for failure to file as such inactivity caused on inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (99:Aug. 31, Sekelsky)(99:Aug. 31, Addison)(99:Aug. 31, Smith)

Board member reprimanded for failure to file financial disclosure statement. (04:Feb. 5, Pabon)

Charter school trustee removed for failure to file complete disclosure statements; ample time given to trustee to correct deficiencies. (01:Jan. 19, Hill)

Charter school trustee removed for failure to file, did not respond to either the SEC or Commissioner. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (99:Aug. 31, Cornwell)

Failure to disclose a relationship in and of itself does not constitute a violation of the act unless it is the failure to disclose it on a disclosure form. (99:Feb. 9, Mallette)

Member of charter school board of trustees. (98:Oct. 15, Serrano) (98:Oct. 15, Wright)(01:Jan. 19, Hill)

Moot: Board member resigned. (99:Aug. 27, White)

Moot: Matter moot as to board member who failed to file and was removed from board by Superior Court. (98:Oct. 15, Neal)

Official provided statement without Commissioner's knowledge; no penalty. (99:Aug. 27, Faigenbaum)(99:Aug. 27, Ludwigsen)(99:Aug. 27, Moore)(99:Aug. 27, Richardson)

Removed (99:Aug. 27, Smith)(99:Aug. 31, Addison)(99:Aug. 31, Cornwall)(99:Aug. 31, Sekelesky)

Suspension for 30 days for failure to file; removal from board if not filed by end of 30 days. (01:Nov. 15, Logan)(01:Nov. 15, Nieves)(01:Nov. 15, Tyska)(01:Nov. 15, Murray)(01:Nov. 16, Helle)(01:Nov. 16, West)(01:Nov. 16, Kendall)(01:Nov. 26, Dixon)

Suspension until files; automatic removal if fails to file in 30 days and reprimand for later filing is he does so file. (03:Dec. 19, Callado)(03:Dec. 22, Roig)(03:Dec. 22, Tullo)(03:Dec. 22, McCabe)(03:Dec. 22, Howard)(03:Dec. 22, Zappy, appeal dismissed for failure to perfect, St. Bd. 04:April 7)(03:Dec. 22, Paniagua)(03:Dec. 22, Williams)(03:Dec. 22, Wilson)(03:Dec. 22, Dunkins)

Failure to file – suspension, then removal

Board member suspended for 30 days for original failure to file and subsequent filing of scantily completed disclosure form. Automatic removal from board if failure to file acceptable disclosure form within 30 days. Commissioner admonishes board member for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Nieves)

Board member suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused on inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Tyska)(01:Nov. 15, Murray)(01:Nov. 16, West)

Board member suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Reprimand if disclosure forms filed prior to filing date of Commissioner's decision as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 19, Callado)(03:Dec. 22, McCabe)(03:Dec. 22, Howard)(03:Dec. 22, Evenson)(03:Dec. 22, Zappy)(03:Dec. 22, Hazzaard)

Charter school trustee suspended for 30 days for failure to file disclosure form. Automatic removal if failure to file within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state educational officials. (01:Nov. 15, Logan)(01:Nov. 16, Helle)(01:Nov. 15, Kendall)(02:Dec. 13, Featherson)

Charter school trustee suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Reprimand if disclosure forms filed prior to the filing date of Commissioner's decision as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 22, Roig)(03:Dec. 22, Tullo)(03:Dec. 22, Santiago)(03:Dec. 22, Williams)(03:Dec. 22, Wilson)(03:Dec. 22, Dunkins)

Charter school trustee suspended for 30 days for original failure to file and subsequent filing of scantily completed disclosure form. Automatic removal from board if failure to file acceptable disclosure form within 30 days. Commissioner

admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Dixon)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member filed disclosure statement after SEC issued decision, reprimanded. Commissioner admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Lorenzini)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member did not file form. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Woodrow)(06:Jan. 27, James)(06:Jan. 27, Robinson)

SEC recommends charter school trustee be suspended until she files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commisisoner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 24, Harrison-Bowers)

False Statement

Board member violated N.J.S.A. 18A:12-25(a)(3) and 26(a)(1) of the School Ethics Act when he omitted material information, that his wife worked for a company that had a contract with the board, on his disclosure forms. Small amount of contract mitigates penalty. SEC recommends censure, Commissioner agrees. (00:Nov. 20, Cirillo)

Omission of wife's employment for company that has contract with board, and with an insurance company, constituted filing a false statement; however, amount of contract was small and board member was contrite; Commissioner does not disturb ALJ's penalty of censure. (00:Nov. 20, Cirillo)

Improperly filed – failure to disclose

Board member violated N.J.S.A. 18A:12-26 (a) (3) when she failed to include the Bd. of Ed. as a source of prepaid expenses for conference attendance and N.J.S.A. 18A:12-24 (c) when she voted on a bill list including a reimbursement to her and her husband and a tuition payment to a school where her husband was employed; indirect financial involvement found. SEC recommends censure. Commissioner agrees. (02:Sept. 6, Dunckley)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Late filing – Reprimand

Board member reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local county and state educational officials. (03:Dec. 22, Young)(04:Feb. 5, Pabon)(04:Feb. 5, Irvin-Johnson)(04:Feb. 5, Seigel)(04:Dec. 1, Burke)(04:Dec. 1, Banks)(06:Jan. 31, Pope)(06:Jan. 27, Cepero)(06:Jan. 27, Crawford)(06:Jan. 27, Long-Brooks)(06:Jan. 27, Love)(06:Jan. 24, Marchado)(06:Jan. 24, Mitchell)(06:Jan. 25, Moses)(06:Jan. 24, Motley)(06:Jan. 24, Outlaw)(06:Jan. 27, Parella)(06:Jan. 27, Spencer)(06:Jan. 27, Davis)(06:Jan. 27, Williams)

Board member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Nov. 23, Lee)(04:Dec. 1, Davis)(04:Dec. 1, Wright)(04:Dec. 1, Wilson)

Board member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. Board member asserted that he had filed the disclosure statements, not once, but twice and that the reason for the forms not being filed with the SEC was his "minority" status on the board and his history of opposition to the board while serving as a councilman. (04:Dec. 1, Ciabatoni)

Charter school board of trustees member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Dec. 1, Perez)

Charter school trustee reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. (03:Dec. 22, Simmons)(03:Dec. 22, Charlton)(03:Dec. 22, Cupo)(04:Dec. 1, Simmons)

Charter school trustee reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Trustee did not respond to either SEC or Commissioner. (06:Jan. 27, Young)

Filing after order to show cause was issued; reprimand ordered. (04:Dec. 1, Banks)(04:Dec. 1, Simmons)

Late filing—Suspension

Reprimand (03:Dec. 22, Young)(03:Dec. 22, Simmons)(03:Dec. 22, Charlton)(03:Dec. 22, Cupo)

School Administrators

Three days without pay. (98:Oct. 15, Dunham)

Suspension for 30 days and removal if fails to file properly prepared forms within those 30 days, for charter school board of trustees member who did not file until order to show cause, and then submitted inadequate filings. (02:Dec. 13, Featherson)(02:Dec. 23, Lassiter)

Where a school official does not complete the disclosure statement after the issuance of an order to show cause and does not provide any reasons for failure to comply, is suspended, and then files the statement prior to the filing of the Commissioner's decision, private reprimand is the appropriate sanction. (04:Dec. 1, Burke III) Commissioner rejects with SEC's recommendation for public censure. (04:Nov. 25, Lee)(04:Dec. 1, Davis)(04:Dec. 1, Wright)(04:Dec. 1, Wilson)(04:Dec. 1, Ciabatoni)

SEC Recommendation Rejected

Board member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Nov. 23, Lee)(04:Dec. 1, Davis)(04:Dec. 1, Wright)(04:Dec. 1, Wilson)

Board member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. Board member asserted that he had filed the disclosure statements, not once, but twice and that the reason for the forms not being filed with the SEC was his "minority" status on the board and his history of opposition

to the board while serving as a councilman. (04:Dec. 1, Ciabatoni)

Charter school board of trustees member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Dec. 1, Perez)

SEC request for removal of board of education member for failure to file declined. Disclosure statements filed with county office but not timely transmitted to SEC. (99:Aug. 27, Faigenbaum)

SEC request for removal of board of education member for failure to file declined. Disclosure statements filed with county office but not timely transmitted to SEC. Board member resigned, matter moot. (99:Aug. 27, White)

SEC request for removal of charter school trustee for failure to file declined. Disclosure statements filed with county office but not timely transmitted to SEC. (99:Aug. 27, Richardson)(99:Aug. 27, Moore)(99:Aug. 27, Ludwigsen)

Doctrine of Necessity

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member, with brother-in-law teaching in another school district and a member of the same statewide union with which the board was negotiating, would not violate the Act by participating in negotiations. Doctrine of Necessity should not be invoked for negotiations committee when there are three persons without conflicts. SBA with conflict could provide technical assistance. SEC Advisory Opinion A14-02 – November 15, 2002.

Employment

Board member position and employment as youth outreach worker were not inherently incompatible; must abstain from matters concerning the employing corporation. Board member violated N.J.S.A. 18A:12-24 (c) by voting to contract for pre-K services with the corporation with which he was employed; financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Board member's employment did not

involve pre-K. SEC recommends censure. Commissioner agrees. (00: July 13, Arocho)

Board member violated N.J.S.A. 18A:12-24(b) when, using her official title, she requested a delay in the release of an SEC decision regarding a member of her board of education; unwarranted privilege for another board member. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated N.J.S.A. 18A:12-24 (c) (indirect financial interest) and N.J.S.A. 18A:12-24 (g) (represented council's interests before the board) by serving as a "consultant" to the borough but actually serving as the borough's financial officer while a member of the board and by his continuing employment with the borough while remaining on the board of education. Board member deliberated and voted on the district budget despite SEC's cautioning prior decision that he should not participate in budget matters. See (98: Nov. 24) SEC would have recommended removal but for member's resignation upon the Commission's finding of probable cause. SEC recommended most severe available penalty of censure. Commissioner agreed. (03:Mar. 31, Gass)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in the discussion and voted on the resolution to continue the appointment of his employer, a bank, as the depository of monies for the board of education; personal involvement that created a benefit to the board member. SEC recommends penalty of reprimand. Considered fact that board member advised that he would not vote on matters related to the bank in the future. Commissioner agrees. (02: Jan. 31. Carpenter, State Board affirms 02:May 1)

Board member violated N.J.S.A. 18A:12-24(c) when he voted on payment of tuition to Vo-Tech Board where he was employed as a principal; indirect financial involvement that might reasonably be expected to impair his objectivity. Board member was no longer member of board. SEC recommends penalty of censure. Commissioner agrees. (01:Sept. 10, White)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member violated N.J.S.A. 18A:12-24(c) when she voted to approve a bill list that contained a bill of her employer. Settlement agreement reached. Board member inadvertently violated the Act. SEC recommends penalty of reprimand. Commissioner agrees. (01:July 27, Jackson)

Board member violated N.J.S.A. 18A:12-24 (d) when she was paid as a substitute school nurse while serving as a board member. While

she was assisting the district in an emergency situation, such employment is reasonably expected to prejudice her independence of judgment in the exercise of official duties. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Wenzel)

Board member who was vice president of Commerce National Insurance Services, a subsidiary of Commerce Bancorp, violated N.J.S.A. 18A:12-24(c) when she voted in favor of Commerce Bank being the paying agent for the board's bond issue. Indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommends reprimand. Commissioner agrees. (00:Nov. 27 Haines)

Ethics statutes do not confer on the individual complainant the right to prosecute matter. (St. Bd. 00:March 1, Pannucci)

Failure to Support School Personnel in the Proper Performance of Duties

Board member violated N.J.S.A. 18A:12-24.1 (e) and (i) of the Code of Ethics for School Board Members, when he called an employee at home and became angry when the employee said that she did not send him the reports he had requested. Board member took private action that could compromise the board and did not support district personnel in the proper performance of their duties. SEC recommends penalty of reprimand. Commissioner agrees. (04: April 12, Fischer)

False Statement

Board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-31 when he fraudulently obtained an Advisory Opinion from the SEC, misleading the SEC into believing that the situation he posed was his when it was actually the situation of another board member; used his position to secure unwarranted privileges and advantages for himself. Board member used the advisory opinion information to file a complaint against the other board member. SEC found that the board member violated the public trust and recommended that the board member be removed. The Commissioner agreed. (02:Dec. 3, Ordini, Stay denied by Commissioner 03: Jan.8, aff'd State Board 03:May 7)

Financial Gain

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Financial involvement reasonably expected to impair objectivity

A board member whose brother held a maintenance position in the district and was a member of the local education association could not

participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member, chair of personnel committee, violated N.J.S.A. 18A:12-24(c) when he twice made motions to pass resolutions that resulted in the appointment of his wife to two positions in the district; financial involvement that might reasonably be expected to impair objectivity. SEC recommends censure. Commissioner agrees. (00: July 10, Sipos)

Board member in one building K-8 school district whose spouse is a teacher in the district may fully participate in initial appointment of superintendent, principal and vice principal, including discussion and voting. Once administrators are hired and become supervisors of spouse, board member must recuse himself from future employment issues regarding these individuals such as performance reviews, contract negotiations or promotions. SEC Advisory Opinion A10-00, June 27, 2000.

Board member position and employment as youth outreach worker were not inherently incompatible; must abstain from matters concerning the employing corporation. Board member violated N.J.S.A. 18A:12-24 (c) by voting to contract for pre-K services with the corporation with which he was employed; financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Board member's employment did not involve pre-K. SEC recommends censure. Commissioner agrees. (00:July 13, Arocho)

Board member violated Act when he commented during public budget meeting that the stipend paid to team leaders was low, when his wife was a team leader at the middle school; censure ordered; no violation of board member's free speech. (02:July 16, Vickner, motions to supplement record and compel production of documents denied St. Bd. 02:Dec. 4, motions for reconsideration

and for oral argument denied, St. Bd. 03:March 5, decision of SEC and Commissioner aff'd St. Bd. 03:July 2)

Board member violated N.J.S.A. 18A:12-24 (c) (indirect financial interest) and N.J.S.A. 18A:12-24 (g) (represented council's interests before the board) by serving as a "consultant" to the borough but actually serving as the borough's financial officer while a member of the board and by his continuing employment with the borough while remaining on the board of education. Board member deliberated and voted on the district budget despite SEC's cautioning prior decision that he should not participate in budget matters. See (98: Nov. 24) SEC would have recommended removal but for member's resignation upon the Commission's finding of probable cause. SEC recommended most severe available penalty of censure. Commissioner agreed. (03:March 31, Gass)

Board member violated N.J.S.A. 18A:12-24 (c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02: July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24(c) when he voted on payment of tuition to Vo-Tech Board where he was employed as a principal; indirect financial involvement that might reasonably be expected to impair his objectivity. Board member was no longer member of board. SEC recommends penalty of censure. Commissioner agrees. (01:Sept. 10, White)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03: May 30, Adams)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04:Oct. 29, Pirillo)

Board member violated N.J.S.A. 18A:12-26 (a) (3) when she failed to include the Bd. of Ed. as a source of prepaid expenses for conference attendance and N.J.S.A. 18A:12-24 (c) when she voted on a bill list including a reimbursement to her and her husband and a tuition payment to a school where her husband was employed; indirect financial involvement found. SEC recommends censure. Commissioner agrees. (02:Sept. 6, Dunckley)

Board member violated the Act when she voted on three separate occasions to approve bill lists that contained bills from a printing company owned by her husband and for which she worked. Acted in a manner in which she had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member who had simple wills and powers of attorney prepared for her and her spouse by the board attorney would violate the act if she were to vote on the reappointment of the board attorney or the attorney's bills. No financial involvement as usual fee paid. Personal involvement existed. Attorney had served a board member's personal counselor and may provide opinions that favor board member's viewpoint. SEC cautioned against private representations of board members. SEC Advisory Opinion A03-01 – April 22, 2001.

Board member who was vice president of Commerce National Insurance Services, a subsidiary of Commerce Bancorp, violated N.J.S.A. 18A:12-24(c) when she voted in favor of Commerce Bank being the paying agent for the board's bond issue. Indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommends reprimand. Commissioner agrees. (00:Nov. 27, Haines)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and

voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15, C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00: June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Board member, with brother-in-law teaching in another school district and a member of the same statewide union with which the board was negotiating, would not violate the Act by participating in negotiations. Doctrine of Necessity should not be invoked for negotiations committee when there are three persons without conflicts. SBA with conflict could provide technical assistance. SEC Advisory Opinion A14-02 – November 15, 2002.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members on sending district board of education, who have immediate family members employed in a school district that receives the board's students, may not vote on the tuition contract with the receiving school district. See In the Matter of Bruce White, 2001 S.L.D. September 10. SEC Advisory Opinion A05-02 – April 2, 2002.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board members who have spouses employed in the district as full-time teacher aides, where teacher aides are not members of the teachers' association, would violate the Act if they were to negotiate and vote on the teachers' association collective bargaining agreement. Spouses/teacher aides historically received salary increases no less than that of the teachers' association. Board member whose spouse is a teacher aide, who is also board president, may appoint chairperson and members of the negotiations committee without violating the Act. SEC Advisory Opinion A01-01 – October 23, 2001.

Board members whose candidacies were endorsed by teachers union did not violate N.J.S.A. 18A:12-24(f) by voting against renewal of, and taking action to damage reputation of, existing food service whose contract the teachers' union opposed. Outside of the collective bargaining agreement as per A13-02, Commission declines to otherwise rule that board members endorsed by a union

have a personal involvement that constitutes a benefit to them in issues that impact on the union. (03:Dec. 19, Kroschwitz)

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Board member's spouse was a teacher in another school district. Not union member, no NJEA affiliation, no representation fee, no agency shop clause, but received benefit of the contract. Board member may not participate on negotiations committee. Recent amendment/Pannucci decision does not change SEC position. SEC Advisory Opinion A02-00, March 28, 2000.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a

matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05:November 9 McCullers)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05: November 2, Funches)

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

School business administrator could continue to serve as a member of NJASBO if his employing board were to participate in an NJASBO sponsored investment program. SEC Advisory Opinion A05-98, November 24, 1998.

Financial/Personal Involvement

SEC determined that board member failed to maintain the confidentiality of a matter where disclosed could have needlessly injured individuals of the schools, in violation of N.J.S.A. 18A:12-24.1(g), by sending an unauthorized board letter to a private district donor. Technology plans in letter had not been approved by the board. Reprimand ordered because board member was new and board had no policy regarding direct correspondence from a committee. (05:May 2, Freilich)

SEC determined that board member took private action that could have compromised the board, in violation of N.J.S.A. 18A:12-24(e), by sending an unauthorized board letter to a private district donor. Technology plans in letter had not been approved by the board. Reprimand ordered because board member was new and board had no policy regarding direct correspondence from a committee. (05:May 2, Freilich)

SEC dismissed charges where board member acted in his official capacity in a matter wherein he had a financial involvement that could be expected to impair his objectivity, in violation of N.J.S.A. 18A:12-24(c), when he voted to approve a bill list containing aid in lieu warrant in his own name. Despite statutory violation, N.J.S.A. 18A:12-24(h) excused the conflict because no greater benefit would accrue to board member than to any other parent receiving aid in lieu of transportation. (05:May 2, Freilich)

Following removal from office for failure to attend training, board member filed appeal beyond the 30-day statutory time limit in N.J.S.A. 18A:6-28. State Board dismissed appeal as it was without authority to enlarge a statutory time limit. (St. Bd. 04:Jan. 7, Nicholas)

Grievance hearing participation

Board members with an out-of-district union affiliation could participate in a grievance hearing where the issue in question was not covered by the collective bargaining agreement and was a matter of past practice. A board member whose daughter worked in the district could not participate as she could be affected by the outcome of the grievance. SEC Advisory Opinion A22-98, December 22, 1998.

Inaccurate Information

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception. SEC

recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05: May 2, Freilich)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Independence of judgment

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member position and employment as youth outreach worker were not inherently incompatible; must abstain from matters concerning the employing corporation. Board member violated N.J.S.A. 18A:12-24 (c) by voting to contract for pre-K services with the corporation with which he was employed; financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Board member's employment did not involve pre-K. SEC recommends censure. Commissioner agrees. (00:July 13, Arocho)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member who was vice president of Commerce National Insurance Services, a subsidiary of Commerce Bancorp, violated N.J.S.A. 18A:12-24(c) when she voted in favor of Commerce Bank being the paying agent for the board's bond issue. Indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommends reprimand. Commissioner agrees. (00:Nov. 27 Haines)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15, C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00:June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members on sending district board of education, who have immediate family members employed in a school district that receives the board's students, may not vote on the tuition contract with the receiving school district. See In the Matter of Bruce

White, 2001 S.L.D. September 10. SEC Advisory Opinion A05-02 – April 2, 2002.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board members who have spouses employed in the district as full-time teacher aides, where teacher aides are not members of the teachers' association, would violate the Act if they were to negotiate and vote on the teachers' association collective bargaining agreement. Spouses/teacher aides historically received salary increases no less than that of the teachers' association. Board member whose spouse is a teacher aide, who is also board president, may appoint chairperson and members of the negotiations committee without violating the Act. SEC Advisory Opinion A01-01 – October 23, 2001.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Charter school trustee could not simultaneously serve on board of education from which charter school receives students. Former board members may be trustees and provide expertise. See A22-96, February 1997. SEC Advisory Opinion A13-98, July 31, 1998.

Executive director of a company, which is the landlord to a charter school, may be a charter school trustee. Trustee must abstain from matters involving the lease of the property or discussions of purchasing school property elsewhere. SEC Advisory Opinion A07-01 – May 22, 2001.

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Interest

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Law firm in which a charter school trustee/president was a partner could not represent the charter school board of trustees. SEC Advisory Opinion A05-99, April 28, 1999.

Members of the immediate family

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member, chair of personnel committee, violated N.J.S.A. 18A:12-24(c) when he twice made motions to pass resolutions that resulted

in the appointment of his wife to two positions in the district; financial involvement that might reasonably be expected to impair objectivity. SEC recommends censure. Commissioner agrees. (00: July 10, Sipos)

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04: Oct. 29, Pirillo)

Board member violated N.J.S.A. 18A:12-24 (c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02:July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member violated N.J.S.A. 18A:12-24(c) when he voted on a bill list, which included his spouse's expense reimbursement. Voted to approve minutes that reflected disputed vote. SEC recommends reprimand. Commissioner agrees. (98:August 26, Levine)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03: May 30, Adams)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board

member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member violated N.J.S.A. 18A:12-26 (a) (3) when she failed to include the Bd. of Ed. as a source of prepaid expenses for conference attendance and N.J.S.A. 18A:12-24 (c) when she voted on a bill list including a reimbursement to her and her husband and a tuition payment to a school where her husband was employed; indirect financial involvement found. SEC recommends censure. Commissioner agrees. (02: Sept. 6, Dunckley)

Board member voted on expense reimbursement concerning husband's employment with board. SEC found probable cause as to violations of N.J.S.A. 18A:12-24(b) and (c). Settlement approved. Three-month suspension. (99:June 10, Harris)

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15, C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00:June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members on sending district board of education, who have immediate family members employed in a school district that receives the board's students, may not vote on the tuition contract with the receiving school district. See In the Matter of Bruce White, 2001 S.L.D. September 10. SEC Advisory Opinion A05-02 – April 2, 2002.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for

School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05: November 2, Funches)

Negotiations

A board member whose brother held a maintenance position in the district and was a member of the local education association could not participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member participated in negotiations with teachers' bargaining unit of which his wife was a member; reprimand ordered as he relied on attorney's mistaken advice and his participation offered little opportunity to influence the outcome. (98:Aug. 16, Santangelo)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his

spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15, C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00:June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Board member whose wife had an out-of-district union affiliation as a teacher in neighboring district and who himself had an out-of-district union affiliation as a supervisor, violated the Act when he negotiated in clandestine meetings, and voted, on two teachers' contracts and three administrators' contracts. 45-day suspension ordered for violating sections a, b, and c of the Act. (00:June 1, White, appeal dismissed for lack of standing St. Bd. 00:Sept. 6)

Board member, with brother-in-law teaching in another school district and a member of the same statewide union with which the board was negotiating, would not violate the Act by participating in negotiations. Doctrine of Necessity should not be invoked for negotiations committee when there are three persons without conflicts. SBA with conflict could provide technical assistance. SEC Advisory Opinion A14-02 – November 15, 2002.

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiations beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board members who are employed as teachers in other school districts and who are represented by the same statewide union with which the board is negotiating may not be members of the negotiations team, may not establish negotiations parameters or be present in closed session when negotiations updates are presented to the board. Board members so situated may be apprised of the terms of the contract after the tentative memorandum of agreement has been reached, discuss same in closed session and vote on the agreement. SEC Advisory Opinion A14-00, November 28, 2000.

Board members who have spouses employed in the district as full-time teacher aides, where teacher aides are not members of the teachers' association, would violate the Act if they were to negotiate and vote on the teachers' association collective bargaining agreement. Spouses/teacher aides historically received salary increases no less than that of the teachers' association. Board member whose spouse is a teacher aide, who is also board president, may appoint chairperson and members of the negotiations committee without violating the Act. SEC Advisory Opinion A01-01 – October 23, 2001.

Board members with an out-of-district union affiliation could participate in a grievance hearing where the issue in question was not covered by the collective bargaining agreement and was a matter of past practice. A board member whose daughter worked in the district could not participate as she could be affected by the outcome of the grievance. SEC Advisory Opinion A22-98, December 22, 1998.

Board member's spouse was a teacher in another school district. Not union member, no NJEA affiliation, no representation fee, no agency shop clause, but received benefit of the contract. Board member may not participate on negotiations committee. Recent amendment/Pannucci decision does not change SEC position. SEC Advisory Opinion A02-00, March 28, 2000.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Negotiations participation limitations regarding union affiliation does not apply to retired members of a union. Nexus is too remote. SEC Advisory Opinion A13-99, September 28, 1999.

Prohibition on negotiations participation does not extend to emancipated child with out of district same statewide union affiliation. Immediate family members only. SEC Advisory Opinion A13-99, September 28, 1999.

No per se violation of N.J.S.A. 18A:12-24(c) where board member is a member of another local union within same statewide union and votes on collective

bargaining agreement in the district. Connection between vote and salary structure of whole class of employees on statewide basis is far too attenuated. (St. Bd. 00:March 1, Pannucci, reversing Commissioner 97:Jan. 28. See also decision on motion St. Bd. 97:June 4)

No violation

SEC dismissed complaint that board member violated N.J.S.A. 18A:12-24.1 (c), (e) and (g) when during the Executive Session of a regularly scheduled Board meeting, he was discovered taping the proceedings of the session without asking permission to do so and he did not inform the Board of his intentions prior to taking action. SEC determines that respondent's action in taping a Board session does not implicate his duties and functions as a Board member sufficiently to characterize his conduct as "board action" within the intendment of N.J.S.A. 18A:12-24.1(c). Further, if such action constituted private action, or action beyond the scope of the respondent's duties, the SEC finds that there are no facts set forth in the complaint that would support a conclusion that this action was of such a nature that it had the potential to compromise the Board so as to violate N.J.S.A. 18A:12-24.1(e). No breach of confidentiality was shown. Gidwani, SEC 2011: September 27

SEC determined that board member who wrote letter to the editor in support of three candidates who were running for the board did not violate the School Ethics Act. No facts were alleged that, if true, would establish that the letter to the editor had the potential to compromise the board. N.J.S.A. 18A:12-24.1(e). Writing the letter in support of the incumbent candidates was fairly within the board member's role as a private citizen. No evidence was presented that the board member surrendered her independent judgment to a special interest or partisan group or used the schools for personal gain or the gain of friends. N.J.S.A. 18A:12-24.1 (f). Board member's employment as a senior clerk typist in the Elmwood Park Tax Department did not violate the Act. Sproviero, SEC 2010: August 31

SEC determined that no probable cause existed to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(b), (c) and (f) of the School Ethics Act and, therefore, dismissed the complaint. Respondents' votes on the payment of legal fees on the dates in question were not a means of using or attempting to use their positions for something to which they were not entitled; no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(b). U*nder the unique factual circumstances of this case*, a five member board with three persons potentially in conflict, which would trigger the doctrine of necessity, the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(c) by voting on the items in question. Respondents did not use, or allowed to be used,

their respective public offices for the purpose of securing financial gain for themselves, any member of their immediate families or for any business organization with which they are associated; no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(f). Granata, Granitir, Calcado, SEC 2011:July 26

SEC determined that the complainant failed to factually establish that the respondent violated *N.J.S.A.* 18A:12-24.1(a), (d), (e) or (j) of the Code of Ethics for School Board Members and dismissed the complaint. Board member was alleged to violate the Code of ethics when she entered a classroom, removed a student to the hallway and confronted the student about a bullying situation between the student and her child. Complainant alleged violation of board policy over which SEC had no jurisdiction. No direct order was ever given to school personnel. No personal promises were made to anyone. C.B., SEC 2011: July 26

SEC determined that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members and dismissed the complaint. Board member wrote letters to two newspapers regarding Governor Christie's capping of superintendent salaries in which she did not identify herself as a board member. While such action was not consistent with Advisory Opinion A03-07, in Rukenstein, C13-08, July 22, 2008, the SEC clarified that A03-07 only applied to matters that have been before the Board for consideration. Hartman, SEC 2011: July 26

SEC dismissed complaint that alleged that the respondents violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members when they filed a complaint against two fellow board members. Allegations were not factually established; the SEC agreed that the essence of the complaint was that the Code of Ethics was violated because respondents filed complaints against plaintiff. Riley and Parks, SEC 2011: July 26

SEC determined that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(e), (g), (h) and (i) of the Code of Ethics for School Board Members with respect to statements made in a closed session board meeting and dismissed the complaint. Board member stated that she had obtained QSAC scores for the District and she wanted the Director of Curriculum to be fired because of the District's failing score. No confidential information was disclosed to the public, no inaccurate information was provided, no personal promises or private action was taken that could compromise the board. Shelen, SEC 2011: August 23

SEC dismissed complaint that superintendent violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when he attended a fundraiser in

support of incumbent candidates for the Board of Education. Facts were insufficient to support a finding that the respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b). No showing was made that superintendent accepted anything of value based upon the understanding that they would influence him in the discharge of his duties in violation of N.J.S.A. 18A:12-24(c). Superintendents are not subject to the Code of Ethics for School Board Members. Bandlow, SEC 2011: August 23

SEC dismissed complaint that assistant superintendent violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when he attended a fundraiser in support of incumbent candidates for the Board of Education. Facts were insufficient to support a finding that the respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b). No showing was made that assistant superintendent accepted anything of value based upon the understanding that they would influence him in the discharge of his duties in violation of N.J.S.A. 18A:12-24(c). Assistant superintendents are not subject to the Code of Ethics for School Board Members. Engravalle, SEC 2011: August 23

SEC dismissed complaint that school business administrator violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when he attended a fundraiser in support of incumbent candidates for the Board of Education. Facts were insufficient to support a finding that the respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b). No showing was made that school business administrator accepted anything of value based upon the understanding that they would influence him in the discharge of his duties in violation of N.J.S.A. 18A:12-24(c). Assistant superintendents are not subject to the Code of Ethics for School Board Members. Ballato, SEC 2011: August 23

SEC dismissed complaint that board member violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when he attended a fundraiser in support of incumbent candidates for the Board of Education. Facts were insufficient to support a finding that the respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b).

No showing was made that board member accepted anything of value based upon the understanding that they would influence him in the discharge of his duties in violation of N.J.S.A. 18A:12-24(c) No facts to indicate that board member took action on behalf of, or at the request of, a special interest group or partisan political group; nor are there any facts to indicate that the board member used the schools in order to acquire some benefit for himself a member of his immediate family or a friend. Luppino, SEC 2011: August 23

SEC dismissed complaint that board member violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when he attended a fundraiser in support of incumbent candidates for the Board of Education. Facts were insufficient to support a finding that the respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b). No showing was made that board member accepted anything of value based upon the understanding that they would influence him in the discharge of his duties in violation of N.J.S.A. 18A:12-24(c) No facts to indicate that board member took action on behalf of, or at the request of, a special interest group or partisan political group; nor are there any facts to indicate that the board member used the schools in order to acquire some benefit for himself a member of his immediate family or a friend. Suh, SEC 2011: August 23

SEC dismissed complaint that board member violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when he attended a fundraiser in support of incumbent candidates for the Board of Education. Facts were insufficient to support a finding that the respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b). No showing was made that board member accepted anything of value based upon the understanding that they would influence him in the discharge of his duties in violation of N.J.S.A. 18A:12-24(c) No facts to indicate that board member took action on behalf of, or at the request of, a special interest group or partisan political group; nor are there any facts to indicate that the board member used the schools in order to acquire some benefit for himself a member of his immediate family or a friend. Stux-Ramirez, SEC 2011: August 23

Official Duties

ALJ found that Board member violated N.J.S.A. 18A:12-24 (b) and (e) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC accepted the Initial Decision of the ALJ and recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (03:Sept. 22, Keelen)

Board member violated N.J.S.A. 18A:12-24 (d) when she was paid as a substitute school nurse while serving as a board member. While she was assisting the district in an emergency situation, such employment is reasonably expected to prejudice her independence of judgment in the exercise of official duties. SEC recommended the penalty of reprimand. Commissioner agreed. (05: Jan. 14, Wenzel)

Board member who was co-facilitator of Special Education Parent Discussion Group (SPED) had no conflict of interest. SEC cautioned board member to be mindful of her duty to maintain confidentiality of information not generally available to the public, which she acquires by reason of her board office. SEC Advisory Opinion A16-04 – July 27, 2004.

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions, resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed

executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05: November 2, Funches)

Superintendent would violate the Act if he were to accept funding from a district vendor (travel, meals and accommodations) to a vendor-sponsored conference where the superintendent was making a presentation. SEC Advisory Opinion A14-03 – August 14, 2003.

Personal/financial involvement reasonably expected to impair judgment

A board member whose brother held a maintenance position in the district and was a member of the local education association could not participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member censured for failure to disclose the board as a source of prepaid expenses for her conference attendance, voting on a bill list which included reimbursement to her and for voting on tuition payment to a school where her husband was employed. (02:Sept. 6, Dunkley)

Board member in one building K-8 school district whose spouse is a teacher in the district may fully participate in initial appointment of superintendent, principal and vice principal, including discussion and voting. Once administrators are hired and become supervisors of spouse, board member must recuse himself from future employment issues regarding these individuals such as

performance reviews, contract negotiations or promotions. SEC Advisory Opinion A10-00, June 27, 2000.

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Board member participated in discussions of possible purchase of property belonging to brother-in-law (by marriage); she did not advocate for property and in-law was by marriage only; reprimand ordered. (99:Feb. 9, Mallette)

Board member violated Act when he voted to retain the bank where he is employed, as the depository of monies for the district. (02:Jan. 31, Carpenter, aff'd St. Bd. 02:May 1)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in discussions and voted on matters concerning lease that the church in which he served as a deacon had with the board. Personal involvement that impaired objectivity found. Acted against attorney advice – aggravating factor. SEC recommends censure. Commissioner agrees. (99: May 24, Coleman)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member violated N.J.S.A. 18A:12-24 (c) when he voted on a bill list, which included his spouse's expense reimbursement. Voted to approve minutes that reflected disputed vote. SEC recommends reprimand. Commissioner agrees. (98:August 26, Levine)

Board member violated N.J.S.A. 18A:12-24(c) when she participated in board meetings in which her brother-in-law's property was discussed. Personal involvement, which impaired objectivity, found. SEC recommends reprimand. Commissioner agrees. (99: Feb. 9, Mallette)

Board member who had simple wills and powers of attorney prepared for her and her spouse by the board attorney would violate the act if she were to vote on the reappointment of the board attorney or the attorney's bills. No financial involvement as usual fee paid. Personal involvement existed. Attorney had served as board member's personal counselor and may provide opinions that favor board member's viewpoint. SEC cautioned against private representations of board members. SEC Advisory Opinion A03-01 – April 22, 2001.

Board member who served as borough consultant advising on budgetary matters. Censure imposed. (03:March 31, Gass)

Board member who voted on 15-page bill list that included his wife's expense reimbursement violated the Act; reprimand ordered. (98:Aug. 26, Levine)

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Board members endorsed by local education association in 2001 would not violate the Act by participating in negotiations beginning in November 2002. Board members endorsed in 2002 and who may be endorsed in 2003 would violate the Act if they were to participate in negotiations. SEC Advisory Opinion A13-02 – November 26, 2002.

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

Board members violated N.J.S.A. 18A:12-24 (c) when they voted to reappoint auditor after auditing firm employee served as campaign treasurer and firm's address was campaign address. Relationship that is more than casual or collegial constitutes a personal involvement. Mitigating circumstances – attorney advice, auditors for several years. SEC recommends reprimand. Commissioner agrees but stays penalty until State Board rules on the appeal. (98: March 4, Longo, aff'd St. Bd. 99:July 9)

Board members with an out-of-district union affiliation could participate in a grievance hearing where the issue in question was not covered by the collective bargaining agreement and was a matter of past practice. A board member whose daughter worked in the district could not participate as she could be affected by the outcome of the grievance. SEC Advisory Opinion A22-98, December 22, 1998.

Board member's spouse was founder of charter school in same school district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Employee of non-profit PRAB had indirect financial involvement with PRAB and should not have voted on district's contract with PRAB to provide prekindergarten services. Mitigating factors included fact that this is not a new contract, but a renewal. Censure ordered. (00:July 15, Arocho)

Financial involvement: Chairperson of personnel committee moved resolution to appoint spouse but excused himself from vote (no allegations that he participated in any discussion); censure ordered. (00:July 10, Sipos)

Former board member is censured for having voted on payment of tuition to vocational school board where he was employed as a principal; financial involvement that reasonable person could perceive as impairing objectivity pursuant to N.J.S.A. 18A:12-24(c). (01:Sept. 10, White)

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Negotiations participation limitations regarding union affiliation does not apply to retired members of a union. Nexus is too remote. SEC Advisory Opinion A13-99, September 28, 1999.

New board member who participated in discussion of whether board should lease building to church where he serves as Deacon, and later voted not to rescind lease, violated Act; censure ordered rather than reprimand as he acted against attorney's advice. (99:May 24, Coleman)

Newly appointed board members violated the Act when they voted to reappoint board's auditors who had served as their campaign treasurer; reprimand ordered in light of mitigating fact that auditors had served for several years. (99:March 4, Longo and Sedaghi, aff'd St. Bd. 99:July 7)

Prohibition on negotiations participation does not extend to emancipated child with out of district same statewide union affiliation. Immediate family members only. SEC Advisory Opinion A13-99, September 28, 1999.

Reprimand: Commissioner agrees with SEC that reprimand is appropriate penalty for board member who voted on resolution authorizing issuance and sale of bonds with bank when she was a vice president of wholly owned subsidiary of related bank; penalty took into account mitigating factors. (00:Nov. 27, Haines)

School business administrator could continue to serve as a member of NJASBO if his employing board were to participate in an NJASBO sponsored investment program. SEC Advisory Opinion A05-98, November 24, 1998.

School Ethics Commission found probable cause to credit allegations of board member's violation of the School Ethics Act, N.J.S.A. 18A:12-24(b) and (e). In the presence of the accused member, a second member, who was campaigning for election to borough council, solicited a campaign donation from a vendor's employee and implicitly threatened non-renewal of the vendor's service contract with the district. Members subsequent conversation with the employee pertaining to the donation contributed to the SEC finding of a violation of the Act in the member's attempt to use his position to secure unwarranted privileges for others and in soliciting a campaign contribution with knowledge that it was given with the knowledge that it would affect him in his official duties. Commissioner accepted SEC's recommendation of censure. (02:Nov. 4, Gallagher, SEC Decision, Commissioner Decision)

SEC found that board member lacked personal involvement that created some benefit to the member, where board president, in his official capacity and upon the legal advice of special counsel, executed an ethics complaint against another board member. No violation of N.J.S.A. 18A:12-24(c). (04:May 5, Atallo)

Settlement approved: Board member voted on employment and salary of spouse and failure to reimburse board for spouse's travel expenses and her own expenses; parties agreed to three month suspension; Commissioner approves settlement: Commissioner approves penalty. (99:June 10, Harris)

Settlement approved: board member agreed to reprimand for inadvertently voting on bill list containing a bill of her employer. (2001: July 27, Jackson)

Personal Gain

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

Personal involvement that creates a benefit, N.J.S.A. 18A:12-24(c)

Board member violated Ethics Act when he was present at and made comments during executive session meetings involving the hiring of his brother and the amendment of the board's nepotism policy. Commissioner modifies Commissioner's recommended penalty of public censure and orders private reprimand, as board member had been informed by CSA that he could attend closed session, his comments were technical, and he abstained from voting. (04:Sept. 8, Pettinelli)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in the discussion and voted on the resolution to continue the appointment of his employer, a bank, as the depository of monies for the board of education; personal involvement that created a benefit to the board member. SEC recommends penalty of reprimand. Considered fact that board member advised that he would not vote on matters related to the bank in the future. Commissioner agrees. (02: Jan. 31, Carpenter, State Board affirms 02: May 1)

Board member violated N.J.S.A. 18A:12-24(c) when he was present for two executive session meetings where his brother's appointment to a teaching staff member position was discussed and when he made two comments during one of the executive sessions; personal involvement that created a benefit. SEC recommended the penalty of censure. Commissioner disagrees, finding that the penalty of censure was disproportionately severe. Commissioner orders penalty of reprimand. (04:Sept. 8, Pettinelli)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board members violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24 (c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Charter school trustee violated N.J.S.A. 18A:12-24(c) where the minutes of the meeting reflected that he voted on the hiring of his son and he voted to approve the minutes, notwithstanding credible testimony that he abstained. Public should be able to rely on the minutes. By so acting he received the personal benefit of ensuring that his son received employment. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Hatchett)

There is a benefit of intrinsic value in the personal satisfaction that a board member receives in ensuring that a sibling obtains employment. (04:Sept. 8, Pettinelli)

Personnel Appointments

Board member, chair of personnel committee, violated N.J.S.A. 18A:12-24(c) when he twice made motions to pass resolutions that resulted in the appointment of his wife to two positions in the district; financial involvement that might reasonably be expected to impair objectivity. SEC recommends censure. Commissioner agrees. (00: July 10, Sipos)

Board member violated N.J.S.A. 18A:12-24(c) when he was present for two executive session meetings where his brother's appointment to a teaching staff member position was discussed and when he made two comments during one of the executive sessions; personal involvement that created a benefit. SEC recommended the penalty of censure. Commissioner disagrees, finding that the penalty of censure was disproportionately severe. Commissioner orders penalty of reprimand. (04:Sept. 8, Pettinelli)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member violated N.J.S.A. 18A:12-24.1 (j) of the Code of Ethics for School Board members, when he wrote a letter to the superintendent requesting a demotion of the assistant superintendent and copied the assistant superintendent's subordinates, among other parties. Did not wait for an administrative solution. SEC recommended the penalty of reprimand. Commissioner agreed. (03:Aug. 19, Santiago)

Charter school trustee violated N.J.S.A. 18A:12-24(c) where the minutes of the meeting reflected that he voted on the hiring of his son and he voted to approve the minutes, notwithstanding credible testimony that he abstained. Public should be able to rely on the minutes. By so acting he received the personal benefit of ensuring that his son received employment. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Hatchett)

Charter school trustee violated N.J.S.A. 18A:12-24.1 (c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24 (b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10) Stay denied by Commissioner (03:Dec. 11) State Board affirms with respect to termination, reverses as to hiring. directs reinstatement of trustee and penalty of reprimand. (04:Sept. 1, Schaeder)

Policy Guidelines

Superintendent would violate the Act if he were to accept funding from a district vendor (travel, meals and accommodations) to a vendor-sponsored conference where the superintendent was making a presentation. SEC Advisory Opinion A14-03 – August 14, 2003.

Policy making, planning and appraisal

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9 McCullers)

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses

and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

Private action compromising the board

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, when she printed and distributed a flier during her reelection campaign which contained incomplete fiscal information regarding the board's budget, compromising the board's ability to pass its budget. SEC recommended the penalty of censure because the public should be aware that the board member provided incomplete information regarding the potential tax increase. (05: March 28, Quinn)

Board member violated N.J.S.A. 18A:12-24.1 (e) of the Code of Ethics for School Board Members, when she, using school equipment, copied and distributed to certain school staff, a letter that contained false and demeaning information regarding fellow board members; she took private action that could compromise the board. SEC recommended penalty of reprimand. Commissioner agreed. (03: April 14, Schmidt)

Board member violated N.J.S.A. 18A:12-24.1 (e) (took private action that could compromise the board) and (g) (failed to hold confidential certain personnel documents) of the Code of Ethics for School Board Members when he revealed confidential employee documents to a member of the public. Board member believed that public discussion of employee made the records public. SEC recommended penalty of reprimand. Commissioner agreed. (03: March 6, Pizzichillo)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by organizing confidential information containing the names of students suspended from October to November 2004 on an Excel spreadsheet and failed to hold the information confidential when he accidentally transmitted the information to all board members as an attachment to an email. SEC recommended the penalty of reprimand. Commissioner agreed. (05:November 23, Zilinski)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24 (h) provided an exception. SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05: May 2, Freilich)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when she took private action that could compromise the board, sending letters under her title as Board President and not acting in concert with her fellow board members. Board member's letter referred to a "substandard kindergarten classroom" with no windows and ventilation and an "obvious fire code violation." SEC recommended the penalty of reprimand. Commissioner agreed. (03:August 21, Zimmerman)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (i) of the Code of Ethics for School Board Members, when he called an employee at home and became angry when the employee said that she did not send him the reports he had requested. Board member took private action that could compromise the board and did not support district personnel in the proper performance of their duties. SEC recommends penalty of reprimand. Commissioner agrees. (04: April 12, Fischer)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the

board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05:November 9 McCullers)

Reprimand for board member who distributed to staff members a false and malicious document about fellow board members. (03:April 14, Schmidt)

Procedure

State Board set aside determination of SEC (which had found on the merits that three board members violated Ethics Act) because the SEC violated the board members' rights to due process when it decided the merits of the matter after notifying board members that the proceedings were for probable cause determination; matter remanded to SEC for determination of probable cause. (04:April 7, Udy, Ewart and Frazier, implementation of penalties stayed by Commissioner 03:Nov. 10)

Proper discharge of duties in the public interest

Board member violated N.J.S.A. 18A:12-24 (a) when he had an interest in a preschool that contracted with the board and when he voted to approve payment to the preschool. SEC recommends penalty of reprimand. Commissioner agrees. (03:Dec. 15, Hodges)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board member's employment as an architect in a firm, which did work for the board, did not inherently conflict with his duties as a board member. Board member was not a principal of the firm and his employment was not reasonably expected to prejudice his independence of judgment in the exercise of his official duties. Board member must recuse himself from all discussions, actions,

resolutions and votes pertaining to architecture. SEC Advisory Opinion A17-04 – July 26, 2004.

Non-voting members of a charter school board of trustees may neither be employees of, nor vendors of, services to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except for training. SEC Advisory Opinion A14-98, July 31, 1998.

Refer complaints to CSA, N.J.S.A. 18A:12-24.1(j)

Board member who took complaints about the cafeteria directly to a television station and provided an interview to the local newspaper, rather than providing the CSA an opportunity to solve the problem before making the complaints public, violated the Ethics Act. (03:Dec. 19, Kroschwitz)

Related to the School Official by Marriage

Board member violated N.J.S.A. 18A:12-24(c) when she participated in board meetings in which her brother-in-law's property was discussed. Personal involvement, which impaired objectivity, found. SEC recommends reprimand. Commissioner agrees. (99: Feb. 9, Mallette)

Relatives

A board member whose brother held a maintenance position in the district and was a member of the local education association could not participate in negotiations. While no financial involvement existed, the board member had a personal involvement that created a benefit to the board member. The public trust would be violated if the board member negotiated and voted on his relative's contract. Discussions and votes on the brother's subsequent appointments or promotions were similarly prohibited. SEC Advisory Opinion A16-00 – November 28, 2000.

A board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board is negotiating, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association. The SEC did not believe that the public would reasonably perceive that a board member's relationship with his sister would raise the same financial concerns as it would with an immediate family member, especially one working outside of the school district. See A-14-02. SEC Advisory Opinion A19-05 – July 22, 2005.

Board member violated N.J.S.A. 18A:12-24(c) when he was present for two executive session meetings where his brother's appointment to a teaching staff member position was discussed and when he made two comments during one of the executive sessions; personal involvement that created a benefit. SEC recommended the penalty of censure. Commissioner disagrees, finding that the penalty of censure was disproportionately severe. Commissioner orders penalty of reprimand. (04:Sept. 8, Pettinelli)

Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. SEC Advisory Opinion A30-04 – December 21, 2004.

Charter school trustee violated N.J.S.A. 18A:12-24(c) where the minutes of the meeting reflected that he voted on the hiring of his son and he voted to approve the minutes, notwithstanding credible testimony that he abstained. Public should be able to rely on the minutes. By so acting he received the personal benefit of ensuring that his son received employment. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Hatchett)

Retirees

Board members, retired members of the NJEA, could serve on the board's negotiations committee without violating the Act, provided they are not actively participating in the NJEA. No financial or personal involvement that would prevent participation found. SEC Advisory Opinion A33-04 – August 23, 2004.

School administrators

Assistant Superintendent who had ownership interest in local day care center violated N.J.S.A. 18A:12-24 (b) by using his position to secure unwarranted privileges or advantages when he set forth that district would have to use all local day care centers, sent letter to district residents promoting his day care center using his title, acted contrary to SEC's second advisory opinion letter. SEC recommends one month suspension. Commissioner agrees; orders one month suspension without pay. (00:June 16, Confessore, aff'd State Board 01:October 3)

Board member in one building K-8 school district whose spouse is a teacher in the district may fully participate in initial appointment of superintendent, principal and vice principal, including discussion and voting. Once administrators are hired and become supervisors of spouse, board member must recuse himself from future employment issues regarding these individuals such as performance reviews, contract negotiations or promotions. SEC Advisory Opinion A10-00, June 27, 2000.

Board member violated N.J.S.A. 18A:12-24.1(j) of the Code of Ethics for School Board members, when he wrote a letter to the superintendent requesting a demotion of the assistant superintendent and copied the assistant superintendent's subordinates, among other parties. Did not wait for an administrative solution. SEC recommended the penalty of reprimand. Commissioner agreed. (03:Aug. 19, Santiago)

Board member, with brother-in-law teaching in another school district and a member of the same statewide union with which the board was

negotiating, would not violate the Act by participating in negotiations. Doctrine of Necessity should not be invoked for negotiations committee when there are three persons without conflicts. SBA with conflict could provide technical assistance. SEC Advisory Opinion A14-02 – November 15, 2002.

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

School business administrator could continue to serve as a member of NJASBO if his employing board were to participate in an NJASBO sponsored investment program. SEC Advisory Opinion A05-98, November 24, 1998.

Superintendent would violate the Act if he were to accept funding from a district vendor (travel, meals and accommodations) to a vendor-sponsored conference where the superintendent was making a presentation. SEC Advisory Opinion A14-03 – August 14, 2003.

School officials

May law firm that represents school district represent charter school located in the same school district. No opinion issued. School attorney is not a school official. SEC has no jurisdiction. SEC Advisory Opinion A15-99 – November 23, 1999.

Non-voting members of a charter school board of trustees may neither be employees of, nor vendors of, services to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except for training. SEC Advisory Opinion A14-98, July 31, 1998.

SEC determined that board members violated N.J.S.A. 18A:12-24(b) and (c) when they voted to appoint their personal attorney as board solicitor. Commissioner modified SEC's penalty due to prior ethics infraction. (03:Feb. 27, I.M.O. Davis)

Settlements

Board member violated N.J.S.A. 18A:12-24(b) when he posted flyers supporting his re-election in the board administrative building. Settlement Agreement, wherein parties agreed to penalty of censure, adopted by SEC. Commissioner approved. (02:Dec. 16, Shepherd)

Board member violated N.J.S.A. 18A:12-24(c) when she voted to approve a bill list that contained a bill of her employer. Settlement agreement reached. Board member inadvertently violated the Act. SEC recommends penalty of reprimand. Commissioner agrees. (01:July 27, Jackson)

Board member voted on expense reimbursement concerning husband's employment with board. SEC found probable cause as to

violations of N.J.S.A. 18A:12-24 (b) and (c). Settlement approved. Three-month suspension. (99:June 10, Harris)

Spouses

Board member in one building K-8 school district whose spouse is a teacher in the district may fully participate in initial appointment of superintendent, principal and vice principal, including discussion and voting. Once administrators are hired and become supervisors of spouse, board member must recuse himself from future employment issues regarding these individuals such as performance reviews, contract negotiations or promotions. SEC Advisory Opinion A10-00, June 27, 2000.

Board member violated N.J.S.A. 18A:12-24 (c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02:July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member violated N.J.S.A. 18A:12-24 (c) when he voted on a bill list, which included his spouse's expense reimbursement. Voted to approve minutes that reflected disputed vote. SEC recommends reprimand. Commissioner agrees. (98:August 26, Levine)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03: May 30, Adams)

Board member violated N.J.S.A. 18A:12-24 (c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board

member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04:Oct. 29, Pirillo)

Board member violated N.J.S.A. 18A:12-26 (a) (3) when she failed to include the Bd. of Ed. as a source of prepaid expenses for conference attendance and N.J.S.A. 18A:12-24 (c) when she voted on a bill list including a reimbursement to her and her husband and a tuition payment to a school where her husband was employed; indirect financial involvement found. SEC recommends censure. Commissioner agrees. (02: Sept. 6, Dunckley)

Board member, whose spouse is a teacher in the school district, would not violate the Act by receiving family medical benefits through his spouse. Board member must abstain from all matters involving the local teachers' association and all employment issues related to his spouse. SEC Advisory Opinion A28-04 – September 30, 2004.

Board members on sending district board of education, who have immediate family members employed in a school district that receives the board's students, may not vote on the tuition contract with the receiving school district. See In the Matter of Bruce White, 2001 S.L.D. September 10. SEC Advisory Opinion A05-02 – April 2, 2002.

Board members who have spouses employed in the district as full-time teacher aides, where teacher aides are not members of the teachers' association, would violate the Act if they were to negotiate and vote on the teachers' association collective bargaining agreement. Spouses/teacher aides historically received salary increases no less than that of the teachers' association. Board member whose spouse is a teacher aide, who is also board president, may appoint chairperson and members of the negotiations committee without violating the Act. SEC Advisory Opinion A01-01 – October 23, 2001.

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board member's spouse was a teacher in another school district. Not union member, no NJEA affiliation, no representation fee, no agency shop clause, but received benefit of the contract. Board member may not participate on negotiations committee. Recent amendment/Pannucci decision does not change SEC position. SEC Advisory Opinion A02-00, March 28, 2000.

Board President was out-of-district NJEA member with spouse who was district employee and member of local NJEA affiliate. Board president could sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement, the monthly bill list that included payment to the labor negotiators and the payroll certification that authorized payment to school district employees without violating the Act. Must continue to abstain on the votes. SEC Advisory Opinion A19-03 – August 27, 2003.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05: November 2, Funches)

Interim superintendent and school business administrator with out-of-district NJEA affiliations may participate on limited basis in negotiations. Interim superintendent is liaison to State Intervention Team; may impart its recommendations. SBA may provide financial and insurance information. SEC Advisory Opinion A13-99, September 28, 1999.

Standing

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15. C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00: June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Surrendered independent judgment, N.J.S.A. 18A:12-24.1(f)

Board members whose candidacies were endorsed by teachers union violated N.J.S.A. 18A:12-24(c) by voting against renewal of, and taking action to damage reputation of, existing food service whose contract the teachers' union opposed, and going to the media; totality of evidence showed that they were more concerned about nonrenewing the existing contract than rectifying the problem. Censure ordered. (03:Dec. 19, Kroschwitz)

Training, failure to attend--removal

(98:Oct. 1, Severns) (98:Oct. 1, Burling) (98:Oct. 1, Trout) (98:Sept. 21, Reed)(99:July 7, Wilder)(00:July 10, Dorety (Oldmans Twp.))(04:Dec. 9, Ruiz)

Board member resigns – matter moot. (02:April 29, Blumenthal)

Charter school trustee appointed February 2001 removed for failure to respond or attend training up to and including October 2002. (02:Dec. 18, Fonesca)

Commissioner adopted SEC's recommendation of removal of board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions without good cause. (03:Aug. 19, Brunett)

Commissioner adopted SEC's recommendation of suspension of board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions. Member advised that he missed June training due to business and family obligations and that he would attend October training session. Suspension ordered from August 19, 2003 until date of October 2003 training session. Summary removal ordered if member failed to attend October training session. (03:Aug. 19, Heinle)

Commissioner adopted SEC's recommendation to remove board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions without good cause. (03:Aug. 21, Bailey)(03:Aug. 21, Blocker)(03:Aug. 21, Correnti)(03:Aug. 21, Gruber)(03:Aug. 21, Ryan)(03:Aug. 21, Scaldino)

Commissioner adopted SEC's recommendation to remove board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, without good cause. (03:Aug. 21, Carter)

Commissioner adopted SEC's recommendation to suspend board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where member missed seven available training sessions. Member advised that he missed June training due to family obligations and that he would attend October training session. Suspension ordered from August 19, 2003 until date of October 2003 training session. Summary removal ordered if member failed to attend October training session. (03:Aug. 19, Evans)

Commissioner adopted SEC's recommendation to suspend re-elected board member for failing to attend training mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, where board member claimed exemption due to having attended training in 1987, prior to the effective date of the School Ethics Act. Commissioner agreed with SEC that member was not "grandfathered" because his prior training in 1987 did not include training in the School Ethics Act. Member suspended until October 2003 training, summary removal ordered if member failed to complete October 2003 training. (03:Aug. 21, Nicholas)

Commissioner modified SEC's recommendation of suspension until member completed training followed by removal if member failed to complete training by October 2003. Member advised that religious observances prevented his attendance at weekend training sessions and was out of the country on the one weekday training was offered. Commissioner rescinded suspension but ordered removal unless member completed training by October 2003. (03:Aug. 21, Tawil)

Commissioner modified SEC's recommendation to suspend member until he completed training as mandated by N.J.S.A. 18A:12-33 and N.J.A.C. 6A:28-1.6, and remove if training was not completed by September 2003. Board secretary/business administrator advised that member had resigned, therefore, Commissioner dismissed matter as moot. (03:Aug. 21, Keeler)

Failure to attend from April to April with no response to recommendation recommending removal; board member removed. (98:Sept. 21, Reed)

Reprimand, but no suspension in light of charter school trustee's illness and confusion about whether attendance was required for such board member; removal if fails to attend by January 2004. (03:Dec. 18, Jackson)

SEC recommends automatic removal if charter school board of trustee member fails to attend January 2004 training. Missed training due to illness. Commissioner agrees and orders additional reprimand for failure to abide by the requirements of the School Ethics Act, causing administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 18, Jackson)

SEC recommends removal from office of board member who failed to attend training. Board member responded to Order to Show Cause stating that child care and nursing issues precluded attendance. SEC extended opportunity for training until October. Board member registered for October training but did not attend. Commissioner agrees, orders board member removed. (04:Dec. 9, Ruiz)

SEC recommends removal of board member if the board member fails to attend October training. No suspension for two board members from three-member board in non-operating district. (99:July 28, Hall)(99:July 28, Cahill)

SEC recommends removal of board member who could not attend orientation due to scheduling conflicts. Commissioner agrees. Board member removed. (98:Oct. 1, Trout)

SEC recommends removal of board member who could not attend orientation due to work and personal schedule. Board member indicated that he would be resigning, but did not resign. Commissioner agrees. Board member removed. (98:Sept. 21, Reed)

SEC recommends removal of board member who failed to attend training. Board member did not respond to SEC or Commissioner. Commissioner agrees. Board member removed. (99:July 7, Wilder)

SEC recommends removal of board member who failed to attend training. Board member initially given extension to June, did not respond to SEC or Commissioner and did not attend June session. Commissioner agrees, orders board member removed. (03:Aug. 20, Brunett)(03:Aug. 20, Blocker)(03:Aug. 21, Carter)(03:Aug. 21, Bailey)(03:Aug. 21, Ryan)

SEC recommends removal of board member who failed to attend training. Board member responds to Commissioner. Child's birthday, snowstorm, need to attend to "adopted" great-grandmother given as reasons for not attending. Commissioner agrees with SEC. Orders board member removed. (00:July 10, Dorety)

SEC recommends removal of board member who failed to attend training. Board member responds to Commissioner. Survival of new business key issue, registered for October 2000. Commissioner orders suspension pending attendance at October training, removal if fails to attend. (00:July 10, Notholt)

SEC recommends removal of board member who failed to attend training, planned to attend October session. Commissioner agrees. Board member removed. (98:Oct. 1, Severns)

SEC recommends removal of charter school trustee who failed to attend training. Board member never responded to either the SEC or the Commissioner. Commissioner agrees, orders trustee removed. (02:Sept. 5, Jubilee)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that her son's disabilities prevented her from attending training, registered for October training. (05:Nov. 7, Betances)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that her son was sick on the day of the March 2005 training session and because she was a stay at home mom she could not attend the June 2005 training sessions. (05:Nov. 2, Rose)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that she had a baby three months after she was elected to the board and was registered for October training. (05:Nov. 2, Manley)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that she had been advised by NJSBA that since she was a board member in 1990 she did not have to attend training. Board member never received training in 1990, registered for October 2005 training. (05:Nov. 3, Shimp)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that she started a new position at work and the training dates did not coincide with her probationary schedule. (05:Nov. 2, Graham)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member never responded to either the SEC or Commissioner. (05:Nov. 19, James)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that he was unable to attend training because of prior personal and professional commitments and was registered for training in March 2006. (05:Nov. 9, Candio)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member never responded to either the SEC or Commissioner. (05:Nov. 3, Repella)

Suspension pending completion of training; removal is member fails to attend by January 2004. (03:Dec. 18, Muhammad)(03:Dec. 22, Hunter)(03:Dec. 22, Frohling)(03:Dec. 22, Sutton)(03:Dec. 23, Gaines)(03:Dec. 23, Charlton)

Late attendance

Board member of non-operating district not suspended despite failure to attend – will be removed if doesn't attend by October. (99:July 28, Cahill)(99:July 28, Hall)

No suspension for board member whose failure to attend due to unique circumstances; removal if fails to attend October session. (01:Sept. 6, Kowal)

No suspension for board member whose failure to attend weekend session after warning was due to her disability and inability to do extensive walking, where she was registered for 1-day October program, removal if fails to attend October session. (01:Sept. 5, Golden)

No suspension for board member who was called upon to assist at World Trade Center after September 11; removal if fails to attend October session. (01:Sept. 6, Young, suspension vacated 01:Sept. 21)

Resignation renders issue of board member's late attendance moot. (01:Sept. 6, Colacci)

Suspension for next meeting: (98:Oct. 1, Meier) (98:Oct. 1, Osborne) (98:Sept. 4, McMahon) (98:Sept. 4, Gross-Quatrone) (98:Sept. 4, Anuario) (98:Sept. 9, Van Gieson) (98:Sept. 9, Beers) (98:Sept. 9, Calhoun) (98:Sept. 9, Winka) (98:Sept. 21, Long) (98:Sept. 21, Johnston)

Suspension for next meeting, or removal if fails to attend October session, revising Commission's recommendation in light of explanation for failure to attend June sessions. (98:Sept. 21, Improta) (98:Sept. 21, Werther)

Suspension pending attendance at October session; otherwise removal. (00:July 10, Nothole)(00:Aug. 10, Fisher)(01:Sept. 6, Banes)(01:Sept. 6, Dowling)(01:Sept. 6, Haas)(01:Sept. 6, Kazawic)(01:Sept. 6, Murch)(01:Sept. 6, Schamp)(01:Sept. 6, Tannenhaus)(01:Sept. 6, Wada)(01:Sept. 6, Wieland)(01:Sept. 6, Williams)(01:Sept. 6, Wilson)

Suspension pending attendance at September program; removal if fails to attend October. (00:Aug. 10, Vierno)

Suspension until attends; or removal if fails to attend by October. (98:Sept. 21, Smith)(99:July 28, Adams, decision amended, recommendation to suspend or remove is moot as member attended June training session)(99:July 28, Hanna)(99:July 28, Reed)

Suspension

Commissioner rejects SEC recommendation to suspend, until such time as training was completed, charter school trustee who did not attend board member training within the first year of her first term. Trustee registered for October 2004 training but did not attend. SEC recommended decision is inconsistent with prior decisions in this area. No articulated reasons by SEC for not recommending removal, if training is not completed by a date certain. Trustee suspended pending completion of training by January 2005. If trustee does not attend one of the two January training sessions, she shall be summarily removed from office as of January 30, 2005. (04:Dec. 9, Rios)(04:Dec. 10, Paniagua)(04:Dec. 13, Torres)(04:Dec. 13, Graham)(04:Dec. 13, Mason-Griffin)

Immediate suspension with subsequent removal if training is not completed by January 2005 for charter school board member appointed in April 2003 who failed to attend the October 2004 session. (04:Dec. 9, Rios)(04:Dec. 10, Paniagua)(04:Dec. 13, Graham)(04:Dec. 13, Torres)(04:Dec. 13, Mason-Griffin)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Board member fails to attend June training session due to child care responsibility, registered for October one-day session. Commissioner removes board member from office. (98:Oct. 1, Burling)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Board member fails to attend June training session due to short notice and business obligations. Commissioner suspends board member for the next regularly scheduled meeting of the board, removal if fails to attend October one-day session. (98:Sept. 21, Werther)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Board member fails to attend June training session due to spouse's surgery and child care responsibility. Commissioner suspends board member for the next regularly scheduled meeting of the board, removal if fails to attend October one-day session. (98:Sept. 21, Improta)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Commissioner agrees. Board member attended June training session, suspended for the next regularly scheduled meeting of the board. (98:Sept. 4, Anuario)(98:Sept. 4, Gross-Quatrone)(98:Sept. 4, McMahon)(98:Sept. 9, Beers)(98:Sept. 9, Calhoun)(98:Sept. 9, Van Gieson)(98:Sept. 21, Long)(98:Sept. 21, Johnston)(98:Oct. 1, Meier)(98:Oct. 1, Osborne)

SEC recommends removal of board member who failed to attend training. Board member responds to Commissioner. Survival of new business key issue, registered for October 2000. Commissioner orders suspension pending attendance at October training, removal if fails to attend. (00:July 10, Notholt)

SEC recommends removal of board member who failed to attend training. Commissioner disagrees. Board member attended June training session, suspended for the next regularly scheduled meeting of the board. (98:Sept. 9, Winka)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that her son's disabilities prevented her from attending training, registered for October training. (05:Nov. 7, Betances)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that her son was sick on the day of the March 2005 training session and because she was a stay at home mom she could not attend the June 2005 training sessions. (05:Nov. 2, Rose)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that she had a baby three months after she was elected to the board and was registered for October training. (05:Nov. 2, Manley)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that she had been advised by NJSBA that since she was a board member in 1990 she did not have to attend training. Board member never received training in 1990, registered for October 2005 training. (05:Nov. 3, Shimp)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that she started a new position at work and the training dates did not coincide with her probationary scheduled. (05:Nov. 2, Graham)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member never responded to either the SEC or Commissioner. (05:Nov. 19, James)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member advised SEC that he was unable to attend training because of prior personal and professional commitments and was registered for training in March 2006. (05:Nov. 9, Candio)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. Board member never responded to either the SEC or Commissioner. (05:Nov. 3, Repella)

SEC recommends suspension of board member until attendance at October training session with removal if failure to attend. Commissioner agrees. (98:Sept. 21, Smith)(99:July 28, Hanna)(99:July 28, Reed)(00:August 14, Fisher)(00:August 14, DeVierno)(01:Sept. 6, Banes)(01:Sept. 6, Wieland)(01:Sept. 6, Dowling)(01:Sept. 6, Young)(01:Sept. 6, Haas)(01:Sept. 6, Wilson)(01:Sept. 6, Kazawic)(01:Sept. 6, Williams)(01:Sept. 6, Murch)(01:Sept. 6, Wada)(01:Sept. 6, Schamp)(02:Sept. 5, Cava)(02:Sept. 5, Caso-Schmidt)(02:Sept. 5, Weingartner)(02:Sept. 9, Cava)

SEC recommends suspension of board member until attendance at October training session with removal if failure to attend. Commissioner agrees. (99:July 28, Adams) but see (99:Sept. 27, Adams) Board member attended June training, suspension/removal moot.

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member had attended training in 1987 but could not show that he had attended training between 1992 and 2003. Per se violation of the Act. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 21, Nicholas)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member initially given extension to June, did not attend. Will go to October session. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 21, Scaldino)(03:Aug. 21, Correnti)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member initially given extension to June, did not attend due to health reasons and family obligations, will go to October session. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 21, Gruber)

SEC recommends suspension of board member who failed to attend training with removal is failure to attend October training session. Board member initially given extension to June, family obligations precluded attendance, will go to October session. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 19, Evans)(03:Aug. 19, Heinle)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member resigned. Matter moot. (01:Sept. 12, Colacci)(03:Aug. 21, Keeler)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member will go to October session. Commissioner disagrees, finds that recommended suspension of board member for failure to attend training is unduly harsh sanction where board member asserts that he is unable to attend weekend training sessions for religious reasons. No suspension. Commissioner cautions that failure to attend October training session will result in removal from board of education. (03:Aug. 21, Tawil)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner agrees. On amendment, suspension vacated in light of WTC 9/11. Removal if failure to attend October training session. (01:Sept. 6, Tannenhaus)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner disagrees, disability involved, no suspension. Removal if failure to attend October training. (01:Sept. 5, Golden)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner disagrees, unique circumstances – family illness, previous 3-term board member, no suspension. Removal if failure to attend October training. (01:Sept. 6, Kowal)

SEC recommends suspension of charter school board of trustees member who failed to attend training with automatic removal if fails to attend January 2004 training. Commissioner agrees, orders suspension pending attendance at January training, removal if failure to attend. (03:Dec. 18, Muhammad)(03:Dec. 22, Hunter)(03:Dec. 22, Frohling)(03:Dec. 22, Sutton)(03:Dec. 23, Gaines)(03:Dec. 23, Charlton)

Training – SEC Recommendation rejected

SEC recommends removal of board member who failed to attend training. Board member responds to Commissioner. Survival of new business key issue, registered for October 2000. Commissioner orders suspension pending attendance at October training, removal if fails to attend. (00:July 10, Notholt)

SEC recommends removal of board member who failed to attend training. Commissioner disagrees. Board member attended June training session, suspended for the next regularly scheduled meeting of the board. (98:Sept. 9, Winka)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member will go to October session. Commissioner disagrees, finds that recommended suspension of board member for failure to attend training is unduly harsh sanction where board member asserts that he is unable to attend weekend training sessions for religious reasons. No suspension. Commissioner cautions that failure to attend October training session will result in removal from board of education. (03:Aug. 21, Tawil)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner disagrees, disability involved, no suspension. Removal if failure to attend October training. (01:Sept. 5, Golden)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner disagrees, unique circumstances – family illness, previous 3-term board member, no suspension. Removal if failure to attend October training. (01:Sept. 6, Kowal)

Commissioner rejects SEC recommendation to suspend, until such time as training was completed, charter school trustee who did not attend board member training within the first year of her first term. Trustee registered for October 2004 training but did not attend. SEC recommended decision is inconsistent with prior decisions in this area. No articulated reasons by SEC for not recommending removal, if training is not completed by a date certain. Trustee suspended pending completion of training by January 2005. If trustee does not attend one of the two January training sessions, she shall be summarily removed from office as of January 30, 2005. (04:Dec. 9, Rios)(04:Dec. 10, Paniagua)(04:Dec. 13, Torres)(04:Dec. 13, Graham)(04:Dec. 13, Mason-Griffin)

Tuition

Board member violated N.J.S.A. 18A:12-24(c) when he voted on payment of tuition to Vo-Tech Board where he was employed as a principal; indirect financial involvement that might reasonably be expected to impair his objectivity. Board member was no longer member of board. SEC recommends penalty of censure. Commissioner agrees. (01:Sept. 10, White)

Unwarranted privileges

ALJ found that Board member violated N.J.S.A. 18A:12-24(b) and (e) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC accepted the Initial Decision of the ALJ and recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (03:Sept. 22, Keelen)

Asking school business administrator to intercede for him in acquiring unsecured loan from bank that holds board's accounts was gross violation of act -- censure ordered; penalty would be harsher if evidence indicated he had actually asked school business administrator to write interceding letter. (99:Feb. 9, James)

Assistant Superintendent, part owner of local day care center, violated Act when he represented to the SEC that his day care center would need to be used to meet the demand for services and then wrote a letter to ensure that factual scenario; sent letter to district residents promoting his day care center using his title, and acted contrary to SEC's advisory opinion letter. One month suspension without pay. (00:June 16, Confessore, decision on motion St. Bd.01:Feb. 7, aff'd St. Bd. 01:Oct. 3)

Assistant Superintendent who had ownership interest in local day care center violated N.J.S.A. 18A:12-24 (b) by using his position to secure unwarranted privileges or advantages when he set forth that district would have to use all local day care centers, sent letter to district residents promoting his day care center using his title, acted contrary to SEC's second advisory opinion letter. SEC recommends one month suspension. Commissioner agrees; orders one month suspension without pay. (00:June 16, Confessore, aff'd State Board, 01:October 3)

Board member used her position to secure unwarranted privilege for another when, using her official title, she requested a delay in the release of a Commissioner decision. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated Act when he solicited contributions from board vendor for upcoming town council election and implying that contribution could affect future contract with board. As board member has since left board, censure recommended which Commissioner approves. (03:Sept. 22, Keelen)

Board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-31 when he fraudulently obtained an Advisory Opinion from the SEC, misleading the SEC into believing that the situation he posed was his when it was actually the situation of another board member; used his position to secure unwarranted privileges and advantages for himself. Board member used the advisory opinion information to file a complaint against the other board member. SEC found that the board member violated the public trust and recommended that the board member be removed. The Commissioner agreed. (02:Dec. 3, Ordini, Stay denied by Commissioner 03: Jan.8, aff'd State Board 03:May 7)

Board member violated N.J.S.A. 18A:12-24(b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24(e) (solicited campaign contribution with intent to influence) when he and other board members solicited a $1000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (02: Nov. 6, Gallagher)

Board member violated N.J.S.A. 18A:12-24(b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24(e) (solicited campaign contribution with intent to influence) when she invited a school district vendor employee to a meeting for the purpose of soliciting a $1000 donation to a board member's campaign for borough council. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommends highest penalty available, censure, as respondent was now a former board member. Commissioner agrees. (02:Sept. 23, Ferraro)

Board member violated N.J.S.A. 18A:12-24 (b) when she appropriated school district mailing labels, containing student names, identification numbers and homeroom numbers in order to mail campaign literature; used her position to obtain unwarranted privileges and advantages for herself and others. SEC recommends penalty of censure. Commissioner agrees. (02:April 18, Russo)

Board member violated N.J.S.A. 18A:12-24 (b) when he asked the board's SBA to intercede for him in acquiring an unsecured loan from the bank, which held the Board's accounts. Attempted to secure unwarranted privileges for himself. SEC recommends penalty of censure. Commissioner agrees. (98:Feb. 9, James)

Board member violated N.J.S.A. 18A:12-24(b) when he endorsed a candidate for municipal council through a mailing of letters to members of the community. The letterhead, envelope, and contents of the letter could mislead recipients to believe that the endorsement was in his official capacity as board president. By so doing he used his position as board president to secure unwarranted privileges and advantages for the candidate. SEC recommended the penalty of reprimand. Commissioner agreed. (04:Nov. 17, DeMeo)

Board member violated N.J.S.A. 18A:12-24(b) when, using her official title, she requested a delay in the release of an SEC decision regarding a member of her board of education; unwarranted privilege for another board member. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated the Act when she acquired mailing labels containing student information that were later used for the political campaign of her husband, a former mayor. Penalty of censure recommended by SEC. Commissioner agrees. (02:April 18, Russo)

Board member's spouse founder of charter school in district. Board member may remain if spouse only founder. No discussions or vote on charter school resolution. Board member may vote on budget matters. If charter school approved, board member may vote on charter issues. SEC assumes that founder role will cease upon charter school approval. SEC Advisory Opinion A14-99, November 23, 1999.

Board members violated N.J.S.A. 18A:12-24(b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24(c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27 Davis and Jackson, Commissioner Stay denied 03:March 11)

Charter school board trustee violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-25(c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son worked. SEC recommended the penalty of removal. Commissioner agreed. (05: November 2, Funches)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05:November 9, McCullers)

Charter school trustee violated N.J.S.A. 18A:12-24.1(c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24(b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10, Stay denied by Commissioner 03: Dec. 11, State Board affirms with respect to termination, reverses as to hiring.) Directs reinstatement of trustee and penalty of reprimand. (04:Sept. 1, Schaeder)

Commissioner upholds settlement agreement between Ethics Commission and board member, that requires censure of board member who violated N.J.S.A. 18A:12-24(b) by posting flyers supporting his reelection in the school's administrative office. (02:Dec. 16, Shepherd)

Ethics Commission found that first board member violated the Ethics Act by presenting a vendor's employee to a second board member who was running for borough council and who, in the presence of the first member, solicited a donation from the employee for his campaign for borough council. Employee perceived the solicitation as a threat against the vendor's existing contract with the school district. Commissioner agreed with the Ethics Commission that the first board member should be censured for attempting to use her office to secure unwarranted privileges for herself or others. (02:Sept. 23, Ferraro)

SEC determined that board member did not use his official position to secure unwarranted privileges for himself or others in violation of N.J.S.A. 18A:12-24(b) when he voted to renew the contract of a transportation service, where member and owner of the transportation service were both members of the same community organization. (04:May 5, Ferrante)

SEC failed to find probable cause that board member used his official position to secure unwarranted privileges, for himself, or others in violation of N.J.S.A. 18A:12-24(b) and (e) of the School Ethics Act when, he challenged the architect's bills and tried to influence the board not to reappoint. Architect alleged that member's conduct was retaliatory. (04:May 5, Meadows)

Use of official title as a department of education employee and board of education member on letterhead in request for delay in release of decision was use of official position to influence the SEC. (03:May 12, Ball)

Violation found for mailing letters to members of the community endorsing a candidate for municipal council with letterhead and envelopes bearing his official title of board president created impression in totality that letter was written in his capacity of president, although he signed letter in his individual capacity; Commissioner agrees that reprimand is appropriate penalty. (04:Nov. 17, DeMeo)

Use of school for personal gain

Board member did not use school for personal gain when she used school copier to copy to staff a disparaging letter about fellow board members; no gain established. (03:April 14, Schmidt)

Board member may simultaneously serve as president of PTA in same school district. Must avoid conduct that may violate N.J.S.A. 18A:12-24(c), (d), (f) or (g). SEC Advisory Opinion A07-00, May 23, 2000.

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05:November 9, McCullers)

Violation found – penalty

Censure

Board member, chair of personnel committee, violated N.J.S.A. 18A:12-24(c) when he twice made motions to pass resolutions that resulted in the appointment of his wife to two positions in the district; financial involvement that might reasonably be expected to impair objectivity. SEC recommends censure. Commissioner agrees. (00:July 10, Sipos)

Board member position and employment as youth outreach worker were not inherently incompatible; must abstain from matters concerning the employing corporation. Board member violated N.J.S.A. 18A:12-24 (c) by voting to contract for pre-K services with the corporation with which he was employed; financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Board member's employment did not involve pre-K. SEC recommends censure. Commissioner agrees. (00: July 13, Arocho)

ALJ found that Board member violated N.J.S.A. 18A:12-24(b) and (e) when he and other board members solicited a $1,000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC accepted the Initial Decision of the ALJ and recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (03:Sept. 22, Keelen)

Board member violated N.J.S.A. 18A:12-24(b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24(e) (solicited campaign contribution with intent to influence) when he and other board members solicited a $1,000 donation to a board member's campaign for borough council from a school district vendor employee. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommended highest penalty available, censure, as respondent was now a former board member. Commissioner agreed. (02:Nov. 6, Gallagher)

Board member violated N.J.S.A. 18A:12-24(b) (unwarranted privileges for herself and others) and N.J.S.A. 18A:12-24 (e) (solicited campaign contribution with intent to influence) when she invited a school district vendor employee to a meeting for the purpose of soliciting a $1000 donation to a board member's campaign for borough council. Implication was that vendor contract could be affected if campaign donation were not made. SEC recommends highest penalty available, censure, as respondent was now a former board member. Commissioner agrees. (02:Sept. 23, Ferraro)

Board member violated N.J.S.A. 18A:12-24 (b) when he asked the board's SBA to intercede for him in acquiring an unsecured loan from the bank, which held the Board's accounts. Attempted to secure unwarranted privileges for himself. SEC recommends penalty of censure. Commissioner agrees. (98:Feb. 9, James)

Board member violated N.J.S.A. 18A:12-24(b) when he posted flyers supporting his re-election in the board administrative building. Settlement Agreement, wherein parties agreed to penalty of censure, adopted by SEC. Commissioner approved. (02: Dec. 16, Shepherd)

Board member violated N.J.S.A. 18A:12-24(b) when she appropriated school district mailing labels, containing student names, identification numbers and homeroom numbers in order to mail campaign literature; used her position to obtain unwarranted privileges and advantages for herself and others. SEC recommends penalty of censure. Commissioner agrees. (02:April 18, Russo)

Board member violated N.J.S.A. 18A:12-24 (c) and (f) when she was present at and participated in discussions at a Business Affairs Committee meeting when bids for new copiers were discussed and one of the bidders was a company in which her husband had a financial interest. The board member resigned before the SEC considered the complaint. SEC recommended the penalty of censure, the highest available. Commissioner agreed. (04:Oct. 29, Pirillo)

Board member violated N.J.S.A. 18A:12-24(c) (indirect financial interest) and N.J.S.A. 18A:12-24(g) (represented council's interests before the board) by serving as a "consultant" to the borough but actually serving as the borough's financial officer while a member of the board and by his continuing employment with the borough while remaining on the board of education. Board member deliberated and voted on the district budget despite SEC's cautioning prior decision that he should not participate in budget matters. See (98: Nov. 24) SEC would have recommended removal but for member's resignation upon the Commission's finding of probable cause. SEC recommended most severe available penalty of censure. Commissioner agreed. (03:Mar. 31, Gass)

Board member violated N.J.S.A. 18A:12-24(c) when he commented at a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader; direct financial involvement. Board member also violated the Board Member Code of Ethics, N.J.S.A. 18A:12-24.1 (e) and (g), when he disclosed student information to the Ewing Twp. Bd. of Ed. after the CSA advised him the information was confidential; took private action that could compromise the board involving the release of confidential student information. Board member was not reelected. SEC recommends penalty of censure. Commissioner agrees. (02:July 16, Vickner, affirmed State Board 03:July 3)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in discussions and voted on matters concerning lease that the church in which he served as a deacon had with the board. Personal involvement that impaired objectivity found. Acted against attorney advice – aggravating factor. SEC recommends censure. Commissioner agrees. (99: May 24, Coleman)

Board member violated N.J.S.A. 18A:12-24(c) when he voted on payment of tuition to Vo-Tech Board where he was employed as a principal; indirect financial involvement that might reasonably be expected to impair his objectivity. Board member was no longer member of board. SEC recommends penalty of censure. Commissioner agrees. (01: Sept. 10, White)

Board member violated N.J.S.A. 18A:12-24(c) when he was present for two executive session meetings where his brother's appointment to a teaching staff member position was discussed and when he made two comments during one of the executive sessions; personal involvement that created a benefit. SEC recommended the penalty of censure. Commissioner disagrees, finding that the penalty of censure was disproportionately severe. Commissioner orders penalty of reprimand. (04:Sept. 8, Pettinelli)

Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, when she printed and distributed a flier during her reelection campaign which contained incomplete fiscal information regarding the board's budget, compromising the board's ability to pass its budget. SEC recommended the penalty of censure because the public should be aware that the board member provided incomplete information regarding the potential tax increase. (05:March 23, Quinn)

Board member violated N.J.S.A. 18A:12-25(a)(3) and 26(a)(1) of the School Ethics Act when he omitted material information, that his wife worked for a company that had a contract with the board, on his disclosure forms. Small amount of contract mitigates penalty. SEC recommends censure, Commissioner agrees. (00:Nov. 20, Cirillo)

Board member violated N.J.S.A. 18A:12-26(a)(3) when she failed to include the Bd. of Ed. as a source of prepaid expenses for conference attendance and N.J.S.A. 18A:12-24(c) when she voted on a bill list including a reimbursement to her and her husband and a tuition payment to a school where her husband was employed; indirect financial involvement found. SEC recommends censure. Commissioner agrees. (02: Sept. 6, Dunckley)

Board member violated the Act when she acquired mailing labels containing student information that were later used for the political campaign of her husband, a former mayor. Penalty of censure recommended by SEC. Commissioner agrees. (02:April 18, Russo)

Board members violated N.J.S.A. 18A:12-24 (b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24 (c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Board members violated N.J.S.A. 18A:12-24.1 (f) and (j) when they surrendered their independent judgment concerning the district's food service contractor to a special interest group, the local education association, which supported their candidacy and opposed renewal of the contract. One board member violated the code of ethics when she took her complaints directly to the media instead of first giving the administration an opportunity to address them. SEC recommends penalty of censure. Commissioner agrees (03: Dec. 19, Kroschwitz II and Sturgeon)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when he failed to uphold and enforce all laws pertaining to the schools when he planned and participated in a closed executive meeting of the board without providing adequate notice, dismissed the board secretary and hired an uncertified business administrator; failed to recognize that authority rests with the board and took private action that could compromise the board when he dismissed the board secretary on his own and did not bring the matter to the board; failed to confine his actions to policymaking and planning when he took it upon himself to determine why scheduling problems had occurred and intervened in a matter between two students; administered the schools when he contacted a complainant after he had been given a solution by administration, intervened in a matter between two students and advised teachers on student discipline; signed certain checks without authorization thereby failing to recognize board authority, using his position to secure unwarranted

privileges, and acting in a matter in which he had a direct financial involvement; used the schools for personal gain by hiring certain contractors; and jeopardized the educational welfare of the children in the school. SEC recommended the penalty of censure, the highest penalty against a former trustee. Commissioner agreed. (05: November 9, McCullers)

Ethics Commission found that first board member violated the Ethics Act by presenting a vendor's employee to a second board member who was running for borough council and who, in the presence of the first member, solicited a donation from the employee for his campaign for borough council. Employee perceived the solicitation as a threat against the vendor's existing contract with the school district. Commissioner agreed with the Ethics Commission that the first board member should be censured for attempting to use her office to secure unwarranted privileges for herself or others. (02:Sept. 23, Ferraro)

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

In consent order approved by the ALJ and SEC board member acknowledged: (1) that she engaged in communication both publicly and by email that was improper for a Board member; (2) that she made improper comments at Board meetings on June 8, 2010 and August 23, 2010; and (3) that she engaged in conduct and communication regarding the

hiring of personnel that was improper; said conduct violating N.J.S.A. 18A:12-24.1(b), (d), (e), (f), (g) and (i) of the Code of Ethics for School Board Members. The parties agreed that the board member would be subject to a penalty of reprimand. Bembry, SEC 2011: August 23

SEC finds that board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and dismisses the allegations that the board member violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f), (g), (i) and (j). SEC recommends penalty of reprimand. Board member called the District's Business Administrator and told him to change the bus pass of the complainant's child to another residence without the complainant's consent. Board member took private action that was outside the scope of her duties as a board member. No factual evidence of violation of the other sections was shown. Zirkle, SEC 2011: September 27

SEC finds that board member acted in his official capacity in a matter where he had an indirect financial involvement which a reasonable person could perceive to impair his objectivity or independence of judgment so as to violate N.J.S.A. 18A:12-24(c) when he: (1) participated in Board discussion regarding the possible return of the Interim Superintendent; (2) made a motion at the February 23, 2011 meeting to approve the appointment of the Interim Superintendent; and (3) voted on the appointment at the February 23, 2011 meeting. The Commission recommends a penalty of reprimand. Pellechia, SEC 2011: September 27

Removal

Board member removed for failure to file, did not respond to either the SEC or Commissioner. Commissioner admonishes board member for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (99:Aug. 31, Sekelsky)(99:Aug. 31, Addison)(99:Aug. 31, Smith)

Board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-31 when he fraudulently obtained an Advisory Opinion from the SEC, misleading the SEC into believing that the situation he posed was his when it was actually the situation of another board member; used his position to secure unwarranted privileges and advantages for himself. Board member used the advisory opinion information to file a complaint against the other board member. SEC found that the board member violated the public trust and recommended that the board member be removed. The

Commissioner agreed. (02:Dec. 3, Ordini, Stay denied by Commissioner 03:Jan.8, aff'd State Board 03:May 7)

Board member violated N.J.S.A. 18A:12-24.1 (a) and (e) of the Code of Ethics for School Board Members, when he told an administrative staff member to remove personnel items from the agenda and commented to the newly appointed employee that she did not have a job after the board approved her employment. By so doing he failed to uphold and enforce all laws and tried to bring about a change through illegal and unethical procedures. SEC recommended the penalty of removal. Commissioner agreed. (04:Nov. 12, Palmer, State Board affirms 05:May 4)

Board member violated N.J.S.A. 18A:12-24.1 (c), (d), (e), (g) and (h) of the Code of Ethics for School Board Members. She ignored the recommendation of the superintendent and allowed an SBA to be hired without CSA recommendation (h), she ordered a school district employee to perform tasks for her (c), had RICE notices sent without consulting the superintendent (c), hired a technology specialist contrary to the superintendent's recommendation (h), created a new position and hired persons without the superintendent's recommendation (c), removed the superintendent from the agenda of a teacher in-service (e) and advised the union president that the superintendent's contract would not be renewed (g). SEC recommends the penalty of removal. Commissioner agrees. Commissioner was not persuaded by board member's attribution of her offenses to her newness as a board member. (03:Aug. 14, Hankerson)

Charter school board trustee violated N.J.S.A. 18A:12-24 (b) and (c) and N.J.S.A. 18A:12-25 (c) 3 of the School Ethics Act and particularly N.J.S.A. 18A:12-24.1 (a) (e) and (g) of the Code of Ethics for School Board Members, when she failed to uphold and enforce all laws pertaining to the schools when she participated in a closed executive meeting of the board of which the public had no knowledge; failed to provide accurate information when she failed to list her husband's company's contract with the charter school on her disclosure form; acted in a matter in which she had a direct financial involvement when she signed checks made out to her husband's company without board authorization and later voted to approve a bill list that included payments to that company; used her official position to secure unwarranted employment in a matter in which she had a direct financial involvement when she voted to approve a contract for a company for which her husband and son

worked. SEC recommended the penalty of removal. Commissioner agreed. (05:November 2, Funches)

Charter school trustee removed for failure to file complete disclosure statements; ample time given to trustee to correct deficiencies. (01:Jan. 19, Hill)

Charter school trustee removed for failure to file, did not respond to either the SEC or Commissioner. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (99:Aug. 31, Cornwell)

Charter school trustee violated N.J.S.A. 18A:12-24.1 (c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24 (b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10) Stay denied by Commissioner (03:Dec. 11) State Board affirms with respect to termination, reverses as to hiring, directs reinstatement of trustee and penalty of reprimand. (04: Sept. 1, Schaeder)

SEC recommends automatic removal if charter school board of trustee member fails to attend January 2004 training. Missed training due to illness. Commissioner agrees and orders additional reprimand for failure to abide by the requirements of the School Ethics Act, causing administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 18, Jackson)

SEC recommends board member be suspended until he files a complete disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commisisoner's decision. Board member did not file form, then filed incomplete form after order to show cause. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Bonds)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to

the filing date of Commisisoner's decision. Board member did not file form. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Woodrow)(06:Jan. 27, James)(06:Jan. 27, Robinson)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member filed disclosure statement after SEC issued decision, reprimanded. Commissioner admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Lorenzini)

SEC recommends charter school trustee be suspended until she files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 24, Harrison-Bowers)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. (05:Nov. 19, James)(05:Nov. 7, Betances)(05:Nov. 2, Graham)(05:Nov. 2, Manley)(05:Nov. 3, Shimp)(05:Nov. 2, Rose)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. (05:Nov. 9, Candio)(05:Nov. 3, Repella)

Three board members violated N.J.S.A. 18A:12-24.1 (a), (c), (d) and (f) when they overruled the recommendation of the superintendent and rehired an employee who lacked proper certification for the newly created position. They failed to uphold and enforce the regulations of the State Board and used the schools for the gain of their friend, the former employee. One board member, the former superintendent of schools, went beyond his duty of policymaking, planning and appraisal and administered the schools in violation of the Act. The SEC recommended the penalty of censure for two of the three board members. For the third board member, the former superintendent of schools, the SEC

recommended the penalty of removal. Commissioner agrees, but concerned with procedural errors, stays implementation of penalty pending State Board appeal. (03:Nov. 10, Udy, Ewart and Frazier) State Board reverses and remands, finding that SEC violated the board members due process rights when it decided the merits of the matter after notifying them that the proceeding was for a determination of probable cause. Matter remanded to SEC for a determination on probable cause. If probable cause found, direct transfer to OAL. (04:April 7)

Reprimand

Board member reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. (03:Dec. 22, Young)(04:Feb. 5, Pabon)(04:Feb. 5, Irvin-Johnson)(04:Feb. 5, Seigel)(04:Dec. 1, Burke)(04:Dec. 1, Banks)(06:Jan. 31, Pope)(06:Jan. 27, Cepero)(06:Jan. 27, Crawford)(06:Jan. 27, Long-Brooks)(06:Jan. 27, Love)(06:Jan. 24, Marchado)(06:Jan. 24, Mitchell)(06:Jan. 25, Moses)(06:Jan. 24, Motley)(06:Jan. 24, Outlaw)(06:Jan. 27, Parilla)(06:Jan. 27, Spencer)(06:Jan. 27, Davis)(06:Jan. 27, Williams)

Board member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Nov. 23, Lee)(04:Dec. 1, Davis)(04:Dec. 1, Wright)(04:Dec. 1, Wilson)

Board member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. Board member asserted that he had filed the disclosure statements, not once, but twice and that the reason for the forms not being filed with the SEC was his "minority" status on the board and his history of opposition

to the board while serving as a councilman. (04:Dec. 1, Ciabatoni)

Board member used her position to secure unwarranted privilege for another when, using her official title, she requested a delay in the release of a Commissioner decision. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated N.J.S.A. 18A:12-24(a) when he had an interest in a preschool that contracted with the board and when he voted to approve payment to the preschool. SEC recommends penalty of reprimand. Commissioner agrees. (03:Dec. 15, Hodges)

Board member violated N.J.S.A. 18A:12-24(b) when he endorsed a candidate for municipal council through a mailing of letters to members of the community. The letterhead, envelope, and contents of the letter could mislead recipients to believe that the endorsement was in his official capacity as board president. By so doing he used his position as board president to secure unwarranted privileges and advantages for the candidate. SEC recommended the penalty of reprimand. Commissioner agreed. (04:Nov. 17, DeMeo)

Board member violated N.J.S.A. 18A:12-24(b) when, using her official title, she requested a delay in the release of an SEC decision regarding a member of her board of education; unwarranted privilege for another board member. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 12, Ball)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in teacher negotiations when his wife was a teacher in the district and a member of the local association. Board member had previously participated as per attorney advice that doctrine of necessity allowed such participation. Attorney's advice and limited participation deemed mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:August 26, Santangelo)

Board member violated N.J.S.A. 18A:12-24(c) when he participated in the discussion and voted on the resolution to continue the appointment of his employer, a bank, as the depository of monies for the board of education; personal involvement that created a benefit to the board member. SEC recommends penalty of reprimand. Considered fact that board member advised that he would not vote on matters related to the bank in the future. Commissioner agrees. (02:Jan. 31, Carpenter, State Board affirms 02:May 1)

Board member violated N.J.S.A. 18A:12-24(c) when he voted on a bill list, which included his spouse's expense reimbursement. Voted to approve minutes that reflected disputed vote. SEC recommends reprimand. Commissioner agrees. (98:August 26, Levine)

Board member violated N.J.S.A. 18A:12-24(c) when he was present for two executive session meetings where his brother's appointment to a teaching staff member position was discussed and when he made two comments during one of the executive sessions; personal involvement that created a benefit. SEC recommended the penalty of censure. Commissioner disagrees, finding that the penalty of censure was disproportionately severe. Commissioner orders penalty of reprimand. (04:Sept. 8, Pettinelli)

Board member violated N.J.S.A. 18A:12-24(c) when she, on three separate occasions, voted on bill lists that contained payments to the printing firm that was owned by her husband and for which she was an employee; indirect financial involvement. SEC recommended the penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member violated N.J.S.A. 18A:12-24(c) when she participated in board meetings in which her brother-in-law's property was discussed. Personal involvement, which impaired objectivity, found. SEC recommends reprimand. Commissioner agrees. (99:Feb. 9, Mallette)

Board member violated N.J.S.A. 18A:12-24(c) when she voted on the reappointment of a principal who supervised and evaluated her husband. By so doing she acted in an official capacity in a matter in which her husband had a personal involvement that was a benefit to him and an indirect financial involvement that could reasonably be expected to impair her objectivity. Given the board member's candor, the SEC recommended the penalty of reprimand. (05:March 18, Koupiaris)

Board member violated N.J.S.A. 18A:12-24(c) when she voted to approve a bill list that contained a bill of her employer. Settlement agreement reached. Board member inadvertently violated the Act. SEC recommends penalty of reprimand. Commissioner agrees. (01:July 27, Jackson)

Board member violated N.J.S.A. 18A:12-24(d) when she was paid as a substitute school nurse while serving as a board member. While she was assisting the district in an emergency situation, such employment is reasonably expected to prejudice her independence of judgment in the exercise of official duties. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Wenzel)

Board member violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by organizing confidential information containing the names of students suspended from October to November 2004 on an Excel spreadsheet and failed to hold the information confidential when he accidentally transmitted the information to all board members as an attachment to an email. SEC recommended the penalty of reprimand. Commissioner agreed. (05:November 23, Zilinski)

Board member violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members, when he took private action that could compromise the board by sending an unauthorized letter to a private donor regarding the board's technology plan. The letter inaccurately implied board approval and contained information that had not been acted upon by the board. Board member did not violate the N.J.S.A. 18A:12-24(c) when he voted to approve a bill list that contained reimbursement for aid in lieu transportation to himself. N.J.S.A. 18A:12-24(h) provided an exception. SEC recommended the penalty of reprimand. Board member had been a member for less than a year and the board had no policy regarding direct correspondence being sent from a committee. Commissioner agreed. (05:May 2, Freilich)

Board member violated N.J.S.A. 18A:12-24.1(e) and (i) of the Code of Ethics for School Board Members, when he called an employee at home and became angry when the employee said that she did not send him the reports he had requested. Board member took private action that could compromise the board and did not support district personnel in the proper performance of their duties. SEC recommends penalty of reprimand. Commissioner agrees. (04:April 12, Fischer)

Board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, when she, using school equipment, copied and distributed to certain school staff, a letter that contained false and demeaning information regarding fellow board members; she took private action that could compromise the board. SEC recommended penalty of reprimand. Commissioner agreed. (03:April 14, Schmidt)

Board member violated N.J.S.A. 18A:12-24.1(e) (took private action that could compromise the board) and (g) (failed to hold confidential certain personnel documents) of the Code of Ethics for School Board Members when he revealed confidential employee documents to a member of the public. Board member believed that public discussion of employee made the records public. SEC recommended penalty of reprimand. Commissioner agreed. (03: Mar. 6, Pizzichillo)

Board member violated N.J.S.A. 18A:12-24.1 (e) and (g) of the Code of Ethics for School Board Members, when she took private action that could compromise the board, sending letters under her title as Board President and not acting in concert with her fellow board members. Board member's letter referred to a "substandard kindergarten classroom" with no windows and ventilation and an "obvious fire code violation". SEC recommended the penalty of reprimand. Commissioner agreed. (03:August 21, Zimmerman)

Board member violated N.J.S.A. 18A:12-24.1(j) of the Code of Ethics for School Board members, when he wrote a letter to the superintendent requesting a demotion of the assistant superintendent and copied the assistant superintendent's subordinates, among other parties. Did not wait for an administrative solution. SEC recommended the penalty of reprimand. Commissioner agreed. (03:Aug. 19, Santiago)

Board member violated the Act when he called an employee at home and became angry when he was informed that she had not sent out the reports he had requested. SEC recommended the penalty of reprimand. Commissioner agreed. (04:April 12, Fischer)

Board member violated the Act when she voted on three separate occasions to approve bill lists that contained bills from a printing company owned by her husband and for which she worked. SEC recommended penalty of reprimand. Commissioner agreed. (03:May 30, Adams)

Board member who was vice president of Commerce National Insurance Services, a subsidiary of Commerce Bancorp, violated N.J.S.A. 18A:12-24(c) when she voted in favor of Commerce Bank being the paying agent for the board's bond issue. Indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. SEC recommends reprimand. Commissioner agrees. (00:Nov. 27, Haines)

Board members violated N.J.S.A. 18A:12-24(c) when they voted to reappoint auditor after auditing firm employee served as campaign treasurer and firm's address was campaign address. Relationship that is more than casual or collegial constitutes a personal involvement. Mitigating circumstances – attorney advice, auditors for several years. SEC recommends reprimand. Commissioner agrees but stays penalty until State Board rules on the appeal. (98: March 4 Longo, aff'd St. Bd. 1999 S.L.D. July 9)

Charter school board of trustees member reprimanded for failure to file disclosure statements in a timely manner; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Commissioner rejects SEC recommended penalty of censure, finding it inconsistent with recommended penalties in SEC matters with substantially similar facts. SEC did not articulate its reasoning for the heightened recommended penalty of censure. (04:Dec. 1, Perez)

Charter school trustee reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. (03:Dec. 22, Simmons)(03:Dec. 22, Charlton)(03:Dec. 22, Cupo)(04:Dec. 1, Simmons)

Charter school trustee reprimanded for failure to file disclosure statements in a timely manner, after SEC had issued Order to Show Cause; such delay causing administrative and adjudicative time to be wasted by local, county and state educational officials. Trustee did not respond to either SEC or Commissioner. (06:Jan. 27, Young)

Charter school trustee violated N.J.S.A. 18A:12-24(c) where the minutes of the meeting reflected that he voted on the hiring of his son and he voted to approve the minutes, notwithstanding credible testimony that he abstained. Public should be able to rely on the minutes. By so acting he received the personal benefit of ensuring that his son received employment. SEC recommended the penalty of reprimand. Commissioner agreed. (05:Jan. 14, Hatchett)

Charter school trustee violated N.J.S.A. 18A:12-24.1(c) and (d) when, without the consultation of the board of trustees, he forced the Chief Academic Officer to resign and N.J.S.A. 18A:12-24(b) when he appointed his former fellow trustee as an Information Technology Consultant within a month after the trustee resigned from the board. SEC recommended the penalty of removal. The trustee had acted as a one-member board and in so doing had egregiously violated the Code of Ethics for Board Members and the standards of conduct expected of board members in general. Commissioner agrees. (03:Nov. 10) Stay denied by Commissioner (03:Dec. 11) State Board affirms with respect to termination, reverses as to hiring. directs reinstatement of trustee and penalty of reprimand. (04: Sept. 1, Schaeder)

SEC recommends automatic removal if charter school board of trustee member fails to attend January 2004 training. Missed training due to illness. Commissioner agrees and orders additional reprimand for failure to abide by the requirements of the School Ethics Act, causing administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 18, Jackson)

SEC recommends board member be suspended until he files a complete disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member did not file form, then filed incomplete form after order to show cause. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Bonds)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member did not file form. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Woodrow)(06:Jan. 27, James)(06:Jan. 27, Robinson)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member filed disclosure statement after SEC issued decision, reprimanded. Commissioner admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Lorenzini)

SEC recommends charter school trustee be suspended until she files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 24, Harrison-Bowers)

Suspension

Assistant Superintendent who had ownership interest in local day care center violated N.J.S.A. 18A:12-24 (b) by using his position to secure unwarranted privileges or advantages when he set forth that district would have to use all local day care centers, sent letter to district residents promoting his day care center using his title, acted contrary to SEC's second advisory opinion letter. SEC recommends one month suspension. Commissioner agrees; orders one month suspension without pay. (00: June 16, Confessore, aff'd State Board, 01:October 3)

Board member suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Tyska)(01:Nov. 15, Murray)(01:Nov. 16, West)

Board member suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Reprimand if disclosure forms filed prior to the filing date of Commissioner's decision as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 19, Callado)(03:Dec. 22, McCabe)(03:Dec. 22, Howard)(03:Dec. 22, Evenson)(03:Dec. 22, Zappy)(03:Dec. 22, Hazzard)

Board member suspended for 30 days for original failure to file and subsequent filing of scantily completed disclosure form. Automatic removal from board if failure to file acceptable disclosure form within 30 days. Commissioner admonishes board member for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Nieves)

Board member voted on expense reimbursement concerning husband's employment with board. SEC found probable cause as to violations of N.J.S.A. 18A:12-24(b) and (c). Settlement approved. Three-month suspension. (99: June 10, Harris)

Board member whose wife had an out-of-district union affiliation as a teacher and who had an out-of-district union affiliation as a supervisor violated N.J.S.A. 18A:12-24(c) when he negotiated and voted on two teachers contracts and three administrators' contracts. SEC recommends removal. Commissioner remands in light of State Board ruling in Pannucci. (00:March 15, C18-99, White) SEC recommends removal on return. Commissioner disagrees – Orders 45 day suspension. (00: June 1). Appeal dismissed State Board (00:Sept. 6). No standing for complainants.

Board members violated N.J.S.A. 18A:12-24(b) (unwarranted privileges and advantages for the attorney) and N.J.S.A. 18A:12-24(c) (personal involvement that constituted a benefit) by the actions they took to bring about the appointment of their personal attorney as board of education solicitor. SEC considered nature of attorney advice received in recommending the penalty of censure. Commissioner agreed with the penalty as to one board member and disagreed with the penalty as to the other. Second board member, who had previously been reprimanded by the SEC, warranted a more severe sanction. Second board member suspended for two months. (03:Feb. 27, Davis and Jackson, Commissioner Stay denied 03:March 11)

Charter school trustee suspended for 30 days for failure to file disclosure form. Automatic removal if failure to file within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Logan)(01:Nov. 16, Helle)(01:Nov. 15, Kendall)(02:Dec. 13, Featherson)

Charter school trustee suspended for 30 days for failure to file disclosure forms. Automatic removal if failure to file within 30 days. Reprimand if disclosure forms filed prior to the filing date of Commissioner's decision as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (03:Dec. 22, Roig)(03:Dec. 22, Tullo)(03:Dec. 22, Santiago)(03:Dec. 22, Williams)(03:Dec. 22, Wilson)(03:Dec. 22, Dunkins)

Charter school trustee suspended for 30 days for original failure to file and subsequent filing of scantily completed disclosure form. Automatic removal from board if failure to file acceptable disclosure form within 30 days. Commissioner admonishes trustee for failure to file as such inactivity caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (01:Nov. 15, Dixon)

Commissioner rejects SEC recommendation to suspend, until such time as training was completed, charter school trustee who did not attend board member training within the first year of her first term. Trustee registered for October 2004 training but did not attend. SEC recommended decision is inconsistent with prior decisions in this area. No articulated reasons by SEC for not recommending removal, if training is not completed by a date certain. Trustee suspended pending completion of training by January 2005. If trustee does not attend one of the two January training sessions, she shall be summarily removed from office as of January 30, 2005. (04:Dec. 9, Rios)(04:Dec. 10, Paniagua)(04:Dec. 13, Torres)(04:Dec. 13, Graham)(04:Dec. 13, Mason-Griffin)

SEC recommends board member be suspended until he files a complete disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member did not file form, then filed incomplete form after order to show cause. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Bonds)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member did not file form. Commissioner agrees with penalty and admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Woodrow)(06:Jan. 27, James)(06:Jan. 27, Robinson)

SEC recommends board member be suspended until he files a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Board member filed disclosure statement after SEC issued decision, reprimanded. Commisisoner admonishes board member as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 27, Lorenzini)

SEC recommends charter school trustee be suspended until she filed a disclosure statement, automatic removal if failure to file within 30 days, reprimand if disclosure forms filed prior to the filing date of Commissioner's decision. Charter school trustee did not file form. Commissioner agrees with penalty and admonishes trustee as such delay caused an inordinate amount of administrative and adjudicative time to be wasted by local, county and state education officials. (06:Jan. 24, Harrison-Bowers)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Board member fails to attend June training session due to child care responsibility, registered for October one-day session. Commissioner removes board member from office. (98:Oct. 1, Burling)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Board member fails to attend June training session due to short notice and business obligations. Commissioner suspends board member for the next regularly scheduled meeting of the board, removal if fails to attend October one-day session. (98:Sept. 21, Werther)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Board member fails to attend June training session due to spouse's surgery and child care responsibility. Commissioner suspends board member for the next regularly scheduled meeting of the board, removal if fails to attend October one-day session. (98:Sept. 21, Improta)

SEC recommends one meeting suspension if attendance at June orientation, removal if failure to attend. Commissioner agrees. Board member attended June training session, suspended for the next regularly scheduled meeting of the board. (98:Sept. 4, Anuario)(98:Sept. 4, Gross-Quatrone)(98:Sept. 4, McMahon)(98:Sept. 9, Beers)(98:Sept. 9, Calhoun)(98:Sept. 9, Van Gieson)(98:Sept. 21, Long)(98:Sept. 21, Johnston)(98:Oct. 1, Meier)(98:Oct. 1, Osborne)

SEC recommends removal of board member who failed to attend training. Board member responds to Commissioner. Survival of new business key issue, registered for October 2000. Commissioner orders suspension pending attendance at October training, removal if fails to attend. (00:July 10, Notholt)

SEC recommends removal of board member who failed to attend training. Commissioner disagrees. Board member attended June training session, suspended for the next regularly scheduled meeting of the board. (98:Sept. 9, Winka)

SEC recommends suspension if board member fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. (05:Nov. 19, James)(05:Nov. 7, Betances)(05:Nov. 2, Graham)(05:Nov. 2, Manley)(05:Nov. 3, Shimp)(05:Nov. 2, Rose)

SEC recommends suspension if charter school trustee fails to attend October 2005 training, removal if fails to attend January 2006 training. Commissioner agrees. (05:Nov. 9, Candio)(05:Nov. 3, Repella)

SEC recommends suspension of board member until attendance at October training session with removal if failure to attend. Commissioner agrees. (98:Sept. 21, Smith)(99:July 28, Hanna)(99:July 28, Reed)(00:Aug. 14, Fisher)(00:Aug. 14, DeVierno)(01:Sept. 6, Banes)(01:Sept. 6, Wieland)(01:Sept. 6, Dowling)(01:Sept. 6, Young)(01:Sept. 6, Haas)(01:Sept. 6, Wilson)(01:Sept. 6, Kazawic)(01:Sept. 6, Williams)(01:Sept. 6, Murch)(01:Sept. 6, Wada)(01:Sept. 6, Schamp)(02:Sept. 5, Cava)(02:Sept. 5, Caso-Schmidt)(02:Sept. 5, Weingartner)(02:Sept. 9, Cava)

SEC recommends suspension of board member until attendance at October training session with removal if failure to attend. Commissioner agrees. (99:July 28, Adams) but see (99:Sept. 27, Adams) Board member attended June training, suspension/removal moot.

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member had attended training in 1987 but could not show that he had attended training between 1992 and 2003. Per se violation of the Act. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 21, Nicholas)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member initially given extension to June, did not attend due to health reasons and family obligations, will go to October session. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 21, Gruber)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member initially given extension to June, did not attend. Will go to October session. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 21, Scaldino)(03:Aug. 21, Correnti)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member initially given extension to June, family obligations precluded attendance, will go to October session. Commissioner agrees, orders suspension pending attendance at October training, removal if failure to attend. (03:Aug. 19, Evans)(03:Aug. 19, Heinle)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member resigned. Matter moot. (01:Sept. 12, Colacci)(03:Aug. 21, Keeler)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Board member will go to October session. Commissioner disagrees, finds that recommended suspension of board member for failure to attend training is unduly harsh sanction where board member asserts that he is unable to attend weekend training sessions for religious reasons. No suspension. Commissioner cautions that failure to attend October training session will result in removal from board of education. (03:Aug. 21, Tawil)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner agrees. On amendment, suspension vacated in light of WTC 9/11. Removal if failure to attend October training session. (01:Sept. 6, Tannenhaus)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner disagrees, disability involved, no suspension. Removal if failure to attend October training. (01:Sept. 5, Golden)

SEC recommends suspension of board member who failed to attend training with removal if failure to attend October training session. Commissioner disagrees, unique circumstances – family illness, previous 3-term board member, no suspension. Removal if failure to attend October training. (01:Sept. 6, Kowal)

SEC recommends suspension of charter school board of trustees member who failed to attend training with automatic removal if fails to attend January 2004 training. Commissioner agrees, orders suspension pending attendance at January training, removal if failure to attend. (03:Dec. 18, Muhammad)(03:Dec. 22, Hunter)(03:Dec. 22, Frohling)(03:Dec. 22, Sutton)(03:Dec. 23, Gaines)(03:Dec. 23, Charlton)

Censure ordered for Charter Trustee member who failed to take required training until ordered to do so. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Collins, Commr 2011 Jan 10.

Reprimand ordered for Charter Trustee member who attended training only after the issuance of an order to show cause. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Nieves, Commr 2011 Jan 10

Charter Trustee member attended training only after the issuance of an order to show cause. Commissioner concurs with the penalty of reprimand recommended by the SEC in consequence of respondent's failure to timely honor an obligation placed upon charter school trustees by law. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Lytle Commr, 2011 Jan 10.

Charter Trustee member attended training only after the issuance of an order to show cause. Commissioner concurs with the penalty of reprimand recommended by the SEC in consequence of respondent's failure to timely honor an obligation placed upon charter school trustees by law. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Phillips-Agins, Commr 2011 Jan 10.

Suspension and then removal initially recommended for charter school trustee member who had not attended training, despite issuance of order to show cause. Trustee member reported that she attended training after issuance of order to show cause but was sent wrong training materials. Trustee has since received correct materials and has been given credit for training. Censure ordered. IMO Hagamin, Commr 2011 Jan. 10

Censure ordered for charter school trustee member who failed to attend training in a timely manner. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Anderson, 2011, Commr Jan. 10.

Charter Trustee member attended training only after the issuance of an order to show cause. Commissioner concurs with the penalty of reprimand recommended by the SEC in consequence of respondent's failure to timely honor an obligation placed upon charter school trustees by law. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Sterling, Commr 2011 Jan 10.

Charter Trustee member attended training only after the issuance of an order to show cause. Commissioner concurs with the penalty of reprimand recommended by the SEC in consequence of respondent's failure to timely honor an obligation placed upon charter school trustees by law. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Campanna, Commr 2011 Jan 10.

Charter Trustee member attended training only after the issuance of an order to show cause. Commissioner concurs with the penalty of reprimand recommended by the SEC in consequence of respondent's failure to timely honor an obligation placed upon charter school trustees by law. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Dumont, Commr 2011 Jan 10.

Charter Trustee member attended training only after the issuance of an order to show cause. Commissioner concurs with the penalty of reprimand recommended by the SEC in consequence of respondent's failure to timely honor an obligation placed upon charter school trustees by law. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Burns, Commr 2011 Jan 10.

Suspension and then removal initially recommended for board member who had not attended training, despite one last chance to do so. Board member informs SEC that he did attend training. SEC recommends censure as training was

taken. Commissioner concurs with the penalty recommended by the SEC and additionally admonishes respondent for failing to honor an obligation placed upon school board members by law, since such failure has resulted in unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Siedlecki, Commr 2011 Jan 10.

Suspension and then removal recommended for charter school trustee member who had not attended training. Trustee ordered suspended until attendance at final training opportunity. If trustee does not attend, then trustee is removed from charter school board. IMO Rosario, Commr 2011 Jan 10.

Reprimand ordered for Charter Trustee member who attended training only after the issuance of an order to show cause. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Oztan, Commr 2011 Jan 10.

Reprimand ordered for Charter Trustee member who attended training only after the issuance of an order to show cause. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Morales-Wright Commr 2011 Jan 10.

Reprimand ordered for school board member who attended training only after the issuance of an order to show cause. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Littles, Commr 2011 Jan 10.

Trustee suspended from Charter School's Board until she has completed the New Board Member Orientation program, and will be removed from this board if this training is not completed. Commission additionally admonishes respondent for failing to honor an obligation placed upon charter school trustees by law, since such failure has resulted in unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Kirtz, Commr 2011 Jan 10.

Reprimand ordered for Charter Trustee member who attended training only after the issuance of an order to show cause. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Szpreingel, Commr 2011 Jan 10.

Reprimand ordered for school board member who attended training only after the issuance of an order to show cause. Additionally, respondent is admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. IMO Murray, Commr 2011 Jan 10.

Removal ordered for board member who failed to attend training, even after issuance of order to show cause. Board member illness, although unfortunate, is not an exception to the requirements of N.J.S.A. 18A:12-33. IMO Coombs, Commr 2011 Jan 10.

Advisory Opinion: A board member's participation in an exit interview would violate N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members. A15-10.

SEC dismisses complaint without prejudice at to complainant's right to refile. Complainant failed to factually establish a violation of the Code of Ethics for School Board Members, failing to provide factual support to credit the allegation that board member told school secretary and registrar that if she wanted to keep her jobs in the following year she needed to take a pay cut. Where the complainant has no basis of knowledge of the events and "facts" set forth in the complaint, she must provide the SEC with a reasonable basis for such allegations, through, but not necessarily limited to, a sworn affidavit or certification. Danis v. Milevski, SEC 2011: January 25.

SEC dismisses complaint without prejudice at to complainant's right to refile. Complainant failed to factually establish a violation of the Code of Ethics for School Board Members, failing to provide factual support to credit the allegation that board member told principals that he would like to find a job for a friend who had worked his campaign. Where the complainant has no basis of knowledge of the events and "facts" set forth in the complaint, she must provide the SEC with a reasonable basis for such allegations, through, but not necessarily limited to, a sworn affidavit or certification. Danis v. Milevski, SEC 2011: January 25.

SEC dismisses complaint without prejudice at to complainant's right to refile. Complainant failed to factually establish a violation of the Code of Ethics for School Board Members, failing to provide factual support to credit the allegation that board member told principals that she insisted that a patient of hers be hired as a social studies teacher. Where the complainant has no basis of knowledge of the events and "facts" set forth in the complaint, she must provide the SEC with a reasonable basis for such allegations, through,

but not necessarily limited to, a sworn affidavit or certification. Danis v. Koch, SEC 2011: January 25.

SEC found that board members violated the Code of Ethics for School Board Members when they released a School Ethics complaint to the media which contained identifiable student information. By so doing, respondents took action to make public, reveal or disclose information that was confidential in accordance with board policies, procedures or practices in violation of the confidentiality section of N.J.S.A. 18A:12-24.1(g). Respondents, by releasing the School Ethics complaint to the media, without adequately redacting student information, willfully made a decision contrary to the educational welfare of a student, in violation of N.J.S.A. 18A:12-24.1(b). SEC recommended the penalty of censure. S.L.G. and M.S., as parents of D.S., AND D.S, v. Granata, Granatir and Calcado, SEC 2011: February 22.

SEC dismisses complaint that board member provided inaccurate address information on Personal/Relative and Financial Disclosure forms. Allegations unfounded. SEC further found that, viewing the totality of the circumstances, the complainant continued this action in bad faith, solely for the purpose of harassment or malicious injury to the respondent. SEC found that the complainant knew, or should have known, that this complaint was without any reasonable basis in law or equity since the complainant was unable to set forth any facts to support a claim of violation. The SEC found the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and ordered that the complainant pay a fine in the amount of $500.00. Valdes v. Morejon, SEC 2011: February 22.

SEC dismissed complaint as complainant failed to factually establish a violation of the Code of Ethics for School Board Members. The complaint set forth no factual allegations which, if true, could establish that the respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the board in violation of N.J.S.A. 18A:12-24.1(e). The complaint set forth no factual allegations which, if true, could establish that the respondents surrendered their independent judgment to a special interest or partisan political group. Nor was there any factual allegation which, if true, could establish that the respondents used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend in violation of N.J.S.A. 18A:12-24.1(f), The complaint set forth no factual allegations which, if true,

could establish that the respondents took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties in violation of N.J.S.A. 18A:12-24.1(i) Daponte v. Becker and Scully SEC 2011: February 22.

SEC determined that board member violated N.J.S.A. 18A:12-24.1(d), (e) and (g) of the Code of Ethics for School Board Members when he took private action by unilaterally proposing to the district administration that he develop a student-level database, without consulting with the Board. Board member did not have the Board's authority "to receive or analyze student data, to work with the data on his home computer, or to host workshops with principals to advise them of the ways to correlate curriculum to improve standardized test score results." He failed to act in concert with his fellow board members, becoming directly involved in activities or functions that were the responsibility of school personnel or the day-to-day administration. He breached his confidentiality obligation as a board member by using the student specific data of a board member's child to illustrate his student level management system. The SEC recommended that the Commissioner of Education impose a penalty of censure. Commissioner found that even if the respondent's action constituted a violation, it was fully supported by the superintendent, was well intentioned and designed to benefit the District. Commissioner found that respondent's conduct did not warrant the imposition of a penalty. Jackson, Commissioner 2011: March 9

SEC found that board members violated the Code of Ethics for School Board Members when they released a School Ethics complaint to the media which contained identifiable student information. By so doing, respondents took action to make public, reveal or disclose information that was confidential in accordance with board policies, procedures or practices in violation of the confidentiality section of N.J.S.A. 18A:12-24.1(g). Respondents, by releasing the School Ethics complaint to the media, without adequately redacting student information, willfully made a decision contrary to the educational welfare of a student, in violation of N.J.S.A. 18A:12-24.1(b). SEC recommended the penalty of censure. Commissioner, whose jurisdiction – in the absence of an appeal – is limited to reviewing the SEC's recommended sanction, adopted the recommendation that respondents be censured. S.L.G. AND M.S. as parents of D.S., and D.S, Commissioner, 2011: April 11

Mother of student complains that Board member violated the Act when she discussed discipline of a student in a hair salon with wife of mother's ex-husband. SEC finds no violation; it was unclear whether board member learned of discipline from her service on the board, nor that she actually discussed the discipline as opposed to parenting issues involving the student. K.S.M. v. Chris Haley, (Manasquan), SEC 2011: March 22

No ethics violations found where Superintendent complains that board member violated his confidentiality by publicly criticizing his job performance at a public board meeting, and by calling him a "petty tyrant" and "mean spirited." SEC says that, however imprudent, allegations are insufficient to establish violation N.J.S.A. 18A:12-24.1(c) (taking board action to effectuate policies and plans without first consulting those affected by such policies and plans) nor N.J.S.A. 18A:12-24.1(g) (confidentiality), nor N.J.S.A. 18A:12-24.1(i) (failure to support and protect personnel in proper performance of duties); SEC declines to become involved in every dispute between a board member and personnel." Kliszus v. Williams-Bembry (Hackensack) SEC 2011:March 22

No ethics violations found in complaint by one Board member against other board members, where she alleged that they violated N.J.S.A. 18A:12-24.1(a) by coercing her to resign from the board and accusing her of violating the ethics act. Charges under this section require that she produce a decision with respect to these respondents from a court or state administrative agency demonstrating that they failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools, or that the respondents brought about changes through illegal or unethical means Oramas-Shirey v. Gallo, (Bethlehem Twp.) SEC 2011:March 22.

SEC dismisses complaint brought by citizen against board members, alleging that they violated N.J.S.A. 18A:12-24.1(a), (e), (g) and (j) by failing to investigate the potential misrepresentation of credentials by the CSA, and creating a hostile environment at board meetings, disregarding her questions and otherwise retaliating against her for her OPRA request to see the CSA'S doctoral transcript (which board counsel informed her would not be produced as it was not in the board's possession). No facts set forth establish ethics violations. SEC notes that to the extent she claims that the Board acted arbitrarily and capriciously with regard to her document request, such

claim must be made to the Commissioner, not the SEC. Simon v. Storcella and Doyle, (Margate) SEC 2011:March 22.

Commissioner affirms Ethics Commission's vacation of reprimand against charter school trustee for not attending second year board member training; trustee had completed his first term of service in 2002, prior to the effective date of the amendment, March 15, 2007, and the statute does not permit the retroactive application of the second-year training requirement. Matter of Lytle, Commr 2011:June 6.

Commissioner vacates earlier order that issued reprimand to charter school trustee; she was not subject to the expanded training requirements for second and third year of a term as she had completed her first term prior to the 2007 revision of N.J.S.A. 18A:12-33, which for the first time required training in the second and third years of a term. Nothing indicated that the 2007 revision was meant to be retroactive. Matter of Oztan, Commr 2011: June 2 (Greater Brunswick Charter).

Commissioner vacates earlier order removing charter school trustee for failure to attend training; charter member served on the board of trustees of the Jersey City Community Charter School since 1997, during which time the SEC had issued a public advisory opinion exempting charter school trustees from attending orientation, and which was prior to the 2000 adoption of regulations requiring first year training. Thus, charter member is not subject to the training requirements. Matter of Rosario, Commr 2011: June 1. (Jersey City Community Charter)

Commissioner vacates earlier order censuring charter school trustee for failure to timely attend training; charter member served on the board of trustees of the Marion P. Thomas Charter School since 1998 and was thus not subject to the expanded training requirements that became effective on March 15, 2007. Matter of Collins, Commr 2011: June 2.

SEC grants motion to dismiss allegations that four board members violated N.J.S.A. 18A:12-24.1(a) when they moved forward with plans to install a turf field without amending the the district's Long Range Facilities Plan and obtaining necessary approval and permits as required by N.J.A.C. 6A:26-2.1; complainant does not assert that a final decision has been rendered with respect to these board member from any court or state administrative agency, and SEC does not have authority to determine whether the board members violated local policy or the regulations governing Long

Range Facilities Plans. Foody v. Bailey(West Milford) SEC 2011:May 24

Complainant alleges that the board president violated N.J.S.A. 18A:12-24.1(c), (e) and (g) of the Code of Ethics for School Board Members when he changed the way the Board conducts its public sessions in order to limit the amount of public understanding and input. The complainant alleges that the public must ask their questions about agenda items before they are presented and discussed and that comment time is limited, which violates the Board's Bylaws. Fanelli v. Terebush, (Brick) SEC 2011:May 24.

SEC dismisses complaint alleging that board member, who also sits on the local zoning board of adjustment, violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members, when he voted for a project that would bring new homes to the district at a time when the district's schools are overcrowded and have not attained required federal achievement standards; SEC finds no factual support for allegations that his position "puts him in direct conflict with the needs of the district." Ferrara v. Hewitson, (Hamilton, Mercer Cty) SEC 2011: June 28.

SEC determines that the board member's email to the business administrator, suggesting that the BA not use the term "hand check" on its registry report, did not violate N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members. SEC is persuaded that the member's email was not a directive to withhold information from the Board, but rather was an offer of her opinion in furtherance of a procedure that had been called into question by the board; her action was fairly within her policy making function and was not inappropriate, under these circumstances. Campbell v. McDonald (Kearny) SEC 2011:June 28.

Board member's vote for the appointment of the Vice Principal who would be the supervisor of her daughter, a newly-hired teacher, did not violate N.J.S.A. 18A:12-24.1(c) and fairly fell within the permissible parameters of the Commission's advisory opinions A10-0 and A23-06. Campbell v. Santos (Kearny) SEC 2011:June 28

SEC determined that school board member violated N.J.S.A. 18A:12-24(c) when he voted to approve the contract of the School Business Administrator to whom his spouse, a secretary in the school district, reported. A board member whose spouse works in the school district may not participate in discussions or vote on employment issues concerning the employee's supervisors. SEC recommended

the penalty of reprimand. Commissioner agreed. Minniti, Commissioner 2010: July 12

SEC finds that board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and dismisses the allegations that the board member violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f), (g), (i) and (j). SEC recommends penalty of reprimand. Board member called the District's Business Administrator and told him to change the bus pass of the complainant's child to another residence without the complainant's consent. Board member took private action that was outside the scope of her duties as a board member. No factual evidence of violation of the other sections was shown. Zirkle, SEC 2011: September 27

SEC finds that board member acted in his official capacity in a matter where he had an indirect financial involvement which a reasonable person could perceive to impair his objectivity or independence of judgment so as to violate N.J.S.A. 18A:12-24(c) when he: (1) participated in Board discussion regarding the possible return of the Interim Superintendent; (2) made a motion at the February 23, 2011 meeting to approve the appointment of the Interim Superintendent; and (3) voted on the appointment at the February 23, 2011 meeting. Interim Superintendent was a member of the County Board of Freeholders. The Commission recommends a penalty of reprimand. Pellechia, SEC 2011: September 27. (Berkeley)

SEC dismissed complaint that board member violated N.J.S.A. 18A:12-24.1 (c), (e) and (g) when during the Executive Session of a regularly scheduled meeting, he was discovered taping the session without asking permission. SEC determines that respondent's action in taping a Board session does not implicate his duties and functions as a Board member sufficiently to characterize his conduct as "board action" within the intendment of N.J.S.A. 18A:12-24.1(c). SEC finds that there are no facts set forth in the complaint to support a conclusion that this action had the potential to compromise the Board so as to violate N.J.S.A. 18A:12-24.1(e). No breach of confidentiality was shown. Gidwani, SEC 2011: September 27(Winslow)

Complainant failed to factually establish a violation of the Code of Ethics for School Board Members. Gardner, SEC 2011: Oct 25 (Hackensack)

Board president/facilities committee chair violated the Act when he released confidential information to the press pertaining to a legal bill for which the invoice was presented in the

Board's closed session discussions, although the bill may have become public record at a later date. However, complainant fails to show that respondent's involvement as facilities committee chair violated N.J.S.A 18A:12-24.1(c) (confining board action to policy making, only after consulting those affected) as the record shows that paying the architect in advance of approval at the board meeting in order not to lose a 22 million dollar grant, was a joint decision between the facilities committee and the administration. SEC recommends reprimand. Stevenson, SEC 2011: Oct 25 (Kearny)

SEC dismisses teacher's complaint that school administrators violated N.J.S.A. 18A:12-24(a), (b), (d) and (e) when they allegedly placed false information in her files to damage her reputation and would not permit her to mail reports that she had prepared for parents. Even assuming the facts as asserted are true, they do not support a finding of violation. Tomko, SEC 2011: Oct 25. (Elmwood Pk)

Board member violated N.J.S.A. 18A:12-24.1(g) when he released confidential information to a newspaper that pertained to a legal bill for complainant's representation in another matter. Although the bill might, at a later date, have become a matter of public record, it was still confidential when he released the information. However, the record did not support the allegation that the board member acted independently by directing payment of $82,107 to the architect in advance of the board's meeting; rather, it appears that the decision was a joint decision between the administration and the Facilities Committee. The Commissioner adopted the Commission's recommendation that the board member be reprimanded. Campbell, 2011:Dec. 12 (Kearny)

Motion to dismiss granted where attorney who volunteered, but gave no money to board candidates' campaign, was later appointed as board attorney. Board members who voted to appoint and approve attorney bills did not violate N.J.S.A. 18A:12-24(c). Any suggestion of a potential benefit for the respondents is, at best, speculative as the complainants allege that the personal involvement between attorney and the respondents provides an expectation of similar support in future campaigns. Wallace SEC 2011: Nov 22

Inferring superintendent is a "terrorist" on board member Facebook page is a violation of N.J.S.A. 18A:12-24.1(i). The Commission finds that the statement may reasonably be considered as undermining, opposing, compromising or harming the Superintendent in the proper performance of

her duties. When a sitting Board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen. However, no violation found of N.J.S.A. 18A:12-24.1(g) for other posting that was a combination of fact and personal opinion. Additional statements in newspaper article that amounted to personal opinion were neither a violation of N.J.S.A. 18A:12-24.1(g) nor N.J.S.A. 18A:12-24.1(i). Bey v. Brown SEC 2011: Dec. 21

Commission dismisses the complaint for failure to prosecute. Complainant failed to appear at hearing before the ALJ and failed to give any explanation for nonappearance. Silva v. Seitler SEC 2011: Dec. 21

SEC dismisses complaint for failure to prosecute. Parties failed to appear for a December OAL hearing. Where a party fails to appear for a hearing at the OAL, regulations provide the administrative law judge (ALJ) with the discretion to return the case to the transmitting agency for appropriate disposition, with notice to the parties, which may result in a summary dismissal of the case. N.J.A.C. 1:1-14.4(a). Although provided an opportunity to explain their nonappearance to the SEC, the parties failed to do so. Silva v. Silver, C09-11, SEC 2012: January 24

SEC dismisses complaint. Complainant alleged that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (e) and (f) of the Code of Ethics for School Board Members when she solicited monies from local businesses on behalf of the Board, but did so without Board approval, then never deposited the checks. No evidence was presented that there had been a final decision from any court of law or administrative agency of this State demonstrating that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical means. No sufficient factual basis was provided to conclude that respondent's actions were actions outside of the scope of her duties as a Board member and that these actions were of such a nature that they had the potential to compromise the Board. No proof was provided to establish that respondent's actions constituted a breach of her duty to limit her board action to policy making, planning, and appraisal. No evidence was presented that the funds were misappropriated, used for personal gain or for the gain of a friend. Dagostino v. Kennedy, C17-11, SEC 2012: January 24

SEC determined that respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he directed the issuance of a RICE notice to the superintendent. It is the board's prerogative to issue the RICE notice or to determine who has the authority to issue a RICE notice. By taking such unilateral action, respondent took private action beyond the scope of his duties and responsibilities of a board member that not only had the potential, but did compromise the board. SEC dismissed the allegations that the respondent violated *N.J.S.A.* 18A:12-24.1(a), (c) and (d). Commissioner recommended the penalty of reprimand. Persi v. Woska, C25-08, SEC 2012: February 28

SEC agreed with the ALJ that board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A: 12-24.1(e) when he contacted a TD Bank employee by email, without the Board's knowledge or authority, and asked the employee to provide the Board with information to make the bank more appealing as the board's primary depository. He attempted to obtain an unwarranted privilege or advantage for TD Bank, which bid on the board's RFP for banking services, in violation of *N.J.S.A.* 18A:12-24(b), which provides that "[n]o school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family *or others.*" It was of no moment that the board member himself was not the intended beneficiary of the unwarranted privilege or advantage. He also took private action beyond the scope of his duties as a board member that had the potential to compromise the board, so as to violate N.J.S.A. 18A:12-24.1(e). SEC adopted the ALJ's recommended penalty of censure. I/M/O Sanford Student, C40-09, SEC 2012: February 28 oal: http://lawlibrary.rutgers.edu/collections/oal/html/initial/eec2590-10_1.html

Where board member did not reply to a parent's email threatening litigation, but in fact, sent his reply only to the board and CSA indicating that he would bring up the parent's issues at the next meeting, he did not violate the Ethics Act. The facts fail to demonstrate that the respondent: (1) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district under N.J.S.A. 18A:12-24.1(d); (2) made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to

compromise the board under N.J.S.A. 18A:12-24.1(e); or (3) acted on, or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint prior to referral to the chief administrative officer or at a time or place other than a public meeting and prior to the failure of an administrative solution under N.J.S.A. 18A:12-24.1(j). Dimon v. Skinner, C11-10, 2012: February 28

SEC found that board member violated *N.J.S.A.* 18A:12-24(c) when he voted for the reappointment of his mother, an elementary school teacher in the District, and his mother's supervisor, the school principal. Board member later acknowledged that he had voted in error and changed his vote to an abstention. SEC recommended the penalty of reprimand. I/M/O Joseph Raines, C36-11, 2012: February 28

Former candidate for CSA position alleged, among other things, that board members violated the Act by seeking to undermine her candidacy for the position, that a board member surreptitiously participated in the search, interview and hiring of the superintendent despite a private advisory that advised that he abstain because of his daughter's familiarity with an internal candidate. SEC dismissed complaint that board members violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (i) and (j) and, although not properly pled, N.J.S.A 18A:12-24(c). Count 1 is time barred as it is beyond the 180-day limitation period for filing a complaint and there are no extraordinary circumstances in this matter that would compel relaxation. Some facts not established. Even assuming that the facts set forth by complainant are true, they would not constitute a violation of the named statutes or would fail to prove such a violation. Hence, Counts 2,3,4,5 are also dismissed. Frascella v. Tola & DelGiudice, C42-11, 2012: February 28

SEC found that board member who voted for the reappointment of his mother, a district elementary teacher, and on the reappointment of his mother's supervisor, the school principal, violated N.J.S.A. 18A:12-24(c). He later acknowledged that he had voted in error and changed his vote to an abstention. SEC recommended the penalty of reprimand. I/M/O Joseph Raines, C36-11, 2012: February 28 . Commissioner concurs with penalty. Commr: 2012: April 17.

SEC agreed with the ALJ that board member violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) when he contacted a TD Bank employee by email, without the

Board's knowledge or authority, and asked the employee to provide the Board with information to make the bank more appealing as the board's primary depository. He attempted to obtain an unwarranted privilege or advantage for TD Bank, which bid on the board's RFP for banking services, in violation of N.J.S.A. 18A:12-24(b), which provides that "[n]o school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family *or others.*" It was of no moment that the board member himself was not the intended beneficiary of the unwarranted privilege or advantage. He also took private action beyond the scope of his duties as a board member that had the potential to compromise the board, so as to violate N.J.S.A. 18A:12-24.1(e). SEC adopted the ALJ's recommended penalty of censure. I/M/O Sanford Student, C40-09, SEC 2012: February 28; OAL decision (Evesham); Commissioner concurs with penalty of censure. Commr 2012: April 16.

SEC finds that board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and dismisses the allegations that the board member violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f), (g), (i) and (j). SEC recommends penalty of reprimand. Board member called the District's Business Administrator and told him to change the bus pass of the complainant's child to another residence without the complainant's consent. Board member took private action that was outside the scope of her duties as a board member. No factual evidence of violation of the other sections was shown. The Commissioner concurs with finding of violation and penalty of reprimand. Zirkle, SEC 2011: September 27 ; Commisioner affirms penalty of reprimand. G.M.B. v. Zirkle, Commr 2012: March 29.

Board member violated N.J.S.A. 18A:12-24.1(i) when she inferred that the superintendent is a "terrorist" on board member Facebook page. The Commission finds that the statement may reasonably be considered as undermining, opposing, compromising or harming the Superintendent in the proper performance of her duties. When a sitting Board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen. However, no violation found of N.J.S.A. 18A:12-24.1(g) for other posting that was a combination of fact and personal opinion. Additional statements in newspaper article that amounted to personal opinion were neither a

violation of N.J.S.A. 18A:12-24.1(g) nor N.J.S.A. 18A:12-24.1(i). Commissioner revises penalty of censure to reprimand, as this is first violation. Bey v. Brown, SEC 2011: Dec. 21 (Camden),Commr: 2012: March 20.

SEC finds that board member acted in his official capacity in a matter where he had an indirect financial involvement which a reasonable person could perceive to impair his objectivity so as to violate N.J.S.A. 18A:12-24(c) when he: (1) participated in Board discussion regarding the possible return of the Interim Superintendent; (2) made a motion to approve the appointment; and (3) voted on the appointment. Interim CSA serves on the Board of Chosen Freeholders and board member was a seasonal employee of the Election Board in Ocean County; despite board attorney opinion, SEC rejects argument that the independent status of the Board of Elections insulates board member from any perceived conflict; while Board of Elections has the sole authority to appoint its employees, the enabling statute nevertheless makes the compensation for Board of Elections employees subject to the approval of the Board of Chosen Freeholders, creating an indirect financial involvement. Pellecchia, SEC 2011: September 27. (Berkeley) The Commissioner concurs with SEC's recommended penalty of reprimand. Pellecchia, Commr 2012:April 5. » SEC Decision

SEC finds that board member did not violate the School Ethics Act even if it had been factually established that as member of a Steering Committee he urged the hiring of a candidate for principal to the committee prior to receiving the Superintendent's recommendation. SEC also determines that board members did not violate the Act when they hired/appointed a District Project Manager and a head custodian, individuals who had served as challengers for the board members' recent campaign. Further, there were insufficient facts to establish that board member violated the Act by allegedly calling a school principal, allegedly telling him who to recommend for several teacher positions, telling him to distance himself from another teacher who would not be renewed since her father did not donate or attend a political fundraiser as he was instructed to do.) Vellon v. Longo et al., SEC 2012 :March 27 (Belleville)

The mere fact that a board member accepted private contact and engaged in a private conversation with a candidate for an interim superintendent position before the Board's interview, did not violate N.J.S.A. 18A:12-24(b) or

N.J.S.A. 18A:12-24.1(e). There was no allegation that the member tried to influence the Board or receive a benefit for himself or another, or that he made any promises to the candidate, as the candidate initiated the contact and the board member in fact did not attend the Board meeting so as to exert any potential influence over the Board, and the candidate withdrew his name from consideration prior to the Board's selection of an Interim Superintendent. Fisher v. Hamilton, SEC 2012:March 27 (Hamilton).

SEC dismissed complaint that by directing the Superintendent to conduct RIFs by seniority, board members effectively took action on a personnel matter without the recommendation of the chief school administrator in violation of N.J.S.A. 18A:12-24.1(h) and became involved in the administration of the schools in violation of N.J.S.A. 18A:12-24.1(d). Even assuming that this complaint was timely filed, the complainants challenge an action effectuated by the Board as a whole, and to the extent complainants believe the Board acted in an arbitrary and capricious manner or violated board or law/ regulation, such claim must be brought before the Commissioner. Cureton et al. v. Albolino et al., SEC 2012:March 27 (Hackensack)

SEC dismisses allegations that board members on the facilities committee violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) by engaging in the supervision, criticism and evaluation of an employee; even assuming that they participated in the Board's discussion and vote regarding a settlement pertaining to the employee, insufficient facts were alleged to support a finding that the members violated the act, especially because the discussion and vote regarding the settlement was before the entire board. Fisher v. Tola et al., SEC 2012:April 24.

Commissioner agrees with SEC that a board member violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he unilaterally directed the issuance of a RICE notice to the interim superintendent. SEC found it was the board's prerogative to issue the RICE notice or to determine who has the authority to issue a RICE notice, and that by taking such unilateral action, the board member took private action beyond the scope of his duties and responsibilities of a board member that not only had the potential, but did compromise the board. SEC dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c) and (d). Commissioner adopts recommended the penalty of reprimand. Persi v. Woska, Commr 2012:June 22 . (Brick)

Board Member did not violate N.J.S.A. 18A:12-24(c) by participating in closed session discussions concerning contract negotiations with the local bargaining unit since her sister-in-law is a fourth grade teacher in the district and a member of the local bargaining unit. The Act defines "relative" as a spouse, natural or adopted child, parent or sibling of a school official. The respondent's sister-in-law is not a "relative," as defined by the School Ethics Act. In Advisory Opinion A08-98 (June 2, 1998), the Commission advised that a Board member with a sister-in-law who was in the local bargaining unit may participate and vote on the contract with that unit without violating N.J.S.A. 18A:12-24(c). Complaint dismissed for failure to state a claim. Bleistine v. Cunningham, SEC 2012: May 29

Dismissal where complainant failed to factually establish a violation of N.J.S.A. 18A:12-24.1(e) where there was no evidence that board president made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. Board president was alleged to have notified superintendent search consultant that a formal vote was taken on a superintendent candidate, when in fact no vote had been taken. Hewitson v. Delguidice, SEC 2012: June 27

A Board member who has an immediate family member (as defined in N.J.S.A. 18A:12-23) or a relative (as defined in N.J.S.A. 18A:12-23) employed in the district may not participate in the search, selection and/or vote for a new Superintendent, *irrespective of whether there is an in-house candidate being considered for the position* because the Commission maintains that the Board member's g the search, discussion and/or vote for a new Superintendent under such circumstances would constitute a violation of N.J.S.A. 18A:12-24(c). To the extent the Commission's past advisories dealing with the search for, and selection of, a new Superintendent are inconsistent with this determination, those advisories are no longer considered valid guidance. Martinez v. Albolino SEC 2012: June 27

No probable cause to credit allegation that board member violated N.J.S.A. 18A:12-24(c), when he allegedly participated in discussions in closed session concerning the superintendent search where an internal candidate was considered, even though he had a daughter working in district. Although board member participated in the vote to go into closed session, no proof presented that he actually participated in closed session. SEC applies this statute to situations where board members have involvement with relatives, even

though the language of the statute is limited to "immediate family." Fisher v. Tola SEC 2012: June 27

Motion to dismiss granted where complainants alleged that board members violated N.J.S.A. 18A:12-24.1(a) and (e) of the Code of Ethics for School Board Members when they gave the superintendent a raise that was approved by the Executive County Superintendent. Complainants alleged that the president violated N.J.S.A. 18A:12-24.1(a) initiated and prepared a letter and outbound phone campaign designed to mislead residents with respect to the Superintendent's employment contract, and she misused school funds without Board authorization in order to do so. However, Complainants proffer no law, regulation, court decision or rule of court that was violated. N.J.S.A. 18A:12-24.1(e) was allegedly violated when there was "previous verbal agreement" to provide a salary increase to the Superintendent of Schools, and the Board awarded the Superintendent a retroactive salary increase in the amount of $12,500 in his employment contract. The Commission does not find this to be "private action" within the intent of N.J.S.A. 18A:12-24.1(e). The Commission maintains that the School Ethics Act does not empower it to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members. To the extent the complainant believes that the Board has acted in a manner that is arbitrary and capricious, or otherwise contrary to law or regulation, any such claim must be brought before the Commissioner of Education. Demiris v. Lent, SEC 2012: June 27

SEC dismissed complaint that board member violated *N.J.S.A.* 18A:12-24.1 (g) of the Code of Ethics for School Board Members when he disclosed protected information. The protected information had already been made public by third parties and the facts failed to disclose that the board member disclosed or revealed any confidential information. Aiello v. Gottlieb, SEC 2012: August 28

School Ethics determination of frivolous complaint and imposition of $500.00 fine upheld where SEC determined that petitioner continued complaint solely for the purpose of harassment or malicious injury to board member. It made this finding based on the fact that petitioner knew or should have known that his complaint was without any reasonable basis in law or equity since he was unable to set forth any facts to support a claim of violation. It is well settled that an agency decision will be upheld on appeal unless it is shown to be arbitrary, capricious or unreasonable, or that it

lacked fair support in the evidence. A reviewing court should not alter a sanction imposed by an administrative agency unless it is "shocking" to the court's sense of fairness. Court found that there was ample support in the record for the determination and the fine. Valdes v. Morejon, No. A-3894-10T3 (App.Div. Oct. 2, 2012)

No probable cause to credit allegation that board member violated *N.J.S.A.* 18A:12-24(c) of the School Ethics Act by attending closed session discussions relative to contract negotiations with the local bargaining unit prior to the tentative memorandum of agreement being signed while being a member of the same statewide union teaching in another district. Complainant submitted nine certifications (from fellow members of the board and the business administrator) that indicate that he did not attend closed session when negotiations were discussed. *Bleistine v. McShea, SEC 2012 Dec 18*.

SEC dismisses the complaint for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. Board President did not violate *N.J.S.A.* 18A:12-24.1 (d), (c), and (f) when she voted against a project to restructure the playground and basketball courts because the suggested model was too large in scope for the limited area proposed. SEC found none of the indicia that would support a conclusion that the respondent violated any subsection of the Code. *Clark v. Hansen SEC 2012 Dec 18*

Advisory Opinion: School board member, whose son is a custodial employee, may participate in negotiations for administrators unless some relationship exists that links the administrators' contract to the custodians' contract, providing a benefit, advantage, profit or gain to the son. Her son is a member of NJEA, but no one in the Administrators' Bargaining Unit is his immediate supervisor; his immediate supervisor (Building and Grounds Supervisor) is neither in the administrators' unit nor represented by it. Neither the Superintendent nor BA are represented by the Administrators' Bargaining Unit. *A14-12* (July 26, 2012)

SEC finds that the complaint set forth no facts to support a conclusion that board members acted beyond the scope of their duties or that they surrendered their "independent judgment" so as to violate N.J.S.A. 18A:12-24.1(c) and (f) when they served on an *ad hoc* committee which proposed that the district build a new playground and basketball courts and then cast the deciding votes in support of the same committee's final ground-building proposal. Nor was

it a violation for them not to obtain input from residents prior to their vote. Nor did board member surrender his independent judgment by serving both as a member of the Spring Lake Board of Education and as a trustee of the Spring Lake Education Foundation which donated funds to build the district's playground and basketball courts, where in fact the board member was not the trustee of the foundation but rather the board liaison. *Close v. Panzini, et al.*, SEC 2012: Sept 25. (Spring Lake)

SEC finds that board member, who is also a science teacher in another district and member of NJEA, did not participate in closed session discussions concerning contract negotiations between the Board and the local bargaining unit, contrary to allegations that he was present; board minutes may have been deficient but BA affidavit and other proofs lead SEC to find no probable cause. *Bleistine v. McShea*, SEC 2012:Dec 18 (South Harrison)

SEC finds no probable cause that the Board President violated N.J.S.A. 18A:12-24.1(d), (c) and (f); no indication that she took action beyond the scope of her authority, failed to confine her Board actions to policymaking, planning, and appraisal, or surrendered her independent judgment, when she voted against a project to restructure the playground and basketball courts, or by her comments during the discussion of the plan for the approved project, or that before the actual vote on the plan, gave a direct order to school personnel or involved herself in the day-to-day operations of the schools. Rather, it appeared that she accepted the Board's approval of the project and undertook the duties of her position to see that the plan was developed as designed. *Clark v. Hansen*, SEC 2012:Dec 18 (Spring Lake)

School Ethics Act did not have jurisdiction over complaint alleging that board did not vet superintendent properly when hiring him and that his resume is rife with falsehoods; the SEA does not empower the SEC to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members. Allegation that Board has acted in a manner that is arbitrary and capricious, or otherwise contrary to law or regulation, must be brought before the Commissioner of Education. *Goldstein v. Lent, et al.*, SEC 2013:Jan 22 (Northern Valley Reg)

SEC finds no probable cause to find ethics violation, where board member participated in a vote to place a staff member on administrative leave and not to renew her contract. The

Commission determines that the complainant has failed to show that the respondent intended to do any more than to share information about the loss of services in the community and point out the impact that loss would have on the families in the district. *Caffrey v. Rodriquez*, SEC 2013:March 19 (Perth Amboy)

Parties submitted Agreement and Mutual Release with the intent to settle and resolve all issues in ethics complaint. Complaint is dismissed according to terms of agreement. (Decision does not detail the ethics charges.) *Chmielewski v. Fracasso*, SEC 2013: March 19(Hackettstown).

Complaint alleging violations of *N.J.S.A.* 18A:12-24(b) and (g), as well as *N.J.S.A.* 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members dismissed following approved settlement of complaints. Complaint withdrawn with prejudice. *Galante v. Brill, SEC 2013: May 28*

Complaint alleges that member violated N.J.S.A. 18A:12-24.1(b), (c), (d), and (h) of the Code. The complainant asserts that the Board conducted a Donaldson hearing at her request. She further asserts that at this meeting, the respondent again voted not to renew her contract, thus ignoring the Superintendent's recommendation, and failed to discuss or comment on the reasons why the contract was not renewed. Teacher has the right to informally appear before the district board to contest the decision not to renew the contract whenever a teaching staff member has requested in writing and has received a written statement of reasons for non-reemployment pursuant to N.J.S.A. 18A:27-3.2. Board has sufficiently complied with the regulations governing these circumstances. Board member's vote contrary to the Superintendent's recommendation did not constitute an ethics violation. Respondent's Motion to Dismiss granted. Complaint untimely filed as to some allegations; the Tolling Order issued by the New Jersey Supreme Court in the aftermath of Hurricane Sandy, which tolled the time between Monday, October 29, 2012 and November 16, 2012 for the purposes of filing deadlines did not extend deadlines that did not fall within those two weeks; consequently the complainant was not given an additional two weeks to file her complaint. Moreover, the complainant could have filed her complaint with the Commissioner of Education in order to preserve her rights. *Baumgartner v. Castelli, SEC 2013: May 28. Baumgartner v. King, SEC 2013: May 28*, *Baumgartner v. Leadbeater, SEC 2013: May 28*, *Baumgartner v. Plaugic, SEC 2013: May 28*

Board member allegedly said that community organizer was engaging in "torch & pitchfork tactics" following tragic death of student. No ethics violation found where uncle of student who was killed, accuses board member of violating ethics act and interfering with efforts to galvanize community, by dissuading residents from attending a meeting, including having a police presence at the meeting and requiring some who attended to sign in. Even assuming the facts as alleged are true, the SEC does not find that the respondent failed to uphold the law, took action beyond the scope of his authority which had the potential to compromise the Board, acted on behalf of some special interest group, or used the schools for his own benefit. *Spadafora v. Radio, SEC 2013: June 25.*

SEC found no violations of the Act where board member made racist and sexist comments and lewd gestures to a security guard and to a fellow board member, about fellow board members. SEC finds no violation of the Act, on allegations that board member respondent told school security guard that another board member is "evil" and called her a vulgar name, told fellow board member that the Main Office was a "cat house" and a "sorority house" in need of "male leadership" because those positions should not be held by women at the same time and accompanied his comments with a lewd hand gesture, where he promised another board member that if he were to vote for him for Board President, he could have any business cards and any chair or parking space he wanted, staring at the complainant during Executive Session and continuing when called on it, and where, and after a board meeting at which a Latina was appointed B.A., he was heard to say disdainfully, "another Puerto Rican." SEC found that the comments, gesture and staring were private; promise of cards and parking space is hollow since the respondent is not authorized to provide such accommodations; and negative comments towards fellow board member does not constitute failure to support personnel, since board members are not personnel. (However, SEC recognizes in footnote the repugnant nature of sexist or racist comments.) *Pilovsky v. Caputo, SEC 2013: June 25*

The SEC determined that a board member did not disclose confidential information at a public meeting; the comments he made about a matter that had been decided by the OAL and the Commissioner and was on appeal to the Appellate Division was not confidential, as any matter that is not under seal before the OAL is a public record unless it has

been sealed. No showing that the comments were other than unskilled disclosures due to board member's unfamiliarity with legalese or his lack of understanding and articulating the complicated outcome in the matter before the Commissioner of Education. *DiNapoli v. Quattrocchi, SEC 2013: June 25*

Board Member violated *N.J.S.A.* 18A:12-24.1(e) and had the potential to compromise the Board when he yelled at a board employee whose wife was on the ballot, that he had better hope that the board member's wife would win, and that if she did not, the employee had better "watch his back." Fact that respondent apologized or that election was heated was of no moment; also, and "most damning," was his attempt to get another employee to perjure himself. The Commission finds that by his conduct, the respondent has now potentially made any vote or Board action in which he is involved suspect. The public may now have lost its respect and confidence for this member and the Board, which is now compromised. Reprimand ordered. Moreover, pursuant Advisory Opinion A06-08 in which the Commission advised a board member not to participate in any vote or Board action involving someone with whom he had a negative history, the respondent is also advised that he must abstain from any vote or Board action regarding this complainant

Board Member did not violate N.J.S.A. 18A:12-24.1(a), (d), (i) and (j) of the Code of Ethics for School Board Members. *Murphy v. Murphy, SEC 2013: June 25*

Board Member did not violate N.J.S.A. 18A:12-24.1(c), (e), (f), (g), (i) and (j). Complaint dismissed. *McClellan v. Bey-Blocker and Famularo, SEC 2013: June 25.*

SEC dismisses complaints brought by Superintendent against various board members in separate matters; facts fail to demonstrate that board members violated any provisions of *N.J.S.A.* 18A:12-24.1; no showing any of the board members: violated any cited law, rule, regulation or court ruling; violating the Act by discussing personnel matters not on the agenda in executive session or acted beyond the scope of his authority; became involved in the activities or functions that are the responsibility of school personnel by voting against the Superintendent's recommendation; surrendered independent judgment or used the schools for personal gain; or failed to support and protect school personnel by having a difference of opinion in a public comment; violated the Act by public comment, which disagreed with the Superintendent's position or by

becoming involved in activities or functions that were the responsibility of school personnel; or by convening the Personnel Committee to investigate the certain allegations of theft. Commission lacks jurisdiction over *Rice* notice violations. *Caffrey v. Tejeda, Perth Amboy Board of Education, Middlesex County, C26-12, 2013:July 30*. *See also, Caffrey v. Puccio, Caffrey v. Gonzalez.*See also, *Caffrey v. Lebreault, C27-12, 07/30/13*.

SEC dismisses for lack of factual support a complaint brought by disgruntled Supervisor of Buildings and Grounds against board member who launched investigation into employee's credentials. Unclear as to which allegations occurred prior to swearing in. Complaint had alleged that board member provided inaccurate information, failed to support and protect school personnel in the proper performance of their duties and neglected to refer all complaints to the Superintendent before acting on complaints in a public meeting. OFAC report showed that employee lacked the necessary credentials for the position. *Berglund v. Gray, Deptford Twp. Board of Education, Gloucester Counter, C10-13, 07/30/13*

SEC dismisses complaint by board candidate against Board member; complaint alleged that on Facebook board member referred to the candidate as an "unhinged lunatic" with a "learning disability," commented about her political leanings to curry favor with the local political parties, treats the members of the community with disrespect by scoffing at their comments, and mischaracterized her platform with lies and inflammatory comments. SEC Commission found that the complainant failed to demonstrate how she learned of the respondent's comments since they were not made to her, and also failed to provide any factual support that the comments were available to the public. That the comments were on the respondent's Facebook does not prove they were accessible for public viewing. No inaccurate information, just personal opinion. Complaint fails to allege facts sufficient to maintain a claim that the respondent violated *N.J.S.A.* 18A:12-24.1(b), (c) (f) or (g). *Close v. Messinger, Freehold Reg. H. S. District Board of Education, Monmouth County, C14-13, SEC 2013: July 30*

Penalty of censure imposed on board member who no longer serves on board, where she conceded by affidavit that her behavior violated the SEA; after CSA had barred two seniors from participating in graduation ceremony she had directed the CSA to allow one to participate, after the

police had warned that the senior was intended target of possible shooting to take place that day, and in fact a shooting took place the next day resulting in bystander being shot. *IMO Doris Graves, Pleasantville Board of Education, Atlantic County, C40-10, SEC 2013: July 30*

In a "combination" matter involving complaints alleging *both* prohibited acts and a violation of the Code of Ethics for School Board Members, SEC finds no probable cause that board members received donations for their election campaigns from the same law firm they later voted to retain as board counsel; complainant submitted no evidence to show that the respondents solicited or accepted any election contributions in violation of *N.J.S.A.* 18A:12-24(e) or (f), or that they had knowledge or reason to believe that any campaign contributions were accepted by their electoral campaigns from Cooper Levenson when they voted to appoint that firm as board counsel. SEC declines to reach to the merits of allegations that a board member participated in a political campaign event held on school property supporting her candidacy for school board member while a school board member, since the allegations were time-barred. *Lesinski v. Hall, Smallwood & Taylor*, SEC 2013:Sept 24 (Asbury Park)

SEC dismisses charges against administrators who allegedly violated *N.J.S.A.* 18A:12-24(b), (c) and (f), in connection with conduct involving the annual report upgrade by the Assistant Superintendent and as Coordinator of Network and Computer Services in the District. Defers to ALJ's credibility determinations. *IMO Jerome Dunne and Alberto Marsal*, SEC 2013:Sept 24 (Elizabeth)

Court remands for further consideration by School Ethics Commission issue of who may request a Rice notice. SEC decision fails to clearly delineate the respective authority of a board member, board president, and full board in determining how and when a school superintendent's employment is reviewed. Once SEC clarifies this issue, then it can properly determine whether board member exceeded the scope of his authority and, if so, whether his issuance of the Rice notice, standing alone, was properly sanctionable. SEC decision also fails to provide adequate guidance for boards and board members who may be confronted with this issue in the future. An administrative agency must conduct an independent evaluation of all relevant evidence and legal arguments presented in support of and in opposition to proposed administrative agency action. The failure to do so may make the agency's decision

arbitrary and capricious and require a remand for reconsideration. Here, a remand is necessary so that the agency may conduct "a full analysis" of the evidence and its factual findings. *Persi v. Woska*, No. A–6038–11T4 (App.Div. Dec. 11, 2013)

Commissioner affirms SEC's June 26, 2013 decision finding that the board member violated *N.J.S.A.* 18A:12-24.1(e) in connection with his conduct at the polling place during the April 2011 school board election, and the SEC's recommended penalty of reprimand. Evidence in the record fully supports the SEC determination that on the day of the election, respondent took action beyond the scope of his authority by confronting, intimidating, and embarrassing complainant (who was an employee) and others, and that his conduct has compromised the Board because the public may have lost confidence in him and respect for his judgment, thereby potentially making every vote that he is involved with suspect. *Murphy*, 2013:Nov 7 (Washington Twp). SEC Decision

Complaint dismissed with prejudice where complainant filed a defective complaint and failed to remedy the deficiencies in the complaint. *Wilson v. Gray*, C-17-13 (SEC 2013:Nov. 26)

Board member violated the Code when she shared the recording of the taped a portion of the Executive Session at the regular meeting of the Board with her attorney for use against certain Board members in another ethics matter filed against her with the Commission. In excluding the tape, the Commission recognized that each public body enjoys its own protection of confidentiality, individually and separately from any other public body. The protection of confidentiality attaches to each public body as a whole: It is not severable and no one Board member or official can waive that protection for the Board without breaching his duty. Further, the Commission finds that sharing the deliberations of a closed meeting with any third party, who would not have been permitted to attend the meeting, is tantamount to a breach of trust and to the promise and expectation of confidentiality. When the respondent, in consultation with another Board member, turned on her phone's recording app, she was still within her rights to do so, as the Commission found in *Pitts v. Gidwani*. However, the Commission concludes that, here, the respondent took private action, or action that was outside the scope of her duties as a Board member when she disclosed the deliberations to two other third parties who would not

otherwise have been privy to the Board's deliberations. Commission finds that the Board's protection of confidentiality was breached when the respondent played the recording for two other individuals who were not permitted in Executive Session. Accordingly, the Commission finds that the respondent took private action, which was of such a nature that it had the potential to compromise the Board in violation of *N.J.S.A.* 18A:12-24.1(e). The Commission also reviews its determination in *Pitts v. Gidwani*, C27-11, 09/27/11, and its reassessment leads to a cautionary note. The Commission does not believe that it is within its authority to prohibit the taping of the Executive Session. However, it does recommend that each District determine for itself the rule it wishes to follow. The Commission supports such a prohibition since allowing the taping of Executive Session Board deliberations creates too great a probability that Board members may not freely discuss school business. Such an outcome must not be countenanced as it makes ineffective the very purpose of a closed session—to discuss the public's business unfettered and protected. Most importantly, allowing members to tape a closed session, even a portion, introduces a greater and unacceptable threat that the confidential deliberations may become available to public scrutiny through an individual who is not a beneficiary of the protection of confidentiality recognized in Executive Session. The Commission recommends a penalty of reprimand for breaching the confidentiality of Board deliberations by sharing the recording with another who would not have been permitted to attend the meeting or be privy to the Board's discussions. The Commission takes this opportunity to encourage the Board as a whole and its members individually to put this rancor behind them so that it does not continue to taint the future and further recommends that they attempt to rebuild the trust that the people who elected them look to for leadership. *Messner and Condo v. Gray and Berglund v. Gray* C16-13 and C22-13, consolidated (SEC 2013: Dec. 19)

No evidence that the respondent took action beyond the scope of her duties as the Board Vice President. Board Member was acting in her capacity as a private citizen. As such, there is no reason to reach the question of whether the action was of such a nature that it had the potential to compromise the Board. Rather, the respondent played no role in the creation of the placard or in the attribution at the silent auction. Based on the testimonial and documentary evidence, the

Commission finds that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members. Further, the Code of Ethics for School Board Members circumscribes the conduct of Board members only; the rules do not limit the spouse of a Board member. Mr. Dean is not answerable to the Commission and has no duty or obligation to follow the Code. *Pollack v. Dean,* C20-13 (SEC 2013:Dec 19)

SEC rejects ALJ dismissal of complaint and instead issues default judgment against respondent for failure to appear at OAL hearing. SEC also determines that by his conduct, the respondent has admitted the facts as alleged in the complaint and established a finding that the respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.*18A: 12-24.1(d). SEC recommends that the Commissioner of Education impose a penalty of reprimand. *I/M/O/ Sterling Waterman, Jersey City Board of Education, Hudson County, C10-12, SEC 2014: January 28*

SEC found no proof that board president, a seven year employee of Sodexo, food services division, violated either *N.J.S.A.*18A:12-24(a) or (c) of the School Ethics Act when he was in the school business administrator's office immediately prior to a meeting between the school business administrator and the Sodexo representative of the custodial services division. Testimony of the school business administrator, superintendent and respondent indicated that no Sodexo business was discussed between the school business administrator and the board president, the meeting with the Sodexo representative was fortuitous and not planned and only pleasantries were exchanged. No business interest, no "business transaction or professional activity" which was in *substantial conflict* with the proper discharge of his duties as a Board member, no proof that the board president participated in or engaged in a discussion regarding Sodexo so as to potentially violate *N.J.S.A.* 18A:12-24(c) proven.*Boyle v. Giannakis, South Plainfield Board of Education, Middlesex County, C01-13, SEC 2014:January 28*

Board member found to have violated *N.J.S.A.* 18A:12-24(b) of the School Ethics Act and *N.J.S.A.* 18A:12-24.1(d) of the Code of Ethics for School Board Members through a series of events that occurred between October 2011 and February 2012 wherein he used his official position to secure unwarranted privileges for himself and his son, a student in one of the Board's schools. SEC determined that, by virtue

of his failure to appear, respondent admitted the factual allegations underlying the claims transmitted to the OAL for hearing. SEC further determined that such admissions supported a finding that the respondent had violated *N.J.S.A.* 18A:12-24(b) of the School Ethics Act and *N.J.S.A.* 18A:12-24.1(d), and recommended a penalty of reprimand. Commissioner concurred. *IMO Waterman,* Commissioner 2014: March 14

A22-13 (3/7/14) A board member would violate *N.J.S.A.* 18A:12-24(b) and (c) if he were to participate in negotiations with the local education association when his father-in-law is a custodian in the district and the board member lives with the father-in-law and co-owns his home with the father-in-law. Although "father-in-law" is not considered a "relative" under the Act, it is considered to be an "other" within the meaning of *N.J.S.A.* 18A:12-24(b), and as such, the public may view your participation in negotiations as an attempt to secure unwarranted privileges or advantages for him in violation of the public trust.

The fact that the board member and his father-in-law co-own and reside in the same house, creates a "personal involvement." A school official shall not participate in a matter in which he has a "personal involvement" that is or creates some benefit to the school official or member of his immediate family. While the father-in-law is not a part of the board member's immediate family under the definition set forth at N.J.S.A. 18A:12-23, co-owning a home and sharing a close familial bond establishes a sufficient dual nexus to suggest that there is a personal as well as financial benefit to the Board member. Such a relationship prohibits the Board member from negotiating a collective bargaining agreement when his father-in-law is a member of the district union because the personal involvement might reasonably be expected to impair his objectivity.

Moreover, participation in employment discussions involving the Superintendent may also create a justifiable perception that the public trust has been violated. Since the Superintendent evaluates and makes recommendations about the father-in-law's continued employment, the School Ethics Commission determined that the board member's participation would be in violation of the Act and foster the perception that the public's trust has been violated as some privilege, advantage or continued employment may inure to him.

A06-14 (4/23/14) A board member who is employed in a regional school district may participate in discussions involving the

superintendent's contract and vote in the election of a new board president in a local constituent district where the member's direct employment supervisor is also a member of the local constituent board. No benefit would inure to either board member, as his employment evaluations are performed by other school officials. In the future, should the facts change creating a benefit to the board member or his supervisor, either member may have to recuse himself or herself from such involvement.

A07-14 (4/23/14) A board member would violate *N.J.S.A.* 18A:12-24(c) if he were to participate in the negotiation of the local collective bargaining agreement when he is a secretary in another district who is subject to a local union contract because the two unions are NJEA affiliates, despite the fact that the board member is not a member of the union and only pays a representation fee.

A08-14 (4/23/14) A board member would violate *N.J.S.A.* 18A:12-24(b) if he were to participate in the interview and selection process for a new chief school administrator when a stepdaughter, stepdaughter-in-law and nephew are employed by the district as certified teachers. Although not considered "relatives" under the Act, these members of the board member's family are considered an "other" within the meaning of this subsection, and as such, the public may view your action as an attempt to secure unwarranted privileges or advantages for them in violation of the public trust.

A09-14 (4/23/14) A board member would violate *N.J.S.A.* 18A:12-24(c) if he were to negotiate or be involved in discussions with the local New Jersey Education Association (NJEA) affiliate when the board member is employed in a different district and represented by the American Federation of Teachers (AFT), even though it is a different statewide teachers union. The two unions share common traits and common goals in their efforts to negotiate a contract. Moreover, they often share the same personnel, the same strategies, negotiators, and labor relations officials.

A10-14 (4/23/14) A board member must limit certain board activity when the member's spouse is the mayor of the local municipality or the board member's cousin is employed by the school district. The board member would violate *N.J.S.A.* 18A:12-24(b) if he were to participate in the pre-hire and post-hire board functions in selecting and discussing personnel matters involving the Superintendent. The official actions of this board member may be seen as an attempt to secure unwarranted privileges or employment

for her cousin, an "other" under this section. Such participation in employment discussion involving the superintendent, who supervises the principals or the agreement, that sets salary guides, benefits and other emoluments, may also create a justifiable perception that the public trust has been violated. The conduct is a potential violation of *N.J.S.A.*18A:12-24(b), (c) and (f).

A11-14 **(4/23/14)** - Four non-conflicted Board members are sufficient to conduct an evaluation of the Superintendent. Use of the doctrine of necessity is unnecessary in this situation.

A13-14 **(4/23/14)** - A board member, who is a freelance journalist, would not violate *N.J.S.A.* 18A:12-24(f) as long as the member does not report on board of education discussions or issues. Additionally, the board member must ensure that no information is disclosed through the freelance reporting to the public on matters solely discussed in board executive sessions.

A16-14 **(4/23/14)** A board member, who is aware he has conflicts, is directed to the *Martinez v. Abolino* (C45-11) decision, which prohibits the board member's participation in pre- and post-employment decisions involving the superintendent and other administrators. *Martinez* held that where a board member who has an immediate family member (as defined in *N.J.S.A.* 18A:12-23) or a relative (as defined in *N.J.S.A.* 18A:12-23) employed in the district, the board member may not participate in the search, selection and/or the vote for a new superintendent, irrespective of whether there is an in-house candidate being considered for the position because the School Ethics Commission maintains that the board member's involvement in the search, discussion and/or vote for a new superintendent under such circumstances would constitute a violation of *N.J.S.A.* 18A:12-24(c). He retains the rights of the public, however, and may attend the public session of board meetings where those matters are discussed.

Commissioner finds that the decision of the School Ethics Commission as to a determination of a violation of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g) is supported by sufficient credible evidence that the board member breached the confidentiality of the Board's deliberation during the executive session by sharing her recording of the closed meeting with two individuals who would not have been permitted to attend the executive session—notwithstanding her argument that sharing her recording with her attorneys did not have the potential to compromise

the Board because her attorneys had a professional obligation not to violate the Board's right to confidentiality and fact that the contents of the recording were never shared with the public. Upholds reprimand. *Messner and Condo*, Commissioner 2014:June 9

SEC grants summary judgment dismissing complaint against board member alleged to have voted to pay her company when she voted to accept the Food Services Report. The Report acknowledged and memorialized all payments to cafeteria vendors, which had been approved and paid earlier by the Food Services Director and the School Business Administrator and so she never had the opportunity to vote for payment because the vendors' invoices never came before the Board for a vote. Had she actually voted on the payment to her business, then she would have violated the Act, and it would be of no moment that the vendors were not identified or if the Board member forgets or was not mindful enough when she votes and receives a benefit. It is incumbent upon the Board member to question and be vigilant, particularly if there is a contract extant with the Board, whereby he or she receives some advantage, benefit or privilege. However, that is not the case here. There was no payment to this vendor or any other vendor attached to the Food Services Report and the respondent did not benefit from her vote. *IMO Moiso*, SEC 2014:May 27

Complainant failed to sustain burden of proof that Board President violated the Code of Ethics, specifically *N.J.S.A.* 18A:12-24.1(e) and (j), as a result of actions taken by him when he authorized, in consultation with chief school administrator and attorney, issuance of letter by board attorney outside of Board meetings with respect to the candidacy of a member of the public for the Board. *Molica v. Sayre*, SEC 2014:June 24.

Complainant bore the burden of proof. She failed to appear at the hearing without good cause, the Commission hereby grants the respondent's Motion to Dismiss the allegation that respondent violated *N.J.S.A.* 18A:12- 24.1(e), (g) and (j) of the Code of Ethics for School Board Members for complainant's failure to prosecute. *Green v. Conlon*, SEC 2014:June 24.

Board Member violated *N.J.S.A.* 18A:12-24(c) of the School Ethics Act when he voted to reappoint the auditing firm for the Elizabeth Board of Education when his business partner is a principal in that firm and recommends the penalty of reprimand. Finally it is of no moment that the respondent did not intend to vote for the firm. The Commission has

determined that it is the responsibility of a Board member to know the items to be voted on in any given meeting and to recuse himself from any vote in which he has a conflict at the time of the vote. *Monteiro*, SEC 2014:June 24

SEC dismisses complaint with prejudice for failure to prosecute. Complainant, who alleged various violations of the Code of Ethics for School Board Members, failed to appear at the hearing without good cause and provided no explanation for her non-appearance. No communication was made to the SEC either by letter, email or telephone. *Verdi v. Bauer, Manasquan Board of Education, Monmouth County*, C36-13, SEC 2014: July 22

SEC accepts the ALJ's findings of fact and the conclusions of law that the respondent violated *N.J.S.A.* 18A:12-24(b) of the Act and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members. By using her position on the Board, the respondent was able to gain access to a forum for her son that was not afforded to other such candidates, who had to endure the conventional application and vetting processes, thereby violating *N.J.S.A.* 18A:12-24(b). Respondent's actions also violated *N.J.S.A.* 18A:12-24.1(f), which prohibits a Board member from "using the schools for personal gain or the gain of friends" and ceding the member's independent judgment "for the gain of friends." The respondent sought gain for her son, "surely within the group contemplated as 'friends.'" But for the respondent's position as a board member, her son would not have been able to avail himself of the benefits offered under this "internship." It is of no moment that the "unwarranted privilege" was not obtained. It is enough that the respondent sought to benefit her son. SEC further adopts the ALJ's recommended penalty of reprimand. *IMO Barbara Garrity, Holmdel Board of Education, Monmouth County*, C24-13, SEC, 2014: August 26

SEC finds no cause to credit the allegations that respondents violated *N.J.S.A.* 18A:12-24(b). Allegation was that board members pulled an item from the agenda regarding intermittent family leave and authorized an investigation by a law firm into a matter which had already been concluded. No showing that either board member that respondents used their respective official positions to secure unwarranted privileges, advantages or employment for themselves, members of their immediate families or others in either situation. *Bailey v. Page and Bey-Blocker, Pleasantville Board of Education, Atlantic County*, C37-13, SEC, 2014: August 26

Board member alleged to have improperly participated in closed session discussions regarding negotiations while employed as a teacher in another school district. Complaint was filed 429 days after the alleged incident, outside the 180 day filing deadline. SEC dismissed the complaint as it was filed out of time. *Fankhauser & Smith v. Cerretani, Howell Twp. Board of Education*, C23-14, SEC 2014: September 23.

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Ethics complaint against a board member alleged that she publicly criticized the superintendent's personnel recommendations. Because the hiring recommendation involved employees who had previously been the focus of the board member's public criticism, the SEC determined that the public could reasonably perceive that she used her public position for personal reasons. The Commissioner concluded that a prior settlement agreement was sufficient notice to the board member of her conflict in future employment actions involving these employees. In the Matter of Bembry, Hackensack Board of Education, C49-12, SEC 2014:October 28.

The School Ethics Commission found that the board member sought to exert influence over district hiring practices by implying that the director of buildings and grounds should invite a particular applicant to an interview for an open custodial position. The Commission determined that the board member attempted to use her office to secure unwarranted privileges for another in violation of the School Ethics Act. In the Matter of Bembry, Hackensack Board of Education, C49-12, SEC 2014:October 28.

SEC determined that board member failed to confine his actions to policy-making, planning, or appraisal in violation of N.J.S.A. 18A:12-24.1(c), when he discussed the employment terms of interim superintendent of schools

with three board members elect and the assistant superintendent of schools. Persi v. Woska, (C03-14 (C25-08 On Remand)) SEC 2014:October 28.

SEC determined that board member did not administer the schools when he involved the assistant superintendent of schools in his plan to replace the interim superintendent, assistant superintendent willingly cooperated in the plan and was not ordered to do so. No violation of N.J.S.A. 18A:12-24.1(d). Persi v. Woska, (C03-14 (C25-08 On Remand)) SEC 2014:October 28.

SEC reaffirmed that board member took private action, in violation of N.J.S.A. 18A:12-24.1(e), which was beyond the scope of his authority when he unilaterally directed the issuance of a Rice Notice to the interim superintendent of schools. Violation also found where board member solicited three board members-elect in discussions about the interim superintendent's continued employment. Persi v. Woska, (C03-14 (C25-08 On Remand)) SEC 2014:October 28.

(C04-14) SEC accepted complainant's withdrawal, with prejudice, but cautioned that respondent's integrity was called into question without being provided the opportunity to respond to the allegation; complainant advised that casting future ethical allegations without allowing a response could be tantamount to an abuse of process. Rimal v. Donray, C04-14, SEC 2014:October 28.

(C14-14) SEC determined that board member took private action that had the potential to compromise the board and breached her duty of confidentiality when she contacted potential superintendent candidates to determine their continued interest in the vacant superintendent's position. Lisinski v. Smallwood, C14-14, SEC 2014:October 28.

(C18-14) SEC dismissed complaint as untimely where it was filed 441 days after alleged incidents involving disclosure of student name on Facebook. According to N.J.A.C. 6A: 28-6.5(a) complaints must be filed within 180 days of notice of the events which form the basis of the alleged violations. A complainant is deemed to be notified of events which form the basis of the alleged violations when the complainant knew of such events or when such events were made public so that one using reasonable diligence would know or should have known. Tallahsea v. Vitagliaro, C18-14, SEC 2014:October 28.

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Commissioner upheld School Ethics Commission's penalty of public censure where board member violated *N.J.S.A.* 18A:12-24(b) of the School Ethics Act. Board member previously entered into a settlement agreement wherein she admitted violating the Act by seeking to persuade board members to vote against the superintendent's personnel recommendation. The SEC determined that based on her prior history in the personnel matter, she should have abstained when the superintendent made subsequent personnel recommendations involving the same employees due to her demonstrated bias. (IMO Williams-Bembry, Hackensack Bd. of Educ., Bergen Cty.: Commr. 2014, Dec. 14)

EVALUATION OF TEACHING STAFF MEMBERS

PIP: Board's policies mandating the inclusion of district goals in the development of Professional Improvement Plan (PIP) did not violate regulation by circumscribing role of teacher; however, PIP must also contain teacher's individual goals, and district responsibilities. (01:May 18, Kinnelon)

PIP: District's Professional Improvement Plan practices were not in compliance with N.J.A.C. 6:3-4.3(f)(3) and (h)(3) because they unduly circumscribed the role of the teaching staff member in the development of a PIP, and because the forms failed to include space for a written statement of the district's responsibilities for implementing the PIP. (99:April 26, Ed. Ass'n of Passaic)

The evaluation of a teacher's performance involves a process that is broader in scope than the annual, in-class observation, and regulation only mandates that the preparer of the Annual Written Performance Report be a certified participant in the evaluation process; and the Board's practice of having a building principal or assistant principal complete the AWPR does not, on its face, violate the dictates of N.J.A.C. 6A:32-4.4(f). Middletown Education Assn. v. Middletown Bd. of Ed., 2011 Commr Feb 22.

EXECUTIVE COUNTY SUPERINTENDENT

Challenge to Executive County Superintendent's rejection of shared school business administrator employment contract deemed moot. ECS had rejected contract as salary was higher than comparable shared positions in the county. Proposed shared person had been appointed to superintendent of schools position, pending ECS contract approval, making original challenge moot. *Franklin Township*, Commr 2013: March 19

EXTRACURRICULAR ACTIVITIES – NJSIAA

ALJ overruled NJSIAA's denial of a student/athlete's request for a waiver of the NJSIAA's eight semester limitation on athletic eligibility. Commissioner determined that NJSIAA's denial of the requested waiver was entirely consistent with its previous application of its eligibility rules, however, the NJSIAA's deferral of the September 2000 request, until spring of 2002, denied the student due process. Commissioner found that the delay so prejudiced the student as to be arbitrary. Commissioner granted the waiver for all but the first two games of the 2002-03 football season. (02:Aug. 8, Taylor)

Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

Challenge to board's failure to bestow upon child the Most Valuable Player award was dismissed as untimely. (99:June 1, J.M.)

Coach's determination not to award petitioner MVP award for cross-country track was not unreasonable. (00:Sept. 11, J.M., aff'd St. Bd. 01:Jan. 3)

Commissioner upheld NJSIAA decision to put basketball team on probation for two years and suspend team from participating in championship tournament due to unsportsmanlike conduct involving violence. (99:Jan. 29, Paterson)

Commissioner upheld NJSIAA decision to suspend and fine coach for unsportsmanlike conduct, and to require the basketball program to provide corrective action plan related to crowd control; participation of NJSIAA's general counsel during hearing did not prejudice his due process rights; nor were NJSIAA's rules applied in an arbitrary, capricious or unreasonable manner. (98:Nov. 10, Turner)

Commissioner upholds NJSIAA's decision not to waive age rule for 19-year old educationally disabled senior for contact sports; limited waiver had been granted allowing him to suit up with the teams and participate in scrimmages. (03:Dec. 5, Raiford)

District may not preclude vo-tech Magnet School students from participating in its extracurricular activities and athletic programs unless such participation is not practicable or reasonable. (99:Nov. 29, G.W.S.)

Divisional realignment by NNJIL establishing two public school divisions and one nonpublic school division was not arbitrary, capricious or unreasonable; it had a rational basis, did not violate equal protection or other constitutional rights of parochial schools, advance or inhibit exercise of religion, or violate the N.J. Law Against Discrimination. NJSIAA's determination is affirmed. (00:June 23, Divisional Realignment)

Judgment call of game officials, or even egregiously incorrect decision, is not reviewable by Commissioner of Education. (99:Dec. 3, Hazlet)

N.J.S.A. 18A:27-4.1 did not preempt or repeal N.J.S.A. 34:13A-24 nor was N.J.S.A. 34:13A-24 unconstitutional delegational of governmental power to arbitrator; PERC determination that employee has right to arbitrate board'' decision not to renew his extracurricular coaching contract. Jackson Twp. Bd. of Ed. v. Jackson Ed. Assn., 334 N.J. Super. 162 (App. Div. 2000); certif. den. 165 N.J. 678 (2000)

NJSIAA's determination that district's team could no longer play an independent schedule in football, was not arbitrary. (00:July 28, Wildwood)

NJSIAA was not arbitrary in denying waiver of academic credit rule to pupil who failed English; student did not produce evidence to demonstrate that his failing grade was result of mother's cancer; not does NJSIAA have authority to change allegedly unfair grade. (01:May 4, Wohlrabe)

Participation in extracurricular activities is not an entitlement but a privilege; board's permanent expulsion of pupil from basketball team for sexual harassment upheld along with three day school suspension. (00:May 5, D.K.)

Special education student whose parents unilaterally removed him from public school and placed him in school that was neither a Department of Education-approved school nor a member of NJSIAA, was not eligible to play tennis at public high school; while parents had the right to place their son in a private school at their own expense without the consent of the local board of education, this does not mean that they have the right to participate in interscholastic athletics at their local public school while attending a private school that has no relationship to it. (03:October 9, C.J.N.) (03:October 9, B.R.I.)

Sportsmanship Rule does not prevent penalty against whole team for incident involving violence, even where individual perpetrators are identified and punished. (99:Jan. 29, Paterson)

Sportsmanship Rule: It was not arbitrary or capricious for NJSIAA to find that sportsmanship rule was violated where track coach filed to field competitors in three events and thus prematurely concluded an event because of his dissatisfaction with the officiating in that race; NJSIAA determination to suspend him for the season provided due process and is upheld. (00:July 10, Staton)

EVALUATION

Commissioner dismisses petition for lack of jurisdiction over teacher's allegations that her evaluations were arbitrary, capricious and contrary to law causing her to suffer depression, and seeking restoration of her sick days used as a result of this depression and order prohibiting certain staff from evaluating her; some allegations are barred by 90-day rule, and others are appropriately pursued as a grievance in accordance with the collective bargaining agreement between respondent and petitioner's union. *Miller, Commr 2013: Aug. 16*

EXTRACURRICULAR ACTIVITIES – NJSIAA

Sportsmanship standards were violated by football coach who hired "volunteer" coaches (not subject to background checks and not board-authorized) and allowed his 11-year old son to participate in 1995 high school intra-squad scrimmage; penalty not arbitrary or unreasonable; request for *de novo* hearing denied as record not inadequate. (98:July 15, Olsen)

Student who attends one school may not participate in interscholastic athletics for another school pursuant to reasonable NJSIAA rule. (98:Aug. 31, E.L.)

Treatment for substance abuse is not a circumstance beyond pupil's control that would justify waiver of academic credit rule; while in this case a different result could have been reached, Commissioner was constrained to defer to NJSIAA's ruling. (01:Oct. 31, C.S.A.)

Waiver of Article V, Section 1, of the NJSIAA Bylaws, denied. (03:October 9, C.J.N.) (03:October 9, B.R.I.)

FACILITIES

Educational Facilities Construction and Financing Act (EFCFA) does not violate the State Constitution's Debt Limitation Clause (Clause), N.J. Const., Art. VIII, § 2, ¶ 3. Appellate Division affirmed the Law Division's ruling that while the State Constitution's Debt Limitation Clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay without prior approval by public referendum, the Clause is not violated here because successive Legislatures are not bound to make the appropriations to pay on the bonds. Lonegan; Stop the Debt.com v. State of New Jersey, 341 N.J. Super. 465 (App. Div. 2001)

Where common law remedies have been preserved in contract, an owner who terminates the contract because it believes that the contractor has materially breached cannot be deemed to have forfeited its right to prove the breach and the resultant damages due to failure to follow the contractual termination procedures, thereby losing the benefit of the conclusiveness of the architect's certificate. Ingrassia Constr. Co. v. Vernon Twp. Bd. of Educ., 345 N.J. Super. 130 (App. Div. 2001)

Actions of the Schools Development Authority and the regulations it has promulgated, are neither arbitrary, capricious or unreasonable. SDA complied with the statutory authority granted to it by the Legislature to determine what types of projects an SDA district could seek to undertake and promulgated regulations establishing the procedures a district is required to follow to achieve that goal. *Education Law Ctr. v. New Jersey Schs. Dev. Auth*, No. A-4732-11T2 (App. Div. Apr. 29, 2013)

Commissioner partially granted Education Law Center's motion for summary disposition on seeking an order for the Office of School Facilities (OSF) to act on applications for emergent repairs to school facilities under the 2011 New Jersey Potential Emergent Projects Program (PEPP); OSF fell short of its responsibility to speedily advance projects designed to remediate emergent conditions in SDA districts; the determinations on the PEPP projects at issue here came significantly later than 150 days after the application date; Commissioner orders OSF to issue PPRs for the projects at issue no later than August 30. Although administrative code appears to suggest that the OSF is not required to issue a preliminary project report (PPR) and preliminary cost estimates until after the SDA has completed its preconstruction activities, such an interpretation is inconsistent with other provisions of the EFSFA, and with the EFSFA's clear legislative intent. *Education Law Center v. NJDOE, OSF*, Commr 2013: June 13.

FAIR LABOR STANDARDS

In matter involving the payment of overtime pay for a part-time occupational therapist, summary judgment granted in part and denied in part. Claim for overtime was not a continuing violation but a series of individual

violations. Claims more than two years old were time barred. Mount Olive did not come forward with payroll data to defeat the inference of the employee's facts. FSLA and NJWHL claims survive summary judgment. Guenzel v. Mount Olive Bd. of Educ., Civil Action No. 10-4452 (SRC), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 132102, Decided November 16, 2011. Filed, Reconsideration granted by, Different results reached on reconsideration by, Summary judgment granted by, in part Guenzel v. Mount Olive Bd. of Educ., 2012 U.S. Dist. LEXIS 21583 (D.N.J., Feb. 16, 2012)

FALSE ARREST

District Court dismissed complaint by substitute teacher alleging false arrest and violation of due process. Teacher was arrested and charged with aggravated assault after physically removing a disruptive student from his classroom, allegedly via headlock. School administrators did not arrest or detain the teacher. However, the arresting officer had sufficient probable cause to believe a crime had been committed, despite the teacher's eventual acquittal. *Jenkins v. Orange Police Dept.*, Dkt. No. 2:11-1555; (D.N.J. Sept. 29, 2014)

FEDERAL IMPACT AID

Governor Christie's Executive Order 14 on February 11, 2010 – which declared a fiscal emergency and, inter alia, ordered the Commissioner to withhold State aid payments to districts based upon any surplus and reserve account monies available to them at the end of the 2009 fiscal year. Board provided expert evidence in support of its position that the withheld funds were comprised of unanticipated federal impact aid received prior to FY 2009, and that respondent has been unable to persuasively rebut the Board's evidence. Accordingly, the Commissioner found that, under 20 *U.S.C.A.* Sec. 7709, respondent must reimburse the petitioning Board in the amount of $1,672,507. NJDOE may apply for certification from the United States Secretary of Education that the State has in effect a program of State aid to equalize expenditures for free public education among local educational agencies in the State; such certification is a prerequisite that can enable the respondent to reduce State aid to an agency which receives federal impact aid, and may thereby eliminate the potential for future litigation over the issues in the present case. *Northern Burlington Regional High School Bd. of Educ.*, Commr 2014: Feb. 4

FERPA

On remand, Court grants summary judgment to defendants on all claims. No pupil constitutional rights violated. Parties consent to order dismissing FERPA

and PPRA claims in light of Gonzaga v. Doe, 536 U.S. 273 (2002); C.N. v. Ridgewood Bd. of Ed., et al. 319 F.Supp. 2d 483 (D.N.J. 2004)

Parents' Sec. 1983 action challenging board of education's administration of a student survey as violative of FERPA and PPRA and pupil constitutional rights dismissed on summary judgment. Motion for preliminary injunction is also denied. Parents were given ample notice that participation in the survey was completely voluntary and anonymous. Board was not required to obtain written parent consent. Individual defendants entitled to qualified immunity. FERPA and PPRA are inapplicable. C.N. v. Ridgewood Bd. of Ed., et al., 146 F. Supp. 2d 528 (D. N.J. 2001), aff'd as to Fifth Amendment claim, rev'd and remanded as to all other claims. C.N. v. Ridgewood Bd. of Ed., et al., 281 F.3d. 219 (3d Cir. 2001).

FINANCE—STATE MONITOR

State –appointed monitor has the power to override board's rejection of a proposed settlement. State monitors have the authority – pursuant to *N.J.S.A.* 18A:7A-55(b)(5) – to override a vote of the board of education in order to achieve fiscal stability. Pleasantville, 2011 Commr July 13

Court finds that former Commissioner disregarded Congress's prohibition against considering Federal Impact Aid to reduce state aid to local districts, when Commissioner withheld state aid to Regional district under Executive Order 14's mandate that the state place in reserve necessary funds to balance the State's budget, and targeted districts' budget surplus funds. Court reverses Commissioner and remands for further proceedings to determine extent to which federal impact aid was the source of the district's reserve funds withheld. N. Burlington County Reg'l Sch. Dist. Bd. of Ed., v. Schundler, No. A-0607-10T3, 2012 N.J. Super. Unpub. LEXIS 224 (App. Div. Feb. 3, 2012)(per curiam)

FIRST AMENDMENT

Allegations of retaliatory discharge for political activity not proven. Secretary position riffed due to budgetary constraints, not political reasons. Bello v. Lyndhurst Bd. of Educ., 344 N.J. Super. 187 (App. Div. 2001)

Judgment for defendants on public employee's free speech claims was affirmed since the employee's public criticism of his superior seriously undermined the effectiveness of the working relationship between them. Johnson v. Yurick, 2002 U.S. App. LEXIS 12691, ____ F.3d. ____ (3d Cir. 2002)

Plaintiff students filed a class action suit under Section 1983 based on allegations that the defendant superintendent's and school board's vote to close a neighborhood school violated several federal and state laws and/or constitutional provisions. Court affirms that students did have a substantive right to a free education, but it was not being taken away.

The students were merely being transferred to a different school. Their claim that the school board's action violated their First Amendment rights also failed because the First Amendment created a right to speak freely but did not create a corresponding obligation on the part of the government to listen. Mullen v. Thompson, 2002 U.S. App. LEXIS 4946, ____ F.3d ____ (3d. Cir. 2002), decided March 7, 2002.

Preliminary injunction was granted to religious organizations who provided voluntary religious instruction allowing their materials and parental permission slips to be distributed; a school district's previous denials of access to distribution scheme by religious groups were viewpoint discrimination. Child Evangelism Fellowship of N.J. v. Stafford Twp. School District, 233 F.Supp.2d 647; (D.N.J. 2002), aff'd 2004 U.S. App. LEXIS 21473 (3d Cir. N.J., Oct. 15, 2004)

Teacher disciplined for violating policy requiring teachers to seek permission before distributing personal correspondence through the mailboxes at his school, challenges policy on constitutional grounds. Third Circuit affirms grant of summary judgment for board. Policy is valid provided that it is justified without reference to the content of the regulated speech, is narrowly tailored to serve a significant governmental interest, and that it leaves open ample alternative channels for communication of the information. Policastro v. Tenafly Bd. of Educ., No. 10-2479 (3d Cir. N.J. July 20, 2011) (not precedential)

Court ruled that the school board carried out its practice of praying in an atmosphere that contained many of the same indicia of coercion and involuntariness that the U.S. Supreme Court had recognized elsewhere in its school prayer jurisprudence. The school board used its regular meeting to recognize student accomplishment of various types, which had the effect of ensuring student attendance at nearly all the board meetings that took place during the school year. Further, the meetings took place on school property and the board was involved in every aspect of the prayer. Nor can a board of education take advantage of the legislative body exception under Marsh v. Chambers, 463 U.S. 783 (1983). Doe v. Indian River Sch. Dist., No. 10-1819 (3d Cir. Del. Aug. 5, 2011) (not precedential)

Public-sector labor union announced a special assessment/mid-year dues increase to defeat two ballot initiatives opposed by the union and elect certain candidates at the upcoming November election. The union's procedure, in the agency shop context, impinged on nonmembers' First Amendment rights. Under the First Amendment, when a union imposes a special assessment or dues increase levied to meet expenses that were not disclosed when the regular assessment was set, it must provide a fresh notice and may not exact any funds from nonmembers without their affirmative consent. Reversed and remanded. Knox v. SEIU, Local 1000, No. 10-1121, SUPREME COURT OF THE UNITED STATES, 567 U.S. ___ (2012), Decided June 21, 2012.

Speech relating to the tenure status of an employee does not rise to the level of public concern. The employee filed the appeal to challenge the board's determination that she did not have tenure, not to communicate with the public about the dispute, or to advance a political or social point of view beyond the context of her employment status. The employee's petition to the Commissioner of Education related to an inherently personal interest, not a matter of public concern. *Milano v. Board of Education of the Borough of Franklin Township*, CIVIL ACTION NO. 11-6803 (MLC), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 161942, Decided November 13, 2012.

District court declined to dismiss principal's claim of retaliatory discharge based on a violation of her 1st Amendment rights. Because the complaint and responsive motions to dismiss both failed to indicate whether principal spoke as a public employee or private citizen, questions of fact remained as to the context of the contested comments accordingly, dismissal would be premature. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 16, 2014)

Statements of a non-tenured principal that school officials diverted public funds to private religious institutions, when combined with allegations of several retaliatory employment actions were sufficient to forma a causal nexus in order to defeat motion to dismiss. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 16, 2014)

FORFEITURE OF PUBLIC OFFICE

Boards of education may make application to a New Jersey court for an order of forfeiture, consistent with Ercolano and N.J.S.A. 2C:51-2. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002)

Commissioner does not have jurisdiction; if court declines to order forfeiture, only means for board of education to remove individual is through tenure charges. (99:Aug. 30, Carney)

Commissioner of Education does not have jurisdiction to enter order of forfeiture. (99:May 3, Tighe)

Forfeiture pursuant to N.J.S.A. 2C:51-2, as amended in 1995, not within the jurisdiction of education. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002)

Law division judgment reversed. Board of education has the authority to seek an order of forfeiture subsequent to a trial court conviction. Order of municipal court forfeiting defendant's employment as of the date he was found guilty of assaulting a student reinstated. State v. Ercolano, 335 N.J. Super. 236 (App. Div. 2000), certification denied 167 N.J. 635 (2001) See also (00:May 1 Ercolano, decision on remand, decision on motion matter dismissed as moot, State Board 01:June 6)

Upon forfeiture in Superior Court, it is unnecessary to proceed with tenure hearing; tenure charges rendered moot by forfeiture; tenure matter dismissed. (99:May 24, Wilburn)(03:March 14, Nixon)

Where court fails to order forfeiture in criminal matter, board of education may apply to court; Commissioner has no jurisdiction. (99:July 30, Morton)

Fifth grade public school teacher, who was swim coach at parochial high school, entered a negotiated plea agreement at which she pled guilty to charges of fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b), and third-degree witness tampering, N.J.S.A. 2C:28-5(a). Matter involved sexual relationship with member of swim team, who, at the beginning of the relationship, was six months shy of her 18th birthday. The plea agreement resulted in a sentence of serving 364 days in the county jail, avoiding all contact with the student, refraining from any unsupervised contact with females under the age of eighteen, successfully completing psychological counseling, complying with all registration requirements of Megan's Law, N.J.S.A. 2C:7-2, an order requiring her to forfeit her teaching certificate for life and to forever forfeit the right to hold public employment. Teacher objected to the permanent forfeiture of her right to hold public office because the offense in question did not "involv[e] or touch on [her] public office," as required by N.J.S.A. 2C:51-2(d). It occurred in a parochial school setting, outside her public employment context. Appellate Division agreed and remanded for resentencing, at which time the portion of defendant's sentence requiring the permanent forfeiture of her right to hold any public office would be vacated. In all other respects, defendant's conviction and sentence are affirmed. State v. Blessing, DOCKET NO. A-1306-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2762, Decided November 4, 2011, Certification denied by State v. Blessing, 2012 N.J. LEXIS 486 (N.J., Apr. 5, 2012)

FOURTEENTH AMENDMENT

Plaintiff filed suit alleging that the New Jersey Department of Education ("NJDOE") violated the Fourteenth Amendment by failing to issue him a high school diploma. District court did not abuse discretion in denying motion for summary judgment. Crisdon v. N.J. Dep't of Educ., No. 11-4436 (3d Cir. N.J. Mar. 1, 2012)

FREE SPEECH

The Supreme Court denied certiorari of two cases that had been resolved in favor of the students, addressing the question of when, under the First Amendment, schools can discipline students for offensive speech created off-campus on the Internet that targets school officials. J.S. v. Blue Mountain School District and Layshock v. Hermitage School District 132 S. Ct. 1097 (2012) (Jan. 17)

The Supreme Court denied certiorari in case affirming grant of summary judgment to school district in challenge to school district's teacher mailbox policy. Policastro v. Tenafly Bd. of Educ., 182 L. Ed. 2d 164; 2012 U.S. LEXIS 1615; 80 U.S.L.W. 3475 (February 21, 2012)

Court determines that the Board and school officials did not violate a parent's First Amendment rights to express his opinion and to protest a governmental policy, when they refused to accept the signed permission form required by board policy prior to students participating in extracurricular activities, which was accompanied by the parent's letter stating that he signed the form "under duress." Board relied on attorney's advice that "under duress," would, in essence, invalidate and nullify the consent given, and the attorney suggested instead language indicating parent's "full reservation of rights." The board's conduct was not designed to deter speech, but rather to elicit affirmation that his daughter would not violate the laws against drug use and underage drinking during lacrosse season. Motion for summary judgment granted. *Doe v. Banos*, 2013 U.S. Dist. LEXIS 118383 (D.N.J. August 19, 2013)

FUNDING

Council determined that mandate to reduce the age span of students in special education classes was unfunded where it could result in additional direct expenditures if enrollment of additional special education students increases. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Petitioners sought individualized needs assessments akin to that remedy sought by rural districts in Bacon. However, Bacon did not establish a new cause of action for all districts. Rather, remedies that non-Bacon districts seek can be found in legislation and QSAC regulations. (Medford Bd. of Educ., Commr., 2006: Dec 5).

Council determined that mandate to reduce the age span of students in special education classes was unfunded where the Legislature did not provide a new source of non-property tax revenue for that purpose. Commissioner's reliance on regulations that gave districts flexibility to reorganize services and realize a cost savings. Using the cost saving to implement the new mandate diminishes the district's ability to use the new money for other discretionary spending. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

The Commissioner determined that Bacon neither created a new cause of action for public school districts nor eliminated alleged educational inadequacy and poverty as prerequisites to T&E claims (Medford Bd. of Educ., Commr., 2006: Dec 5).

Council determined that mandate to reduce the age span of students in special education classes was unfunded where the Legislature did not provide a new source of non-property tax revenue for that purpose. Commissioner's

reliance on generalized appropriation of additional state aid did not satisfy the constitutional amendment against unfunded mandates. No funding source was tied to this mandate (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Council determined that mandate to reduce the age span of students in special education classes was unconstitutional as an unfunded mandate and could not be enforced against any district. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Commissioner determined that purchases made for postage and computers on the last day of the contract period could not have been for the purpose of fulfilling that contract; therefore, funds budgeted for the school year were not expended on services rendered during that year. (Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Commr., 2008: Aug. 8)

Council determined that it had jurisdiction to hear special services district complaint alleging that a new age span regulation constituted an unfunded mandate where regulation was adopted after Jan. 17, 1996. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Council determined that Dept. of Ed. regulation N.J.A.C. 6A:14-47.(a)(2) violated the constitutional prohibition against new unfunded mandates, Art. VIII Sect. 2. para. 5 of the NJ Constitution. Regulation reduced the age span in special education classes for four years to three. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

Commissioner determined that budget guidance document is not the definitive statement of all fiscal requirements for Abbott preschool providers. The budget guidance document is not the standard against which the audit should have been conducted. (Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Commr., 2008: Aug. 8)

The State is relieved of prior remedial court orders concerning public school funding in Abbott districts as the New Jersey School Funding Reform Act of 2008 (SFRA), is constitutional under the Thorough and Efficient Education Clause, N.J. Const. art. VIII, § 4, para. 1 and may be applied in Abbott districts, with the following caveats: State must provide school funding aid during 2009 and the next two years at the levels required by SFRA's formula each year, and formula's weights and other operative parts must be reviewed after three years of implementation. Abbott v. Burke, 199 N.J. 140, 2009 N.J. LEXIS 420(May 28, 2009).

Court affirms State Board decision to deduct from the Elizabeth Board's 2006-2007 fiscal year the sum of $88,373 to compensate for board expenditures during the prior fiscal year for a 20-page brochure and television communication that amounted to political advertisement and contained misrepresentations and criticized the mayor, in connection with a campaign to build new schools in Elizabeth. In the Matter of the use of Abbott Funds, App. Div. unpublished decision (A-2409-07T3, August 18, 2009)

Appellate Division affirms Commissioner decision denying the school district's request for funding for additional educational programs, declining to subsidize the Board's decision to give its teachers and aides a one-hour lunch break instead of the thirty minutes provided under the collective bargaining agreement, and concluding that it had not been sufficiently thrifty in planning and paying for its technology needs Bd. of Educ. of Elizabeth v. N.J. State Dep't of Educ., (A-4063-07T2)2009 N.J. Super. Unpub. LEXIS 506 (App. Div. March 16, 2009.)

The document iinstrumental in the DOE's development of the new funding formula was exempt from release under OPRA's deliberative process privilege and the common law right. A government record, which contains factual components, is subject to the deliberative process privilege when it was used in the decision-making process and its disclosure would reveal the nature of the deliberations that occurred during that process. Education Law Center v. New Jersey Dept of Ed., 198 N.J. 274 (2009). (March 26, 2009)

Commissioner affirms NJDOE Office of Compliance Investigation (OCI) directive, requiring charter school to return federal grant funds in the amount of $354,765.04 spent in violation of bidding requirements under public school contracts law; bidding violation must be viewed against the backdrop of a misleading grant application and submissions that veiled the fact that the funds – which were intended for school rehabilitation – were being used for the design and construction of buildings and facilities that did not yet exist. Oceanside Charter, Commr. 2009:Dec. 17.

Court affirms decision by former Commissioner appointing a fiscal monitor in district for October 1, 2009 through September 30, 2011. Board complained of dissatisfaction with the prior fiscal monitors, but did not establish that the district was fiscally responsible and not in further need of monitoring. Use of 2008 CAFR report was not arbitrary because 2009 report was not yet available. Stay of emergent relief was rightfully denied as cost of monitor does not constitute irreparable harm. Pleasantville Bd. of Educ. v. New Jersey Dep't of Educ., NO. A-1011-09T2, 2011 N.J. Super. Unpub. LEXIS 100 (App. Div. January 13, 2011).

Challenge to tax credit for donations to scholarship organizations dismissed. Petitioners lack standing to challenge tax credit as to tax expenditure. Arizona Christian School Tuition Organization v. Winn, 2011 U.S. Lexis 2612 (2011).

Appellate Division affirms General Equity judge's motion of summary judgment dismissing Village of Loch Arbour's complaint. The School Funding Reform Act's repeal of the Kiely bill, *N.J.S.A.* 18A:8-1.1, which carved out an exception for the Village by capping the Village's school contribution to the Ocean Township School District at $300,000, was not unconstitutional, an infringement of equal protection rights, an impairment of the right to contract and a violation of the Fifth Amendment's Takings Clause. Loch Arbour v. Township of Ocean, No. A-3136-09T3, 2011 N.J. Super. Unpub. LEXIS 1872 (App. Div. July 13, 2011).

GIFTS OF PUBLIC FUNDS

Board does not have the statutory authority to improve property of the municipality, and improperly expended public funds to improve sidewalk owned by municipality, to jointly develop and construct a recreational field; Division of Finance must recover from school board all state aid received on the amounts inappropriately disbursed. (00:Feb. 26, Wildwood Crest)

Board's motion for summary judgment granted; expenditure of public funds (money raised through bonds) to promote the construction of a new school, was not an improper use of those funds. (01:Aug. 6, Rural Tabernacle)

Emergent relief granted to constituent board; dissolving board is restrained from making payments to employees for accrued sick leave benefits under its Dissolution Incentive Program, until a hearing is held on whether incentive program is *ultra vires* payment of public money for service that teachers are already obligated to provide. (00:June 29, Berlin)

N.J.S.A. 18A:6-4 grants to the Commissioner the authority to delegate to the Office of Compliance the ability to inspect the Board's fiscal accounts; no rulemaking requires. (00:Feb. 26, Wildwood Crest)

GOVERNMENT RECORDS COUNCIL

ALJ ratified settlement agreement approved by GRC in matter regarding Executive Session minutes from September to December 2008. Because the complaint brought about a change in the custodian's conduct (revision of OPRA request form) complainant was a prevailing party with the matter being forwarded to the OAL for a determination of reasonable attorneys fees. Wolosky v. Township of Vernon, No. 2009-57 (GRC February 24, 2011).

Motion for reconsideration granted as earlier GRC decision was based upon a "palpably incorrect or irrational basis." While e-mail in question was contained in a chain of e-mails which concerned official business of the Robbinsville Public School District, and which were therefore government records as defined in OPRA, the contents of this specific e-mail did not concern official business of the School District and therefore said e-mail constituted a personal message which was not "made, maintained or kept on file… in the course of official business." As such, the subject e-mail was not a government record pursuant to N.J.S.A. 47:1A.1.1 and was therefore not disclosable under OPRA. Lewen v. Robbinsville Public School District, No. 2008-211 (GRC February 24, 2011).

Custodian certified that no records responsive to the Complainant's OPRA request for an official copy of the Superintendent's transcript from Virginia Polytechnic Institute and State University existed in the district files. There was no credible evidence in the record to refute the

Custodian's certification. Accordingly, the Custodian did not unlawfully deny the Complainant access to the requested records. Simon v. Margate City School District, No. 2010-140 (GRC February 24, 2011).

Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an in camera review of the handwritten student notes to determine the validity of the Custodian's assertion that the record contains advisory, consultative or deliberative material which is exempt from disclosure under OPRA pursuant to N.J.S.A.47:1A-1.1. Complainant stated that the responsive student notes contained factual information obtained by the School District during the course of a non-criminal investigation and thus should not be considered exempt from disclosure under OPRA as ACD material. Sage v. Freehold Regional High School District, No. 2010-108 (GRC February 24, 2011).

Accumulated sick time is considered to be part of a payroll record which is subject to disclosure under N.J.S.A. 47:1A-10. See Jackson v. Kean University, No.2002-98 (GRC February 2004). Roarty v. Secaucus Board of Education, No. 2009-221 (GRC January 25, 2011).

Because the requested records comprise notes used by a board member as a memory aid to facilitate comments made to the public during a Board of Education meeting, and because such notes are not the official record of the meeting, the requested records are exempt from disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1 and O'Shea v. West Milford Board of Education, No. 2004-93 (GRC April 2006). See also Lucente v. City of Union City (Hudson), No. 2008-119 (GRC November 2009). Schiavoni v. Sparta Township School District, No. 2010-73 (GRC January 25, 2011).

The in Camera review revealed that the Custodian lawfully denied access to the redacted portion of the requested record because the discussion relates to a matter for which the Township may become a party to litigation, and involves anticipated litigation pursuant to N.J.S.A. 10:4-12(b)7 and N.J.S.A. 47:1A-9.a. However, Township's OPRA request form did not conform to the minimum form requirements as it does not contain the exceptions in OPRA to the general rule that personnel files are not public records; while this does not rise to the level of a knowing and willful violation of OPRA and the form has been revised, the complainant achieved the desired result, and as prevailing party was entitled to reasonable attorney fee. Case notable for its detailed discussion of "prevailing party." Wolosky v. Township of Fredon (Sussex),No. 2009-12 (GRC March 29, 2011)

Custodian deemed to have denied access where he did not timely respond in writing within 7 days of request for information about former school employee that 2 of 3 requested items did not exist (employment application and college degrees), and waited 7 months to provide existing records (former employee's transcript and certificates). However, deemed denial was not intentional and did not amount to knowing and willful

violation. Herron v. Westfield Public Schools (Union), No. 2010-94 (GRC March 29, 2011)

Request for report pertaining to a sexual harassment and discrimination complaint filed by the Complainant, along with handwritten notes from interviews and copies of any inter-/intra-office correspondence (e-mails, memoranda, handwritten/typed notes, letters, meeting minutes, audio tape...) "related to this matter" were properly denied. The report did not yet exist at the time of the request, and the other documents were exempt from access pursuant to N.J.S.A. 47:1A-9.a and Executive Order No. 26 (McGreevey 2002). Cargill v. NJDOE, No. 2009-256 (GRC March 29, 2011).

Motion to reconsider award of attorney fees to requestor of financial disclosure statements is denied. The custodian should not have redacted the financial disclosure statements filed under Local Government Ethics Act, albeit that his concerns were for privacy of volunteer officials and others and although he obtained advice from the GRC and his Counsel that redaction was appropriate. The Appellate Division has conclusively held that the financial disclosure statements required by N.J.S.A. 40A:9-22.1 et seq., do not invade the privacy of local officials, and the completion of a home address and phone number on the form is noted in statute as being optional, so that a filer may opt to keep those confidential. Walsh v.Twp of Middletown, No. 2008-266 (GRC March 29, 2011)

A request for records of bids for camera system, and certain pupil records were not specific enough regarding time period of documents or specific records sought. GRC notes that the custodian's response was insufficient because he failed to try to accommodate the request before denying access on the basis that it would substantially disrupt the Board's operations; and that in any event, four OPRA requests in three weeks is not voluminous. However, the Custodian did not unlawfully deny access to the records requested because said request was invalid under OPRA. Caldwell v. Vineland Bd. of Ed., No. 2009-278 (GRC March 29, 2011)

Request for "(a)ny and all correspondence, including District and personal e-mail, text messages, etc., having the phrase "petrelli" or "Petrelli" or "BP" or "Temple" or "Sholom" (sic) or "TS" was overly broad and not a valid OPRA request. Although the district conducted a search and provided over 4,500 e-mails responsive to the request via a website link, the custodian need not have done so. GRC notes that, had the request been valid, the Custodian would have had an obligation to ask all indicated school board officials for the specifically identified government records made, maintained or filed on the officials' personal computer storage systems. Petrelli v. Branchburg Bd. of Ed., No. 2010-13 (GRC March 29, 2011).

Redactions must be accomplished by visually obvious method showing the requestor the specific location of any redacted material in the record and the volume of the material. The custodian's method of copying the minutes with a blank sheet of paper covering material to be redacted, thus "whiting out" the executive session minutes in their entirety did not

comply with OPRA. GRC must conduct an in camera review of the executive session minutes to determine the validity of the Custodian's assertion that the records contain information which is exempt from disclosure as attorney-client privileged, personnel matters and contract negotiations. Council defers analysis of whether the Custodian knowingly violated OPRA, and whether Complainant is a prevailing party, pending the Custodian's compliance. Paff v. Manasquan , No. 2009-281 (GRC March 29, 2011).

Reporter gathering information for articles describing mismanagement and waste in the Lakewood Township budget, was properly denied access to Township 2009 Budget Manual which is exempt from disclosure as advisory, consultative or deliberative material because it contains notes and recommendations used by the Municipal Manager to prepare the final Township budget for presentation to and adoption by the governing body. Rozsansky v. Lakewood , No. 2010-89 (GRC March 29, 2011).

GRC determines that requested letter related to the installation of artificial turf at Ridgewood High School from Assistant Engineer that was not yet reviewed by the Village Engineer, is a draft document, that in its entirety comprises advisory, consultative and deliberative material; Custodian lawfully denied access Shea v. Ridgewood No. 2010-79 (GRC Feb. 24, 2011).

Custodian violated OPRA at N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.g. by failing to provide records by requestor's preferred method of delivery, when the Custodian had the capability to convert the records to an electronic medium for e-mail delivery or make paper copies for facsimile delivery. GRC must conduct an in camera review of the requested e-mails between the Township Clerk and the Township Attorney regarding the recall of a Township Committee member, to determine the validity of the Custodian's assertion that the records constitute attorney-client privileged information which is exempt from disclosure. Requester entitled to award of reasonable attorney fee; although violations were not willing and knowing, there was a nexus between the filing of the complaint and the result obtained. (See detailed attorney fee/prevailing party analysis.) Wolosky v. Frankford No. 2008-254(GRC Feb. 24, 2011).

Borough's blanket requirement that all requestors who submit OPRA requests via mail must submit photo identification prior to receiving records presented an obstacle to public access of government records pursuant to N.J.S.A. 47:1A-1. Further, the Borough's OPRA request form contained misinformation regarding the accessibility of personnel records as it fails to state exceptions to the rule that personnel files are not public records; also, Borough must charge actual cost of audio cassette tape, and improperly charged a service charge as charges for labor are permitted only for requests requiring extraordinary time and effort and may not be set in advance but must be based on actual direct cost of providing the copy or copies. Paff v. Wildwood Crest, No. 2009-54(GRC Feb. 24, 2011).

While Custodian replied to the request to provide access to proposals submitted for the position of Borough Attorney in time, the response was insufficient because she failed to provide a specific lawful basis for denying access; however violation was not knowing or intentional. Further, she lawfully denied access because at the time of the OPRA request, proposals were exempt from disclosure because they contain information that "would give an advantage to competitors or bidders." Although all proposals were publicly opened with the name of the vendor and the price read aloud, the proposals themselves did not become public documents until the contract was awarded. GRC acknowledges a conflict between the Borough's obligation to open the bids up publicly prior to the successful negotiation of a contract and OPRA's exemption from disclosure for information which "would give an advantage to competitors or bidders." Bond v. Washington Borough, No. 2009-324 (March 29, 2011).

Emails were exempt and would not be provided to requestor; requestor had not surrendered her rights to confidentiality in her personnel records when she submitted her request for emails containing her personnel information; moreover, Council determined through an in camera examination of e-mails, that they were exempt from disclosure as (1) inter-agency or intra-agency advisory, consultative or deliberative material ("ACD"), (2) personnel matters, and/or (3) attorney-client privilege; fact that former township official on the emails was no longer an official when the emails were created did not invalidate the exemption, as she had served during the period that was the subject of the discussions, had first-hand knowledge of the issues. Custodian's verbal response, and fact that no written explanation for the denial of access was supplied until the thirteenth business day following receipt of the OPRA request resulting in a "deemed" denial, but did not rise to knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. McGee v. East Amwell, No. 2007-305 (March 29, 2011).

Because the request (copies of the information contained within the database purchased by the Township of Nutley each June in its original format) failed to identify a specific government record or a specific time period within which the Custodian could focus her search for the requested entries, but rather seeks general information from a database, the Complainant's request is invalid under OPRA. Moore v. Nutley, GRC Complaint No. 2010-110 (June 28, 2011)

The Custodian's response to OPRA request failed to provide a date certain to expect disclosure and thus violated OPRA; further, the Custodian's failure to charge the actual cost to reproduce "audio recording of the most recent regular public meeting of the governing body" onto a CD-ROM constituted a violation; Custodian must disclose the requested check registry data and tables in the specifically requested medium and if necessary, consult a vendor to convert the documents upon the Complainant's acceptance of any applicable charges; and must disclose the requested records (a digital copy of the requested check registries and

data registries of the Township in either a Microsoft Word, Excel, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator) with appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the payment of the special service charge, if any, within ten (10) business days; further the OPRA request form is deficient in several respects including its failure to state the exceptions to the general rule that personnel files are not public records, and failure to adequately describe avenues to challenge denial of access. Wolosky v. Chester, GRC Complaint No. 2010-184 (June 28, 2011)

No denial of access demonstrated in complaint that Sparta Board of Education's official OPRA request form contains boxes that are too small to comfortably write in the name of the records sought. Wolosky v. Sparta, GRC Complaint No. 2010-224 (June 28, 2011)

No denial of access, where the Complainant failed to file an OPRA request with the Lakewood Board of Education; complainant alleged that Board of Education violated OPMA by failing to make public meeting minutes available after two (2) weeks. The Complainant also states that the Board of Education has violated OPMA by not posting proper notification of meetings on the public announcement board at the Board of Education building. However, the Complainant did not file an OPRA request to the Lakewood Board of Education. Blaustein v. Lakewood Bd. of Ed. GRC Complaint No. 2011-210 (June 28, 2011)

All legal fees relating to disciplinary charges against (complainant) including but not limited to those of (certain named individuals). Delay in providing responsive records was caused by an oversight and the difficulty in securing specific billing information. Although the Custodian violated N.J.S.A. 47:1A-5.i., by failing to indicate a specific date upon which the records would be provided, all records were in fact provided, and the evidence does not show that the violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate and thus do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Bentz v. Paramus, GRC Complaint No. 2008-89 (June 28, 2011)

Because the governing body had approved the executive session minutes at the time of the Complainant's OPRA request, said minutes no longer constituted advisory, consultative or deliberative (ACD) material at the time of the request and were therefore disclosable with appropriate redactions. Custodian is ordered to provide minutes within five business days with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction. Wolosky v. Jefferson, GRC Complaint No. 2010-163 (June 28, 2011). See similar rulings in Wolosky v. Roxbury, GRC Complaint No 2010-183 (June 28, 2011) and Wolosky v. Montville, GRC Complaint No. 2010-160 (June 28, 2011)(also finding that charge of $10.00 for an audio recording in CD format is unreasonable

and in violation of N.J.S.A. 47:1A-5.b as actual charge was $1.79 to duplicate the record)

Request for "a copy of every communication by the BOE, any member or employee of the BOE, and/or anyone contacted by the BOE concerning the Delbury matter, including, but not limited to, any resolutions, complaints, letters, public notices, press releases, memos, notes, telephone logs and e-mails" was overbroad and fails to specifically identify the documents sought; OPRA does not require custodians to research files to discern which records may be responsive to a request, or to conduct research to locate records potentially responsive. Gettler v. Sussex Wantage Regional Bd. of Ed., GRC Complaint No. 2007-105 (May 24, 2011).

Custodian failed to properly redact executive session minutes, and failed to provide a written response setting forth a detailed and lawful basis for each redaction made to the records which were disclosed. Paff v. Lavallette, Complaint No. 2007-209 (May 24, 2011).

Complainant's need for access (desire to ensure compliance with New Jersey's Prevailing Wage Law) did not outweigh Custodian's need to safeguard personal information contained in the certified payroll records of apprentices for public works contracts. The release of the employee names could result in harassment and unsolicited contact between the Complainant and the individuals whose names and wages are being requested. A public agency has a responsibility to safeguard from public access a citizen's personal information when disclosure would violate his/her reasonable expectation of privacy. Ott v. Cape May, Complaint No. 2010-77 (May 24, 2011).

Complainant's request for his original employment application was properly denied as the record was not disclosable because it is an exempt personnel record pursuant to N.J.S.A. 47:1A-10 and Executive Order 26 (McGreevey, 2002). The request for all records relevant to how the DHS will respond to the Complainant's Merit System Appeal was overly broad. Toscano v. DHS, Complaint No. 2010-147 (May 24, 2011).

Employee's Juris Doctor degree is a government record pursuant to N.J.S.A. 47:1A-10 because it exhibits employee's educational qualifications to hold the position of Labor Analyst. Thus the Custodian has unlawfully denied access to the requested record and must l disclose it with appropriate redactions. Guz v. New Jersey Civil Service Commission, Complaint No. 2010-33 (May 24, 2011).

Custodian lawfully denied access to the e-mail discussions involving board members requesting and/or receiving legal advice from the School attorney or the members' deliberations over how to handle personnel or administrative matters; these discussions are exempt from disclosure as attorney-client privilege and/or as advisory, consultative or deliberative material pursuant. Ray v. Freedom Academy Charter School, Complaint No. 2009-185(May 24, 2011).

Request for "… all cost records, invoices and payment vouchers showing the breakdown and total cost to date of the lawsuit against Monmouth County Parks Department on hunting in a designated no-hunting zone in Wall Township" is not overly broad under OPRA; pending or ongoing litigation is not a lawful basis for denial of access to records requested under OPRA. Darata v. Monmouth County, Complaint No. 2009-312(May 24, 2011).

Request for emails and letters that identify by name the specific recipients of the e-mails and letters sought was valid under OPRA; GRC must conduct an in camera review to determine if the records constitute inter-agency or intra agency advisory, consultative or deliberative material. Other requests were not valid as they failed to identify by name the specific recipients of the e-mails and letters sought, failed to specify identifiable government records and would require the Custodian to perform research which he is not required to do. Armenti v. Robbinsville Bd. of Ed, Complaint No. 2009-154 (May 24, 2011).

Where request was for sick time calculation related to a settlement agreement between the Borough and the Complainant, in camera review establishes that some is exempt from disclosure as attorney-client privileged information that would give an advantage to adversarial litigants pursuant to N.J.S.A. 47:1A-1.1; however, Custodian unlawfully denied access to executive minutes where only certain paragraphs should be redacted as a discussion of personnel. Verry v. South Bound Brook, Complaint No. 2008-161(May 24, 2011).

Where request was for "copies of any and all invoices submitted by the law firm of […] for the months of October, November and December 2008," the GRC determined that it must conduct an in camera review of the package of unredacted records to determine whether Custodian validly asserts that the record contains information which is exempt from disclosure as attorney-client privileged. Verry v. South Bound Brook, Complaint No. 2009-204 &2009-205(May 24, 2011).

The OPRA request does not require research in order to identify the responsive records (OC's Ethical Standards and Officers' Uniform Code of Conduct," but rather requires the Custodian to locate and provide the two specific records sought; however, there is no language relieving the Complainant from paying the appropriate copying costs because he is indigent. Reid v. Dept of Corrections, Complaint No. 2010-83 (May 24, 2011).

Response to records request beyond the seven (7) business days from receipt of the request was not a "deemed" dismissal where district calendar School demonstrated that the school district was closed for business on February 15, 2010 and did not count as a business day. Schiavoni v. Sparta, Complaint No. 2010-73 (May 24, 2011)

Charge of $7.50 to scan and e-mail records violated N.J.S.A. 47:1A-5.b. because actual cost is likely zero; OPRA request form did not comply with N.J.S.A. 47:1A-5.f. ; the current Custodian complied with Interim Order by providing the requested executive session minutes for an in camera

examination and disclosed the requested e-mails, lawfully redacted requested executive session minutes for information generated in connection with collective negotiations, including documents and statements of strategy or negotiating position pursuant to OPRA and OPMA and pending or anticipated litigation under OPMA. Prevailing party attorney fees awarded, amount to be determined. Paff v. Gloucester City, Complaint No. 2009-102 (May 24, 2011).

Custodian lawfully denied access to the discussions in the requested e-mail chain between and among the Board Attorney, previous School Leader and Board members pursuant to N.J.S.A. 47:1A-6 because the e-mail chain discussions are exempt from disclosure as attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1. However, the Custodian must disclose the following information contained in the e-mail chain: (1)To: (2) cc: (3) From: (4) Subject: (5) Closing salutations and electronic signature information. Miguel Mendes v. Freedom Academy Charter School, No. 2009-184 (GRC August 24, 2010)

Complainant requested copies of the 2009-2010 invoices for Individuals with Disabilities Education Act ("IDEA") and American Recovery and Reinvestment Act ("ARRA"), support services out of district and other Local Education Agency ("LEA") tuitions. Because the custodian failed to provide all of the requested records by the extended date, or ask for an additional extension, the failure constituted a "deemed denial" of the OPRA request. Because of the volume of materials requested and the fact that the approximately 500 invoices were provided within two weeks after the extended date, no willful violation of OPRA was found and no attorney fees were awarded. Jesse Wolosky v. Sparta Board of Education, No. 2010-189 (GRC July 26, 2011)

Complainant requested copies of Detail profit and loss statement as of June 30, 2010, Detail balance sheet as of June 30, 2010, Schedule of capital equipment as of June 30, 2010, List of all computers, printers, projectors, televisions, DVD players, VHS players, cameras and copiers as of June 30, 2010. Because custodian failed to provide all of the requested records within seven business days, or ask for an extension, the failure constituted a "deemed denial" of the OPRA request. Additionally custodian mistakenly advised, due to an insufficient search, that no records responsive to the fourth request existed. Materials were eventually provided. No willful violation of OPRA was found. Luisa D. Erich-Carr v. Plumstead Township School District, No. 2010-168 (GRC July 26, 2011)

Complainant sought copy of the Juris Doctor degree for a Labor Analyst with the New Jersey Civil Service Commission; a mandatory requirement and educational qualification for his employment. Pursuant to the GRC's holding in Bonanno v. Garfield Board of Education, GRC Complaint No. 2006-62, the Juris Doctor degree is a government record pursuant to N.J.S.A. 47:1A-10 because it exhibits the employee's educational qualifications to hold the position of Labor Analyst. The Custodian

unlawfully denied access. No willful or knowing violation of OPRA was found.Edward J. Guz v. New Jersey Civil Service Commission, No. 2010-33 (GRO July 26, 2011)

Complainant alleges that the board of education's official OPRA request form is not compliant with OPRA as it contains boxes that are too small to comfortably write in the name of the records sought. Such an allegation does not rise to the level of a denial of access to a government record pursuant to Martin O'Shea v. Township of West Milford (Passaic), GRC Complaint No. 2007-237. No denial of access at issue. Jesse Wolosky v. Sparta Board of Education, No. 2010-224 (GRC June 28, 2011)

Complainant alleges that the board of education is in violation of the Open Public Meetings Act ("OPMA") by failing to make public meeting minutes available after two (2) weeks. The Complainant also states that the board of education has violated OPMA by not posting proper notification of meetings on the public announcement board at the board of education building. However, Complainant did not file an OPRA request. No denial of access at issue. Baruch B. Blaustein v. Lakewood Board of Education, No. 2011-210 (GRC June 28, 2011)

The complainant failed to establish that the filing of his complaint with the GRC was the "catalyst" for the voluntary action of … a change to the fee in the new Ordinance to the actual cost of the CD and jacket. The Township began discussing an amendment to the CD fee prior to having knowledge of the complaint, and the Complainant never objected to the $5.00 fee initially charged and instead chose to simply file a complaint with the GRC. Therefor, he is not a prevailing party entitled to attorney fees. Wolosky v.Township of Stillwater (Sussex), No. 2009-22 (GRC Sept 27, 2011)

The Custodian violated N.J.S.A. 47:1A-5.b. by not offering the Complainant an opportunity to review and object to the actual cost to convert the recordsrequested to the medium specified, and the CFO violated the Act by failure to timely respond; however, the Custodian complied with later orders. Violations did not constitute knowing and willful violations nor an unreasonable denial of access. Reasonable attorney fees are granted as the complaint brought about a change in the custodian's conduct; however, enhancement of the lodestar fee was not warranted. Wolosky v.Borough of Morris Plains (Morris), No. 2010-165(GRC Sept 27, 2011)

Custodian's failure to respond in writing within seven (7) business days resulted in "deemed denial" of OPRA request; however documents were subsequently provided without objection from the Complainant. Custodian certified she failed to respond due to inattention, and can offer no excuse and further certifies that it was a mistake and not in any way intentional. Therefore, it is concluded that her actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial. Complainant was prevailing party entitled to reasonable attorney fees. Luers, Esq.(on behalf of Gwen Franklin) v. Township of West Orange (Essex),No. 2009-327 (GRC Sept 27, 2011)

Consolidated complaints are dismissed; complainants withdrew their complaints from the Office of Administrative Law. Jung v.Borough of Roselle (Union), No.

2007-299/ O'Halloran v. Borough of Roselle (Union), No.2007-307 (GRC Sept 27, 2011)

Uunapproved, draft executive session meeting minutes were inter-agency or intra-agency advisory, consultative, or deliberative material and thus were not government records and were exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek Township. Although custodian failed to respond to the request for records within the 7 days required but provided records she was required to disclose within 9 days, no willing violation found; further, Custodian acted independently of the filing and therefor was not catalyst and no attorney fees are warranted. Wolosky v. Stillwater Township (Sussex), No. 2009-30 (GRC Sept 27, 2011)

Custodian was not required to conduct the research that would be required to respond to a request for a "copy of every letter submitted since July 1990 by (4 named individuals) associated with the receipt of their annual/bi-annual contractual medical benefits," nor was custodian required to conduct research where another part of the request referred to types of records but not specifically identifiable records. In light of these findings, as well as finding that another part of the request was for records that did not exist, there was no denial of access, nor grounds for an award of attorney fees. Verry v.Borough of South Bound Brook (Somerset), No. 2010-135 (GRC Sept 27, 2011)

Custodian complied with earlier order requiring that township either adopt GRC request form or revise its own deficient request form; however, Custodian's reply to request stating that as to certain items the Custodian would respond on a "later date, " provided an openended timeframe in violation of OPRA; failure to charge the Complainant the actual cost for the reproduction of the requested "audio recording of the most recent regular public meeting of the governing body" onto a CD-ROM was a violation, as was the failure to provide check registry data and tables in the requested medium or another medium meaningful to the Complainant. Violations were not knowing or willful; however, Complainant is entitled to a reasonable attorney fee as he achieved "the desired result because the complaint brought about a change… in the custodian's conduct." Wolosky v. Chester (Morris), No. 2010-184 (GRC Sept. 27, 2011)

Where request for an audio recording of Borough Council meeting required a substantial amount of manipulation or programming of information technology not within ability of Borough, who must utilize its vendor to do so at a rate of $195.00/hr. plus $3.50 for the tape, the Custodian carried her burden of proof that the proposed reproduction charge was reasonable. Borough ordered to amend its OPRA request for as it contains an incomplete recitation of exemptions to disclosure which renders it deficient. Jesse Wolosky v.Borough of Victory Gardens (Morris), No. 2010-187 (GRC Sept 27, 2011)

Where requestor asked to examine all records regarding construction project, specifically the minutes of the prebid meeting, along with any RFI submitted by any bidders, the Custodian's failure to respond in writing within seven business days results in a "deemed" denial. Response provided was legally insufficient because it failed to designate and respond to each record individually and provide a specific reason for denial for each; Custodian could have denied the request as being overly broad pursuant to MAG and its

progeny, or by seeking clarification of such request. However, he responded by disclosing the requested records and thus had a duty to respond to each requested item individually. Custodian must disclose correspondence between the contractor and the architect related to the Change Order as there was no proof it was exempt from disclosure. Colasante v. County of Bergen, No. 2010-18 (GRC Sept 27, 2011)

Custodian did not fully comply with interim order by providing requestor with the records ordered to be disclosed with appropriate redactions, and the GRC with a legal certification, nine copies of the unredacted records requested for the *in camera* inspection and a document index within the time required. While request for certain email correspondence was a valid request, Custodian lawfully denied access to the discussion portion of the requested e-mail chain between and among the Board Attorney and School Leader and Board members; the e-mail chain is exempt from disclosure as attorney-client privileged material and ACD material (pre-decisional and deliberative.) Custodian must disclose all other portions of the requested e-mails (i.e. sender, recipients, date, time, subject, and closing salutations). Request for personnel meeting minutes and executive session meeting minutes for particular topics would require the custodian to conduct research and was thus an invalid request; Failure to respond within 7 days was a "deemed" denial but left open determination of whether it was a knowing and willful OPRA violation. .Ray v.Freedom Academy Charter School (Camden), No. 2009-185 (GRC Sept 27, 2011)

Custodian's failure to comply with prior order requiring redaction of documents did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access; complainant was prevailing party entitled to counsel fees; however, matter is dismissed as withdrawn pursuant to a settlement between the parties. John Paff v. Lavallette (Ocean), No. 2007-209 (GRC Sept. 27, 2011)

Additional charge of $5.00 for City service charges to provide a recording (CD), did not represent part of the actual cost and must be refunded; matter referred to AOL for hearing as to whether custodian denied access to the recording. Edwards v.City of Plainfield Planning Board (Union), No. 2010-17 (GRC October 25, 2011)

The Complainant submitted a non-form written request that, because it did not reference OPRA, was not a valid OPRA request. The GRC's authority is limited to adjudicating denial of access complaints based on valid OPRA requests. Roundtree v. New Jersey Department of State, Division of Elections, No. 2011-305(GRC Oct. 25, 2011)

Requests for certain e-mails were invalid requests under OPRA as they failed to name "specifically identifiable" records, failed to name the senders and/or recipients of the e-mails sought, and failed to identify a specific date range sought; these requests would require research beyond the scope of a custodian's duties. Custodian had denied access on basis that these documents were "pre-decisional" ACD communications containing advice and recommendations of the Township Administrator. Kaplan v. Township of Winslow (Camden), No. 2010-202(GRC Oct. 25, 2011)

Request for a "copy of each and every e-mail sent or received by the Municipal Clerk's office to or from each and every other Municipal Clerk in Morris County regarding Jesse Wolosky and/or his OPRA request from June 29, 2010 [through] June 22, 2010" was invalid under OPRA because it failed to specifically name identifiable senders and recipients, and because the request required research beyond the scope of a custodian's duties. Complainant was not a prevailing party entitled to an award of a reasonable attorney's fee. Wolosky v.Borough of Riverdale (Morris), No. 2010-192 (GRC Oct. 25, 2011)

Although the Custodian provided an insufficient response to the Complainant's request by failing to respond to each request item individually, and failed to bear his burden of proving a lawful denial of access to the records at issue, his actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances where he gathered the requested records and faxed them but the fax machine was not working properly and he made several attempts to fax them. Complainant was not a prevailing party entitled to an attorney's fees because the Custodian disclosed the records in response to an unrelated OPRA request and not as a product of the filing of the complaint. Verry v.Borough of South Bound Brook (Somerset), No. 2010-86 (Oct. 25, 2011)

Custodian violated OPRA by failing to provide immediate access to contract and salary information of municipal clerk, immediate access required although part of larger request including items allowing 7 day response; although requestor did not use township request form, there was no evidence that requestor failed to properly invoke OPRA and therefor denial on that basis was improper; custodian must provide year end gross income, financial disclosure statement and vendor activity report with redactions as detailed in redaction index; counsel fee decision is deferred. Wolosky v.Township of East Hanover (Morris),No. 2010-205(GRC Oct. 25, 2011)

Custodian violated OPRA for failing to immediately provide salary information for employees and failing to provide access to employee list within 7 days, pursuant to a request for "(a)ny record or set of records which sets forth ….for each Borough employee employed as of September 30, 2009: name of employee, department within which the employee works, total remuneration as reported to the Internal Revenue Service for the most recent reporting period. " Although Borough did not maintain a record containing the specific information requested, the request could be fulfilled by providing *any record or set of records* which contained the information requested, such as a Borough Employee List with annual salaries for the 2008 tax year, or employee's personnel file or pension records, employment contracts and collective negotiation agreements. Thus, $35.00 special service charge requested for submitting request to Borough's CASA Payroll Services to produce a record, was unwarranted and must be refunded. Culver v. Borough of Lawnside (Camden), No. 2010-15 (GRC Oct. 25, 2011)

Although the Complainant's request provided a specific range of dates in which the requested e-mails were transmitted, the request failed to name a specific identifiable sender and recipient: the request seeks e-mails from and to a specific class of employee (specifically, Municipal Clerks) and not individually identified senders and recipients. Custodian's duty to discern

which e-mails in her possession have been received by or sent to a Municipal Clerk. A search for the individual employees' names and related e-mail addresses would constitute research that is not the statutory duty of a Custodian. The Complainant's request is invalid under OPRA because it fails to specifically name identifiable individual senders and recipients and because the request requires research beyond the scope of a custodian's duties pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Wolosky v. Jefferson Twp. GRC 2011, Nov. 29

District failed to respond within seven days as required by OPRA. However, once district did respond, they could find no records that were responsive to the request. There was no unlawful denial of access to the records themselves. Herron v. Montclair Board of Educ., GRC 2011, Dec 20.

Complaint administratively dismissed where requester filed complaint with GRC only six days after making a request to records custodian. Scheer v Franklin Twp. Fire District, GRC 2011, Dec. 20

ALJ ratified settlement agreement approved by GRC in matter regarding Executive Session minutes from September to December 2008. Because the complaint brought about a change in the custodian's conduct (revision of OPRA request form) complainant was a prevailing party with the matter being forwarded to the OAL for a determination of reasonable attorneys fees. Wolosky v. Township of Vernon, No. 2009-57 (GRC February 24, 2011)

Motion for reconsideration granted as earlier GRC decision was based upon a "palpably incorrect or irrational basis." While e-mail in question was contained in a chain of e-mails which concerned official business of the Robbinsville Public School District, and which were therefore government records as defined in OPRA, the contents of this specific e-mail did not concern official business of the School District and therefore said e-mail constituted a personal message which was not "made, maintained or kept on file… in the course of official business." As such, the subject e-mail was not a government record pursuant to N.J.S.A. 47:1A-1.1 and was therefore not disclosable under OPRA. Lewen v. Robbinsville Public School District, No. 2008-211 (GRC February 24, 2011)

Custodian certified that no records responsive to the Complainant's OPRA request for an official copy of the Superintendent's transcript from Virginia Polytechnic Institute and State University existed in the district files. There was no credible evidence in the record to refute the Custodian's certification. Accordingly, the Custodian did not unlawfully deny the Complainant access to the requested records. Simon v. Margate City School District, No. 2010-140 (GRC February 24, 2011)

Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the handwritten student notes to determine the validity of the Custodian's assertion that the record contains advisory, consultative or deliberative material which is exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1. Complainant stated that the responsive student notes contained factual information obtained by the School District during the course of a non-criminal investigation and thus should not be considered exempt from

disclosure under OPRA as ACD material. Sage v. Freehold Regional High School District, No. 2010-108 (GRC February 24, 2011)

Accumulated sick time is considered to be part of a payroll record which is subject to disclosure under N.J.S.A. 47:1A-10. *See* Jackson v. Kean University, GRC Complaint No.2002-98 (February 2004). Roarty v. Secaucus Board of Education, No. 2009-221 (GRC January 25, 2011)

Because the requested records comprise notes used by a board member as a memory aid to facilitate comments made to the public during a Board of Education meeting, and because such notes are not the official record of the meeting, the requested records are exempt from disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1 and O'Shea v. West Milford Board of Education, GRC Complaint No. 2004-93 (April 2006). *Seealso* Lucente v. City of Union City (Hudson), GRC Complaint No. 2008-119 (November 2009). Schiavoni v. Sparta Township School District, No. 2010-73 (GRC January 25, 2011)

Custodian received no records request. Bell v. Paterson Public Schools (Passaic) No. 2012-39 (GRC March 27, 2012)

Denial of access complaint is denied. President of Inside on the Outside is prohibited from having any contact with any present or former employees or officials of the Borough of Stanhope except to mail tax and utility payments or call 911 in an emergency, pursuant to Judge Dana's December 3, 2008 Judgment; therefor he is precluded from filing a Denial of Access Complaint against the Borough ; Council dismisses his complaint . Caggiano v. Stanhope , No. 2012-25(GRC March 27, 2012)

Request for "travel" and "expense" records of Governor Christie and staff, was not sufficiently specific as "'travel records' and 'expense records' are not requests for a specific identifiable government record but are broad and generic. Burton v. Office of the Governor No. 2010-320, 2010-321 &2010-322 (GRC March 27, 2012).

Request for "(a)ny and all New Jersey State or federal fiscal, managerial, or educational audits, reviews, monitoring reports or anything of a similar nature " received during specific period by the Lakewood Board, as well as "all correspondence relating to any such audits, reviews.. .monitoring reports" fails to specify identifiable government records sought and would require the Custodian to conduct research outside the scope of the Custodian's duties; request is invalid under OPRA. Hersh v. Lakewood Bd. of Ed., No. 2010-283(GRC March 27, 2012)

Where requestor asked for copies of OPRA requests made to custodian, the custodian did not unlawfully deny access when she redacted the telephone numbers, or home and email addresses; a custodian does not have a duty to determine what telephone numbers are unlisted and what telephone numbers are listed; moreover, privacy rights of individuals who submitted OPRA requests to the Township in their names, e-mail addresses, and home addresses in the OPRA request forms and log sheets outweighed the complainant's need for such information under common law right of access balancing test. Wolosky v. Parsippany Troy Hills, No. 2010-317 (GRC March 27, 2012).

Where custodian verbally responded to the requestor that she was not required to answer question but failed to provide a written response within the statutorily

mandated time period and where the request was not for a specific identifiable government records and was invalid under OPRA, the custodian's improper response did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Urbay v. West Orange, Complaint No. 2011-01(GRC March 27, 2012).

Where custodian certified in the Statement of Information that no notice responsive to the request could be located, and no credible evidence was presented in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested public notice. Valdes v. Union City Bd. of Ed., No. 2011-27 (GRC March 27, 2012)

Custodian's response to OPRA request for a copy of the original GRC Request Form sent to DOE for a specific request in 2010 indicating the reason for the denial, was lawful because it was timely, it was signed and dated by the Custodian, it provided a lawful basis for the denial of access and was the only record responsive to the request. Valdes v. NJDOE, No. 2010-256 (GRC March 20, 2012)

Although the custodian did not provide a lawful basis for the denial of access to the requested records, he certified in the SOI that the executive session minutes could not be located; in the absence of competent, credible evidence to refute the certification, there was no unlawfully denial of access to the requested executive session minutes; no conscious or intentional wrongdoing ; no unreasonable denial of access under the totality of the circumstances. Valdes v. Union City Bd. of Ed., No. 2010-2018 (GRC March 20, 2012)

The Custodian denied access to the requested bid proposal contents. However, OPRA does not provide the Council with the authority to develop and monitor a corrective action plan for the Township with specific attention to the Custodian's responsibilities and the handling of and responds to OPRA requests, as requested by the complainant/requestor. Steinhauer-Kula v. Down Twp, No. 2010-197(GRC March 27, 2012)

Request for contracts, agreements and other documents regarding attorney's services, including "compensation to Ms. Amana and related companies, " was overly broad and unclear and would require Custodian to conduct research; further, the term "related companies" does not identify with reasonable clarity specific government records. GRC must conduct an *in camera* review of monthly billing invoices to determine the validity of the Custodian's assertion that the redacted portions of the records constitute attorney-client privileged information. Rivera v. Camden, No. 2010-182(GRC March 27, 2012)

Approved executive session minutes for September, October, November and December 2008 were disclosed with redactions for ACD (pre-decisional issues), student issues, potential litigation and contract negotiation; complainant withdrew his complaint as the matter settled; referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Wolosky v. Andover Reg. School Dist. No. 2009-94(GRC March 27, 2012)

Custodian corrected the following OPRA violations, in matter where he had failed to provide an anticipated date upon which the records responsive to the request for executive session minutes would be provided; responded to the request for a copy of the Township's official OPRA request form by referring the

Complainant to the Township's website instead of scanning the form and providing an electronic copy as requested; had a practice of requiring requestors to provide a portable USB drive to obtain electronic copies of audio recordings; charged $1.00 for the CD to make the requested audio recording of the most recently recorded regular public meeting rather than the "actual cost" of duplicating the record; Failed to use the Complainant's preferred method of delivery (e-mail), and instead provided the requested OPRA request form as a paper copy. Also, Township's official OPRA request form was deficient in several respects. However, custodian was correct to deny access to the unapproved, draft executive session minutes as they constitute draft advisory, consultative, or deliberative material and are exempt from the definition of a government record and from disclosure as they were not approved by the governing body at the time of the request. Violations were not willing and purposeful. Remanded for determination of counsel fees. Wolosky v. Denville, No. 2010-191 (GRC March 27, 2012)

Request for "correspondence (e-mails, letters, memos, faxes) to the board members, administrative staff or employees of the BOE regarding the standards based grading system from 2009-2010" and for "the proposal from the BOE employee responsible for bringing the standards based report card system to Middletown Elementary School" was invalid because it is broad and unclear and fails to name identifiable government records with reasonable specificity. Brunt v. Middletown Bd. of Ed. No. 2011-13(GRC April 25, 2012)

Custodian violated OPRA by failing to timely respond to the Complainant's OPRA request for meeting minutes and video and audio CD/DVD copies of meetings but items were provided 16 days after request; not knowing and willful violation. Request for "any and all reports pertaining to the mold problem at the Leeds Avenue School" is invalid because it fails to identify a date the report was prepared, who authored the report, or to whom the report was disseminated and would require the Custodian to conduct research to locate a responsive record; unnecessary to decide if attorney client privilege protected disclosure. . Not a prevailing party; no counsel fees awarded. Babiak v. Pleasantville Bd. of Ed., No. 2010-326 (GRC April 25, 2012)

Where request was for signed or unsigned copy of the draft Certificate of Determination relevant to the tenure charges filed against the complainant, the custodian did not violate OPRA as the charges were never signed because board of education did not determine whether there was probable cause; an unsigned copy of the draft Certificate of Determination relevant to tenure charges is considered advisory, consultative and deliberative and is therefore exempt from disclosure. Request for executive session minutes where tenure charges were discussed, had been previously provided. Valdes v. Union City Bd. of Ed., No. 2010-329 (GRC April 25, 2012)

Where requestor asked for copies of signed contracts of all Shore Riptide Hockey League members, OPRA specifically required the Custodian to redact those portions of the 80 contracts that he believed to be exempt from disclosure and to provide the remainder of each record to the Complainant; however, he instead opted to disclose records that were not responsive to the OPRA requests. Custodian violated OPRA. Not a knowing and willful violation. Lakavitch v. Toms River, Complaint No. 2010-230(GRC April 25, 2012)

Where request was for cell phone bills, including itemized list of phone calls, for all Borough employees, and hotel receipts from 2002 to the present, and audio tape of a council meeting, Custodian improperly redacted phone bills as to city and state of locations of calls received; further, charge of $5.00 each for two audio recordings of the requested meeting was not authorized and was unreasonable and in violation of N.J.S.A. 47:1A-5.b.; and request for hotel receipts was invalid as it would have required the Custodian to conduct research. Livecchia v. Mt. Arlington, Complaint No. 2008-80(GRC April 25, 2012)

Because the Custodian failed and refused to disclose to the Complainant the records ordered for disclosure pursuant to the terms of the Council's Interim Order, the GRC shall immediately commence an enforcement proceeding in New Jersey Superior Court against the Custodian in accordance with N.J. Court Rule 4:67-6. Records requested were for detailed information regarding personnel hires, grants, and job responsibilities of a list of named employees, overtime information and lists of provisional, temporary and unclassified employees Andrews v. Irvington, No. 2008-232(GRC April 25, 2012)matter settled, Andrews v. Irvington, No. 2008-243.

Subcommittee police report was used as the basis for deliberations which resulted in the negotiation, preparation, and execution of a Retirement and Separation Agreement with the Borough's former Police Chief, such report is therefore a predecisional record the disclosure of which would reveal the nature of the deliberations that occurred during that process. The requested subcommittee policy report, as well as the factual components thereof, is therefore exempt from disclosure under OPRA as advisory, consultative and deliberative material. N.J.S.A. 47:1A-1.1. Sarafin v. Hightstown, GRC No. 2011-122 (May 29, 2012)

Custodian failed to provide a written response to the Complainant's OPRA request for minutes of particular meetings that granted access, denied access, sought clarification, or requested an extension of time to produce the requested records within the statutorily mandated seven(7) business days, resulting in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., and N.J.S.A. 47:1A-5.i., the Custodian did not unlawfully deny the Complainant access to the requested records because the Custodian certified that the requested records do not exist within the Board of Education. Valdes v. Union City Board of Education GRC No. 2011-47 (May 29, 2012)

A copy of health insurance coverage for all members of the elected governing body is not a request for an identifiable record and constitutes an invalid OPRA request. W2s and/or 1099s are employee tax information that is prohibited from release pursuant to U.S.C. § 6103 (2004), thus the Custodian did not unlawfully deny the Complainant access to those records. Gelber v. City of Hackensack GRC No. 2011-148 (June 26, 2012)

Requestor sought copies of every e-mail in former Charter School director e-mail account from the time he retired until specified date. Custodian has certified that no records responsive to the Complainant's OPRA request exist. Because there is no evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny the Complainant access to those records.

Schooley-Wank v. Teaneck Community Charter School GRC No. 2011-175 (June 26, 2012)

Board ordered to release record of minutes in response to request. Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Valdes v. Union City Board of Education GRC No. 2010-285 (June 26, 2012)

The Custodian violated OPRA by failing to provide a specific anticipated date upon which access to item would be granted, by failing to timely respond to address the Complainant's preferred method of delivery to request for another item; by merely directing the Complainant to charter school's website to obtain the requested agendas; however, other requests failed to specifically identify a government record sought. In addition Custodian timely complied with the Council's Interim Order and provided copies of the agendas responsive to the other requests. Therefore, Custodian's actions do not rise to the level of a knowing and willful violation under the totality of the circumstances. Statute is clear as to which specific records are classified as "immediate access" records (budgets, bills, vouchers, contracts, public employee salary and overtime information) so GRC declines to determine that meeting minutes and resolutions are also "immediate access" records. Chin v. Teaneck Community Charter School, GRC No. 2010-340 (Sept. 25, 2012)

Where requester asked for a list of vendors bidding on the RFP,including bid amounts, for toll attendant services on the N.J. Turnpike, the Custodian lawfully denied access because providing such records would give an advantage to competitors or bidders; at the time of the records request, the Board's approval to award the toll attendant services bid and the expiration of the Governor's ten (10) day veto period was still pending. Pipa v. Turnpike Auth, GRC No. 2011-107 (Sept. 25, 2012).

The Custodian violated OPRA by failing to respond immediately to the OPRA request for salary information, and because the Custodian should have retrieved the most comprehensive record that contained the requested information; However, the Custodian timely complied with the Council's Interim Order and provided a copy of a computer printout including the title, position, salary and length of service for the Custodian from 2003 through 2004 responsive to the request. Valdes v. Union City Bd. of Ed., GRC No. 2011-64(Sept. 25, 2012).

Given conflicting evidence, GRC is unable to determine whether the record responsive to the Complainant's request is a post-decisional formula for interlocal agreements , or is a pre-decisional ACD document; not clear whether custodian reclassified the document as "work papers" in order to evoke the ACD exemption. Complaint is referred to the Office of Administrative Law for a hearing. Hendricks v. Cape May, GRC No. 2011-338 (Sept. 25, 2012).

Although Custodian made a good faith effort to provide all records his response was insufficient because all responsive records failed to transmit successfully due to errors. The Custodian attempted to fax the actual responsive records four (4) times. No knowing or willful violation. Verry v. South Bound Brook, GRC No. 2011-171(Sept. 25, 2012).

Former Custodian violated OPRA by failing to state the specific legal citations, which formed the basis for redactions made to the executive session minutes requested. She also failed to bear burden of proof that the denial of access to the portions of the executive session minutes were lawful. However, the present Custodian timely provided the GRC with legal certification, unredacted executive session minutes for the *in camera* inspection, and timely complied with the Council's order by subsequently providing the minutes to the Complainant. No willing violation under the circumstances; however, the Complainant is a prevailing party and entitled to an award of reasonable attorneys fee. Wolosky v. Vernon, GRC 2010-311 (Sept. 25, 2012).

The Complainant's e-mail dated May 19, 2011 is not a valid OPRA request pursuant to Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009) because the Complainant failed to clearly invoke the provisions of OPRA. Specifically, the Complainant's e-mail states that he *will be* or *may be* requesting records, not that he *Is* requesting any records. Alvarez v. Northwest , GRC 2011-205 (Sept. 25, 2012).

Custodian's insufficient written response failing to grant or deny access or request an extension of time or clarification to request seeking subpoenas served by prosecutor, resulted in a "deemed" denial. However, the GRC declines to order disclosure of the responsive records because the Custodian already disclosed the records. Nevertheless, the Custodian must either provide records or legally certify that no responsive records exist. No knowing violation. Verry v. South Bound Brook, GRC 2011-161, 2011-162, 2011-163, 2011-164, 2011-165, 2011-166 & 2011-167 (Sept. 25, 2012).

Where Custodian violated OPRA by failing to respond in time in writing to the request for a digital copy of the budget for the years 2000 through 2011 – which should have been made immediately available---the custodian has been replaced, and the new custodian fully complied according to the Council's June 31, 2012 Interim Order. Custodian timely provided notice of the special service charge to convert the 3,000 pages to digital medium. Blaustein v. Lakewood Bd. of Ed. , GRC 2011-109(Sept. 25, 2012).

Custodian violated OPRA by failing to timely provide response to request for resignation letter from borough counsel. Subsequently, Custodian complied with interim order to provide same with appropriate redactions. However, requestor is prevailing party for purpose of counsel fees. Verry v. South Bound Brook, GRC 2011-173(Sept. 25, 2012).

Custodian provided access in timely manner to requested Certificate of Determination. *Valdes v. NJ Department of Education No. 2011-372 (GRC 2012 Dec 18)*

Custodian has borne her burden of proving a lawful denial of access to the requested records because she provided the Complainant with the specific reasons for her inability to fulfill the request. The requested records are exempt from public access pursuant to *N.J.S.A.* 47:1A-9 and *N.J.S.A.* 18A:6-7.4 as criminal history record information which must be kept confidential by the Commissioner of Education. *Herron v. NJ Department of Education, No. 2011-363(GRC 2012 Dec 18)*

Custodian has borne her burden of proving a lawful denial of access to the requested records because she provided the Complainant with the specific reasons for her inability to fulfill the request and the Complainant provided no

clarification. The requested records are exempt from public access pursuant to *N.J.S.A.* 47:1A-9 and *N.J.S.A.* 18A:6-7.4 as criminal history record information which must be kept confidential by the Commissioner of Education. *Herron v. NJ Department of Education, No. 2011-364(GRC 2012 Dec 18)*

In seeking an extension of time, Custodian failed to specify an anticipated date on which access to the requested records would be granted or denied. Certain requested items are overly broad and are invalid under OPRA pursuant to MAG Entertainment, *LLC v. Division of Alcoholic Beverage Control*, 375 *N.J.Super*. 534 (App. Div. 2005). A proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. A request for "Any and all Board minutes, documentation, e-mails, and/or any other written instrument" is insufficient as an OPRA request. *Inzelbuch v. Hamilton Twp Board of Educ. No. 2011-220 (GRC 2012 Dec 18)*

Because a minimum GPA is required to obtain licensure from the Department of Education, the GPA is data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension pursuant to *N.J.S.A.* 47:1A-10. As such, the GPAs contained on the requested transcripts are public. Redaction of the individual grades contained in the requested transcripts is lawful. Complainant's argument that the only way to validate the authenticity of the requested transcripts is to view the originals, fails to override the potential harm for identity or financial fraud present with the disclosure of dates of birth or social security numbers. As such, the Custodian has lawfully denied access to the dates of birth and social security numbers pursuant to *N.J.S.A.* 47:1A-1. Custodian's denial of access to the original transcripts is lawful. *Herron v. NJ Department of Education, No. 2011-268 and 2011-269 (GRC 2012 Dec 18)*

The requested settlement of a special education matter is a student record pursuant to *N.J.A.C.* 6A:32-1.1, and because *N.J.A.C.* 6A:32-7.5 provides that only authorized persons enumerated in the regulation shall have access to student records, and because the evidence of record reveals the Complainant is not such an authorized person, and because exemptions from disclosure provided by regulations promulgated under the authority of a statute apply to OPRA pursuant to *N.J.S.A.* 47:1A-9.a., the Custodian did not unlawfully deny the Complainant access to the settlement agreement. *Popkin v. Englewood Board of Educ. No. 2011-263 (GRC 2012 Dec 18)*

Custodian did not receive request for records until complainant filed Denial of Access Complaint. Upon receipt of complaint, custodian provided requested records to the extent possible. Therefore, because the custodian certified that she never received a copy of the complainant's OPRA requests, the custodian has met her burden of proving that the failure to respond to the Complainant's request did not constitute an unlawful denial of access under OPRA. N.J.S.A. 47:1A-6. *Herron v. River Vale Board of Educ. No. 2011-351 (GRC 2012 Dec 18)*

GRC determined that custodian's response four business days after request for copy of current contract of business administrator and board secretary did not

constitute a timely response to an "immediate access" government record. Because the Custodian failed to immediately respond to the Complainant's OPRA request for the contract, the Custodian violated *N.J.S.A.* 47:1A-5.e., pursuant to *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007). The Custodian's OPRA violations did not have a positive element of conscious wrongdoing nor was intentional and deliberate; not deemed a knowing and willful violation of OPRA. *Kaplan v. Winslow Twp. Board of Education, No. 2011-237 (GRC January 29, 2013)*

GRC determined that custodian's response, eight business days after request, for copies of salary, wage, pension amount, life insurance costs, for certain employees and legal costs, did not constitute a timely response to "immediate access" government records. Because the Custodian failed to immediately respond to the Complainant's OPRA request, the

Custodian violated *N.J.S.A.* 47:1A-5.e pursuant to *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007). I*ndividual* employee health benefits and waivers information are exempt from disclosure pursuant to the Privacy Rule of Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C.A. Section 1301, *N.J.A.C.* 17:9-1.2, and *N.J.S.A.* 47:1A-9 and were lawfully denied. The Custodian's OPRA violations did not have a positive element of conscious wrongdoing nor was intentional and deliberate; not deemed a knowing and willful violation of OPRA. *Brown v. Ocean City Board of Education, No. 2011-271 (GRC January 29, 2013)*

GRC determined that custodian's response, eight business days after request, for copies of salary, wage, pension amount, life insurance costs, for certain employees and legal costs, did not constitute a timely response to "immediate access" government records. Because the Custodian failed to immediately respond to the Complainant's OPRA request, the Custodian violated *N.J.S.A.* 47:1A-5.e. pursuant to *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007). I*ndividual* employee health benefits and waivers information are exempt from disclosure pursuant to the Privacy Rule of Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 *U.S.C.A.* Section 1301, *N.J.A.C.* 17:9-1.2, and *N.J.S.A.* 47:1A-9 and were lawfully denied. The Custodian's OPRA violations did not have a positive element of conscious wrongdoing nor was intentional and deliberate; not deemed a knowing and willful violation of OPRA. *Brown v. Sea Isle City Board of Education, No. 2011-273 (GRC January 29, 2013).*

Custodian lawfully denied access to legal memorandum regarding proposed county layoffs as the requested record contained attorney client privilege information pursuant to N.J.S.A. 47:1A-1.1; Requested record was a written legal opinion regarding *N.J.S.A.* 40A:14-60 *et seq*. and its applicability to Complainant's status regarding the current/proposed layoffs for the County. *Wargacki v. County of Bergen, No. 2011-198 (GRC January 29, 2013)*

GRC's jurisdiction does not extend to disputes under common law right of access to public records. Jurisdiction is limited to disputes under OPRA. Complainant sought access to emails between athletic director and a staff member and the superintendent and the same staff member. *Rowan v. Warren Hills Regional School District, No. 2011-347 (GRC January 29, 2013)*

GRC determined that employee sign-in sheets qualify as disclosable payroll records. Employee sign-in sheets detail the number of weeks and dates specifically

worked as specified in *N.J.A.C.* 12:16-2.1 and, as such, are deemed a payroll record subject to disclosure under *N.J.S.A.* 47:1A-10. *Havlusch v. Borough of Allenhurst, No. 2011-243(GRC* January 29, 2013)

GRC determined that teacher certifications are personnel file records which disclose conformity with specific experiential and/or educational qualifications required for government employment and are subject to disclosure pursuant to *N.J.S.A.* 47:1A-10 and *Bonanno v. Garfield Board of Education Business Department*, GRC Complaint No. 2006-62 (June 2008). Resumes of successful candidates for employment are subject to disclosure pursuant to Executive Order No. 26 (McGreevey) (provides that the résumés of successful candidates shall be disclosed once the successful candidate is hired) *Krrywda v. Pinelands Regional School District, No. 2011-285 (GRC January 29, 2013)*

GRC determined that attendance records of former superintendent, including total number of absences, including sick days, personal days, and vacation days for each school year are payroll records accessible under OPRA. *Vargas v. Camden City School District, No. 2011-315 (GRC January 29, 2013)*

GRC determined that e-mail addresses received through a solicitation posted on the Borough's website were received "in the course of official business," between July, 2007 and September 15, 2009, making such e-mail addresses government records pursuant to *N.J.S.A.* 47:1A-1.1 and subject to OPRA. *Mayer v. Borough of Tinton Falls, No. 2008-245 (GRC January 29, 2013)*

GRC determined that "as built drawings" responsive are exempt from disclosure as they contain security information or procedures for a building facility which, if disclosed, would jeopardize security of the building or facility or persons therein pursuant to *N.J.S.A.* 47:1A-1.1 and *Cardillo v. City of Hoboken (Zoning Office*), GRC Complaint No. 2005-158 (December 2006). *Kohn v. Township of Livingston, No. 2011-330 (GRC February 26, 2013)*

GRC determined that custodian's failure to immediately respond to the Complainant's request for invoices results in a violation of OPRA's immediate access provision at *N.J.S.A.* 47:1A-5(e). *See* Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *Kohn v. Township of Livingston, No. 2011-329 (GRC February 26, 2013)*

GRC determined that requests which ask questions or seek information rather than identifiable government records, are invalid under OPRA. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 *N.J. Super*. 534, 546 (App. Div. 2005); *Bent v. Stafford Police Department*, 381 *N.J. Super*. 30, 37 (App. Div. 2005); *New Jersey Builders Association v. New Jersey Council of Affordable Housing*, 390 *N.J. Super*. 166, 180 (App. Div. 2007); *Dooley v. City of Newark No. 2011-257 (GRC February 26, 2013)*

GRC determined that Custodian bore his burden of proof that fulfilling the Complainant's OPRA requests would require an extraordinary expenditure of time and effort, which warranted a special service charge pursuant to *Courier Post v. Lenape Regional High School*, 360 *N.J. Super*. 191, 199 (Law Div. 2002) and *N.J.S.A.* 47:1A-5(c). GRC determined that the special service charge of $ 675 was reasonable pursuant to *N.J.S.A.* 47:1A-5(c) and *N.J.S.A.* 47:1A-5(d) because the Custodian certified that the contract administrator is the only New Jersey City University employee capable of locating, identifying and providing the records requested and that the fee assessed was

based on the contract administrator's discounted rate of $20 per hour and the actual direct cost of $85 attributable to the vendor costs for retrieval and return of records stored off campus. *Andes v. New Jersey City University No. 2011-219 (GRC February 26, 2013)*

GRC determined that the Custodian's failure to respond immediately to the Complainant's OPRA request for contracts results in a violation of OPRA's immediate access provision at *N.J.S.A.* 47:1A-5(e). *See* Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *Kohn v. Township of Livingston, No. 2011-362 (GRC February 26, 2013)*

GRC determined that because the Newfield Fire Company was not created by the Borough of Newfield, it is not an "instrumentality or agency" of the Borough. The Fire Company is not a public agency subject to the provisions of OPRA pursuant to *N.J.S.A.* 47:1A-1.1. *Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities*, 207 *N.J.* 489 (2011). *See also Chaves v. JFK Medical Center* (Middlesex), GRC Complaint No. 2009-217 (March 2011), *Nash v. Children's Hospital of New Jersey*, GRC Complaint No. 2006-13 (May 2006) and *Cole v. Newton Memorial Hospital*, GRC Complaint No. 2009-68 (February 2010). *Carrow v. Borough of Newfield No. 2012-111 (GRC February 26, 2013)*

GRC determined that the Custodian lawfully denied access to the roll call sheets because such information could pose a significant risk to the safety of police personnel pursuant to *N.J.S.A.* 47:1A-1.1, *Rivera v. City of Plainfield, Police Department* (Union), GRC Complaint 2009-317 (May 2011). *See McElwee v. Borough of Fieldsboro*, 400 *N.J. Super*. 388 (App. Div. 2008). *Alicea v. City of Hoboken Police Department No. 2011-103 (GRC February 26, 2013)*

County violated the Act when Custodian failed to provide date certain upon which it would respond to request for electronic copies (via e-mail) of all cell phone call detail reports for County; however, the Custodian's redactions of the public employee cell phone bills, which redactions were only of the incoming and outgoing telephone numbers except for those calls to the Complainant's residence, are consistent with previous GRC and court decisions on similar records, thus, the Custodian lawfully redacted same as per Livecchia v. Borough of Mt. Arlington, 421 N.J.Super. 24, 19 (App. Div. 2011), which held that "… the privacy interest attached to government telephone records, which protects the person called and his or her telephone number, does not similarly cloak the destination location of calls placed by government employees when necessary to advance the watchful eye of a vigilant public seeking accountability of its municipal representatives." *Papiez v. Mercer Cty*. No. 2012-52(GRC April 30, 2013).

Custodian violated Act by failing to provide cover page of compliance manual. *Carter v. Franklin Fire Dist*., No.2011-319(GRC April 30, 2013)

OSHA reports were not immediate access reports; however, the Custodian's response was insufficient pursuant to N.J.S.A. 47:1A-5(i) because she failed to provide a date certain on which she would respond. *Papiez v. Mercer County*, 2012-59 (GRC March 22, 2013).

Request for listings of "… positions filled, being filled, [etc.]" for DOT and Public Works from June 10, 2006 and February 14, 2012" ; custodian responded by providing current employees lists and noting that the County did not maintain lists of changes or openings. The evidence of record supports that the

Custodian provided all responsive records and that no other records exist. GRC declines to determine that lists of jobs are "immediate access" records because said records are not specifically identified under OPRA as such. *Papiez v. Mercer County*, No. 2012-56 (GRC March 22, 2013) .

Where requestor sought access to vacancy announcements for the position of "Superintendent, Veteran's Haven" and the Custodian conducted a reasonable search for the requested records based on the information provided in the Complainant's OPRA request, he did not unlawfully deny access to the May 2005 vacancy announcement for "Principal Staff Officer 1 (Superintendent, Veterans Haven.)" Therefore, the Custodian did not knowingly and willfully deny access or unreasonably deny access under the totality of the circumstances. *Serdiuk v. NJ Div Military &Veterans Affairs*, No. 2012-27 (GRC March 22, 2013).

Request for an entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. *Boslet v. Greenwich Township*, No. 2012-29 (GRC March 22, 2013).

Where valid OPRA request was made through email, and Custodian counsel's response was inadequate because it failed to provide any specific legal basis for the redactions made to the requested meeting minutes, and the Custodian failed to comply with the terms of the Council's March 22, 2013 Interim Order requiring that the custodian provide the legal basis for redactions, the Board of Education's current OPRA request form, and the resolutions that authorized the Board of Education executive session minutes; and given possibility that the Custodian's actions were intentional and deliberate, and not merely negligent, complaint is referred to the Office of Administrative Law for determination of whether the custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and amount of reasonable attorney's fees due complainant as prevailing party. *Schmidt v. Salem City Board of Education*, No. 2012-14 (GRC April 30, 2013).

Custodian lawfully denied access to the OPRA request for the following reasons: the Custodian properly notified the Complainant that the Civil Service Commission does not maintain the requested proof of veteran status or proof of disability; remainder of the request was invalid because it failed to identify any specific government records but asks for "all information related to" a named candidate for employment. Custodian properly sought clarification of the invalid request; and when Complainant failed to provide adequate clarification the Custodian reiterated request; once Complainant clarified that request was for an employment application; the Custodian correctly denied access to pursuant to Executive Order No. 26, which states that only *resumes* of successful candidates shall be disclosed once that candidate is hired, but makes no mention of employment applications being disclosed after the completion of the recruitment search. *Michael Deutsch v. N.J. Civil Service*, No. 2011-361 (GRC March 22, 2013).

Requested individual employee health benefit information was exempt from disclosure pursuant to the Privacy Rule of HIPAA and *N.J.A.C.*17:9-1.2, and *N.J.S.A.* 47:1A-9; however, the sum total amount of money the Board spends to provide its employees with health benefits is not exempt from disclosure. Disclosure by Custodian of a copy of the Township's budget, which shows

the amount the Township spends on health benefits and the amount the Township spends on life insurance plans as directed in the Council's Order and submitted to the GRC, certified confirmation of compliance, the Custodian complied in a timely manner with the Council's February 26, 2013 Interim Order. (Matter dismissed; complaint withdrawn) *Schilling v. Little Egg Harbor Twp*, No. 2011-294 (GRC April 30, 2013).

Where custodian requested an extension of time to respond to records request but failed to provide a date certain upon which the requested records would be provided, the Council held that the custodian's request for an extension of time was inadequate under OPRA pursuant to *N.J.S.A.* 47:1A-5(i). Council orders Custodian to allow Complainant to inspect the responsive logbook and provide her with the estimated cost to receive copies of the logbook for 2010 through 2012, pursuant to a listed time frame. Also enters order with respect to other responsive records with appropriate redactions. *Papiez v. Mercer*, No. 2012-55 (GRC March 22, 2013).

Council finds that Custodian failed to make any arguments against the Complainant's Denial of Access Complaint and instead attached irrelevant correspondence; based on the inadequate evidence in this matter the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records, and refers the matter to the OAL. (Request had been for all e-mails or inter-office documents sent to and from all parties, in regard to matter concerning James Whelan or Jim Whelan, all memoranda and e-mails involving discussions about the Complainant; details of any conversation between the Custodian and Custodian's Counsel regarding the Complainant; any records provided by Custodian's Counsel as to why James Whelan failed to follow election requirements regarding filing papers; James Whelan and Jim Whelan's voting record, signature and voter card, electronic copy of the policy and procedures rules and regulations manual; State and federal statutes regarding what signature on an oath must be notarized; any documentation in which Custodian's Counsel stated that James Whelan could use the name of Jim Whelan on an Oath of Acceptance and what law supports this decision; what steps were taken in the Complainant's complaint with the Division regarding the forgery and the fraudulent signature submitted to the Division pertaining to Jim Whelan; and whether altering an Oath of Acceptance fraud.) *Roundtree v. Division of Election*, No. 2011-266 (GRC March 22, 2013).

Custodian was ordered to provide requested 2010 Exit Conference Report with Exhibit 1 redacted because Exhibit 1 of the report, "Exit Conference Summary of Audit Findings," contains inter-agency or intra-agency advisory, consultative, or deliberative material exempt from disclosure pursuant to *N.J.S.A.* 47: 1A-1.1. *Maschke v.Winslow Township Fire District #1*, No. 2011-261 (GRC March 22, 2013).

Although Custodian timely responded to request for multiple records stating that the Township needed an additional two (2) weeks to prepare a response, he did not meet that 2- week deadline when he later notified the requestor that the Township needed a second extension of time and thus failed to respond within the extended time period and thus the Complainant's OPRA request is "deemed" denied. Further, Custodian unlawfully denied access to the 26 pages of records that the Complainant identified during his inspection of the

responsive records because he failed to provide same to the Complainant via e-mail as requested. *Kohn v. Livingston Twp*, 2011-342 (GRC March 22, 2013).

Council ordered Custodian to convert and provide the requested CD of open session meeting within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance to the Executive Director. Request had been for Inspection of the audio recording of the Township of Livingston ("Township") open session meeting dated August 1, 2011; and November 28, 2011 OPRA request: Copy of the audio recording of the Township's open session meeting dated August 1, 2011 in CD audio format. The Complainant had acknowledged that the Township suffered from a storm but alleged that many of the OPRA-related issues found within have been consistent since before the storm and have continued since. *Kohn v. Livingston*, No. 2011-344 (GRC March 22, 2013).

Request for copies via U.S. mail of 1) student records; 2) hearing records from a board meeting concerning J.W.; and 3) discipline records, and subsequent request for : Inspection of 1) student records; 2) hearing records from a board meeting concerning J.W.; 3) discipline records; and 4) test results. Although Custodian failed to respond timely when she responded in 12 days rather than 7 business days, she bore her burden of showing that all responsive records were subsequently provided; Custodian certifies that she disclosed 85 records ranging from progress reports and grades to disciplinary and medical records; there was no evidence of "hidden" records as alleged by requestor; no willful violation. *Watson v. Washington Township Public Schools*, No. 2012-33 (GRC March 22, 2013).

The Custodian's failure to respond to the Complainant's OPRA request for emails resulted in a "deemed" denial; Custodian failed to bear her burden of proving a lawful denial of access. However, current Custodian timely complied with the Council's Order. Additionally, the evidence does not indicate that the Custodian's violations were intentional and deliberate. Complainant is a prevailing party entitled to an award of a reasonable attorney's fee; complaint should be referred to the OAL; enhancement of the lodestar fee is not appropriate. *Carter v. Franklin Fire Dist, No. 2011-234(GRC March 22, 2013).*

Request was for current suits involving Orange and West Orange, and a list of law suits involving Orange; due to the complexities of the matter and the lack of sufficient evidence in the record, the GRC refers this matter to OAL to determine whether there has been an unlawful denial of access and whether an attorney who asks to intervene is entitled to intervene on behalf of Complainant where he, while not representing the complainant in this matter, claims an interest in this matter and in "transparency" as he has been the plaintiff or plaintiff's counsel in eight other prerogative writ actions against the City; city objects and notes that the attorney's claims are without merit, as three of them have already been dismissed by Judge Coleman and Judge Kennedy and affirmed by the Appellate Courts. *Gordon v. Orange*, Nos. 2011-336 and 2011-337 (GRC March 22, 2013).

Request for reconsideration is granted because the Complainant has established that GRC's decision that the Complainant's request was overly broad and would require the Custodian to conduct research, was based on a palpably incorrect basis, as it relied heavily on *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 *N.J. Super*. 534 (App. Div. 2005) which is called into question by the Appellate Division's recent decision of *Burke v. Brandes*, No. A3051-11T3 (App. Div. December 7, 2012). *Loigman v. Ocean County Prosecutor's Office*, No.2011-197 (GRC March 22, 2013).

Although Custodian's failure to respond in writing to the request within the statutorily mandated seven business days was a "deemed" denial of access; however, Custodian bore burden of proving that the responsive daily shift schedules were exempt from disclosure as "… emergency or security information … for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein. " However, delay in providing access to other documents was reasonable to ensure that the appropriate copying costs were remitted. *Durham v. Dept. of Corrections*, No. 2012-35 (GRC March 22, 2013).

Custodian's failure to respond in writing to the request within the statutorily mandated seven business days was a "deemed denial" of complainant's OPRA request. The evidence does not indicate that the Custodian's "deemed" denial had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's "deemed" denial did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. *Coffey v. New Jersey Department of Health and Senior Services*, No. 2012-140(GRC June 25, 2013)

Custodian unlawfully denied access to the requested attendance records because said records are considered payroll records, which are available for public access. Custodian lawfully denied access to the requested training records, on the basis that said records are exempt from public access as personnel records. Said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. *Argento v. Township of Bloomfield, No. 2012-165 (GRC June 25, 2013)*

Custodian did not unlawfully deny the Complainant access to his medical records for the period of time which he was at the Steps Program. Complainant's records request, related to "medical, psychiatric or psychological history, diagnosis, treatment or evaluation," and thus were exempt from production pursuant to OPRA. *Janowski v. New Jersey Department of Corrections*, No. 2012-240 (GRC June 25, 2013)

Custodian's failure to respond in writing to the request within the statutorily mandated seven business days was a "deemed denial" of complainant's OPRA request. Notwithstanding the Custodian's "deemed denial," the Custodian has not unlawfully denied access to the records the Complainant asserts were withheld because the Complainant's OPRA request is overly broad and invalid. The evidence does not indicate that the Custodian's "deemed" denial had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's "deemed" denial did not rise to the level of a knowing and willful violation of OPRA and

unreasonable denial of access under the totality of the circumstances. *Fleming v. Town of Phillipsburg*, No. 2012-222 (GRC June 25, 2013)

Custodian failed to bear her burden of proving a lawful denial of access to the responsive invoices for Roach's Towing and Sam's Garage on the basis that the Township was not in possession of any records. Custodian had an obligation to obtain and provide the responsive invoices to the Complainant. *DeRobertis v. Township of Montclair*, No. 2012-199 (GRC June 25, 2013)

Custodian established in his request for reconsideration of the Council's May 28, 2013 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect …basis" and 2) it is obvious that the GRC did not consider the significance of probative, competent evidence; to wit, the GRC did not consider the Custodian's SOI submission when rendering its decision. Custodian's request for reconsideration is granted. *Lamanteer v. County of Gloucester*, No. 2012-198 (GRC June 25, 2013)

No unlawful denial of access occurred because the Delaware Valley Regional Planning Commission is a bi-state agency that is not subject to the provisions of OPRA. Frey v. Delaware Valley Regional Planning Commission No. 2012-139 (GRC June 25, 2013)

Custodian lawfully denied access to the requested 1,300 e-mail addresses. Custodian has borne her burden of proving that the disclosure of approximately 1,300 County e-mail addresses at once, in one document, constituted administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security. Scheeler v. County of Atlantic, No. 2012-97 (GRC June 25, 2013)

Conceptual drawings of redevelopment plan for a B3 zone are exempt from access as "inter-agency or intra-agency advisory, consultative or deliberative" material. Plans were "pre-decisional" and essential to the recommendation or opinion of a Planning Board member intended to facilitate discussion and debate about the B3 zone. Eastwood v. Borough of Englewood Cliffs No. 2012-121 (GRC June 25, 2013)

Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request.

Custodian lawfully denied access to request item nos. 1-7 because said requests sought information rather than specifically identifiable government records. Rangwala v. Borough of Point Pleasant Beach, No. 2012-171 (GRC June 25, 2013)

Custodian improperly required the Complainant to complete an official OPRA request form, because the Complainant's e-mailed and faxed non-form OPRA requests clearly invoked OPRA and made clear the nature of the request. Fire District's policy not to accept electronic transmissions of OPRA requests does not impose an unreasonable obstacle to the transmission of a request for a government record because the Fire District accepts requests hand-delivered, mailed, or faxed. Counsel fees awarded. The GRC finds that 2.3 hours at $300 per hour is reasonable for the work performed by Counsel in the instant matter. Paff v. Bordentown Fire District No. 2, No. 2012-158 (GRC June 25, 2013)

The Custodian unlawfully denied access to Complainant's OPRA request, for salary, position, title, payroll records, length of service, date of service and separation, the reason for separation, for several employees and arrest records. OPRA delineates the specific information contained on an arrest report which must be disclosed to the public. Barkley v. Essex County Prosecutor's Office, No. 2012-34 (GRC May 28, 2013)

Custodian's failure to respond in writing to the request within the statutorily mandated seven business days was a "deemed denial" of complainant's OPRA request. The evidence does not indicate that the Custodian's "deemed" denial had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's "deemed" denial did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Marinaccio v. Borough of Fanwood, No. 2012-180 (GRC May 28, 2013)

Custodian did not unlawfully deny access to the Complainant's OPRA request. Custodian attempted to reasonably accommodate the Complainant's voluminous OPRA requests, an attempt that substantially disrupted the New Jersey Department of Health & Senior Services' operations. Parties could not reach a reasonable accommodation without DHSS incurring additional costs to compile all responsive records to complete a privilege log and risking nonpayment for extraordinary time and effort. Davis v. New Jersey Department of Health and Human Services, No. 2012-94, 142 (GRC May 28, 2013)

Custodian certified that the responsive preliminary incident report describes an inmate injury and the medical action taken; said report is exempt from disclosure because the report relates to medical treatment or evaluation. Robinson v. New Jersey Department of Corrections, No. 2012-129 (GRC May 28, 2013)

Custodian satisfied her burden of proving a lawful denial of access to the responsive GPS records; copies of global positioning system records, to include full reports, of the primary vehicles used by certain staff. GRC found that since the responsive records likely contain information regarding "… security measures and surveillance techniques …" that could create a risk to the officer identified in the request, same are exempt from disclosure under OPRA. Fano v. New Jersey Department of Human Services, No. 2012-148 (GRC May 28, 2013)

GRC determined that, in balancing the Complainant's need to the redacted individual's name against the New Jersey Department of Education's need to keep the information confidential, non-disclosure was favored. The complaint, seeking copies of all documents, complaints or records alleging that the South Plainfield Board of Education President had a conflict of interest in the Sodexo contract, as set forth in an April 17, 2012 OFAC report , was filed by an anonymous person naming the individual as someone possessing evidence to support the complaint. Although it may be true that the Complainant has a right to know the name of his accuser, the accuser that filed the complaint is anonymous. Custodian lawfully denied access to the name of the individual in the New Jersey Department of Education complaint on the basis that disclosure of same would violate the citizen's reasonable

expectation of privacy. Giannakis v. New Jersey Department of Education, No. 2012-152 (GRC May 28, 2013)

Although the NJCU Foundation is a 501(c)(3) nonprofit organization, the Foundation was created as an instrumentality of NJCU to support the University's development, and thus is a public agency for the purposes of OPRA. Complainant's OPRA requests, including any and all e-mails, telephone records, memoranda, facsimiles and letters between the NJCU Foundation and the Executive Committee are overly broad because they fail to identify specific government records sought, and are thus invalid under OPRA. Dusenberry v. New Jersey City University Foundation, No. 2012-82 (GRC May 28, 2013)

GRC determined that the Matawan First Aid and Rescue Squad Squad is not a public agency. The Squad was created by and is run by the members of the Squad, with no oversight from the municipality or any other public agency. Thus, the Squad is not required to receive or respond to OPRA requests. Fisher v. Matawan First Aid and Rescue Squad, No. 2012-164 (GRC May 28, 2013)

GRC determined that the Complainant's request for inspection of any and all non-confidential records relating to an ethics complaint filed by the Complainant is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties. Reid v. New Jersey Department of Corrections, No. 2012-248 (GRC May 28, 2013)

Custodian lawfully denied access to the twenty-seven (27) records the Complainant asserts were withheld because the Complainant's OPRA request is overly broad and invalid. Complainant's request fails to identify any government records and rather seeks "every public record" on file with the agency. Gettler v. Township of Wantage, No. 2012-162 (GRC May 28, 2013)

Custodian unlawfully denied access to portions of the 23 pages of records responsive to the Complainant's OPRA request. Custodian must disclose the responsive e-mails with appropriate redactions for information exempt under Executive Order No. 26 (McGreevey, 2002). Scheeler v. Township of Mt. Laurel, No. 2012-83 (GRC May 28, 2013) http://www.nj.gov/grc/decisions/pdf/2012-83.pdf

Counsel fees are ordered to complainant, prevailing party, for the full amount of $690.00, representing 2.3 hours of service at $300 per hour where the custodian improperly required the Complainant to complete an official OPRA request form; pursuant *to Renna*, e-mailed and faxed non-form OPRA requests clearly invoked OPRA and made clear the nature of the request. The Fire District's policy not to accept electronic transmissions of OPRA requestsdoes not impose an unreasonable obstacle to the transmission of a request for a government record because the Fire District accepts requests hand-delivered, mailed, or faxed (*Paff)*. See Paff v. City of East Orange, 407 *N.J. Super*. 221 (App. Div. 2009). *Paff v. Bordentown Fire Dist* #2, No. 2012-158)(GRC August 29, 2013).

Request was for hardcopies via pickup of 16 items for work conducted by attorney firm pertaining to "Testing Scandal." Here, the Complainant disputed the original Custodian's response that no additional records

existed. The Complainant stated that given the amount of money spent on the BOE's "testing scandal," he could not believe that the BOE maintained no documentation to support the attorney charges. GRC agrees with custodian that the original Custodian was not required to create a record supporting how the attorney's legal fees were accumulated, but also finds that one responsive record was withheld and orders custodian to either disclose the responsive letter, with redactions if necessary, provide the Council with a lawful basis for denying the responsive record, or certify if the letter does not exist. *Simons v. Lakewood Board of Education*, No. 2012-216(GRC August 27, 2013)

E-mail titled "Jane – Confidential Personnel Matter" was exempt from disclosure as ACD material pursuant to *N.J.S.A.* 47:1A-1.1, as determined by GRC's *in camera* inspection; sender is the Complainant's department head and recipients are the Township Administrator and Assistant Township Administrator who are responsible for employee discipline; e-mail comprised internal municipal correspondence between administrators and contained advice concerning an employee and thus contained advisory and deliberative content. Custodian lawfully denied access as it was an intra-agency ACD material exempt from disclosure. *N.J.S.A.* 47:1A-1.1. Unnecessary for the GRC to determine whether the record is exempt as a personnel record pursuant to *N.J.S.A.* 47:1A-10. *Gasparik v.Township of Middletown (Monmouth), No. 2012-234(August 27, 2013)*

Request for "check in the amount of $5.05 for copy fees paid relevant to Request No. C66396 seeking a copy of the complete set of tenure charges with the original markings made by the Honorable Stephen G. Weiss, Administrative Law Judge" lacked sufficient information allowing the Custodian to identify and provide the responsive check for inspection. While request went into extensive detail about the records the Complainant submitted his check for, it lacked necessary identifiers to locate a specific check, such as a specific check number and/or date. A check is comprised of few elements by which to identify it and a check number and date are among them. These elements are crucial to the identification process when seeking a specific check; however, the Complainant failed to identify same. *Valdes v.New Jersey Department of Education*, No. 2012-190 (July 23, 2013).

Request was made for personnel or pensions records which contain the name, position, salary, payroll record and length of service for every full or part time Police Department or Municipal Court employee within a specified time frame. GRC determines that where OPRA makes provision for disclosure of specific information and the Custodian compiles such information from existing government records, such disclosure is an adequate response. Here, the Custodian went beyond what is required after the Complainant expressed dissatisfaction with the list of information prepared by the Custodian and demanded actual payroll records, which the Custodian provided with redactions, whereupon the complainant then asked for a redaction index for each redaction the Custodian made. GRC

finds that while a redaction index is necessary to provide a lawful basis for denying access to the requested record, or part(s) thereof, a redaction index is unnecessary, however, when as here, the redactions were made to material that has not been requested and is being withheld from disclosure via redaction. In this instance, the Custodian redacted a more comprehensive record so that only the information required to be disclosed was revealed, and tailored it by redaction to fulfill the complainant's request. The Complainant did not request the content of the records that were redacted, and therefore it is unreasonable for the Complainant to demand a redaction index. *Marinaccio v. Borough of Fanwood, No. 2012-174 (July 23, 2013)*

The Custodian lawfully denied access to the requested training records for a particular police officer (relating to training on discrimination in the workplace; on retaliation and/or the conscientious employee protection act in the workplace; on harassment) , on the basis that said records are exempt from public access as personnel records. N.J.S.A. 47:1A-10. The Custodian has borne her burden of proving that said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. The Custodian unlawfully denied access to the requested attendance records because said records are considered payroll records. *Argento v.Township of Bloomfield, Complaint No. 2012-165 (August 27, 2013).*

Request for "Onsite inspection of motion made and carried by the Union City Board of Education ("BOE") to approve executive and special meeting held on June 13, 2000, included in the minutes made for any regular or special meeting held for the months of January 2001, to March 2011" was an invalid request. Request fails to identify the specific minutes sought and would require the Custodian to research minutes for a ten (10) year period in order to determine whether any of those minutes contain the motions sought by the Complainant. Custodian has lawfully denied access to the Complainant's request. *Valdes v.Union City Board of Education, Complaint No. 2012-329 (August 27, 2013)*

Where request was for "electronic copies via e-mail of closed session minutes of Board of Education meetings… from November 1, 2002 through March 1, 2003" and Custodian provided redacted records but failed to indicate the specific lawful basis for each redaction, Custodian's response to the Complainant's OPRA request is insufficient. *Kellinger v. Bergen County Prosecutor's Office*, Complaint No. 2012-193

A valid OPRA request requires a search, not research. An OPRA request is thus only valid if the subject of the request can be readily identifiable based on the request. Whether a subject can be readily identifiable will need to be made on a case-by-case basis. When it comes to e-mails stored on a computer, a simple keyword search may be sufficient to identify any records that may be responsive to a request. Further, a completed "subject" line may be sufficient to determine whether the record relates to the described subject. Again, what will be sufficient to determine a proper

search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous e-mails to determine if any are responsive: in other words, conduct research. *Carter v. Franklin Fire Dist No. 1, GRC Complaint Nos. 2012-288, 2012-289, 2012-290, 2012-293 and 2012-2942.*

Custodian correctly denied access to requestor's own mental health records. *Larry McLawhorn GRC Complaint No. 2012-292 Complainant v. New Jersey Department of Corrections* (July 23, 2013)

Custodian should not have withheld regular meeting minutes; however, if the meeting minutes were not yet approved as of the date of the OPRA request, the Custodian would not have been obligated to disclose them; unapproved, draft meeting minutes constitute inter-agency or intra-agency advisory, consultative, or deliberative material, they are not government records pursuant to the definition of same in N.J.S.A. 47:1A-1.1. *Hemmann v. Borough South Toms River*, GRC 2013-224 (Oct 29, 2013).

Request was invalid because it failed to provide ample identifiers necessary for the original Custodian to locate the responsive records where request did not include a subject for the correspondence; it generally sought all correspondence the Complainant sent to the NPD for a certain time frame and all records generated from that correspondence. *Ciszewski v. Newton Police*, GRC 2013-90(Oct 29, 2013).

Request for the dates of a workers' compensation judge's leave of absence and "a copy . . . any other record recording [the judge's] leave of absence including any and all E-Mails requesting and granting such leave of absence" fails to identify with reasonable clarity those records that were desired. *Gillespie v. Dept Labor* GRC 2013-84(Oct 29, 2013).

Custodian denied request for "[i]ndex to waterfront development permits from 1973 to the present," because the Custodian has certified that no such record exists; while records of various permits may exist in different forms and in different storage mediums, OPRA does not require a custodian to analyze such records in order to create a new document in response to a complainant's request. *Eastman v. NJDEP* GRC 2013-113 (Oct 29, 2013).

Custodian lawfully denied access to invalid request; request fails to identify the specific minutes sought and would require the Custodian to research minutes for a ten year period to determine whether any of those minutes contain the motions sought by the Complainant. *Valdes v. Union City BOE*, GRC 2012-329(Oct 29, 2013).

As Custodian certified in the Statement of Information that no records responsive to the Complainant's OPRA requests seeking the 2011 contract and numerical lists exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. *Papiez v. Mercer Cty*, GRC 2013- 2013-82 and 2013-88 (Oct 29, 2013).

Custodian violated the act by failing to respond to each request item individually and failed to respond to request for for legal invoices. The Custodian additionally violated the Act as she failed to prove that the special service charge of $2,969.88 was reasonable and warranted; however, special service charge of

$465.44 for other items was reasonable. Counsel fees are warranted as the Complainant was prevailing party having achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Specifically, the Council ordered the Custodian to calculate the "actual cost" of the records responsive to request Item No. 1 within five (5) business days from receipt of the July 31, 2012 Interim Order and ordered the Custodian to assess a special service charge of $1,857.75 for the records responsive to request Item No. 2 and not $2,969.88 as the Custodian originally calculated. Further, the relief ultimately achieved had a basis in law. *Halper v. Piscataway Twp* , GRC 2010-281(Oct 29, 2013)

No violation for custodian's failure to provide copy of all accident reports involving named individual and a copy of all scooter board purchase records, respectively, where custodian certified that the records are nonexistent, of which Complainant provides no evidence to refute. Custodian failed to bear her burden of proving a lawful denial of access to copies of all tort claim notices during the twenty year period preceding date of request, which are the records responsive to the request; therefore, the Custodian must disclose said records. *Figueroa v. Nutley Board of Education (*Essex) GRC 2012-266(Oct 29, 2013)

No violation where complainant sought "all documentation identifying the Insurance Carrier for the Township of Deptford." Complainant did not provide any limitations to help identify which documents were sought; did not specify types of coverage or time periods; request on its face lacked sufficient information to allow the Custodian to identify and provide any responsive records. *Cokos v. Deptford Twp*, GRC 2013-60 (Sept. 24, 2013)

Complainant is seeking records of the consultations between the University's In-House Counsel and the University's representative at the Attorney General's Office regarding the In-House Counsel's potential conflict of interest in investigating an ethics complaint; emails responsive to this request constitute written legal advice rendered to a public entity by retained counsel. Thus, the Custodian lawfully denied access to these communications as they are shielded from disclosure based on OPRA's exemption for attorney-client privileged materials. *Rodriguez v Kean University*, GRC 2013-68 (Oct 29, 2013).

Where requestor sought copy of the resolution packet and counsel opinion on the collective bargaining agreement between the Jersey City Housing Authority and the Independent Service Workers' of America, and the custodian provided the packet but not the counsel opinion; no violation as the document did not exist; deemed denial for failure to timely respond, but not knowing or willful violation. *Costigan v. Jersey City Housing Authority*, GRC 2012-274(Sept 24, 2013)

Private email addresses: Where requestor sought communication regarding budget proposal, custodian did not unlawfully redact personal e-mail addresses, but was ordered to disclose names of e-mail senders and recipients "where only redacted e-mail address[es are] present …" Counsel asserts that the issue of under what circumstances e-mail addresses should be disclosed is a novel one that the GRC answered by requiring the disclosure of the names of senders or recipients if their names were not disclosed by way of redacted e-mail addresses. Judge had found that OPRA's dual aims of public access and

protection of personal information weigh in favor of redacting the personal email addresses from the disclosed emails in the present case; the potential for harm in subsequent nonconsensual disclosure of the email addresses and the lack of any adequate safeguards that would prevent unauthorized disclosure of the email addresses outweigh the degree of need for access to these email addresses. The public interest in knowing to whom public records are sent dictates in favor of disclosure of the names of the email "senders" and recipients" where only the redacted email address is present on the subject emails. *Gettler v. Wantage Twp* , GRC 2009-73 and 2009-74(Oct 29, 2013)

GRC determined that the Custodian of Records attempted to reasonably accommodate the Complainant's voluminous requests and subsequently certified that responding to the requests would have substantially disrupted agency operations. Complainant sought countless complaints and documents related thereto for over a 15-year period (1998- 2013). Such a request was overly broad. Additionally, it is evident that the parties could not reach a reasonable accommodation. Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA request. *N.J.S.A.* 47:1A-5(g); *N.J.S.A.* 47:1A-6; C*aggiano v. NJ Dep't of Law & Public Safety, Div. of Consumer Affairs*, GRC Complaint No. 2007-69 (September 2007); *Vessio v. NJ Dep't of Cmty. Affairs, Div. of Fire Safety*, GRC Complaint No. 2007-63 (May 2007); *Dittrich v. City of Hoboken* (Hudson), GRC Complaint No. 2008-13 (June 2009). *See also Davis v. NJ Dep't of Health & Senior Services*, GRC Complaint Nos. 2012-94 and 2012-142 (May 2013). *Karakashian v. NJ Department of Law & Public Safety, Division of Consumer Affairs, Office Board of Medical Examiners* No: 2013-121 and 2013-144 (GRC November 19, 2013).

GRC determined that the Custodian of Records did not unlawfully deny access to the requested records; a copy of the completed Permanent Aeronautical Facility Application Evaluation Ranking form (an "Evaluation") used by the DOT's Aeronautics Division in evaluating licensing criteria for a helistop application. Because the evaluations contain recommendations about DOT policy and were generated before the DOT made a decision regarding the helistop, the responsive Evaluations are reflective of the deliberative process and are exempt from access as ACD material. *See* N.J.S.A. 47:1A-1.1; In *Re the Liquidation of Integrity Insurance Company*, 165 *N.J.* 75, 84-85 (2000). *See also Education Law Center v. New Jersey Department of Education*, 198 *N.J.* 274, 304 (2009). *Held v. NJ Department of Transportation* No: 2013-142 (GRC November 19, 2013).

GRC determined that $300 was a reasonable fee for an attorney of Counsel's experience representing clients before the GRC. A Counsel's hourly rate should be assessed to reflect his experience and the local prevailing rates for representation of clients in OPRA matters. However, the Council found that the time expended, 17.0 hours, was not reasonable. The Council finds that 5.2 hours at $300 per hour is reasonable for the work performed by Counsel in the instant matter. *Deloy v. Township of Lyndhurst* No. 2012-128 (GRC November 19, 2013).

GRC determined that the Custodian of Records did not unlawfully deny access under OPRA to the requested email directing the placement of a State Ethics

Commission report into a University employee's personnel file. *See N.J.S.A.* 47:1A-6. The requested email was the equivalent of "personnel records" exempted under *N.J.S.A.*47:1A-10, and "[t]he same legislative intent embodied in the general exemption of personnel files from disclosure – one that aims to protect personal information disclosed to government agencies when such agencies are operating under the mantle of employer – demands that protection be afforded to the documents at issue" here. *North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office*, 405 N.J. Super. 386, 389 (App. Div. 2009); *see also Dusenberry v.New Jersey City University*, GRC Complaint No. 2009-101 (April 28, 2010). *Rodriguez v. Kean University* No. 2013-268 (GRC November 19, 2013) .

GRC determined that the Custodian of Records did not unlawfully deny access to government records. Complainant's request for emails was impermissibly broad in that it failed to identify with sufficient "specificity or particularity the governmental records sought." *See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 *N.J. Super*. 534, 549 (App. Div. 2005). Nor did Complainant specify the identifying particular dates and parties. GRC further determined that the Custodian did not unlawfully deny access to the requested OEM Organizational Charts and EMP. *N.J.S.A.* 47:1A-6. These documents are not considered "government records" under OPRA because such records contain security measures and emergency or security information or procedures that, if disclosed, would substantially interfere with the State's ability to protect and defend the State and its citizens. *N.J.S.A.* 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order No. 21 (McGreevey 2002); *Vasquez v. Burlington County*, GRC Complaint No. 2005-193 (February 17, 2005); *Mariano v. New Jersey Department of Environmental Protection*, GRC Complaint No. 2003-140 (February 27, 2004). *Russomano v. Township of Edison* No. 2012-307 (GRC November 19, 2013).

GRC determined that Complainant's requests were invalid under OPRA because the requests were overly broad, failed to identify specific government records and would require the Custodian to conduct research in order to determine which records may be responsive to the requests. *See MAG Entm't, LLC v.Div. of ABC*, 375 *N.J. Super*. 534 (App. Div. 2005), *Bent v. Stafford Police Dep't*, 381 N.J. Super. 30 (App. Div. 2005), and *NJ Builders Assoc. v. NJ Council on Affordable Hous*., 390 *N.J.Super*. 166 (App. Div. 2007). Complainant sought copies via e-mail of all license restoration letters sent from March 11, 2013 to March 15, 2013, by the NJMVC to New Jersey drivers who were suspended for reasons as determined by the courts, the MVC, or any other agency. Complainant also sought unredacted copies of all municipal court orders in which there was a driver license suspension, received by the NJMVC from March 11, 2013 to March 15, 2013, inclusive. *Siciliano v. NJMVC* No. 2013-98, 2013-99 (GRC November 19, 2013).

Custodian lawfully denied access under OPRA to the requested memoranda regarding the disciplinary action taken by the Complainant against two (2) University employees. *See N.J.S.A.*47:1A-6 as the records are personnel records that are exempt from disclosure under OPRA, and the complainant does not qualify as an "individual in interest" under *N.J.S.A.* 47:1A-10. *See Kovalcik v. Somerset County. Prosecutor's Office*, 206 *N.J*. 581, 594 (2011); *North Jersey Media Group, Incorporated v. Bergen County*. Prosecutor's

Office 405 *N.J. Super*. 386, 389(App. Div. 2009); *Hewitt v. Longport Police Department*, GRC Complaint No. 2004-148 (March2005); *Mapp v. Borough of Roselle* (Union), GRC Complaint No. 2009-334 (November 30,2010). *Rodriguez v. Kean University* No. 2013-157 (GRC November 19, 2013).

GRC determined that the Custodian of Records did not unlawfully deny access to governmental records. Complainant sought overtime justifications for several employees. There is no requirement that payroll records must include a description or justification of the work performed. Additionally, information pertaining to or which may reveal the duty assignments of law enforcement officers are exempt from OPRA. Custodian lawfully denied access to the records under *N.J.S.A.* 47:1A-6. *N.J.A.C.* 12:16-2.1; *N.J.A.C.* 13:1E-3.2(a)(7). *Baker v. New Jersey State Parole Board* No. 2013-143 (GRC November 19, 2013).

GRC determined that Complainant's request seeking "… all records …" concerning the BME's complaint process was invalid because it failed to seek specific, identifiable government records; the Custodian is not required to research every record in his possession to determine whether same refers to the process. *MAG Entm't, LLC v. Div. of ABC*, 375 *N.J. Super*. 534, 546 (App. Div. 2005); *Bent v. Stafford Police Dep't*, 381 *N.J. Super*. 30, 37 (App. Div. 2005); *NJ Builders Assoc. v. NJ Council on Affordable Hous.*, 390 N.J. Super. 166, 180 (App. Div. 2007); *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009). *John Ciszewski v. NJ Department of Law & Public Safety, Division of Consumer Affairs, Office Board of Medical Examiners Custodian of Record* No. 2013-127 (GRC November 19, 2013) .

GRC determined that the Custodian of Records did not unlawfully deny access to governmental records. Responsive documents (Mayor & Council Budget Workbook include all material etc. handed out during budget Meetings) were reflective of the deliberative process and were exempt from access as ACD material because they contained recommendations about Township policy and were generated before the Township made a decision regarding its Municipal Budget. *See* N.J.S.A. 47:1A-1.1; *In Re the Liquidation of Integrity Ins.Co*., 165 *N.J*. 75, 84-85 (2000). *See also Educ. Law Ctr. v. N.J. Dep't of Educ*., 198 *N.J*. 274, 304 (2009). *Kohn v. Township of Livingston* No. 2013-123 (GRC December 20, 2013).

GRC determined that the Custodian of Records lawfully denied access to the requested Affirmative Action File because same is exempt from disclosure as information related to a sexual harassment complaint and grievances filed by or against an individual. *N.J.S.A.* 47:1A-1.1.; *N.J.S.A.* 47:1A-6. *Bell v. Paterson Public Schools* No. 2013-04 (GRC December 20, 2013).

The GRC determined that the Custodian of Records did not unlawfully deny access to various governmental records. The Custodian lawfully denied access to the Complainant's complete medical/dental record based on the exemptions to OPRA listed at *N.J.A.C.* 10A:22-2.3(a)(4) and the alternative procedures available at *N.J.A.C.* 10A:22-2.7. The Custodian lawfully denied access to Complainant's complete Account state pay monthly forms based on Executive Order No. 26 (McGreevey 2002). *N.J.S.A.* 47:1A-6; *N.J.S.A.* 47:1A-9. *Sheridan v. New Jersey Department of Corrections* No. 2013-122 (GRC December 20, 2013).

GRC determined that the Custodian of Records did not unlawfully deny access under OPRA to the requested report from the University's Ethics Liaison Officer setting forth his findings and recommendations regarding sanctions of a University employee. *See N.J.S.A.* 47:1A-6. The report related to an ethics investigation that was the equivalent of the "personnel records" exempted under *N.J.S.A.* 47:1A-10, and "[t]he same legislative intent embodied in the general exemption of personnel files from disclosure – one that aims to protect personal information disclosed to government agencies when such agencies are operating under the mantle of employer – demands that protection be afforded to the documents at issue" here. *North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office*, 405 *N.J. Super*. 386, 389 (App. Div. 2009); *see also Dusenberry v. New Jersey City University*, GRC Complaint No. 2009-101. *Rodriguez v. Kean University* No. 2013-197 (GRC December 20, 2013).

Where requestor claimed that the township custodian redacted the 136 billing entries in the invoices requested "to the point of meaninglessness" the GRC will conduct an in camera review to determine the validity of the Custodian's assertion that the records constitute attorney-client and work product privileged material exempt from disclosure. *Skidmore v. Lebanon Twp*, GRC 213-194(January 28, 2014)

Although the Complainant may not have received the Custodian's correspondence tendering the requested documents, the letter was mailed out on and documents were produced by the Custodian a month prior to the Complainant filing her complaint; since the documents were produced prior to filing of the Complaint, the filing of the same did not bring about a change in the Custodian's conduct, so she was not a prevailing party entitled to counsel fees. Reconsideration request is denied as untimely filed. *Giblin v. Wildwood*, GRC 2012-302, 2012-303 and 2012-304 (January 28, 2014)

Custodian violated OPRA when she did not timely respond to OPRA request and that failure resulted in a "deemed" denial of the request; failed to provide immediate access to the requested bills and vouchers in redacted or unredacted form; denied access to the remaining records relevant to the complaint without providing a legal reason; refused to refund the $317.80 he prepaid in copying fees for which she was unable to provide a proper accounting; and failed to comply with the terms of the Council's Interim Order. *Femminella v. Atlantic City*, GRC 2012-232 (January 28, 2014)

No violation where there were no responsive records regarding the sale prices for specific property and how many times it has been sold. *Kulig v. Deerfield*, GRC 2013- 174(January 28, 2014)

GRC will review unredacted MVR (video recording) to determine if redactions were proper. *Nelson v. Law and Public Safety,*GRC 2013-124 (January 28, 2014)

Deemed denial was not knowing or willful, where Custodian certifies that the OPRA request "fell through the cracks" as it arrived while the Custodian's assistant was on vacation and the office was short-staffed. *Kohn v. Livingston (*January 28, 2014)

Motion for reconsideration is denied; Custodian has failed to establish that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence or that it acted arbitrarily, capriciously or unreasonably.

Thus, the Custodian failed to support her claim that reconsideration should be granted based on mistake and her request for reconsideration should be denied and this complaint should be referred to OAL. *Cherensky v. Fanwood*, GRC 2013-87 (January 28, 2014)

The Custodian complied with the Council's September 24, 2013 Interim Order by providing the Complainant with the responsive closed session minutes without redactions of the homeowner's name; Complainant was a prevailing party entitled to reasonable counsel fees of $960.00, representing 3.2 hours at $300 per hour. *White v. Monmouth Reg. High School*, GRC 2012-218 (January 28, 2014)

Although the Custodian violated OPRA's immediate access provision at N.J.S.A. 47:1A-5(e), he provided the Complainant with all records responsive to the request even though the MVC does not maintain the requested contracts; no willful violation found. *Scheeler v. NJMV*, GRC 2013-207(January 28, 2014)

Complainant's dissatisfaction with the Council's decision is not a basis for reconsideration and request for reconsideration should be denied. The Complainant failed to establish extraordinary circumstances, fraud, new evidence or illegality, or that the GRC acted arbitrarily, capriciously or unreasonably regarding the municipal prosecutor's records, where no records where township responded that no records responsive exist or that documents requested were not amply identified. *Caggiano v. Green*,GRC 2012-252 (January 28, 2014)

Although the Custodian failed to respond to the Complainant's OPRA request in a timely manner and failed to bear his burden of proving that the denial of access to copies of telephone logs, auditing fees and publications regarding legal and/or auditing services, and settlement agreements for certain time periods was authorized by law, he did comply with the terms of the GRC's Order. *Inzlebuch v. Lakewood Board of Education*, GRC 2013-97, March 25, 2014

Requestor sought all OPRA requests submitted to the NJDOE in 2013. No special service charge warranted. However, NJDOE can charge materials and supplies used in actually making the copies. *Scheeler v. N.J. Department of Education*, GRC 2013-190, March 25, 2014

Records sought are not immediate access records and the Complainant verified his complaint before the statutory time frame provided for the Custodian to respond had expired, this complaint is materially defective and must be dismissed. *Alexander v. NJ Department of Corrections*, GRC 2014-70, April 29, 2014

Request for reconsideration denied where Custodian had been found only one month earlier to be in contempt of an Interim Order due to his lack of a response. *Shuster v. Pittsgrove*, GRC 2013-6, April 29, 2014

Copies of all custodians and maintenance records, plus their bosses, salaries, overtime and bonuses from July 1, 2011 to June 3, 2012. Copies of name and salaries plus overtime pay for every employee of board in a non-teaching capacity to include cafeteria, stadium, maintenance, warehouse, janitors, etc. Custodian failed to respond to records request in required amount of time. Records are deemed to have been denied, yet actions do not rise to knowing and willful denial. *Bidnick v. Clifton Board of Education*, GRC 2013-254, April 29, 2014

Requestor sought any and all documents provided to the Somerset County Prosecutor's Office relating to a complaint initiated by requestor. All records responsive to the Complainant's OPRA request were disclosed to the Complainant within the statutorily mandated response time and the Complainant failed to provide any competent, credible evidence to contradict the Custodian's certification, the Custodian did not unlawfully deny the Complainant access to the requested records. *Wicks v. Bernards Township Bd. of Educ.*, GRC 2013-210, April 29, 2014

Requestor sought Financial records specific to the Autism unit for the years 2010 through 2013 and all Request for Autism & ABA Student Services forms to the Autism Unit from all school districts for the years 2010 through 2013. Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. *N.J.S.A.* 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request. However, the Complainant's request, in part fails to identify any government records and instead seeks "financial records" that support an unidentified "determination." *Breslin v. Burlington County Special Services School District*, GRC 2013-295, April 29, 2014 (Interim order)

Requestor sought the redacted portion of a superintendent search report prepared by search firm subtitled "concerns and challenges facing the school district." After *in camera* examination of documents in question, GRC determines the Custodian lawfully denied access to the redacted segment of the requested record as advisory, consultative or deliberative material pursuant to *N.J.S.A.* 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny access under the totality of the circumstances. *Stone v. Manasquan School District*, GRC 2013-203, April 29, 2014

GRC determined that complaint was materially defective and must be dismissed. Complaint was filed only two days after OPRA request for W-2 forms. As W-2 forms are not immediate access government records, complaint was filed before the statutory time for access (7 days) had expired. *Frank L. Cahill v. Township of Parsippany-Troy Hills*, No. 2014-226 (GRC June 24, 2014)

GRC determined that emails between Complainant and Custodian did not constitute an OPRA request. *Caren Matayckas v. NJ Department of Children and Families*, No. 2013-316 (GRC June 24, 2014)

Redacting information "not related to" a request is not a lawful basis to deny access to records under OPRA. Unless expressly identified for redaction, everything in the record shall be disclosed. Entries marked "not related to shared services" improperly redacted. Complainant had asked for electronic, via e-mail, of unredacted copies of all records in the Township's possession including, but not limited to, correspondence, reports, e-mails, telephone logs and minutes of the executive session of any committee meeting that reflect, refer or relate to discussions of any Shared Service Agreement with any other township for January 1, 2011 to December 1, 2011, including any materials prepared by any member of the Township Committee, Custodian, Chief Financial Officer, Tax Collector, Road Supervisor and Township attorney.

John Hyland v. Township of Lebanon and Township of Tewksbury, No. 2012-227, 228 (GRC June 24, 1024)

Board president's response on behalf of Custodian was insufficient as he failed to provide a date certain as to when Custodian would reply to Complainant. Custodian unlawfully denied access of transportation contracts, invoices, bills and purchase orders for 2009-2010 and 2010-2011, because the evidence of record indicates that same were not part of the FBI's investigation and therefore were not exempt from access at the time of the Complainant's OPRA request. Complainant requested Inspection and/or copies of all transportation contracts, invoices, bills and purchase orders for public and non-public school bus routes servicing Lakewood students living in Somerset Walk during the 2009-2010, 2010-2011, 2011-2012 and 2012-2013 school years. *Joyce Blay v. Lakewood Board of Education*, No. 2013-150 (GRC June 24, 2014)

Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA request using ""…. . . the proper form . . ." Complainant's request at issue here was appropriately filed and the Custodian should have responded to same specifically advising of Elections' policy change regarding the methods by which the Complainant could submit a request. While a custodian is not permitted to deny a request for records under OPRA simply because it is not on the agency's form, an agency does have the authority to dictate the methods by which a requestor can transmit an OPRA request. *David J. Roundtree v. NJ Department of State, Division of Elections*, No. 2013-258 (GRC June 24, 2014)

Because the Custodian certified that the requested report contains a detailed analysis of the court buildings' security systems, to include surveillance capability, and that disclosure of the report could jeopardize the safety of those working in the building as well as visitors to the buildings, the Custodian lawfully denied access to the requested report as "…security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." *Jose R. Gonzalez v. Hudson County's Sheriff's Office,* No. 2013-370 (GRC June 24, 2014)

Notwithstanding the existence of reimbursement payments made pursuant to a possible ethics violation, such records are not disclosable under OPRA because disciplinary actions are not specifically identified as personnel information subject to disclosure under OPRA. Custodian lawfully denied access to the requested reimbursements, which may or may not exist within employee's personnel file. Allegation was that employee had misused University property at a cost of $ 20,000. *Luis F. Rodriguez v. Kean University*, No. 2013-296 (GRC June 24, 2014)

Because the Complainant's OPRA request seeks a class of various documents, rather than a request for specifically named or identifiable records, the request is invalid under OPRA. Custodian is not required to conduct research to locate documents responsive to the Complainant's request. *Maurice Torian v. NJ State Parole Board*, No. 2013-245 (GRC June 24, 2014)

New Jersey Department of State's policy not to accept OPRA requests via e-mail does not impose an unreasonable obstacle to the transmission of a request for a government record because the Department accepts requests via mail, hand-

delivery and OPRA Central. Custodian has not violated OPRA. *David J. Roundtree v. NJ Department of State*, No. 2013-260 (GRC June 24, 2014)

GRC finds that the Custodian lawfully denied access to the requested records because NJ Shares does not sufficiently possess the characteristics required to be considered an instrumentality of the state, or a political subdivision thereof, and thus a "public agency" subject to OPRA. *Rafael L. Martinez v. NJ Shares*, No. 2013-286 (GRC June 24, 2014)

Custodian violated *N.J.S.A.* 47:1A-5(e) by failing to provide immediate access or to provide an immediate response to the Complainant's OPRA requests for timesheets, payroll, and/or overtime records. *Stacie Percella v. City of Bayonne*, No. 2013-217 (GRC June 24, 2014)

Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA requests using ". . . the proper form . . ." Custodian should have responded to same specifically advising of Elections' policy change regarding the methods by which the Complainant could submit a request. While a custodian is not permitted to deny a request for records under OPRA simply because it is not on the agency's form, an agency does have the authority to dictate the methods by which a requestor can transmit an OPRA request. *David J. Roundtree v. NJ Department of State, Division of Elections*, No. 2013-259 (GRC June 24, 2014)

Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA requests using ". . . the proper form . . ." Custodian should have responded to same specifically advising of Elections' policy change regarding the methods by which the Complainant could submit a request. While a custodian is not permitted to deny a request for records under OPRA simply because it is not on the agency's form, an agency does have the authority to dictate the methods by which a requestor can transmit an OPRA request. *David J. Roundtree v. NJ Department of State, Division of Elections*, No. 2013-257 (GRC June 24, 2014)

The potential for harm stemming from non-consensual disclosure, coupled with teacher's reasonable expectation of privacy, warrants non-disclosure of the full address. However, these concerns do not extend to the limited disclosure of just the town of residence. Custodian has failed to bear her burden of proving that disclosure of the town of residence listed on teacher's application for a teaching license would violate her reasonable expectation of privacy of. Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence. *Harry B. Scheeler, Jr. v. NJ Department of Education*, No. 2013-191 (GRC June 24, 2014)

Custodian improperly required the Complainant to complete an official OPRA request form. Notwithstanding the Custodian's "deemed" denial, the responsive documents to the Complainant's OPRA request are exempt from disclosure as the Complainant seeks records containing information regarding the victim of his crimes. Custodian's denial of access is proper because the Complainant seeks records regarding relatives of his victim. *Brian Killion v. Hammonton Police Department*, No. 2013-228 (GRC June 24, 2014)

Custodian bore his burden that did not unlawfully deny access to the Complainant's request for all e-mails pertaining to city business from former mayor. Complainant's request for emails pertaining to "city business" is overly broad and invalid. Custodian bore his burden that he did not unlawfully deny access to the Complainant's request for all text messages and Facebook messages pertaining to city business from former mayor. Complainant's request for text messages and Facebook messages pertaining to "city business" is overly broad and invalid. *Jason Todd Alt v. City of Vineland*, No. 2013-205 (GRC June, 24, 2014)

Custodian lawfully denied access to the requested appraisal. Disclosure of the appraisal would have provided an advantage to bidders and competitors vying with the Township for ownership of the subject property. *Larry A. Kohn v. Township of Livingston*, No. 2013-308 (GRC June 24, 2014)

Custodian of Records failed to produce all requested records within statutory time frame amounting to a denial of a records request. However, complainant failed to delineate the records that were denied or the reasons why records that were timely provided rose to the level of an unlawful denial. Accordingly, the custodian did not unlawfully deny access to the requested records. *Inzelbuch v. Lakewood Bd. of Educ. Custodian of Records*, 2014 July 29.

Custodian of Records timely complied with interim order of the Government Records Council where he made responsive records available to complainant within the time extension granted by the Council. B*lay v. Lakewood Bd. of Educ. Custodian of Records*: 2014 July 29.

Custodian of Records unlawfully denied access to public transportation contracts based on his concern over the pendency of an FBI subpoena. Custodian's concern mitigates against a finding of a knowing and willful violation. *Blay v. Lakewood Bd. of Educ. Custodian of Records*: 2014 July 29.

Custodian of Records failed to timely comply with interim order but the late submission was fully responsive to the complainant's request. Custodian's actions did not rise to the level of a knowing and willful violation. *Scheeler v. NJ Dept. of Educ. Custodian of Records*: 2014 July 29.

Records custodian was not obligated to provide copies of work-assignment records of private "for-profit" entities that are contracted to provide services to the district; such records are not "personnel records" under the Open Public Records Act. *Owoh v. West Windsor-Plainsboro School District*, (Nos. 2014-16, 2014-62 and 2014-81) GRC 2014:September 30

Where records custodian timely provided personnel information extracted from personnel records, the Council determined that the records custodian was not obligated to provide the names of the individuals who compiled the district's response to the OPRA request, nor was custodian required to provide the records from which the responsive personnel information was obtained. *Owoh v. West Windsor-Plainsboro School District*, (Nos. 2014-15, 2014-61, 2014-105) GRC 2014:September 30

Request for resume from school district dismissed where custodian properly denied request because the record did not exist and the requestor offered nothing in support of their assertion that it did. *Tomlinson v. Beach Haven Board of Education 2014-104*, GRC 2014: Oct. 28

No unlawful denial of access to the requested employee information of private, for-profit businesses. Custodian was not obligated to obtain personnel information from those businesses and provide same to the Complainant because that information does not meet the definition of a "government record" under OPRA. Personnel records of private, for-profit companies are not "government records" subject to access under OPRA. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. *Owoh v. West Windsor Plainsboro School District 2014-16, 2014-62 and 2014-81*, GRC 2014: Sept. 30

Custodian timely disclosed all responsive personnel information to the Complainant and thus, no unlawful denial of access occurred. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee in dispute of personnel information. *Owoh v. West Windsor Plainsboro School District Nos. 2014-15, 2014-61 and 2014-105*, GRC 2014: Sept. 30

OPRA requests all seeking "information" or the "motion" approving the UCBOE's meeting minutes from a particular date and session invalid. The Council has previously considered five (5) nearly identical requests made by the Complainant and, in each case, determined that such requests are invalid owing to their insufficient specificity and requirement that the Custodian to perform research. Complaints should be dismissed as frivolous. *Valdes v. Union City Board of Education, Nos. 2013-147, 2013-201, 2013-298 & 2013-301*, GRC 2014: Sept. 30

OPRA request seeking information presented to board on residency of student properly denied because records sought were student records. *See, N.J.A.C.* 6A:32-7.5; *Popkin*, GRC 2011-263. *Inzelbuch v. Lakewood Board of Education, No. 2014-92*, GRC 2014: Sept. 30

Custodian failed to timely respond to OPRA request seeking Child study team e-mails. However, custodian did provide requested records, albeit after the statutory requirement. *Inzelbuch v. Lakewood Board of Education, No. 2014-79*, GRC 2014: Sept. 30

GRADES

Court affirms Commissioner's dismissal of parents' challenge to a failing grade their daughter received in Freshman English class; the parents' filing was untimely and was not brought within 90 days of the starting date to trigger the limitation period, the date on which the parents met with the local administration and were informed that their daughter's failing grade would not be changed. H.H. v. Bd. of Educ., No. A-3638-09T3, 2011 N.J. Super. Unpub. LEXIS 333(February 15, 2011).

GRADUATION

Emergent relief denied. Board decision to not name graduating student as "distinguished student speaker" upheld. Student was not eligible for honor as did not attend Academy of Biological and Environmental

Sciences for all four of her high school years. Board criteria for determining "distinguished student speaker" reasonable and fair. (03:June 18, K.R.C.)

Emergent relief granted. Board's action prohibiting student from walking at high school graduation reversed. Decision was arbitrary, capricious and unreasonable. (03:June 20, C.M.)

Commissioner dismisses as moot the parents' challenge to board's determination that student, who had failed eleventh grade English and thus not satisfied graduation requirements, could not march in the processional or participate in graduation ceremonies. Student later passed his courses at the County Technical Adult High School where he received his diploma rather than earning his diploma from the high school; matter is moot. Tomlin, Jr., Commr 2011:May 23 (Cape May Reg.)

Where former student files petition eleven months after he received notification that he did not have enough credits to graduate due to loss of credit for absenteeism, Commissioner relaxed the 90-day timeframe in the interest of fundamental fairness and remanded the matter to the OAL for a full hearing on the merits. Brophy, Commr. 2012: Jan 18 (Gloucester) » OAL Decision

Commissioner upheld district's determination that, due to absenteeism and loss of credit, and failure of a course, and failure to finish the district's summer credit completion program following his junior year, a student had not satisfied requirements for graduation, and therefore could not march in the processional or otherwise participate in high school graduation ceremonies in June 2012. A local board of education has broad discretionary powers pursuant to N.J.A.C. 6A:8-5.1 and has the authority to prescribe graduation requirements for a State-endorsed diploma; student's unjustified incarceration does not excuse him from complying with the attendance requirements of the school district, and there was no indication that the board acted in an arbitrary, capricious or unreasonable fashion. Accordingly, the ALJ concluded that the petition in this matter must be dismissed. Stevens, Commr 2012: June 8.

Commissioner dismisses with prejudice the request of an adult student for emergency relief to permit her to graduate and to attend commencement; petitioner received her high school diploma and finds that she has knowingly and voluntarily withdrawn her emergent relief application. *Cheng v. North Bergen Bd. of Ed.*, Commr 2012:Nov. 13.

Where petitions for emergent relief seeking change in time for holding high school and middle school graduations were denied, and as graduation took place, matter dismissed as moot. *Bermudez, Commr 2013: Aug 16.*

HARASSMENT, INTIMIDATION AND BULLYING (HIB)

Commissioner disagrees with ALJ, and rejects parent's request for reimbursement for student's senior year tuition at an out-of-district high school after the

parent unilaterally withdrew her son from prior to the beginning of his senior year 2009, alleging that the District failed to address persistent intimidation, harassment and bullying based on perceived sexual preference of the boy during his junior year. Parent failed to prove by a preponderance of the competent and credible evidence that the alleged bullying took place, that timely notice of the harassing conduct was provided to the district, that under all of the circumstances the Board failed to take actions reasonably calculated to remediate and end the conduct, that petitioner exhausted all available administrative remedies with the district and had no alternative but to remove the student and did so at a specific cost. J.K., obo P.B, Commr 2012: Feb 9. » OAL Decision

Commissioner dismisses appeal as to some of the petitioner parents for failure to appear at hearing; parents had brought appeal of "bullying" charges against their children stemming from a single incident that occurred in March 2012, seeking downgrade to "inappropriate behavior," and asking that all references to bullying be removed from each student's file. *B.B. and M.B., o/b/o K.B. et al*, Commr 2012: Dec 19 (Dumont)

Commissioner dismisses petition by parents who challenged Board's determination that their 6th grader engaged in harassment, intimidation and bullying (HIB) when he and told classmate that he "danced like a girl" and called him "gay". Board did not act arbitrarily by giving him 3 day detention. *J.M.C.*, Commr 2013: Jan 9 (East Brunswick)

Commissioner dismisses petition by parents who challenged Board's determination that their 4th grader engaged in harassment, intimidation and bullying (HIB) when he explained to classmates that another student had dyed her hair because she had head lice. Student was given a learning assignment to encourage greater sensitivity and his parents were informed but the incident did not appear in student's record. Commissioner agrees with ALJ that the parents failed to show that Board's actions were arbitrary, capricious or unreasonable. *W.C.L.* , Commr 2013:Jan 9 (East Brunswick)

Commissioner determined that board of education acted properly when it found that incidents between two swim team members at swim team competitions, swim team parties and events and online did not constitute HIB as defined by the Anti-Bullying Bill of Rights Act and applicable board policy. Disagreement reflected a dispute between the girls regarding their respective roles on the swim team and was more of a personal vendetta; no acts of HIB as defined in the law occurred. Board responded to all complaints in a timely manner, seriously evaluated the merits of petitioner's concerns and took extraordinary measures to address the disagreement. *L.B.T. o/b/o K.T.*, Commr 2013: March 7.

Board of education found that shoving a crumbled piece of paper down another student's sweatshirt was designed to antagonize the victim, disturbing the educational environment. ALJ and Commissioner overturned the board's decision. No distinguishing characteristics found. Matter was part of an ongoing unresolved conflict between two students. Element of "mutually"

involved. Relied on DOE Guidelines document. *J.A.H. o/b/o C.H.* Commr 2013: April 25

Commissioner finds that board was not arbitrary or unreasonable when it found that a middle school student committed HIB where he called a classmate "fat," "fat ass" and "horse" on more than one occasion in 7th and 8th grade, and by referring to her by the name of another other female student after she dyed her hair black. The ALJ determined that E.B.'s actions were verbal acts motivated by distinguishing characteristics, i.e., appearance and body type. Board's imposition of two after-school detentions as consequence for his behavior was designed to redirect his behavior in a manner that was consistent with his age and recognized that this was his first offense. *R.G.B. obo E.B., v. Ridgewood Bd. of Ed.*, 2013:June 24. OAL Decision

Commissioner dismisses complaint brought by parent alleging that her daughter, a kindergartner was twice subjected to HIB on a school bus when two girls on the bus called her names and told her daughter to pull down her pants or they would not be friends with her. Parent disputed board's determination that the matter was not a confirmed case of HIB; Commissioner finds that parent's appeal was procedurally deficient; she had not filed and perfected her petition until months after the 90 day period for filing, and after one of the incidents she had not nor had she exhausted her administrative remedies before the board before seeking relief from the Commissioner. *E.G.M. obo J.M. v. Mahwah BOE*, Commr 2013:May 21.

Commissioner upholds board's determination that Petitioner's son engaged in HIB, when on a school bus the sixth grader called a fellow classmate names, including "faggot", and suggested that the student engaged in sexual aggression. Verbal acts were motivated by distinguishing characteristics, i.e., gender and sexual orientation, and district's response of assigning him to 4 days of lunch and recess detention and reassignment of his bus seat, was designed to redirect the child's behavior in a manner that was consistent with his age and recognized that this was his first offense. Actions of school personnel relative to this incident were consistent with the letter and spirit of *N.J.S.A.* 18A:37-14 and *N.J.A.C.* 6A:16-7.9. G.A., obo K.A. V. Mansfield Bd, Commr 2013: June 24.

Commissioner remands question of whether board investigated incident of alleged bullying by teacher; parent alleged that teacher forced African-American student to eat a bagel which had been retrieved from the trash can in front of the other students in her classroom. ALJ dismissed petition, finding that an independent investigation conducted by the Department of Children and Families, Institutional Abuse Investigation Unit (IAIU), found no evidence of neglect or abuse and that district staff have been trained in New Jersey's anti-bullying procedures; Commissioner, however, rejects initial decision finding, *inter alia*, that: the ALJ was in error when he applied a "default" standard of review to the Board's motion for summary decision, whereby the unopposed motion was

automatically granted; pursuant to New Jersey's Anti-Bullying Bill of Rights Act, all alleged acts of harassment, intimidation and bullying (HIB) require a mandatory internal investigation by a school anti-bullying specialist; it is unclear from the record whether respondent Board undertook such required internal investigation.. the conduct of an investigation by IAIU – or any other agency or entity – does not relieve a school district of its obligation to conduct the statutorily-required internal investigation." *K.T., o/b/o K.H. AND T.D. v. Deerfield, Commr 2013: July 30*

Board of education's determination that in-class support teacher's interaction with student did not constitute HIB within the intendment of the Anti-Bullying Bill of Rights Act was neither arbitrary nor capricious. In-class support teacher's handling of possible dress code violation (skirt length) and alleged cheating on a math test and related verbal interactions were nothing more than disciplining a student for violation of school rules and did not constitute HIB. There was no indication that the teacher's actions and subsequent verbal interaction were motivated by a distinguishing characteristic. The school district responded promptly and appropriately to petitioner's HIB complaint. *R.C.F. and A.L.F o/b/o S.N.F, Commissioner 2013: September 18*

Commissioner grants board's motion for summary dismissal of petition brought by parent; parent sought to reverse the district's determination that his daughter violated its anti-bullying and harassment policy and to expunge her student disciplinary record in connection with the HIB investigation of an incident which occurred in March 2012. Commissioner found that there was no disciplinary record in the student's educational file to expunge. Further, the student is currently attending college, and there is no evidence to suggest that the board conveyed any finding related to the HIB incident to any higher educational institution. The Board's actions in investigating the March 2012 incident and subsequently requiring the student to participate in sensitivity and awareness training were in compliance with the district HIB policy. A determination of whether the student engaged in the alleged HIB incident is moot, as resolution would not further a remedy. *G.T.S., o/b/o S.A.S.*, Commr 2013: Dec 2 (Union Cty Vocational).

Commissioner dismisses parent's petition for lack of prosecution in matter where parent challenged the discipline imposed upon student by Board following an incident in which the student allegedly yelled "I have a shotgun" into a darkened auditorium full of students, and where board excluded the student from his high school graduation ceremony. Emergent relief had been denied following a hearing on the day of graduation, and student did not walk with his class. No response was received from parent on remaining issues that had not been resolved, the record closed and an Initial Decision was issued dismissing the matter as moot. Thereafter, the parent's counsel submitted exceptions challenging the ALJ's determination, contending, *inter alia*, that an issue remains as to whether the discipline imposed was excessive, arbitrary, capricious, or otherwise

unreasonable. Commissioner found it unnecessary to reach a determination on the issue of mootness, as petitioner failed to prosecute the appeal. *R.B., o/b/o/ A.B.,* Commr 2013: Dec 12 (Burlington).

Court of Appeals affirms District Court dismissal of plaintiffs' claims. Parents of allegedly bullied middle school students claimed that school district officials, after being notified of the bullying, did not act to prevent the bullying of the students. The appellants asserted claims under 42 U.S.C. § 1983 for violations of the First, Fourth, and Fourteenth Amendments. The District Court dismissed all of these claims. No affirmative retaliatory actions by the school district alleged or proven. No special relationship existed between plaintiffs and the state nor was any state created danger existed in this case. The bullying of the children by other students did not give rise to a procedural due process claim; no constitutional duty to protect children from bullying by other children. *Monn v. Gettysburg Area Sch. Dist.*, No. 13-2730, (3rd Cir. January 21, 2014)

Plaintiffs brought various state and federal statutory constitutional and common law claims against board of education and superintendent based on defendant's alleged failure to prevent students from bullying K.T. Numerous HIB complaints filed regarding teasing about K.T.'s mother's weight and aunt's disability, profanity directed against K.T., threats of physical violence, etc. None were substantiated after investigation by anti-bullying specialist. NJLAD claim dismissed – no evidence that K.T. was bullied based on gender, no protected status based on Southern-American heritage. No constitutional rights shown to be violated. No fundamental right to a public education under the United States Constitution. No "discriminatory enforcement" of the Anti- Bullying Bill of Rights Act. No state created danger, no negligent infliction of emotional distress. Anti-Bullying Bill of Rights Act does not create or alter tort liability; cannot be a basis for a claim of negligent infliction of emotional distress. *Thomas G/A/L K.T. v. East Orange Board of Education*, Civ. No. 2:12-01446 (D.N.J. February 6, 2014)

Defendant board of education and various employees' motion to dismiss granted without prejudice. Plaintiff attended middle school from 2003-2008 and alleged that during that time period that she was abused by a teacher in the school. Plaintiff alleged that defendants were liable for the injuries she sustained as a result of that abuse. In thirteen separate counts, the Complaint accuses Defendants of discrimination under Title IX of the Education Amendment of 1972 (20 *U.S.C.* § 1681(a)); various civil rights violations under both 42 U.S.C. § 1983 and its state law corollary, the New Jersey Civil Rights Act (*N.J.S.A.* § 10:6-1 *et seq.*); and six separate torts under New Jersey state law. The Complaint was devoid of any factual allegations connecting Defendants to the alleged abuse. Plaintiff may file an amended complaint within 45 days. *E.R. v. Lopatcong Twp. Middle Sch.*, Civ No. 13-1550 (D. N.J. January 27, 2014)

Petitioner sought a finding that coach engaged in acts of harassment, intimidation, bullying and retaliation, and that the coach be relieved of her coaching

duties. Board had not found HIB. Matter not mooted by departure of coach from position. Issue of HIB and surrounding facts still in controversy. Matter remanded to OAL for proceedings to determine whether coach's conduct constituted harassment, bullying or intimidation. *J.M. on behalf of minor child T.M.*, Comm: Jan 23

Board determined that eighth grade student participated in an act of harassment intimidation and bullying (HIB) when he was among a group of boys who chanted "kool-aid" to tease and taunt an African American classmate in the hallways and locker room. Use of the word "kool-aid" was directed at a fellow student because of his race, thereby insulting and demeaning him. Commissioner concurred with the Administrative Law Judge that the Board's decision to impose a one-day suspension on K.H. for violating *N.J.S.A.* 18A:37-14 and the Board's Harassment, Intimidation and Bullying policy was not arbitrary, capricious or unreasonable. Parent's argument that K.H.'s action did not constitute HIB because it was a single incident dismissed as it ignored the plain language of the statute. *G.H. and E.H. o/b/o K.H.*, Commissioner 2014: April 10

Petitioner sought, a declaratory ruling directing the respondent Board to issue a written decision stating that it rejected its superintendent's decision affirming a finding that the petitioner was in violation of the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq*. Superintendent found that parent violated the Act when she allegedly accused several students of smoking marijuana off-campus during the summer. Petitioner was effectively granted the relief she sought when the Board rejected the superintendent's finding that petitioner had violated the Act, and notified both the petitioner and the parent who had initiated the HIB complaint of its decision, in writing, on September 19 and October 7, 2013, respectively. Commissioner concurred with the ALJ that the matter was appropriately dismissed as moot. *Morency v. Bd. of Ed. of the Twp. of Hamilton*, Commissioner, 2014: October 29

Commissioner determined that the district had an affirmative obligation to conduct HIB investigation even where parent failed to fill out the district's HIB form. Written report is not a prerequisite to initiating the HIB investigation. Nor is the district relieved from the obligation to conduct an investigation where victim withdraws from the district prior to completion of the investigation (D.M. v. West Milford: Commr: 2014, Nov. 24).

Commissioner determined that the board violated the *Anti-Bullying Bill of Rights Act*, when it failed to investigate allegations of peer sexual harassment. Board determination to adopt administrative report labeling student conduct as "adolescent sexual curiosity" and not as HIB was arbitrary, capricious and unreasonable where student conduct clearly rose to the level of harassment. Commissioner clarified that sexual harassment may also constitute HIB (T.R. v. Bridgewater-Raritan Reg'l: Commr., 2014, Nov. 10).

HOME SCHOOLING

Placement

Current State education law, which differentiates between nonpublic school students and home-schooled students with respect to providing funds for speech therapy, is constitutional, but in the context of the facts of this case was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not at home. This service was offered to other nonpublic school students at the public school, to deny a home-school student the service was a denial of equal protection. While home schooled students are not entitled to special education and related services under the IDEA, they are entitled to their "equitable share of public funds" for speech therapy services. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)

Parents' application for emergent relief to place home schooled child in tenth grade rather than ninth grade, denied. District must conduct educational evaluation of pupil within 30 days to determine whether placement should be changed; parents' request for independent evaluation is denied. (98:Oct. 16, M.C.)

Reentry into public school: District should have made initial placement of home schooled pupil in accordance with grade level represented by parents as appropriate level, on presumption that instruction was equivalent; then district should have assessed her actual level with respect to the district's specific course proficiencies to determine if initial placement was appropriate. (00:Feb. 2, M.C.)

Reentry into public school system: Upon reentry, home schooled pupils to be treated as any other new or returning student from private school or school outside of district. (98:Dec. 3, M.C.)

IDEA

Board of education was properly granted summary judgment in parent's 1983 action in son's death in residential school where board did not violate IDEA by placing child in school without IEP as parents agreed to placement. Tallman v. Barnegat Bd. of Ed., 2002 U.S. App. LEXIS 19051, ____ F.3d ____ (3d Cir. 2002), decided August 21, 2002.

Commissioner determined that board did not violate IDEA in adopting protocols regarding the evaluation of student requests for transfers for medical/environmental reasons. Protocols were not specific to classified students and issues were more appropriate for pending due process proceedings. (05:April 10, Tuttle)

Parents not entitled to reimbursement for independent evaluation fee as they failed to initially consult with board of education as required under N.J.A.C. 6A:14-2.5c. Question of fact existed as to whether board had

acceded to all items in settlement agreement prior to the start of litigation. K.R. v. Jefferson Twp. Bd. of Ed., 2002 U.S. Dist. LEXIS 13267, decided June 25, 2002.

Pursuant to IDEA's "stay put" provision, parent's application for a preliminary injunction granted. School district required to educate student at school where child attended kindergarten, his placement when the dispute over placement arose. While IEP called for self-contained out-of-district autistic program, IEP was never implemented, notwithstanding ALJ order. K.T. v. West Orange Bd. of Educ., 2001 U.S. Dist. LEXIS 22265, October 23, 2001

School board had standing and an express right of action under the IDEA to seek reimbursement of an autistic child's residential placement from the State Division of Developmental Disabilities and the State Department of Education. S.C. v. Deptford Twp. Bd. of Ed., 213 F.Supp.2d 452 (D.N.J. 2002).

While the law requires that the IEP provide a FAPE in the LRE, it did not require that the board provide the best education in exactly the manner dictated by parents. Child receiving little benefit locally. Court ordered placement at one of placements identified by ALJ. M.A. v. Voorhees Twp. Bd. of Ed., 202 F.Supp.2d 345 (D.N.J. 2002).

In a parent initiated action under the IDEA, the Court of Appeals affirmed the District Court's determination that multiply handicapped student's IEP was appropriate and reasonably calculated to enable the student to receive meaningful educational benefits. Tuition reimbursement for parents who had unilaterally removed student from the Cranbury School and placed student in private school was denied. School district had complied with all IDEA procedural requirements and the IEP was appropriate. Fact that IEP did not incorporate all of parents' expert witness instructional recommendations did not violate the IDEA. G.S. v. Cranbury Twp. Bd. of Educ., No. 11-2439, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 450 Fed. Appx. 197; 2011 U.S. App. LEXIS 22609, Decided November 8, 2011.

In a parent initiated action under the IDEA for their SLD dyslexic child, the District Court affirmed the ALJ's determination that the school district's IEP did not meet the student's educational needs, did not provide the student with FAPE and did not provide for placement in the LRE that would provide the student with a meaningful educational benefit. Unilateral placement by parents in a private school was reasonable. School district ordered to reimburse parents for the cost of private placement, transportation costs and attorney's fees, to be agreed upon by the parties. J.M. v. Morris Sch. Dist. Bd. of Educ., Civil Action No. 10-cv-06660 (SDW), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 148670, Decided December 23, 2011.

District Court affirms ALJ's holding that Bayonne can offer student FAPE in the least restrictive environment. Mainstreaming the student — in accordance

with the letter and intent of the IDEA — will provide him with the most beneficial setting for the development of his educational, social and life skills. Bayonne had challenged the Elysian Charter school's placement of first grade student with learning disabilities in a private day school, Community School. *L.Y. v. Bayonne Bd. of Educ.*, Civil Action No. 10-5698 (CCC)(JAD), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 180361, Decided December 20, 2012.

U.S. Supreme Court denies certiorari; upholds appellate division's affirmance of district court's order that under the IDEA, the hearing officer had committed legal error when she declined to order a publicly-funded independent educational evaluation despite her conclusion that the district's report was inappropriate. Once the hearing officer determined that the reevaluation was inappropriate, the student was entitled to an independent educational evaluation at public expense as a matter of law. *Bethlehem Area Sch. Dist. v. D. Z.*, No. 13-248, 2013 U.S. LEXIS 7594; 82 U.S.L.W. 3234 (October 21, 2013)

Parents entitled to tuition reimbursement for three year period of private school placement (Benchmark) between hearing officer's decision that Ridley's IEP denied FAPE and the court of appeals affirmance of the district court's decision reversing the hearing officer's decision, holding that Ridley's IEP provided FAPE. Board was required to pay private school tuition for three years under "stay put." Parent's right to interim funding extended through the time of the judicial appeal. Parent's claim was not barred by res judicata or the compulsory counterclaim rule. Parents did not have to file their claim for payment before the administrative ruling in their favor was reversed. *M.R. v. Ridley Sch. Dist.*, No. 12-4137, (3rd Cir. February 20, 2014)

District Court denied plaintiff parents' motion, affirming the administrative finding that tuition reimbursement was inappropriate where parents unilaterally removed student and placed student in a private school without following the IDEA notice requirements and applicable state and federal regulations. Plaintiff parents did not seek permission to remove student and did not notify school district of their intent to remove until after student had been enrolled in the private school, violating the notice requirements, including the 10-day written notice requirement. Plaintiffs "disregarded their obligation to cooperate and assist in the formulation of an IEP, and failed to timely notify [Defendant] of their intent to seek private school tuition reimbursement." Plaintiff parents failed to demonstrate any procedural violations, any loss of educational opportunity for the student, any serious deprivation of parents of their participation rights, or deprivation of educational benefits. *W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ.*, Civ. No. 13-3423, (D. N.J. February 24, 2014)

INCREMENTS

Board action modified

Board proved tenure charges of unbecoming conduct against tenured secretary. Secretary, on several occasions, left work early without permission, failed to heed Board policy prohibition against selling commercial items, despite warnings, and used disrespectful and unprofessional language. Suspension for six months and loss of salary increment deemed appropriate penalty. (McCain, Commr. 2007:July 16, aff'd St. Bd. 2007:December 5)

Board action reversed

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, Commr., 2008: Feb 19)

Commissioner restores increment withheld from tenured mathematics supervisor. Petitioner proved that board's withholding was arbitrary, capricious and unreasonable and motivated by personal animosity of her supervisor. No independent evaluation was done by the board and the reasons set forth by the supervisor were largely without merit. (Kohn, Commr., 2007:July 19)

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, Commr., 2006:Dec. 1) See matter on appeal regarding calculation of incremement, reversing Commissioner: App. Div. unreported decision (A-0823-08T2, July 15, 2009)

Commissioner determined that board improperly withheld the increment of a twelve month employee because salary increment had vested prior to board action to withhold. Board action to withhold therefore improperly reduced tenured principal's compensation absent the filing of tenure charges. (Giorgio, Commr., 2008: Feb 19)

Commissioner determined that petition appealing board's increment withholding may be based on procedural instead of substantive issues where initial request for arbitration addressed the merits of the matter but was enjoined because the withholding was deemd not to be disciplinary in nature. (Giorgio, Commr., 2008: Feb 19)

Commissioner modified initial decision to affirm board decision to suspend non-tenured campus police officer (SRO) without pay pursuant to N.J.S.A. 18A:6-8.3. (Lopez, Commr., 2003: Nov. 6). R'vd by State Board. State Board held that fundamental fairness dictated that the employees are entitled to back pay and emoluments where they are fully exonerated of criminal charges. (Lopez, St. Bd., 2004: Nov. 3)

Commissioner determined that N.J.S.A. 34:13A-27d was intended to provide a mechanism whereby a petitioning employee could seek arbitration, and if enjoined, not find himself time-barred from pursuing relief from the Commissioner. (Giorgio, Commr., 2008: Feb 19)

Commissioner determined that where board successfully enjoined arbitration of a tenured assistant principal's increment withholding because it was not disciplinary in nature, the assistant principal was not time-barred from contesting the withholding on procedural as opposed to substantive issues, where the initial request for arbitration addressed the merits of the matter. (Giorgio, Commr., 2008: Feb 19)

Board action sustained

Commissioner determined that board's decision to withhold an increment is a matter of managerial prerogative which has been delegated by the legislature to the board. (Newsome, Commr., 2008: Jan. 14).

Commissioner determined that in an increment withholding action, the teacher bears the burden of demonstrating that the board's action was arbitrary, capricious, or unreasonable by a preponderance of the evidence. (Newsome, Commr., 2008: Jan. 14).

Commissioner determined that increment is not a statutory right, but a reward for meritorious service to the district. Pursuant to N.J.S.A. 18A:29-14, board has the ability to withhold increments from teachers who had not performed well during the previous year. (Newsome, Commr., 2008: Jan. 14).

Commissioner dismissed petition of tenured physical education teacher who asserted that the board's increment withholding was arbitrary, capricious, and 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 practice and had received a three-day suspension with pay. (Newsome, Commr., 2008: Jan. 14).

Commissioner upheld increment withholding where board alleged that teacher engaged in conduct unbecoming in hitting student with a ruler. Teacher's denials not sustainable. (Morris, Commr., 2006: Dec 1). (Morris, Commr., 2008:September 4) See subsequent case, on calculation of the increment, reversing Commissioner of Education's calculation, App. Div. unreported decision (A-0823-08T2, July 15, 2009) ,

Commissioner adopted Initial Decision holding that 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, Commr., 2008:March 5)

Commissioner dismisses teacher's appeal of board's action to withhold his increment for unbecoming behavior toward a student; reason for withholding was disciplinary and proper appeal is through negotiated procedures, not with the Commissioner. (Chilmonik, Commr., 2009:May 6)

Board action upheld

Board properly withheld basic skills teacher's increment for performance problems; clerical error on evaluation that indicated she would receive increment had no legal significance. (98:Feb. 5, Sims)

Board properly withheld increments. (99: Aug. 25, Blazakis)

Board properly withheld increments for less than satisfactory performance. (00:Oct. 13, Jackson)(00:Nov. 13, Battle)(00:Dec. 1, Schlesinger)

Board properly withheld increment. Withholding not arbitrary, capricious or unreasonable. Teacher failed to use effective instructional methods, establish and maintain discipline and failed to appraise the effectiveness of her own instructional program and methods. (02:March 11, Miele)

Board properly withheld special education teacher's increments for lack of classroom control and inadequate classroom techniques and assessment of student needs. (99:Jan. 25, Natapoff)

Board property withheld teacher's increment for performance problems and not because teacher was not a member of an African-American sorority as were her principal-evaluator and other teachers in the school. (01:March 7, Mininson)

Board properly withheld the increments of 14 certificated staff members based on unsatisfactory performance; Commissioner reverses ALJ's determination that board acted unreasonably in one instance, finding that the board's actions were amply supported by the record. (98:Sept. 4, Andino, et. Al.)

Board properly withheld the increments of special education (EMR) teacher for ineffective teaching techniques and harsh demeanor. (98:July 8, Elik)

Board properly withheld increment of teacher for using improper instructional techniques, and other deficiencies. (00:Aug. 18, Alessio)(00:Aug. 18, Smallwood)

Board properly withheld increments of speech/language specialist for failure to complete paperwork such as reporting forms and lesson plans; fact that other supervisors did not strongly enforce these requirements and that the problems were corrected by the end of the year did not affect propriety of withholding. (98:July 14, Zampella, aff'd St. Bd. 98:Dec. 2)

Board's action to withhold teacher's increment for performance reasons is upheld. While his performance had improved, it was less than satisfactory, and although he was not specifically advised his increment was in danger, he had reasonable foundation to expect withholding. (01:July 9, McCormack)

Elementary school teacher with 35 years experience performed unsatisfactorily with respect to pupil supervision and classroom management. (02:Dec. 23, Clark)

Increment holding upheld for failure to properly assess pupil needs, use effective techniques, organization or planning. (00:Sept. 1, Elik)

Increments properly withheld for teaching performance problems. (00:Sept. 15, Holston)

Increment restored

Increment restored; board failed to answer teacher's appeal. (00:July 6, Smith)(00:July 6, Burgess)

Teacher terminated for excessive absenteeism including absence due to work-related injury. Penalty of increment withholding for separate incident of insubordination rejected by Commissioner since increment withholding applies prospectively. (00:May 15, Folger)

Jurisdiction over

Commissioner had no jurisdiction over disciplinary increment withholding where PERC had exercised jurisdiction and arbitration award had been entered. (00:Feb. 15, Montgomery)

Commissioner had no jurisdiction over increment withholding since assistant board secretary/director of administration was not a teaching staff member. (00:June 12, Cheloc)

Commissioner has no statutory authority to act on increment withholding of clerk. (00:July 13, North Bergen)

Jurisdiction: Commissioner questions whether he has jurisdiction over increment withholding of noncertified clerk within a bargaining unit; ALJ ruling that the board acted arbitrarily is set aside, and matter remanded on jurisdictional issue. (99:Oct. 28, North Bergen)

Superintendent's failure to receive a travel reimbursement of expenses was a contractual matter and not an increment withholding; outside of jurisdictional purview of Commissioner. (98:July 17, Vitacco)

Where employee was not a teaching staff member for which the Commissioner has jurisdiction to review increment withholdings, nor was she a member of a collective bargaining unit which would provide a mechanism for resolving such disputes, the Commissioner would consider claim of retaliation for denying salary increases; held that board did not act improperly. (00:June 12, Cheloc)

Procedures

Matter dismissed for lack of prosecution. (99:March 31, Hayes)

Notice: There is no statutory requirement for advance written notice of intent to withhold an increment. (98:Feb. 5, Sims)

Commissioner determined that board's increment withholding from elementary bilingual teacher was arbitrary, capricious, and unreasonable where board approved 45 days of disability absences and provided only one of two customary annual evaluations. (Rexach, Commr., 2009:February 23)

Reversing the Commissioner of Education, the Court holds that in the year following the withholding of a salary increment, a board of education has discretion to provide for only horizontal movement; the Commissioner's calculation would have advanced the employee one step horizontally and one step vertically. Morris v. State Operated School District of Newark, App. Div. unreported decision (A-0823-08T2, July 15, 2009)

90 day rule: began to run from time teacher received letter advising him of the withholding of his increment, even where during first month of that period he believed he would not be offered reemployment; petition dismissed as untimely filed. (99:Feb. 22, Freyberger)

90-day rule: relaxation of rule unwarranted where teacher who challenged increment withholding claimed stress prevented her meeting deadline. (00:Sept. 11, Bland-Carter)

Teacher who filed challenge to increment withholding 99 days after notification, was not entitled to relaxation of 90-day rule; a showing of emotional stress alone, without a showing of incapacity, did not justify relaxation. (04:May 3, Dickerson)

Settlements

Matter settled. (01:Sept. 5, Burd)(01:Sept. 20, Harris)(02:June 26, Chabrol)

Standard of review

Law judge applied heightened standard of review and erroneously interjected own value judgment that language specialist's failure to complete paperwork was insignificant; scope of Commissioner's review is only to determine whether evaluators had a reasonable basis for their conclusions. (98:July 14, Zampella, aff'd St. Bd. 98:Dec. 2)

Matter dismissed with prejudice where neither party appeared at hearing, without explanation Smith v. Englewood School District, Commr, 2011 Jan 25.

Board's withholding of principal's employment and adjustment increment for failure to properly oversee administration of district's Terra Nova testing program upheld. Board's decision was neither arbitrary nor capricious nor without a substantive basis. Proper due process was provided to principal. Spells, Commissioner 2011: April 21

Commissioner upholds board's action to withhold the increment of a special education teacher; she received "unsatisfactory" ratings in several categories by her supervisors, and both administrators were in agreement that she failed to perform up to their level of expectation; she failed to prove that the board's action was arbitrary, capricious, unlawful, or induced by improper motive. Stapleton, Commr 2011: June 24.

Court affirms Commissioner decision which upheld school board's decision to withhold a salary increment for the 2008-09 school year; court concludes that the arguments presented by appellant that the Commissioner's decision should be reversed because the Board failed to comply with its stated policies and regulations are without sufficient merit to warrant discussion in a written opinion. Spells v. Matawan-Aberdeen Reg. Board of Educ., No. A-4786-10T3, 2012 N.J. Super. Unpub. LEXIS 406 (App. Div. Feb 27, 2012)(unpublished)

Board's action was not arbitrary, capricious unreasonable, or an abuse of its discretion when it withheld the increment of an early childhood education teacher where all three evaluations concluded that teacher's performance was below standard, unsatisfactory, and needed improvement. Teacher

never submitted a written rebuttal stating why she should not have received an unsatisfactory evaluation, and never asked for or accepted assistance from staff or colleagues, although it was offered. Martin, Cmmr 2012: Aug. 9

Board's action was not arbitrary, capricious unreasonable, or an abuse of its discretion when it withheld the increment of a world language where teacher evaluations concluded that petitioner's performance was unsatisfactory and in need of improvement; petitioner's second and third evaluations reflected no improvement in targeted performance areas. Rodriguez, Cmmr 2012: Aug. 17

Board withholding of vice-principal's increment upheld where his unsatisfactory performance as Vice Principal was detailed in multiple memoranda from principal. Board held Donaldson hearing and declined to change its determination. Vice-principal clearly had notice that increment was being withheld, yet did not file appeal to Commissioner until after the 90 day limit had expired. Petition is dismissed with prejudice. Campbell, Cmmr 2012: Aug. 30

While tenured secretaries may "bump" into the secretarial positions of untenured employees at the time of a RIF – in the absence of contractual seniority for secretaries, a board of education is not obliged to maintain a seniority list and call a secretary back when a secretarial job opens up subsequent to the elimination of his or her prior position. Petition dismissed. Biggiani, Cmmr 2012: Aug. 31

Commissioner upheld board of education withholding of increment from early child education teacher, employed in the school district since 1990. Teacher failed to sustain burden of proving that board's action was arbitrary, capricious or unreasonable. Teacher was evaluated twice in the 2011-2012 academic year by two different evaluators and was given notice of the standards and expectations on which she would be evaluated. Both evaluations found the teacher's performance needing of improvement in numerous areas. Notably, the second evaluation revealed no demonstrated improvement in the deficiencies found in the first evaluation. Martin, Commissioner 2012:October 25

Board of education's withholding of security guard's 2011-2012 salary increment was arbitrary, capricious and unreasonable. Withholding was based on board's inconsistent, confusing, and inaccurate evaluation forms that combined performance evaluations for the 2009-2010 school year and prior years, but did not include an addendum for the 2010-2011 school year or provide information on petitioner's work performance during the 2010-2011 evaluation period. Salary increment ordered restored. *Shuler*, Commr 2013: March 19

Board's decision to withhold teacher's 2010-2011 salary increment was not arbitrary, capricious or unreasonable. Increment was withheld based on performance evaluations during the 2009-2010 school year. Petitioner's classroom instruction during the year in question was lacking in many respects, including unacceptable lesson plans, repeating lessons already

taught, and leaving the class alone on multiple occasions. *Craig-Ndiaye, Commissioner 2013:September 30*

Commissioner upholds increment withholding by board. Petitioner bears the burden of proving that the withholding of his increment was arbitrary, capricious or unreasonable; petitioner's increment was withheld based on several performance evaluations; credible testimony at hearing supported the respondent's determination that petitioner's classroom instruction during the year in question was lacking, particularly in pedagogical skills; and petitioner's contention that his problems stemmed in part from a lack of curriculum materials was without merit. *Lopez*, Comm. 2014: Jan 15

Commissioner denied teacher's request for restoration of increment. Teacher argued that Commissioner penalty pursuant to tenure proceedings, which included loss of increment for one year, beginning January 1, 2013, required restoration of the increment after the expiration of one year, January 1, 2014. Increment not restored. Teacher entitled to receive any increment that he would have received on January 2, 2013 commencing January 15, 2014, and – going forward – will advance one step behind his regular step. Teacher will remain a step behind his peers due to the continuing effect of the increment withholding previously ordered by the Commissioner. Petition dismissed. *Calandriello*, Commissioner 2014: July 17

INDEMNIFICATION

Acquittal or other disposition of criminal charges in favor of the employee or officer is triggering event for insurance coverage of board's statutory indemnification obligation. Insurance policy in effect at time of acquittal covers. Bd. of Ed. of the Borough of Florham Park v. Utica Mutual Insurance Co., 172 N.J. 300 (2002), aff'g Bd. of Educ. v. Utica Mut. Ins. Co., 344 N.J. Super. 558 (App. Div. 2001)

Board employees' concealed ownership of a building that they were leasing to the district, did not arise out of their duties of their employment; therefore they were not entitled to indemnification for federal and state indictments, under N.J.S.A. 18A:16-6.1. (05:Feb. 2, Parlavecchio, aff'd St. Bd. 05:July 6)

Board member censured for failure to disclose the board as a source of prepaid expenses for her conference attendance, voting on a bill list which included reimbursement to her and for voting on tuition payment to a school where her husband was employed. (02:Sept. 6, Dunkley)

Board member who filed petition with Commissioner for indemnification was not thereby disqualified from board membership, even where the board member is seeking indemnification which is discretionary, not statutory; the primary purpose of the claim for which indemnification was sought

served important public objectives, namely the board member's ability to attend board meetings in safety. (99:Feb. 16, Walsh)

Board member who was also a police officer was not entitled to indemnification where he illegally obtained confidential employee information and disseminated it to board members and then was sued by that employee. Board member's actions were taken at his own initiative and peril and therefore should not be entitled to be defended at public expense. (05:Sept. 16, Gunther)

Board of education not obligated to indemnify teacher who successfully defended criminal harassment charge brought by student. Charge did not arise out of the performance of the duties and responsibilities of a high school English, journalism and drama teacher. (03:Jan. 3, Brothers)

Commissioner clarified that in civil litigation, board member must demonstrate that the conduct underlying the litigation arose out of the performance of his duties and occurred in the course of performing those duties in order to qualify for indemnification. But in a criminal or quasi-criminal action, board member must also demonstrate a favorable final disposition. (05:Sept. 16, Gunther)

Indemnification denied for board member who was sued for slander by private citizen, for telling others that citizen was a racist, a nazi, and under investigation by the Department of Justice, as he was not acting in his official capacity when he made the comments. (01:Aug. 13, Grant, aff'd St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2109-01T2, March 11, 2003)

Indemnification denied to teacher who was suspended upon indictment for sexual assault, and against whom charges were subsequently dismissed upon his completion of PTI; PTI not tantamount to final disposition in his favor. No need to reach issue of whether charges arose out of and in course of his employment. (01:Aug. 30, Busler, aff'd on other grounds St. Bd. 02:Feb. 6, clarified by Lopez, St. Bd. 04:Nov. 3)

Insurance carrier for school bus company may be required to indemnify and defend board of education. Remanded as to duty to defend. Rosario v. Haywood, 351 N.J. Super. 521 (App. Div. 2002).

Teacher was entitled to reimbursement for legal fees sought by law firm that substantially assisted teacher in successfully defending criminal charges, although another firm provided primary representation. (00:Aug. 31, Seabrook)

Employee

The Court affirms the State Board of Education's holding that a petition to the Commissioner of Education was properly dismissed as untimely. The underlying matter involved employees' claim for indemnification for legal fees and costs after having been acquitted of criminal charges emanating from their concealed ownership of a building that the School District was leasing. Indemnification was not the kind of absolute statutory entitlement that is exempt from the 90-day rule. Parlavecchio et al. v. State Operated School

District of Newark, Unpublished Opinion, Dkt. No. A6634-04, decided January 18, 2007.

Commissioner acknowledged that the Appellate Division held that an administrative dismissal of a criminal complaint constitutes "a favorable termination of a criminal proceeding for purposes of a malicious prosecution action." Rubin v. Nowak, 248 N.J. Super. 80, 84 (App. Div. 1991), and was reluctant to find that a dismissal without prejudice cannot be regarded as a favorable disposition,.but failed to reach the issue by deciding the matter on other grounds. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

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).

Commissioner determined that teacher failed to show that the conduct which precipitated criminal and civil proceedings arose from the duties of his employment because engaging in sexual relations with a student cannot be characterized as conduct related to respondent's teaching duties. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

Commissioner determined that N.J.S.A.18A:16-6.1 and related case law articulate two conditions that a school employee seeking indemnification must satisfy. First, the charges against the employee must be dismissed or otherwise result in a favorable disposition. Second, and additionally, the charges must be triggered by acts or omissions arising out of and in the course of the performance of the employee's duties. (Shinkle, Commr., 2006: Feb. 9) Aff'd (Shinkle, St Bd, 2006: July, 19). See also, (Shinkle, Commr., 2004: Aug. 19).

Teacher was appropriately denied reimbursement pursuant to N.J.S.A. 18A:16-6 and N.J.S.A. 18A:16-6.1, of legal fees incurred in connection with her successful defense against a criminal complaint for disorderly conduct. The conduct did not arise out of her teacher duties when she, of her own volition, left the school grounds in derogation of her duties at the time she was arrested. (Crews, Commr. 2007:May 31)

Appellate Division determined that district's insurance carrier must extend coverage to employee alleged to have engaged in both intentional sexual acts and negligent unspecified but offensive conduct where district policy expressly excluded coverage for intentional acts but did not exclude coverage for negligent acts. Leonia BOE v.

Hannover Insurance, A-3957-04 (App. Div. June 20, 2006) (unpublished slip op. at 4).

Certification was granted in a matter holding that a contracted board attorney was not entitled to indemnification under N.J.S.A. 18A:16-6. Sahli v. Woodbine Bd. of Educ., 189 N.J. 429 (2007) , 2007 N.J. LEXIS 48. Underlying case 386 N.J. Super. 533 (App. Div. 2006)

State Board affirms Commissioner decision upholding board's decision to subcontract board secretary and school business administrator position in favor of Interlocal Services Agreement with county vocational district. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7). Affirmed, No. A-5555-05 (App. Div. Aug. 7, 2007) (slip op. at 17). Cert. denied, 193 N.J. 222 (2007).

The question of whether a board member should be required to indemnify a board of education for improper expenditures he authorized does not require the expertise of DOE. The decision is purely one of law, whether there was a breach of duty and whether any such breach requires indemnification. Such questions are within the common law and non-Title 18A questions that trial judges routinely decide. Matter remanded to judge for determination. Rivera v. Elizabeth Bd. of Educ. No. A-5365-09T4 (App. Div. March 30, 2011)

Board is ordered to reimburse an employee and NJEA-provided insurance company, for all costs and fees expended in his defense where he was sued by a student in Superior Court. NJEA's insurance company had defended the employee in the matter which resulted in dismissal of the claims through a settlement; the subrogation clause in the insurance policy stated that the Company shall be subrogated to all the Insured's rights of recovery. Commissioner rejects as overly mechanistic, the board's contention that an employee cannot be indemnified where, because he is covered under insurance, he suffers no loss. Waters, Commr 2011: May 11.

Appellate Division affirms the Commissioner's determination that a school employee who is represented by his union and who relies on his union's insurance company for his litigation defense, is entitled to indemnification pursuant to N.J.S.A. 18A:16-6 and 6.1, even when the reimbursement monies will ultimately be paid to the defending insurer rather than the employee. Any other result would undermine the statutory purpose. Board was ordered to reimburse plaintiffs. Waters v. Bd. of Educ. of Toms River, DOCKET NO. A-4706-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 3083, November 9, 2011, Decided December 22, 2011.

Commissioner dismisses request for indemnification without prejudice, finding that he has no jurisdiction over the question of whether a civil settlement of in a Superior Court civil action alleging sexual

assault and harassment by the board's security officer, which was settled in August 2010, resolved all of the issues including indemnification. Alexander and Horace Mann Ins. Commr 2012: April 27 (Trenton)

Appellate Division affirms trial court ruling awarding teacher counsel fees and costs in connection with a lawsuit filed on behalf of a student in which teacher was a defendant. Teacher had been represented by her NJEA insurance carrier. Teacher sought and was granted reimbursement pursuant to the employee indemnification statute N.J.S.A. 18A:16-6. Teacher paid for the coverage she received from the NJEA insurance policy through her union dues and Board failed to defend teacher in the underlying lawsuit, instructing her to contact the NJEA for legal representation. Tort Claims Act did not bar the insurer for reimbursement of costs and fees. A.B. v. Montville Bd. of Educ., DOCKET NO. A-3498-10T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1086, Decided May 17, 2012.

Board was obligated to reimburse an employee for the cost, under N.J.S.A. 18A:16-6.1, of his defense in a criminal action that was dismissed; fact that NJEA financed the defense does not relieve the board of education of its obligation; however, without testimony or certification of the other attorneys other than the lead attorney who billed hours to petitioner, a preponderance of evidence does not exist that the hourly rates they charged were reasonable and accordingly, those expenses cannot be reimbursed. Commissioner orders reimbursement of $18,755.28 for reasonable counsel fees and expenses. Salaam, Commr 2012: June 25 (Irvington)

The Appellate Division overruled the Commissioner's finding that a board member was not entitled to be indemnified for her costs in fighting the Board's action to censure her. The Court determined that under the indemnification law, N.J.S.A. 18A:12-20, the Board member's challenge to the censure was a "legal proceeding." Castriotta v. Bd. of Ed. of Roxbury, A-52222-10T3, 2012 N.J. Super. LEXIS 138 (August 9, 2012) approved for publication

Board member, who was improperly subject to school board censure regarding alleged conduct under the Code of Ethics for School Board Members, entitled to indemnification of legal fees in the amount of $107,475.00 plus $202.67 in expenses. No evidence that $250/hour rate was unreasonable. *Castriotta*, Commr 2013: March 21

Commissioner agrees with ALJ that art teacher was not entitled to be indemnified by the board for the costs of litigating a civil lawsuit alleging that he engaged in wrongful conduct, *i.e.*, making sexual comments and advances to a female student; although the case that was ultimately settled with no admission of wrongdoing, the allegations were adjudicated in prior separate proceedings in which

the State Board of Examiners successfully revoked his teaching certificates based on allegations by several female students that he made sexually inappropriate comments to them; conduct that has been adjudicated as unbecoming does not qualify as conduct which arises out of a school employee's duties; and indemnification only applies when an employee is sued individually for an action taken in furtherance of his prescribed duties. *Vanden Huevel and Horace Mann v. Hackettstown BOE*, Commr 2013:May 2.

Appellate Division reverses Commissioner in indemnification case involving school security guard who was sued by a student for civil assault. The case settled. The Commissioner ordered the board to reimburse the guard for costs incurred in defense of the suit, relying on a 1997 Supreme Ct decision, *Bowe*r, for proposition that when a civil suit is settled without an admission or adjudication of facts and where claims have not been substantiated, the employee is entitled to indemnification. However, in *Bowe*r, where because all charges were dismissed before trial, the Court found there was no other evidence to refute that the allegations arose out of the course of his employment. Here, however, there exists sufficient evidence proving L.A. sexually assaulted the student as there was a DYFS report substantiated sexual/genital contact with students, and a criminal conviction resulting from the conduct. In matters such as this one, where the conduct giving rise to alleged civil liability is also the basis for criminal charges, the factual basis for and ultimate disposition of those criminal charges is highly probative when determining whether the employee's conduct "arose out of and in the course of the performance of his or her duties." Here, the record does not support a sufficient between L.A.'s official duties as a security guard and his conduct with the students to trigger the protection of *N.J.S.A.* 18A:16-6. *L.A. and Horace Mann Ins. Co v. Trenton Bd. of Ed.* (per curiam) (Sept 24, 2013) unreported App. Div. 2013 N.J. Super. Unpub. LEXIS 2336 (App Div. Sept 24, 2013)

Appellate Division affirmed Commissioner's decision that teacher entitled to indemnification in municipal court matter. Teacher was charged with the petty disorderly persons offense of harassment, *N.J.S.A.* 2C:33-4(c), for allegedly having inappropriate contact with a female student. Following numerous court appearances, the charge was ultimately dismissed by the State. Commissioner, pursuant to N.J.S.A. 18A:16-6.1, found that teacher was entitled to reimbursement and ordered the board to reimburse teacher a total of $18,755.28 for the reasonable fees and costs attributable to the attorney's services. Fees relating to attorney's associates were disallowed because they did not testify or submit certifications that would permit a determination as to whether their fees were reasonable. $ 250 per hour rate was reasonable. *Salaam v. Bd. of*

Educ. of Irvington, Essex County, DOCKET NO. A-5592-11T4(App. Div. February 4, 2014)

Teacher charged with criminal defense arising out of his duties as a teacher. Teacher charged with making improper sexual advances toward student during class. Charges were dismissed, entitling teacher to indemnification under *N.J.S.A.* 18A:16-6.1. IAIU investigation was an integral part of the successful defense against the criminal charges. Board directed to reimburse teacher for legal fees as follows: 1) expenses of $694.01; 2) investigator fees of $676.78; and, 3) 47.8 hours of attorney work at the hourly rate of $250. Fact that NJEA Legal Services financed the appeal does not prevent indemnification. *Greene*, Commissioner 2014: March 20

Appellate Division affirms Commissioner determination that district was required to reimburse teacher for defense and indemnification costs incurred to defend a suit filed by a student who alleged an assault by teacher. Under *N.J.S.A.* 18A:16-6 two criteria set forth in the statute must be satisfied: the conduct triggering the legal action against teacher must have 1) arisen out of the performance of the individual's duties, and 2) occurred in the course of performing those duties. Both criteria satisfied. Case was settled that included no admission of wrongdoing. *Matthews v. Board of Educ. of the Union County Voc. Tech. Sch.*, No. A-1181-12 (App. Div. Aug. 6, 2014)

INSTRUCTIONAL CERTIFICATES

The Commissioner determined to suspend a teacher's instructional certificate for one year for failing to provide 60 days notice of resignation to the district. Teacher was not entitled to rely on a phone conversation with the superintendent absolving her of any obligation to complete the notice period because it occurred after teacher gave less than 60 days notice. (05:March 29, Farran)

The Commissioner ordered a one-year suspension of the instructional certificate of a teacher who engaged in unprofessional conduct by failing to give proper notice of resignation pursuant to N.J.S.A. 18A:26-10. (05:March 5, Incalterra)

INSURANCE

Acquittal or other disposition of criminal charges in favor of the employee or officer is triggering event for insurance coverage of board's statutory indemnification obligation. Insurance policy in effect at time of acquittal covers. Bd. of Ed. of the Borough of Florham Park v. Utica Mutual Insurance Co., 172 N.J. 300 (2002), aff'g Bd. of Educ. v. Utica Mut. Ins. Co., 344 N.J. Super. 558 (App. Div. 2001)

Insurance carrier for school bus company may be required to indemnify and defend board of education. Remanded as to duty to defend. Rosario v. Haywood, 351 N.J. Super. 521 (App. Div. 2002).

State Health Benefits Commission erred in denying retiree's request for free medical coverage. Retiree had more than 25 years of aggregate service credit from three retirement systems and was not required to have full credit from a single system. Barron v. State Health Benefits Commission, 343 N.J. Super. 583 (App. Div. 2002).

Court affirms prior order for summary judgment in favor of defendant/third-party plaintiff Board of Education, ruling that insurance company is obligated, under the terms of a 2006-2007 premises pollution liability insurance policy issued to the School Alliance Insurance Fund (SAIF) on behalf of the Board, to defend and indemnify the Board with respect to alleged bodily injury claims and remediation costs arising out of pesticide contamination discovered at middle school. The court construed ambiguous contract language; coverage is available for the "discovery" of pesticide contamination where the contaminants existed on the premises prior to the Policy's July 1, 2005 Retroactive Date but were not discovered until after that Retroactive Date. Ackley et. al v. Paramus Bd. of Educ., No. A-2492-10T4, 2012 N.J. Super. Unpub. LEXIS 452 (App. Div. Feb. 29, 2012) (unpublished)

Court of Appeals affirms District Court judgment denying board's summary judgment motions for essentially the reasons set forth in the May 15, 2008 and March 17, 2011 District Court opinions. Matter involved insurer's duty to defend board in three construction litigation actions involving breach of contract and duty of good faith and fair dealing. Costs were taxed against the Board. N. Plainfield Bd. of Educ. v. Zurich Am. Ins. Co., Nos. 11-1961 and 11-2323, 467 Fed. Appx. 156; 2012 U.S. App. LEXIS 9909 Decided May 17, 2012. See also N. Plainfield Bd. of Educ. v. Zurich Am. Ins. Co., 2011 U.S. Dist. LEXIS 27718 (D.N.J., Mar. 17, 2011) N. Plainfield Bd. of Educ. v. Zurich Am. Ins. Co., 2008 U.S. Dist. LEXIS 39555 (D.N.J., May 15, 2008)

Minivan, used to transport special education students, was an "automobile" as defined by *N.J.S.A.* 39:6A-2(a) and may not serve as a basis for insurance company to deny PIP benefits to driver involved in accident. *Taveras v. Roman*, No. A-0593-13T4 (App. Div. July 16, 2014)

INTERDISTRICT PUBLIC SCHOOL CHOICE ACT

Board of education adopted a resolution limiting the number of its students that could enroll in a choice school district. Commissioner denied approval of the resolution stating that "the resolution is not accompanied by any credible evidence that supports the assertion that allowing unrestricted student participation in the choice program would have a negative impact on the students, operations, programs or fiscal condition of your district." The Appellate Division held that the Commissioner has the authority to

require such information but not without giving prior notice of the obligation. The Commissioner's failure to provide prior notice of the obligation to provide supporting information, made the denial of approval of the limiting resolution solely on the ground that none was provided, arbitrary. *Milford Borough Bd. of Educ. v. Cerf,* DOCKET NO. A-1584-11T2, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2700,Decided December 12, 2012.

INTER-LOCAL SERVICES AGREEMENT

Board did not abuse its discretion in failing to renew inter-local service agreement with school that provided an in-state school option for students in the district, school could readopt its sending-receiving relationship with Port Jervis, located in New York. (01:Nov. 19, K.S.R.)

JANITORS

Custodian appointed on fixed term contracts; rights not violated when board non-renewed (00: Jan. 6, Cromwell, aff'd St. Bd. 00: June 7) Parties amicably resolve disputed issues, appeal dismissed with prejudice, App. Div. unpub. op., Dkt. No. A-6138-99T2, July 30, 2001.

Dismissal ordered; custodian did not file answer to charge of chronic, excessive absenteeism. (98:Aug. 7, Scott)

Failure to answer charges; custodian dismissed for insubordination and other just cause. (98:Oct. 19, Pietronico)

Five-day suspension of non-tenured custodian was outside Commissioner's jurisdiction. Remedy lies within the collectively negotiated agreement. If custodian were tenured, suspension without pay would be minor disciplinary action lawfully imposed by the board. (02:March 14, Heminghaus)

Janitor's poor performance of responsibilities, as well as conduct unbecoming by virtue of hostile behavior toward other staff members, and insubordination, warranted dismissal. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5, aff'd St. Bd. 00:May 3, aff'd 347 N.J. Super. 451 (App. Div. 2002), certification denied 174 N.J. 38 (2002)

School janitor occupies a position of trust and responsibility necessitating high standards of dependability and morality. (99:June 9, Vereen)(99:June 9, Prusakowski

JOINTURE COMMISSION

District acted within its authority when, after having opened bids it rejected all bids; lowest bidder's claims of implied contract and agency based on Jointure Commission's notice are dismissed. (99:Feb. 24, Taranto Bus)

Jointure Commission may not intervene one month after final decision has been issued. (St. Bd. 99:May 5, Colantoni)

N.J.S.A. 18A:46-25 does not authorize jointure commission to contract with participating board of education to provide guidance services to non-handicapped students. Colantoni v. Long Hill Bd. of Ed., 329 N.J. Super. 545 (App. Div. 2000)(aff'g St. Bd. decision 99:March 3 that reversed Commissioner decision 97:Jan. 23)

JURISDICTION

Commissioner dismissed for lack of jurisdiction the allegations of a non-tenured director of building and grounds that his employment was improperly terminated and that the actions of the Board were arbitrary, capricious and unreasonable. Matter raises contract claims that fall outside of the Commissioner's jurisdiction. Lewicki, Commr 2012: May 3.

Commissioner lacks subject matter jurisdiction to adjudicate alleged violation of the Code of Ethics for School Board Members. Exclusive jurisdiction lies in the School Ethics Commission. Allegation was that board of education failed to honor petitioner's request for anonymity after he contacted the Board to advise that two students from the same family were non-resident school attendees. Reimbursement of $ 4,387.65 in legal fees for municipal court defense and formal apology sought. *Taylor*, Commr 2013: March 19

In tenure dismissal proceedings, CSA's claims that board violated the contract are properly before the Commissioner, not the Superior Court. Allegations involved in the tenure proceeding and the current contract claims are part of the same "integrated dispute" stemming from defendant's decision not to renew superintendent plaintiff's employment contract and defendant's subsequent decision to institute tenure charges against plaintiff. Superintendent's response to the tenure charges, which was to file a complaint in the Law Division contending the board breached its contractual duty of good faith and fair dealing by drafting and filing bogus charges of misconduct against him, is a claim that cannot be separated as they derive from the same factual basis. Court finds that Commissioner had primary jurisdiction to hear this entire dispute and affirms Law Division's dismissal of Superintendent's complaint. *Costanzo v. Lebanon Borough Bd. of Educ., 2013 N.J. Super. Unpub. LEXIS 1231 No. A-6330-11T2 (App.Div. May 22, 2013)*

Commissioner dismisses petition, finding he has no jurisdiction to decide board member's challenge to board's use of the Doctrine of Necessity; board member argued that the board's use of the Doctrine of Necessity was merely a scheme involving the identification of conflicts of interest that did not in fact exist, in order to overcome the board's failure on numerous occasions to obtain the required number of votes to appoint particular administrators. Commissioner determines that claims did not sufficiently implicate the school laws or necessitate an interpretation of the school laws, requiring the expertise of the Commissioner. Jurisdiction resides with SEC or Superior Court. Commissioner declined to transfer matter, as

election of forum belongs to petitioner. *Gardner v. Hackensack Bd. of Ed.*, Commr 2013: June 7.

Commissioner grants motion to dismiss for lack of jurisdiction over matter solely involving allegations arising under OPMA (in reliance on *Sukin)*; board member alleged that the board violated OPMA when it failed to contact her by telephone to participate in a vote on the 2012-2013 school budget where she left the meeting prior to the vote on the school budget – which was on the meeting agenda—and where the board allegedly called another absent member and who voted telephonically. *Bembry*, Commr 2013:Nov. 7 (Hackensack).

Commissioner dismisses matter brought by constituent member of Central Regional school district (Berkeley Twp) against another constituent member (Seaside Heights) alleging that Seaside Heights channeled public funds through a charitable organization (Citizens) to pay tuition for Central Regional students to attend Toms River Regional School District. Commissioner dismisses for lack of jurisdiction this matter which engages local public contracts law, ethical codes for municipal officials, and the operation of Citizens as a charitable organization and for which there is evidence that the two Boards believed that the arrangement was sanctioned by the County Superintendent and where the diversion of twelve students from Seaside Park to Toms River is not an acute impact; however, Commissioner warns that his dismissal should not be construed to signify that future efforts by municipalities to evade the responsibilities of membership in a regional school district will elude Commissioner review and sanction, where appropriate. *Berkeley, Central Regional v. Seaside Park et al*, Commr: 2013: Nov 4. *et al.*,

While Commissioner does have jurisdiction concerning claim that district failed to provide thorough and efficient education under state constitution, such claim is premature, moot and precluded by the principles of res judicata; given state takeover of district. Commissioner does not have jurisdiction over NJLAD claims. Petition dismissed. *S.V., M.R. and G.R.*, Comm., 2014: Jan 21

District court determined that claimed loss of stipend was not a matter that was more properly brought before the Commissioner of Education where no law requires that such claim be brought before the Commissioner and exhaustion of remedies is not a prerequisite for a 42 *U.S.C.* §1983 claim. *Bergland v. Gray*, Dkt. No.: Civ No. 14-1972; (D.N.J. Oct. 16, 2014)

LABOR RELATIONS

Contumacious public school teachers' union members were ordered incarcerated until they agreed under oath not to violate the TRO. As to any members still incarcerated after seven days, the court would assess whether further incarceration would secure compliance. If the court determined that it

would not, it would consider forfeiting such members' rights to continued employment. Bd. of Educ. v. Middletown Twp. Educ. Ass'n, 352 N.J. Super. 501 (App. Div. 2001). Application for expungement of incarceration record denied. Bd. of Educ. v. Middletown Teachers Educ. Ass'n., 365 N.J. Super. 419 (Ch. Div. 2003)

In dispute over right of board of education to non-renew custodial/maintenance contracts and the employee's right to be disciplined only for just cause, matter would proceed to arbitration. Employees bear the initial burden of proof that they were terminated for cause. If the employee fails to carry the burden, the right to grieve is foreclosed due to the nature of the term of employment. Camden Bd. of Ed. v. Alexander, 352 N.J. Super. 442 (App. Div. 2002).

New hires: Appellate Division upheld arbitration award that interpreted collective bargaining agreement to require the district to pay newly hired teachers (that is, teachers who had accepted offers of employment to commence in September) for their attendance at summer professional development workshops even though attendance at workshops was voluntary and the newly hired teachers had not yet reported to work for the district. East Brunswick Bd. of Ed. v. East Brunswick Ed. Assn., Superior Court of New Jersey, Appellate Division Dkt. No. A-2627-99T2 (Feb. 23, 2001); certif. den. 168 N.J. 293 (2001)

N.J.S.A. 18A:27-4.1 did not preempt or repeal N.J.S.A. 34:13A-24 nor was N.J.S.A. 34:13A-24 unconstitutional delegational of governmental power to arbitrator; PERC determination that employee has right to arbitrate board'' decision not to renew his extracurricular coaching contract. Jackson Twp. Bd. of Ed. v. Jackson Ed. Assn., 334 N.J. Super. 162 (App. Div. 2000); certif. den. 165 N.J. 678 (2000)

Recognized representative has standing to bring action challenging board decision to employ uncertified volunteer to teach spanish under supervision of certified teacher even in absence of specific aggrieved teacher. (01:March 7, Middletown Education Assn.)

The Supreme Court denied certification of appellate ruling affirming a PERC decision requiring the Board to arbitrate a grievance filed by the Association concerning the elimination of summer work hours for four groups of employees who were members of the Association. Flemington-Raritan Reg'l Bd. of Educ. v. Flemington-Raritan Reg'l Bd. of Ed., 209 N.J. 100 (2012)(Jan 24)

Court confirms payment to custodian of back pay for the period from his initial termination on November 16, 2005 until his reinstatement on August 24, 2008, less pay for the ten-day suspension ordered by the arbitrator, plus counsel fees. Court rejects board's position that since custodian's name was omitted from the list of renewed employees, he was only entitled to back pay up to the date of nonrenewal, and the Association's failure to grieve the omission of his name from the list terminated his right to continued employment at the end of 2005-06. Court finds that the omission of custodian's name from the list may have simply reflected the

fact that he was not a current employee of the board as a result of his termination, and finds further that the board waived its right to raise the Association's failure to file the grievance by not raising it in the arbitration hearing or the action to vacate the arbitration award. Linden Bd. of Educ. v. Linden Educ. Ass'n, 2012 N.J. Super. Unpub. LEXIS 416 (App. Div. February 28, 2012) (unpublished).

Non-union Information Technology Manager whose individual employment contract was tied to benefits in the administrators' collective bargaining agreement, claimed that upon retirement he was entitled to pay for unused vacation days where, although the union contract did not explicitly provide for same, they were provided to union members through past practice. Court holds that the broad language in his individual contract (all benefits…. provided to all employees pursuant to the policies and procedures of the Board and as agreed to in the contract) did not support the notion, espoused by the trial judge, that a non-union member may not be entitled to the benefit of past practices. Order of summary judgment to board is reversed for determination of whether past practice existed. Degroot v. Linden Bd. of Ed., No. A-3629-10T4, 2012 N.J. Super. Unpub. LEXIS 199 (App. Div. Feb 1, 2012)(per curiam).

Appellate Division affirmed trial court determination that mid-term termination of non-tenured teacher was not arbitrable. Trial Court correctly determined that grievance procedure in collective bargaining agreement did not apply to termination of non-tenured teacher. If teacher wished to challenge the Board's decision terminating her employment for education-based reasons, her remedy was to file an appeal with the Commissioner of Education. Warren County Tech. Sch. Bd. of Educ. v. Warren County Tech Educ. Ass'n, DOCKET NO. A-1757-11T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, Decided June 29, 2012.

Appellate Division affirms Law Division grant of motions for summary judgment in matter involving alleged violation of the Computer-Related Offense Act (CROA). Teacher/ Education Association member distributed email communications at an Association meeting; communications to which he was not a party, but of which he became aware through an open inbox on a school computer. Civil action claims under CROA, for which summary judgment was not granted, proceeded to a jury trial, with a verdict of no cause on both claims. Marcus v. Rogers, DOCKET NO. A-2937-09T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, Decided June 28, 2012,

In dispute over interpretation of contract, arbitrator determined that calendar requiring that the last two days of the school year be shortened days for students only did not violate contract. Contract required that ""[t]he last two scheduled student days of school will be shortened days." Arbitrator found provision ambiguous and looked to longtime past practice and found that they were shortened for students only. Arbitrator did not exceed or imperfectly execute powers such that a definite award could not be made. Arbitrator's interpretation of the Agreement is reasonably

debatable and entitled to court deference. Educ. Ass'n of Mt. Olive v. Mt. Olive Bd. of Educ., No. A-2144-11T2 (App.Div. Oct. 2, 2012)

Appellate Division affirms decision of Commissioner of Education that board of education, by adopting a July 1, 2009 resolution, which established salary guides for 2007-2008, 2008-2009, 2009-2010, and 2010-2011, exceeded its authority by binding itself and future boards for a total of four years in violation of *N.J.S.A.* 18A**:**29-4.1, and declared the fourth year of the salary policy null and void. A collective bargaining agreement (CBA) that provides for retroactive payment covering a two-year period and prospectively establishes the pay scale for the next two years is inconsistent with *N.J.S.A.* 18A:29-4.1. *Bd. of Educ. of Ramsey v. Ramsey Teachers Ass'n,* DOCKET NO. A-1338-11T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2566, Decided November 21, 2012.

Certification denied where a collective bargaining agreement containing lump-sum retroactive adjustments for two years and a prospective salary schedule for two years violated state law on the three-year limitation on the duration of salary schedules. B*d. of Educ. of Ramsey v. Ramsey Teachers Ass'n*, 2013 N.J. LEXIS 503 (N.J. Apr. 29, 2013)

In matter where school psychologist and speech therapist initially were receiving additional compensation for bilingual evaluations but then district ceased the additional pay. However, additional duties could not be done during regular work day. School board must negotiate issue of extra pay for extra work. It matters not that the claimed additional work may be covered by the employee's existing job description. Although there may be no change in the kind of duties assigned, at issue is whether there has been a change in the volume of duties without a commensurate increase in pay. *Atlantic City Bd. of Educ. v. Atlantic City Educ. Ass'n,* No. A-2549-11T1 (App. Div. Apr. 9, 2013)

In matter involving allegations of wrongful termination and discrimination, plaintiff's motion to reopen the case was denied. School district's motion to enforce the settlement granted. *DaPonte v. Barnegat Twp. Sch. Dist*., No.: 12-4016 (MAS), 2013 U.S. Dist. LEXIS 111589 (D.N.J. August 8, 2013)

Court grants motion to confirm an arbitration award in matter arising out of a dispute between Petitioners and Newark School District over whether the district had failed to make required contributions to the Funds. Court finds there was a valid agreement to arbitrate, that District's ability to challenge the award was limited because it did not appear at the arbitration after receiving notice of the hearing, that the CBA requires employers to contribute to the Funds; and that in the event that an employer does not make the required contributions the CBA clearly contemplates that the Trustees may choose to collect delinquent funds through arbitration, and the Trust Agreement provides for the specific mechanism used in this case—the designation of a permanent arbitrator to hear and determine collection disputes. *N.J. Bldg. Laborers' Statewide Benefit Funds v.*

Newark Bd. of Educ., No. 12-7665(FSH), (D.N.J. September 13, 2013) 2013 U.S. Dist. LEXIS 131088 (not for publication)

Supreme Court denies certification; Appellate Court found that PERC properly determined that compensation for additional work by psychologist and speech language therapist was mandatorily negotiable and thus arbitrable. Board terminated its existing outside contract with these employees through their companies for conduct of bilingual evaluations of students outside school hours, and directed employees to perform the evaluations as part of their duties without additional compensation. Board denied union's grievance and sought to restrain arbitration by filing scope petition. Court found that it matters not that the claimed additional work may be covered by the employee's existing job description; at issue was the change in volume of duties, not the kind of duties, without a commensurate increase in pay. *Atlantic City Bd. of Educ. v. Atlantic City* ..., 2013 N.J. Super. Unpub. LEXIS 787 (April 9, 2013), certif. den., 2013 N.J. LEXIS 920 (September 10, 2013)

LAND (See, SCHOOLS AND SCHOOL BUILDINGS)

Board may purchase land from surplus so long as voters pass school budget that includes line items reflecting appropriation of surplus. (00:Aug. 2, Fairfield, St. Bd. rev'g Commissioner 00:Feb. 17)

Board's motion for emergent relief denied for failure to meet the *Crowe* standards of irreparable harm, settled legal rights, a likelihood of prevailing on the merits, and a balancing of equities and interests in its favor. Board sought an Order voiding a prior lease agreement between it and the borough so that a field could be returned to the board to be used as the site for construction of a new school. (04:Jan. 28, Lincoln Park)

Commissioner, upon remand from N.J. S. Ct., adopted ALJ's findings to equitably distribute the regional district's assets and liabilities based upon a formula designed by expert consultant, despite the absence of the proposed distribution in the resolution adopting the dissolution. (04:Feb. 5, I.M.O. Union County Regional H.S., dec. on motion Comm. 04:March 29, motion for stay denied, St. Bd. 04:June 2, aff'd St. Bd. 04:Aug. 4)

LAW AGAINST DISCRIMINATION

Board policy against distribution of religious gifts in classroom was not unconstitutional where kindergarten student wished to hand out proselytizing pencils and evangelical candy canes to classmates in classroom during the school day. No prohibition present against distributing gifts outside the classroom or after school. Court also found no violation of NJLAD. Walz v. Egg Harbor Twp. Bd. of Ed., 187 F.Supp.2d 232 (D.N.J. 2002), aff'd 2003 U.S. App. LEXIS 18148 (3d Cir. N.J., Aug. 27, 2003).

The granting of former principal's application for unemployment benefits does not establish that he was constructively discharged and suffered an adverse employment action under the NJLAD when he was required to go to the ninth floor of the school administration building which was accessible by elevator for mandatory training. Fusco v. Bd. of Ed. of Newark, 349 N.J. Super. 455 (App. Div. 2002).

Plaintiff's motion to dismiss granted in part, denied in part. Defendant's motion to dismiss granted in part, denied in part. Plaintiffs LAD claims not barred by CEPA waiver provision. As non-tenured employee, plaintiff had no expectation to future employment. Substantive due process claim fails. Courts should not readily expand the protections of substantive due process. No evidence that board arbitrarily or capriciously denied reemployment. Breach of contact claim not barred by the LAD. Confidentiality clause of settlement agreement void as against public policy in New Jersey. (See Asbury Park Press v. County of Monmouth, 201 N.J. 5, 986 A.2d 678, 679 (N.J. 2010).) Goldberg v. Egg Harbor Twp. Sch. Dist., Civil No. 11-1228 (RBK/KMW), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 131390, Decided November 14, 2011.

Appellate Division affirmed trial court's dismissal of all claims in matter which alleged racial discrimination, retaliation, harassment and bullying during student's high school years. Claims arose initially in student's sophomore year when the school failed to nominate her for several commendations and school administrators did not act on family's unrelenting inquiries and persistent complaints. Family asserted that student suffered humiliation and emotional distress due to actions and omissions of school. Plaintiffs' contentions were unpersuasive and not supportable by law. J.C. v. Goger, DOCKET NO. A-1577-09T2, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2995, Decided December 12, 2011.

Board of education and superintendent of schools appeal from a jury verdict, awarding plaintiff $147,630 for lost wages, $427,370 for future lost earnings, and punitive damages of $250,000 and a trial judge award of $237,843 in attorney's fees plus expenses of $7708.84. The jury found in favor of plaintiff on his causes of action for (1) discrimination under the New Jersey Law Against Discrimination (LAD), due to a disability or perceived disability for a work-related injury, and (2) wrongful discharge in retaliation for the filing of a petition seeking compensation under the Workmen's Compensation Act. Appellate Division reversed the jury's verdict and award of counsel fees as to the LAD and Workers Compensation claims. The court concluded that admitting certain statements violated the hearsay rule and the admission was so prejudicial that a "manifest denial of justice resulted." Appellate Division affirmed trial court's decision dismissing employee's racial and ethnic discrimination claims. *Pace v. Elizabeth Bd. of Educ*., DOCKET NO. A-4995-10T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE

DIVISION, 2012 N.J. Super. Unpub. LEXIS 2683, Decided December 10, 2012.

Plaintiff parent brought an action on behalf of her minor autistic child and a putative class of all other similarly situated persons, against the board of education. Plaintiff parent sought, under the NJLAD, to enjoin the board from discriminating against kindergarteners who require special education services. Plaintiff parent alleged that members of the class are forced to attend a school other than the neighborhood school, without the board having given consideration to whether it is reasonable and appropriate to educate these children in their neighborhood school, as other kindergarteners are educated. The Chancery Division judge dismissed the action and entered judgment on behalf of the board of education. Plaintiff failed to establish a prima facie 'failure to accommodate' case under the NJLAD because it was not demonstrated that the board of education failed to reasonably accommodate A.T.'s learning disability, autism. The placement was fully ADA-compliant, and comported with the requirements of the IDEA and the Rehabilitation Act. The record was devoid of any proof of any damages to any of the students or to any members of the putative class. *J.T. v. Dumont Pub. Sch*., DOCKET NO. C-139-12 CIVIL ACTION, SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, BERGEN COUNTY, 2012 N.J. Super. Unpub. LEXIS 2834, Decided December 20, 2012.

LEASE OF PROPERTY

Appellate Division affirms in part and reverses in part jury award of $1,000,000 plus interest — $900,000 plus interest on its claim that defendant school district breached a warranty clause in a lease agreement, and $100,000 plus interest on its claim of legal malpractice by defendant law firm. The total award was equivalent to plaintiff's initial non-refundable deposit on a contract to purchase a building in downtown Newark plus interest paid on the loan taken to secure it. Plaintiff alleged it lost that money because 1) the school district breached its warranty of compliance with the laws and procedures governing its authority to lease the building once plaintiff acquired it, and 2) the law firm provided a legal opinion letter stating that the school district had met those obligations. The judgment against the district was vacated in its entirety because plaintiff did not prevail on its claim of breach. 570 Escuela Partners, L.L.C. v. State-Operated Sch. Dist. of Newark, No. A-6329-08T3, A-6372-08T3, 2011 N.J. Super. Unpub. LEXIS 2321(App. Div. August 30, 2011).

LEAVES OF ABSENCE

One-year leave of absence does not create a vacancy or temporary vacancy. (04:April 12, Lustberg, aff'd St. Bd. 04:Sept. 1)

Disability

Teacher returning to teaching on a part-time basis following a work-related injury was eligible for benefits under N.J.S.A. 18A:30-2.1 through mid-May 2005; the fact that her workers' compensation benefits had stopped upon her voluntary return to part-time service in March 2005, did not affect her eligibility for benefits for 1 year. (Schuenemann, Commr., 2007:May 9)

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, Commr., 2008: Feb. 1)

Appellate Court affirms PERC's denial of board's requests to restrain arbitration and vacate the arbitration award requiring the board to place a teacher at top of salary guide, in a matter where the Commissioner had ordered the district to reinstated the teacher to the board's employment many years after she took disability retirement. Manalapan-Englishtown Reg'l Bd. of Educ. v. Manalapan-Englishtown Educ. Ass'n, (A-3515-06T1; A-3138-07T1) 2009 N.J. Super. Unpub. LEXIS 1980 (App. Div. July 28, 2009)(see related matter, Klumb v. Board of Educ., 199 N.J. 14 (2009) (May 11, 2009). related matter)

Appellate Division affirms Commissioner decision that teacher who sustained a work-related injury that prevented her from performing her extra-curricular duties as a field hockey coach, was not entitled to payment of her coaching stipend because the term "full salary," as used in N.J.S.A. 18A:30-2.1, refers only to the compensation received for teacher's full-time teaching position, and not to a part-time coaching salary. Daganya v. Board of Educ. of Twp. of Old Bridge, 2009 N.J. Super. Unpub. LEXIS 2973 (App. Div. Dec. 8, 2009.)

Employee's claim that Board violated the NJLAD because of cancer following his return from medical leave was unfounded. Assignment to other courses and different classroom had rational basis supported in the record. Claim dismissed. Varjian v. Midland Park Bd. of Ed., 2009 N.J. Super. Unpub. LEXIS 2464 (App.Div. Sept. 28, 2009)

Commissioner dismisses teacher's petition for restoration of sick time for injuries sustained in the course of employment pursuant to N.J.S.A. 18A:30-2.1; matter had been placed on inactive list pending settlement of Workers Compensation matter, and her

counsel notified the Commissioner that the matter had been settled in Worker's Compensation Court. Bradley, Commr. 2009: Nov. 6.

Extended paid sick leave under N.J.S.A. 18A:30-2.1

Board may require physician's certificate to be filed with secretary of board of education in order to obtain sick leave. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

Determination of eligibility for temporary disability benefits by workers' compensation court sufficient to enable Commissioner to make a determination whether sick leave benefits under N.J.S.A. 18A:30-2.1 exists. No need to await permanent disability award. Sick and vacation days ordered restored. (01:Feb. 26, Frabizio)

District found that teacher was not injured in an accident arising out of her employment and properly charged her sick leave, where teacher had a car accident while looking for a parking spot after signing in at the work premises; Workers Compensation Court had approved a settlement but had not determined whether she was injured in the course of her employment. (04:June 17, Elliott)

Employee's tenure rights not violated when board of education docked employee a day's pay for failure to provide sick leave verification for a day's absence. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

Even if an alleged work-related injury is also the subject of a Worker's Compensation action, the employee must file a petition before the Commissioner of Education within 90 days of the board's denial of benefits in order to preserve any related claim, including a claim under N.J.S.A. 18A:30-2.1. The filing of a Workers Compensation claim does not toll the obligation to file within 90 days. (05:Jan. 20, Abercrombie, parties ordered to supplement the record on appeal, St. Bd. 05:May 4, St. Bd. affirms Commissioner decision for the reasons expressed therein, 05:July 6)

No relaxation of the 90-day rule prescribed by N.J.A.C. 6A:3-1.3(d), for teacher seeking restoration of sick days for absences allegedly due to work related injury. (01:Sept. 4, Force)(01:Sept. 4, Leiva)

Sick leave under N.J.S.A. 18A:30-2.1 is not limited to the time period for which benefits are awarded by the Division of Workers Compensation (see Verneret); therefore, where leave was directly attributable to effects of earlier injury and subsequent surgery, shop teacher was entitled to full salary without loss of sick time under N.J.S.A. 18A:30-2.1, even though leave extended beyond period of time for which workers compensation benefits were awarded. (02:Oct. 30, Collins)

Teacher's acceptance of lump-sum workers' compensation settlement does not preclude claim for sick leave benefit under N.J.S.A. 18A:30-2.1 unless there is an intentional relinquishment of that right. (01:Sept. 20, Franks)

Teacher claiming "psychological injury due to stress" was not entitled to leave benefit under N.J.S.A. 18A:30-2.1 where she failed to demonstrate an illness that "arose out of and in the course of her employment" pursuant to the standard applicable in workers compensation cases. (01:Sept. 20, Franks)

Teacher on an extended, pre-arranged unpaid leave of absence to the end of her contract (June 30), having exhausted all of her accumulated sick, personal and family days, had no entitlement to pay for three days during the last week in June that none of the teachers actually worked; board correctly deducted her pay for the entire month of June. (04:Nov. 3, Cuthbertson) See also, (04:Dec. 9, Berkowitz)(04:Dec. 9, Rodriguez)

Teacher's complaint for full salary under N.J.S.A. 18A:30-2.1 is dismissed as she voluntarily decided not to file a workers' compensation claim; the determination of work-relatedness of an injury should be made in a workers' compensation case except in limited instances such as where the Division of Workers' Compensation has no jurisdiction or the workers' compensation case is settled. (02:Oct. 7, Bruno-Schwartz)

Tenure charge of incapacity was not premature just because teacher has not yet received workers compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Under appropriate circumstances, the Commissioner has original exclusive jurisdiction to decide a claim for benefits under N.J.S.A. 18A:30-2.1. (00:March 1, Marino, St. Bd. rev'g 99:April 13, settlement on remand, Feb. 16, 2001)

Where teacher failed to file a Worker's Compensation claim and instead chose to rely on a representation allegedly made by district personnel that her injury was work-related, her leave would be charged against her sick time, as she was not entitled to the benefits of N.J.S.A. 18A:30-2.1. (05:Jan. 13, Wilkerson)

Where teacher never received a determination from the Division of Worker's Compensation that his absences were due to a work-related injury, the absences were not improperly charged to his sick leave bank. (00:Jan. 24, Medeiros)

Maternity

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, Comm'r., 2008:June 13).

Sick/Personal

Parties directed to supplement the record with documents concerning dispute over the use of sick time for work-related injury. Ambercrombie, St. Bd. 2005: May 4. See also Ambercrombie, Commr. 2005: Jan 20

Motion for summary judgment granted to Spanish teacher on his claim that the school district violated the Family Medical Leave Act ("FMLA") by refusing to allow him to return to work after a medical leave of absence that he took because of severe anxiety attacks caused by harassment about his open homosexuality; However, summary judgment denied with regard to his claims of retaliation and wrongful termination in violation of the Family Medical Leave Act ("FMLA") and the New Jersey Law Against Discrimination ("NJLAD") as general issues of material fact existed. (No. 04-5100 (JBS), 2006 U.S. Dist. LEXIS 46648, (D.N.J. June 28, 2006)).

Where the board had permitted a newly hired SBA to carry over 128 accumulated sick days from his previous public school employment but had subsequently removed the 128 days on the direction of the assistant Superintendent, the Union's challenge to the grant of 128 days is dismissed on remand as moot. (Carteret Ed. Assn., Commr., 2008:November 19)

Where parties agreed that tenured kindergarten teacher was injured in an accident arising out of her course of duties, Commissioner determined that board improperly charged days against her accrued but unused sick leave where board failed to provide a reasonable accommodation upon teacher's request to return to duty. Chism, Commr., 2009: Jan. 7.

Commissioner clarified initial decision to limit salary offset to temporary disability benefits only where benefits have been actually paid to the employee, so that the total amount received will equal the employee's full salary. Chism, Commr., 2009: Jan. 7.

Union challenged the provisions of the SBA's contract that permitted carry-over of sick leave from prior employment, claiming that the contract was void ab initio as a "customized" contract in violation of N.J.S.A. 18A: 27, and that the board failed to file a resolution relating to sick leave pursuant to N.J.S.A 18A:30-2. The board claimed the contract was valid exercise of N.J.S.A 18A: 17-24.6. Commissioner held that the 90-day rule did not bar this action, and remanded for a hearing on the substantive issues concerning the sick leave provisions. (Carteret Education Association, Commr., 2006: May 26), affirmed (Carteret Education Assoication, St. Bd., 2006: Nov. 1)

Teacher of the handicapped, who received a notice of non-renewal, contended that she had acquired tenure; forty-three day approved unpaid medical leave of absence should be counted toward tenure

acquisition. Commissioner agreed with ALJ determination that petitioner served sufficient time under her endorsement to be tenured, notwithstanding an approved unpaid medical leave of absence. The Board was not deprived by such leave of its opportunity to evaluate petitioner; and clear and consistent precedent supported the findings, notably Kletzkin v. Board of Education of the Borough of Spotswood, Middlesex County, 136 N.J. 275 (1994). Teacher was reinstated

Commissioner dismisses teacher's petition for restoration of sick time for injuries sustained in the course of employment pursuant to N.J.S.A. 18A:30-2.1; matter had been placed on inactive list pending settlement of Workers Compensation matter, and her counsel notified the Commissioner that the matter had been settled in Worker's Compensation Court. Bradley, Commr. 2009: Nov. 6.

Suit challenging the validity of the regulations that set standards for payments in lieu of unused sick and vacation leave to school district business administrators was rejected. Further regulations on nepotism upheld. Commissioner's power was not in material conflict with any statute and did not set forth an unauthorized extension of power. New Jersey Ass'n of Sch. Bus. Officials v. Davy, 409 N.J. Super. 467 (App.Div. 2009)

Non-tenured custodian dismissed by the board. Refused to submit to a medical examination as Superintendent attempted to verify, pursuant to Article 10A of the collective bargaining agreement, the legitimacy and scope of petitioner's claimed inability to work due to continuing illness, after a four-month absence from employment. Refusal to submit to the directed examination was an act of insubordination constituting good cause, under the collective bargaining agreement, for dismissal prior to the expiration of his individual employment contract. Commissioner lacked jurisdiction, petition dismissed. Jeannette, Commr. 2009: September 16

Leave request forms which document an employee's absence from work and the reason for that absence is an attendance record. Leave forms, as attendance records, are an integral part of a payroll record, which is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10. The Custodian must disclose the requested records. (McManus v. West Milford Township No. 2008-129 (GRC August 11, 2009))

Appellate Division affirms Commissioner decision that teacher who sustained a work-related injury that prevented her from performing her extra-curricular duties as a field hockey coach, was not entitled to payment of her coaching stipend because the term "full salary," as used in N.J.S.A. 18A:30-2.1, refers only to the compensation received for teacher's full-time teaching position, and not to a part-time coaching salary. Daganya v. Board of Educ. of Twp. of Old

Bridge, 2009 N.J. Super. Unpub. LEXIS 2973 (App. Div. Dec. 8, 2009.)

Petitioner's claim for payment of accrued vacation/personal days and health insurance waiver deemed moot. Payment in full for post-judgment interest made entire matter moot. (Kaprow, Commr., 2007:July 23, affirmed St. Bd. 2007:December 5)

Vacation

A teacher, including a substitute teacher, is not entitled to unemployment benefits for the period between successive academic years, or during a vacation or recess when the teacher has "reasonable assurance" that she will be returning to work. Here, as the substitute's name was placed on the list of substitute teachers for the next academic year, she was not entitled to benefits over the summer; however, the Court did not disturb the factual determination of the Board of Review that dates in early September and late June fell within the school year during which she was eligible for unemployment benefits. Washington Twp. Bd. of Ed. v. Bd. of Review, No. A3405-07 (App. Div. Feb. 10,

The board of education could provide one vacation day per month as it is earned, rather than "front-load" the full 10 days at the start of the year, for security guards employed as 10-month civil service workers; statute was silent and regulations requiring front-loading for State civil service employees did not necessarily apply to local government civil service employees. In the Matter of Vacation Leave, Vineland, App. Div. unreported decision (A-3029-07, July 22, 2009)

Suit challenging the validity of the regulations that set standards for payments in lieu of unused sick and vacation leave to school district business administrators was rejected. Further regulations on nepotism upheld. Commissioner's power was not in material conflict with any statute and did not set forth an unauthorized extension of power. New Jersey Ass'n of Sch. Bus. Officials v. Davy, 409 N.J. Super. 467 (App.Div. 2009)

Board violated rights of tenured special education teacher when it involuntarily placed her on an unpaid extension of her six week maternity leave two weeks before end of school year. Although the Board asserted that it was not in the best interests of the students to allow her to return to the classroom late in the school year, Commissioner agrees with ALJ that board provided no factual support, nor written policies nor collective bargaining agreement to authorize an involuntary, unpaid extension to a maternity leave for tenured staff; the Board's disruption argument was a pretext for saving the district money; Board's decision amounted to a suspension of a tenured teacher on "flimsy" reasons and violated N.J.S.A. 18A:6-10. Commissioner notes that because it was not possible to conclude the within litigation before June 1,

2012, the board must pay her the full salary and benefits that she would have received had she been allowed to return to the classroom on that date. Amorin, Commr 2012:June 25 (Elizabeth)

LIABILITY

Student sued for injuries he sustained when he pushed his hand through a wired glass door panel. The motion judge granted defendants' motion for summary judgment and dismissed the complaint with prejudice, ruling that plaintiff did not meet the requirements of the New Jersey Tort Claims Act. *Rodriguez v. Livingston Twp. Bd. of Educ.*, No. A-4036-12T3 (App. Div. July 30, 2014)

District immune from suit under Tort Claims Act due to slip and fall due to alleged failure to remove snow. *Guerrero v. Toms River Reg'l Schs. Bd. of Educ.*, No. A-0358-13 (App. Div. Aug. 8, 2014)

Bus driver neglected four-year-old student by leaving him unattended on a bus for one hour thereby failing to exercise a minimum degree of care as required by *N.J.S.A.* 9:6-8.21(c)(4)(b). She failed to conduct the post-route walkthrough or take any equivalent steps to assure that no children were on the bus when she parked. *N.J. Dep't of Children & Families v. M.H.*, 2014 *N.J. Super*. Unpub. LEXIS 1778 (App. Div. July 21, 2014)

LIBRARY/LIBRARIANS

Paraprofessional aide working in library may perform clerical duties, but not professional educational media services involving independent initiative. (99:Sept. 9, Pennsville)

School library does not necessarily require properly certified librarian or educational media specialist; the school principal has the authority to develop and coordinate library. (99:Sept. 9, Pennsville)

MOOT ISSUES OR QUESTIONS

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

A private school appealed the Division of Finance's determination to withdraw the school's status as an approved private school for the disabled for failure to meet the average daily attendance requirements of N.J.A.C. 6A:23-4.3(c)iii. The Commissioner determined that the appeal was moot in light of the Commissioner's previous decision to reject the school's petition for a waiver of that requirement. (05:March 4, Victory School)

Challenge to placement of pupil in regular math course rather than algebra dismissed as moot where pupil had transferred to different school district. (99:May 3, Fox)

Commissioner adopted ALJ's determination, pursuant to N.J.S.A. 18A:13-1 to 81, that a non-resident pupil who sought admission to a tuition placement, had her application rendered moot by virtue of her entry into college. (03:Aug. 19, A.K.)

Issue of board not following grade-level placement policy not moot, despite student withdrawal, where question is one of substantial importance and capable of frequent repetition. Commissioner directs that either the regulation be re-written to reflect district practices or that the district conform its practices to the regulation as written. Concerning placement, Commissioner, concludes that the district did not act in an arbitrary, capricious or unreasonable manner in placing pupil in the sixth grade. It is well established that when a board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. (03:Sept. 2, O.S., matter remanded to ALJ for further determinations, Commissioner decision on remand 04:July 7, aff'd St. Bd. 04:Nov. 3)

NEGLIGENCE

Appellate Division reversed trial court's granting of defendant's motion for summary judgment. Based on facts of defendant's employees regarding the school's sprinkler system, plaintiff could establish a prima facie case of negligence that required submission to the jury. As a matter of law, defendant was not entitled to summary judgment. New Jersey Sch. Bds. Ass'n Ins. Group v. East Coast Fire Prot., No. A-1414-10T3, 2011 N.J. Super. Unpub. LEXIS 2163 (App. Div. August 10, 2011).

Appellate Division affirms summary judgment order to defendant EIA regarding negligence claim bur reverses summary judgment order to defendant NJSDA dismissing the indemnification claim. The indemnification claim was found in the contract between NJSDA and EIA and was assignable as a matter of law. The appeal arose from a school construction project in Harrison, Hudson County, funded by defendant New Jersey Schools Construction Corporation, n/k/a New Jersey Schools Development Authority (NJSDA). Horizon Group of New Eng., Inc. v. New Jersey Sch. Constr. Corp., No. A-5934-09T1, 2011 N.J. Super. Unpub. LEXIS 2271 (App. Div. August 24, 2011).

Court affirms summary judgment in favor of school district and other defendants in matter brought by assistant coach of a girls' soccer team who fell in the evening while scrimmaging on a poorly lit field adjacent to a football field where artificial turf was being installed. Board did not act in a "palpably unreasonable manner" with respect to maintenance of the field. ***Neumann***

v. Brick Twp. Bd. of Educ., No. A-1402-11T1, 2013 N.J. Super. Unpub. LEXIS 2416 (App. Div. October 7, 2013) (not published).

NEW JERSEY CHARITABLE IMMUNITY ACT

Appellate Division reversed trial court denial of summary judgment in favor of parochial high school, diocese and track coach in matter of personal injuries of student-athlete resulting from an auto accident. Auto accident occurred while being driven to a school-sponsored track meet by fellow student-athlete. The immunity granted under §2A:53A-7(a) to an associated charitable entity, such as a school or diocese, applied to these individuals and did not affect the rulings regarding the driver and the car owners, his parents. Hehre v. DeMarco, 421 N.J. Super. 501; 24 A.3d 836 (App. Div. 2011)(August 18).

NEW JERSEY COUNCIL ON LOCAL MANDATES

Council holds that portions of the "Anti-Bullying Bill of Rights" (P.L. 2010, c.122) impose unfunded mandates in violation of the State Constitution and N.J.S.A. 52:13H-2.1; namely the sections that require districts to: adopt a policy for responding to incidents of HIB including "an appropriate combination of counseling, support services, intervention services, and other programs;" establish bullying prevention programs and provide training of school personnel therein; appoint a "district anti-bullying coordinator" and a "school anti-bullying specialist" and a "school safety team" in each school. In The Matter of a Complaint filed by Allamuchy Township Board of Education, Council on Local Mandates (argued and decided January 27, written opinion May 1, 2012).

NJEA

Board impermissibly denied the requests of three administrators (vice principals) to attend the NJEA convention, in violation of statute, N.J.S.A. 18A:31-2. Administrators' personal days were restored and any salary, benefits and emoluments were retroactively compensated. (03:May 28, Newark)

NEW JERSET LAW AGAINST DISCRIMINATION

Substitute teacher failed to establish that he performed up to the district's legitimate employment expectations so as to establish a *prima facie* case of discrimination where he allegedly placed a disruptive student in a headlock while physically removing the student from the classroom. In addition, the district demonstrated a legitimate non-discriminatory basis for the employment action of removing the teacher from the employment rolls. *Jenkins v. Orange Police Dept.*, Dkt. No. 2:11-1555; (D.N.J. Sept. 29, 2014)

Aiding and Abetting

In determining board's motion to dismiss, the district court found sufficient facts to support the allegation that the board attorney, superintendent, and board president actively and passively encouraged discriminatory acts while performing in a supervisory

capacity. Officials allegedly orchestrated false disciplinary proceedings, refused to provide necessary funding, and intentionally understaffed the high school as reprisals for non-tenured principal's whistle-blowing activities. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 17, 2014)

Discrimination

District court found evidence of discriminatory intent in board's transfer of non-tenured high school principal to elementary school and replacement with a lesser qualified male that was sufficient to defeat board's motion to dismiss where board failed to offer legitimate reason for transfer or preference for lesser qualified male. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 17, 2014)

Hostile Work Environment

In deciding board's motion to dismisss, the district court credited allegations that board and administration intentionally interfered with the performance of non-tenured principal's duties by forcing her to defend false allegations of misconduct and publicly criticized and demoted her. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 17, 2014)

Retaliation

District denied motion to dismiss where non-tenured principal pleaded sufficient facts showing that transfer from high school to elementary school was a demotion; no need to show financial hardship. *Yuli v. Lakewood Bd. of Educ.*, Dkt. No. 13-4617; (D.N.J. Oct. 17, 2014)

NJSIAA

Commissioner determined that NJSIAA is entitled to consider the impact of a waiver of the 70% rule on other districts within the conference. (05:Sept. 26, Phillipsburg)

Commissioner upheld NJSIAA's application of its rule requiring that 70% of member districts regular season competition schedule must consist of New Jersey teams. Matter remanded for additional fact-finding. (05:Sept. 26, Phillipsburg)

Commissioner upheld NJSIAA's denial of district petition to withdraw from Northern New Jersey Interscholastic Athletic Association and join the Northern Hills Conference. Basis for NJSIAA league alignment, to assure full scheduling, was not arbitrary, capricious or unreasonable. (05:Oct. 3, Nutley)

Commissioner upholds NJSIAA denial of Midland Park withdrawal from Bergen-Passaic Scholastic League. Substantial need must be demonstrated. (02:April 4, Midland Park)

Commissioner's standard of review in NJSIAA matters is appellate in nature, therefore, Commissioner may not overturn an NJSIAA decision unless it is patently arbitrary, capricious or unreasonable. Nor may she substitute her judgment for that of the NJSIAA. (05:Sept. 26, Phillipsburg)

Participation in interscholastic athletics has long held to be a privilege which may be circumscribed by reasonable rules governing eligibility, not a constitutional right. (05:Sept. 26, Phillipsburg)

Petitioning board sought reversal of the final decision of the NJSIAA, which declared student ineligible to play football because he transferred to the district for athletic advantage, and further required the board to forfeit a victory over another high school as a result of the student's participation in that game. Commissioner found that both the board and student were afforded the full measure of due process to which they were entitled, and that the decision of the NJSIAA was not arbitrary, capricious or unreasonable. Petition was dismissed. (04:Feb. 18, North Brunswick)

Power point ranking did not entitle St. Joseph to play its championship game at Giants Stadium rather than Rutgers, although the rules were inartfully drafted, the Executive Director retained the discretion of the ED to choose locations for reasons other than power point rankings. Nor was location arbitrary as it was based on geography applied even-handedly. (04:Dec. 2, D.H.)

Commissioner determined that applicant was granted due process by virtue of advance notice and a hearing during which it presented testimony and cross-examined witnesses. (Central Jersey South Officials Association, Commr., 2008: Feb. 13).

Commissioner upheld NJSIAA decision to place high school basketball program on probation for two years in order to to compel Camden to address systemic flaws and gaps in the supervision and operation of its basketball program to be a reasonable exercise of the NJSIAA's authority and responsibility for oversight of interscholastic athletic activity statewide. (Camden, Commr., 2006: Dec. 28)

Commissioner determined that NJSIAA cannot be found to have engaged in improper rulemaking since it is not a State agency and its governing rules and regulations are not subject to the requirements of the Administrative Procedure Act. (Central Jersey South Officials Association, Commr., 2008: Feb. 13).

Commissioner determined that NJSIAA's purpose in imposing a two-year period of required reporting was not to punish individuals, but rather to compel the Board to work constructively with the Association in addressing demonstrated flaws and gaps in the supervision and operation of its basketball program was an appropriate exercise of NJSIAA authority. (Camden, Commr., 2006: Dec. 28)

Commissioner upheld NJSIAA's findings and conclusions that charter school had engaged in athletic recruitment in violation of Article V, Section 4D of the NJSIAA bylaws. Commissioner also upheld penalty placing boys' basketball team and its coach on probation, and were disqualified from tournament competition, for a period of two years. (Leap Academy University Charter School, Commr., 2007: April 3).

Commissioner determined that given NJSIAA responsibility to do everything possible to ensure the safety and good sportsmanship of student athletes, as well as staff andspectators, it was not at all unreasonable for the NJSIAA to take the position that systemic adjustments were needed in the supervision of the Camden basketball program and to direct that the district report regularly to the Association on its progress in this regard.. (Camden, Commr., 2006: Dec. 28)

Commissioner affirms NJSIAA denial of hardship waiver for basketball player who transferred back from private school to former public high school in March 2009 without a bona fide change in address. There was sufficient evidence supporting the NJSIAA's finding that petitioner originally transferred to Life Center for athletic considerations; and NJSIAA's denial of a hardship waiver of the Transfer Rule, with its one year period of ineligibility, was not arbitrary, capricious or unreasonable. Quarles, Commr. 2009: October 2

Board properly exercised its right to non-renew a teacher who allegedly sexually harassed a colleague. (OAL decision not yet available on-line); however, Commissioner rejects board's argument that teacher failed to exhaust administrative remedies by not requesting a Donaldson hearing. (Korba, Commissioner 2008:December 15)

The Commissioner upheld the NJSIAA's decision not to grant a student's request from waiver of the Eight Semester Rule – which limits a student's eligibility for high school athletics to eight consecutive semesters following his or her entrance into the 9th grade; student was not allowed to participate in sports during his senior year where he had played baseball and football as a freshman in Maryland prior to his family's relocation to Summit, and had, at the request of his family, repeated 9th grade so he could mature physically and otherwise in light of the disparity between him and his peers. NJSIAA determined that his case was not distinguishable from traditional "red shirting." Commissioner finds NJSIAA's decision was not arbitrary, capricious or unreasonable. Summit o/b/o Ryan, Commr: 2012: June 25.

Petitioner sought waiver of eight semester rule for participation in high school athletics. Commissioner affirmed NJSIAA decision that there were no "extraordinary circumstances" that warranted waiver from rule. Argument that student was being held back for academic reasons rather than athletic is not convincing. Petitioners voluntarily held student back one grade. Commissioner's decision was not arbitrary, capricious or unreasonable. Regarding educational matters, the New Jersey Supreme Court has cautioned that "the courts cannot supplant educators; they are not at liberty

to interfere with regulatory and administrative judgments of the professionals in the field of public education unless those judgments are palpably arbitrary or depart from governing law." Decision affirmed. Board of Education of Summit v. NJSIAA, No. A-5771-11T1 (Oct. 23, 2012)

Commissioner upheld NJSIAA decision denying student request for a waiver of the athletic eligibility Eight Semester Rule. Family's decision to send student to Paraguay for his junior year was voluntary. While he did not play soccer during his year in Paraguay, student did not maintain academic standards, causing him to repeat his junior year on return to Bernards. Request did not meet the test of "truly extraordinary circumstances", which would warrant a waiver of the Eight Semester Rule. NJSIAA decision not arbitrary, capricious or unreasonable. Villagra, Commissioner 2012: September 27

The Assistant Commissioner upheld NJSIAA's decision stripping North Bergen High School of the State Football Championship for recruiting violations. North Bergen did not challenge the underlying recruiting violations, but rather contends that this matter that had been heard by the Controversies Committee, should not have then come before the Executive Committee, and that it was not afforded the requisite due process before the Executive Committee. However, the Assistant Commissioner found that the decision to allow Montclair to appeal the penalty to the Executive Committee even though Montclair was not a party to the original hearing, was not arbitrary or capricious; Montclair was an aggrieved party, having been the school that had lost the title to North Bergen, and its interest did not become real until after the Controversies Committee determined that North Bergen had cheated. *Bd. of Ed. of North Bergen v. NJSIAA*, Commr 2012: Dec. 14.

Commissioner upholds NJSIAA determination not to grant a waiver of Age Rule to a boy diagnosed with autism, ADHD, and cognitive impairments who would be 19 when the 2013 football season begins. Age Rule prohibits students who turn 19 before the school year starts from participating in high school sports. Petitioners asserted that they only sought a limited waiver to allow student to participate as a place kicker on the football team – a position that gives him a sense of self-esteem, self-worth, and dignity. NJSIAA ruled that allowing him a fifth year would provide him with an advantage over all other Brick students and would create potential safety issue because of a disparity in size between a 19 year old and younger players and as he is a "difference-maker" on the field, and would provide the team with a competitive advantage. *Starego v. NJSIAA*, Commr 2013:June 28.

NEW JERSEY SUPREME COURT

Supreme Court grants certification of **Robinson v. Vivirito, 2013 N.J. Super. Unpub. LEXIS 464 , in which** Appellate court held that the motion judge should not have dismissed the plaintiff's case on summary judgment.

Appellate court determined that a jury could reasonably find that the school had a duty to protect persons walking on school property from a dog when school was closed, where the dog had previously come onto the school's property and attacked two people, while leaving for the jury the question of whether in fact the principal was negligent in failing to take remedial action. *Robinson v. Vivirito and Buena Regional School District and Nelson*, 214 *N.J.* 117 (June 4, 2013)

Court denies certification of Appellate Division decision which had affirmed the Commissioner's decision that board of education, by adopting a July 1, 2009 resolution, which established salary guides for 2007-2008, 2008-2009, 2009-2010, and 2010-2011, exceeded its authority by binding itself and future boards for a total of four years in violation of *N.J.S.A.* 18A:29-4.1, and declared the fourth year of the salary policy null and void. A collective bargaining agreement (CBA) that provides for retroactive payment covering a two-year period and prospectively establishes the pay scale for the next two years is inconsistent with *N.J.S.A.* 18A:29-4.1. *Bd. of Educ. of Ramsey v. Ramsey Teachers Assn*, 213 N.J. 535 (May 2, 2013), denying certif. of *Bd. of Educ. of Ramsey v. Ramsey Teachers Ass'n,* No. A-1338-11T3, 2012 *N.J. Super*. Unpub. LEXIS 2566 (App. Div. November 21, 2012).

Court denies certification of Appellate Division ruling that upholds regulations imposing caps on superintendent salaries in matter brought by NJASA. Addressing the numerous challenges made to the cap, the Court determined that: the cap did not exceed the authority delegated to the Commissioner by the Legislature or violate the Separation of Powers Clause in the State Constitution, nor does it conflict with the authority of a local school board to fix its superintendent's salary, *N.J.S.A.* 18A:17-19. Application of the salary cap to superintendents whose contracts expired on June 30, 2011 is not precluded by *N.J.S.A.* 18A:17-20.1 or -20.2 and the Commissioner did not violate the rulemaking provisions of the Administrative Procedure Act by directing the ECSs to suspend review of renegotiated contracts pending adoption of the salary caps. There is nothing arbitrary, capricious or unreasonable in the Commissioner's effort to rein in spending with salary caps based on enrollment. *N.J. Ass'n of Sch. Adm'rs v. Cerf*, 213 *N.J.* 536 (May 7, 2013), Supreme Court denying certification of *New Jersey Ass'n of Sch. Adm'rs v. Cerf*, 428 *N.J. Super.* 588 (October 25, 2012).

Court denies certification. *Feldman v. Board of Educ.* , 214 *N.J.* 119 (June 25, 2013)

Court denies certification . *Rivera v. Elizabeth Bd. of Educ.*, 213 *N.J.* 538 (May 13, 2013)

Court denies certification. Certification denied, where, based on finding that board member statements were hearsay and should not have been admitted, appellate court reversed jury verdict that had been entered in favor of non-renewed security guard on LAD disability discrimination and

workers compensation retaliation claims, and for counsel fee award. *Pace v. Elizabeth Bd. of Educ.*, 213 *N.J.* 538 (May 13, 2013)

Court denies certification. *D.F. v. Collingswood Bd. of Educ.*, 213 *N.J.* 538 (May 13, 2013),

Court denies certification. *Freehold Reg'l High Sch. Dist. Bd. of Educ. v. Freehold Reg'l High Sch. Custodial & Maint. Ass'n*, 213 *N.J.* 536 May 7, 2013(May 9, 2013)

NON-PUBLIC SCHOOLS

New Jersey education law, which differentiates between non-public school students and home schooled students with respect to providing funds for speech therapy is constitutional, but in the context of the facts of this case, was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not his home. This service was offered to other nonpublic students at the public school; to deny a home schooled the service was a denial of equal protection. While home schooled students are not entitled to special education and related services under the IDEA, they are entitled to their "equitable share of public funds" for speech therapy services. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)

NONRENEWALS

Custodian appointed on fixed term contracts; rights not violated when board non-renewed (00: Jan. 6, Cromwell, aff'd St. Bd. 00: June 7) Parties amicably resolve disputed issues, appeal dismissed with prejudice, App. Div. unpub. op. Dkt. No. A-6138-99T2, July 30, 2001.

In dispute over right of board of education to non-renew custodial/maintenance contracts and the employee's right to be disciplined only for just cause, matter would proceed to arbitration. Employees bear the initial burden of proof that they were terminated for cause. If the employee fails to carry the burden, the right to grieve is foreclosed due to the nature of the term of employment. Camden v. Bd. of Ed. v. Alexander, 352 N.J. Super. 442 (App. Div. 2002).

Non-renewal upheld. Even though non-renewal was solely and directly attributable to a National Honor Society selection controversy, the Superintendent's actions were tained by "small town politics," and factual findings were not supported by even the board's exhibits, Commissioner found that petitioner failed to state a claim upon which relief could be granted. (04:Dec. 1, Sheridan, aff'd St. Bd. 05:June 1)

Settlement approved. (03:May 19, Scherba)

Appellate Division affirms Commissioner's holding that board's decision to non-renew teacher was not arbitrary, capricious or otherwise unlawful. Teacher failed to prove there were any documents missing from his personnel file, or that the file was manipulated or "papered" with false or unnecessary

documents so as to prevent an adequate assessment of his performance as a teacher and drama director. Eisenberg v. Bd. of Educ. of Fort Lee, No. A-3810-09T2, 2011 N.J. Super. Unpub. LEXIS 189 (App. Div. July 15, 2011).

Board was well within its rights to decline to rehire a non-tenured social worker, as she did not request a statement of reasons within 90 days; May 13 letter informing staff of budgetary non-renewals, not board's subsequent decision not to rehire her in another position because of performance concerns, triggered 90 day period. Rudd, Commr 2011:September 1.

Commissioner finds that non-renewal of tenured teacher holding a standard instructional certificate with endorsements as an Elementary School Teacher and a Teacher of Italian violated her tenure rights; she was tenured after continuous employment as teacher of Italian, resolution to effectuate a reduction in force was not passed, and even if it had, she should have been retained as an elementary school teacher based upon the tenure law as the district retained non-tenured elementary teachers. District ordered to reinstate her to a full-time teaching position, reimburse her within 60 days for lost salary and payments made for medical, dental, and prescription insurance coverage, provide her with seniority credit, and make the requisite contributions to the pension fund and Social Security for the entire period of petitioner's illegal termination. Gillikin, Commr 2011:Oct 17 (Garfield)

Non-renewals of non-tenured custodians for poor attendance not subject to arbitration. If the union intended to negotiate tenure rights for its otherwise non-tenured contract-employee members, in the form of a "last in, first out" clause applicable outside a traditional "layoff" situation, it should have negotiated a provision specifically so providing. Freehold Reg'l High Sch. Dist. Bd. of Educ. v. Freehold Reg'l High Sch. Custodial & Maint. Ass'n, No. A-0125-11T3 (App.Div. Apr. 25, 2012)

Non-renewal of non-tenured school business administrator upheld; board did not act in an arbitrary, capricious or unreasonable manner. To the extent that a dispute exists regarding the Standard Residency Agreement, that is a contract between the parties and is not under the purview of school law. Any contractual violation should be addressed in another forum. *Jones*, Commr 2013: April 11

Commissioner dismisses petition of City Association of Supervisors and Administrators, which claimed that the State-Operated School District of Newark violated their rights by failing to properly evaluate their performance as principals in accordance with applicable statutes, regulations and the provisions of the CBA, and sought reinstatement of the three former principals whose contracts were not renewed after two years; the District cited fiscal and reorganizational concerns as its rationale for the non-renewals, and no performance issues were noted in the non-renewal letter; although the District did fail to comply with the requirements of *N.J.S.A.* 18A:27-3.1 and *N.J.A.C.* 6A:32-4-5 relative to evaluation, but – non-compliance with the statute holds no penalty, and previous court cases have held that such non-compliance does not prevent

a school district from acting to non-renew the employment of a non-tenured teaching staff member; and any claims pursuant to the' CBA is a contractual matter not under the jurisdiction of the OAL. *City Ass'n of Supervisors and Administrators, Commr 2013: Aug 9.*

Commissioner dismisses teacher's challenge to her nonrenewal for filing six months late, in matter where teacher claimed she had tenure; she had been employed in as a bilingual science teacher from September 2006 until June 2009, when her contract was nonrenewed for reasons of economy; in September 2011 she was reappointed and was notified on May 11, 2012 that her contract would not be renewed for the next school year because of performance issues. Commissioner declines to address whether she had acquired tenure, since the May 11 date of her nonrenewal notice triggered the 90- day period for the filing of appeals. It is clearly the date of the notice of non-renewal, not the date of a *Donaldson* hearing, which starts the clock for an appeal to the Commissioner. *Rosenstrauch, Commr 2013:Aug 30.*

Commissioner reverses board's non-renewal of teacher of mathematics. Teacher acquired tenure when he became a citizen as teacher's service under Non-Citizen Certificate counts toward tenure acquisition once teacher became a citizen. Standard Certificate for Non-Citizens is an appropriate certificate for tenure acquisition. Petitioner was employed for the requisite period of time under an appropriate certificate and acquired tenure. *Bleah,* Commissioner 2014: March 24

Commissioner rejects assistant principal's claim that Board's determination not to renew his contract after employment in that position for 3 years was arbitrary, capricious and unreasonable and that board violated procedures during his performance evaluations; boards of education have an almost complete right to terminate the services of a non-tenured employee and here the Board based its decision upon input from administrators with personal knowledge of petitioner's work performance, including the Superintendent of Schools, as well as parental complaints regarding petitioner's administrative style and abilities; despite his allegation that the Board's non-renewal decision included retaliation for the filing of a discrimination complaint by his former principal, petitioner failed to raise a material question of fact as to other bona fide reasons for the Board's non-renewal action. *Schempp*, Commissioner 2014:May 12 (Clayton).

Commissioner dismisses petition of high school teacher with general business endorsement, who claimed she had tenure when she was non-renewed; courses teacher had been assigned to teach during seven of her eight years of her service in district required a technology education endorsement, which she did not possess; general business endorsement would have authorized her to teach any "educational technology" course, but not any "technology education" course; the courses petitioner taught that are at issue here are Imaging Technology and Computer Aided Design, both of which currently require a technology education endorsement. By 2006 she was aware that her credentials were not adequate and was advised by DOE

in 2007 that she could not qualify for the technology education endorsement without taking additional coursework, which she chose not to complete. *Lopac*, Commissioner 2014:May 27 (Manville)

Board's decision not to renew petitioner's teaching contract was not arbitrary, capricious or unreasonable. *Lacik*, Commissioner 2014:May 27 (Edison)

Commissioner determined that the board's failure to provide paraprofessionals with timely notice of nonrenewal did not entitle such employees to automatic reinstatement for the upcoming school year. (Winslow Twp. Para. v. Winslow Twp. Bd. of Educ.: Commr, 2014, Nov. 10).

NON-TENURED RIGHTS - Notice of Non-Renewal

State Board reversed the Commissioner's determination that the date the 90-day period for filing was not the date the teacher received the "blanket" nonrenewal letter as determined by the ALJ, but rather the date she learned that similarly-situated colleagues were being recalled but she was not. Therefore, the teacher's petition was deemed untimely by the State Board. Teacher was aware of allegedly discriminatory conduct prior to her non-renewal. Decision on motion. (Charapova, Commr. 2006:Dec. 6, reversed St. Bd. 2007:August 1)

Two non-tenured teaching staff members sought reemployment, alleging that their termination was not for stated budgetary reasons. While petition was time-barred and was dismissed, Commissioner noted that where a non-tenured teacher challenges a board of education's decision to terminate her employment on the grounds that the stated reasons are not supported by the alleged facts, she is entitled to litigate the question only if the facts she alleges, if true would constitute a violation of constitutional or legislative-conferred rights. (Middletown, Commr., 2007:August 16)

Commissioner dismisses claim by maintenance mechanic that the board failed to provide him timely notice of nonrenewal; the statutory May 15 date does not apply to non-tenured individuals, and he was provided notice according to his annual contract and bargaining agreement. (Hensel, Commr., 2009:May 18)

Provisional teacher claims that board's failure to renew his contract violated his contract violated laws and regulation governing provisional teachers, and discriminated against him. Matter is dismissed as it involves the same claims or arose out of claims that were dismissed by the Commissioner in previous litigation and on appeal in Superior Court. The teacher's contrived attempts to classify his claims in different terms or to name different individuals as respondents are rejected. (El Hewie, Commissioner 2008: November 13)(El Hewie, Commr., 2008:April 10) (Consolidated cases)

Certiorari denied where non-tenured teacher asserted that his non-renewal violated 42 U.S.C. 1983 and 1981. Bradford v. Township of Union Public Schools, 2006 U.S. LEXIS 4030, (May 22, 2006)

Commissioner determined that non-tenured transportation supervisor failed to demonstrate that board was arbitrary, capricious or unreasonable in its decision to non-renew, rendered against the recommendation of district administrators. (Davidson, Commr., 2009: Jan. 5).

Non-renewal upheld where appeal violated 90-day rule and petitioner did not hold proper certification for the position. (Clanton, Commr, 2007: March 12).

In matter brought by assistant principal seeking damages under the Family and Medical Leave Act and New Jersey's Law Against Discrimination.for Board's refusal to renew his contract, court upholds order requiring disclosure of his psychological records to board. Levine v. Voorhees Bd. of Educ., 2009 U.S. Dist. LEXIS 78851 (D.N.J. Sept. 1, 2009) (subsequent proceedings Dec. 23, 2009, 2009 U.S. Dist. LEXIS 119263)

District court dismisses action filed by transferred maintenance worker and spouse, former teacher's aide, alleging deprivation of rights under the NJ LAD, Sec. 1983, the fourteenth amendment and retaliation regarding his transfer and her non-renewal. Spoliation of videotape evidence claim is rejected. Aurelio v. Bd. of Educ., No. 06-3146 (JLL), 2009 U.S. Dist. LEXIS 52759 (D. N.J. June 23, 2009)affirmed by Aurelio v. Bd. of Educ., 2010 U.S. App. LEXIS 7069 (3d Cir. N.J. Apr. 6, 2010)

Appellate Division affirmed Commissioner's decision upholding teacher of mathematics' non-renewal by the board. School district's lack of full compliance with the mentoring and evaluation program did not prevent non-renewal. The Commissioner decision was overwhelmingly grounded in substantial credible evidence in the record as a whole, and was not arbitrary, capricious or unreasonable. The court found the decision to be a fair and reasonable implementation of applicable law and legislative policies. El-Hewie v. Bd. of Ed. Voc. Sch. Dist., 2009 N.J. Super. Unpub. LEXIS 3116 (App. Div. Dec. 24, 2009.)

Teacher of the handicapped, who received a notice of non-renewal, contended that she had acquired tenure; forty-three day approved unpaid medical leave of absence should be counted toward tenure acquisition. Commissioner agreed with ALJ determination that petitioner served sufficient time under her endorsement to be tenured, notwithstanding an approved unpaid medical leave of absence. The Board was not deprived by such leave of its opportunity to evaluate petitioner; and clear and consistent precedent supported the findings, notably Kletzkin v. Board of Education of the Borough of Spotswood, Middlesex County, 136 N.J. 275 (1994).

56 year-old music teacher who was non-renewed in third year alleged violation of NJLAD which court dismissed. District showed that teacher had problems with discipline. Further, hiring a qualified candidate with less experience in light of job performance deficiencies does not constitute evidence of discrimination. Dorfman v. Pine Hill Bd. of Educ., 2009 U.S. App. LEXIS 21427 (3d Cir. N.J. Sept. 30, 2009) (not precedential)

Provisional teacher filed civil rights claim alleging discrimination in his non-renewal. Plaintiff's section 1983, and 1985 (conspiracy) claims fails, but

section 1981 claims are remanded for hearing on preclusive effect that ALJ determinations have on state law claims. El-Hewie v. Bergen County, 2009 U.S. App. LEXIS 20689 (3d Cir. N.J. Sept. 17, 2009)(not precedential)

Non-renewal did not constitute discipline. Appellate Division affirms Chancery Division order, which restrained arbitration of the board of education's decision not to renew school bus driver's employment contract. Freehold Reg'l High Sch. Dist. Bd. of Educ. v. N.J. Educ. Ass'n, (A-4130-06T1) 2009 N.J. Super. Unpub. LEXIS 1099 (App Div. May 8, 2009.)

Commissioner dismisses petition filed by non-tenured athletic director who claims his contract was improperly terminated, as case involves issues of contract interpretation over which the Commissioner has no jurisdiction; summary judgment granted. McGriff, Commr. 2009: Nov. 6

90-day rule begins to run from date of notification of non-renewal, not on date of expiration of contract. Salazar-Linden v. Board of Educ. of Holmdel, 2009 N.J. Super. Unpub. LEXIS 2713 (App.Div. Oct. 28, 2009)

State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of limitations. (Bradford, St. Bd. 2007:June 6)

Public school employers were improperly granted summary judgment on principal's First Amendment retaliation claim. Employers' failure to renew the employee's employment contract constituted adverse employment action for purposes of employee's First Amendment retaliation claim for "whistleblowing" activities. Principal's resignation occurred only after notification that employer planned to non-renew his contract. Non-renewal was actionable conduct; a demotion in title and salary. Lapinski v. Bd. of Educ., No. 04-1709, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 163 Fed. Appx. 157, 2006 U.S. App. LEXIS 1989, Filed January 24, 2006.

Motion to compel production of personnel file and minutes of board meeting in appeal of non-renewal denied. Motion filed nearly four years after initial petition filing with Commissioner and nearly a year after filing appeal with State Board. No explanation given for delay. (Anderson, St. Bd. 2007:May 2)

Two non-tenured teaching staff members sought reemployment, alleging that their termination was not for stated budgetary reasons. While petition was time-barred and was dismissed, Commissioner noted that where a non-tenured teacher challenges a board of education's decision to terminate her employment on the grounds that the stated reasons are not supported by the alleged facts, she is entitled to litigate the question only if the facts she alleges, if true would constitute a violation of constitutional or legislative-conferred rights. (Middletown, Commr., 2007:August 16)

Petition to challenge nonrenewal must be filed within 90 days of the notice of his nonrenewal, not within ninety days of exhaustion of the other avenues and mechanisms that might have employed in seeking employment renewal. Cumberland, Commissioner 2011: March 4

Petition to challenge two day in-school suspension and expunge discipline, dismissed for failure to file within 90 day time period. J.F.L. o/b/o/M.L., Commissioner 2011: April 12

Assistant Director for Human Resources/Personnel challenged involuntary transfer to the position of Supervisor of Physical Education and Health – a supervisory position within her area of certification – in October 2006. Petitioner alleged her tenure rights were violated and filed her appeal in 2009. Matter dismissed for failure to timely file within 90-day time period. Adams, Commissioner 2011: April 12

Charter school's nonrenewal of elementary school teacher upheld. Teacher received timely notice of nonrenewal. Procedural violation with respect to statement of reasons for nonrenewal did not impact teacher's ability to present case. Board's decision to non-renew was neither arbitrary, capricious nor unreasonable. Gilbert, Commissioner 2011:March 7

Written Statement of Reasons

Commissioner declines to address ALJ's conclusion that a mid-term termination of a teacher does not require statement of reasons or hearing as with a nonrenewal. (Martell-Dimaio, Comm'r., 2008:May 9).

Commissioner determined that petitioner failed to establish that the board was arbitrary, capricious, or unreasonable in denying tenure where principal's evaluations demonstrated continuing building management issues despite having an overall positive nature. (Adams, Comm'r, 2008: Aug. 13)

Commissioner determined that non-certificated employees are first required to request a written statement of reasons for non-renewal and a Donaldson hearing in order to be entitled to claim a due process denial. (Ruby, II, Commr., 2007: Jan. 22).

High school music teacher alleged that his contract non-renewal constituted First Amendment Retaliation under 42 U.S.C. § 1983 and age discrimination pursuant to the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621 et seq. and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. No evidence was presented, either direct or circumstantial, that cast sufficient doubt on the board's articulated reasons for refusing to renew Plaintiff's employment contract. Summary judgment was granted as to all claims. Saia v. Haddonfield Area Sch. Dist., Civil Action No. 05-2876, 2007 U.S. Dist. LEXIS 67018, (D. N.J. September 10, 2007)

Non-renewal of non-tenured teacher's contract was not arbitrary, capricious or unreasonable and will be upheld, regardless of whether the procedures for observing and evaluating the teacher were adhered to; however, she is entitled to compensation for twelve days of work she performed after her contract had expired. Tuck-Lynn, Commr. 2009: Nov. 20.

Board of education's decision to non-renew non-tenured teacher's aide was neither arbitrary, capricious or unreasonable. Non-renewal was recommended by the superintendent and was based on ample and demonstrable performance concerns over a six year period. Boards of

education have nearly unfettered discretion in the renewal or non-renewal of non-tenured staff. *Turchio*, Commissioner 2013: October 18

Appellate Division affirms Commissioner decision upholding non-renewals of three teachers by the school district. Time served as a replacement teacher, substituting for a teacher on maternity leave did not count towards tenure acquisition, despite administrator assertions to the contrary. Teachers were employed by the board of education, not the principal. Replacement or substitute teachers are governed by a different statute, which enables a board of education to designate a person "to act in place of any officer or employee during the absence, disability or disqualification of any such officer or employee." *N.J.S.A.* 18A:16-1.1. However, the statute provides that "no person so acting shall acquire tenure in the office or employment in which he acts pursuant to this section when so acting." *Ibid.* Thus, "under *N.J.S.A.* 18A:16-1.1, substitute teachers do not earn credits toward tenure." Interesting arguments from union that tenure should be granted as a matter of equity; reliance on apparent authority of principal and equitable estoppel. *Bridgewater-Raritan Educ. Ass'n v. Bd. of Educ. of the Bridgewater-Raritan Sch. Dist.*, DOCKET NO. A-1868-12T4 (App. Div. January 9, 2014)

Non-renewal upheld where principal received poor evaluations. In particular, principal's improper response to student bringing weapon to school was enough to warrant non-renewal. Principal did not follow policy when he gave weapon back to parent, failing to notify superintendent in a timely manner and law enforcement. Principal endangered school community and did not appreciate gravity of actions. Claim that non-renewal was politically motivated not supported by record. *Nazziola*, Comm 2014: Jan 31.

Nonrenewal of non-tenured custodian following excessive absenteeism upheld. The express terms of the CNA discerns no ambiguity or doubt that the Board did not agree to arbitrate nonrenewals. The Board retained the right to decide whom to employ, which includes its exercised discretion to determine whom not to employ. *N.J.S.A.* 18A:27-4.1. In Article III of the CNA, the Board agreed to "be limited only by the specific and express terms" of the agreement. No provision in the CNA allows nonrenewals to be reviewed in arbitration. Interpretation of the CNA is guided by *N.J.S.A.* 18A:27-4.1, which we conclude is not inconsistent with the Legislature's pronouncement favoring arbitration, set forth in *N.J.S.A.* 34:13A-5.3. In fact, the amendment to *N.J.S.A.* 34:13A-5.3 did not alter prior precedent that held: absent specific mention in the CNA, nonrenewal of an expired fixed-term contract of a nontenured employee is not subject to arbitration. *Glassboro Bd. of Educ. v. Glassboro Educ. Support Professionals Ass'n*, No. A-5276-12T1 (App. Div. June 11, 2014)

A board may rely upon a reason for non-renewal even if that reason is not provided in the district's response to the teacher's request for reasons. (04:Oct. 15, Watson, Jr., appeal dismissed for failure to perfect, St. Bd. 05:March 2)

Adult night high school: teachers who are in non-mandatory adult night high school may obtain tenure if statutory criteria are otherwise met; however, teachers here did not receive sufficient number of yearly appointments to achieve tenure. (04:Oct. 15, Martin, appeal dismissed for failure to perfect, St. Bd. 05:March 2)(04:Oct. 15, Watson, Jr., appeal dismissed for failure to perfect, St. Bd. 05:March 2)

Charter Schools

Termination of business manager/board secretary by charter school was reasonable where employee had left work without permission and was uncooperative. (99:Nov. 15, Mezzacappa)

Commissioner adopted ALJ's decision to dismiss non-tenured Spanish teacher's claim that his dismissal was arbitrary and unreasonable. However, Commissioner modified the ALJ's dismissal of teacher's NJLAD claim because the teacher set forth facts sufficient to show a genuine issue as to whether the board's decision to nonrenew was unlawfully based on the teacher's disability. (04:Feb. 23, Grande)

Commissioner determined that non-tenured employees of a dissolving regional district did not possess a right to continued employment in the constituent districts, pursuant to N.J.S.A. 18A:13-64 because they were non-renewed at the conclusion of the school year. The save harmless provision is intended to protect only those employment entitlements possessed prior to dissolution. (05:April 13, Lower Camden County Reg.)

Emergent relief denied teacher who was not renewed and sought medical benefits for chemotherapy. (99:Sept. 22, Castro)

Five-day suspension without pay for non-tenured custodian was outside Commissioner's jurisdiction. If custodian were tenured, suspension without pay would have been minor disciplinary action lawfully imposed by the board. (02:March 14, Heminghaus)

Interpersonal problems with teachers may afford a basis for non-renewal. (04:Oct. 15, Martin, appeal dismissed for failure to perfect, St. Bd. 05:March 2)

Nonrenewal - Reasons

Board is not required to take action accepting or rejecting a CSA's recommendation to non-renew; the contract is deemed non-renewed by operation of law, and teacher may then request statement of reasons, and subsequently request a *Donaldson* hearing. Where CSA notified teacher through the year-end evaluation that the CSA recommended she be non-renewed, she was so deemed by operation of law. (04:Dec. 1, Skidmore)

Board's actions to non-renew teacher were upheld in light of board's broad discretion in this area. (04:Dec. 1, Sheridan)

By resigning his position nine or ten days after receiving notice of non-renewal guidance counselor relinquished any rights that may have otherwise accrued to him through a challenge to the non-renewal. (03:May 1, Cohen, aff'd St. Bd. 03:Aug. 8)

Commissioner deferred to ALJ's credibility findings regarding district's testimony that certified notice of non-renewal was mailed where petitioning teacher asserted a claim of re-employment based on failure to receive district's notice of non-renewal. (04:July 14, Sahni, aff'd St. Bd. 04:Nov. 3)

Decision to not grant tenure (non-renew) need not be grounded in unsatisfactory classroom or professional performance; unrelated but equally valid reasons may exist. (02:March 11, McEwan)

Even when a board fails to provide a teacher with accurate and sufficient reasons for nonrenewal, the Commissioner may not impose a penalty upon the board for such failure unless it is established that the true reasons for nonrenewal violate the teacher's constitutional or legislatively conferred rights. (04:Dec. 1, Sheridan)

Nonrenewal by board not improper. Board acted in good faith, performance not up to district standards. (04:April 12, Lustberg, aff'd St. Bd. 04:Sept. 1)

Nonrenewal of librarian/teacher was not arbitrary and unreasonable, in light of evaluations; teacher's conspiracy theory discredited. (04:Oct. 15, Watson, Jr., appeal dismissed for failure to perfect, St. Bd. 05:March 2)

Nonrenewal of principal was upheld; recommendation not to renew was not based on unsubstantiated rumors but rather on fact that principal lacked interpersonal skills and contributed to division within school community; determination in regard to tenure is not limited to evaluations and may include other input. (98:Aug. 17, Pratt, appeal dismissed St. Bd. 99:Jan. 6)

Nonrenewal upheld; petitioner claimed that he was non-renewed because he had cancer. Claimed board failed to give him proper number of evaluations. Commissioner agreed that discrimination claim had been abandoned and that requisite number of evaluations had been given. (00:March 15, Castro, appeal dismissed for failure to file appeal in timely manner, St. Bd. 00:Oct. 4)

Non-tenured guidance counselor resigned prior to the effective date of the non-renewal. Relinquished all rights that would have accrued to him. Board provided courtesy statement of reasons. (03:May 1, Cohen, aff'd St. Bd. 03:Aug. 8)

Non-tenured teacher makes no claim that she was deprived a constitutional or statutory right in nonrenewal, failing to state a claim upon which relief can be granted. (02:Oct. 29, Margadonna, aff'd for the reasons expressed therein, request for oral argument denied, St. Bd. 03:Feb. 5, appeal dismissed with prejudice unpub. Op. Dkt. No. A-3338-02T2, May 1, 2003)

Superintendent of state-operated district acted within authority in nonrenewing vice principal's contract based on one negative evaluation by assessor. (98:Oct. 7, Harvey)

Teacher failed to demonstrate that non-renewal was arbitrary or capricious, notwithstanding CSA recommendation to renew. Petitioner failed to meet limited standard entitling non-tenured, non-renewed teachers to relief. (02:March 11, McEwan)

Teacher fails to challenge non-renewal within 90 days of notification; petition dismissed. (00:Sept. 11, Wise)

The board's acceptance of a teacher's resignation may be fairly read as its consent to permit the resignation despite contractual terms requiring 60 days' notice. (04:Dec. 1, Sheridan)

The board's failure to notify a non-renewed teacher in writing of its decision within three days of the informal appearance (Donaldson hearing), did not constitute a due process violation where the teacher was timely advised by the CSA of the Board's decision and where he tendered his resignation the day after the appearance. Moreover, a nontenured teacher has no protected interest in continued employment under the New Jersey or United States Constitutions. (04:Dec. 1, Sheridan)

Non-tenured teacher who worked one week and was then terminated was not entitled to damages as employment contract had never been consummated (never approved by State District Superintendent). (99:June 14, Fanego)

Procedure: Non-tenured teacher was estopped from obtaining withdrawal or stay of her pending discrimination claim before OAL to pursue an appeal of the dismissal of concurrent Superior Court matter; parties had almost completed the administrative hearing. (01:May 25, Stewart-Rance)

Psychologist challenging non-renewal failed to file claim within 90 days of learning by letter that his contract would not be renewed; Commissioner rejects teachers' argument that 90-day period begins after receipt of written notice of determination after Donaldson hearing pursuant to N.J.S.A. 18A:27-3.2. (02:Oct. 7, Sniffen)

Social worker: Settlement approved following challenge to non-renewal as arbitrary, capricious and unreasonable. (02:June 26, Pannullo)

Sunshine Law issues were not relevant to question of non-renewal of non-tenured teacher. (04:Oct. 15, Watson, Jr., appeal dismissed for failure to perfect, St. Bd. 05:March 2)

Teacher's challenge to non-renewal claiming discrimination because of Jamaican national origin, is dismissed for lack of prosecution. (01:May 25, Stewart-Rance)

Termination

Absent constitutional constraints or legislation, local boards have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the board. (01:Feb. 7, Anderson, St. Bd. aff'g 00:Jan. 19, aff'd App. Div. unpub. op. Dkt. No. A-3972-00T2, March 26, 2002)

Teacher who allowed pupil to be beaten in her presence was properly terminated for cause; board not required by statute or constitution to conduct a pre-termination hearing, only to provide a statement

of reasons; any rights to a hearing under collective bargaining agreement are outside of Commissioner's jurisdiction. (01:Feb. 7, Anderson, St. Bd. aff'g 00:Jan. 19, aff'd App. Div. unpub. op. Dkt. No. A-3972-00T2, March 26, 2002)

Termination of social worker upon 60 days' contractual notice was affirmed on remand; although exhibits in evidence had been lost, factual stipulations were not disputed. (98:Dec. 11, Fuller)

Where, after Donaldson hearing, board wished to offer teacher contract, but mistakenly thought superintendent's recommendation was necessary, board's vote to reappoint "at the discretion of superintendent" had legal effect of reappointment. Teacher, who was subsequently appointment as long-term sub for only part of year, was entitled to salary she would have earned as full-time teacher for entire year, with appropriate adjustments for unemployment compensation to avoid unjust enrichment. (00:June 26, Healy)

Non-tenured teacher who received a contract in June, and then in mid-August a letter notifying her that the contract was issued in error, filed an appeal at the end of December challenging her non-renewal and claiming that the board never voted to non-renew her, and seeking specific performance of the contract; Commissioner finds that she filed her appeal in excess of ninety-days after the receipt of the letter and that her petition should be dismissed for failure to timely file. Allen, Commr 2011: May 23. (Elizabeth)

Charter school teacher did not violate N.J.S.A. 18A:26-10 when she gave only two weeks' notice of departure during the first 60 days of her employment; the language in her contract created two separate terms of employment by establishing a 60-day probationary period during which her employment would be reviewed and after which a permanent position would be offered based on satisfactory performance. Matter of Certificate of Walker, 2011: Nov. 10 (Central Jersey Arts Charter)

Petition of former non-tenured employee who challenged the Board's decision to terminate her employment, is dismissed as untimely filed under N.J.A.C. 6A:1.3(i). The ALJ concluded that petitioner's appeal was not timely filed with the Commissioner within 90 days of the date when her Superior Court complaint was dismissed on jurisdictional grounds. Accordingly, the ALJ granted the Board's motion to dismiss. Maranon, Commr 2012: March 29.

NURSES

Board violated school nurse's tenure and seniority rights when it reduced her to part-time position and assigned her teaching duties to another teaching staff member; she had tenure protection in all the assignments within her tenurable position of school nurse, including teaching health. (00:Aug. 18, Woodbine)

Contracted nurses, even if they possess school nurse certification, may not independently perform services reserved to the school nurse by statute; they may only assist. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)

District must employ a sufficient number of certified school nurses to ensure adequate provision of the duties specifically reserved for certified school nurses; other duties can be performed and provided by other health professionals who hold the requisite license from the Board of Nursing. (97:Dec. 12, Dover, dismissed as moot St. Bd. 00:July 5)

Non-certificated nurses and contracted nurses possessing nursing certificates may perform health-related services other than those that must be performed by a school nurse. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)

N.J.S.A. 18A:40-3.3 permits board to use noncertified nurse to supplement services of part-time certified school nurse assigned to facility, while certified school nurse is not present, provided they do not perform duties statutorily reserved for school nurse. (01:June 7, Ramsey Teachers Assn., motion granted St. Bd. 01:Sept. 5, aff'd St. Bd. 04:Sept. 1)

Petition filed by certified school nurses alleging that Boar retained unqualified uncertified nurses in violation of statute and of their rights, dismissed on basis of *res judicata* and collateral estoppel; issues the same as in prior litigated cases. (99:May 6, Old Bridge Ed. Ass'n)

School health aide did not perform duties of certified school nurse. Allegation that board did not provide adequate nursing services not raised in petition. Matter dismissed. (03:Jan. 6, Franklin Lakes)

Settlement approved in nonrenewal matter. (03:May 19, Scherba)

Paterson Education Association had standing in matter where it alleged that the school district failed to employ the proper ratio of school nurses to provide services for every preschool child in the District under N.J.A.C. 6A:13A-4.5-- which mandates that there be one school nurse for every 300 preschool children—and improperly sought to meet the needs of its preschool students through the use of medical assistants; Deputy Commissioner remands to the OAL for specific findings about the number of preschool students in the district, the number of qualified nurses, and whether the ratio has or has not been satisfied. Paterson Education Association had standing to bring the action. Paterson Ed. Ass'n, Commr 2012: May 24.

Parent Choice Act, *N.J.S.A.* 18A:40-3.3(b), governs the employment of nursing personnel for medically fragile students, and provides that the parents or legal guardian shall have the option to choose a provider to render clinical nursing services so long as the cost to the school district remains neutral. Parents want Loving Care Agency (LCA) to continue to provide the medically necessary clinical nursing services required by A.A. while she attends school in the Trenton school district. Cost for LCA's services would be the same as home nursing service currently used by the school district. Commissioner determines that parents of AA be allowed to

choose LCA as the provider of medically necessary clinical nursing services for their daughter. *Loving Care Agency, Inc. and K.S. and K.A. o/b/o A.A.*, Commissioner 2014: April 7

OPEN PUBLIC MEETINGS ACT

Board member appealed board's censure of him for violating board policy when he spoke to media after closed session discussing potential ethics complaints against him. Policy that required five-day notice to board prior to releasing board information did not violate First Amendment rights. (00:Jan. 18, Crystal)

Board's agenda did not provide sufficient notice that possible elimination of kindergarten program would be discussed; however, board later provided adequate notice of its intent to consider the issue at subsequent meeting. (00:Jan. 18, Sherman, aff'd St. Bd. 00:June 7)

Certification of charges should not be dismissed as violative of the Open Public Meetings Act where the board did not record the vote to certify charges in its minutes; the tenure law requires that such vote take place in closed session, and such closed session minutes are not to be made promptly available; do so would violate the tenure law. (03:Oct. 14, McDonald)

No evidence that board violated OPMA in adopting protocols regarding the evaluation of student requests for transfers for medical/environmental reasons. No violation of board bylaw of regulation and no evidence of intent to deceive the public found. (05:April 10, Tuttle)

Sunshine Law: Commissioner has jurisdiction over Sunshine Law issue only if ancillary to claims arising under school law. (00:Jan. 3, Parisi)(01:April 26, Settle)

Teacher was not entitled to a Rice letter. (04:Sept. 15, Mueller)

State Board determined that failure to provide tenured clerk with Rice notice in advance of a reduction-in-force may have been evidence of bad faith on the part of the board, such lack of notice was not the basis for restoration to the clerk's tenured position. (Ferronto, St. Bd., 2006: Feb. 1).

The defendant development corporation was subject to both the Open Public Meetings Act and the Open Public Records Act because it is both a public body that performs a governmental function within the meaning of OPMA and an instrumentality or agency created by a political subdivision under OPRA. Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp. 205 NJ LEXIS 609 (2005)

The fact that the Township Attorney had not yet authorized the closed session minutes for release was not a lawful basis for a denial of access Johnston v. Hillside, GRC Complaint No. 2006-202, Decided January 23, 2008)

Given the Custodian's duty to safeguard the integrity of government records and the fragility of the meeting minutes, providing inspection was a reasonable alternative to compromising the integrity of fragile records. The

Custodian's offer of inspection of the meeting minutes from 1925 to 1975 was lawful pursuant to Hascup v. Waldwick Board of Education, GRC Complaint No. 2005-192 (April 2007). (Taylor v. Cherry Hill Board of Education, No. 2008-258 (GRC August 11, 2009))

GRC to conduct in camera inspection of letter read by mayor at a public meeting to determine whether the record falls under the ACD exception and is exempt from disclosure. (Diaz v. South Harrison Township, No. 2009-171 (GRC August 11, 2009))

Where a pattern of misconduct is alleged under the OPMA, a court should consider violations occurring outside the statute's 45-day limitations period to decide whether an injunction to prevent future wrongful conduct is warranted under N.J.S.A. 10:4-16; here, where court finds one instance of an OPMA violation within 45-day limitations period, and plaintiffs alleged that over course of two years freeholder board voted on numerous occasions in closed session rather than bring issues for a public vote, court remands for further findings on whether injunctive relief is warranted. Burnett v. Gloucester County Board of Chosen Freeholders, 976 A.2d 444; (App. Div. August 20, 2009)

Executive session minutes from October 2006 through February 2007 reviewed in camera by the GRC. Determinations made as to what was properly redacted and what was not. Custodian ordered to comply with the review. (Barile v. Stillwater Township, No. 2007-92 (GRC August 11, 2009))

The court determined that the board's routine practice of conducting its regular meetings with a brief open session, followed by a closed session of indeterminate duration, followed by the resumption of the open session, violated the Open Public Meetings Act. OPMA appears to contemplate a procedure under which the open meeting precedes the closed meeting. The board's variable time for the resumption of the open session, in combination with the brief five-minute open session at the beginning of the meeting, created such uncertainty about when the public session will actually resume as to impermissibly erode the reliability of the times specified in the public notices of the Board's meetings. Court declined to decide whether there can ever be a justification, on an isolated basis, for conducting the closed portion of the meeting before the open session begins. McGovern v. Rutgers U. Board of Governors, ___N.J. Super __(App. Div. 2011) No. A-2531-09T1, 2011 N.J. Super. LEXIS 32, (App. Div. February 18, 2011) Approved for Publication.

New Jersey Supreme Court overturned an Appellate Division ruling that would have required public bodies, including school boards, to conclude open sessions of meetings before they could enter closed session. Absent proof of bad motive, courts should refrain from intervening in highly individualized decisions on how public body proceeds through its agenda. The Court also addressed other aspects of closed-session, including the content of a resolution to enter closed session, which must contain all the information known at the time, and the requirement that members of public bodies must ensure that they do not stray from the defined issues that may

be addressed in a closed session. Francis J. McGovern, Jr., Esq. v. Rutgers, 211 N.J. 94 (2012) (July 25) (Sunshine Law issues, including sequencing of board meetings).

While cognizant exemptions or privileges may apply to certain attachments, absent the same, the public has a right to know and receive the full agenda prior to any meeting. There exists a significant public interest in ensuring the open, transparent, and public review of matters discussed by the Board consistent with the legislative intent pursuant to OPRA, OPMA, and the common law right of access. To the extent the Board does not claim an exemption, privilege, or some particularized reasons why it cannot produce the documents, all attachments shall be uploaded with the agenda pursuant to the requirements of OPMA. *Opderbeck v. Midland Park Bd. of Educ*., 2013 N.J. Super. Unpub. LEXIS 3010, (Law Div. Dec. 24, 2013)

Board ordered to take corrective and remedial action by proceeding de novo at a public meeting held in conformity with the OPMA, following suit alleging several violations including: violated *N.J.S.A.* 10:4-13 because it entered closed session without first apprising the public of the "general nature" of the closed session discussion and the time when and the circumstances under which the confidential discussion could "be disclosed to the public." Further, Board discussed matters that should have properly been addressed at the public session. Defendants do not dispute that, the Board's discussion's regarding: (1) the solar panel project; (2) the Board's goal regarding shared superintendence; (3) the "possibility of having K,1,2, self-contained classroom for the upcoming 2012-12 school [*15] year"; (4) Mrs. Fuhring's "progress on her goals for the 2011-12 year"; (5) the possibility of having "a volunteer to assist in picking teacher of the year"; (6) the announcement that Joe Pasiment would now oversee Ocean, Monmouth, and Middlesex counties; (7) the Board's intentions to do "trainings the last week of school"; (8) tuition rates; (9) the Choice School application; (10) the naming of the Board's multi-purpose room; (11) a conflict concerning meeting dates; (12) calendar changes to half days; (13) NJSBA Board training; (14) the dates of the school band concert; (15) the "dedication for Mr. CZ"; (16) the Quality Single Accounting Continuum or "QSAC"; (17) the science curriculum; (18) textbooks; (19) Mrs. Fuhring's "progress on the teacher evaluation system"; Mrs. Brendel's success in obtaining insurance funds for a new gym floor; (20) building repairs and lighting; (21) "a new sign with PTO"; (22) the fact that the Spanish teacher began teaching; (23) the Board's efforts to bring art to the grade school; and (24) the need to focus on Language Arts. *N.J. Found. for Open Gov't v. Island Heights Bd. of Educ.*, No. OCN-L-703-14 (Law Div. Aug. 26, 2014)

OPEN PUBLIC RECORDS ACT

The fact that the Township Attorney had not yet authorized the closed session minutes for release was not a lawful basis for a denial of access Johnston v. Hillside, GRC Complaint No. 2006-202, Decided January 23, 2008)

GRC determined that since no records relevant to the OPRA request existed, there would not be an unlawful denial of access. Records requested included superintendent's salary for the 2006-2007 school year, cost of a car provided to the superintendent, any additional compensation paid to the superintendent and any compensation from the Grants Administration to the superintendent. Donohue v. Salem County Vocational Technical High School GRC Docket No. 2006-164, Decided November 15, 2006.

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. Although denial is "deemed" by Custodian's failure to respond in writing within 7 days, this was not an unlawful denial of access because the requests were invalid. Taylor v. Elizabeth Bd. of Ed., GRC Complaint No. 2007-214, Decided April 23, 2008.

Custodian required to disclose the requested December 1, 2003 and March 1, 2004 executive session minutes with appropriate redactions pursuant to the Open Public Records Act ("OPRA"), providing a detailed and lawful basis for each redaction. Custodian violated N.J.S.A. 47: 1A-5.g. in not providing a specific basis for the denial of access to the requested executive session minutes. (Old Bridge, GRC, 2006: April 11.)

GRC found that the board secretary violated OPRA by failing to provide immediate access or a lawful basis for denial of access to copies of expenditures obtained as a result of the referendum voted on in 2002. Board secretary failed to obtain written agreement extending the time to respond. (Hascup, GRC, 2007: April 25).

GRC found that the board secretary did not violate OPRA by failing to allow complainant to use a personal copier to copy requested records (Hascup, GRC, 2007: April 25).

GRC found that the board secretary did not violate OPRA by using the board attorney to respond to her denial of access complaint. (Hascup, GRC, 2007: April 25).

GRC found that the complainant was not entitled to a refund for costs associated with making copies of documents when those documents were subsequently released to the public. (Hascup, GRC, 2007: April 25).

Complainant affirmatively asserted that he had instituted an action in Superior Court regarding the denial of access. Complaint disposition - pending action in Superior Court. GRC Complaint No. 2007-77, Decided March 28, 2007

It was not a violation for custodian to fail to provide monthly reimbursement records from the district's outside counsel where none existed as the law firm provides legal representation via a flat contract fee; however,

Custodians' failure to respond in a timely manner was a "deemed" denial. The Custodians did ultimately respond and there was no evidence that either Custodian's actions were consistent with the legal standards established for knowing and willful conduct. (Lyons, GRC, 2005)

OPRA contains no exemption to disclosure for records which are a part of litigation. Even where an OPRA request involves the same subject as the litigation (in this case, windmills), a requestor is still entitled to obtain the requested records. Pisauro v. Township of Longbranch, GRC Complaint No. 2007-146, Decided April 23, 2008.

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. Pursuant to N.J.S.A. 18A:36-19 and N.J.A.C. 6A:32-2.1, the records are student records which must be returned to the Board as the counselor is no longer assigned educational responsibility for these students. (Welty, Comm'r., 2008:May 12).

The $55 fee established by the Township of Edison for duplicating the minutes of the Township Council meeting onto a computer diskette is unreasonable and unsanctioned by the explicit provisions of OPRA; the actual cost of copying onto the diskette is far less than $55. The imposed fee creates an unreasonable burden upon plaintiffs' right of access under OPRA and is not rationally related to the actual cost of reproducing the records. The judgment of the Law Division is reversed. 384 N.J. Super. 136 (App Div 2006)

The Custodian of records failed to provide timely access to records, including a failure to provide minutes of a closed session meeting, as well as the failure to provide bills immediately, and other records within 7 business days. The GRC ordered the Custodian to provide redacted minutes, with justification for each redaction. Violation was not willful and knowing; delays were due to high turnover in office. O'Loughlin, GRC, 2006:Feb. 6

The Custodian of records had not provided the information requested with regard to records of any services performed by the board's attorneys, as well as records pertaining to the Schools Construction Corporation and any other contractors that may have done or may do any work in several schools within the District. The GRC entered an interim order for the Custodian to disclose the records responsive to the request, or submit a legal certification with a legal justification within 10 days as to why the records should not be disclosed. Lyons, GRC,2006: Feb. 17.

Complainant's request for W-2 forms pertains to tax return information, and such information is exempt from public access pursuant to N.J.S.A. 47:1A-9.a. and 26 U.S.C. § 6103 (2004). Custodian has met his burden of proving that he did not unlawfully deny (Lucente, GRC 2007: April 11).

Custodian did not unlawfully deny access to complainant. Custodian provided records responsive to one request item, provided information responsive to two request items. Documents did not exist for three other requested items. No obligation under OPRA for custodian to create documents in response to records requests. Failure to respond within the statutorily

mandated seven (7) business days resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.i.(Cottrell, GRC, 2006: April 11).

Custodian has complied with the Council's January 27, 2006 order in disclosing the requested "handwritten notes taken of meeting between Edward Scheingold, John McCormack and Linda B. Hickey; notes taken by Linda Hickey," except Section 2, Portion "D" and "E" as indicated in the January 19, 2006 In Camera Findings and Recommendations and has appropriately done so within (10) business days from receipt of the Council's Order. (McCormack, GRC, 2006: March 9).

The defendant development corporation was subject to both the Open Public Meetings Act and the Open Public Records Act because it is both a public body that performs a governmental function within the meaning of OPMA and an instrumentality or agency created by a political subdivision under OPRA. Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp. 205 NJ LEXIS 609 (2005)

Custodian complied with the GRC's January 27, 2006 Interim Order by releasing the Ocean Gate Board of Education's October 20, 2004 meeting minutes to the Complainant within ten (10) business days of receiving said Order and has included a Certified Mail receipt indicating same. Pursuant to N.J.S.A. 47:1A-7.b., the Council does not have authority over the content of records (O'Laughlin, GRC, 2006: March 9).

Custodian inaccurately asserted that the requested student transcript did not exist, which was an unlawful denial of access. Z.T. v. Bernards Township, GRC Complaint No. 2007-262, Decided April 23, 2008.

Student's OPRA complaint is dismissed where student, who was suspended from middle school for ten days and adjudicated in the Family Part for weapons possession, sought criminal investigatory records from police, including all narrative reports and complaints related to weapons possessions on school grounds over 6-year period. Appellate Division affirms summary judgment dismissal,as investigatory reports and juvenile records are exempt from production. R.O. v. Plainsboro Police Dep't, (A-5906-07T2) 2009 N.J. Super. Unpub. LEXIS 1560 (App Div June 17, 2009.)seeking information related to the number and racial composition of juvenile arrests and charges.

GRC must conduct an in camera review of resignation letter, law firm invoice and executive session meeting minutes in order to determine the validity of the Custodian's assertion that the redactions constitute information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. (Kupferman v. Long Hill Township Board of Education, No. 2007-213 (GRC August 11, 2009))

Custodian of government records may adopt a form for requesting access to a government record, and may require specific reasonable procedures that need not include every method of transmission mentioned in N.J.S.A. 47:1A-5(g); thus where custodian required that requests be made by mail or hand-delivery, he was not required to honor request for access made by

fax. Paff v. City of East Orange, 407 N.J. Super. 221(App. Div. 2009) (May 21,2009)

The document iinstrumental in the DOE's development of the new funding formula was exempt from release under OPRA's deliberative process privilege and the common law right. A government record, which contains factual components, is subject to the deliberative process privilege when it was used in the decision-making process and its disclosure would reveal the nature of the deliberations that occurred during that process. Education Law Center v. New Jersey Dept of Ed., 198 N.J. 274 (2009). (March 26, 2009)

Requested record of check made out to attorney must be produced for requestor. Matthews, GRC 2009: Nov. 18. Matthews, GRC 2009: Dec. 22

GRC referred complaint to OAL for hearing, including an in camera examination of the record, to determine whether School District Internal Investigation Report completed by Special Counsel was attorney-client privileged material, and if so, whether the attorney-client privilege was waived, and if the Custodian knowingly and willfully violated OPRA and unreasonably denied access. (Jones v. Trenton Board of Education, No. 2007-282 (GRC June 23, 2009))

Small public agencies may charge the enumerated paper copy fees established under N.J.S.A. 47:1A-5.b. rather than determining the actual cost of providing such copies. Because Stillwater's population is less than 5,000 according to the 2000 Census, the Township qualifies as a small municipality. Additionally, because the Custodian certified that the paper copy fees established in the Township's code were based on the rates of neighboring municipalities, and thus are not based on the Township's actual cost of providing paper copies, the Township may charge OPRA's enumerated rates for paper copies. (O'Shea v. Stillwater Township, No. 2007-253

Custodian's written request for an extension of time was inadequate, pursuant to N.J.S.A. 47:1A-5.i, because the Custodian failed to provide an anticipated deadline date upon which the requested records would be made available. (Kohn v. Township of Livingston, No. 2007-322 (GRC June 23, 2009))

Electronic database of drinking establishments provided to the Division of Alcoholic Beverage Control ("ABC") as part of the "Last Drink" initiative, created under the Attorney General Law Enforcement Directive 2007-2 to be used as an investigatory tool to enforce N.J.A.C. 13:2-29.2, was exempt from disclosure. (Osman v. New Jersey Department of Law and Public Safety, No. 2009-32 (GRC August 11, 2009))

GRC to conduct in camera inspection of draft proposal for re-adoption of the Small Employees Health Benefits program to determine whether the record falls under the ACD exception and is exempt from disclosure. (Srivastay-Seth v. New Jersey Department of Banking and Insurance, No. 2008-152 (GRC August 11, 2009))

GRC to conduct in camera inspection of letter read by mayor at a public meeting to determine whether the record falls under the ACD exception and is

exempt from disclosure. (Diaz v. South Harrison Township, No. 2009-171 (GRC August 11, 2009))

Councilman knowingly and willfully violated OPRA and unreasonably denied access to the Complainant's OPRA request. Conduct of Councilman was intentional and deliberate, with knowledge of the wrongfulness of his actions, and not merely negligent. Councilman ordered to "pay a civil penalty in the amount of $1,000 for this initial violation pursuant to N.J.S.A. 47:1A-11.a." (Johnson v. Borough of Oceanport, No. 2007-107 (GRC August 11. 2009))

Executive session minutes from October 2006 through February 2007 reviewed in camera by the GRC. Determinations made as to what was properly redacted and what was not. Custodian ordered to comply with the review. (Barile v. Stillwater Township, No. 2007-92 (GRC August 11, 2009))

Because of the extraordinary volume, time, and effort required to fulfill the Complainant's OPRA request, the special service fee assessed by the Custodian is reasonable and valid. The special service fee permissible under N.J.S.A. 47:1A-5.c. is $11,586.08 ($12,173.98 - $587.90 = $11,586.08). The Supervisor of Technology's ten (10) hours at $58.79, or $587.90, was deducted as the Computer Technician had the necessary expertise. (Rogers v. Roxbury Township Board of Education, No. 2007-243 (GRC June 11, 2009))

Because the requested record, a resume of a successful candidate for employment, is disclosable pursuant to N.J.S.A. 47:1A-10, N.J.S.A. 47:1A-9.b., Executive Order No. 26 (McGreevey 2002), and Mendes v.Tinton Falls Board of Education, GRC Complaint No. 2006-201 (March 2007), the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying access. (Fallstick v. Haddon Township, No. 2008-156, (GRC August 11, 2009))

Custodian lawfully denied access to unredacted audiotape of student disciplinary hearing. Unredacted audiotape contained reference to another student and could not be released. Student/requestor was offered a redacted version of the audiotape. The identity of the requestor is not a consideration in deciding whether an exemption applies to a requested OPRA government record. (White v. William Paterson University Custodian of Records No. 2008-216 (GRC August 11, 2009))

GRC does not have jurisdiction over records request made to the Office of Legislative Services, as it falls under the Legislative Branch of government. (Sachau v. New Jersey Legislature, Office of Legislative Services No. 2009-196 (GRC August 11, 2009))

Leave request forms which document an employee's absence from work and the reason for that absence is an attendance record. Leave forms, as attendance records, are an integral part of a payroll record, which is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10. The Custodian must disclose the requested records. (McManus v. West Milford Township No. 2008-129 (GRC August 11, 2009))

Names and addresses of residential owners properly redacted pursuant to N.J.S.A. 47:1A-1.1, which provides that "a public agency has a responsibility and an

obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." (Reynolds v. New Jersey Board of Public Utilities No. 2008-14 (GRC August 11, 2009))

Given the Custodian's duty to safeguard the integrity of government records and the fragility of the meeting minutes, providing inspection was a reasonable alternative to compromising the integrity of fragile records. The Custodian's offer of inspection of the meeting minutes from 1925 to 1975 was lawful pursuant to Hascup v. Waldwick Board of Education, GRC Complaint No. 2005-192 (April 2007). (Taylor v. Cherry Hill Board of Education, No. 2008-258 (GRC August 11, 2009))

Numerous emails reviewed in camera by the GRC. Some emails had redactions because of privacy interests, some fell under the ACD exception, some were exempt personnel records, some were protected by attorney-client privilege, some needed to be disclosed. (McGee v. Township of East Amwell, No. 2007-305 (GRC August 11, 2009))

While an official OPRA request form should be used, no request for information should be rejected if the form is not used as long as the requester sets forth in writing, and in a cogent and clear manner, the nature of the request and the other information required by N.J.S.A. 47:1A-5(f), sufficient for the custodian to determine the nature of the request and whether it falls within the scope of OPRA. (May 21, 2009) Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009)

GRC does not have the jurisdiction to determine alleged denials of requests for pupil records. General access to pupil records is controlled by the Family Education Rights and Privacy Act ("FERPA") and by N.J.A.C. 6A:32-7.5. Watson, GRC 2009: Dec 22

Complainant's OPRA request is invalid because it is a broad general request for records and would require the Custodian to conduct research to discern which records may be responsive to the Complainant's OPRA request. While the Custodian has not unlawfully denied the Complainant access to the records requested, the Custodian was erroneous in asserting that OPRA exempts from disclosure government records that relate to a matter in litigation or in anticipation of litigation, as OPRA contains no such exemption. (Cody v. Middletown Township Board of Education, No. 2008-162 (GRC August 11, 2009))

Custodian must disclose not only requested e-mails, but also their attachments. In camera review of redacted email required by GRC. Lewen, GRC 2009:Dec. 22

Because the Complainant's OPRA request is not a request for specific identifiable government records, the Complainant's OPRA request for a list of all contractors and subcontractors at the Cecily Tyson School and for the names, addresses, and union status of those contractors and subcontractors is invalid. (Walker v. East Orange Board of Education, No. 2008-20 (GRC June 11,2009))

Court affirms order denying parent access under OPRA and the common law to a public school district employee's letter of resignation as the high school varsity baseball coach; upheld trial judge's assessment that the letter contains personnel information beyond what is required by law to be released; affirms attorney fee award. Kieffer v. High Point Reg'l High Sch., NO. A-1737-09T2, 2010 N.J. Super. Unpub. LEXIS 3115 (App. Div. December 28, 2010).

Parent appealed from a Trial Court decision dismissing his claim that the board of education violated OPRA and his common law right of access to public records. Parent had sought access to school records regarding alleged incidents of bullying against his children. Appellate Division affirmed in part, reversed in part and remanded for a determination of attorney fees. The notes in question were privileged from disclosure under the work product doctrine, and therefore, the Board was not required to disclose them to plaintiff in response to either his OPRA or common law requests. Parent partially prevailed as, after plaintiff filed this lawsuit, the Board released one redacted document to plaintiff that reported the disciplining of another student for violent conduct against plaintiff's son. K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337 (App. Div. 2011) 32 A.3d 1136, Decided December 12, 2011. Certification denied by K.L. v. Evesham Twp. Bd. of Educ., 2012 N.J. LEXIS 477 (N.J., Apr. 3, 2012)

Mailing list of the names and addresses of self-identified "senior citizens" was subject to the dissemination provision of the Open Public Records Act (OPRA). Appellate panel rejects argument that the senior citizens' privacy interests precluded disclosure of this information under OPRA. and affirms the order requiring defendant to provide an unredacted list, but urges the use of a disclaimer informing those who voluntarily submit their names and addresses for such a list, that such listing is subject to disclosure under OPRA. As to the counsel fees, the panel remands for further proceedings. Renna v. County of Union, No. A-1811-10T3 (App. Div. Feb. 17, 2012) (per curiam) (unpublished).

Appellate Division affirms trial court ruling ordering school district to provide requesting Education Association with access to the following information existing as of June 18, 2010: Names of teachers reemployed for the 2010-2011 school year, their certifications issued by the New Jersey Board of Examiners and their employment information to the extent allowable by N.J.S.A. 47:1A-10 along with reasonable attorneys' fees. The record was devoid of any evidence that providing access to Board records as provided in the trial order would create an undue burden to the Board, and there is no provision in OPRA sheltering access to a government record accessible through other sources. Elizabeth Educ. Ass'n v. Elizabeth Bd. of Educ., DOCKET NO. A-4717-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1245, Decided June 5, 2012.

Appellate Division affirms trial court order denying plaintiff's OPRA request for various records and attorney fees. Request for "all documents (whether

electronic or paper) and objects in your, your attorney's, agent's, employees' or students' possession which make reference to" herself or her child was "overly broad and improper." Plaintiff's blanket request for "all documents" referencing either herself or her child was without specification or description. Her "open-ended" demand required the Board to identify every single document mentioning herself or her child without any limitation. Given the vast number of persons and places where the requested documents could be located, as well as the requestor's lack of specificity as to types of records sought and their timeframes, the Appellate Division concluded that plaintiff's request was overbroad and therefore rightfully rejected. L.R. v. Camden Bd. of Educ. Custodian, DOCKET NO. A-4712-10T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1140, Decided May 23, 2012.

Developer was not entitled to records of a public law school legal clinic relating to its cases, because the clinic's client-related documents, clinical case files, and information about the development and management of litigation were not subject to New Jersey's Open Public Records Act. Sussex Commons Assoc's, LLC v. Rutgers, 210 N.J. 531 (2012)(July 5)

Appellate Division affirms trial court determination that board of education adequately and responsively complied with OPRA request for school records of attorney bills related to student's federal Rehabilitation Act claim against the school district. A prevailing party fee dispute was pending remand from the Third Circuit at the time of the request. *M.G. v. E. Camden County Reg'l Sch. Dist. Bd. of Educ. Records Custodian*, DOCKET NO. A-1829-11T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2767, decided December 19, 2012.

Appellate Division dismisses appeal of Law Division order denying plaintiff's application for "more narrowly redacted versions" of records she received from the board of education pursuant to an OPRA request. The court specified that plaintiff's application was denied "without prejudice." The order denying plaintiff's application without prejudice is not a final appealable order. Plaintiff has the right to seek relief after the parties' underlying claim has been concluded. *D.F. v. Collingswood Bd. of Educ.*, *D*OCKET NO. A-1668-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2543, Decided November 19, 2012.

Federal court denies motion made on behalf of plaintiff student, to set aside the judgment entered below. Court finds that plaintiff has not shown that the 12 student disciplinary reports are missing, much less that the board's counsel engaged in any act of fraud. Court denied Plaintiff's Motion to Set Aside the Judgment, Motion for Discovery, and Motion for Reconsideration. Underlying matter involved numerous actions brought by plaintiff student who had been suspended for having knife at school; parent had unsuccessfully challenged district's action before the Appellate

Division and NJDOE; Appellate Court also dismissed parent's subsequent suit alleging violation of civil rights and disparate treatment claiming that similarly situated Caucasian students were not referred to the police and received shorter suspensions. OPRA complaints brought to Superior Court and complaints based on allegations that the district and its employees engaged in fraudulent concealment and intentional spoliation of evidence and records, had also been dismissed. *O.R. v. Hutner,* Civ. No. 10-1711, 2013 U.S. Dist. LEXIS 130422 (D.N.J. September 12, 2013) (unpublished)

In dispute over production of records pursuant to OPRA concerning implementation of a random drug testing policy, the issue of attorneys' fees is reserved to be addressed at a later date. While the court recognizes the substantial, albeit delayed, production made by defendant, there remains to be resolved the issue of withheld documents. Board shall provide a more exacting Vaughn Index that complies with case law so as to permit plaintiff's counsel to analyze the documents which have been withheld to see if further review by the court is necessary. Custodian shall certify to her good faith effort to locate the requested documents, the nature of her search, that all responsive documents have been produced and no further responsive documents exist which have not been produced. The custodian shall directly reference the categories of documents listed which plaintiff asserts have not been produced. *Hausmann v. N. Valley Reg'l Bd. of Educ*., 2013 N.J. Super. Unpub. LEXIS 2705 (Ch. Div. Nov. 7, 2013)

OVERPAYMENTS

Commissioner agrees with ALJ and dismisses petition by tenured teaching staff member who claimed that board reduced her in compensation in violation of tenure rights when board reduced her salary by withholding a total of $5,000 in five monthly installments to reimburse for a stipend which she was inadvertently double-paid. Despite a body of case law establishing that a board of education cannot require reimbursement of money paid in error through no fault of the employee, these facts differ as there is no dispute regarding teacher's position on the salary guide nor the amount of salary she was entitled to; she received full salary for the year, with full benefits; she was aware that she had received double payment of her stipend, as she brought the initial overpayment to the attention of respondent's payroll department and jokingly indicated that she would "love to keep it"; the overpayment was recaptured in the same manner in which it made in 5 installments; and the double payment was not a salary guide error but rather an overpayment of which petitioner was aware. Did not constitute an impermissible reduction in compensation as contemplated by *N.J.S.A.* 18A:6-10. See *Trenton Education Association,*

et al. v. Board of Education of the City of Trenton, St. Bd., 1999: Dec 1.
Elson, Commr 2013: Aug 15.

OVERTIME

Court grants school board's motion for reconsideration of the Court's denial of its motion for summary judgment regarding former occupational therapist's claims that the board violated the New Jersey State Wage and Hour Law when it failed to pay her for alleged overtime work. The board argued that the statute of limitations had run for claims arising prior to July 29, 2008. Court agrees, finding that similar to the accrual of claims for overtime pay under the FLSA, each failure to pay overtime begins a new statute of limitations period as to that particular event for NJWHL purposes. Accordingly, Plaintiff's NJWHL claims arising prior to July 29, 2008 (two years prior to the date on which she filed her Complaint) are time-barred by N.J.S.A. 34:11-56(a)25.1, and are dismissed. In its Guenzel v. Mount Olive Bd. of Educ., 2012 U.S. Dist. LEXIS 21583 (Feb 16, 2012)

PENSION

Court affirms final decision of TPAF that confirmed a 17-month disqualification of the creditable service time of a retired superintendent, and prospectively reduced her pension benefits; she had entered into a contract addendum with the board by which she resigned and was placed on a 17- month leave of absence until the end of her contract term in 1998, during which she was paid a salary although provided no services. Facts contradict that she was on a paid leave of absence, which would have been creditable compensation, as she had no intent to return and had signed a letter of resignation when executing the addendum. Only prospective reduction of her benefits is equitable because of the Fund's earlier delay in adjusting her actual creditable service. Bossart v. Bd. of Trustees of TPAF, No. A-0754-10T1, 2012 N.J.Super Unpub.LEXIS 50 (App. Div. Jan 11, 2012) (per curiam)

Motion to dismiss granted to State over challenge to Chapter 78 of Public Law 2011 requiring increase in employee pension contributions and the elimination of cost-of-living adjustments for retirees. Suit barred by Eleventh Amendment. N.J. Educ. Ass'n v. New Jersey, No. 11-5024 (D.N.J. Mar. 5, 2012)

Court finds no reasonable grounds to toll two-year limitation. Petitioner did not exercise reasonable diligence. Despite changing jobs and pension plans, and thereafter purchasing service credits for PERS, she took no action to determine the status of her PERS accounts for three years, until the Division contacted her. According to the pension handbook, the Division intended to contact petitioner sooner. However, the Division was not required to do so. Court finds nothing to warrant adopting argument for equitable tolling of the two-year time period provided by *N.J.S.A.* 43:15A-7(e). *Linnett v. Public Emples. Ret. Sys.,*2013 N.J. Super. Unpub. LEXIS 2908, 14-15 (App. Div. Dec. 10, 2013)

In challenge to Chapter 78 that suspended the payment of cost of living increases (COLAs) to current and future retirees receiving pensions from each of the

State's public pension funds. The trial court dismissed the complaints on summary judgment. Court affirms the grant of summary judgment in *DeLucia v. State of New Jersey*, A-0632-12. Court reverses the grant of summary judgment in *Berg and New Jersey Education Association v. Christie (Berg)*, A-5973-11 and A-6002-11, and Court remands Berg to the trial court for further proceedings required to address plaintiffs' Contract Clause claims under the New Jersey Constitution. *Berg v. Christie*, 436 N.J. Super. 220 (App. Div. 2014)

Court affirms denial of Teachers' Pension and Annuity Fund denial of nontenured chemistry teacher's application for ordinary disability retirement benefits. TPAF determined that Santangelo did not establish that she was permanently unable to perform her regular duties as a teacher. ALJ fully considered all of teacher's conditions, but found that, both individually and in the aggregate, her conditions did not create a total and permanent disability. Court must give appropriate deference to the ALJ's and the Board's findings where, as here, those findings are based on sufficient credible evidence in the record. *Santangelo v. State Teachers' Pension & Annuity Fund*, No. A-2184-12T1 (App. Div. June 9, 2014)

PERC

Appellate Division will not disturb PERC's refusal to reconsider its ruling that Board committed an unfair labor practice by terminating employment of computer technician who sought to grieve a negative evaluation and where union alleged that imposition of any improvement plan must be negotiated; PERC found that employee was engaging in protected activity when she attempted to file a grievance and when her union asserted Board's obligation to negotiate over PIPs for non-teaching employees, and ordered reinstatement with back pay. Evidence did not support Board's claim that its (former) attorney did not have board authorization to stipulate facts and waive the hearing. Wall Twp. Bd. of Educ. v. Wall Twp. Info. Tech. Ass'n, NO. A-3764-09T1, 2011 N.J. Super. Unpub. LEXIS 179 (App. Div. January 26, 2011)

PERS

State Health Benefits Commission erred in denying retiree's request for free medical coverage. Retiree had more than 25 years of aggregate service credit from three retirement systems and was not required to have full credit from a single system. Barron v. State Health Benefits Commission, 343 N.J. Super. 583 (App. Div. 2002).

Court affirms ruling by TPAF denying a former teacher an ordinary disability pension on the ground that she lacked the requisite ten years of New Jersey service and declining to refer the matter to the Office of Administrative Law for a hearing. Purchase for service rendered out-of-

state did not count for ordinary disability benefits. In the Matter of Barbara Thomas, No. a1191-09, 2011 N.J. Super Unpub. LEXIS 141(App. Div. January 21, 2011).

Appellate Division determined that Board of Trustees of PERS erred when it determined that public employee's deferred retirement benefits were forfeited due to employee's conviction of two counts of assault by auto, a third-degree crime. Where employee's termination was for reasons not related to her work, the employee was entitled to her vested deferred retirement allowance. Matter reversed and remanded for consideration of employee's entitlement to retirement benefits. In re Hess, No.. A-2408-09T1, 2011 N.J. Super. LEXIS 171 (App. Div. August 30, 2011).

Appellate Division reverses determination of PERS Board of Trustees that employee's retirement was not bona fide as he did not observe the required 30-day break in service before beginning a PERS-covered part-time teaching position. Trustees required repayment of all pension payments made for the 16 month period in question, $32,479.95 and a reduction in life insurance from $ 12,875 to $1,000. Appellate Division found matter to be one not of manipulation of the system, but a misunderstanding of the applicable regulations and required restoration of salary earned in part-time position, $8,775 , restoring him to full pension status and a recalculation of life insurance. Chiappini v. Board of Trs., No.. A-3983-09T2, 2011 N.J. Super. Unpub. LEXIS 2062 (App. Div. July 29, 2011).

Appellate Division affirms determination of Board of Trustees of TPAF denying employee's application for accidental disability retirement benefits. Employee did not experience a traumatic event and was not permanently and totally disabled. Determination was supported by the record as throughout the several years that this matter was pending administratively, appellant continued to regularly work three days a week as a college teacher. Janetta v. Teachers' Pension & Annuity Fund, No. A-5653-08T2, 2011 N.J. Super. Unpub. LEXIS 2073 (App. Div. August 1, 2011).

Appellate Division reverses determination of Board of Trustees of the TPAF that members were not entitled to pension credit for compensation they received for serving as content specialists and program coordinators. The stipend at issue here met both requirements of N.J.A.C. 17:3-4.1(j). The stipend was paid through regular payroll checks and the duties are "integral to the effective functioning of the school curriculum." East Windsor Reg'l Sch. Dist. v. Board of Trs., No. A-3655-9T4, 2011 N.J. Super. Unpub. LEXIS 2135 (App. Div. August 8, 2011).

PERSONAL INJURY

Dismissal of complaint against district upheld where plaintiff's injuries were not substantial. The Legislature intended that a plaintiff must sustain a permanent loss of the use of a bodily function that is substantial. Although plaintiff still experiences some pain following a fall into a hole

in a parking lot, the limitations on activities are minor. Plaintiff does not experience problems with her foot when the weather is dry, she can wear shoes, she can get in and out of vehicles other than trucks, she can still perform her job even though she is often on her feet, and she takes her children to their sporting events and watches them, albeit seated rather than standing. *Termyna v. Jonas Salk Middle Sch., No. A-3495-11T4 (App.Div. June 26, 2013)*

After defendant-board was dismissed on summary judgment, plaintiff's claim that defendant Colonia Girls Softball League's negligent conduct caused her to fall on a sidewalk on school property, which was used by the league on evenings and Saturdays, went to trial and resulted in a judgment for plaintiff. The appellate panel reversed because the trial court had not presented special interrogatories to identify whether the jury found the league negligent because it failed to remove rocks that were on the walkway as the result of the league's construction of a pavilion and it had actual and constructive knowledge of the rock on which plaintiff fell, or as a result of removing the construction tape around the area before construction was completed, or both, and the first theory regarding knowledge of the rock should not have been submitted to the jury because of insufficient evidence. On retrial, the league's motion for an involuntary dismissal was granted. On appeal, the panel affirms, finding that the trial judge correctly concluded that the league's failure to restrict the area through the use of tape could not constitute a proximate cause of plaintiff's fall since, if the League cannot be held liable for the alleged hazardous condition near the pavilion, as was held in the prior appeal, it cannot be held liable for failing to take measures to keep pedestrians from strolling through that same area. 36-2-9869 *St. George v. Woodbridge Twp. Bd. of Educa*., App. Div. (per curiam)

PHYSICAL AND PSYCHIATRIC EXAMINATIONS

Board had sufficient reason to require psychiatric examination of industrial arts teacher whose teaching performance had deteriorated and who had displayed defiant and non-responsive attitude deviating from norm. Board encouraged to consider tenure charges if teacher does not comply with order for psychiatric examination. (01:Feb. 16, Varano)

No jurisdiction over petition by teacher employed by Juvenile Justice Commission to have psychiatric evaluation expunged because, as state employee, claim arises under the Civil Service laws, and not the education laws. (01:April 19, Morelli, letter opinion)

PHYSICAL AND PSYCHIATRIC EXAMINATIONS

Settlement of tenure dismissal charges includes return to classroom conditioned on submission to, and results of, drug/alcohol testing and psychiatric examination; settlement also requires random drug testing. (99:May 10, Howard)

POLICY

Appellate Division affirms General Equity Part determination dismissing parent's complaint seeking to enjoin enforcement of the board's drug and alcohol policy to the extent that it governed non-school related conduct that takes place off of school grounds at any time day or night. Plaintiffs had failed to exhaust their administrative remedies before the Commissioner. Matter remanded for entry of an order retaining jurisdiction pending completion of the administrative process. Doe v. Haddonfield Bd. of Educ., DOCKET NO. A-3412-09T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2870, Decided November 21, 2011.

Commissioner upholds school district decision to deny student admission to first grade, where student had turned six on October 2, 2013, and had already completed a private school kindergarten program; board's policy allowed child to enter first grade if he or she has attained the age of six years on or before October 1 of the year in which entrance is sought or has completed the District's kindergarten program or if transferring from an American public school because the parents have moved into the township—and petitioner met none of these criteria. *D.H. and J.H., o/b/o , S.H.,* Commr 2013: Nov 7 (Parsippany-Troy Hills)

POLITICAL AFFILIATION DISCRIMINATION

Plaintiff's amended complaint, grounded in 42 *U.S.C.* §1983, alleging discrimination based on political association contained sufficient factual support to survive a motion to dismiss under Rule 12(b)(1) for failure to state a claim where the amended complaint averred employment in a position that did not require political affiliation, that plaintiff was politically affiliated, and that defendants sought to remove plaintiff due to those affiliations. *Bergland v. Gray*, (Dkt. No.: Civ No. 14-1972; (D.N.J. Oct. 17, 2014)

POLL HOURS

Regional school district had set voting hours at 3:00 p.m. to 9:00 p.m. Two constituent districts had set voting hours for 7:00 a.m. to 9:00 p.m. and 12:00 p.m. to 9:00 p.m. Court held that regional school district election

hours in the two constituent districts would be 7:00 a.m. to 9:00 p.m. and 12:00 p.m. to 9:00 p.m. with the cost for the additional hours to be borne by the constituent districts. (In the Matter of the Annual School Election of the Colts Neck Township Board of Education, Law Division, Monmouth County, Dkt. No. L-1205-01, March 28, 2001.)

PPRA

On remand, Court grants summary judgment to defendants on all claims. No pupil constitutional rights violated. Parties consent to order dismissing FERPA and PPRA claims in light of Gonzaga v. Doe, 536 U.S. 273 (2002); C.N. v. Ridgewood Bd. of Ed. et. al., 319 F.Supp. 2d 483 (D.N.J. 2004)

Parents' Sec. 1983 action challenging board of education's administration of a student survey as violative of FERPA and PPRA and pupil constitutional rights dismissed on summary judgment. Motion for preliminary injunction is also denied. Parents were given ample notice that participation in the survey was completely voluntary and anonymous. Board was not required to obtain written parent consent. Individual defendants entitled to qualified immunity. FERPA and PPRA are inapplicable. C.N. v. Ridgewood Bd. of Ed., et. al., 146 F. Supp. 2d 528 (D. N.J. 2001), aff'd as to Fifth Amendment claim, rev'd and remanded as to all other claims. C.N. v. Ridgewood Bd. of Ed., et. al. 281 F.3d. 219 (3d Cir. 2001).

PREMISES LIABILITY

Parent who was picking up her child from school alleged that Board of Education was negligent in removing snow from school property caused her to fall and be injured. Based upon the well-established common law immunity conferred upon public entities in connection with snow removal, no liability accrues to school district. By their very nature, snow-removal activities leave behind "dangerous conditions." No matter how effective an entity's snow-removal activities may be, a multitude of claims could be filed after every snowstorm. No other governmental function that would expose public entities to more litigation if this immunity were to be abrogated. *Holub v. Livingston Bd. of Educ.*, No. A-2928-11T2 (App. Div. Mar. 18, 2013)

PRESCHOOL

Court reaffirms October 2001 schedule it set forth concerning its mandate for preschool programs in Abbott districts. Court refuses to appoint special master. Court said that the day-to-day oversight is best left to those with the proper training and expertise, not the court system. Court also says "We must never forget that a 'thorough and efficient system of free public schools' is the promise of participation in the American dream. For a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future." Abbott v. Burke, 170 N.J. 537 (2002).

PRIVACY

Parents bring motion for summary judgment against Board, administrators, supervisors, and teachers for using their son's confidential psychiatric evaluation as a tool to teach The Catcher in the Rye, where redactions are insufficient to prevent identification of student. Parents sue under: Section 1983; privacy violations under 14th amendment Due Process, 1st and 4th Amendments, the New Jersey Constitution, the New Jersey Pupil Records Act ("NJPRA"), N.J.S.A. 18A:36-19; IDEA, FERPA, HIPAA, 29 U.S.C. § 1181; and general negligence principles, and seeking compensatory and punitive damages. Court grants partial summary judgment to defendants on most issues, but grants summary judgment to parents as against two instructors for privacy violations under Section 1983 and N.J. Constitution, and for common law negligence for breach of duty of care owed to student. L.S. & R. v. Mount Olive Bd. of Educ., No. 09-3052 (DRD), 2011 U.S. Dist. LEXIS 19674 (D.N.J. February 25, 2011)

Commissioner affirms decision of State Board of Examiners (SBE) denying appellant's request to remove internet postings of SBE's denial of her request for an additional year of participation in the provisional teacher program and of minutes of meeting in which SBE voted to grant her an extra year in the program. Although she wanted the postings removed "from all search engines" because they were allegedly interfering with job prospects and creating vulnerability to abuse because of the personal information posted, the Commissioner found that an applicant for certification had no "reasonable expectation of privacy" regarding her qualifications and that while the public initial rejection of her application for another year in the provisional teacher program may not have been appropriate, she was accommodated by removing the specifics of her case from the minutes; however it could not remove the minutes as their posting was required under the OPMA. *Muench v. State Board of Examiners*, 2013:May 28.

PRIVATE SCHOOLS FOR HANDICAPPED

Audit – Non allowable costs under N.J.A.C. 6:20-4.4 include investment expenses, severance expenses for employees, and excess salary paid to CEO, among other expenses. (01:April 12, Carrier Foundation – East Mountain School, aff'd in part and remanded in part St. Bd. 01:Oct. 3, settlement approved, 02:July 11, aff'd St. Bd. 02:Oct. 2)

Disallowances in tuition following audit to include salary of uncertified staff, occupancy and food expenses upheld. (03:March 3, Catholic Family and Community Services, aff'd St. Bd. 03:July 2)

Having previously denied private school's request for a waiver of the average daily enrollment requirement of 16 students for 2004-05 pursuant to the

equivalency and waiver process, the Commissioner dismissed this petition for the same relief. (05:March 4, Victory School)

Private school for handicapped and committee from which it leased premises, were related parties; therefore, lease agreement was not an arms length transaction; rental costs were thus improperly included as allowable cost in school's tuition rate (99:July 6, Passaic County Elks Cerebral Palsy, aff'd St. Bd. 99:Dec. 1)

Tuition rebill for school year was reasonable as lease termination costs and unamortized depreciation was not included in original bill. (03:March 14, Caldwell-West Caldwell)

Private school for children with disabilities (PSD) may not include in its tuition charges for the 2007-08 school year the undisputed amount of $10,360 incurred to provide student lunches. Commissioner concluded that NJDOE's disallowance of the food services fee as a component of tuition costs was not arbitrary, capricious or unreasonable. Disallowance is justified pursuant to *N.J.A.C.* 6A:23A-18 *et seq.* The costs of meals for students is disallowed, unless the PSD meets the criteria set forth in *N.J.A.C.* 6A:23-4.2(a)20; i.e., two separate school board resolutions from a majority of the school districts that send students to the PSD in that fiscal year, the first resolution declaring that those districts do not require the PSD to apply for and receive funding from the State's Child Nutrition Program, and the second declaring that those district boards do not require the PSD to charge students for reduced and/or paid meals. Commissioner finds that only one district of the five sending districts under contract had submitted both resolutions, by operative date of June 30, 2007. Representations of individual board members or administrators are insufficient to bind a board to a particular course of action and that a board can only be bound by official board action; BA's cover letter in lieu of formal resolution was not sufficient. Delaware Valley School for Exceptional Children, Commr: 2012: Feb 17.

Private school for the handicapped (PSH) appealed five audits conducted by DOE from 1994-95 through 1998-99, in which the DOE disallowed approximately $9 million in non-allowable costs and expenses and ordered these tuition overcharges returned to the sending districts. Many unresolved issues and partial decisions—protracted litigation. Commissioner rejects the recommended decision of the OAL and remands to the OAL for revision so that final decision contains– by presentation, not by way of incorporation through the attachment of charts prepared by others – ALJ's recommendation as to the appropriate disallowances and finding as to the amount of money to be returned to the sending public school districts. Archways, Commr 2012: March 14 (DOE, Pemberton, Ewing) (Consolidated)

Entity running for-profit schools serving students with disabilities did not have standing to bring ADA and Rehabilitation Act claims against NJDOE NJDA and USDA on behalf of the students and the private schools, for terminating school lunch reimbursement plan that had been a state-

endorsed “workaround” the federal Meals Programs statute allowing reimbursement for students "attending . . . a public or nonprofit private school." No standing as there was no injury to students; same meals continue to be provided but cost now passed on through tuition to sending district as allowable cost; nor does testimony show that private school’s declining enrollment is linked to the cost of the lunch increase cost—or that any specific districts decided not to send their students there for that reason. Nor did the cessation of the plan run afoul of the Rehabilitation Act or the ADA. *Deron Sch. of N.J., Inc. v. USDA*, 2013 U.S. Dist. LEXIS 125109 (D. N.J. September 3, 2013) (unpublished)

Commissioner upholds disallowance of $ 36,498 from Pineland Learning Center’s tuition audit regarding compensation paid to teacher of the handicapped who was not properly certified. Teacher argued that delay in obtaining certificate was due to DOE Office of Licensure and Credentials. Commissioner determined that doctrine of substantial compliance was not applicable in this case. *Pinelands Learning Center*, Commissioner 2014: March 24

Commissioner upholds disallowance from private school for the handicapped tuition calculation, cost of health insurance premiums for school nurse while on unpaid leave of absence and portion of teacher salary which exceeded maximum salary permitted for vocational teachers. Subsequent presentation of contradictory documentary and/or testimonial evidence as to teacher’s salary at an administrative hearing before the OAL does not render earlier determination arbitrary or capricious. Commissioner finds respondent’s initial determination, as to vocational teacher’s salary, reasonable in light of the documentation and information petitioner submitted for respondent’s desk review. *Chancellor Academy*, Commissioner 2014: April 24

Commissioner determined that Office of Fiscal Accountability and Compliance determination that expenses associated with two four day/three night out-of-state field trips (Spring Trips) to Baltimore, Maryland and Hershey, Pennsylvania could not be included in its tuition charges was arbitrary, capricious and unreasonable. The trips were relevant and necessary educational and transitional opportunities, consistent with the students’ IEPs; the cost of these trips was carefully calculated and was reasonable. Commissioner ordered that these costs be included in the tuition rate for the 2009-2010 school year. *Passaic County Elks Cerebral Palsy Center*, Commissioner, 2014: August 14

PRIVATIZATION AND SUBCONTRACTING

Board could not lawfully provide Latin instruction through distance learning program by a person not in possession of appropriate New Jersey

certification. Question of whether Board can subcontract with private vendor to provide distance learning credit courses in Latin not reached. (00:May 22, Neptune)

Board did not violate seniority and tenure rights of child study team members when it eliminated their positions and entered into a joint agreement with an educational services commission (ESC) to obtain basic child study team services; tenure rights would be triggered should district decide to again provide CST services through its own employees; moreover, such joint agreement does not constitute a "takeover" of the CST that would warrant recognition of the CST members' tenure rights by the ESC, relying on Miller, distinguishing Shelko and Stuermer. (01:Jan. 2, Anders)(02:Dec. 2, Trigani)

Board violated N.J.A.C. 6:28-3.1 and Elson by subcontracting LDTC services to Ed. Services Commission as substitute during LDTC's sabbatical leave. (98:Oct. 5, South Amboy)

Child study team: psychologist who had been riffed had no tenure entitlement to employment with ESU that was under contract with board to supply child study team services on a case-by-case basis; distinguished from Shelko where county special services school district assumes operation of and responsibility for entire special education program. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

Child Study Team Services: Waiver invalid for district that wanted to contract out basic child study team services to private vendor; such waiver contradicts legislative intent. (St. Bd. 00:May 5, Miller)

Contracted nurses, even if they possess school nurse certification, may not independently perform services reserved to the school nurse by statute; they may only assist. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)

Despite authorizing resolution, board did not hire any uncertified instructors from Berlitz to teach foreign languages. Matter dismissed as moot. (02:April 19, Morris)

Non-certificated nurses and contracted nurses possessing nursing certificates may perform health-related services other than those that must be performed by a school nurse. (99:Sept. 30, Montclair, aff'd and remanded St. Bd. 02:Nov. 6)

Where special services school district assumes operation of district's entire special education program, tenure and seniority rights of riffed teaching staff must be recognized by special services school district. (99:Jan. 19, Miller v. Burlington, aff'd St. Bd. 01:Nov. 7)

While it may supplement such services, a Board may not supplant the services provided by a tenured core CST member with those provided by an outside contractor. (02:July 2, Iraggi)

PROCEDURAL RULES

District Court determined that fees should not be awarded because plaintiff parents failed to name the Department of Education as an indispensable party; DOE was an "innocent intervenor". *J.M. v. Wall Twp. Bd. of Educ.*, Dkt. No. 3:13-cv-4505; (D.N.J. Sept. 23, 2014)

Exhaustion of Remedies

Despite the fact that disabled student brought claims under both Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, plaintiff's failure to utilize the administrative remedies available under the Individuals with Disabilities Education Act, required administrative dismissal for failure to exhaust the IDEA's administrative remedies. *S.B. v. Trenton Bd. of Educ.*, Dkt. No. 13-0949; (D.N.J. Oct. 9, 2014)

Where plaintiff alleged futility because the disabled student sought only monetary damages, which are unavailable under the Individuals with Disabilities Education Act ("IDEA"), the District Court determined that the theory underlying the damages alleged in the complaint serves as the basis for a remedy, even where the relief demanded is unavailable under the IDEA. The fact that plaintiff sough a remedy in addition to the remedies available under the IDEA does not excuse the exhaustion requirement. Accordingly, futility was unavailable to excuse the exhaustion of remedies requirement. *S.B. v. Trenton Bd. of Educ.*, Dkt. No. 13-0949; (D.N.J. Oct. 9, 2014)

IDEA Statute of Limitations

While neither Section 504 of the Rehabilitation Act nor the Americans with Disabilities Act contain a statute of limitations, the 3rd Circuit has determined that the IDEA's two year statute of limitation is applicable to educational claims made under either statute. *S.B. v. Trenton Bd. of Educ.*, Dkt. No. 13-0949; (D.N.J. Oct. 9, 2014)

Waiver of the IDEA's two year statute of limitation for the local educational agency's failure provide pertinent information to parents is inapplicable to educational claims made against state educational agencies. Claims older than two years are barred. *S.B. v. Trenton Bd. of Educ.*, Dkt. No. 13-0949; (D.N.J. Oct. 9, 2014)

Jurisdiction

District Court determined that it had jurisdiction over plaintiff's appeal seeking to seal the record, despite the pending appeal to the Circuit Court where the motion to seal was not designated as issue before the Circuit Court. *Kirschling v. Atlantic City Bd. of Educ.*, 10 F. Supp. 3d 587 (2014); Oct. 16, 2014

District Court granted remand of special education matter to superior court for lack of subject-matter jurisdiction finding that mere reference to the IDEA was insufficient to invoke federal jurisdiction. *Delgado v. Edison Twp. Bd. of Educ.*, Dkt. No. 14-1757; (D.N.J. Sept. 17, 2014)

Motion to Seal

In denying plaintiff's motion to seal the record without prejudice, the District Court acknowledged litigant's right to privacy, but determined that the public possessed a right to obtain information about judicial proceedings. Plaintiff failed to demonstrate that disclosure would cause a "clearly defined and serious injury." Similarly, plaintiff failed to demonstrate that less restrictive alternatives were unavailable. *Kirschling v. Atlantic City Bd. of Educ*., 10 F. Supp. 3d 587 (2014); Oct. 16, 2014

PROCEDURE

Difficulties in contacting respondent in tenure dismissal proceeding do not warrant default judgment against respondent. ALJ and parties to establish protocol for communication; the OAL and petitioner shall use only that contact information to communicate with respondent, and respondent will not be excused if she fails to reply to notices, pleadings and communications sent to the phone numbers and addresses that she provides. Gillespie, 2011 Commr Aug 3.

Matter dismissed for failure to prosecute. Serber, 2011:Dec. 13. (Paterson)

Initial decision rejected and remanded. Contained an inaccurate description of the procedural posture of the case and failed to attach the proposed settlement agreement. *Alston-Balatura*, Commissioner 2013:September 16

PROPERTY – Real

These appeals involve related questions of law and fact and were consolidated. The complaints challenged ordinances adopted by the City of Asbury Park authorizing the acquisition, by eminent domain, of property owned by the Board and by the private developer. The trial court eventually granted summary judgment in favor of the City and the city's designated redeveloper, who intervened in the actions. The Appellate Division affirmed. (Asbury Park Bd. of Ed. v. Asbury Park Sewer Authority, No. A-1076-04T1 (App. Div. April 6, 2006) certif. denied, 188 N.J. 355 (2006))

The court affirms the ruling below which held that a school district that condemned a Sabrett hot dog manufacturing plant to build a new school, must pay the owner, Marathon Enterprises, Inc. ("Marathon") $2,039,265.35 in relocation reimbursement expenses, taking into account the broad remedial purposes of the State's Relocation Assistance Act of 1971. Jersey City School District v. Marathon Enterprises, Inc., Unpublished Opinion, Dkt. No. A6188-03, decided January 4, 2007.

Commissioner affirms DOE's action to revoke the approval for a private school for students with disabilities, where as a result of expansion beyond approved capacity, the facility was insufficient for enrollment and not compliant with health and safety rules. (All Can Excel, Comm'r., 2008:May 16).

A school district that condemned a Sabrett hot dog manufacturing plant to build a new school, must pay the owner, Marathon Enterprises, Inc. ("Marathon") $2,039,265.35 in relocation reimbursement expenses, taking into account the broad remedial purposes of the State's Relocation Assistance Act of 1971. Jersey City School District v. Marathon Enterprises, Inc., Unpublished Opinion, Dkt. No. A6188-03, decided January 4, 2007.

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. unpublished opinion, Dkt. No. A-5413-06T1,

Zoning Board's denial of variance for construction of high school annex was improper. Clifton Bd of Ed. v. Zoning Board of Adjustment, 409 N.J. Super. 389 (App.Div. 2009)

The Court ordered equitable rescission of a settlement agreement between the Board and its construction manager on the ground of unilateral and material mistake, where implementation would be unconscionable and would violate several laws. Tri-Tech Environmental Engineering, Inc. v. Nutley Board of Education, No. L-009675-08 (Essex County) (L. Div 2009, Feb. 19, 2009).

Commissioner determined that post-award negotiations with contract award recipient did not amount to fraud or bad faith because the initial award was ultra vires and thus void. (Commr, 2004: Sept. 2, Control Building Svcs, Inc.)

PSYCHIATRIC EVALUATION

Commissioner determined that he retained jurisdiction over teacher's petition of appeal objecting to a board directive to submit to a psychiatric examination, despite the fact that teacher allegedly filed a civil rights complaint in federal court. Teacher's prosecution of the matter confirmed the need for an evaluation (Purvis-Chapman v. Glassboro Bd. of Educ.: Commr., 2014, Nov. 11).

PUBLIC RECORDS

Newspaper was entitled to a redacted copy of ALJ's opinion in case involving teacher who allegedly committed sexual abuse against her students. Division of Youth and Family Services v. M.S., 340 N.J. Super. 126 (App. Div. 2001) See also In the Matter of Allegations of Sexual Abuse at East Park High, 134 N.J. Super. 149 (App. Div. 1998) See also, Certification revoked, D.Y.F.S. v. M.S. and I/M/O Revocation of Teaching Certificates of M.S., App. Div. unpub. op. Dkt. Nos. A-722-00T3 and A-2494-00T3, January 22, 2002, certification denied, 796 A2d. 897, 2002 N.J. LEXIS 691, April 25, 2002.

School district must provide to the court for *in camera* review pupil records in case where teacher/coach is charged with criminal sexual contact with a student. State v. Corsey, Superior Court of New Jersey, Law Division, Gloucester County, Dkt. No. A-00-09-0579.

Court finds that with respect to request for minutes of closed session, court finds that the board did not satisfy its duty under OPRA to record nonpublic meeting minutes in a reasonably comprehensible manner and to make those minutes publicly available; if any of those minutes reflected discussions regarding items so "unusual" that even "minimal disclosure" would cause "great harm to the public interest," the board had to give specific reasons for redacting them. Court directs board to provide the court with unredacted minutes for the requested closed sessions for an *in camera* review by the court. Court declines to find that board's response to OPRA request was untimely given snowstorm and fact that plaintiff gave the board an extension of time to respond. Court does not address common law access issues, as these will be addressed after further arguments. *New Jersey Foundation for Open Gov't v. Island Heights Bd. of Educ.,* No. OCN L-703-14 (Law Div. Ocean County April 25, 2014) (not for publication)

PUBLIC SCHOOLS CONTRACTS

An electrical subcontractor sought to be considered for the school board's high school theater renovation project. Board awarded contract to prime contractor who selected another subcontractor. The subcontractor argued that Public School Contracts Law required subcontractors be qualified in accordance with regulations that had never been promulgated. For more than 25 years regulations of NJ Treasury department provided standards for classification and qualification of all bidders including subcontractors. The Legislature's failure to change these provisions indicated its intention that the system already in place should continue. Advance Elec. Co. Inc. v. Montgomery Twp. Bd. of Ed., 351 N.J. Super. 160 (App. Div. 2002).

Where common law remedies have been preserved in contract, an owner who terminates the contract because it believes that the contractor has

materially breached cannot be deemed to have forfeited its right to prove the breach and the resultant damages due to failure to follow the contractual termination procedures, thereby losing the benefit of the conclusiveness of the architect's certificate. Ingrassia Constr. Co. v. Vernon Twp. Bd. of Educ., 345 N.J. Super. 130 (App. Div. 2001)

Bid Award Contests

Commissioner determined that revision of bid specification providing for one-hour paid lunch amounted to a substantail revision pursuant to N.J.S.A. 18A:18A-22(d). (Commr, 2004: Sept. 2, Control Building Svcs, Inc.) Appeal dismissed for failure to prosecute (Control Bldg Svcs, Commr., 2006: April 5)

Commissioner determined that contract documents that erroneously projected a loss was the mistake of board employees and was not a significant factor in the vote to award the contract nor was the voted tainted by evidence of fraud. Contract award was therefore valid. (Compass Group USA, Commr., 2007: Dec. 7)

Commissioner dismissed petitioner's claims that Board violated N.J.A.C. 6:22-1.7 by advertising, bidding and awarding a contract for a roofing project before obtaining construction code approval. Petitioner barred by the doctrine of res judicata and entire controversy doctrine because the matter was previously litigated under Wicks v. Bd. Of Ed. Of the Twp. Of Bernards (00: Nov. 20 Wicks, aff'd State Bd. Of Ed. (01: April 4, Wicks)). Commissioner cautioned all boards that failure to act in accordance with standards established in N.J.S.A.18A:7G-1 et seq. and N.J.A.C. 6A:26-1 et seq., may result in action to withhold state funds.

Commissioner does not have jurisdiction over contractual bidding dispute arising between vendor and municipality for security facilities, and not under school law. Matter dismissed. (Integrated Security Technology, Inc. Commr., 2007:Nov. 7)

Commissioner determined that state district superintendent had the authority to award a custodial services contract, but his failure to bring the award before the board for approval, pursuant to N.J.S.A. 18A:7A-48(b), rendered that award ultra vires. Therefore the board failed to take lawful action within the statutory time period which amounted to a rejection of all bids, leaving the board free to rescind the contract and re-bid. (Commr, 2004: Sept. 2, Control Building Svcs, Inc.) Appeal dismissed for failure to prosecute (Control Bldg Svcs, Commr., 2006)

Commissioner determined that N.J.S.A. 18A:18A-1 does not require a board to award a contract to the lowest bidder. Awarding a contract to a higher bidder does not establish that award as arbitrary, capricious, or unreasonable. (Compass Group USA, Commr., 2007: Dec. 7)

Commissioner determined that re-count of votes was not improper where initial count inappropriately included votes of sending-district representatives. (Compass Group USA, Commr., 2007: Dec. 7)

Commissioner determined that sending-district representative lacked statutory authority to vote on a proposal to provide food services in the receiving

district, therefore the board vote that included the vote of the sending-district representative was improper. Such authority is limited to matters enumerated in N.J.S.A. 18A:38-8.1 and in-house procedural matters. (Compass Group USA, Commr., 2007: Dec. 7)

Commissioner upheld ratification vote where initial vote to award a food services contract was improper due to the participation of sending district representatives. (Compass Group USA, Commr., 2007: Dec. 7)

Appellate Division modified a final decision of the New Jersey School Development Authority excluding a site consultant from an eligibility list for a school construction project by expanding the chosen list of seven to eight to include the excluded site consultant because the authority failed to follow N.J.A.C. 19:38C-5.6 in the selection process. Van Note-Harvey Assocs., P.C. v. New Jersey Schs. Dev. Auth., 407 N.J. Super. 643 (App. Div.2009) (June 19).

Commissioner determines that the board was wrong to reject lowest bidder for custodial and management services contract, where deviations from specs were waivable and not material and reflected the reality that the bidder was already a presence in the district, and could thus accelerate startup/transition tasks before the contemplated start date; board is enjoined from awarding contract to next-lowest bidder. (Pritchard Industries, Commr., 2009:July 14)

Challenge to award of bid for utility upgrades fails where challenger was out of time, and where challenger was an HVAC vendor rather than a bidder and thus had no standing; addendum permitted bidders to supply equipment other than Fafco brand required by the specs. (D&B Engineering, Commr., 2009:August 13)(OAL Decision not yet available online)

Facilities Litigation

District Court determined that the New Jersey Trust Fund Law did not provide any protection to a general contractor with respect to the money owed from a governmental entity. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

District Court denied board's motion for summary for summary judgment where general contractor alleged that board published false statements on the district website. Remanded for additional proceedings. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

District Court denied board's motion for summary for summary judgment where general contractor alleged that board fraudulently failed to disclose problems and delays regarding to the funding of a school construction project. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867.

District Court determined that general contractor failed to establish the applicable duty of care that an architect, project manager, or construction attorney would owe to the general contractor. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

District Court board's motion for summary for summary judgment where general contractor alleged that board entered into a civil conspiracy to deprive general contractor of its property and destroy its business. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

District Court determined that attorney, acting within the scope of the attorney-client privilege are exempt from a conspiracy charge under 42 U.S.C. 1985. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

Contractor whose services were terminated by the district, could not claim retaliation for exercise of its 1st Amendment right to freedom of Speech where speech concerned private scheduling matter and was not a public matter. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

A subsidiary of a State authority, the New Jersey Schools Construction Corporation (the SCC), may not permit a general (or prime) contractor to substitute major trade subcontractors for those listed in the general contractor's bid documents after the bid has been awarded; such a practice is contrary to public bidding laws and their underlying policies. Given the language of § 34:1B-5.7b(2), the SCC did not have the discretion to permit substitution of subcontractors after the contract had been awarded. Trial court ruling is thus reversed, and matter remanded with directions to enter a judgment in favor of plaintiffs. (O'Shea v. NJ School Construction Corp., 388 N.J. Super. 312

District Court determined that contractual clauses were ambiguous in the event of a default. As was the district's declaration of default. Court therefore denied board's motion for summary judgment. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 21, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

Supreme Court denies certification of Appellate Division matter that permitted a contractor on school construction project to withdraw its miscalculated bid despite being the lowest bidder. Remedy of rescission was allowed where unilateral mistake was made. Counsel fees were not permitted.

(Brick Twp. Bd. of Ed. v. Wallace Brothers, Inc., No. A-4751-04T5 (App. Div. July 13, 2006), certif. denied (October 19, 2006).

Court determined that district was authorized to disburse funds to construction manager without the surety's consent. Great American Insurance v. Norwin School District, 544 F.3d 229 (3d Cir. 2008).

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. unpublished opinion, Dkt. No. A-5413-06T1,

District Court determined that construction vendor failed to establish a substantive due process violation by failing to show that school districts conduct locking contractor's employees out of the worksite "shocked the conscience" or "interfered with rights implicit in the concept of ordered liberty". Moreover, contractor did not possess any property right that was protected by procedural due process. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93867.

Contractor claimed that district harmed its reputation, and thereby, its ability to bid on public projects, where district terminated the contractor's services without following the termination procedures outlined in the contract. District court determined that contractor demonstrated a protected liberty interest in its reputation under the 14th Amendment and that the board of education interfered with this interest. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93867. Board's motion to join surety denied. 2008 U.S. Dist. Lexis 43063. (3d Cir. June 2, 2008).

Contractor whose services were terminated by the district, could not claim retaliation for exercise of its 1st Amendment right to freedom of Speech where speech concerned private scheduling matter and was not a public matter. Remanded for additional proceedings. D&D Associates v. North Plainfield Bd of Ed. No. 03-1026, (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93867.

Commissioner affirms NJDOE Office of Compliance Investigation (OCI) directive, requiring charter school to return federal grant funds in the amount of $354,765.04 spent in violation of bidding requirements under public school contracts law; bidding violation must be viewed against the backdrop of a misleading grant application and submissions that veiled the fact that the funds – which were intended for school rehabilitation – were being used for the design and construction of buildings and facilities that did not yet exist. Oceanside Charter, Commr. 2009:Dec. 17.

Appellate Division affirms Commissioner's dismissal of petition challenging charter school settlement of school construction finance related litigation. Board of trustees' decision was neither arbitrary nor capricious and was entitled to deference. Crapelli v. Bd. of Trs. of the Red Bank Charter Sch., (A-6216-07T3) 2009 N.J. Super. Unpub. LEXIS 1656 (App Div. June 23, 2009).

The Court ordered equitable rescission of a settlement agreement between the Board and its construction manager on the ground of unilateral and material mistake, where implementation would be unconscionable and would violate several laws. Tri-Tech Environmental Engineering, Inc. v. Nutley Board of Education, No. L-009675-08 (Essex County) (L. Div 2009, Feb. 19, 2009).

Appellate Division modified a final decision of the New Jersey School Development Authority excluding a site consultant from an eligibility list for a school construction project by expanding the chosen list of seven to eight to include the excluded site consultant because the authority failed to follow N.J.A.C. 19:38C-5.6 in the selection process. Van Note-Harvey Assocs., P.C. v. New Jersey Schs. Dev. Auth., 407 N.J. Super. 643 (App. Div.2009) (June 19).

Privatization/Subcontracting

Commissioner determined that state district superintendent had the authority to award a custodial services contract, but his failure to bring the award before the board for approval, pursuant to N.J.S.A. 18A:7A-48(b), rendered that award ultra vires. Therefore the board failed to take lawful action within the statutory time period which amounted to a rejection of all bids, leaving the board free to rescind the contract and re-bid. (Commr, 2004: Sept. 2, Control Building Svcs, Inc.) Appeal dismissed for failure to prosecute (Control Bldg Svcs, Commr., 2006:

State Board affirms Commissioner decision upholding board's decision to subcontract board secretary and school business administrator position in favor of Interlocal Services Agreement with county vocational district. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7). Affirmed, No. A-5555-05 (App. Div. Aug. 7, 2007) (slip op. at 17). Cert. denied, 193 N.J. 222 (2007).

State Board affirms the decision of the Acting Commissioner to dismiss the matter as moot. Local association alleged that board procedures subcontracting custodial, maintenance and bus transportation services for the 2002-03, 2003-04 and 2004-05 school years violated public bidding laws. (Lyndhurst, St. Bd. 2007:May 2)

Transportation

State Board affirms the decision of the Acting Commissioner to dismiss the matter as moot. Local association alleged that board procedures subcontracting custodial, maintenance and bus transportation services for the 2002-03, 2003-04 and 2004-05 school years violated public bidding laws. (Lyndhurst, St. Bd. 2007:May 2)

Commissioner determined that statute did not authorize district to lease buses to groups not enumerated in N.J.S.A. 18A:39-22. Murphy Transportation Inc, Commr., 2009: Feb. 24

Commissioner determined that purchases made for postage and computers on the last day of the contract period could not have been for the purpose of fulfilling that contract; therefore, funds budgeted for the school year were not expended on services rendered during that year. (Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Commr., 2008: Aug. 8)

Vendor Services

Commissioner determined that where petitioner/preschool provider misunderstood the budget construction process to mean that the fundamental accountability provisions and generally accepted accounting practices required by the parties' signed contract would not apply to administrative costs – and that district did not correct this misunderstanding during the course of the contract year – could not serve to shield petitioner/preschool provider from all consequences of noncompliance. (Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Commr., 2008: Aug. 8)

Commissioner determined that the DOE's review on audit was not limited to the language of the budget guidance document alone, but was properly based on all standards of applicable law and policy. Department's cost disallowances and determination of under-expenditure of budgeted funds was upheld as reasonable and proper in all respects, and the funds identified were to be refunded to the district. (Catholic Family and Community Services (Friendship Corner I And Friendship Corner II), Commr., 2008: Aug. 8)

Commissioner determined that board was not responsible for tuition payments to pre-school provider found to have committed several regulatory violations. Motion for emergent relief had been previously denied and ALJ decision was only a recommendation, with no binding force or effect. (Toddlertown Child Care Center, Commr., 2008: Jan. 14).(Motion for expedited ruling denied by St. Bd. under the standard for interlocutory review of an administrative ruling. December 19, 2007.)

Commissioner determined that board's decision not to renew pre-school provider's contract is not subject to the more strict standards governing mid-contract termination. (Toddlertown Child Care Center, Commr., 2008: Jan. 14).(Motion for expedited ruling denied by St. Bd. under the standard for interlocutory review of an administrative ruling. December 19, 2007.)

Board's decision not to renew pre-school provider's contract must demonstrate that it meets the arbitrary, capricious, and unreasonable standard; that alternative means exist to educate the provider's students; and that the board is not violating the prohibition against duplication of services. (Toddlertown Child Care Center, Commr., 2008: Jan. 14). (Motion for expedited ruling denied by St. Bd. under the standard for interlocutory review of an administrative ruling. December 19, 2007.)

Commissioner rejected Initial Decision granting pre-school provider a renewed contract for school year 2007-08. The board's failure to include reasons for non-renewal in the notice of non-renewal did not violate due process where provider had sufficient prior notice of problems in the pre-school program. (Toddlertown Child Care Center, Commr., 2008: Jan. 14).(Motion for expedited ruling denied by St. Bd. under the standard for interlocutory review of an administrative ruling. December 19, 2007.)

State Board affirms Commissioner determination that petitioner, teacher of practical nursing did not demonstrate that she possessed greater seniority that teacher retained by school district in RIF. Petitioner forfeited her tenure by declining a recall in 2002. (Kelly, Commr., 2006:Nov. 9, aff'd St. Bd. 2007:May 2)

Board's motion for summary judgment granted in part but denied as to promissory estoppel. Successful bidder of fuel oil that purchased oil futures in reliance on board's acceptance of its bid, sought damages when board subsequently notified all bidders that it would repeat the bidding process and void all bids after the lowest bidder, rejected as non-compliant, had filed a complaint. Bidder's breach of contract claim is denied, as Court finds that there was no enforceable contract between board and bidder as bidder should have known that no contract could issue without a formal resolution. Court dismisses claims of breach of implied covenant of good faith as inapplicable. However, court does not dismiss claim of promissory estoppel, as bidder relied in good faith and based on past experience on the board's representations that a contract had been presumptively awarded, albeit without the formality of a resolution, and was reasonable to go ahead and enter into the necessary fuel oil contracts to insure that it would be able to profit from performance of the contract. It experienced losses related to its attempt to mitigate damages as re-selling the contracts on the open and volatile market resulted in an immediate loss of $100,000 even without any discussion of lost profits. Isobunkers, LLC v. Byram Twp. Bd. of Educ., No. O9-cv-00607 (DMC)(JAD), 2011 U.S. Dist. LEXIS 16531 (D.N.J. February 16, 2011)(not for publication)

Motion for reconsideration denied where Board failed to show a clear error of law or fact and had not shown that facts or law were overlooked by the court. North Plainfield Board Of Education v. Zurich American Insurance Company, No. 05-4398 (D.N.J. March 17, 2011)

Bidder on construction project makes various claims including civil rights, tortious interference, defamation against school district's and agents' actions arising out of a breach of contract. Because remaining claims are state law claims, federal court declines to exercise supplemental jurisdiction. D & D Assocs. v. Bd. of Educ. of North Plainfield, No. 03-1026 (D.N.J. Mar. 30, 2012)

District Court enters judgment in favor of school district in matter involving bids on fuel oil. Vendor claimed breach of contract based on challenge to bid award and rebidding by the board of education. ISOBunkers, LLC v.

Byram Twp. Bd. of Educ., Civil Action No. 09-cv-00607 (DMC)(JAD), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 69671, Decided May 18, 2012.

Procedural dictates at issue required court to vacate the sanction award against student's attorney and remand to the District Court, in matter arising out of an OPRA request for documents identifying various school district staff with Electronic Violence and Vandalism Reporting System (EVVRS) responsibilities and training. *Or v. Hutner,* 2013 U.S. App. LEXIS 2760 (3rd Cir Feb 8, 2013)(not precedential)

Matter regarding whether parties entered into valid joint purchasing agreement, and whether if so such agreement was breached, has been amicably adjusted, parties have stipulated to dismissal, and accordingly, the appeal is dismissed with prejudice and without costs. *Bd. of Educ. of Sparta v. Bd. of Educ. of Byram*, 2013 *N.J. Super*. Unpub. LEXIS 156 (App. Div. Jan 28, 2013)

In matter on remand, arising out of remodeling and renovation of the Board's seven school facilities, appellate court affirms trial court ruling that referred seven of the fourteen counts to arbitration; ruling was not under-inclusive despite a mandatory arbitration clause, nor did the entire controversy clause mandate that all claims be litigated together; given the explicit terms of Settlement Agreement and Rider, which specifically preserved for litigation in court plaintiff's claims for non-payment and any other claims that arose relating to that Settlement Agreement and Rider, the trial court correctly declined to refer such claims to arbitration without the mutual consent of the parties, and also properly maintained jurisdiction over those counts containing claims against co-defendants who were not parties to an arbitration agreement. The jurisdictional division of plaintiff's claims into the two tribunals, although it is inefficient, did not violate the entire controversy doctrine. Appellate court affirms trial court ruling *Tri-Tech v. Nutley Bd. of Ed,* 2013 *N.J. Super*. Unpub. LEXIS 247 (App. Div. Jan 25, 2013)

Commissioner finds that Board's resolution authorizing an award to an engineering firm for building commissioning services was *ultra vires* because it should have been competitively bid; it qualified neither as professional services nor extraordinary unspecifiable services. Also, the Board violated *N.J.S.A.* 18A:76-33, which precludes contractors from bidding on work for school facility projects unless they are prequalified by the NJDSA. Commissioner rules in light of the public importance of the issues, and even though the petitioner, an unsuccessful vendor, participated in the relaxed RFP solicitation process and is therefore estopped from challenging the process. All relief demanded in the petition, save for the above *ultra vires* declaration, was denied as moot as the contracted work has been substantially completed. *Concord Engineering,* Commr 2013: Feb 11(Livingston)

Board’s decision to reject bids upheld. Consequently, so long as a board of education rejects all bids for any of the reasons permitted under *N.J.S.A.* 18A:18-22 and the decision was neither arbitrary nor capricious, the rejection is proper. The fact that it was unnecessary to reject all bids in order to permit substitutions does not render the Board's action arbitrary or capricious. Further, there was no evidence proffered that the action was in bad faith. *Sur. Mech. Servs. v. Bridgeton Bd. of Educ.*, 2013 N.J. Super. Unpub. LEXIS 2914 (App. Div. Dec. 11, 2013)

In matter concerning school construction contract pursuant to the New Jersey public bidding laws, the central issue is whether the fourth-lowest bidder can bring suit directly against the lowest bidder challenging the award and seeking money damages. Bidder's complaint was properly dismissed. General purpose of bidding laws is to secure for the taxpayers the benefits of competition and to promote the honesty and integrity of the bidders and the system. Their objects are to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition. New Jersey's bidding laws have been construed to curtail the discretion of local authorities by demanding strict compliance with public bidding guidelines. A bidder claiming to be entitled to the award of a contract for public work has long been held to have sufficient standing to challenge the rejection of his bid or the letting of the contract to another bidder, and to compel the award of the contract to him. There is no legislative support for such an implied cause of action for damages by an unsuccessful bidder against the bidder who was awarded the contract, based on alleged misrepresentations in the successful bidder's submissions. The Legislature did not intend to create a private right of action. *Brockwell & Carrington Contrs., Inc. v. Dobco, Inc.*,2013 N.J. Super. Unpub. LEXIS 3029 (App.Div. Dec. 26, 2013)

Transportation company, AAA, challenged school district’s bid specifications for various school bus routes, alleging discrimination. Petitioner contended that the requirement in bid specifications that vendors provide 16-passenger yellow school buses showed prejudice against his company, which neither owns nor uses same, and sought a change in the specifications so that AAA could bid on the contract. Commissioner held that petitioner failed to meet the standards for emergent relief. The only remedy available to petitioner was the right to challenge the board of education’s award of contracts based on the June 14 bid specifications; to which petitioner availed itself. Any allegations concerning the legality of the bid specifications or contract awards will be addressed in that challenge. *AAA School LLC,* Commissioner, 2014: August 25

Commissioner determined that the board was not arbitrary, capricious, or unreasonable in declining to award a transportation contract to vendor who failed to meet specifications contained in the RFP (AAA School v. Passaic County Ed. Svcs. Comm: Commr, 2014, Dec. 18).

PUPILS

Abbott

Budget Litigation

Commissioner denied district's petition challenging the DOE's directive to return $44,000 of disallowed costs from the district's Whole School Reform incentive grant. Principal failed to advise administrators and board of required revisions to grant application made cooperatively with DOE staff. (05:May 19, Trenton)

Absenteeism

Board was unreasonable in depriving student of course credit and graduation due to excessive absenteeism; summary judgment granted to student; offense was out of proportion to punishment where pupil had academically completed the course with an A- and absences were legitimate; also, board's appeal process denied pupil due process. (00:Jan. 13, G.J.C.)

Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

Admission to School

Admission policy requiring pupil to attain certain age by October 1 cutoff date as condition for admission to first grade not arbitrary, capricious or unreasonable. (00:July 13, N.R., aff'd St. Bd. 00:Nov. 1)

Board had authority to deny admission to child who would not be five years old on October 1 and who did not show readiness under district's testing policy; parents' emergency application denied for lack of probability of success. (98:Oct. 6, W.D.)

Cut-off date: Pupil not permitted to attend kindergarten where birth date falls beyond cut-off date of Oct. 1. (02:Dec. 5, K.T., aff'd St. Bd. 03:March 5)

DA's nieces moved from Columbia to reside in America with DA. DA supported the children gratis, without compensation from their parents. Father not required to produce income tax returns because in Columbia, persons below the poverty level are not required to file income tax returns, therefore were unable to demonstrate that they were unable to support the children in America. Commissioner agreed with ALJ that DA satisfied N.J.S.A. 18A:38-1 and is domiciled within the district, supporting his nieces gratis due to family hardship. (02:Sept. 23, D.A.)

District policy required all students to reach the age of five years prior to October 1 in order to be eligible for enrollment into kindergarten. Petitioner was born October 2, 1997, and applied for and was denied admission for the 2002-03 school year. Parent argued that district policy was unfair and filed for emergent relief before the Office of Administrative Law. OAL found that the policy, while arguably unfair, was not arbitrary, capricious or unreasonable. OAL judge also found that petitioner failed to meet her emergent relief burden by failing to prove irreparable harm if petition was not granted, legal entitlement, likelihood of prevailing on the merits on the underlying claim or that petitioner would suffer greater harm if the petition was not granted than would respondent district if petition was granted. (02:Sept. 23, R.T.)

Emergent relief denied in pupil admission matter. Crowe v. DeGioia test not met. (02:March 25, F.P.T.)

Non-resident student: board was within authority to reject tuition student as board's decision to accept nonresident students is discretionary under N.J.S.A. 18A:38-3; emergent relief denied. (98:Oct. 7, J.S.)

Parents contested the board's denial of resident status where parents purchased a new home within the district, but split time between the new "in-district" residence and old "out-of-district" residence until old home was sold. Commissioner agreed that parents were not "domiciled" in the new district. Parents ordered to reimburse the district $27,292.38 in prorated tuition. Appellate Division reversed in part finding that petitioners had demonstrated by a preponderance of the evidence that they were domiciled in district for at least part of the time in question. (02:Sept. 16, D.L., aff'd St. Bd. 03:Jan. 8, remanded to State Board for determination of tuition for period in question, App. Div. No. A-3183-02T3, 04:February 5, matter remanded to Commissioner for determination consistent with Court opinion, St. Bd. 04:June 2)

Placement: Parents' application for emergent relief to place home schooled child in tenth grade rather than ninth grade, denied. District must conduct educational evaluation of pupil within 30 days to determine whether placement should be changed; parents' request for independent evaluation is denied. (98:Oct. 16, M.C.)

Policy: Board could adopt new policy of not accepting non-resident tuition students; not bound by prior practice of permitting siblings. (99:Sept. 3, J.S., aff'd St. Bd. 00:Jan. 5)

Pupil not domiciled in district. Parent ordered to pay $31,023.93 for period of ineligible attendance for first half of school year plus $44.46 per day until date of decision. (98:June 18, T.B.W., motion for stay denied, Comm. 98:Sept. 17, motion for stay denied and decision aff'd St. Bd. 02:Nov. 6)

Alternate School

District's transfer of student from regular day high school to twilight alternative school was neither arbitrary nor capricious and was reasonable and within the scope of the district's lawful authority, given the student's school placement, disciplinary record and grades. (03:June 19, L.R.R.)

No federal constitutional rights involved when pupil transferred from regular education program to alternative school within the district. Student had been suspended for assault and possession of a weapon. (03:May 15, K.C.)(See also emergent relief denied 03:March 26)

No relaxation of 90-day rule where parent sought to appeal disciplinary expulsion with offer of transfer to alternative program seven months after board action. (03:May 20, J.G.)

Attendance areas/attendance policy

Board did not act arbitrarily in denying pupil credit for classes where her absences exceeded the maximum permitted; pupil not moved to tenth grade; fact that absences due to difficult year including asthma, unwarranted pregnancy and father's illness not sufficient to require giving her credits. (99:Oct. 12, P.D.M., motion for emergent relief denied 98:Sept. 3)

Policy giving students from some, but not all, constituent districts of a regional board a meaningful choice to attend the high school they wanted, was not illegal "discrimination"; there is no constitutional right to receive an education in a specific school house in the district; the policy was valid exercise of board's discretion and was not arbitrary and capricious; board's motion for summary judgment granted. (99:March 10, Piccoli)

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Statute allowing a student living remove from appropriate school to attend a closer school in adjacent school district (N.J.S.A. 18A:38-9) did not give student the right to attend a school that was not substantially closer. (98:Oct. 29, M.M.)

Commissioner upheld board's decision to return student to his home school from a lottery school based on poor attendance. Transfer did not rise to the level of being arbitrary, capricious or unreasonable (M.G. v. Elizabeth City: Commr, 2014, Nov. 24).

Attendance at graduation ceremony

Academic requirements: Board policy to deny attendance at graduation to student who fails to satisfactorily complete State and district academic requirements upheld. Emergent relief denied. Decision on motion. (02:June 19, K.Mc.)

Parents not entitled to emergent order permitting senior to attend graduation exercise where he had excessive absenteeism in physics class, where parents were on notice of board policy. (99:June 25, G.J.C., denial of emergent relief reversed, St. Bd. 99:Oct. 6)

Possession of marijuana on school grounds: Board acted reasonably and appropriately by barring student from participation in school regulated activities (graduation) during period of suspension. (98:July 8, C.S.)

Shoplifting: excluding student from graduation and prom for lateness and lying about it while being on disciplinary probation for shoplifting was not arbitrary, capricious, or unreasonable; emergent relief denied. (02:June 14, Bush)

Awards

Coach's determination not to award petitioner MVP award for cross-country track was not unreasonable. (00:Sept. 11, J.M., aff'd St. Bd. 01:Jan. 3)

Commissioner found that petitioner did not reside in the school district and as such petitioner's twin children were not entitled to a free public education in the school district. Petitioner ordered to remit $8,301 for one child's enrollment in the district and $31,953.60 for the other child's out-of-district special education placement. (04:Nov. 17, A.M., motion to supplement record on appeal granted, St. Bd. 05:Feb. 2, settlement approved, St. Bd. 05:Aug. 3)

Confidential communications

Commissioner adopted findings of ALJ that athletic director violated N.J.A.C. 6:3-6.1 pertaining to the confidentiality of pupil records when he disseminated such records to the NJSIAA without authority and while no longer an employee of the district. (04:Jan. 29, Swartz)

Question of a counselor's duty to disclose confidential communications is outside of Commissioner's jurisdiction (note that ALJ below held that confidential communications between a school counselor and a pupil must be disclosed if in the best interest of the student such as where pupil is suicidal.) (99:Aug. 13, M.N.)

County jail does not qualify as a present district of residence for purposes of determination of tuition responsibility. (St. Bd. 00:July 5, Somerville, reversing 97 N.J.A.R.2d (EDU) 352)

Conduct

New Jersey Supreme Court denies certification to district in matter involving 24/7 student conduct policies. *G.D.M. v. Board of Educ. of the Ramapo Indian Hills Reg'l High School,* __N.J. __(2013), 2013 N.J. LEXIS 62 (January 16, 2013)

Discipline

ALJ recommended dismissal of gym teacher, accused of grabbing, pushing, screaming at second grade students, and instructing one

student to strike another. Commissioner affirmed teacher's dismissal and transmitted matter to State Board for appropriate action against teacher's certificate. (02:Nov. 6, Kendle)

Board of education was in violation of N.J.S.A. 18A:37-15 when administrators failed to investigate an alleged incident of harassment, intimidation or bullying on school property. District ordered to conduct staff in-service training. (05:May 26, M.G.D.)(OAL 05:April 27, M.G.D.)

Commissioner upheld board imposition of a one-day suspension for belittling and ridiculing a special education student despite the fact that both victim and aggressor shared a Jewish background. (05:Oct. 13, S.S.)

Community service as a prerequisite to receiving diploma was reasonable form of discipline. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.

District's transfer of student from regular day high school to twilight alternative school was neither arbitrary nor capricious and was reasonable and within the scope of the district's lawful authority, given the student's school placement, disciplinary record and grades. (03:June 19, L.R.R.)

Challenge to suspension dismissed as moot where petitioner has already received her high school diploma and there is no longer any record of the suspension maintained in petitioner's student records; petitioner's assertions that the suspension was imposed in violation of her due process rights and that the district's disciplinary procedures are legally flawed are likewise moot because petitioner is no longer subject to the force of school procedures or regulations. Robinson v. School District of Paterson, Commr, 2011 Jan 25

Pupil challenged 3-day suspension. Discipline expunged from record. Portion of complaint related to discipline is moot. Request for attorneys fees denied. Complaint dismissed with prejudice. Witkins v. Pitman Bd. of Educ., 2011 Commr Feb 18

Sanctions warranted against plaintiff's attorney in suit concerning suspension of student for bringing knife to school. Subjective views of attorney cannot overcome what is a plainly frivolous lawsuit. Matter remanded to trial court regarding quantum of sanction. O.R. v. Cave, No. A-5001-09T1 (App. Div. March 10, 2011)

School board did not violate a former student's due process rights by refusing to grant a third adjournment of the student's expulsion hearing or by offering to adjourn on the condition that the student waive his right to file a civil suit, nor did the superintendent's recommendation of expulsion after previously recommending either suspension or expulsion violate due process; A hostile

educational environment claim under the New Jersey Law Against Discrimination survived summary judgment because the student testified that he was subjected to racist bullying and a jury could have found that a vice principal had actual or constructive knowledge of the harassment and that the school's response was not reasonable. *George v. Bd. of Educ.*, No. 2:11-cv-00043 (D.N.J. July 23, 2014)

Due Process

Diploma is a property interest for purpose of due process analysis. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.

Diploma: sanction of refusal to give student who had successfully completed requisite academic curriculum, as discipline for act of vandalism, may not be imposed without due process. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.

Expulsion: removal of student from regular education program constituted expulsion; subsequent hearing and provision of alternative education cured potential due process violation. Emergent relief denied. Decision on motion. (02:June 24, C.L.)

No federal constitutional rights involved when pupil transferred from regular education program to alternative school within the district. Student had been suspended for assault and possession of a weapon. (03:May 15, K.C.)

Notice to student, given orally one half hour before graduation, that student would not receive diploma as discipline for act of vandalism satisfied student's due process rights. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.); Jan. 8, 1999.

Emergent relief

Crowe v. DeGoia standard met. Board ordered to allow out of district student to attend junior prom as date of district student. Petitioners experienced severe personal inconvenience sufficient to constitute irreparable harm. (03:May 2, L.J.)

Denied in student discipline matter. Crowe v. DeGioia test not met. (02:April 18, A.G.K.)

Denied. Student failed to prove that district acted unreasonably in transfer of student from day high school program to twilight alternative school. District did not act inappropriately with respect to student's disciplinary record or grades. (03:June 19, L.R.R.)

District policy required all students to reach the age of five years prior to October 1 in order to be eligible for enrollment into kindergarten. Petitioner was born October 2, 1997, and applied for and was denied admission for the 2002-03 school year. Parent argued that district policy was unfair and filed for emergent relief before the Office of Administrative Law. OAL found that the policy, while arguably unfair, was not arbitrary, capricious or unreasonable. OAL judge also found that petitioner failed to meet her emergent relief burden by failing to prove irreparable harm if petition was not granted, legal entitlement, likelihood of prevailing on the merits on the underlying claim or that petitioner would suffer greater harm if the petition was not granted than would respondent district if petition was granted. (02:Sept. 23, R.T.)

Emergent relief denied. Board decision prohibiting student from walking in graduation ceremony because she had not passed the math portion of the HSPA upheld. (03:June 20, Ratto)

Emergent relief denied. Board decision to not name graduating student as "distinguished student speaker" upheld. Student was not eligible for honor as did not attend Academy of Biological and Environmental Sciences for all four of her high school years. Board criteria for determining "distinguished student speaker" reasonable and fair. (03:June 18, K.R.C.)

Emergent relief denied to student who was suspended for 10 days and then re-assigned to alternative school. Crowe standards not met. (03:March 26, K.C.)

Emergent relief granted. Board's action prohibiting student from walking at high school graduation reversed. Decision was arbitrary, capricious and unreasonable. (03:June 20, C.M.)

Granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program such as home instruction, pending final disposition of expulsion proceedings. (02:March 22, S.R.R.)

Residency

Petitioners failed to appear for telephonic hearing and failed to provide any explanation, even after being given time to do so. Matter dismissed pursuant to N.J.A.C. 1:1-14.4. W.B. and L.M. on behalf of minor child, A.B., v. Bd. of Ed. of the City Of Plainfield, Commr 2011 Jan 14 .

Matter dismissed where petitioner failed to appear at hearing concerning residency appeal. M.A.P. v. West Orange Bd. of Ed. 2011 Commr Jan 25

Settlement approved and judgment docketed against parents for period of pupil's ineligible attendance in the amount of $61,160.18. G.B. and K.B. 2011 Commr Feb 9.

Where parents failed to appear at hearing to refute board's proofs that, as a result of a residency investigation her children were not domiciled in East Brunswick during period in question, Commissioner determines that they owe tuition for 50 day period of illegal attendance totaling in the amount of $6,191 following the mother's move to Old Bridge. *East Brunswick v. C.C.* , Commr 2013: May 21.

Settlement

Settlement approved in student discipline matter. (02:April 18, W.O.L.)

Suspension and Expulsion cases

ALJ overruled NJSIAA's denial of a student/athlete's request for a waiver of the NJSIAA's eight semester limitation on athletic eligibility. Commissioner determined that NJSIAA's denial of the requested waiver was entirely consistent with its previous application of its eligibility rules, however, the NJSIAA's deferral of the September 2000 request, until spring of 2002, denied the student due process. Commissioner found that the delay so prejudiced the student as to be arbitrary. Commissioner granted the waiver for all but the first two games of the 2002-03 football season. (02:Aug. 8, Taylor)

Alternative school ordered pending final determination of whether district acted reasonably in expelling girl who committed serious assault including kicking, hair pulling on other pupil. (99:Oct. 5, D.B.)

Assault: Ten-day suspension and transfer of pupil from regular to alternative program for assault and possession of a weapon upheld. Parents failed to file in a timely manner. (03:May 15, K.C.)

Assault: Two day suspension for holding student's head in urinal upheld; board did not act unreasonably. (02:June 12, T.M.)

Assault with bricks and sticks; board's decision to provide home instruction until student's sixteenth birthday and then to expel him was upheld; even if parent's challenge had been timely filed, due process had been provided student, and board did not act arbitrarily. (99:Aug. 4, P.S.)

Beer possession by seventh grader: 1 year suspension harsh; superintendent's automatic practice of 1 year suspension for every drug/alcohol incident without consideration of particular circumstances is inconsistent with board policy; readmission ordered. (98:Nov. 30, E.R.)

Board acted reasonably when, pursuant to policy adopted pursuant to N.J.S.A. 18A:40A-8 through –21, it required a high school student who was at a "senior cut day" party where extensive drinking had taken place, to be referred to SAC Core Team for further investigation into possible chemical dependency, even though there was no evidence that she consumed any alcohol. (00:June 12, D.B.)

Board did not act improperly by not conducting suspension/expulsion proceedings mandatory under N.J.S.A. 18A:37-2.1, where administrators did not believe that incidents involving threats to teachers constituted criminal assaults, where Board took measured discipline against pupils, and where teachers' appeal of discipline did not allege assault. (01:Aug. 20, Knight, aff'd with clarification St. Bd. 02:Jan. 2)

Board generally has no obligation to provide educational services to a pupil it has expelled. (99:Sept. 7, Somerset County)

Board had to pay tuition of expelled student adjudicated delinquent where court ordered placement in lieu of incarceration. (99:Sept. 7, Somerset County)

Board's authority to discipline for alcohol consumption by pupils involved in school functions is not limited by distance from the school. (00:Feb. 15, F.B.)

Board's decision to expel was moot; pupil restored, record expunged; not a matter of public concern evading review. (01:Jan. 8, L.H., remanded St. Bd. 01:June 6, settlement approved by Commissioner 02:Nov. 18, motion denied and matter dismissed, St. Bd. 03:April 2)

Board's failure to hold expulsion hearings for student who "assaulted" teaching staff members through computer website postings not arbitrary and capricious. Board, through its administrators followed up quickly and diligently upon learning of the postings. (02:May 6, Hillsborough)

Bomb threat; board's decision to expel student for bomb threat, in light of explicit policy calling for expulsion after due process hearing, upheld. (00:March 20, K.W.)

Child study team evaluation: Failure to obtain child study team evaluation rendered expulsion void; emergent relief granted; district must place child on home instruction, conduct evaluation and may then reconsider issue of expulsion. (98:Sept. 9, E.A. and D.G.)

Child study team referral: Propensity to act-out should have alerted board to need for referral to child study team, prior to expulsion. (99:April 7, A.B.)

Community service is permitted form of discipline; emergent relief denied. (00:Dec. 1, K.E.)

Consolidated disciplinary and special education matter dismissed. Board acted for the benefit of the larger school population in matter regarding marijuana and weapon possession when parent refused to cooperate in special education evaluation. Appeal was untimely; seven months after student was expelled. (03:May 20, J.G.)

CST determined that knife-wielding child had no learning disability and that behavior leading to expulsion was not a manifestation of any such disability. (99:June 24, E.A.)

Disciplinary transfer of pupil from one school in the "open enrollment" district to another school in the district for signing his father's name on math test was not arbitrary or unreasonable; did not require due process requirements of notice and hearing as the pupil was not excluded from the educational process. (99:Dec. 23, E.A., aff'd St. Bd. 00:April 5)

Drinking off school premises: board's suspension of pupils from classes and extracurricular activities for five and ten days, respectively, was arbitrary and capricious where policy not consistently enforced, and where policy was vague and overly broad; all references to discipline must be removed from pupil records. (00:Feb. 15, F.B.)

Due Process: Providing an explanation of the charges and an opportunity to present his/her side of the story applies only when the student denies the charges. (99:Dec. 23, E.A., ALJ dicta, p. 57, citing Giangrasso, aff'd St. Bd. 00:April 5)

Due Process: Where board adjourned expulsion hearing due to board member's recusal and lack of quorum, failure to hold hearing within 21 days did not deprive pupil of due process. (98:Sept. 9, E.A. and D.G.)

Emergent relief denied; expulsion for role in altercation not lifted; Crowe standard not met; expeditious hearing ordered. (98:March 20, W.W., on motion)

Emergent relief denied; pupil who was suspended for several days for fighting, unsuccessfully sought order for school authorities to assist in defusing minor problems between students before they get out of hand. (01:March 2, E.G.)

Emergent relief denied to pupil seeking return to original school after disciplinary directive requires attendance at alternative school. (00:Aug. 18, M.C.)

Emergent relief denied to pupil who challenged his exclusion from participating in extracurricular activities for one year, for

having made threatening and defamatory statements against teacher on web. (00:Sept. 1, M.D.)

Emergent relief denied where district properly offers expelled student temporary home instruction from time of expulsion and choice of three different alternative education placements whose programs have NJDOE approval. (Dec. on motion 01:Oct. 18, A.M., decision on merits 02:Feb. 4, decision on motion, St. Bd. 02:April 3, aff'd St. Bd. 02:July 2)

Emergent relief granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program, such as home instruction, pending disposition of expulsion proceedings. (02:March 22, S.R.R.)

Emergent relief granted; where board initially voted not to expel eighth grader with four bags of marijuana, but then at subsequent meeting voted to reverse prior decision without notice to parents. (98:Sept. 10, R.R.)

Emergent relief to stay detention is denied to pupil accused of cheating. (00:June 8, C.C., appeal dismissed for failure to perfect, St. Bd. 00:Sept. 6)

Expelled pupil is granted emergent relief of home instruction; legal issue of entitlement to free public education in an alternative setting after a student's lawful expulsion is not fully settled. (00:Sept. 15, P.H., 01:July 16, decision on motion St. Bd. 01:Sept. 5, aff'd St. Bd. 01:Oct. 3)

Expulsion: Parents did not appear at plenary hearing before OAL on expulsion matter; matter to reinstate pupil is dismissed. (99:Dec. 27, D.B.)

Expulsion: parent's request for temporary restraint denied where board followed due process in expelling pupil for profanity, disruptive behavior, repeated violations of disciplinary code; further, board will provide education in alternative school. (00:Feb. 15, D.C.)

Failure to provide pupil with a summary of expected testimony at the expulsion hearing was not a violation of due process; emergent relief denied. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4, appeal dismissed. V.A.'s constitutional claims were not decided at the State Board level. Cross appeal dismissed, K.M.A. no longer a student; subsequent disciplinary proceedings resulted in expulsion. App. Div. unpub. op. Dkt. No. A-1531-00T5, April 24, 2001)

Failure to report vandalism; no stay of suspension; however, pupils may return without submitting to psychiatric evaluation. (00:Dec. 1, K.E.)

Gun threats: removal from regular education program and placing him in alternative program does not constitute irreparable injury for emergent relief. Decision on motion. (02:June 24, C.L.)

Hearing process: flaws in hearing process, including restricted cross-examination and withholding name of witness, did not render it arbitrary. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

Hearing: the 21-day requirement in R.R. may be of limited precedential value at this point in time, given amendments to statute providing for 30 days before a hearing; significance of R.R. is that a board may not inordinately delay providing students a formal hearing. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4, appeal dismissed, V.A.'s constitutional claims were not decided at the State Board level. Cross appeal dismissed, K.M.A. no longer a student; subsequent disciplinary proceeding resulted in expulsion. App. Div. unpub. op. Dkt. No. A-1531-00T5, April 24, 2001)

Hit List: Suspension pending psychological or psychiatric clearance of student at board expense after student found with his list of teachers he was angry at was not arbitrary, unreasonable or capricious. (02:June 13, T.L.)

Home instruction: Expelled 14-year old was entitled to emergency relief for home instruction pending hearing on reasonableness of expulsion; expulsion matter must be held in abeyance until Division of Special Education determines whether pupil should have been referred to child study team in light of propensity to act-out. (99:April 7, A.B.)

Implementation of five-day bus suspension for student who touched emergency door handle and exited bus at wrong stop, is not stayed; parent's motion for emergency relief denied. (03:Oct. 29, D.T.)

Jurisdiction: Commissioner had no jurisdiction to determine suspension matter involving special education student for whom the conduct was judged to be a manifestation of the disability. (03:October 27, R.P.)

Mootness: challenge to board's disciplinary action not moot where pupil withdrew from district and enrolled in private school, as suspension for assault remained part of student's permanent school record. (99:March 23, J.O.)

Ninety-day rule was unduly harsh; waived so parent may demonstrate a pattern of past inappropriate behavior by teachers toward her son, including teacher's accusation that

pupil copied other pupil's homework and detention therefor. (00:Sept. 18, C.C.)

One day in-school suspension and zero grade on math test imposed on truant pupil who, in order to miss morning math test, arranged for friend to pose as parent to call in tardiness excuse; pupil denied emergent relief to take test. (99:March 4, S. and M.B.)

One year "expulsion" of eight grader due to assault on teacher was upheld; home instruction was provided. (03:April 15, C.S.)

Paging device: Student's challenge to board's three day suspension for possession of paging device was dismissed as untimely: 90 days began to run from date pupil or her attorney heard board's vote, and not from letter subsequently sent to parents from board. (98:Sept. 30, S.W.)

Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

Parent's appeal of board's determination to expel her son upon his 16th birthday with homebound instruction until that time, is dismissed as it was out-of-time pursuant to 90-day rule. (01:Oct. 9, L.G.)

Parents fail to establish need for emergent relief although board did not provide hearing until 34 days after suspension for bomb threat without home instruction. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4, appeal dismissed, V.A.'s constitutional claims were not decided at the State Board level. Cross appeal dismissed, K.M.A. no longer a student; subsequent disciplinary proceeding resulted in expulsion. App. Div. unpub. op. Dkt. No. A-1531-00T5, April 24, 2001)

Parents objection to alternative school is dismissed. (00:Sept. 8, D.C.)

Petitioners failed to file brief on appeal of pupil suspension; dismissal for failure to perfect. (St. Bd. 00:Feb. 2, R.E.)

Possession of knife and threats to kill other students; expulsion void for failure to conduct child study team evaluation where *(prior)* Administrative Code gave district flexibility to determine whether evaluation was warranted on case-by-case basis. (98:Sept. 9, E.A. and D.G.)

Pupil (age 16) expelled for marijuana use must be readmitted; expulsion was not compelled by board's policy; board must

consider options such as alternative school, before imposing ultimate sanction of expulsion. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

Pupil granted emergent relief and immediately reinstated pupil who was suspended for allegedly threatening to shoot classmate; board had no legally competent evidence to support board's hearsay evidence. (00:May 3, B.B.)

Pupil speech: One-day suspension for a wish that a teacher die, coupled with immature doggerel "Roses are red, violets are black. Why is your chest as flat as your back;" raised a legitimate pedagogical concern and may be subject to reasonable restrictions, such as a prohibition against abusive, offensive behavior directed toward a teacher. (00:June 13, J.F.)

Pupil who voluntarily waived disciplinary hearing and entered into settlement agreement for one semester suspension is denied emergent application to set aside the agreement in favor of less harsh punishment. (00:Sept. 8, J.B.)

Questioning: Administrators may exercise discretion in deciding whether to notify parents or seek parental consent prior to questioning students. (99:Aug. 13, M.N.)

Signing of a parent's name to a test is inappropriate student behavior. (99:Dec. 23, E.A., aff'd St. Bd. 00:April 5)

Stay of punishment (loss of parking privileges and five detentions during which pupil is to attend drug counseling) is granted pending final determination of whether item pupil made in art class was hash pipe. (99:Oct. 4, J.K.)

Superintendent both testified as a witness at the expulsion hearing and participated in the decision-making process; no violation of due process; emergent relief denied. (99:June 29, V.A., aff'd with modification St. Bd. 00:July 5, decision on motion St. Bd. 00:Oct. 4, appeal dismissed, V.A.'s constitutional claims were not decided at the State Board level. Cross appeal dismissed, K.M.A. no longer a student; subsequent disciplinary proceeding resulted in expulsion. App. Div. unpub. op. Dkt. No. A-1531-00T5, April 24, 2001)

Suspension: Commissioner upheld board's three-day suspension of high school student who used profane and disrespectful language to a faculty member, reacted physically against another student and refused to follow the faculty member's directive. The student's willful disobedience, open defiance of authority and use of inappropriate, hostile language toward a teacher were disruptive of the

educational process. (04:Dec. 6, B.B., motion for stay denied, Commissioner 05:Jan. 19, appeal dismissed for failure to perfect, St. Bd. 05:June 1)

Suspension for rest of year with home instruction and return in September conditioned on submitting to psychiatric evaluation, attending summer school and executing behavior contract, not unduly harsh for 18 year junior who assaulted other pupil. (99:March 23, J.O.)

Suspension from April to end of June for committing vandalism not overly harsh in light of fact that student was repeat offender and deplorable nature of act; however, he is still entitled to education that will allow him to complete high school: 10 hours/week home instruction and exams ordered. (2000 S.L.D. May 19, Dentino, decision on motion)

Suspension of pupil for three days and permanent expulsion from basketball team for sexual harassment (mooning) upheld. (00:May 5, D.K.)

Ten day suspension for threatening a teacher (during which baseball would be missed) not excessive; emergent relief denied. (00:May 19, A.S.)

Untimely petition: Pupil's claim that board did not hold hearing within 21 days, and that board was racially biased, were dismissed where pupil's challenge was filed untimely pursuant to N.J.A.C. 6:24-1.2(c). (99:March 23, J.O.)

Board exceeded its authority by adopting a broad policy that would restrict students from participating in sports and extracurricular activities for off-campus misconduct. A board may not adopt a policy that imposes consequences, including restrictions on extracurricular activities, for conduct violations that occur away from school grounds, unless there is a substantial nexus between the student's conduct and the safe and orderly operation of the school, and the conduct "materially and substantially" interferes with the discipline necessary to operate the school. Board is seeking certification from the N.J. Supreme Court. G.D.M. and T.A.M. v. Ramapo Indian Hills Regional School District, 427 N.J. Super. 246 (App. Div. 2012) (July 24) (Student conduct).

Dress Code

Student wore a Jeff Foxworthy T-shirt to school that was inscribed with "redneck" jokes and suspended pursuant to school district's racial harassment policy. Third Circuit reversed the District Court's refusal to enjoin enforcement of the school district's racial harassment policy. Third Circuit agreed that the school district had a duty to regulate student behavior that materially disrupts class

work, involves substantial disorder or invades the rights of others. However, an undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Where a district can point to a well-founded expectation of disruption, based on past incidents of similar speech, a restriction on speech may pass constitutional muster. Sypniewski v. Warren Hills BOE, 307 F.3d 243 (3rd Cir. 2003), reversing 2001 U.S. Dist. LEXIS 25388, September 7, 2001

Drug testing

Board's actions did not violate requirement that board provide parents a copy of its policy on discipline for substance abusers after suspension following first positive test. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

Consent: parents do not have a statutory right to refuse to consent to testing of pupil, and parents contention that they did not consent does not provide grounds for ignoring the results of a drug test. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

Court upholds constitutionality of random drug and alcohol testing program for all students who participated in extracurricular activities and for those who possess school parking permits. Court held policy clearly constitutional under the U.S. Constitution and N.J. Constitution. Court noted that students' expectations of privacy were reduced in a public school setting; testing was done with minimal intrusion on students' privacy while maintaining their personal dignity; the need for the testing was paramount as there was a necessity to reduce the major drug problem in the school. Joye v. Hunterdon Central Regional High School Bd. of Ed., 176 N.J. 568 (2003), aff'g 353 N.J. Super. 600 (App. Div. 2002), rev'g Superior Court of New Jersey, Law Division, Somerset County, Judge Guterl, Dkt. No. HNT-C-14031-00 (January 4, 2001)

District properly fulfilled its dual responsibility to arrange for an immediate medical examination of a pupil when a staff member suspected that he was under the influence, and, where that suspicion was substantiated, to ensure follow-up. (00:Nov. 6, M.G., decision on motion 01:March 8, St. Bd. dismissed for failure to perfect, 01:May 2, emergent relief denied, 01:Feb. 15)

Random drug testing: Temporary restraining order issued requiring school district to cease implementation of policy on random drug testing of pupils who park on campus or are involved in athletics or other extra-curricular activities. Court concluded that policy invades pupils' right to privacy under New Jersey State Constitution. Joye v. Hunterdon Central Regional High School

Bd. of Ed., 176 N.J. 568 (2003), aff'g 353 N.J. Super. 600 (App. Div. 2002), rev'g Superior Court of New Jersey, Law Division, Somerset County, Judge Guterl, Dkt. No. HNT-C-14031-00 (January 4, 2001)

Enrollment

Certificate of inhabitancy may not be required for registration of pupil. Absence or incompleteness of transcripts and immunization records must not interfere with or delay enrollment of new pupil although incomplete immunization records may justify delay of actual admission. Five to six-day delay in enrollment due to parent's failure to complete verification of residency did not amount to denial of due process. (00:Sept. 7, M.G.L., aff'd St. Bd. 02:Jan. 2, aff'd unpub. Op. Dkt. No. A-2975-01T5, March 25, 2003)

Entitlement to free education

Age: no entitlement after age 20 for unclassified pupil (settlement relying on Morris Hills.) (98:Aug. 12, Wallington)

Commissioner adopted ALJ's findings, pursuant to N.J.S.A. 18A:38-1(b), that R.K.'s family, who was living in Syria and suffering family hardship, was unable to provide for R.K. where R.K. moved to the district to live with an uncle who supported him gratis. (03:Aug. 11, F.M.)

Home schooled student was entitled to tuition and transportation costs for attendance at vocational school in the afternoon. (99:June 24, Jacobs)

Student did not prove that she was denied admission to district's schools by board's placement of student in non-credit basic skills adult program, after pupil had failed all her classes due to poor attendance record; board is not required to create an IEP for a non-special education pupil. (04:Oct. 18, C.G., motion to supplement the record denied, St. Bd. 05:May 4)

Extracurricular activities

Athletics

ALJ overruled NJSIAA's denial of a student/athlete's request for a waiver of the NJSIAA's eight semester limitation on athletic eligibility. Commissioner determined that NJSIAA's denial of the requested waiver was entirely consistent with its previous application of its eligibility rules, however, the NJSIAA's deferral of the September 2000 request, until spring of 2002, denied the student due process. Commissioner found that the delay so prejudiced the student as to be arbitrary. Commissioner granted the waiver for all but the first two games of the 2002-03 football season. (02:Aug. 8, Taylor)

Commissioner determined that board was not arbitrary, capricious or unreasonable in adopting a policy limiting participation

on middle school lacrosse team to female students. (04:July 1, A.L.D.)

Emergent request by disrespectful student, for reinstatement to wrestling team in time for district tournament was denied, for failure to meet Crowe standards, and where matter was moot for passage of time. (03:April 15, S.L.)

No evidence of discrimination where student not placed on either JV or Varsity soccer team after competitive tryouts. (02:May 3, D.H.)

Board decision to ban former district student from attending junior prom as date of current student, based on prior disciplinary record in the district, reversed. Board ordered to allow former student to accompany current student to the junior prom. (03:May 2, L.J.)

District may not preclude vo-tech Magnet School students from participating in its extracurricular activities and athletic programs unless such participation is not practicable or reasonable. (99:Nov. 29, G.W.S.)

Policy precluding vo-tech magnet school students from participating in sports at sending school violated NJSIAA Bylaws. (99:Nov. 29, G.W.S.)

Free Speech

Board had right to exercise pedagogical control over pupil's school assignment and to assign zero grade for pupil's failure to delete references to illegal drug use and drug culture, in light of school's zero tolerance policy. It was within the province of the teacher and school administrators to view the paper as advocating or at least making light of illegal drug use; no substantial first amendment issue raised. (99:Oct. 18, J.L., aff'd St. Bd. 00:Feb. 2; aff'd App. Div. unpub. op. Dkt. No. A-3787-99T5, June 19, 2001, certification denied, 170 N.J. 207 (2001)

Gifted and Talented

Denial of entry to gifted and talented program for pupil who was both gifted and learning disabled was proper, where educators were concerned that he could be easily frustrated by pace. (99:Oct. 28, D.B.)

Emergent relief to parents seeking placement in gifted and talented program, denied. (99:March 4, Mullane)

There is no law or regulation which prescribes the substantive content of a gifted and talented program. (99:Oct. 28, D.B.)

Grades

Board neither exceeded its authority, violated pupil's constitutional or due process rights, nor reduced a grade for disciplinary reasons, when it upheld teacher's assignment of a zero grade for pupil's failure to delete from assignment references associated with drug use and drug culture; relying on Hazelwood, held that gravamen of case is pedagogical control. It was within the province of the teacher and

school administrators to view the paper as advocating or at least making light of illegal drug use; no substantial first amendment issue raised. (99:Oct. 18, J.L., aff'd St. Bd. 00:Feb. 2; aff'd App. Div. unpub. op. Dkt. No. A-3787-99T5, June 19, 2001), certification denied 170 N.J. 207 (2001)

Board was unreasonable in depriving student of course credit and graduation due to excessive absenteeism; summary judgment granted to student; offense was out of proportion to punishment where pupil had academically completed the course with an A- and absences were legitimate; also, board's appeal process denied pupil due process. (00:Jan. 12, G.J.C.)

Challenge to placement in honors English where pupil failed and was denied graduation privileges, moot, where pupil completed summer school course which permitted him to receive diploma. (99:April 22, E.S.H.)

Vocational student's failing grade due to attendance problems, rendering him ineligible for a second year for the second year of his vocational education program, was not arbitrary or capricious. (04:Sept. 30, K.D.)

Graduation

Board acted properly in denying senior a diploma because he was deemed academically ineligible to complete a required physics course due to tardiness counted as unexcused absences. (00:Aug. 18, Buckley)

Board was unreasonable in depriving student of course credit and graduation due to excessive absenteeism; summary judgment granted to student; offense was out of proportion to punishment where pupil had academically completed the course with an A- and absences were legitimate; also, board's appeal process denied pupil due process. (00:Jan. 12, G.J.C.)

Community service as a prerequisite to receiving diploma was reasonable form of discipline. Rizzo v. Kenilworth Bd. of Ed., unpublished opinion, Dkt. No. UNN-C-122-98 (Ch. Div. – Gen. Equity, Union Co.), Jan. 8, 1999.

Emergent relief denied. Board decision prohibiting student from walking in graduation ceremony because she had not passed the math portion of the HSPA upheld. (03:June 20, Ratto)

Emergent relief denied. Board decision to not name graduating student as "distinguished student speaker" upheld. Student was not eligible for honor as did not attend Academy of Biological and Environmental Sciences for all four of her high school years. Board criteria for determining "distinguished student speaker" reasonable and fair. (03:June 18, K.R.C.)

Emergent relief granted. Board's action prohibiting student from walking at high school graduation reversed. Decision was arbitrary, capricious and unreasonable. (03:June 20, C.M.)

Pupil is granted emergent relief and allowed to graduate with her class although private school from which she transferred refused to send records confirming successful completion from 11th grade, because of tuition dispute. (00:May 19, D.H.)

Special education pupil was denied emergent application to march in graduation ceremony, where she had not earned certification to graduate because of failing grades. (00:June 20, G.L.)

Where pupils were unable to obtain their school records from private school previously attended because of tuition dispute with that school, and there was no proof that the necessary credits, district is ordered to advance pupils to 12th grade and graduation respectively, provided they pass the required courses. (Motion for emergency relief granted 00:May 15)(00:July 3, D.K.)

Home Instruction

Commissioner adopted ALJ's decision to dismiss parent demand for home-instruction and "contempt-of-court" finding as moot due to parent's decision to re-locate to new domicile outside the district. (04:Jan. 29, E.L.C.)

Emergent relief denied to pupil who had been raped at school and subsequently provided home instruction; pupil's emergent petition to continue home instruction or transfer to out-of-district high school denied as school board already agrees to continue home instruction pending full hearing on issue of child's schooling. (99:Oct. 29, C.J., underlying matter dismissed as moot, 00:Jan. 11)

Emergent relief granted. Crowe v. DeGioia test met. Student to be placed in an appropriate educational program, such as home instruction, pending disposition of expulsion proceedings. (02:March 22, S.R.R.)

Honors

Board did not act arbitrarily in enforcing its policy requiring student maintain 3.5 GPA for National Honor Society eligibility; board could deny admission to pupil with 3.49 average. (01:Jan. 16, L.B.)

Boards selection process for National Honor Society is upheld. (03:Dec. 1, J.B.)

Challenge to placement in honors English where pupil failed and was denied graduation privileges, moot, where pupil completed summer school course which permitted him to receive diploma. (99:April 22, E.S.H.)

Commissioner adopted ALJ's initial decision denying parent's Emergent Relief motion. Parents failed to show a likelihood of success on the merits where the district's evaluation system for selection to the National Honor Society varied slightly from, but was consistent with NHS policy. (03:Aug. 5, J.B., aff'd St. Bd. 03:Dec. 3, dismissal aff'd, St. Bd. 04:June 2)

Commissioner adopted ALJ's Initial Decision denying parent's petition alleging that L.M.U. should have been recognized as a "distinguished student speaker" during 2003 graduation ceremonies. Pupil's graduation rendered matter moot. (03:Aug. 14, K.R.C.)

Commissioner adopted ALJ's Initial Decision denying parent's petition alleging that L.M.U. should have been recognized as a "distinguished student speaker" during 2003 graduation ceremonies. District eligibility criteria requiring four consecutive years in one program for "distinguished student speaker" designation held reasonable despite lack of board approval. (03:Aug. 14, K.R.C.)

90-Day Rule

Tolled

Commissioner determined that 90-day period did not begin to run until board made a lawful determination of non-renewal; prior written notice of non-renewal was deemed non-compliant with N.J.S.A. 18A:17-20.1 because board failed to take official action. Matter remanded for a legal determination on whether board's actions complied with OPMA so as to constitute a lawful determination of non-renewal. (05:May 20, Drapczuk, aff'd St. Bd. 05:Oct. 19)

Placement of

Board could assign pupil to another public high school within the district after a suspension, where principal of current high school had legitimate fear for her safety if the pupil were to remain on premises. (00:June 13, G.L.)

Challenge to placement of pupil in regular math course rather than algebra dismissed as moot; pupil transferred to different school district. (99:May 3, Fox)

District should have placed home schooled pupil in accordance with grade level of her equivalent instruction, and then assessed her actual level with respect to the district's specific course proficiencies to determine if initial placement was appropriate. (00:Feb. 2, M.C.)

Gifted and talented: Placement of pupil in science class was not improper; there are no federal or state requirements for programming for students who are arguably "gifted and talented." (99:Dec. 27, Wicker)

Pupil is granted emergent relief and allowed to graduate with her class although private school from which she transferred refused to send records confirming successful completion from 11 grade, because of tuition dispute. (00:May 19, D.H.)

Student did not prove that she was denied admission to district's schools by board's placement of student in non-credit basic skills adult program, after pupil had failed all her classes due to poor attendance record; board is not required to create an IEP for a non-

special education pupil. (04:Oct. 18, C.G., motion to supplement the record denied, St. Bd. 05:May 4)

Suit challenging placement of student in alternative school dismissed for failure to prosecute. (04:July 8, L.K.B., Sr.)

Use and administration of placement test for kindergarten French language immersion program not arbitrary, capricious or unreasonable. (03:March 14, G.L.L.)

Waiver to allow student to attend different high school denied; ALJ opines that waivers should be granted for extraordinary or medical reasons, not just for comfort. (00:Feb. 2, M.C.)

Where pupils were unable to obtain their school records from private school previously attended because of tuition dispute with that school, and there was no proof that the necessary credits, district is ordered to advance pupils to 12th grade and graduation respectively, provided they pass the required courses. (Motion for emergency relief granted 00:May 15)(00:July 3, D.K.)

Privacy rights

On remand, Court grants summary judgment to defendants on all claims. No pupil constitutional rights violated. Parties consent to order dismissing FERPA and PPRA claims in light of Gonzaga v. Doe, 536 U.S. 273 (2002), C.N. v. Ridgewood Bd. of Ed. et. al., 319 F.Supp. 2d 483 (D.N.J. 2004), See N.J.S.A. 18A:36-34.

Parents' Sec. 1983 action challenging board of education's administration of a student survey as violative of FERPA and PPRA and pupil constitutional rights dismissed on summary judgment. Motion for preliminary injunction is also denied. Parents were given ample notice that participation in the survey was completely voluntary and anonymous. Board was not required to obtain written parent consent. Individual defendants entitled to qualified immunity. FERPA and PPRA are inapplicable. C.N. v. Ridgewood Bd. of Ed. et. al., 146 F. Supp. 2d 528 (D. N.J. 2001), aff'd as to Fifth Amendment claim, rev'd and remanded as to all other claims. C.N. v. Ridgewood Bd. of Ed. et. al., 281 F.3d. 219 (3d Cir. 2001). See N.J.S.A. 18A:36-34.

Promotion/retention

Board is ordered to retain immature kindergarten pursuant to parents' request; emergent relief granted to parents. (99:Sept. 3, J.C.)

Suit challenging retention of student in the fifth grade dismissed for failure to file in a timely manner. Petitioners failed to set forth legal or factual basis for waiving timely filing requirement. (04:July 21, M.N. and E.Y.)

Records

Commissioner did not have jurisdiction over issue of whether child's proper name in school records should reflect father's recent paternity order; issue of child's name should be part of pending matter in Family Division. (99:June 25, Barlow)

Initials must be used to identify children and their parents who are parties or witnesses. (State Board denial of *nunc pro tunc* appeal, 2005:June: December 21, A.B., see footnote 1.)

Mandated pupil records in existence during student's enrollment or at the time of pupil's graduation or departure may not be destroyed without parental consent; permitted pupil records of currently enrolled pupils may be destroyed without prior notice if no longer relevant. (See N.J.A.C. 6:3-6.2(i) (99:Aug. 13, M.N.)

On remand, Court grants summary judgment to defendants on all claims. No pupil constitutional rights violated. Parties consent to order dismissing FERPA and PPRA claims in light of Gonzaga v. Doe, 536 U.S. 273 (2002); C.N. v. Ridgewood Bd. of Ed. et. al., 319 F.Supp. 2d 483 (D.N.J. 2004). See N.J.S.A. 18A:36-34.

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Pupil is granted emergent relief and allowed to graduate with her class although private school from which she transferred refused to send records confirming successful completion from 11 grade, because of tuition dispute. (00:May 19, D.H.)

Records dispute over IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

School district must provide to the court for *in camera* review pupil records in case where teacher/coach is charged with criminal sexual contact with a student. State v. Corsey, Superior Court of New Jersey, Law Division, Gloucester County, Dkt. No. A00-09-0579.

Student not entitled to change designation on HSPA indicating that he disrupted or cheated on the test. Scores on HSPA not released to colleges or employers. (05:Sept. 9, Z.G.)

Student not permitted to change testing designation on HSPA indicating that he disrupted or cheated on the test. Allowing changes without a cognizable legal basis or actionable harm would set precedent allowing any test-taker to change reported results. (05:Sept. 9, Z.G.)

Student not permitted to change testing designation on HSPA indicating that he disrupted or cheated on the test. DOE should not be compelled to create new administrative categories whenever a situation does not fall neatly into the established reporting scheme. (05:Sept. 9, Z.G.)

Student not permitted to change testing designation on HSPA indicating that he disrupted or cheated on the test. Student should be able to show an interest in the designation that outweighs DOE's interest in uniformity, consistency and security. (05:Sept. 9, Z.G.)

Substance abuse referral records subject to confidentiality; would not be provided to parent. (00:Feb. 15, D.C.)

The Commissioner rejected the ALJ's determination that certain items from pupil record should be expunged. Pursuant to N.J.A.C. 6:3-6.8(c), the pupil record of a pupil who departs a school system may be destroyed only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., which specified that a student's Confidential Disciplinary File is to be retained for "two years after graduation or termination from school system or age 23, whichever is longer." (04:Feb. 5, J.C., aff'd St. Bd. 04:July 7)

Residence for school purposes

Commissioner adopted ALJ's determination, pursuant to N.J.S.A. 18A:13-1 to 81, that a non-resident pupil who sought admission to a tuition placement, had her application rendered moot by virtue of her entry into college. (03:Aug. 19, A.K.)

Commissioner adopted ALJ's finding that petitioner who lives in a particular place and, on occasion, spends time overnight at a different place, does not automatically abandon his initial domicile. (03:Aug. 1, A.M.K.)

Commissioner adopted ALJ's finding that petitioning grandmother successfully carried her burden of persuasion in a residency contest, pursuant to N.J.S.A. 18A:38-1b.(2), where pupil often slept at his mother's home even though grandmother had obtained legal custody. (03:Aug. 1, S.G.)

Commissioner adopted ALJ's finding that the district's "drive-by" surveillance of the domicile was deficient for purpose of determining domicile. (03:Aug. 1, A.M.K.)

Commissioner adopted ALJ's finding that upon the superintendent's determination that a pupil is not domiciled within the district, the parent or guardian has the burden of proving domicile by a preponderance of the evidence standard; N.J.S.A. 18A:38-1(b)(2). (03:Aug. 1, A.M.K.)

Commissioner adopted ALJ's findings, pursuant to N.J.S.A. 18A:38-1(b), that R.K.'s family, who was living in Syria and suffering family hardship, was unable to provide for R.K., where R.K. moved to the district to live with an uncle who supported him gratis. (03:Aug. 11, F.M.)

Commissioner affirmed district's determination of non-residency. Tuition assessed in the amount of $10,668.90 for 110 days of ineligible attendance. (05:Oct. 13, J.M.R.)

Commissioner awarded tuition in the amount of $22,499.40 to board for period of students ineligible attendance in the district. Attorney's fees denied in the absence of express statutory authority to do so. (05:Dec. 5, Hamilton Twp.)

Commissioner determined that parent failed to prove domicile where parents did not share equal parenting time under a joint custody decree, parent did not present a court decree or a Judgment of Divorce outlining custody between the parents. Petitioning parent failed to bear the burden of proof of domicile where district witnesses placed children with the mother for the majority of the disputed time. (05:April 8, A.O.L.)

Commissioner determined that petitioner failed to demonstrate that children were domiciled due to a family or economic hardship when petitioner failed to appear to pursue the appeal of the board's determination of ineligibility. (05:April 19, C.M.)

Commissioner initially granted summary judgment in parent's favor for the district's failure to answer the parent's petition of appeal. The State Board vacated Commissioner's decision on the ground that the parents had burden to prove residency. On remand, parent failed to appear. Therefore, Commissioner dismissed a parent's appeal with prejudice for failure to appear. Remand ordered for calculation of tuition due to the district. (05:April 7, H.R.)

Commissioner rejected board determination of non-residency where district contended that student was residing in district solely because of his difficulties in his prior district. Student's aunt had been awarded joint custody by family court, therefore entitlement to attend was established pursuant to N.J.S.A. 18A:38-2, providing for eligibility based upon court order. (05:Oct. 24, I.B.)

Commissioner remanded parents residency petition to OAL despite parent's motion to withdraw based on district's counter-claim for past due tuition. (05:Sept. 29, J.D.)

Commissioner upheld district residency determination denying residency to D.O. Investigation revealed that after marital separation, pursuant to N.J.S.A. 18A:38-1. Each parent resided outside the district and one parent transported one child to school, while the other parent transported the other two. (05:May 18, D.O.)

Counterclaim by board not a necessary precondition to a tuition award to the board. (03:July 23, Z.A., aff'd St. Bd. 03:Sept. 5)

District in which student lived, albeit for a few weeks, prior to placement by DYFS in a Skill Development Home, was the district of residence responsible for the pupil's educational costs. N.J.S.A. 18A:7B-12b, N.J.A.C. 6A:23-5.2. (03:June 18, Wallkill Valley, settlement approved St. Bd. 04:Feb. 4)

Homeless: Commissioner did find compelling circumstances to permit relaxation of 30- day rule of N.J.A.C. 6A:17-2.8, N .J.A.C. 6A:23-5.1(d), where district filed appeal 84 days after notification of county superintendent's determination of district responsible for educating homeless pupil. (03:October 2, Springfield)

Notwithstanding the fact that parents maintained a residence elsewhere, pupil was domiciled in the district because under N.J.S.A. 18A:38-1(d) "any person who has had or shall have his all year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district. (04:Aug. 4, Hunterdon Central Regional, reversed St. Bd. 05:March 2)

Parent failed to meet burden of proof that pupil was entitled to a free public education in the school district. Pupil may be removed from the educational program offered by the district. Parent ordered to pay $5,914.92 in tuition for the period of ineligible attendance. (03:June 10, Hamilton)

Petitioner failed to prove by a preponderance of the evidence that he was domiciled in district where inspection of the residence showed little evidence of having resided there, there was no change in voter registration and petitioner continued to use old address for purposes of vehicle registration, employment, and utility bills. (03:Sept. 2, O.M.)

Petitioner failed to prove by a preponderance of the evidence that pupil was domiciled in district where pupil was coming out of home outside district during observation by district staff and process server. (03:Sept. 22, M.F.) Decision on remand, 04:May 24, ordering assessment of tuition for 105 school days; fact that district had not filed a counterclaim seeking such tuition did not prevent it from collecting.

Petitioner's claims of homelessness unsubstantiated. Petitioner freely testified that she was a resident of North Bergen for the last three years. She had personal belongings, furnishings, at least one vehicle and lists North Bergen as her permanent address on her driver's licenses and vehicle registrations as an indication that homelessness does not exist. District owed tuition in excess of $253,000 including special education services for her two children. (04:Dec. 21, A.B., motion to file appeal *nunc pro tunc* rejected as State Board without authority to enlarge the time on appeal, St. Bd. 05:June 1)

Pupil assessed tuition for period of ineligible attendance. Parent failed to prove residency and entitlement to free public education. Parent claimed that revealing her address would place her and her children in danger. (03:July 23, Z.A., aff'd St. Bd. 03:Sept. 5)

Pupil assessed tuition for period of ineligible attendance. Parent failed to prove that pupil resided in district for the time period in question. Expressed an intent to return but never did so. (03:July 10, K.L.)

Pupil assessed tuition for period of ineligible attendance. Petitioner failed to demonstrate that pupil's parents, who relocated to Florida, were unable to support or care for the pupil due to family or economic hardship. Mother provided health insurance and father claimed pupil as dependent. (03:July 31, P.P.M.)

Pupil assessed tuition for period of ineligible attendance. Petitioner failed to demonstrate that pupil's parents, who reside in Hong Kong, were unable to support or care for the pupil due to family or economic hardship. Pupil lived with another in the district solely for the purpose of obtaining a free public education. (04:March 18, W.C.K.)

Pupil assessed tuition for period of ineligible attendance. Petitioner never established that she and her children were domiciled in the school district. (03:June 23, S.H.)

Pupil, living with aunt and uncle in school district, entitled to free public education. Uncle became guardian of pupil. Pupil met standard for "family or economic hardship" for the period prior to guardianship. Father lost job, was unemployed for two years, reemployed at significant loss of income. Could not support family and send pupil to international school. Pupil would face significant problems in Korean school. P.B.K. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001), aff'g St. Bd. 00: Jan 5, rev'g Commissioner 97:Oct. 14.

Pupils were never domiciled in the district and therefore not entitled to a free public education. While family intended to move into the district, closing on house never took place. (03:June 23, S.H.)

Settlement approved in residency matter. Tuition remitted by parent. (03:July 24, M.O.)

The Commissioner affirmed a district determination that respondent parent failed to establish residency within the district based on the parents' lack of cooperation during the board's residency investigation, the board's inability to contact the petitioner either at her residence or through the use of certified mail. (05:April 7, B.M.)

The Commissioner determined that petitioner failed to prove residency due to the fact that the student's parents provided financial support, visited the child several times per year and placed the student with his aunt to receive an education. (05:March 18, C.P.)

The Commissioner determined that the district's failure to respond to two requests to answer parent's appeal of the board's residency determination to be a removal of opposition to the parents appeals. Commissioner ordered that petitioner's daughter attend Hamilton schools free of charge so long as circumstances remain unchanged. (05:March 16, C. DeV.)

The Commissioner dismissed a parent's appeal of the board's adverse residency determination where parent admitted domicile outside of New Jersey, but asserted that medical needs required the student to be near his doctor. (05:March 22, S.B., decision on motion, 05:April 20, pro se litigant's appeal of judgment for tuition due dismissed for failure to perfect, despite pro se status. St. Bd. 05:July 6)

The domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning, and from which he has no present intention of moving. Once established, a domicile continues until superseded by a new domicile. Moreover, notwithstanding that an individual may subsequently acquire another residence, he can have only one true domicile. Three elements may be looked at to determine domicile: 1) physical presence in the residence; 2) an intent to make the residence a permanent or at least an indefinite home; and 3) an intent to abandon the old domicile. Record showed that family rented apartment in district merely for purposes of sending child to school. Parents ordered to pay tuition for period of ineligible attendance. (04:Aug. 4, Hunterdon Central Regional)

Where petitioner's family was in crisis and parents undertook trial separation, free attendance in district will be allowed so long as the sole purpose of such residency is not to obtain a free public education. See, N.J.A.C. 6A:28-2.4(a)4 and Whausun Lee, 97 N.J.A.R.2d (EDU) 77, 80-82. (04:Aug. 11, C.H.)

Where residence straddled two or more local districts, district of domicile for school purposes is the municipality to which the resident pays the majority of property taxes. However, under the particular facts of this case where resident reasonably believed he lived in other municipality, back tuition will not be assessed and district to which tuition is owed is estopped from barring the children from a free public education in the district. (03:Sept. 2, T.D'O., rev'd St. Bd. 04:March 3)

Where home straddled two districts, district where majority of home was located and greater amount of taxes paid was home of residence, even though mailing address and voting rights were in the other district. (04:Sept. 1, W.H.S., aff'd St. Bd. 05:Jan. 19)

Commissioner dismisses residency matter as moot where parent provided driver's license/identification verifying her residence in Woodland Park. *A.R., o/b/o A.V. v. Woodland Pk Bd. of Ed.*, Commr 2012:Nov. 13.

Commissioner dismisses *pro se* residency appeal for failure to appear.*M.K., o/b/o I.T.K. v. Clifton Bd. of Ed., Commr 2012:Nov. 21.*

Commissioner dismisses *pro se* residency as moot where the student had transferred out of the district and the board withdrew its counterclaim for tuition. *J.P., o/b/o S.N. v. Clifton Bd. of Ed., Commr 2012:Nov. 21.*

Sister and mother of high school senior failed to demonstrate that the child was entitled to be educated in Hawthorne although sister alleged that child came to live with her in Hawthorne so she could complete her year at the Vo Tech, when her mother's house was damaged by Hurricane Irene; temporary guardianship agreement, not provided by a court of law, was insufficient where overwhelming evidence suggests that the child was residing with mother in Garfield during the period at issue –accordingly mother and sister are liable for the costs of educating the child for the period in question. Commissioner rejects calculation of back tuition and remands for redetermination of total due the board. *C.B., o/b/m, S.H. v. Hawthorne Bd. of Ed., Commr 2012:Nov. 27. Initial decision*

Parent who claimed she was homeless and challenged board's determination that her children did not reside in Burlington, ultimately presented acceptable proof of residency in Burlington, and as the Board dropped its challenge; matter is moot, petition is dismissed; tuition issues have been settled. *T.H., o/b/o minor children, S.K., S.H. AND S.H. v. Bd. of Ed. Of Burlington, Commr 2012:Nov. 27.*

Although *pro se* parent filed residency appeal, Commissioner agrees with ALJ that the issue in this case is not a residency dispute but rather required a homelessness determination pursuant to *N.J.A.C.* 6A:17-2.6(h), also within the Commissioner's jurisdiction; however, although facts were in dispute where parent had signed a lease on an apartment in Audubon but lease was terminated before she could move in, and facts were in dispute, matter and counterclaim were dismissed without prejudice as parent failed to appear at hearing. *G.H., o/b/o M.H., S.A. AND I.H. v. Bd of Ed of Gloucester, Commr 2012: Dec 21.*

Affidavit pupils:

ALJ concluded that petitioning uncle carried the burden of proof by a preponderance of the evidence in establishing the existence of a domicile, family relationship, economic hardship and gratis support pursuant to N.J.S.A. 18A:38-1b.(1). Uncle supported nephew gratis and was domiciled within the school district. (02:Aug. 1, P.G.)

ALJ erred in analyzing case under the affidavit student provisions of the statute, rather than the domicile provisions. However, petitioner failed to demonstrate by a preponderance of the credible evidence that student was eligible for a free public education. Board reminded of duty to educate if petitioner makes reasonable showing. (02:March 11, D.M., Commissioner decision reversed, St. Bd. 03:Nov. 5, motion for stay denied, St. Bd. 04:Jan. 7)

American citizen was entitled to free education in district as affidavit student living with brother, where parents experienced economic hardship in Israel. (03:Dec. 17, K.J.)

Aunt and uncle failed to show they were supporting child gratis. No economic or family hardship shown. 35 days tuition owed to board. (02:April 8, S.M.)

Child was entitled to free education in district during period that aunt was his legal guardian; no entitlement when mother regained custody of child because parents provided financial support; tuition ordered from date. (98:Sept. 4, M.D.P.-W)

Child was entitled to education in district where supported by church friend; hardship established; continued living with his missionary parents in Uzbekistan would subject children to physical danger. (99:Aug. 25, D.K.S.)

Commissioner adopted ALJ's findings, pursuant to N.J.S.A. 18A:38-1(b), that R.K.'s family, who was living in Syria and suffering family hardship, was unable to provide for R.K. where R.K. moved to the district to live with an uncle who supported him gratis. (03:Aug. 11, F.M.)

Commissioner concludes child's parent not capable of providing support because of drug abuse, despite lack of supporting documentation. (00:Sept. 11, J.C.)

DA's nieces moved from Columbia to reside in America with DA. DA supported the children gratis, without compensation from their parents. Father not required to produce income tax returns because in Columbia, persons below the poverty level are not required to file income tax returns, therefore were unable to demonstrate that they were unable to support the children in America. Commissioner agreed with ALJ that DA satisfied N.J.S.A. 18A:38-1 and is domiciled within the district, supporting his nieces gratis due to family hardship. (02:Sept. 23, D.A.)

Decision involving whether or not niece was entitled to free public education vacated and remanded back to Commissioner following motion by board to set aside decision following board failure to get notices of appeal. (St. Bd. 03:Nov. 5, M.R.A.)(See also St. Bd. 03:Nov. 5, H.R., St. Bd. 03:Nov. 5, E.Y.)

De minimus support provided by parents does not undermine affidavit pupil status. (98:Aug. 28, H.K.)

Equitable principles operated under particular circumstances of this case, to allow parents standing to prosecute board's adverse determination on affidavit pupil status. (98:Aug. 28, H.K.)

Even where affidavit was incomplete, Commissioner finds pupil entitled to education based on credibility of resident's testimony; hearsay was admissible where it contained residuum of credibility. (99:Oct. 28, U.S.K.)

Failure of pupil's brother to appear at hearing; burden not met. Back tuition awarded for period of ineligible attendance. (02:Feb. 4, L.N.)

Family discord constituted hardship: pupil residing with aunt is entitled to be educated in the district in light of divorcing parents' domestic violence and mother's economic situation. (99:Oct. 28, U.S.K.)

Father could bring appeal of districts' determination to remove alleged affidavit pupil from district, although resident was statutorily required to do so, where petition was filed prior to promulgation of N.J.A.C. 6A:3-8.1(b). (02:Jan. 28, Y.I.S., aff'd St. Bd. 02:May 1)

Grandmother's petition dismissed for failure to prosecute; must pay back tuition within 60 days. (00:Dec. 7, M.L.)

Grandmother with whom pupil resided but was not the legal guardian, did not establish pupil's entitlement to education as an affidavit pupil; no demonstration of hardship rendering parents incapable of caring for child; child lived with grandmother as a matter of family choice, cultural custom and lack of child care. Child was entitled to free education once his father also moved in with grandmother. Case is of interest because of long and laborious procedural history, including several remands and appeals to the State Board, and involving Commissioner's insistence on obtaining grandmother's testimony to resolve the material facts and refusal to dismiss where grandmother's failure to prosecute was due to her illness. (01:Aug. 20, E.G.P.)(on remand)(See also, 98:Dec. 21, E.G.P., aff'd St. Bd. 99:June 2, aff'd with modification St. Bd. 00:July 5)

Hardship demonstrated because parents could not provide pupil privileges of citizenship because they lived in Korea; also, resident met criteria to be child's guardian despite fact that school district would not provide verification required by Surrogate. (00:Aug. 18, R.C.P., aff'd St. Bd. 01:Jan. 3)

Hardship demonstrated during period where foster child, which created family hardship, continued to reside in pupil's home. Once foster child removed, entitlement to free education removed. Desire to stay in district for dance recital or until damage to own home repaired insufficient to warrant continued free education. (01:March 2, A.D., appeal dismissed for failure to perfect, St. Bd. 01:July 10)

Hardship demonstrated where parents, immigrants from India, did not speak English and could only work in out-of-state hotel where owner spoke Indian but which did not allow children. (01:April 20, K.M.)

Hardship: when hardship ends, parents responsible for payment of tuition. (01:March 2, A.D., dismissed for failure to perfect, St. Bd. 01:July 10)

It is the resident who is responsible for back tuition where resident submits affidavit. (01:Nov. 26, Williams)

Matter settled, after ALF finds that student was left by mother in uncle's home with no showing of hardship. (01:Nov. 8, G.J.)

No entitlement to free education where student resided with grandmother, but there was no showing that parents had an economic family hardship simply because they work and student has discipline problems; further, grandmother had no order of custody. (04:Dec. 22, B.L.)

No entitlement to free education where uncle abandoned appeal of board's decision; tuition ordered for period of ineligible attendance. (00:July 13, G.M.)

N.J.S.A. 18A:38-1(b)1, which requires a showing by the child's parent or guardian that he or she is incapable of caring for the child due to "family or economic hardship" and that the child is not residing in the district solely for purposes of receiving a free public education in the district. A finding of "incapability" remains a condition of the statute and its interpreting case law. Pupil lives with grandmother due to incapacity of mother. Pupil entitled to attend school free of charge. (04:Aug. 12, B.M.A.)

Order granting custody retroactive to one year earlier entitled student residing with sister to free education under N.J.S.A. 18A:38; custody order must be accepted on its face and parties' motives are not determinative; no back tuition ordered. (01:May 11, L.D.M.)

Petition dismissed for failing to attend hearing without good reason. Board's counterclaim for tuition granted where it was alleged that student was not actually residing with the affidavit parent. (04:Aug. 5, P.J.)

Petitioner demonstrates economic hardship on behalf of mother; entitlement to be educated in district. (00:Sept. 11, M.J.)

Petitioner failed to meet burden that nephew was entitled to free education in district. Failure to appear; tuition assessed and petition dismissed. (04:Aug. 18, H.K.)

Petitioners must prove not only family hardship, but one that renders parents "not capable" of caring for their child; not established by parents' inability to supervise their teenage sons during work hours where mother cared for elderly parents and father was working. (98:Aug. 28, H.K.)

Polish citizen on expired temporary visitors visa was entitled to education in district where she met requirements of affidavit pupil statute; failure to present proof of the claim of hardship by way of affidavit until the time of the hearing was not fatal to her claim; further, visa status was of no moment. (99:April 9, E.M.)

Pro se grandmother's pleadings did not resolve all factual issues where child had lived with her for 7 years; matter remanded for oral depositions or other mechanisms to produce grandmother's essential testimony, since grandmother was currently ill and unable to attend proceedings before Commissioner. (00:Jan. 24, E.G.P.)

Providing school supplies, transportation costs as well as other needs satisfies requirement that resident assume personal obligations for child relative to school. (98:Aug. 28, H.K.)

Pupil, an American citizen of Korean descent, living with and supported *gratis* by friend of his parents, meets affidavit pupil standard; family hardship established where parents, while of adequate means in Korea, do not have the funds to support their son's desire to live in the United States as an American citizen. (02:Oct. 28, Q.C.S.)

Pupil, a U.S. citizen who previously lived with his parents in South Korea and was later sent to live with his aunt and uncle in Tenafly in order to be educated in the U.S., was entitled to a free education in Tenafly as an affidavit pupil. The Appellate Division found no abuse of discretion in the decision of the State Board to permit P.B.K. to supplement the record after the initial decision to demonstrate financial hardship. P.B.K., on behalf of minor child E.Y. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001); aff'g St. Bd. 00:Jan. 5, rev'g Commissioner 97:Oct. 14)

Pupil had a relative domiciled in the United States who had legal guardianship and was willing to support him gratis while petitioners were in India and would be unable to care for pupil. Pupil entitled to a free education in the district. (04:May 7, N.S., aff'd St. Bd. 04:Sept. 1)

Pupil, living with aunt in district, entitled to free public education. Father's support was *de minimus,* aunt supported child gratis, family hardship existed. Overcrowding, lack of suitable sleeping arrangements and medical condition rose to the level of a family hardship. (04:April 28, M.O.M.)

Pupil, living with sister in district, entitled to free public education. Pupil was domiciled in district, sister was supporting her gratis and parents in Peru were unable to support her. (04:April 30, F.A.)

Pupils were neither domiciled in the district, nor did they qualify as "affidavit pupils" where after moving to Israel and renting out their house, they returned early and moved into another district with grandmother; and then attempted to create illusion of domicility in district by having a lease prepared to show that family moved in with father's sister; nor was there credible evidence that the children lived with father's sister due to any hardship, or were supported by her; tuition ordered for ineligible attendance. (02:Feb. 4, S.G., appeal dismissed for failure to perfect, St. Bd. 02:May 1)

Pupil who came from Poland to live with district resident after her father became seriously ill, met statutory criteria; a district may not automatically deny an application on the basis of inadequate documentation without consideration of the full circumstances developed at the evidentiary hearing. (03:October 2, B.R.)

Pupils who lived with their uncle while parents resided in Columbia, were entitled to free education; hardship established as mother works seven days a week as a dentist, and children must travel with her on weekends through dangerous areas inhabited by guerrilla groups, and father cannot care for them weekends as he works 235 miles away due to lack of work nearby. (01:July 2, L.C.A., on behalf of C.A.L.A.)

Pupil who resided with grandparents was entitled to free education although father provided son a weekly allowance and medical insurance where grandfather claimed him as a deduction on tax returns; pupil's mother had abandoned him and father's work entailed long hours with travel. (02:Jan. 28, Y.I.S., aff'd St. Bd. 02:May 1)

Pupil who was citizen of and living in Brazil, not entitled to a free education where her petitioning cousin, a New Jersey resident, abandoned prosecution of his appeal, and further expressly stated that he did not intend to bring the girl to the U.S. to live with him unless the Board approved her admission to its schools. (03:Jan. 16, G.B.)

Residency application on its face contained disqualifiers: child's aunt noted that child's parents placed him with her for an education, that they support him from Haiti and visit him; no affidavit pupil status; not did temporary guardianship document, not entered by a court, establish guardianship. (05:March 18, C.P.)

Resident is the party with legal standing to appeal a board's adverse determination on affidavit pupil status, parents have no standing. (98:Aug. 28, H.K.)

Resident of district who failed to appear and did not establish that when fire destroyed family's mobile home she began supporting her niece "gratis" was ordered to reimburse board tuition for period of niece's illegal attendance. (99:April 8, F.B.)

Resident was supporting his nephew from Peru gratis; while sworn statement did not establish hardship, testimony before ALJ indicates that nephew's father cannot find work in Peru and family is poor; moreover, uncle plans to keep nephew in his home not just to be educated in the district but because of economic situation. (04:May 12, M.R.A.)

Sister fails to prove student's entitlement to free education; inability to send pupil to a private school does not indicate that parents in Haiti are incapable of supporting or providing care due to family hardship; tuition due even though petitioner claims she didn't realize she would be responsible for tuition while awaiting decision. (00:Dec. 15, M.S.)

Student from out of state entitled to free education where student resided with aunt who applied for custody; however, Superior Court could not exercise jurisdiction to grant custody where N.J.S.A. 2A:34(e) requires child to be in state with person acting as parent for at least six months prior. (00:Aug. 2, D.W., St. Bd. rev'g 99:Oct. 4)

Student seeking to enroll did not qualify as affidavit pupil; reopening of matter not warranted in light of parent's failure to appear at hearing because she "forgot" coupled with her disregard of numerous discovery request; reimbursement for 165 days of ineligible attendance. (02:Feb. 22, S.M.)

Summer and other visits with parents do not undermine affidavit pupil status. (98:Aug. 28, H.K.)

Uncle did not establish hardship; parent, a Haitian immigrant, simply preferred New Jersey schools to those in New York. Tuition ordered within 60 days, or pursuant to payment schedule. (01:Jan. 8, S.M.)

Where parents sold home in Ewing and purchased home in Trenton, and sent pupils to live with uncle and aunt in Ewing while new home underwent renovations to correct dangerous conditions, the pupils were entitled to free education in Ewing. (04:Sept. 24, D.M.)

Where relative failed to appear, relative's petition challenging board's denial of free education is dismissed; however, no prejudice to future application if relative completes adoption process in Ethiopia. (00:Aug. 18, T.M.)

Discipline

The Commissioner determined that Regulation 6145 as revised does comply with the requirements of N.J.A.C. 6A:16-7.1 and N.J.A.C. 6A:16-7.6, finding, *inter alia*, that the key inquiry relating to the suspension from extracurricular activities based on off-school-grounds conduct is not whether the conduct was unlawful or whether the student was arrested, but rather whether the suspension is reasonably necessary to protect the well-being of the student, other students or the school staff, and whether the conduct interferes with the requirements of appropriate discipline in the operation of a school. G.D.M. and T.D.M., Commr 2011 Aug 22.

In constitutional challenge to school district's 24/7 drug and alcohol policy, plaintiff seek class action status. Motion for class action status denied without prejudice; Plaintiffs have failed to show commonality prong of Federal Civil Procedure Rule 23. D.O. v. Haddonfield Bd. of Educ., No. 10-cv-631 (D.N.J. Mar. 21, 2012)

Board's "24/7" policy which contained allowed board to deny student participation in extracurricular activities based on a student's drug and alcohol use off school grounds, exceeded the board's authority, was *ultra vires* and unlawful. Policy did not comport with the two prong test dictates of *N.J.S.A.* 6A:16-7.6. Board was directed to bring its policy into compliance with the requirements of *N.J.S.A.* 6A:16-7.6. Haddonfield, Commissioner, 2012: September 24

Emergent relief denied for parent who challenged board suspension of student from Senior Class Trip and for up to three athletic contests for alleged off campus conduct; specifically participation in underage drinking party at private home which resulted in various alcohol and drug-related charges against the 36 Delran students at the party. Matter remanded to OAL for development of factual record and a determination as to whether the board decision to impose discipline with regard to the off-campus incident

was arbitrary capricious or unreasonable. Questions of fact include whether student attended the party and drank alcohol while under the legal age, "tweeted" anything about the party or created a disruption at school. *M.A. and L.A. o/b/o M.A. (Delran)* Commissioner 2013: March 7

Domicile

ALJ concluded that petitioning uncle carried the burden of proof by a preponderance of the evidence in establishing the existence of a domicile, family relationship, economic hardship and gratis support pursuant to N.J.S.A. 18A:38-1b.(1). Uncle supported nephew gratis and was domiciled within the school district. (02:Aug. 1, P.G.)

Although parent considered herself a N.J. resident and owned a home in N.J. to which she hopes one day to return, she is not domiciled in N.J.; she rarely visits the residence, and resides in Tennessee, her husband's business is there, she has a job there, she is registered to vote there and her car and drivers license are there. (98:Aug. 3, K.W.)

Although student and mother did not establish residency, ALJ was reluctantly constrained to deny the board's petition for back tuition and to recognize a Superior Court order for "residential custody" with the resident "godmother," despite ALJ's belief that such award was contrary to the intent of N.J.S.A. 18A:8-2. (04:Dec. 1, M.N.)

A short period of residence out of the district was enough to acquire domicile in another district for 34 days; family left district with intent to remain, although they ultimately did not remain; tuition reimbursement ordered. (99:Nov. 17, H.S., aff'd St. Bd. 00:May 3)

As it was undisputed that children were not residents of district; back tuition ordered. (04:Dec. 1, A.M.)

Aunt failed to appear at hearing and failed to sustain her burden that student was legal resident of district; back tuition ordered. (04:May 21, N.C.R.)

Based on surveillance of investigators, and an assessment of the credibility of the witnesses, and considering all of the particular facts on a case-by-case basis, the ALJ determined that the mother was not domiciled in Union although the mother's parents and sister may live there, further, the children did not stay in Union, but rather lived in Newark with their aunt and uncle. District entitled to back tuition for ineligible attendance. (04:Nov. 17, A.M.)

Board did not prove that student was not resident of the district when placed in correction center. Board responsible for tuition. (02:May 31, South River) Decision on Remand.

Board failed to follow procedure for residency hearing and special education procedures, in determining to terminate payment for pupil's placement at private school, because of residency dispute. (00:Sept. 11, C.M.)

Board policy permitted nonresidents to enroll if residency is established in 60 days; parents but did not establish residency; back tuition ordered; also, district ordered to permit children to complete school year on a tuition basis. (99:March 23, R.D.F., appeal dismissed for failure to perfect, St. Bd. 99:July 7)

Burden: Challenger to district's decision to deny schooling to a student, bears the burden to prove entitlement by a preponderance of the evidence. (04:Dec. 21, A.B., motion to file an appeal *nunc pro tunc* is denied, State Board 2005:June 1)

Child of unmarried couple, who shared time with each parent, did not reside with father based on totality of evidence, but rather resided with her mother who was not domiciled in the district. Back tuition ordered; however no prejudgment or postjudgment interest. (01:Aug. 27, W.A.)

Child placed in out-of-state facility by State agency: Presumption of correctness of address provided by DYFS, was rebutted by board of education; parent did not reside in district on date child was placed by DYFS. (01:Feb. 8, Morris Hills)

Commissioner adopted ALJ's findings that child was not domiciled within the district where twenty random surveillances revealed that the pupil was dropped off, but not domiciled at the in-district residence. Tuition assessed in the amount of $31,847.16 for the period of ineligible attendance. (04:Feb. 23, E.C., appeal dismissed for failure to perfect, St. Bd. 04:June 2)

Commissioner adopted ALJ's finding that pupil did not reside within the district. Parent failed to appear at hearing and was thus unable to carry his burden of proving residency. Tuition of $13,483.34 assessed for the period of ineligible attendance. (04:Feb. 26, J.H.)

Commissioner assessed tuition against parent where he advised the district that he would be moving out of district, but requested district permission to allow his child to remain in district because he would soon purchase a home in district. District granted a 60-day retroactive grace period, then sought tuition reimbursement when parent failed to provide proof of residency within 60 days. (02:Nov. 6, C.K.)

Commissioner confirmed district's authority to charge tuition after investigation by district's residency investigator revealed that student did not reside in district. (02:Nov. 6, C.B.)

Court order transferring custody to aunt was conclusive of pupil's residency, regardless of motive in obtaining order; board must pay tuition to charter school on behalf of pupil. (00:July 13, Absecon)

Court order transferring temporary custody to grandmother was conclusive of pupil's residency, absent fraud, and regardless of motive in obtaining order; not to be analyzed as affidavit pupil. (00:Aug. 4, J.M.)

Custody order: Sister obtained custody of brother residing with her; boy was entitled to free education as of date of entry of retroactive custody order. No need to apply affidavit pupil standard of hardship. Custody order must be accepted on its face; motive not determinative. No tuition owed for last year's attendance in light of retroactive nature of order, despite tentative agreement between parties. (01:May 11, L.D.M.)

Despite intention to move into district, actual domicile was outside district. (98:Dec. 15, W.H.)

District challenging DYFS determination of domicile bears burden of proof. (99:March 22, Newark v. Dept of Ed.)

District entitled to back tuition for period of attendance while student was not domiciled in district, where parents did not appear. (04:Nov. 15, L.W.)(04:Nov. 17, J.J.)(04:Nov. 23, M.N.)

District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited. (98:May 26, Livingston, aff'd as modified, St. Bd. 99:Feb. 3, dec. on motions, St. Bd. 99:April 7, stay denied St. Bd. 99:June 2)

Division of Development Disabilities law, together with school funding law and laws regarding disabled students, compel the conclusion that where a classified pupil is placed by DDD in a group home, district of residence is responsible not only for tuition, but also for transportation costs; district where group home is located is not responsible. West Windsor-Plainsboro, App. Div. unpub. op. Dkt. No. A-4919-01T1, July 1, 2003, reversing St. Bd. 02:April 3 and 00:Sept. 5.

Domicile and residency explained. (99:April 13, F.P.)

Domicile explained. (98:Sept. 24, L.B. aff'd St. Bd. 99:Jan 8. See also decision on motion 98:August 8; motion for stay denied, 98:Dec. 2)

Domicile has two requisite elements: a physical residence and the intent to remain there. Intent is only relevant when there are multiple residences. (99:Sept. 23, J.B., settlement approved, St. Bd. 01:March 7)

Domicile not established; tuition ordered where house had no certificate of occupancy and remained vacant while under construction. (01:Aug. 13, K.L.)

Domicile remained in district where family owned home, although they rented a small apartment in another district; many factors weighed in determining intent to establish domicile. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)

Domicile was not in district where, although petitioner owns home and has strong roots there, he does not actually live there and does not list that address for tax, drivers license, car insurance and voter registration purposes ; intention to return to former home if possible is too vague to establish domicile. (98:Sept. 24, L.B., aff'd St. Bd. 99:Jan 8. See also decision on motion 98:August 8. motion for stay denied, 98:Dec. 2.)

Dual residency: Under particular circumstances of case where special education student resided with each parent on alternate weeks under joint custody arrangement, both districts must share student's education costs. Somerville Bd. of Ed. v. Manville Bd. of Ed., 332 N.J. Super. 6 (App. Div. 2000), certification granted 165 N.J. 676 (2000), aff'd 167 N.J. 55 (2001)

DYFS' failure to notify district of its placement decision deprived district of opportunity to participate in decision; Commissioner remands issue of whether such failure affects district's responsibility for cost of placement, as regulations no longer require participation of district of residence in placement of classified pupil. (99:Dec. 23, Highlands)

DYFS has no obligation to conduct independent investigation of residence but may rely on information received from the Department of Human Services. (99:March 22, Newark v. Dept of Ed.)

DYFS placement: In the absence of contrary evidence, mother was domiciled in Newark prior to the time the classified child was placed by DYFS, even though Newark had no such record of mother's domicile and only record was from DYFS; therefore, pursuant to N.J.S.A. 18A:7B-1 to 13, Newark was responsible for child's tuition. (99:March 22, Newark v. Dept of Ed.)

DYFS placement: Pursuant to N.J.S.A. 18A:7B-12(b), board was district of residence for classified child because child lived with his mother prior to DYFS placement and because mother currently resides in the district. (99:Dec. 23, Highlands)

Equitable estoppel: Board is not estopped from removing pupil not entitled to free education simply because it admitted pupil previously. (98:Dec. 21, E.G.P., aff'd St. Bd. 99:June 2, aff'd with modification St. Bd. 00:July 5)

Even assuming the authenticity of documents that the parent submitted as exhibits only after the hearing, the Commissioner found that the parent had not met her burden of establishing domicile in the district; documents only proved that she lived in the district at one time, and contradictory documents were submitted at trial. Students were ineligible; back tuition ordered. (04:Dec. 1, L.C.)

Failure to answer; allegations deemed admitted; tuition ordered for period of ineligible attendance. (02:July 15, Clifton v. M.F.)(02:July 15, Clifton v. Barnes)

Failure to answer: tuition ordered as parent failed to answer charges that pupils attended unlawfully. (01:May 7, North Arlington)

Failure to appear at hearing and provide proofs required dismissal of parent's appeal; board's counterclaim for tuition granted. (98:July 22, M.S.)

Failure to comply with discovery order of court required dismissal of petition; board's counterclaim for tuition granted. (99:July 30, K.O.)

Homeless: Clifton, being the district responsible to educate three children before they became homeless, is ordered to pay tuition to Delran under N.J.A.C. 6:3-8.3(b)(6). Tuition is to cover attendance for the period that the children attended Delran's schools after the mother had been evicted from her Clifton apartment and the family stayed temporarily and "out of necessity" with a friend in Delran in violation of the occupancy rating. (04:Dec. 23, Delran)

Homeless: Students with disabilities who had been placed in out-of-district residential placements by DYFS, and for whom the district had paid for the cost of schooling for several years on the representation that the mother was homeless, were neither homeless nor did they reside in the district; investigation showed that mother had lied; she is ordered to pay the district back tuition for three years. (04:Dec. 21, A.B., motion to file an appeal *nunc pro tunc* is denied, State Board 2005:June 1)

Homelessness: family members were homeless during period they lived in motel after being evicted from rented home; however homelessness ceased when family moved back to property they owned that had been listed for sale. (99:Sept. 23, J.B., settlement approved, St. Bd. 01:March 7)

Intentional representation and frivolous defense claims could not be determined on board's motion for summary judgment; fact-finding required; dismissed without prejudice so board could pursue claim for attorneys fees in court. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)

Joint custody: determination of where pupil was residing in light of several consent orders changing residential custody, hearing reopened. (00:July 10, M.A.D.)

Joint custody: pupil living with a parent under joint custody arrangement, not entitled to being dropped off and picked up at alternate sites within district where the arrangement did not result from court adjudication. Fact that board was not party to divorce action had no bearing on matter. (01:June 4, Van Note)

Joint custody: Somerville v. Manville decision inapplicable because rulling limited to factual circumstances of that case. (01:June 4, Van Note)

Joint custody: Under particular circumstances of case where special education student resided with each parent on alternate weeks under joint custody arrangement, both districts must share student's education costs. Somerville Bd. of Ed. v. Manville Bd. of Ed., 332 N.J. Super. 6 (App. Div. 2000), certification granted 165 N.J. 676 (2000), aff'd 167 N.J. 55 (2001)

Judicial estoppel: Parents were judicially estopped from asserting claim of residency in district where they had taken inconsistent position in previous litigation; summary judgment granted; parents ordered to pay back tuition. (00:Feb. 2, Hunterdon Central Regional, aff'd for the reasons expressed therein, St. Bd. 00:June 7)

Late filing: Parent was out of time in contesting board's residency determination; 21 days expired August 7 but petition filed September 3; board's motion to dismiss granted. (99:March 10, D.R., appeal dismissed for failure to perfect, St. Bd. 99:July 7)

Local board cannot require legal guardianship for residency purposes nor delegate its authority to hold hearing and make determination under the residency statute, N.J.S.A. 18A:38-1, to determine eligibility to attend school in the district. Notwithstanding these defects, parents provide no information demonstrating son's entitlement to attendance in the district free-of-charge. Board not compelled to accept non-resident student. (01:Dec. 13, J.M., aff'd St. Bd. 02:April 3)

Matter remanded to Commissioner for determination of local board's total annual per pupil cost after petitioner fails to demonstrate domicile in district. (St. Bd. 02:Jan. 2, K.D.)(See also amount of tuition aff'd as clarified St. Bd. 03:Dec. 3, K.D.)

Mother did not sustain her burden to produce documentation that children were district residents or that they were homeless and resided in the district prior to becoming homeless; back tuition ordered. (04:May 14, D.H.)

Mother's rental of duplex in Princeton while continuing to reside in Pennsylvania, did not establish domicile in Princeton; although she claimed to have misunderstood the law she never sought clarification; equal protection challenge that renters treated differently than homeowners under 60-day policy is dismissed. (01:Aug. 27, H.M., appeal dismissed for failure to file within statutory time limit, St. Bd. 02:May 1)

No automatic stay requiring pupil to be admitted to district's school pending proceedings under N.J.S.A. 18A:38-1, where there was no residency dispute; pupil admitted nonresidency, and issue was merely whether tuition should be forgiven because of district's flawed instructions. (01:April 26, H.M.)

No emergency relief to parents who failed to file their appeal within 21 days of board's notification that district would transfer pupil to another district for lack of residency. (00:Sept. 6, T.C.M.)

No entitlement to free education in district where parent neither provided persuasive proof that she resided in an apartment in the district, nor produced reliable, signed contract for the construction of new home in the district, back tuition ordered. (01:Oct. 9, S.S.)

No entitlement to free education where parent failed to prosecute; board (party upon whom burden did not rest) presented sufficient evidence to establish prima facie case. (00:Nov. 3, E.K., aff'd St. Bd. 01:Feb. 7)

Notice and due process rights of N.J.S.A. 18A:38-1 must be construed in light of J.A., Appellate Division's 1999 ruling. (99:June 25, S.C.)

No tuition ordered for period during which district "let matter slip through the cracks" creating impression for parent that the matter had been resolved and attendance permitted by central office. (98:Sept. 24, L.B., aff'd St. Bd. 99:Jan 8. See also decision on motion 98:August 8; motion for stay denied, 98:Dec. 2.)

Order of Temporary Custody with no expiration date establishes aunt's guardianship. However, petitioner failed to demonstrate by a preponderance of the credible evidence that student was eligible for a free public education. Board reminded of duty to educate if petitioner makes reasonable showing. (02:March 11, D.M., Commissioner decision reversed St. Bd. 04:Nov. 5, motion for stay denied, St. Bd. 04:Jan. 7)

Parent challenged Board's determination of ineligibility based on residency. ALJ determined that parent and children were domiciled in the district despite experiencing problems with their housing due to the events of September 11, 2001. (02:Aug. 1, L.McN.)

Parent failed to establish that the child resided in the district, where attendance officers found contrary evidence; and parent failed to provide documentation despite requests for same. (05:Feb. 3, L.E.C.)

Parent fails to meet burden of showing that child is entitled to free education; failed to appear at hearing; tuition ordered for period of ineligible attendance. (04:June 29, S.P.)

Parents contested the board's denial of resident status where parents purchased a new home within the district, but split time between the new "in-district" residence and old "out-of-district" residence until old home was sold. Commissioner agreed that parents were not "domiciled" in the new district. Parents ordered to reimburse the district $27,292.38 in prorated tuition. Appellate Division reversed in part finding that petitioners had demonstrated by a preponderance of the evidence that they were domiciled in district for at least part of the time in question. (02:Sept. 16, D.L., aff'd St. Bd. 03:Jan. 8, remanded to State Board for determination of tuition for period in question, App. Div. No. A-3183-02T3, 04:February 5, matter remanded to Commissioner for determination consistent with Court opinion, St. Bd. 04:June 2)

Parents did not establish domicile; back tuition ordered. (03:Nov. 20, T.L.S.)

Parent's testimony was not credible regarding residence; tuition ordered for period of illegal attendance. (00:Jan. 21, C.C.)

Petitioner directed to reimburse board for part of time that student was not domiciled in district. Equitable estoppel prevents board from reimbursement for entire period of time that student not domiciled in district. (St. Bd. 99:June 2, Whasun Lee, aff'd in part and rev'd in part, Docket No. A-5978-98T2 (App. Div. Aug. 7, 2000), certif.. den. 165 N.J. 677 (2000), dec. on remand St. Bd. 02:July 2)

Petitioner failed to appear at hearing; testimony of investigators that child resided in another district with her mother was undisputed. Tuition ordered for 67 days of illegal attendance. (02:Feb. 20, R.C.S.)

Petitioner ordered to pay tuition for the period of ineligible attendance; 1/180 of the total annual per pupil cost multiplied by the number of days of ineligible attendance. (02:April 2, T.W.J.)

Petitioning parent failed to answer board's counterclaim; held that children were not entitled to free education in district. (99:March 23, R.D.F., appeal dismissed, St. Bd. 99:July 7)

Pupil, living with aunt and uncle in school district, entitled to free public education. Uncle became guardian of pupil. Pupil met standard for 'family or economic hardship" for the period prior to guardianship. Father lost job, was unemployed for two years, reemployed at significant loss of income. Could not support family and send pupil to international school. Pupil would face significant problems in Korean school. P.B.K. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001), aff'g St. Bd. 00: Jan 5, rev'g Commissioner 97:Oct. 14.

Pupil residing in correction center – burden of proof: matter remanded so burden is properly placed on board of education; board must demonstrate that the district of residence determination made by Division of Finance was wrong. (00:Dec. 18, South River, aff'd St. Bd. 01:July 10)

Pupils not domiciled in the district. Parent ordered to pay tuition for period of children's ineligible attendance, $17,935.90 plus $47.44 per day. (02:April 8, R.T.)

Pupils residing with uncle whose property overlapped two districts only entitled to free education in the district to which majority of property taxes paid even though uncle held address in neighboring district out as his own and even though previous homeowner's children attended neighboring district tuition-free. (01:April 2, R.D.)

Pupil was not domiciled in district during last year of school prior to graduation where water pipes burst in family home and family moved to nearby town and rented out family home; matter remanded for determination of tuition costs. (99:March 10, G.E.A., aff'd St. Bd. 00:July 5)

Pupil was not living with a parent resident of the district; she was actually living alone under watchful eye of neighbor while her parent lived in other town. (01:July 20, M.C. on behalf of S.M.)

Residence was in district where mother worked in home for the elderly and received apartment there; fact that child stayed elsewhere some nights did not change residence. (99:Aug. 30, A.W.)

Separated parents were credible; they provided plausible explanation of why investigators saw child leave mother's out-of-district apartment in the mornings; child was temporarily staying with mother while he needed help with poor grades; his residence remained with father until his parents made decision for him to move permanently. (02:Feb. 4, K.J.)

Severely disabled pupil in residential placement for which district had been sharing the cost, was no longer domiciled in New Jersey and thus district had no obligation under IDEA to provide FAPE; change of domicile occurred "incrementally" and was effective when parent's intention to return to New Jersey had become a mere hope for the future. (98:Aug. 3, K.W.)

Since father was domiciled in district had custody of children pursuant to separation agreement, children were entitled to attend school in district. (02:June 20, S.B.)

Special education regulations no longer require that district of residence participate in placement decision made by other public agency. (99:Dec. 23, Highlands)

State has fiscal responsibility for tuition of student placed in a state facility when the district of residence is outside of New Jersey. (99:Aug. 13, Lower Camden)

Student and her parent had not been domiciled in the district for several years and had not become homeless but instead had established domicile in another district where her name was on a lease and mailbox and where she paid rent. Parent ordered to reimburse tuition to board. (03:Dec. 29, B.W., aff'd St. Bd. 04:July 7)

Summary judgment granted to parent where board failed to answer petition; failure to answer deemed to be admission of student's entitlement. (05:March 16, C. de V.)

Testimony of investigators who conducted surveillance was credible whereas that of father was not. Daughter did not live with father, but rather with mother in another district. (02:Jan. 28, H.M.)

Testimony was crucial to determination that child was not the child of a homeless family in accordance with N.J.A.C. 6:3-8.3, as parents were domiciled in the district and living with the child's grandmother. (99:June 21, Woodlynne)

The fact that child had Crohn's disease and needed to be near his New Jersey doctor did not entitle child to a free education in the district, where father admitted that his child resided with him in New York. (05:March 22, S.B., decision on motion, 05:April 20, pro se litigant's appeal of judgment for tuition due dismissed for failure to perfect, despite pro se status. St. Bd. 05:July 6)

Tuition ordered; aunt failed to appear for hearings. (03:Nov. 17, M.E.)

Tuition ordered; parent's challenge is dismissed for failure to prosecute. (03:Nov. 3, T.A.)

When a board contests a district of residence determination made by Finance based on information provided it by the Department of Human Services, the board bears the burden of proving that the determination was wrong. (00:July 3, Bradley Beach, settlement on remand 01:May 22)

Where father and sons were living between two residences, father failed to establish domicile in district for 1997-98; remanded for further development of record to determine whether there was necessary concurrence of physical presence and an intention to make district his home in 1998-99. (99:April 13, F.P.)

Where less than two-tenths of property was located in district, residence was not in district. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)

Where present residence could not be determined, district of residence was district where child resided prior to admission or placement. (99:Aug. 13, Lower Camden)

Where pupils were not domiciled in district, fact that parents relied on neighboring district employee's refusal to enroll the children there did not excuse parents from obligation to pay back tuition from date of notification, nor did district's delay in notifying them warrant application of laches. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)

While pupil had two residences in that he spent equal time with grandmother and mother, by operation of law his domicile was with mother. (01:May 24, J.M., dismissed for failure to perfect, St. Bd. 01:Aug. 1)

Settlements

Approved

Parents agree to pay tuition in monthly payments. (02:April 12, E.K. and D.H.)

State is fiscally responsible where pupil is placed by DYFS and the parents' district of residence is out of state. (St. Bd. 00:June 7, Wildwood, reversing 96:Dec. 30, see also remand 95:Oct. 6)

State Residential Treatment Facility: Where student resides in treatment facility and parents no longer reside in New Jersey, it is then responsibility of State to pay tuition for placement. (St. Bd. 00:June 7, Wildwood, reversing 96:Dec. 30, see also remand 95:Oct. 6)

Speech

Circuit Court affirms district court's granting of preliminary injunction of school district's ban on wearing of breast cancer awareness bracelets bearing slogan, "I (heart) Boobies!." Applies a standard prohibiting a school board from restricting speech that is not clearly lewd or advocating illegal drug use if the speech concerns political or social issues, as long as speech is not disruptive. Rejected the school district's claim that the slogan is lewd, and found no basis to establish that the bracelets were disruptive. *B.H v. Easton Area School District*, 725 F.3d 293, No. 11-2067, 2013 U.S. App. LEXIS 16087 (3d Cir. Aug. 5, 2013).

Student achievement

Although teacher had no standing to bring complaint that the board failed to follow state guidelines in its implementation of the Special Review Assessment (SRA), it was appropriate for the SRA to be reviewed by special committee recently convened by the Commissioner to review the SRA process statewide and the meaningfulness of diplomas awarded through the SRA process. (01:Oct. 15, Ryan, aff'd for the reasons expressed therein, St. Bd. 02:March 6)

Student council

Emergent relief granted in part to pupil who was elected as student council president but then disqualified for making disparaging remark in speech, where he obtained consent from school advisor and target of remark prior to making remark. (02:Oct. 16, R.B.P.)

Student Placement

Petitioner sought a determination that child was not appropriately identified as an eighth grade student for placement as a freshman into the respondents' Advanced Placement Academy. Boards of education are granted discretionary authority under Title 18A of the New Jersey Statutes to adopt policies and rules for the management of public schools; appropriate deference must be given to professionals in a school district when assessing the appropriate placement of a student; Student. failed to meet board criteria, and was therefore not admitted to the Academy; petitioner has not proven that the Board acted in an arbitrary, capricious or unreasonable manner in determining that student was not qualified for placement in the Academy; and the Board did not violate N.J.A.C. 6A:8-3.1, as the District does have a gifted and talented program in place which is separate and apart from the optional Academy program. D.R., 2011 Commr July 28

Boards of education are granted discretionary authority under N.J.S.A. 18A:4-24 to adopt policies and rules for grade promotion; appropriate deference must be given to professionals in a school district when assessing the appropriate placement of a student; the

Commissioner will not substitute his judgment for that of the board of education unless the board's action is shown to be arbitrary, without rational basis or induced by improper motives; in the instant matter, class placement was based on the advice of experienced education professionals who were motivated only by genuine concern for the child's happiness and educational growth; and, accordingly, petitioner has not met his burden of proving arbitrary, capricious or unreasonable Board action. Petition dismissed. A.T., Commr 2011 Aug 17

Surveys

On remand, Court grants summary judgment to defendants on all claims. No pupil constitutional rights violated. Parties consent to order dismissing FERPA and PPRA claims in light of Gonzaga v. Doe, 536 U.S. 273 (2002); C.N. v. Ridgewood Bd. of Ed. et. al., 319 F.Supp. 2d 483 (D.N.J. 2004). See N.J.S.A. 18A:36-34.

Parents' Sec. 1983 action challenging board of education's administration of a student survey as violative of FERPA and PPRA and pupil constitutional rights dismissed on summary judgment. Motion for preliminary injunction is also denied. Parents were given ample notice that participation in the survey was completely voluntary and anonymous. Board was not required to obtain written parent consent. Individual defendants entitled to qualified immunity. FERPA and PPRA are inapplicable. C.N. v. Ridgewood Bd. of Ed. et. al., 146 F. Supp. 2d 528 (D. N.J. 2001), aff'd as to Fifth Amendment claim, rev'd and remanded as to all other claims. C.N. v. Ridgewood Bd. of Ed. et. al., 281 F.3d. 219 (3d Cir. 2001). See N.J.S.A. 18A:36-34.

Suspension and expulsion

Alternative education: Emergency relief granted to student who was expelled for slashing another's coat with a box cutter and possessing knife; Board must immediately assess student's alternative education needs and place him in appropriate alternative education program meeting Core Curriculum Content Standards, during pendency of appeal. (01:July 16, P.H., emergency relief granted St. Bd. 01:Sept. 5, motion for leave to appeal denied, App. Div. unpub. op. Dkt. No. AM-0084-01T3, October 18, 2001)

Board's decision to expel was moot; pupil restored, record expunged; not a matter of public concern evading review. (01:Jan. 8, L.H., remanded St. Bd. 01:June 6)

Commissioner agreed with ALJ that the Commissioner and State Board did not violate the pupil's right to a thorough and efficient education by failing to ensure that pupil was enrolled in an alternative education program subsequent to expulsion, where home instruction was provided subsequent to an emergent relief hearing. (03:Feb. 18, S.R.R., aff'd St. Bd. 03:Aug. 6)

Commissioner agreed with ALJ that the Commissioner and State Board did not violate the pupil's right to a thorough and efficient education guaranteed by Art. VIII, Sect. IV, para. 1 by failing to issue regulations pertaining to expulsions. Proper course to seek promulgation of regulations is through agency petition, not adjudication. (03:Feb. 18, S.R.R., aff'd St. Bd. 03:Aug. 6)

Commissioner found that the district did not violate pupil's constitutional right to a thorough and efficient education in expelling him. Commissioner agreed with ALJ that the Commissioner and State Board did not violate the pupils right to due process guaranteed by the 14th Amendment of the U.S. Constitution by failing to issue regulations governing expulsions. N.J. Constitution. Proper course to seek promulgation of regulation is through agency petition, not adjudication. (03:Feb. 18, S.R.R., aff'd St. Bd. 03:Aug. 6)

Commissioner modified ALJ decision dismissing pupil's petition alleging constitutional violations in an expulsion matter. Commissioner denied pupil's State claims seeking relief in the form of a finding that the Commissioner and State Board violated the pupil's rights under the New Jersey Constitution and an Order directing the Commissioner and State Board to issue regulations on the administration of long-term suspensions and expulsions. Commissioner noted that pursuant to P.H. and P.H. o/b/o/ M.C. v. Bergenfield Bd. of Ed., the proper course for seeking the adoption of regulations by an administrative agency is to petition that agency pursuant to the procedures prescribed by that agency. (03:Feb. 18, S.R.R., aff'd St. Bd. 03:Aug. 6)

Commissioner sustains Board's decision to expel 16-year old pupil after he twice tested positive for marijuana; however, notes that before a Board takes the dire step of expulsion it must assure that less draconian course of action was considered, such as alternative school, and during period in which Commissioner determines whether board considered such action, it is appropriate for Commissioner to order a continuation of educational services. (01:Aug. 6, M.G., aff'd St. Bd. 01:Dec. 5)

Community service: Board's decision to suspend pupil for three days and require three hours of community service where pupil was defiant to teacher, was not arbitrary or unreasonable; emergent relief denied. (01:Dec. 31, L.B.)

Emergent relief denied 14-year old involved in exploding homemade bomb; alternative school placement does not cause irreparable harm. (01:Oct. 16, A.M.)

Emergent relief denied since student would have served entire suspension in issue by the date order could be rendered. (01:Oct. 15, D.P., decision on motion)

Emergent relief denied to seniors involved in hazing incident at hockey camp; suspended from field hockey team and from serving as captain of other athletic team; argument that students would be denied opportunity to benefit from scholarships, is speculative and misguided; due process does not apply to exclusion from extra-curricular activities; behavior, while not explicit in handbook, clearly violated spirit of school rules; school may suspend for conduct occurring off-school property where safety of other pupils is threatened. (01:Oct. 22, D.M.)

Emergent relief denied to students suspended from basketball team for 60 days for involvement with alcohol at private party; the fact that pupil only signed the anti-substance student agreement form after the party was irrelevant. (01:Dec. 28, J.J.)

Expulsion: Board's expulsion of student who slashed another's coat with a box cutter and possessed knife, upheld; emergency relief granted regarding alternative education pending appeal. (01:July 16, P.H., emergency relief granted St. Bd. 01:Sept. 5, motion for leave to appeal denied, App. Div. unpub. op. Dkt. No. AM-0084-01T3, October 18, 2001)

Expulsion of high school junior for assault on a teacher was upheld, as board did not act arbitrarily in imposing this harsh penalty; alternative education program offered complied with content standards, and all state guidelines and statutory and regulatory requirements, consistent with P.H. v. Bergenfield. (04:June 28, B.F.)

Expulsion: Pupil who is permanently expelled must be provided with an alternative education program until graduation or twentieth birthday, in accordance with N.J.S.A. 18A:38-1. (St. Bd. 02:July 2, P.H.)(See also St. Bd. 02:July 2, P.H.)(See also 00:Sept. 15, P.H., 01:July 16, decision on motion St. Bd. 01:Sept. 5, aff'd St. Bd. 01:Oct. 3)

In school suspension for three days was upheld for student who exhibited disobedience, profanity and defiance of a teacher; suspension was not arbitrary, capricious or unreasonable. (04:Dec. 6, B.B., appeal dismissed by State Board for failure to perfect, 2005:June 1)

Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

Pupil was entitled to attend district's alternative school despite parent having signed a settlement agreement with Board withdrawing pupil from the district after he was suspended for repeatedly violating drug policy. Commissioner does have incidental jurisdiction to review settlement agreement concerning expulsion. (02:Oct. 7, B.P., aff'd with modification, St. Bd. 03:Dec. 3)

Student suspended from track team for drinking a few beers before attending school dance; in light of school policy against drinking by athletes, student's petition for emergent relief denied. (01:April 20, K.F.)

Suit against board of education for failing to suspend/expel student who assaulted staff member dismissed for failure to prosecute. (04:July 8, Hamilton Township Education Assn.)

Suspension of student who threatened violence to another student in the evening from home, and then brought knives to school the next day, was properly suspended and restricted from extracurricular activities, as well as denied participation in commencement exercises; Commissioner disagreed with ALJ's view that it was unreasonable to extend the punishment to commencement exercises. (04:June 11, C.A.)

Two-day suspension upheld, and expungement of record denied, where male pupil played role in harassing a female pupil and parents had been provided a hearing. (01:Dec. 10, H.A.)

Where student and district entered consent order with regard to district's failure to provide alternative education as required by Abbott; after expulsion of student, the parents could not pursue the matter further with respect to effecting system wide changes; matter was moot and did not meet standard of being "capable of repetition yet evading review." (01:Dec. 31, J.M.)

Commissioner found that school district's drug policy did not violate N.J.S.A. 18A:40A-24(d), as it contained a mechanism for challenging a positive test result. The Board did not act in an arbitrary, capricious or unreasonable manner in imposing discipline upon student who failed a random drug test; student was aware of the drug testing policy, did not challenge the student selection method, and acknowledged that student had failed the drug test. Student discipline upheld. Commissioner directed Board to revise its drug policy to bring it into full compliance with the

requirements of N.J.A.C. 6A:16-4.4. K.Q. and L.Q. o/b/o C.Q. Commissioner 2011: March 17

One day out of school suspension for violation of board misconduct policy deemed excessive. Board had affirmative right to require that all students understand the severity of harassing language between students. When student did not discourage other student from asking student's girlfriend if she performed certain sexual acts, such behavior constituted misconduct. However chart of offenses and corresponding disciplinary action in Code of Discipline established that first offense for misconduct should have been teacher detention. W.C. o/b/o M.C., Commissioner 2011: March 21

Temporary residence

Parent who acquires residence as temporary measure after being homeless, but remains for over two years, establishes permanent residence for purposes of educating her children. (01:Dec. 5, Pine Hill)

Transportation costs

Where classified pupil was placed by DDD in group home, district of residence was responsible for tuition, but district where group home is located is responsible for transportation costs. Transportation is an "educational benefit" to be provided by district in which group home sits pursuant to N.J.S.A. 30:4C-26(c). (00:Sept. 5, West Windsor-Plainsboro, aff'd St. Bd. 02:April 3)

Tuition

Back tuition ordered; petitioner did not appear for hearing. (02:Jan. 10, K.F.)

Board awarded summary judgment for back tuition for period of child's ineligible attendance, where parents produced no proof of domicile, failed to answer charges or attend hearing, and copies of notice was returned refused or unclaimed. (01:Nov. 30, Marlboro)

Board generally has no obligation to provide tuition for educational services to a pupil it has expelled. (99:Sept. 7, Somerset County)

Board had to pay tuition of expelled student adjudicated delinquent where court ordered placement in lieu of incarceration. (99:Sept. 7, Somerset County)

Board policy permitted nonresidents to enroll if residency is established in 60 days; parents but did not establish residency; back tuition ordered; also, district ordered to permit children to complete school year on a tuition basis. (99:March 23, R.D.F., appeal dismissed St. Bd. 99:July 7)

Board's refusal to waive policy imposing tuition charges after 60 days on those planning to move to district, held to be reasonable. (98:Oct. 29, M.M.)

Change of domicile occurred "incrementally," effective when parent's intention to return to New Jersey had become a mere hope for the

future; back tuition ordered for that period of disabled pupil's attendance. (98:Aug. 3, K.W.)

Commissioner assessed tuition against parent where he advised the district that he would be moving out of district, but requested district permission to allow his child to remain in district because he would soon purchase a home in district. District granted a 60-day retroactive grace period, then sought tuition reimbursement when parent failed to provide proof of residency within 60 days. (02:Nov. 6, C.K.)

Commissioner confirmed district's authority to charge tuition after investigation by district's residency investigator revealed that student did not reside in district. (02:Nov. 6, C.B.)

Commissioner had jurisdiction to enforce agreement between district and parent for tuition payment in residency dispute; to require separate Law Division filing would be pointless and wasteful. (00:Jan. 18, J.A.D.)

Default on settlement of tuition charges for illegal attendance: Parents were ordered, according to terms of previously entered Settlement and Release, to make additional back tuition payments to district; parents defaulted on terms of Settlement requiring monthly payments, and then failed to answer petition. (99:March 12, Warren Hills)

District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited. (98:May 26, Livingston, aff'd as modified St. Bd. 99:Feb. 3, dec. on motions, St. Bd. 99:April 7, stay denied St. Bd. 99:June 2, aff'd App. Div. 00:March 29)

Equitable consideration of estoppel precluded district from obtaining reimbursement for entire period of illegal attendance; tuition ordered only from date district notified parents. (00:July 31, M.F., aff'd St. Bd. 01:Feb. 7)

Equitable estoppel: board was estopped from collecting back tuition for those years where affidavit form did not ask about family hardship, and family was lead to believe they were in compliance with affidavit pupil requirements. (98:Aug. 28, H.K.)

Failure to appear at hearing and provide proofs required dismissal of parent's appeal; board's counterclaim for tuition granted. (98:July 22, M.S.)

Failure to comply with discovery order of court required dismissal of petition; board's counterclaim for tuition granted; neither prejudgment nor post-judgment interest were warranted. (99:July 30, K.O.)

Homelessness: Family members were homeless during period they lived in motel after being evicted from rented home; however, homelessness ceased when family moved to property they owned in another district that had been listed for sale; back tuition

ordered. (99:Sept. 23, J.B., settlement approved St. Bd. 01:March 7)

Inequitable under circumstances to assess tuition against parents prior to board's final decision to exclude children residing with their uncle in home that overlaps two districts; appropriate to assess tuition after that date. (01:April 2, R.D.)

Matter remanded to Commissioner for determination of local board's total annual per pupil cost after petitioner fails to demonstrate domicile in district. (St. Bd. 02:Jan. 2, K.D.)(See also, amount of tuition aff'd as clarified, St. Bd. 03:Dec. 3, K.D.)

Parents ordered to pay tuition for period during which pupil attended district's schools, but had not yet moved into new home in district, pursuant to parties' agreement. (01:Jan. 26, Plumsted)

Petitioner responsible for tuition of pupils through day he verbally informed principal of withdrawal and physically removed them from school. Written notice of withdrawal not required. Petitioner not responsible for alleged tuition owed for failing to provide written notice. (01:Oct. 15, E.M.M.A., decision on remand 02:June 27, rev'd St. Bd. 03:Feb. 5)

Policy: Board's policy requiring pupils who leave the district mid-year to pay tuition was not arbitrary or capricious, even though some districts may permit students in such circumstances to remain free of charge. (99:Sept. 23, J.B., settlement approved St. Bd. 01:March 7)

Pupil assessed tuition for period of ineligible attendance. Petitioner failed to demonstrate that pupil's parents, who reside in Hong Kong, were unable to support or care for the pupil due to family or economic hardship. Pupil lived with another in the district solely for the purpose of obtaining a free public education. (04:March 18, W.C.K.)

Pupil was not domiciled in district during last year of school; parent's challenge to board's determination could not be dismissed until tuition costs were determined on remand. (99:March 10, G.E.A., aff'd St. Bd. 00:July 5)

Reimbursement awarded for period of attendance that did not satisfy affidavit pupil requirement, foster child removed from home so family hardship ended. Desire to remain in district for dance recital and until damage to own home repaired insufficient to warrant continued free education. (01:March 2, A.D., appeal dismissed for failure to perfect, St. Bd. 01:July 10)

Reimbursement awarded for period of attendance that did not satisfy affidavit pupil requirements; summary decision for district where petitioner failed to respond to motion. (98:July 30, S.G.)

Remand on amount of tuition; parent could not reopen threshold issue of pupil's entitlement to free education in district. (00:Jan. 18, G.E.A., on remand)

Request by district for back tuition for alleged affidavit pupil was denied; parties did not seek tuition against proper party (resident), nor did board elicit facts to establish whether upon reaching majority, student was domiciled in the district; further, matter inexplicably took 2 years to resolve during which time pupil graduated from district. (01:Nov. 26,)

School district of residence, under both new and repealed regulation, has the responsibility for non-residential special education costs of pupil placed by DYFS in approval residential private school. (00:Sept. 11, Highlands)

Special education pupil placed by DYFS in residential facility; district of residence of parent at time of placement was responsible for tuition. (00:June 1, Burlington)

Tuition in the amount of $8,627.21 ordered where parent failed to appear at hearing and failed to prosecute her challenge to the board's adverse residency determination. (04:Sept. 29, S.W.)

Tuition ordered for non-resident pupil who attended district's schools prior to being in legal custody of resident aunt. (03:April 11, J.A.)

Tuition ordered where parents failed to submit answer in residency dispute. (00:Jan. 19, Wayne)

Tutor: Parents were unsuccessful in petitioning Commissioner to direct district to pay the cost of private tutor where they failed to follow even minimal standards regarding parties, allegations, and relief sought. (00:Aug. 14, L.C.)

Valedictorian; salutatorian

Board's policy to restrict valedictorian and salutatorian to those pupils who have competed for all four years, was reasonable. (99:June 16, P.A.)

Parents sought an order citing the board for violations of the public school choice option of the No Child Left Behind Act (NCLB) and directing the board to transfer their child. Upon review, the Commissioner, citing the 2003 U.S. District Court decision in *Association of Community Organizations for Reform Now et al. v. New York City Department of Education, et al.,* concluded that since the NCLB does not provide for a private right of action, there is no basis on which the Commissioner may consider this matter. The Commissioner granted the Motions to Dismiss and dismissed the Petition of Appeal. (04:Feb. 11, D.N.)

Where a parent or guardian is chronically transient, i.e. not homeless but having a series of short-term residencies, tuition for a student placed in a state facility is the responsibility of the parent or guardian's district of present residence, if residence can be determined. (St. Bd. 00:July 5, Somerville, reversing 97 N.J.A.R.2d (EDU) 352)

Court, *sua sponte*, orders rehearing *en banc*, in case where student's motion had been granted in and school enjoined from suspending, threatening to suspend, or otherwise disciplining the students for wearing cancer

awareness bracelets that bore the slogan, "I love boobies." B.H. v. Easton Area Sch. Dist., 2012 U.S. App. LEXIS 17201 (3d Cir. Aug. 16, 2012)

PURCHASING

Commissioner grants summary judgment to petitioning boards, reversing ECS decision that the boards must purchase oil from PTC (oil company) pursuant to an alleged joint purchasing agreement between respondent board and 5 other boards. Commissioner adopts ALJ ruling that boards of education that pursue joint purchasing on behalf of other school districts may do so only with the approval of the DLGS and in compliance with the Public School Contracts Law and the Cooperative Purchasing rules; here, those requirements were not met as no joint purchasing agreement existed between the parties, respondent board failed to register and obtain approval of a joint purchasing program, rendering respondent board's agreement with PTC unenforceable against petitioners; further, the ECS did not have the authority to enforce the agreement between respondent board and PTC on petitioners since no joint purchasing agreement existed between petitioners and respondent boards. Sparta, Commr 2011: June 24

REDUCTIONS IN FORCE - Bumping/Seniority Rights

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, Commr., 2007: Dec. 27.

Commissioner dismissed appeal as moot where board first reduced tenured teacher to 60% position and then reinstated her to a full time position. Teacher suffered no loss in pay or benefits. (Price, Commr., 2008: Jan. 24).

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 since the regulation does not provide a time frame nor require "hands-on" experience, he met the regulatory requirements. Board was ordered to provide back pay and emoluments, less income received. (Savage, Comm'r., 2008: May 23).

Appellate Division affirms State Board's determination that board wrongly terminated a tenured teacher coordinator of cooperative industrial education on grounds of lack of proper certification, where he held an obsolete certificate of "employment orientation" and a 1982 certificate in skilled trades; the certifications in fact enabled him to teach basic level courses that he was in fact teaching such as shop, maintenance and repair with carpentry emphasis, and industrial technology; App. Div. also affirms State Board's reduction of back-pay to $140,167.24, reflecting

period time that he would have been subject to RIF and on preferred eligibility list. Ziegler v. Bayonne Bd. of Ed. App. Div.

Board did not violate tenured physical education teacher's tenure/seniority rights, and followed N.J.S.A. 18A:28-9 thru -13, when it terminated her position and created the position of Health and Physical Education Teacher which requires endorsements in both subject areas; teacher had been given opportunity, but failed, to obtain health endorsement. Francin, 2009: August 20.

Notice of termination clause was vague in that it made no provision for unilateral termination by the board; therefore, the standard 60 days' notice was applied, and the RIFFED principal was not entitled to a full year's pay. . (2005, Feb. 10, Griggs)

RIF of principal position, and absorption by Superintendent of principal responsibilities for a stipend, was upheld; RIF was driven by economic and efficiency reasons. (2005, Feb. 10, Griggs)

Principal who was provided late notice of non-renewal after the May 15 deadline, was deemed a tenured employee although he did not actually start his fourth year of service. (2005, Feb. 10, Griggs)

Certificated Titles

Commissioner invalidated district's RIF because the district reduced the social worker position and contracted those services to a private vendor while continuing to maintain its own child study team. Reinstatement ordered for one petitioner remanded for supplementation of the record in light of pending tenure charges against and disability retirement of the other petitioner. (Parisi, Commr. 2005: June 10) (Parise, Commr., 2007: April 11).

Commissioner determined that despite never having been employed as a conventional classroom teacher, tenured program director could not be terminated pursuant to a reduction in force while a position within the scope of her instructional certificate was held by a non-tenured teacher. (04: Aug. 19, Trionfo)

A RIF is non-negotiable and non-grievable, and will be upheld absent illegal motives; a RIF will be overturned if an incumbent sustains his burden of demonstrating that the position has not really been abolished but merely transferred to another person in violation of the incumbent's tenure rights. (2005, Feb. 10, Griggs)

Good Faith

Generally, good faith required in abolishing positionWerlock v. Woodbridge Twp. Bd. of Ed., 5 N.J. Super. 140 (App. Div. 1949) (76:685, Oros) (76:761 Cordano, aff'd St.Bd. 77: February 2) (77: March 21, Lilenfield) (77:440, Popovich) (77:625, Vexler)

State Board affirms that district board of education conducted a valid reduction in force when it eliminated its basic child study team and contracted with a jointure commission for the provision of basic child study team services. No violation of petitioners' tenure rights occurred. (Becton Ed. Assn., St. Bd. 2005: May 4). (See also Becton Ed. Assn., Commr. 2004: Dec. 20).

In a matter brought by special education teacher bringing a challenging his termination during a RIF under the Law Against Discrimination and the Veterans' Tenure Act, the Court reverses grant of partial summary judgment in favor of the district on the teacher's VTA claim. The factual record precluded summary judgment on the VTA claim, and the jury's findings on the LAD claim did not necessarily encompass a finding that would be fatal to the VTA claim. Vitale v. Atlantic County Special Services School District, No. A-1675-07(App. Div. January 12, 2009).

Trial court did not err in vacating an arbitration award that would reverse the state monitor's RIF of twenty-two non-tenured special education aides; the award ignores monitor's function to implement policies to achieve sound fiscal management of the District, and is contrary to existing law and public policy; fact that there was no "just cause" for termination under the contract was irrelevant because a RIF is not arbitrable; award must be vacated as a "mistake of law." Pleasantville Board of Education v. Pleasantville Education Association, App. Div. unpublished decision (A-2123-08T3 Aug. 25, 2009)

Recall rights of tenured teaching staff members upon a reduction in force do not extend to endorsements acquired subsequent to the reduction. (Ziegler, Commissioner 2008:November 3)

Recall Rights

State Board affirms Commissioner determination that petitioner, teacher of practical nursing did not demonstrate that she possessed greater seniority that teacher retained by school district in RIF. Petitioner forfeited her tenure by declining a recall in 2002. (Kelly, Commr., 2006:Nov. 9, aff'd St. Bd. 2007:May 2)

Case addressed the date on which teacher's cause of action accrued on his claim that he was entitled to a position after a 2003 RIF. The Commissioner held that his cause of action accrued on December, 2006 during previous litigation, wherein he had been put on notice by the board's brief on remand for back pay that his rights could have been violated. The teacher had argued that his claim did not arise until the Commissioner's final decision on remand on the matter of his entitlement to back pay. Therefor, his December 2007 claim was dismissed as untimely filed. (Ziegler, Commissioner 2008:November 3)

Appellate Division affirms State Board decision which affirmed Commissioner decision, denying school social worker's claim that she was entitled to teaching position upon the school district's elimination of her position as a school social worker. Social worker served for twelve years under her educational services certificate but accrued no time under her instructional services certificate. The employee's tenure and seniority rights did not extend beyond her educational services certificate. The board could have, but was not required to hire the employee as a teacher. Aiello v. Bd. of Educ. of Westwood Reg'l Sch. Dist., (A-5896-07T1) 2009 N.J. Super. Unpub. LEXIS 1690 (App. Div.

RIFd tenured teacher of television technology claimed that board violated her tenure rights when it appointed a non-tenured person to the position of in-school suspension monitor. ECS reviewed position as an unrecognized title and determined that it was not an instructional position and did not require certification. As such, no tenure entitlement existed. Macchia, Commr. 2009: October 9

Uncertificated Titles

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, Commr., 2007: Dec. 27)

State Board determined that despite evidence of bad faith in the reduction-in-force of a tenured clerk's position, clerical employee was entitled to reinstatement to her tenured position, but was not entitled to seniority protection pursuant to N.J.S.A. 18A:28-13. (Ferronto, St. Bd., 2006: Feb. 1).

RIFd tenured teacher of television technology claimed that board violated her tenure rights when it appointed a non-tenured person to the position of in-school suspension monitor. ECS reviewed position as an unrecognized title and determined that it was not an instructional position and did not require certification. As such, no tenure entitlement existed. Macchia, Commr. 2009: October 9

Appellate Division affirmed Board of Review denial of permission to conduct a withdrawal referendum; withdrawal would result in an excessive debt burden for River Edge and would interfere with maintenance of an efficient system of education in that district without excessive costs. In Re: Petition For Authorization To Conduct A Referendum On The Withdrawal Of The Borough Of Oradell From The River Dell Regional School District, 406 N.J. Super. 198 (App. Div. 2009).

Imposition of injunctive relief in RIF reversed; While Law Division has subject matter jurisdiction over a contractual dispute as well as the tort and discrimination claims alleged, plaintiff's action also challenges the propriety of the reduction in force ordered by defendant, which is a matter within the primary jurisdiction of the Commissioner of Education. Accordingly, issues regarding the reduction in force must first be resolved by the Commissioner, and the Law Division must stay its action pending final administrative review. Jackus v. Elizabeth Bd of Educ. No. A-0993-10T1, (App. Div. March 9, 2011)

Board's nonrenewal of employee affirmed. A school board's lack of strict compliance with statutory teacher evaluation requirements did not mean a non-renewed teacher had to be reinstated, or that the error allowed financial recovery. N.J.S.A. 18A:27-3.1. does not provide for any penalty in the event a local board fails to follow the prescribed procedures. Tuck-Lynn v. Sch. Dist. of Newark, No. A-2072-09T3 (App. Div. March 3, 2011)

Former employee's position, Maintenance/Air Conditioning and Commercial Appliance Repair Worker, was eliminated in a reduction in force. Commissioner held that position was significantly different from any janitorial or custodian position and, as such, employee did not have any tenure or seniority rights pursuant the reduction in force. RIF was proper. Mezzina, Commissioner 2011: March 18

RIFd tenured educational media specialist claimed entitlement to elementary teaching position based on possession of instructional certificate with elementary endorsement. Media specialist claimed tenure as a teacher based on claim of having taught Bill of Rights and Civil War over a six week period in her tenth year as a librarian. Commissioner held that educational media specialist had never served as a teacher. Tenure and seniority rights attached to her educational services certificate but not instructional certificate as she had never served as a teacher. Douglas, Commissioner 2011: April 12

Teacher of diesel mechanics was RIF'd due to lack of enrollment, and diesel technology program was combined into more encompassing auto technology course; teacher failed to challenge action until 170 days after receiving written notice of the Board's decision and was thus out of time under 90-day rule, N.J.A.C. 6A:3-1.3(i); moreover, he did not have seniority rights to teach the second year of the diesel class or the general auto mechanics class. Berghof, Commr 2011:June 2.

Board did not violate tenure rights under N.J.S.A. 18A:17-2 of 10-month secretary when it reduced her time and compensation pursuant to a RIF while maintaining the incumbent in the position of Administrative Assistant to the Superintendent. The Administrative Assistant, a 12-month position with supervisory responsibilities, was a confidential position which included supervisory responsibilities and the assumption of the Superintendent's duties in his absence, and was not similar to the petitioner's position. Petition was dismissed. Burger, Commr 2011:May 19.

Tenured Secretaries who were riffed not entitled to bump into positions of Accounts Payable Assistant or Payroll/Benefits Assistant. Petitioners' tenure rights extend only to secretarial positions. Such placement would constitute a promotion with responsibilities and duties that were not attendant in their secretarial positions; and it is well settled that tenured school employees asserting priority over non-tenured employees must be fully qualified for the positions sought. Petition Dismissed. Harrington and Hiller, 2011 Commr July 7

Board did not violate the tenure rights of a secretary during a RIF; she had not acquired tenure through her prior position in the school district as an assistant traffic coordinator (ATC), as her responsibilities in that prior job went well beyond the secretarial/clerical. Therefor, she had no claim to employment based on tenure rights Kopko, Commr 2011:September 7. (Middletown)

Matter dismissed for failure to prosecute, where teacher contended that the board violated her tenure and seniority rights when it terminated her employment in a reduction in force, but failed to appear at the hearing. Kaminsky, 2011:Nov. 23 (Paterson)

Petitioner, who contended that her employment was terminated in a RIF in violation of her tenure and seniority rights, failed to appear at the hearing; Commissioner dismisses for failure to prosecute. Vilchez, 2011: Nov. 23 (Paterson)

Petitioner, who contended that his employment was terminated in a RIF in violation of her tenure and seniority rights, failed to appear at the hearing; Commissioner dismisses for failure to prosecute. Rose, 2011: Nov. 23 (Paterson)

Petitioner, who contended that her employment was terminated in a RIF in violation of her tenure and seniority rights, failed to appear at the hearing; Commissioner dismisses for failure to prosecute. Constable, 2011:Dec. 13 (Paterson)

Petitioner, who contended that her employment was terminated in a RIF in violation of her tenure and seniority rights, failed to appear at the hearing; Commissioner dismisses for failure to prosecute. Leonardo, 2011: Dec. 13 (Paterson)

Petitioner, who contended that her employment was terminated in a RIF in violation of her tenure and seniority rights, failed to appear at the hearing; Commissioner dismisses for failure to prosecute. Pelosi, 2011: Dec. 13 (Paterson)

Tenured teachers and speech therapists employed on an hourly basis by county special services school district to provide services in non-public schools alleged in consolidated suit that their hours for the 2010-2011 school year were improperly reduced by respondent in violation of their tenure and seniority rights, and should have been done according to seniority. Commissioner finds that board's reduction of hours did not constitute a RIF as described in *N.J.S.A.* 18A:28-9 since there was never any entitlement to a particular number of hours; no violation of tenure rights or OPMA. Kourtesis, 2011:Dec 5 (Bergen Co Spec Serv) (consolidated)

Board violated tenure rights of tenured school psychologist who held a school social worker endorsement on her educational services certificate, when it abolished her position of school psychologist in a RIF and subsequently employed a non-tenured individual as school social worker without first offering the position to her; however, she did not have seniority as a social worker since she never held the title, and does not have superseding seniority rights over other tenured social workers in the district. Henshaw, 2011: Dec. 9 (Hammonton)

Board did not violate tenure rights of Supervisor for Grant Acquisition and Management was eliminated in a reduction in force (RIF). Prior service in his various Director positions did not earn time toward tenure, where he only possessed a principal's endorsement which did not authorize him to fulfill the district-level responsibilities with which he was charged; he

should have possessed an administrative certificate with an endorsement as a school administrator; fact that the District's job descriptions required a supervisor endorsement is not controlling for purposes of whether or not petitioner earned tenure. Perna, Commr: 2012:Jan 4 (Paterson)

Employee's claim that his employment was terminated by the respondent in a reduction in force, in violation of his tenure and seniority rights is dismissed for failure to appear. Mendez, Commr 2012:Jan 11 (Paterson)

Commissioner finds that petitioners had no standing and dismisses matter brought by tenured members of the respondent Board's child study team who challenged the Board's abolishment of the CST and its decision to enter into an agreement with the Sussex County Educational Services Commission (Commission) to provide CST services. Petitioners have not shown that they have a sufficient stake, or would be directly affected by the outcome of this controversy; courts have consistently ruled that a RIF, if done for reasons of economy, is entirely within the authority of the board; petitioners alleged that the agreement contains no maximum cost and is in violation of applicable statutes and regulations, which rendered the abolition of their positions invalid. McKenna and MacMurren, Commr: 2012: Jan 17 (Andover Reg.)

Employee's claim that his employment was terminated by the respondent in a reduction in force, in violation of his tenure and seniority rights is dismissed for failure to appear. Thomas, Commr 2012:Jan 11. (Paterson)

Commissioner determines tenure entitlements to non-separately- enumerated positions of director, assistant director and supervisor after four tenured administrators whose positions were eliminated in a RIF during reorganization asserted entitlement to administrative positions currently held by non-tenured teaching staff members, including several new positions created during reorganization (Assistant Director positions, Director of Curriculum and Testing and Athletic Director.) Smith, Richburg, Kohn, Gray v. Commr 2012:Feb 1 (Consolidated)

Commissioner holds that clerical aide who had held various titles since 1999, including data processing technician or operator, aide, secretary, and data processor, did not have tenure as a secretary and therefore no rights to a secretarial position, and her termination pursuant to a RIF was not arbitrary, capricious or unreasonable; she never joined labor union that existed for secretaries, and all but one contract identified her duties as those of a clerical aide or a data processor; the fact that petitioner performed some of the duties of a secretary who had retired did not change her job title; and petitioner considered herself an hourly employee and left the building when other aides left on early dismissal days, rather than remaining at work with the secretaries until the principal authorized their departure. White, Commr 2012 April 16(Glassboro)

The lack of qualifications for a standard SAC endorsement bar the petitioner from claiming tenure in respondent's district and, in turn, preclude petitioner from any "bumping rights" in the wake of the RIF. Ruiz v. Bd. of Ed, 2012: Commr March 27(on remand)

Commissioner finds that the tenure rights of a principal who was tenured as an assistant principal, were not violated when her annual salary was reduced in consequence of the change from a 12-month to a 10-month position following a RIF which eliminated the 12-month principal position she held at an elementary school. She contends that she was reassigned from her 12-month principal position to a 12-month high school assistant position as a result of the RIF, and that the Board then transferred her of its own volition to the 10-month elementary assistant principal position, thereby illegally reducing her salary. Commissioner determined that the Board first assigned her to a newly created 12-month high school assistant principal position but when she expressed dissatisfaction with that reassignment, it changed the assignment to a 10-month assistant principal position in an elementary setting which she seems to have wanted, at her base salary, pro-rated for ten months. The board's transfer was as a result of a RIF and did not violate her tenure rights. Moore, Commr 2012: March 5(Willingboro)

Commissioner finds that the board violated the seniority rights of a tenured assistant principal employed at the middle when it failed to rehire him to his former vice principal position following a reduction in force (RIF). Board offered the position to another former vice principal who had a greater number of years of service in the district, but no seniority as a vice principal in the middle school. The petitioner had served in the category of "Junior high school vice principal or assistant principal," *see,* N.J.A.C. 6A:32-5.1(l)(14), while the other employee had served primarily in the category of "High school vice principal or assistant principal. The Commissioner concurs with ALJ order for board to reinstate the assistant principal to his former position with back pay and benefits. Palmer, Commr 2012: March 5 (Pleasantville)

Appellate Division affirms Commissioner's decision concluding that the Board did not violate secretary's tenure rights when it reduced her time and compensation pursuant to a reduction in force while maintaining a non-tenured incumbent in the position of administrative assistant. The jobs did not include "identical responsibilities," the position was secretarial and while the administrative assistant position included secretarial work, it also required supervisory tasks, including the coordination of school-wide and district-wide administrative activities. Burger v. Bd. of Educ., DOCKET NO. A-5223-10T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1244, Decided June 5, 2012.

While a teaching staff member may not unilaterally rescind her resignation after the school board accepts the resignation, the teaching staff member and the school board nevertheless may mutually agree to rescind the resignation after the school board accepts the resignation. When there is mutual agreement to rescind resignation, there is no break in service and no forfeiture of tenure and seniority rights. Subsequent RIF, while leaving staff member with less seniority in place, violated tenure and seniority

rights. District directed to compensate petitioner for all salary, benefits, and emoluments, less mitigation, to which she was entitled As her social worker position was abolished by the Board in a second RIF, petitioner is entitled to be placed on the preferred eligibility list in accordance with her seniority rights as of that date. Eberwein-O'Donnell, Cmmr, 2012: July 16

Petitioner not entitled to be restored to position with Juvenile Justice Commission as there were others with greater seniority who also held the position at time of RIF. Previous employment with NJ Department of Corrections does not count toward seniority with Juvenile Justice Commission. Troyanovich, Cmmr, 2012: July 19

Tenured supervisor and director did not attain tenure as principal. However, charter school RIF of supervisor was improper as school replaced supervisor with non-tenured person. Because charter school is no longer operating, the Board cannot reinstate the petitioner; however, the Board remains obligated to provide the petitioner with retroactive salary, benefits and emoluments as ordered by the ALJ. Zydiak, Cmmr, 2012: July 30

Board improperly RIFs tenured elementary school teacher by terminating her employment, but retaining teachers with less seniority. Board ordered to immediately reinstate her position of employment, and must be compensated for all lost salary, benefits and emoluments, less mitigation, retroactive to the date of her termination. Bearg, Cmmr 2012:Aug 3, Meade, Cmmr 2012:Aug 3, Jones, Cmmr 2012:Aug 3

Board's action was not arbitrary or capricious when it determined that petitioner's comprehensive business endorsement is not adequate for the technically oriented curriculum offered in the career academies. Such decision of board is within its discretionary powers, and case law provides that such a decision by a local board of education should be honored. RIF was proper where tenured individual held endorsements in General Business Studies and Elementary Education yet board required Teacher of Computer Science Technology (CST) endorsement which was required for teaching the rigorous curriculum offered in the Board's five specialized and selective Career Academies. Slivka, Cmmr 2012: Aug. 8.

Teacher was notified that her position of Director of Curriculum was to be eliminated in a reduction in force. Petitioner subsequently filed an appeal in asserting her tenure rights to reinstatement as a school principal or to one of two new administrative positions in respondent Board's school district. Board contended that petitioner waived her tenure rights when she was offered the position of high school principal or one of two other administrative positions, but rejected them. petitioner was never offered the position of high school principal because the Superintendent did not make a bona fide offer of employment that petitioner could rely upon; the District interpreted petitioner's preference for a middle or elementary school position as a rejection and never fulfilled its duty to actually offer her a position in accordance with her tenure and seniority rights; even after petitioner clarified her position by stating in writing that she would take

the high school principal position if it was offered to her, the Board decided to terminate her by sending a letter accepting her resignation; waiver of tenure rights is only effective if the protected employee intended to relinquish them, and in this case petitioner clearly expressed her job preferences. Board to reinstate petitioner to the position of High School Principal or a similar position with back pay, seniority, and any other emoluments to she is entitled. Tribbet, Cmmr 2012: Aug. 1

Tenured teacher challenged Board's RIF of her position. Teacher failed to appear at hearing. Teacher's counsel also could not reach her. Commissioner concludes that the appeal has been abandoned, and dismisses the petition for petitioner's failure to prosecute. Becker, Cmmr 2012:Aug. 29, Amento, Cmmr 2012: Aug. 29, **Simmons** Cmmr 2012:Aug. 29

K-5 physical education teacher challenges RIF where seemingly less senior staff who taught in departmentalized program were retained. Under N.J.A.C. 6A:32-2.1, departmentalized seventh and eighth grade programs are treated differently from nondepartmentalized seventh and eighth grade programs. It appears entirely reasonable for the Commissioner to interpret the regulation to allow the sixth grade to be treated in the same fashion. A K-5 teacher has very different duties and responsibilities from a teacher in a departmentalized program. As such, there is ample reason to conclude that departmentalized teaching experience fell into a different category from nondepartmentalized experience. Moreover, nothing in the record suggests that the Commissioner's determination contradicted the legislative intent behind the statute controlling seniority rights and its implementing regulations. Commissioner's decision affirmed. Cozzolino v. Board of Educ. of West Orange, No. A-5455-10T1 (App.Div. Sept. 12, 2012)

RIF'd tenured teachers, each holding instructional certificate with a K-8 endorsement in elementary education, did not have bumping rights into pre-school positions held by non-tenured teachers. Board determined that RIF'd teachers were not qualified to teach Pre-K as they did not possess a P-3 endorsement and did not demonstrate that, along with their K-8 endorsement, that they had either two full years of experience teaching three and four year olds or were able to demonstrate appropriate content knowledge to teach preschool. The record was devoid of any evidence that the petitioners satisfied either the experience or content knowledge necessary for qualification. Fitzgerald, Scott, Watkins and Grimm, Commissioner, 2012: September 21

Board of education did not violate rights of tenured principal when it reduced her salary as a result of a reduction in force. Along with being the full time principal of one campus, the principal was also the part time principal of the adult education program on another campus. When the adult education program was completely eliminated for reasons of economy and efficiency, the board of education properly reduced the principal's salary by the amount she was paid as the principal of adult education, $ 10,000. Stallone, Commissioner, 2012: October 25

Commissioner determined that tenured teacher, who alleged that board violated her tenure and seniority rights when it terminated her employment as part of a reduction in force (RIF) abandoned her case. Teacher failed to appear for a hearing and attorney advised that she had an ongoing inability to reach her client. Attorney advised that client was unresponsive to additional attempts to contact her. ALJ concluded that teacher had abandoned the matter. Gutierrez, Commissioner, 2012: October 26

Appellate Division affirms Commissioner of Education denial of teacher's motion to reinstate her petition of appeal challenging her placement on the school district's seniority list, which she had previously withdrawn with prejudice. Teacher freely and knowingly withdrew her petition after consultation with counsel and a nearly year-long period of extensive discovery, wherein she had the opportunity to review the District's employment records as well as multiple drafts before the mutually-developed and agreed upon seniority list was finalized. *Ashe v. State Operated Sch. Dist. of Paterson*, DOCKET NO. A-1307-11T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2807, Decided December 26, 2012.

Appellate Division affirms Commissioner of Education decision finding that board of education's reduction of hours for tenured teachers and speech therapists did not constitute a RIF as described in *N.J.S.A.* 18A:28-9 since there was never any entitlement to a particular number of hours; no violation of tenure rights or OPMA. Tenured teachers and speech therapists were employed on an hourly basis by county special services school district to provide services in non-public schools. Employees alleged in consolidated suit that their hours for the 2010-2011 school year were improperly reduced by respondent in violation of their tenure and seniority rights, and should have been done according to seniority. *Kourtesis v. Bergen County Special Servs. Sch. Dist.*, DOCKET NO. A-2139-11T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2527, Decided November 19, 2012.

Commissioner dismisses petition of RIF'd tenured Director of Curriculum and Instruction/Principal who claimed her tenure and seniority rights were violated when the school district failed to employ her in district-level position of Director of Special Education/Child Study Team, and also claimed that a staff member (intervenor) was unqualified for this position, and further claimed entitlement to a principal position. Commissioner holds that while petitioner was a backup to the building principal, her primary duties related to curriculum and instruction and it was not established whether she actually performed the duties of principal to become tenured in that position; the intervenor is qualified to hold the Director position under her administrative certificate with a principal endorsement and instructional certificate with a Teacher of the Handicapped endorsement; and there exists no principal vacancy to which

petitioner could claim entitlement at the time the petition was filed. *Jacqueline v. Dennis Twp, Commr 2012: Dec 21.*

Appellate Court rejects ALJ and the Commissioner conclusion that both of two former tenured staff members lacked standing to challenge the district's elimination of its CST program and contracting for services through the Sussex County Educational Services Commission; staff member who was RIF'd had standing, other who merely retired lacked standing. Court did not address merits of the Board decisions changing the method of how CST services are provided in the district. Court finds that 90-day filing deadline began to run not from date of board's resolution to discontinue its in-house CST or date that board notified parties of that resolution, but rather when board decided to enter into allegedly illegal agreement with SCESC. Court remands. *McKenna v. Bd. of Educ. of the Andover Reg'l,* 2013 *N.J. Super*. Unpub. LEXIS 435 (App. Div. Feb 27, 2013)

Appellate Court affirms affirms board's determination that plaintiff was the principal with the least seniority among several principals subject to a reduction in force that resulted in his termination. Service under certificate of eligibility did not count towards seniority; under *N.J.S.A.* 18A:28-5 and *N.J.S.A.* 18A:1-1, only a "teaching staff member" who has an emergency, provisional, or standard certificate can acquire tenure. Rejects principal's argument that the effective date of his provisional certificate should relate back to the date he actually began work, or the date when his mentorship informally began; the only material fact was the date the provisional certificate was issued. *Feldman v. Branchburg Bd. of Ed*., 2013 *N.J. Super*. Unpub. LEXIS 440 (App. Div. Feb 27, 2013)**.**

Teacher of Italian who was RIF'd and claimed entitlement to elementary school position over non-tenured staff; she had obtained tenure status while employed as an elementary Italian teacher and thus achieved tenure status under all endorsements to her teaching certificate—both as an Italian teacher and an elementary teacher and was entitled to reinstatement. Court affirms Commissioner's decision to reinstate her with back pay and other enumerated benefits. *Gillikin v. Garfield Bd. of Educ.*, 2013 *N.J. Super*. Unpub. LEXIS 348 (Feb. 15, 2013).

Commissioner dismisses teacher's appeal of the board's action to terminate his employment through a reduction in force (RIF) in June 2011, as the teacher failed to cooperate in the prosecution of his appeal, having made no sincere effort to obtain a copy of his elementary teaching certificate despite having been asked to do so since June 2012 as the issue of whether he was properly certified to earn tenure was at issue; he therefore has abandoned the matter. *Simmons*, Commr 2013:Jan 3(Elizabeth)

Commissioner determines that the approach used by the Board and its consultant to determine seniority for the purpose of implementing a RIF was outside of the parameters established by *N.J.A.C.* 6A:32-5.1. Accordingly, the ALJ concluded that the petitioner should have been retained in the RIF and granted her motion for summary decision. Consultant had created unauthorized additional class of categories which included "elementary

with math specialization" and "elementary teacher of secondary math." Board must compensate teacher wages, COBRA premiums; restore personal, critical illness and sick days and pension contributions and increase her seniority credit for the period of improper RIF. *Miles, Wronko and Sacks*, Commr 2013:Feb 19 (Asbury Park)

Vice principal, who received standard certification – principal on August 2010 with a retroactive date of September 2009, was eligible for tenure as a vice principal in June 2010 and should have been treated no differently than other vice principals at the end of the 2009-2010 school year when a RIF of vice principals occurred. At time of the RIF vice principal only possessed a provisional certificate. Commissioner ordered that petitioner be reinstated to the position of vice principal and be paid the difference between her teacher's salary and vice principal's salary retroactive to June 2010. See also Francisco, Commissioner 2012: September 14. *Francisco,* Commr 2013: April 17

Board of education had legal authority to eliminate position of certified school nurse for reasons of economy and enter into a shared services agreement with another school district. Petitioner's tenure and seniority rights were not violated by the RIF. *Prezioso,* Commr 2013: April 26

Tenured teacher with an instructional certificate with endorsement in Skilled Trades, Machine Shop and whose last position was that of In-House Suspension Teacher, had no entitlement to be recalled after a RIF, to reconstituted position of In-House Suspension (IHS) teacher; no bad faith shown by board's addition of instructional physical education component which required that the new instructor possess a physical education endorsement – which teacher did not possess; newly hired teacher provides physical education instruction during in-school suspensions. *Martin v. South Amboy BOE*, Commr 2013: May 13.

In light of well-settled case law that secretaries are not terminated or reinstated on the basis of seniority, the board did not violate the rights of a tenured secretarial employee whose position was abolished in a RIF, and where the board retained less experienced tenured secretaries. However, the secretary's petition was not time-barred as the date that triggered the 90 days for filing the petition was not the date of her RIF, but rather the date that the board decided to retain less tenured staff through a motion to rescind the RIF of other secretaries. *Pavia-Musi v. Carteret BOE,* Commr 2013:June 18.

Teacher who had been improperly terminated in 1998 and ordered returned to his skilled trades and position by State Board ruling in 2005, had been awarded back pay through the June 30, 2003 RIF which would have resulted in his legitimate dismissal; however, since he had obtained Teacher of Handicapped endorsement in 2002, he was entitled to tenure rights based on all of the endorsements he possessed at the time of 2003 RIF; board failed to offer petitioner reemployment and instead hired non-tenured teachers for positions that Ziegler was qualified for. Commissioner orders back pay in the amount of $7,997 plus benefits and

emoluments, and remains entitled to reemployment over non-tenured teachers in any position for which he is qualified. *Ziegler v. Bayonne BOE, Commr 2013: July 15.*

Non-tenured administrator who was also tenured teacher, was not subject to a RIF where during restructuring, board eliminated 3 administrative positions including hers, and offered her the choice of another administrative or a teaching position, and she agreed to the transfer to a teaching position. *Ragoo-Mohammed v. Newark, Commr 2013: July 22.*

Tenured supervisors of curriculum, who were subject to a RIF, entitled to Assistant Director positions currently held by non-tenured staff. Unrecognized Assistant Director position improperly determined by ECS to not require approval prior to appointment of candidates. Petition did not require supervision of principals or other supervisors; administrator/principal endorsement not required in job description. Position should be retitled as Supervisor. Enhanced certification requirements (certain teaching certificate and endorsement for each position) have a logical nexus to the positions and were appropriate for the job description. Minuskin and Graf entitled to Assistant Director Grades 9-12 and Assistant Director Grades 4-8 position; ordered to be immediately appointed with full salary and benefits retroactive to June 30, 2010. *Nicholson, Minuskin and Graf,* Commissioner 2013: September 16

Commissioner finds that tenured Supervisor of Mathematics for grades 7-12, whose position was abolished in a reorganization, was not qualified for the position of Director of Mathematics and Science because that is a district-wide position that – pursuant to *N.J.A.C.* 6A:9-12.3(a) – requires a school administrator endorsement, which petitioner does not hold; the job responsibilities of the Director position are of a qualitatively higher level than those of petitioner's former position as Supervisor of Mathematics; not enough that she holds principal and supervisor endorsement. *Kohn v. Orange*, 2013:Nov 4.

Appeal of Reduction in Force of technology teacher dismissed for failure to prosecute. *Alfonso*, Commr 2014: February 26.

Commissioner upholds RIF of non-tenured Supervisor of Special Education for reasons of economy. Supervisor, who was employed for three consecutive years, asserted that she was not properly terminated as no vote of the school board occurred, in violation of *N.J.S.A.* 18A:27-4.1 and she was never given a formal statement of reasons for her termination. ALJ found that petitioner's arguments were overly simplistic and that, given the unique circumstances within the district, which was under partial State intervention, the process used was proper. Mid-year termination for reasons of economy was properly effected as control over personnel matters had not been returned to the board; the state operated superintendent had control over all personnel matters; no board vote was required to appoint, transfer or remove personnel. *Jiminez*, Commissioner 2014:March 4

Guidance counselor did not earn tenure as a teacher and was not entitled to teaching assignments during the period of the RIF, nor to any back pay, where she was hired as a guidance counselor and while she often prepared lesson plans outlining her character development program she was not required to do so and her lessons presented were solely guidance-related, she never taught core curriculum subjects, and she was employed under her educational services certificate as a guidance counselor. She was tenured exclusively as a guidance counselor. *Rutledge v. Board of Education*, Commissioner 2014:June 19.

When during a RIF the position of the tenured Supervisor of Visual and Performing Arts was eliminated and he was reassigned to a teaching position at a reduced salary, the board improperly applied seniority regulations, rather than tenure principles, as non-tenured supervisors with greater knowledge and expertise were permitted to remain in supervisory positions in the district. Commissioner notes that, irrespective of content expertise, a certified supervisor with tenure should be preferred over one who is non-tenured (as per *Duva*); and, although there is no statutory right to the salary held prior to a RIF, award of differences in salary was an appropriate remedy when a petitioner's tenure rights are violated as a result of a RIF. *Annecchino v. Irvington Bd.*, Commissioner 2014:June 24.

Appellate Division upholds Commissioner's determination that district properly eliminated school nurse position and contracted for shared nursing services with another district. District had legal authority to implement the shared services agreement for certified school nurse services and the corresponding reduction in force for reason of economy. Such authority is consistent with the Uniform Shared Services and Consolidation Act and *N.J.S.A.* 18A:40-3.3. *Prezioso v. Board of Educ. of the Polytech Career Acad.*, No. A-4644-12 (App. Div. Aug. 27, 2014)

Person tenured as vice-principal and removed from position as principal entitled to vice-principal salary despite being returned to former position of teacher. Issue raised by district of NJDOE backdating of certificates not properly before Appellate Division in this appeal. *Silviera-Francisco v. Bd. of Educ. of Elizabeth*, No. A-4418-12 (App. Div. Aug. 7, 2014)

Commissioner determined that he lacked jurisdiction over elimination of non-certificated, non-tenured coordinator of community programs title, where employee alleged violation of the Conscientious Employee Protection Act and the Law Against Discrimination. Employee did not possess a certificate issued by the State Board of Examiners and was therefore not a "teaching staff member" as defined in statute. Employee was entitled neither to tenure protection nor was subject to reduction for reasons of economy, efficiency or other good cause. Accordingly, the Commissioner determined that the matter did not arise under the school laws, but the Commissioner reaffirmed the board's virtually unilateral right to non-renew contracts for such employees. (Brown-Kneisel; Commr.; 2014, Nov. 3)

Commissioner determined that board did not violate a tenured clerk's tenure rights when, during a RIF, it retained non-tenured secretaries where the clerk claimed similar job duties. Analysis of titles revealed that clerk was not qualified for the secretarial position (Nelson v. Elizabeth City: Commr, 2014, Nov. 24).

QUALIFIED IMMUNITY

District court denied qualified immunity for board members where plaintiff alleged that he was the removed from his position based on his political affiliation. Plaintiff also alleged conduct by board members that could subject each of them to individual liability. *Bergland v. Gray*, 2014:Oct. 17. Dkt. No.: Civ No. 14-1972; (D.N.J. Oct. 17, 2014)

REGIONAL BOARDS

Because racial imbalance would result, Board of Review should have refused borough's petition to have school district withdraw from regional high school district. New Jersey had a constitutional imperative to prevent segregation and racial imbalance in its public schools. Board of Review had approved the withdrawal, finding that the nine-percent decrease in the white student population that would result from the withdrawal would have a "negligible impact" on the racial character of the district. The appellate division reversed, finding that in light of demographics showing that the minority population in the district would continue to increase and the white population would continue to decline, the nine percent decrease in the white population was not negligible. Allowing the withdrawal was out of step with the state's policy that required education policy makers to anticipate imbalance and to take action to blunt perceived demographic trends that would lead to racial or ethnic imbalance. The Supreme Court affirmed, finding that the constitutional imperative to prevent segregation in New Jersey's public schools provided by N.J. Const. art. I, para. 5 applied to the Board of Review in the exercise of its duties. (Petition for Authorization to Conduct a Referendum on Withdrawal of N. Haledon School District v. Passaic County Manchester Regional High School District, 181 N.J. 161 (2004) affirming N. Haledon Bd. of Ed. v. Passaic County Manchester Regional High School District. (In re Authorization to Conduct A Referendum on Withdrawal of N. Haledon School District, 363 N.J. Super. 130 (App. Div. 2003).

Commissioner, upon remand from N.J. Supreme Court, adopted ALJ's findings to equitably distribute the regional district's assets and liabilities based upon a formula designed by expert consultant, despite the absence of a proposed

distribution in the resolution adopting the dissolution. (04:Feb. 5, I.M.O. Union County Regional H.S., dec. on motion Comm. 04:March 29, motion for stay denied, St. Bd. 04:June 2, aff'd St. Bd. 04:Aug. 4)

Dissolution: Amount of assets to be distributed include the entire amount of those assets and not just those assets identified for distribution at the time of County Superintendent's report. In the Matter of the Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School District No. 1, St. Bd. Decision on remand, 02:Jan. 2)

Dissolution: Commissioner dismisses as untimely under 90 day rule, the union's claim that one of former constituent districts violated posting process established so that teachers could select districts in which they would be employed upon dissolution of the regional. (98:Nov. 30, AFT)

Dissolution: Constituent of recently dissolved limited purpose regional school district could enter into sending-receiving relationship to send high school pupils to non-constituent district; receiving district not obligated to employ staff of the dissolved regional limited-purpose district, as it was never part of that district, and there is no derivative responsibility to hire such staff because of sending-receiving relationship. (00:Jan. 4, Hammonton)

Dissolution: Distribution of assets: Until the date of dissolution, the grounds, buildings, furnishings, and equipment remain in the possession of the regional district, which can employ these resources for the purposes of operating the school district. (97:June 20, In the Matter of the Distribution of Assets and Liabilities upon the Dissolution of the Union County Regional High School District #1 (Kenilworth I), aff'd St. Bd. 97:Nov. 5)

Dissolution: Emergent relief granted to constituent board; dissolving board is restrained from making payments to employees for accrued sick leave benefits under its Dissolution Incentive Program, until a hearing is held on whether incentive program is *ultra vires* payment of public money for service that teachers are already obligated to provide. (00:June 29, Berlin)

Dissolution: Illegal reduction in *per diem* compensation occurred when tenured teacher, who was transferred to constituent district upon dissolution of regional school district, had increased work year pursuant to constituent district's bargaining agreement; retroactive reimbursement ordered. (99:Feb. 22, Riegel)

Dissolution: In distributing assets of dissolved regional high school district, the two municipalities that were not deeded real estate were entitled to the district's liquid assets pursuant to agreement so providing, even though such distribution deviated from the statutory formula; strict compliance with statutory formula would have left those two municipalities with a substantial shortfall, and the remaining municipalities with a windfall, of district's assets based on proportions of district's operating budget that each municipality contributed. In the Matter of the Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School District No. 1, cert. granted 164 N.J. 189 (2001) (Statutory scheme governing dissolution permitted deviation from the general requirement

that liquid assets be divided proportionately) 168 N.J. 1 (2001) (See also St. Bd. Decision on remand 02:Jan. 2)

Dissolution: Motion to Appeal nunc pro tunc granted; parties cautioned to comply with all procedural requirements. (Decision on motion St. Bd. 99:May 5, Lower Camden)

Dissolution: Motion to reopen to receive additional testimony denied. While N.J.A.C. 1:1-18.5(b) authorizes agency head to reopen a matter after initial decision has been filed, in this case parties were granted an opportunity to request additional evidentiary hearings on whether a sending-receiving relationship was a quantifiable asset, which were not taken advantage of. Moving party provides no basis for reopening matter. Dividing liquid assets among four non-building districts in proportion to school taxes paid is most equitable allocation. Request for post-judgment interest is premature. (Motion denied, St. Bd. 03:Sept. 5, Lower Camden, aff'd St. Bd. 03:Oct. 1)

Dissolution: Salary level of custodians transferred to constituent district from regional pursuant to regional dissolution; Stagaard challenge dismissed as untimely under 90-day rule. (99:Dec. 8, Balwierczak, aff'd St. Bd. 00:May 3)

Distribution of assets: The statute does not prevent assets from being altered between the time of the county superintendent report and final dissolution. Nothing in the statute requires the preservation of the assets of any constituent district prior to dissolution. (97:December 18, In the Matter of the Distribution of Assets and Liabilities upon the Dissolution of the Union County Regional High School District #1 (Kenilworth II), aff'd State Board 98:April 1, aff'd in part, rev'd in part, App. Div. unpub. op. Dkt. No. A-4553-97T5, April 15, 1999) Reversed for findings of fact and conclusions on claim that county superintendent failed to define "shared and rotated assets" as including furniture, equipment and personal property removed from Brearley High School. Aff'd in all other respects.

Distribution of assets: Where dissolution is conditioned on a distribution of assets different from the statutory scheme, Board of Review so acknowledges in its decision and will direct that ballot question be so drafted. Because no method of distribution of liquid assets was specified in the question placed before the voters, the assets should be distributed in accordance with the statute. (97:May 5, In the Matter of the Distribution of Assets and Liabilities upon the Dissolution of the Union County Regional High School District #1 (Mountainside), aff'd State Board 98: July 1, aff'd App. Div. unpub. op. Dkt. No. A-7438-97T1, Oct. 1, 1999, certification granted 164 N.J. 189 (2000). See Supreme Court decision 168 N.J. 1 (2001), rev'd and remanded to State Board with directions that liquid assets be divided between the two constituent districts that were not deeded real estate. Statutory scheme allows for deviation.

Lease purchase is a "capital project," but is not "indebtedness" as intended under N.J.A.C. 6:3-7.2; therefore, Commissioner will not grant declaratory judgment barring the dissolving regional district from passing a resolution

regarding 10-year lease purchase agreement at the present apportionment rate per constituent district, with benefit beyond the dissolution period. (00:Feb. 25, Lower Camden, aff'd for reasons expressed by ALJ, St. Bd. 00:July 5)

Policy giving students from some, but not all, constituent districts of a regional board a meaningful choice to attend the high school they wanted, was not illegal "discrimination"; there is no constitutional right to receive an education in a specific school house in the district; the policy was valid exercise of board's discretion and was not arbitrary and capricious; board's motion for summary judgment granted. (99:March 10, Piccoli)

Reapportionment: County Superintendent decision to include military personnel and inmate populations to determine reapportionment neither arbitrary and capricious nor an abuse of discretion. Upon examination of legislative history of 18A:13-8, inclusion of prison population was not proper in reapportionment. (02:April 12, Northern Burlington Regional, motion to intervene granted, St. Bd. 02:July 2, Comm. Dec. clarified and reaffirmed 02:July 19, aff'd in part on other grounds, St. Bd. 03:March 5, affirmed in part, reversed in part and remanded, 372 N.J. Super. 341 (2004), remanded to Commissioner, St. Bd. 05:Feb. 2)

Reapportionment: County Superintendent use of "equal proportions" method to reapportion board member seating among the regional Board's constituents following the 2000 census neither arbitrary and capricious nor an abuse of discretion. Upon examination of legislative history of 18A:13-8, inclusion of prison population was not proper in reapportionment. (02:April 12, Northern Burlington Regional, motion to intervene granted, St. Bd. 02:July 2, Comm. Dec. clarified and reaffirmed 02:July 19, aff'd in part on other grounds, St. Bd. 03:March 5, affirmed in part, reversed in part and remanded, 372 N.J. Super. 341 (2004), remanded to Commisisoner, St. Bd. 05:Feb. 2) (See also 02:April 12, Rancocas Valley Regional, stay granted in part and denied in part, 02:July 22, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0368-02T2, Dec. 11, 2003)

Reapportionment: Use of equal proportions method proper to reapportion seats among constituent districts. Upon examination of legislative history of 18A:13-8, inclusion of prison population was proper in reapportionment. (02:April 12, Northern Burlington Regional, motion to intervene granted, St. Bd. 02:July 2, Comm. Dec. clarified and reaffirmed 02:July 19, aff'd in part on other grounds St. Bd. 03:March 5, affirmed in part, reversed in part and remanded, 372 N.J. Super. 341 (2004), remanded to Commissioner, St. Bd. 05:Feb. 2)

Retired employees of constituent district of dissolved regional were barred by 90-day rule from pursuing claim for reimbursement for unused sick leave at rate set by collective bargaining agreement that had governed employment in regional prior to its dissolution. (01:July 9, Nadasky, appeal dismissed St. Bd. for failure to perfect 01:Oct. 3)

Settlement of tenure and seniority rights to position in constituent district upon dissolution of Lower Camden County Regional. (01:June 15, Grimmett)(01:July 2, Hanna)

Significant procedural distinctions between withdrawal and dissolution regarding the assumption of indebtedness, explained. (00:Feb. 25, Lower Camden, aff'd for reasons expressed by ALJ, St. Bd. 00:July 5)

State Board regulations relating to withdrawal of districts also apply to dissolutions. (00:Feb. 25, Lower Camden, aff'd for reasons expressed by ALJ, St. Bd. 00:July 5)

Stay denied; scheduled selection process for employment of staff members affected by dissolution will go forward; if mistakes occur, adjustments can be made prior to date of dissolution. (00:March 14, Lower Camden, settled 01:March 19)

Stay denied: Stay for withdrawal of constituent district denied. Only after party has sought stay of Commissioner's decision before the Commissioner which is denied will State Board entertain a motion for stay in accordance with N.J.A.C. 6A:4-2.2. (Motion den. St. Bd. 03:March 5, In the Matter of the Withdrawal of the North Haledon School District, matter dismissed as moot, St. Bd. 03:July 2)

Stay granted and denied: Where constituent district puts three seats up on ballot in spite of County Superintendent determination, Commissioner will keep three seats of constituent district on regional board but give them weighted votes so as not to thwart the reapportionment required by census nor will of electorate, pending outcome of underlying claims. (02:April 12, Rancocas Valley Regional, stay granted in part and denied in part, 02:July 22, aff'd St. Bd. 02:Aug. 7)

Tenure rights of teachers in dissolving district: N.J.S.A. 18A:28-6.1 is triggered only if a district closes a school and agrees with another district to send its pupils from the closed school to that district; does not apply simply because limited purpose regional district dissolves. (00:Jan. 4, Hammonton)

Composition

State Board reaffirms 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. (IMO Referendum for Withdrawal of North Haledon from Manchester, St. Bd. 2007:Nov. 7)(Decision on motion) See also decision on motion, Commr.11/10/2004; Commr. 1/18/2005; decision on motion Comm'r, 3/15/2005; decision on motion by Commr., 3/17/2005; decisions on motions by the New Jersey Supreme Court, 4/5/2005

The 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. (IMO Manchester, St. Bd. 2007: Nov. 7)

Appellate Division affirms Board of Review decision denying the Township of Liberty's request to withdraw from the Great Meadows Regional school district. In re Liberty Twp., (A-4783-06T3) 2009 N.J. Super. Unpub. LEXIS 873 (App. Div. April 1, 2009.)

The 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. (IMO Manchester, St. Bd. 2007: Nov. 7)

Withdrawal

Court reverses Board of Review's order that would have permitted a referendum on issue of withdrawal on one district from limited purpose regional district; Board of Review misperceived impact on racial diversity and racial imbalance due to loss of 9% of white population of high school. (In the Matter of the Petition for Authorization to conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, 363 N.J. Super. 130 (App. Div. 2003), certif. granted 177 N.J. 573 (2003))(See also, appeal dismissed as moot St. Bd. 03:July 2)

Appellate Court finds that chancery court properly upheld the dismissal of a suit brought by Seaside Park, its board of education and 13 taxpaying residents seeking the dissolution of Central Regional School district, as well as Seaside Heights and Island Heights, permission to withdraw from the district, or alteration of the district's funding formula, due to disproportionate tax liability. Court declines to grant the Commissioner extraordinary authority to equitably revise the tax apportionment as in *Haledon*; unlike *Haledon*, this case does not implicate the impact of withdrawal or dissolution on racial diversity or issues of other constitutional dimension that compel it to remain in the district after a successful referendum. Court holds that the voter referendum on the dissolution failed and they did not pursue the statutory processes for withdrawal and modification of the tax allocation method, failed to exhaust the administrative remedies available, and failed to set forth a cognizable constitutional or other claim entitling them to any legal or equitable basis for judicial intervention and relief. *Borough of Seaside Park v. Commissioner of the N.J.D.O.E.,A-0743-10T4, 2013 N.J. Super. LEXIS 118 (August 12, 2013) approved for publication*

In matter concerning equitable contributions methodology by constituent board to regional high school, the Commissioner directed

implementation of a formula employing 50% equalized property valuation and 50% enrollment to allocate funding among the constituents of Manchester Regional. Previous formula had been 67% equalized valuation / 33% enrollment. Court takes into account that North Haledon's forced membership in the regional due to racial impact of withdrawal, its disproportionate contributions per pupil, as well as Haledon's greater ability to pay, and also the other constituents' ability under *N.J.S.A.* 18A: 13-23 to veto any formula change that North Haledon might propose. The Commissioner emphasized that the formula developed in this decision is based upon unique circumstances, and that while the principles employed to reach the result may be useful in analyzing future controversies, the formula per se shall not serve as precedent. *Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, Commr 2013: Aug. 29*.

Commissioner dismisses petition by River Dell for more equitable apportionment, and rejects OAL Report, finding that this case is neither constitutionally nor equitably similar to the situation in *North Haledon* and that *North Haledon* cannot be interpreted as establishing a blanket rule that the Commissioner has the authority to perform the function of *N.J.S.A.* 18A:13-23. Further, ALJ's proposed 80% per pupil/20 % property valuation formula appears not to have taken into account that property values, not per pupil counts, have been regarded by the Supreme Court as the most equitable basis for school funding. Extraordinary relief such as petitioner sought herein might be desirable in more compelling circumstances. *In re: Petition for Equitable Modification of Cost Apportionment for River Dell Reg.,* Commissioner 2014:June 2.

REGIONALIZATION

Mandatory Regionalization: State Board's decision not to order mandatory regionalization but to encourage districts to explore other alternatives to reduce racial impact (e.g. magnet and other specialty schools) upheld. Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000), certif. granted in part, 166 N.J. 604 (2000)(aff'g St. Bd. final decision 98:Oct. 7, aff'd as modified.) Court reviewed appropriate allocation of specific responsibilities between the Commisisoner of Education and the Englewood School District in relation to the development and implementation of a voluntary plan that is designed to achieve an appropriate racial balance and educational quality by means of magnet and specialty schools. Court determined that the Commissioner and State Board retain the ultimate responsibility for developing and directing

implementation of a plan to redress the racial imbalance. 170 N.J. 323 (2002).

Mandatory Regionalization: court assumes, without deciding, that State Board has authority to mandate establishment of a regional school district. Englewood Cliffs, 333 N.J. Super. 370 (App. Div. 2000), certif. granted in part, 166 N.J. 604 (2000)(aff'g St. Bd. final decision 98:Oct. 7, aff'd as modified.) Court reviewed appropriate allocation of specific responsibilities between the Commisisoner of Education and the Englewood School District in relation to the development and implementation of a voluntary plan that is designed to achieve an appropriate racial balance and educational quality by means of magnet and specialty schools. Court determined that the Commissioner and State Board retain the ultimate responsibility for developing and directing implementation of a plan to redress the racial imbalance. 170 N.J. 323 (2002).

Request for directed regionalization, denied. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1, on remand to Commissioner, negative racial impact precludes severance, 04:Dec. 15, decision on remand aff'd, St. Bd. 05:May 4)

State Board reaffirms 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. (IMO Referendum for Withdrawal of North Haledon from Manchester, St. Bd. 2007:Nov. 7) (Decision on motion)

Appellate Division affirmed Board of Review denial of permission to conduct a withdrawal referendum; withdrawal would result in an excessive debt burden for River Edge and would interfere with maintenance of an efficient system of education in that district without excessive costs. In Re: Petition For Authorization To Conduct A Referendum On The Withdrawal Of The Borough Of Oradell From The River Dell Regional School District, 406 N.J. Super. 198 (App. Div. 2009).

Federal Impact Aid - Supreme Court determined that the methodology used by the Secretary of Education to identify districts that were allowed to reduce state aid to districts to offset federal aid was reasonable where the statute permitted two methods of identifying those districts. (Zuni Public School District No 89, et al. v. Department of Education et al., _____ U.S._____ (2007), 2007 U.S. Lexis 4335 (April 17, 2007)).

RELIGION

Board policy against distribution of religious gifts in classroom was not unconstitutional where kindergarten student wished to hand out proselytizing pencils and evangelical candy canes to classmates in classroom during the school day. No prohibition present against distributing gifts outside the classroom or after school. Court also found no violation of NJLAD. Walz v. Egg Harbor Twp Bd. of Ed., 187

F.Supp.2d 232 (D.N.J. 2002), aff'd 2003 U.S. App. LEXIS 18148 (3d Cir. N.J., Aug. 27, 2003).

Preliminary injunction was granted to religious organizations who provided voluntary religious instruction allowing their materials and parental permission slips to be distributed; a school district's previous denials of access to distribution scheme by religious groups were viewpoint discrimination. Child Evangelism Fellowship of N.J. v. Stafford Twp. School District, 233 F.Supp.2d 647; (D.N.J. 2002), aff'd 2004 U.S. App. LEXIS 21473 (3d Cir. N.J., Oct. 15, 2004).

RENEWAL/REAPPOINTMENT

Phys ed teacher was not reappointed as head soccer coach when four of the nine Board members voted in his favor and five members abstained from voting. N.J.S.A. 18A:27-4.1 requires the recommendation of the chief school administrator and a recorded roll call majority vote of the full membership of the board and the Board's bylaws also provide that a majority vote of the full board is required for appointment of a staff member. Reid, Commr 2012:Jan 23 (Jefferson)

Board's decision to non-renew teacher was not arbitrary, capricious or in bad faith. Local boards of education have an almost complete right to terminate the services of a non-tenured teacher. Trisuzzi, Commr 2012: Jan 23 (Kinnelon)

RESIDENCY

ALJ determined that parents have the burden of proof by a preponderance of the evidence standard to establish residency and that the unorthodox post-divorce relationship did not support residency. Board granted tuition payments of $16,831.10. Commissioner modified the initial decision such that notwithstanding N.J.S.A. 18A:38-1(b)(2), mandating tuition reimbursement to the district, the Commissioner is not precluded from considering principles of fundamental fairness and equitable estoppel in determining whether tuition should be assessed for any period of ineligible attendance. (03:Feb. 24, M.R.N.)

Commissioner determined to reverse default judgment entered in district's favor where pro se petitioning uncle failed to respond to hearing notice or appear at hearing, but submitted explanatory letter concerning political oppression and economic hardship in Haiti within time allotted for exceptions to the initial decision and remands matter for hearing on merits. (05:July 14, G.P., aff'd St. Bd. 05:Nov. 2)

Commissioner granted parents petition for domicile where district failed to file an answer after having accepted service of process. (03:Feb. 11, D.H.)

Parent's appeal of domicile decision in which student was found not to be living in the district was dismissed for failure to perfect, despite pro se status. Payment of tuition ordered. (St. Bd. 05:Oct. 19, L.C.)

Pupil, living with aunt and uncle in school district, entitled to free public education. Uncle became guardian of pupil. Pupil met standard for "family of economic hardship" for the period prior to guardianship. Father lost job, was unemployed for two years, reemployed at significant loss of income. Could not support family and send pupil to international school. Pupil would face significant problems in Korean school. P.B.K. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001), aff'g St. Bd. 00: Jan 5, rev'g Commissioner 97:Oct. 14.

Commissioner's reversed board's determination that student was not domiciled in the Northern Valley Regional High School district for the 2009-2010 school year. Evidence indicated that student resided in Closter in 2009-2010 and Demarest in 2010, both within the district. Occasional presence at father's home in Cresskill did not amount to residency at that address. S.G.S. o/b/o S.S., Commissioner 2011: March 4

Board's determination of non-residency upheld. Notwithstanding joint custody order, the record demonstrated that student resided with her mother in Trenton and not in Ewing. Commissioner concluded that student was not eligible for a free public education in Ewing. Petition was dismissed. P.B. o/b/o Y.S., Commissioner 2011: March 24

While family had been continuously classified as "homeless" by the Burlington County Board of Social Services; family has resided in Mount Laurel since February 2010. Although a family may fall under the rubric of "homeless," it nonetheless achieves domicile for school law purposes after a continual year of residence in one district. Family deemed domiciled for school purposes in Mount Laurel. Maple Shade, Commissioner 2011: April 27

Commissioner dismisses with prejudice a pro se residency appeal as parent failed to appear and provided no explanation for her nonappearance. K.M., Commr 2011: June 24.

Commissioner rejects board's claims for financial reimbursement and determines that student was entitled to a free public education in Pine Hills; the parent is domiciled there and has primary physical custody of her children under a court order; pursuant to N.J.A.C. 1:1-14.4(d) the parent is entitled to a decision on the merits based on the proofs presented at hearing as the Board failed to submit an explanation for its failure to appear. T.L.J., 2011:June 24.

Pro se residency appeal is dismissed with prejudice for non-appearance. J.S., 2011: June 24.

Commissioner rules that, where family resided in the same motel in Mine Hill Township since 2006, they were homeless; because the children were enrolled in schools of Dover, (district of origin prior to becoming homeless) the children shall remain enrolled in Dover schools in order to maintain continuity in their educational program; however, financial responsibility shifted to Mine Hill after one year in the motel pursuant to N.J.S.A. 18A:38-1(d), which states that homeless persons who reside within a school district for one year or longer are deemed to be domiciled

within that district; Mine Hill is liable for sixth grader's tuition, and for the send/receive tuition for A.S. should Dover seek payment for same. A.M. and M.S., Commr 2011:June 15.

Student

Petitioner filed a pro se residency appeal on behalf of student contending that family was homeless. Executive County Superintendent determined that the family was homeless and the district of residence pursuant to N.J.S.A. 18A:38-1(f) and N.J.S.A. 18A:7B-12.1(c). Following ECS determination, board withdrew counterclaim for tuition.

Petition was dismissed with prejudice following petitioner's failure to attend phone conference. V.W. 2011 Commr July 14

Complaint dismissed with prejudice where respondent filed a motion to dismiss in lieu of an answer, asserting that the appeal was not timely filed, that petitioner lacks standing as she does not have primary custody of the children, and additionally does not reside in the district. Additionally, plaintiff failed to appear at hearing and gave no explanation for nonappearance. F.O., 2011 Commr, July 28

Petitioner filed a pro se residency appeal on behalf of her minor child, contending that the family did in fact live in district. Petitioner received appropriate notice of the hearing, but failed to appear and provided no explanation for nonappearance. Commissioner ordered student disenrolled from respondent's school district and dismissed the petition. R.S. Commr 2011 Aug 31.

Commr grants board's request for entry of judgment on docket of the Superior Court pursuant to *N.J.S.A.* 2A:58-10, for $7,527.80 representing the 140 days that, pursuant to earlier Commissioner summary decision, were owed to district for illegal student attendance, and where respondents had failed to make payment.. Burlington, Commr 2011: Oct 20

Student was entitled to a free education in the district as an affidavit pupil living with grandparents who resided in the district; family hardship was based on fact that grandparents removed student from his mother's care because of violence and emotional strife that the student was inflicting upon his mother and siblings, finding that the emotional discord and financial insecurity resulting from the long illness and subsequent death of child's stepfather clearly qualified as family hardship. Commissioner rejects district's motion to reopen the record based on fact that student subsequently went to live with biological father in New York. M.E.M.,Commr 2011:Oct.7(S. Plainfield).

Commissioner determines that student and her mother were homeless during the 2010-2011 school year (forced to vacate apartment for lack of funds) and therefor, under *N.J.S.A.* 18A:7B-12(c), entitled to be educated by the last district of residence prior to their becoming homeless (Mainland Regional). It was irrelevant whether student and

mother were staying temporarily in or outside the district. K.N. o/b/o A.N., Commr 2011:Sept.19.

Pro se residency appeal is dismissed due to petitioner's failure to appear. A.B. obo B.N.W Commr 2011:Oct 14. (Orange)

Pro se residency appeal is dismissed due to petitioner's failure to appear. K.W. obo J.B, Commr 2011:Oct 21. (Orange)

Where grandmother obtained custody of child and board therefore withdrew its objections to child's attendance in the Bayonne schools and request for tuition, matter was dismissed with prejudice. E.I. o.b.o. R.C., Commr 2011: Nov. 1 (Bayonne)

Parent failed to prosecute her residency appeal despite being afforded every opportunity to do so; therefor, Board's counterclaim for tuition for both children in the amount of $25,591.92 is granted. F.O., o.b.o. D.O. and R.O. V. 2011: Nov. 10 (Waldwick)

Commissioner rejects Tinton Falls request for ruling that it is responsible only for the education of dependent children of Navy personnel residing at NWS Earle, and that all other children residing on the base must be educated in the district where the housing is physically located.

While the legislative history supports that the legislation was created and passed with Tinton Falls and the future NWS Earle children in mind, nothing supports that the designation made pursuant to N.J.S.A. 18A:38-7.8 was one for the education of Navy children only, and any such remedy rests with the legislature. Tinton Falls, 2011:Nov. 17 (Tinton Falls, Colt Neck, Monmouth Reg., Freehold Reg)

Residency appeal is dismissed with prejudice where pro se parent who contended that the family was homeless and living with her son in Orange, failed without explanation to appear at the hearing despite having received appropriate notice. V.M., o/b/o, C.J. , 2011: Dec. 16 (Orange)

Where school district sought to remove child, parent's petition was filed beyond the 21-day window for the filing of appeals to a residency determination by the board and accordingly is dismissed. Commissioner grants board's counterclaim for tuition. T.K., Commr 2012: Jan 5 (West Orange)

Where parent failed to appear in challenge to district's residency determination, matter is dismissed. Commissioner remands to the OAL for supplementation of the record for amount of tuition owed for period of ineligible attendance. Y.C., Commr 2012: Jan 10. (S. Plainfield)

When student' mother moved out of the district where she and her children had been living with her mother, and left the child behind to continue residing with her grandmother, the child was ineligible to receive a free public education in Orange, as no hardship was demonstrated to qualify as an affidavit student under

N.J.S.A. 18A:38-1(b). H.T., obo, T.A. , Commr 2012:Jan 17 (Orange)

Children were not domiciled in the district; upholds board's determination to remove the children from the Bayonne school system and orders parent to reimburse the Board for 94 days each of tuition at the rate of $50 per day per child. E.Z., obo B.J.C. and E.J.C. , Commr 2012 (Jan 24) (Bayonne)

Commissioner rejects claim by Freehold Regional that Bergenfield Board is obligated to share its cost of educating disabled twin brothers who have been in a residential placement since 2001. Parents are separated and the father has continuously resided in Bergenfield since 2004, while the mother remains at the family home in Howell (Freehold Reg). N.J.A.C. 6A:22-3.1(a) provides that separated or divorced parents living in different communities can – by written agreement –designate a district for school attendance; although no such written agreement exists in this case, the intent of the twins' parents is clear through their conduct and depositions that they want the house in Howell to serve as the twins' home since it is where they grew up and continue to spend the majority of their time when not in school and it appears that the twins' mother is the parent most actively engaged in the boys' care. Freehold Regional, Commr 2012:Feb 6

Pro se residency appeal is dismissed with prejudice for failure to appear. O.B. obo A.B., Commr 2012: Feb 21. (Orange)

Commissioner adopts ALJ ruling that her triplets were not eligible for a free public education in the Highlands school district. Mother argued that she is a resident of Rumson, but intended to live temporarily in Highlands in a property owned by her and her husband while her Rumson residence was being renovated, and that she was honest about this with Highlands, which never alerted her to a possible tuition obligation to the fact that she might end up owing tuition. Commissioner finds that since her permanent home is in Rumson, not Highlands; and was ordered to pay tuition in the amount of $20,211 for the period of her children's ineligible attendance. K.B., on behalf of minor children, T.B., T.B., and I.B., Commr 2012: Feb 21.

Matawan/Aberdeen Regional sought a determination that respondent Hazlet is responsible for the cost of educating a student receiving special education services in a residential placement for the 2010-2011 school year. Since parents divorced in 2001, parents had joint legal custody under the divorce decree which also designated his mother as the residential custodian and primary caretaker, and indicated parents' intention that their son continue to be educated in Hazlet. In 2009, child was placed by DCF in residential school. In 2010 when child was 18, father who resides in Aberdeen, filed for permanent sole legal guardianship for legal and financial

matters, but guardianship did not mention living arrangements. The parties filed cross motions for summary decision as to which board is responsible for the cost of educating the student. Held: summary judgment granted to Matawan; Hazlet is responsible; child's district of residence is his mother's present district of residence in Hazlet because he lived with her prior to placement and she is the custodial parent; the divorce decree and not the guardianship order is determinative of and the guardianship order did not terminate residential custodial rights as it was executed pursuant to a judgment of incapacity that declared K.M. guardian over J.M.'s legal and financial issues. Matawan-Aberdeen Reg v, Hazlet., Commr 2012: Feb 21. See also, decided concurrently, Hazlet v. NJDOE, Commr. 2012: Feb 21. (Hazlet appeals determination of NJDOE that it is responsible for the costs.)

The State Facilities Education Act presents a distinct statutory scheme from N.J.S.A. 18A:38-1. SFEA and accompanying regulations requires the district of residence to be determined annually only. The statutory scheme is designed to address the needs of a small number of students. The Legislature and the agency charged with overseeing the legislation determined this scheme to be reasonable. The regulations have been in effect since 2002 without legislative intervention. The Commissioner's construction of the statute and regulation is reasonable in the context of the SFEA statutory scheme. Piscataway Board of Education v. NJDOE and the Dunnellen Board of Education, No. A-1916-10T4 (App.Div. Apr. 19, 2012)

Aunt who appeals *pro se* from board's determination to remove her niece, is ordered to pay tuition for 2 month period of ineligible enrollment of her niece. Aunt contended that she was awaiting a court date for proceedings that would grant her custody of the child who is living with her in Union. Subsequent to testimony presented on the first day of hearing, the Board agreed to settle the matter for a payment of $1,000 but petitioner failed to pay the amount agreed to in the settlement; board requested a judgment in its favor for the full amount of tuition owed, $2,634, and dismisses aunt's appeal. M.M-C., obo, T.C. , Commr 2012: March 16 (Union)

Pro se residency appeal dismissed with prejudice for failure to appear. P.N., Commr 2012: April 3 (Orange)

Residency appeal dismissed with prejudice for failure of mother to appear. M.H., Commr 2012: April 17 (Orange)

Parents appealed the determination of the respondent Board that their minor children are not entitled to a free public education in the South Hackensack school district, where the parents own a home in Hackensack in which they reside but they also own a property that straddles the border between Hackensack and South Hackensack, and they pay taxes to both municipalities.

Commissioner rules that petitioners are domiciled in Hackensack, not South Hackensack, even if they eventually intend to live in their South Hackensack house; the children have never attended school in South Hackensack and are not entitled to a free public education in South Hackensack schools V.A. and J.A., Commr 2012: March 5.

Commissioner agrees with parent that she and her daughter are domiciled in West Orange. She produced a driver's license and a PSE&G bill which both bore a West Orange address. ALJ found that based on the testimony and documentation, mother and her daughter live in an apartment in West Orange with mother's spouse, W.S.; the lease for the apartment is in spouse's name; no evidence was presented to show that any of them have resided elsewhere during the 2011-2012 school year; credible testimony was presented. Child is entitled to a free public education; West Orange is ordered to re-enroll the child. J.A.E., obo K.H., Commr 2012: March 12 (West Orange)

Children who resided in West Orange since February 2011 in a house owned by their grandmother, were not entitled, pursuant to *N.J.S.A.* 18A:38-1(b), to a free public education in West Orange during the 2010-2011 school year because they were not supported by their grandmother gratis during that time. T.K., obo D.K., Y.K. AND A.K., Commr 2012:April 27

Although child's aunt living in West Orange had custody of nephew by court order , he was not entitled to a free education there because he started each school day at his mother's house in Montclair; and was not domiciled in West Orange during the 122 school days he had attended school in West Orange. Tuition reimbursement ordered. R.F., Commr. 2012: April 27 (West Orange)

Parent fails to appear in *pro se* residency appeal on behalf of her child; dismissed with prejudice. V.O., o/b/o O.O. Commr 2012: May 3 (Orange)

Deputy Commissioner grants summary judgment to board, in matter where parent appeals board's determination that her son was not eligible to attend the Regional High School for the 2011-2012 school year, on grounds that she was not properly notified of the district's decision to disenroll her son. Deputy Commissioner agrees with ALJ that neither of the divorced parents reside in the district, and there is no hardship to qualify for affidavit pupil status; and she was on notice of board's determination since board afforded her an opportunity to participate in a hearing to set forth her position, pursuant to N.J.A.C. 6A:22-4.2. A.P., o/b/o M.M. , Commr: 2012:June 14 (Hunterdon Voorhees)

Student was not eligible for free public education in district. Investigation revealed he lived in a different district. Commissioner remands for determination of actual tuition amount based on time student spent

with mother or father who lived in the two different districts. E.A.A., Cmmr 2012: July 11

Student was not eligible for free public education in district. Despite producing a child support document, a federal student loan bill, and an independent business registration indicating residence in the district, petitioner failed to produce any proof of residency such as voter registration, licenses, or financial account information that might demonstrate a personal attachment to a specific location. A lengthy residency investigation by district revealed that students lived in another town. Petitioner ordered to reimburse the Board for tuition in the amount of $84.09 per day for 180 days, or $15,136.20. J.V., Cmmr 2012: July 16

Pro se residency appeal dismissed with prejudice where petitioner failed to appear without explanation. Board withdrew counterclaim for tuition. M.D. and D.A., Commr 2012: July 16.

Pro se residency appeal is dismissed where petitioner failed to appear without explanation. Board presented proofs that student was not a resident during the disputed time. Counterclaim for tuition in the amount of $6773.00 is granted. O.C., Cmmr 2012: Aug. 8

Parent claimed that students were transferred from one district to another pursuant to the Unsafe Schools Option under No Child Left Behind. However, there were no documents reflecting the alleged Unsafe School Choice Option transfer, nor any record of an agreement between the two districts on the education of petitioner's children. Petitioner must reimburse the Board for tuition in the amount of $76,223.40 for the period of her children's ineligible attendance in the district schools. L.B., Cmmr 2012: July 16

Aunt failed to provide proof of residence, provided proof of guardianship of student after three months had passed. Aunt also failed to appear at hearing. Petitioner must pay tuition for period of ineligibility in the amount of $2828.00. Y.C., Cmmr 2012: Aug. 3.

Student continued to attend district schools despite the fact that neither parent lived in district after separation. Parents ordered to pay tuition in the amount of $12,600 for the period of J.M.H.'s ineligible attendance in the district's schools. J.M.H. Cmmr 2012:Aug. 10

Student of divorced parents, with joint custody agreement, eligible for free public education in Wood-Ridge, notwithstanding representation of father that student lived with him in Hasbrouck Heights. Facts reflected proof of Wood-Ridge domicile; mother was "parent of primary residence," student's driver's license and summer work history reflected a Wood-Ridge address. J.B., Wood-Ridge, Commissioner 2012: September 17

Residency appeal is dismissed for failure to prosecute. *M.W.*, Commr 2013:Feb 5 (North Brunswick)

Petition dismissed for failure to prosecute, in *pro se* appeal requesting that student remain in his present elementary school placement. *T.W.*, Commr 2013:Jan 3 (North Brunswick)

Board of Education's determination to discontinue the funding of student's educational services must be overturned. Student was placed in a group home by the Division of Developmental Disabilities (DDD) in 2010, at which time the Department of Education determined the board of education was the student's district of residence for school funding purposes. Any change in such designation can only be accomplished by a redetermination of district of residence on appeal. The board of education remains the district of residence responsible for the funding of the student's educational services unless and until such designation is altered through the utilization of the appropriate methodology. *R.L. o/b/o K.O.L., C*ommr 2013: March 4

Student deemed ineligible to receive a free public education in the school district. Student alleged that mother's home was damaged by Hurricane Irene, causing her to move in with sister, enabling her to complete her senior year. Record did not support her allegations; she was still living with her mother. Parent deemed liable for tuition from April through June 2011. ($3559.20) Parent and sister deemed liable for tuition for all of 2011-2012 school year. ($11,864) No specific time frame for payment ordered. *C.B. o/b/o S.H.*, Commr 2013: March 7

Student deemed not resident in the school district for the 2011-2012 school year. Tuition assessed in the amount of $ 5,255.48, representing seventy-four days of ineligible attendance at the daily rate of $ 71.02. Parent failed to appear at OAL hearing. *A.H. o/b/o N.H.,* Commr 2013: March 19

Board of education properly determined that student was non-resident and ineligible to attend school in the district. Board was neither arbitrary nor capricious in declining request to attend as non-resident tuition student; student did not meet any of the criteria.

Board entitled to tuition reimbursement for the 2011-2012 and 2012-2013 school years; fairness and time considerations dictate that student be allowed to finish her senior year. Parent ordered to pay, by July 1, 2013 – tuition in the amount of $32,393 for ineligible attendance during the 2011-2012 and 2012-2013 school years, with student being allowed to finish her senior year. *J.G. o/b/o S.G.,* Commr 2013: April 3.

Pro se residency appeal is dismissed in favor of district for failure to prosecute; as ALJ decision fails to provide exact amount of back tuition, matter is remanded to the OAL for a determination as to the exact amount of tuition costs for which parent is liable in connection with student's ineligible attendance in the district. *A.L.T., o/b/o K.I.R. , Commr 2013: Aug 2*

Commissioner determined that student was not domiciled in the school district as of October 1, 2011, the date upon which the lease commenced in the out of district property. District deemed entitled to tuition reimbursement of $ 14,824.62 for the 162 days of tuition at the cost of $ 91.51 per day of ineligible attendance. District's proofs regarding the purported cost of the student's special education component, $ 5,417.87, failed to establish the accuracy or authenticity of the special education amount. *C.F. o/b/o A.F.*, Commissioner 2013: September 17

Commissioner determined that students were not domiciled in the school district for the 2011-2012 school year. While parent stated that she was living in her father's house in Marlboro, the Board's residency investigation, testimony and documentary evidence established that parent and her children were living at her grandparents' house in Edison at the time in question. Parent and children have since established residency in Marlboro. Parent found liable to the Marlboro school district for 2011-2012 tuition for both children in the amount of $20,598. *S.S. o/b/o A.S. and A.S.*, Commissioner 2013: October 10

Where petitioner failed to appear and prosecute his appeal of the Board's residency determination and the undisputed evidence established that the student was not domiciled in West Orange, the Board properly determined that the student should be removed from the district and that the district is entitled to recover tuition for periods of ineligible attendance in its schools in the amount of $24,040.68 for a period of 178 days during the 2012-2013 school year. *F.L., o/b/o R.L.*, Commr 2013:Nov 18 (West Orange).

Board is awarded back tuition of $11,439.00 where parent did not provide the requisite re-registration documents when requested by the respondent Board; and the parent failed to prosecute the appeal and student was not entitled to a free public education in the respondent's school district. *A.L.T., o/b/o, K.I.R.*, Commr 2013:Dec 23. (Jamesburg)

Family was determined to have a residence and was not homeless as first claimed. Board sought reimbursement. Matter dismissed for failure to prosecute. Claim for tuition dismissed as time spent in district was "transitional." *M.K., on behalf of minor children, V.K. and N.K.*, Commr 2014: Feb 4

Commissioner adopts ALJ's recommendation that petitioner resided in the school district during the time in question. Credible evidence indicated that petitioner lived in a sublet department after being evicted from his former apartment in the school district. Student entitled to a free public education in the school district. Board's claim for tuition dismissed. *E.H. o/b/o E.H. and J.H.*, Commissioner 2014: April 7

Grandmother who was court-ordered residential custodian of child did not prove that child was entitled to a free public education in Burlington schools; surveillance showed that child resides with his mother in Philadelphia and in such cases, where the facts in evidence are discrepant with the terms of a custody order, the Commissioner will look behind the terms of the order, find that the child is not domiciled in the subject district. As mother is not a party to this case, tuition may not be assessed against her. Commissioner rejects ALJ's determination that grandmother is not liable for tuition, finding that she was in fact her grandson's guardian as defined in *N.J.A.C.* 6A:22-1.2; Commissioner dismissed grandmother's petition and assessed tuition in the amount of $18,381.34. *A.B., o/b/o L.M.D-R*, Commissioner 2014:May 2 (Burlington)

Commissioner rules in favor of Hawthorn Bd. in its appeal of the interim Executive County Superintendent's determination that Hawthorne was the district responsible for the cost of educating a child who allegedly became homeless prior to enrolling in the Prospect Park School District between January 2013 and April 2013. Finds that the parent voluntarily left her apartment to move back to Prospect Park as part of the process of moving to Florida, which occurred a few months later; thus, no crisis of immediacy displaced the family, and the family's circumstances are clearly distinguishable from cases where a family becomes transient due to an emergency. *Hawthorne Bd. of Ed. v. Prospect Park Bd. of Ed.*, Commissioner 2013:May 12.

Commissioner orders back tuition for period of illegal attendance in the amount of $19,619.76 after evidence showed that parents shared custody of student, that student moves frequently between Hamilton address and Trenton address but spends far more time in Trenton with mother than with father's cousin in Hamilton, and mother retains financial responsibility for her son; after leaving in the morning from his mother's Trenton address, he attended school in Hamilton; father's cousin has not assumed guardianship nor is she responsible for his support and maintenance; father has not been physically present since incarcerated in September 2012; I.J. intended to make her custody permanent by filing for a change in custody status in Superior Court in February 2014. As of September 2012 child was considered domiciled with mother in Trenton. I.J., o/b/o Q.J., Commissioner 2014:May 2 (Hamilton)

Where residency investigation confirmed that mother had moved from Ocean City and was domiciled at the home purchased in Marmora in May 2013; and where mother receives her important mail at the Marmora address, and keeps two pets there full-time and failed to credibly establish that the other addresses she identified during the hearing were legitimate Ocean City residential locations during

the period in question, Commissioner agrees with ALJ that mother and daughter were domiciled in Marmora for the 2013-2014 school year. However, the ALJ also concluded that child must remain in the Ocean City Intermediate school for the balance of the school year, unless mother opts to remove her, as changing schools this late in the school year would be too disruptive; petitioner's appeal is denied; she must pay the Ocean City School District tuition for the period of G.H.'s ineligible attendance. Remanded to determine amount of tuition. *E.H., o/b/o G.H.*, Commissioner 2014:May 16. (Ocean City)

Domicile of child was unclear due to conflicting evidence and parent failed to bear his burden to show that child was entitled to a free public education in Ewing schools. Accordingly, the petition was dismissed and parent was ordered to reimburse the school district tuition for the period of ineligible attendance in the amount of $13,013.36, representing 188 days at a daily tuition rate of $69.22. *J.L., o/b/o J.L.-C.*, Commissioner 2014:May 19 (Ewing)

Board denies residency appeal of parent who failed to appear and prosecute; testimony of the school district's investigation showed that children live in Trenton with their mother; no evidence was presented to refute the Board's proofs; and the Board's Attendance Officer testified that the total amount of tuition due and owing for the ineligible attendance of petitioner's children is $35,394. *W.H. III*, Commissioner 2014:June 6. (Ewing)

Residency petition and counterclaim for tuition reimbursement are dismissed. Failure to prosecute and board waived its counterclaim. *D.B., on behalf of minor child, E.B.*, Commissioner 2014:June 25.

Commissioner rendered a determination as to where petitioners' children should attend school and which school district should be financially responsible for the children's educations. Petitioners were evicted, via foreclosure, from their longtime home in Cresskill in 2011, lived with grandparents in Little Ferry for a year, were forced to leave the grandparents' home in Little Ferry due to flooding from Hurricane Sandy, lived with relative in Paramus and Queens for a little over six months and returned to Little Ferry. Commissioner determined that the children were deemed homeless after the foreclosure and remain homeless. Commissioner granted the petitioner's request continuing the children's education in Cresskill, ordered that Little Ferry remain financially responsible for the education until the parents establish a permanent residence or are deemed domiciled in another jurisdiction. Commissioner disagreed with ALJ's determination that children were no longer homeless and should be enrolled in the Little Ferry schools. *M.O'K. and S.O'K. o/b/o K.O'K., A.O'K. and C.O'K.,* Commissioner 2014: August 12

Commissioner upheld board determination that T.B. and K.B. were not entitled to a free public education in Hunterdon Central Regional High School (HCRHS) during the 2011-2012 and 2012-2013 school years. Children were domiciled during the period in question in Martinsville, which is outside of the HCRHS district. Commissioner found that: petitioner's move to Martinsville in 2010 gave every indication of being a voluntary domicile change; petitioner claimed that she intended to move back to her former home in respondent's district, but her actions suggest otherwise; petitioner bore the burden of proving that her children were entitled to a free public education in HCRHS, but failed to do so. Parent alleged that the Board ignored various extenuating circumstances, but the ALJ found no merit to that claim. Summary decision was granted to the respondent, and petitioner was ordered to pay the Board tuition in the amount of $63,182. The petition was dismissed. *K.F. o/b/o T.B. and K.B.*, Commissioner, 2014: October 2

On July 18, 2014, Commissioner granted summary decision in favor of the Board for the cost of tuition pertinent to the period of ineligible attendance of C.J. and C.J. in the public schools of the Hamilton Township School District from September 5, 2012 to June 20, 2013; $ 24,408.00. Respondent failed to comply with his decision. Board requested that the Commissioner seek entry of the assessment on the judgment docket of the Superior Court pursuant to *N.J.S.A.* 2A:58-10. Respondent offered no reasons why the judgment against her should not be so docketed, although given an opportunity by this agency to do so. Commissioner ordered that, pursuant to *N.J.S.A.* 2A:58-10, M.J. is now subject to entry of a judgment by the court in the amount of $24,408.00, which represents the payment ordered at the conclusion of the contested case before the Commissioner, with interest to accrue as provided by law. *Board of Education of the Twp. of Hamilton v. M.J. o/b/o C.J. and C.J.*, Commissioner, 2014: October 7

On August 8, 2014, Commissioner granted summary decision in favor of the Board for the cost of tuition pertinent to the period of ineligible attendance of C.B. in the public schools of the Hamilton Township School District from October 1, 2012 to June 20, 2013; $ 12,204.00. Respondent failed to comply with his decision. Board requested that the Commissioner seek entry of the assessment on the judgment docket of the Superior Court pursuant to *N.J.S.A.* 2A:58-10. Respondent offered no reasons why the judgment against her should not be so docketed, although given an opportunity by this agency to do so. Commissioner ordered that, pursuant to *N.J.S.A.* 2A:58-10, M.J. is now subject to entry of a judgment by the court in the amount of $12,204.00, which represents the payment ordered at the conclusion of the contested

case before the Commissioner, with interest to accrue as provided by law. *Board of Education of the Twp. of Hamilton v. S.B. o/b/o C.B*, Commissioner, 2014: October 7

Commissioner granted board's motion and dismissed parent's residency appeal with prejudice. Parent had failed to respond to the board's discovery requests, failed to appear at a scheduled hearing, failed to contact the OAL and failed to provide an explanation for his non-appearance. Board had determined that his son was not entitled to a free public education in the Township of Hainesport schools. Parent asserted that student had attended school in Hainesport for ten years, and that custody of his son has recently been shared between the parents, who are separated. Father owns a house in Hainesport, and mother rents a condo in Mount Laurel, with the student's time being divided between the two households. *R.P. o/b/o A.P v. Bd. of Ed. of the Twp. of Hainesport*, Commissioner, 2014: October 23

Commissioner upheld board determination that student was not eligible for a free public education in the Union Township school district. District investigation concluded that students were not living with parent's brother and sister-in-law in Union. While parent claimed that she lived at her brother's home in Union because of heating problems in her East Orange apartment, there was no documentation to support her claim and the landlord, who lived on the property, testified that he had never seen either the parent or the child. Parent failed to sustain her burden of proof that she lived in Union Township. Commissioner ordered parent to pay tuition to the board for the period of ineligible attendance; $ 13,625 for the 2013-2014 school year plus $ 77.58 per day for each day of ineligible enrollment in the 2014-2015 school year. *N.J. o/b/o J.J v. Bd. of Ed. of the Twp. of Union*, Commissioner, 2014: October 27

Commissioner determined that parent failed to prosecute his residency appeal and dismissed the appeal. Parent could not be reached for a pre-hearing conference and failed to appear for a hearing. Board's residency investigation showed that on at least 15 occasions between March 26 and April 29, 2014, parent was observed driving to the West Orange address where she purported to be domiciled, and then walking her daughter to school. Parent's car was observed parked in front of an apartment building in Orange. Commissioner upheld the board's determination that the student was not domiciled in West Orange and granted the Board's application for tuition reimbursement for the period of ineligible attendance in the 2013-2014 year in the amount of $6,207.84. *K.G. o/b/o M.K.E v. Bd. of ed. of the Twp. of West Orange*, Commissioner, 2014: October 29

Commissioner determined to dismiss parent's appeal of a residency determination where parent withdrew the students from the district and refused to sign settlement agreement (M.H. v. Bogota Bd. of Educ.: Commr., 2014, Dec. 23).

Commissioner determined that students were not domiciled in the district and ordered tuition to the board in the amount of $12,762 per child. (R.C.P., Jr. v. Hillside Twp. Bd. of Educ.: Commr., 2014, Dec. 23)

Commissioner determined that late notice to parents of outstanding tuition justified reduction of tuition award. Despite parents' good faith intent to move to the district upon completion of construction of their new home, parents failed to demonstrate that they were domiciled within the district. (S.Y. v. Wyckoff Twp. Bd. of Educ.: Commr., 2014, Dec. 15)

RESIGNATION

Board acceptance of resignation in March, without recission of one-year leave of absence, made resignation effective June 30, the end of the approved leave. (04:April 12, Lustberg, aff'd St. Bd. 04:Sept. 1)

Board could not unilaterally change tenured staff member's proffered resignation date to an earlier date more to the board's liking as this would violate tenure rights; that the staff member planned not to work, but rather to use vacation days for the 60-day notice period, was immaterial. (04:Sept. 24, Soriano, aff'd St. Bd. 05:March 2)

Board's unilateral change of tenured teacher's resignation date, thereby purporting to retire him a month prematurely and involuntarily, was tantamount to an unlawful discharge; board must pay full salary minus pension received for that month. (03:Dec. 29, Bloomfield)

By resigning his position nine or ten days after receiving notice of non-renewal guidance counselor relinquished any rights that may have otherwise accrued to him through a challenge to the non-renewal. (03:May 1, Cohen, aff'd St. Bd. 03:Aug. 8)

Notice

Settlement approved in matter seeking suspension of certificate for one year for failure to provide proper notice of resignation. (03:June 9, Robbie)

Rescission: custodian's rescission of resignation was valid where rescission occurred before Board took formal action to accept it. (98:Sept. 24, Monroe)

Rescission of resignation denied. Art teacher did not file petition in a timely manner. (03:May 1, Unangst)

Resignation was a voluntary, uncoerced, knowing relinquishment of guidance counselor position. Fact that it might have been predicated on non-renewal notice is of no consequence. (03:May 1, Cohen, aff'd St. Bd. 03:Aug. 8)

Settlement

Settlement approved in matter seeking suspension of certificate for one year for failure to provide proper notice of resignation. (03:June 9, Robbie)

Settlement of teacher's claim against district, which terms include teacher's resignation and payment of lump sum, rejected for failure to reveal factual context to Commissioner. (99:June 7, Moreen)

Teacher's certificate suspended for one year for failure to give proper notice of resignation. Engaged in unprofessional conduct. N.J.S.A. 18A:26-10. (02:April 29, Owens)

Teacher's failure to provide 60 days' contractual notice of resignation resulted in finding of unprofessional conduct and suspension of certificate for 1 year pursuant to N.J.S.A. 18A:26-10; poor working conditions no excuse. (98:Sept. 25, Verbesky)

Tenure dismissal: Tenure charges dismissed as moot upon unilateral resignation from district. (03:March 14, Sturm)

Tenure settlement: Voluntary resignation prior to removal for cause in tenure matter permitted superintendent to avoid the effect of the mandatory forfeiture provisions on his deferred retirement benefits; preservation of pension rights is a legitimate consideration of the Commissioner in considering tenure charges. (00:May 15, Mullen – involved CSA)

The Commissioner adopted ALJ's dismissal of teacher's petition concluding that her voluntary, unequivocal resignation terminated any employment rights she may have had in the district. Conversations that teacher had with school officials, which led her to believe that she could return to the district if the charter school did not work out, could not overcome her voluntary resignation. (04:Jan. 30, Williams)

The Commissioner agreed with and adopted the ALJ's determination that the board impermissibly accelerated petitioner's resignation date thereby depriving petitioner of one month's salary. The Commissioner found that this N.J.S.A. 18A:26-10, in conjunction with the parties' employment contract, which required the party wishing to terminate employment to give the other party 60 days' notice of such intent, required that petitioner be compensated for the full notice period. Although the Commissioner lacks jurisdiction over disputes that are solely contractual in nature, he does have jurisdiction over contractual claims that are incidental to his obligation to resolve education claims that are the subject of litigation. (04:Feb. 9, Carrelle)

Where tenure charges of absenteeism were dismissed upon teacher's retirement for disability, district has no obligation to notify State Board of Examiners under N.J.A.C. 6A:9-17.4, as the charges alleged neither criminal allegations nor conduct unbecoming. (04:Dec. 1, Robinson)

Petition dismissed where employee who resigned has lost standing to appeal rescission of a previously granted discretionary extension of maternity/child care leave. Petitioner's resignation was not made under duress, but rather was a reasoned decision made in order to spend more time with her child and, therefore, the resignation was binding; petitioner

relinquished any rights she had as a teaching staff member upon resignation, thereby rendering the instant proceedings moot; the petitioner did not have a vested right to the extended maternity leave once it was granted, as the board retained the right to reconsider this exercise of discretionary power; and petitioner has not demonstrated that the Board's discretionary exercise of power was arbitrary, capricious or unreasonable. DeKenipp 2011 Commr July 15

RESTITUTION

School district entitled to restitution in eight year scheme to defraud the school district through bribes and kickbacks involving insurance contracts. The Government established by a preponderance of the evidence, the School District's losses, a total amount of $4,336,987.91. Superintendent, who had previously forfeited $1 million, a 2010 Mercedes Benz and $8,950 in cash prior to sentencing, found to be jointly and severally liable for the full amount of restitution to the district. C-defendant found liable for only a portion of the total amount of restitution — $1,625,925.79 — because he was only involved in the scheme from 2002-2006. The Mandatory Victims Restitution Act ("MVRA") requires the Court to "order, in addition to . . . any other penalty authorized by law, that the defendant make restitution to the victim of the offense . . . ." 18 *U.S.C.* § 3663A(a)(1). The definition of "victim" includes "public institutions that receive government funding," like the school district. *United States v. Ritacco*, Criminal Action Nos. 10-cr-00713,10-cr-00697,11-cr-336,12-cr-220 (JAP), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 179663, Decided December 19, 2012.

RESTRAINING ORDER

A restraining order that barred a man from being anywhere near his ex-wife — a proviso he violated by attending his child's soccer game — was beyond the domestic violence statute's scope. The language at issue required the defendant to stay away from his ex-wife's home and place of employment and "any other place where [she] is located." Because the order did not specify the other places that were off limits but generally required the defendant to stay away from his ex-wife — a restriction "virtually impossible ... to obey at all times" — it was invalid, the court held in a precedential decision. State v. S.K. No. A-1488-10T1 (App. Div. Jan 17, 2012).

RETALIATION

After sole federal claim (FMLA) was dismissed, court finds lack of subject matter jurisdiction over state claims, and grants plaintiff special education teacher's motion to remand matter to Superior Court; teacher working for health care network alleged that Defendants took retaliatory actions against her because of her union activities, and her disability for

depression and anxiety. *Moran v. Northwest Essex Cmty. Healthcare Network*, 2013 U.S. Dist. LEXIS 23480 (D.N.J. February 20, 2013) (not for publication).

RETIREMENT AND PENSION

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Board's unilateral change of tenured teacher's resignation date, thereby purporting to retire him a month prematurely and involuntarily, was tantamount to an unlawful discharge; board must pay full salary minus pension received for that month. (03:Dec. 29, Bloomfield)

Commissioner affirmed DOE's exclusion of private school's pension contribution as allowable costs of certain employee salaries pursuant to N.J.A.C. 6A:23-4.5(a)23i. Excess contributions were deemed fringe benefits that were not distributed in an equitable manner. (05:May 18, YALE School)

Commissioner determined that pension contributions were a non-allowable per-pupil expense when distributed in an arbitrary and capricious manner rather than upon an equitable standard. (05:May 18, YALE School)

Commissioner ordered reinstatement of tenured elementary teacher as of March 1, 1999 -- the date on which petitioner was interviewed for an existing elementary teacher vacancy -- with emoluments, back pay, and any support necessary to assure petitioner's seamless re-acclimation to her teaching duties. Teacher had recovered from alcoholism. To the extent that petitioner is seeking enforcement of Commissioner's order, proper venue is Superior Court. (05:June 16, Klumb, motion for stay denied, Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

Former Director of Vocational Education whose position was abolished , had no bumping rights to entitlement to principal position where he had retired prior to filing his petition; moreover, his tenure rights did not attach to the position of principal. (98:Sept. 4, Janik)

If a vacancy at the former position, existed the statute requires that the recovered disability retireant be placed in that position. If not, he should be returned to "any other available duty" to which the district is willing to assign him. (05:June 16, Klumb, motion for stay denied, Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

Post-judgment interest

Commissioner did not find that board deliberately violated the statute, acted in bad faith or acted from other improper motive, therefore teacher was not entitled to prejudgment interest where board improperly failed to restore her after her recovery from a disability.

The Commissioner also observed that a claim for post-judgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to N.J.A.C. 6A:3-1.17(c)2. (05:June 16, Klumb, motion for stay denied. Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

Pre-judgment interest

Commissioner did not find that board deliberately violated the statute, acted in bad faith or acted from other improper motive, therefore teacher was not entitled to prejudgment interest where board improperly failed to restore her after her recovery from a disability. The Commissioner also observed that a claim for post-judgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to N.J.A.C. 6A:3-1.17(c)2. (05:June 16, Klumb, motion for stay denied, Commr. 05:Aug. 15, motion to supplement the record denied as exhibit not germane to appeal, St. Bd. 05:Nov. 2)

School board was not obligated to allow teacher to change his retirement date once it had accepted it, although the board had allowed him to do so once before. (02:July 26, Johnson III, aff'd St. Bd. 03:Jan. 8)

Teacher could not argue that his retirement request was nullified when TPAF voided the clause in his collective bargaining agreement permitting use of accumulated sick time to increase base salary in final years of employment, as his retirement request was not made conditional or contingent upon his gaining the benefits of this clause. (02:July 26, Johnson III, aff'd St. Bd. 03:Jan. 8)

Wife of principal appeals from a final decision of the Board of Trustees of TPAF denying her application for accidental death benefits pursuant to N.J.S.A. 18:66-46 upon the death of her husband, a highly respected school principal, who was killed when he left home early to pick up donuts with his own funds for his staff on Teacher Appreciation Day. Not entitled to additional benefits as accident did not occur "while in the performance of duties." Merce v. TPAF, No. A-0540-11T2, 2012 N.J. Super Unpub. LEXIS 2049 (App. Div. Aug. 28, 2012)

Court affirms agency ruling that Director and BA of charter school violated the State's pension laws and regulations by working while he was simultaneously receiving a TPAF retirement pension; ALJ properly and comprehensively analyzed relationship under IRS factors and determined that he did not work as a consultant; was actually an employee subject to reenrollment in TPAF. Rejects laches and equitable estoppel arguments, and remanded for determination of amount to be refunded to TPAF and potential applicability of N.J.S.A. 18A:66-53.2(b). Barckett v. NJ of Pensions and Benefits, No A-3244-10T3, 2012 N.J. Super. Unpub. LEXIS 1625 (App. Div. July 9, 2012).

Plaintiff who was a non-certificated computer specialist in district appeals denial of her claim for accidental disability retirement benefits. Employee

injured her hand when she was standing in the bathroom at work, stall door fell towards her and while trying to protect herself, a metal piece pressed into her hand between her palm and thumb. Independent medical examiner disagreed with her expert, and found no permanent disability. The ALJ weighed the expert testimony of her Dr. and that of independent , and found that independent Dr.'s opinion was more accurate, that the plaintiff had not borne her burden to prove by a preponderance of the credible evidence that she is "totally and permanently disabled as a direct result of a traumatic event. *Wright v. Public Emples. Ret. Sys., No. A-2390-11T2 (App.Div. May 31, 2013)*

Court dismisses challenge to pension reform law. Claim that increased pension contributions by employees was unconstitutional and violative of civil rights was without merit. Claim that pension law impaired contract was not ripe as committees set up under the law had taken no action that would alter those contracts. Further, New Jersey enjoys sovereign immunity from both federal statutory and federal constitutional claims. *New Jersey Educ. Ass'n v. State, No. L-771-12 (Law Div. June 13, 2013)*

In 2006 teacher was injured when a door hit her in the face as she was entering classroom to break up a fight; 3 years later she began to experience post traumatic disorder and other symptoms and filed for accidental disability; Court agrees with TPAF's determination that while she was totally and permanently disabled, it was not due to a "traumatic event" that was terrifying or horror-inducing to be sufficient to entitle her to enhanced accidental disability retirement benefit, and affirms that she is only entitled to ordinary disability. *King v. Board of Trs. of the Teachers' Pension & Annuity Fund*, No. A-3483-11T3, 2013 N.J. Super. Unpub. LEXIS 2454 (App. Div. October 10, 2013) (unpublished).

RIF (See, ABOLITION OF POSITION)

District could eliminate all three positions of its basic CST and contract with jointure commission for basic child study team services with increased hours at reduced cost; the elimination of tenured psychologist and LDTC positions did not violate tenure rights and permitted more economical delivery of CST services. (04:Dec. 20, Becton)

RIF of social worker position from 4/5 to 1/5 upheld. Decision to adjust the Child Study Team's workload was made in good faith and promoted economy and efficiency and did not violate tenure rights. (04:Jan. 8, Maher, aff'd St. Bd. 04:June 2)

Commissioner grants summary judgment to petitioning employee who had served for many years as a secretary and was promoted to Assistant BA in July 1, 2009, and who claimed that the termination of her employment pursuant to a RIF in 2011 violated her tenure and seniority rights. Commissioner determines that she had acquired tenure as a secretary district, and that in the context of promotions or voluntary reassignments, the waiver of tenure protection requires that the tenured employee voluntarily relinquish his or

her tenure rights, which she had not done; and she was promoted in part based on her thirty-five years of loyal service, as well as her experience in prior secretarial positions. Upon termination of her Assistant BA position she should have been returned to a clerical or secretarial position held by a non-tenured employee. If there are no secretarial positions held by non-tenured employees, she must be placed on a recall list; and, further, she is entitled to back pay less mitigation if, at any time since the RIF, there were secretarial positions held by non-tenured employees and those positions were not offered to her. DiNapoli, Commr 2012: June 7 (Verona)

While board claimed to have dismissed teacher in a RIF for reasons of economy, but made it clear in later filings that petitioner was actually dismissed because of allegations of misconduct, the board did not initiate the RIF in good faith, but rather as a ruse to avoid the expense and inconvenience of filing tenure charges pursuant to N.J.S.A. 18A:6-10 *et seq.* Accordingly, the ALJ concluded that petitioner must be immediately reinstated to his position and compensated for all lost salary, benefits and emoluments, less mitigation, retroactive to June 30, 2011. Schwartz, 2012: May 18 (Elizabeth)

Tenured instructor of electricity/electronics, employed since 1993, claimed that board violated his tenure and seniority rights when he was RIF'd, since the district hired or retained individuals who were non-tenured or lacked seniority over him. Acting Commissioner finds that he has no entitlement to position of Electrical Trades Instructor; his endorsement of Skilled Trades –Electricity/Electronics is no longer issued, but the expertise and skills previously included in this endorsement are now subsumed in the CIP Program Category #47:Mechanic and Repair Technologies/Technician cluster, whereas the Electrical Trades Instructor falls under the Construction Trades cluster and requires a certificate in Electrical Trades and experience as an electrical contractor, electrical wiring contractor, or electrician which petitioner does not possess. Petitioner failed to establish that his seniority rights were violated. Biasi, Commr 2012: June 14 (Morris Cty Vo Tech)

RICE NOTICE

District court found allegation of a violation of employee's right to confidentiality was sufficient to survive motion to dismiss. Public motion was made to discuss the employee without prior notice to that employee. Violation found although no action taken on the motion during that meeting. *Bergland v. Gray*, Dkt. No.: Civ No. 14-1972; (D.N.J. Oct. 17, 2014)

RIGHT TO KNOW

Newspaper was entitled to a redacted copy of ALJ's opinion in case involving teacher who allegedly committed sexual abuse against her students. Division of Youth and Family Services v. M.S., 340 N.J. Super. 126 (App. Div. 2001) See also In the Matter of Allegations of Sexual Abuse at East Park High, 314 N.J. Super. 149 (App. Div. 1998). See also, Certification revoked, D.Y.F.S. v. M.S. and I/M/O Revocation of Teaching Certificates of M.S., App. Div. unpub. op. Dkt. Nos. A-722-00T3 and A-2494-00T3, January 22, 2002, certification denied, 796 A2d. 897, 2002 N.J. LEXIS 691, April 25, 2002.

RULEMAKING

In challenge to rulemaking petition, court rules that Department of Education has met its obligation to provide required information to public school students under the High School Voter Registration law by requiring monitoring piece in QSAC. However, matter remanded to agency concerning promulgation of regulations for non-public schools as required under the law. Matter Of The State Board Of Education's Denial of Petition To Adopt Regulations Implementing The New Jersey High School ,Voter Registration Law, ___ N.J. Super.____(App. Div. 2011)

Challenge under Rule 2:2-3(a)(2) for agency inaction upheld concerning award of pharmacy benefit management services contract. Union had standing as its members were affected by the contract with provider. The appeal is remanded to the SEHBC so that it may make a determination on the issues raised after developing the record as it sees fit in accordance with its rules of procedure. NJEA v. Beaver, No. A-3221-09T3 (App. Div. April 19, 2011)

RULES OF PROCEDURE

Commissioner determined that an appeal of an unsuccessful demand for recusal must be taken before the chief judge and acting director of the Office of Administrative Law. (AAA School v. Passaic County Ed. Svcs. Commn: Commr, 2014, Dec. 18).

Commissioner dismissed employee's petition seeking restoration of sick days allegedly stemming from a work-related injury. Employee failed to respond to demand for discovery. (Lane v. State-Operated School District of the City of Paterson, Commr: 2014, Dec. 5)

SALARY

Overpayment

Board properly froze teacher's salary until the overpayment due to Board's error, was recouped; she would prevail even if her petition

were not out of time; and since Board's error was inadvertent, estoppel did not bar recovery. (98:Aug. 10, Harris)

District complied with wage execution order, where the district had notified the constable in writing that the employee was an on-call substitute, that wage attachment deductions are sporadic and can only occur when the employee is entitled to receive a paycheck, and where school presented evidence that the employee no longer worked there. Triffin v. Broadus, Newark Public Schools, 2011 N.J. Super. Unpub. LEXIS 282 (February 8, 2011).

Board's settlement of expired contract, which encompassed two years of retroactive salary and two years of prospective salary increases, violated N.J.S.A. 18A: 29-4.1, under which a board of education of any district may adopt a one, two or three year salary policy. Ramsey, Commr 2011: Oct 21.

Commissioner dismisses as untimely, a teacher's petition for back pay differential, leave benefits and pension credits in connection with his employment in the district prior to the issuance of his certificate of eligibility with advanced standing (CEAS) in September 2004; teacher had accepted a teaching position beginning in September of 2003 based on a contingency employment agreement with the expectation that his CEAS would be issued imminently, but it was not, and district paid him salary rate of per diem sub. Pinsl, Commr 2012: March 16 (Irvington)

Court affirms final decision of Acting Commissioner of Education upholding board's reduction of administrator's salary to comply with the salary-cap provisions of *N.J.A.C.* 6A:23A-1.2 and -3.1(e)(2), relying on its opinion in *New Jersey Ass'n of School Administrators v. Cerf*, 428 *N.J. Super.* 588 (App. Div. 2012). *Bacher v. Bd. of Educ. of Mansfield*, 2013 *N.J. Super*. Unpub. LEXIS 293 (App. Div. Feb 8, 2013)

ALJ finds that Board did not violate the Employer-Employee Relations Act (EERA) when it determined, without negotiating with the Teachers Union, to recoup funds erroneously paid under the 2002-2005 and 2005-2008 teacher contracts by freezing salaries and withholding increments and other benefits. The Board had managerial discretion to determine the means for recouping an inadvertent overpayment made to petitioners – as long as their salaries were not reduced. Ruling was sent to PERC for review as PERC had predominant interest in implementing the EERA, and PERC adopted the recommendations of the ALJ and obtained an extension of time for the Commissioner to issue a final decision on the school law issues involving calculating the payments. *Alparone, et al, v. High Bridge*, Commr 2013:Dec 19

SALARY CAPS

Commissioner finds that board properly reduced superintendent's salary; ECS never provided the required written approval of salary exceeding cap prior to announcement of new regulations on November 1, 2010, and does not find credible Superintendent contention that there had been verbal approval prior to the effective date of the new salary regulations (

February 7, 2011). Rejects Superintendent's alternate argument that his initial contract automatically "rolled over" because advance notice was not given of a change to the terms of the contract; rather, the initial contract remained in effect until it expired on July 1, 2011, entitling him to compensation in excess of the new salary cap; but on July 1, 2011, any "roll over" contract is unenforceable absent approval of the ECS; the ECS directed the Board to submit a new contract for her approval that complied with the maximum salary provisions; the Board rescinded and voided petitioner's former contract, but continued to pay petitioner in excess of the maximum until November 3, 2011. Board's actions in reducing petitioner's salary in November were proper and Board is entitled to reimbursement of $17,597, to recoup the salary it had paid to the petitioner in excess of the salary cap. *Seitz v. Parsippany-Troy-Hills Reg. BOE, Commr 2013: July 15.*

SALARY SCHEDULES

Board was arbitrary and capricious when it denied salary increases where there was nothing in evaluation to suggest poor performance and the increase had been recommended by supervisors and employee was the only person in district not to get raise. (00:June 12, Cheloc, aff'd in part and rev'd in part St. Bd. 02:July 2)

Board violated teacher's tenure rights when it reduced her salary to eliminate a disparity in salaries between her salary and that of her part-time colleagues; board ordered to reimburse her for amounts deducted, and to freeze her salary until such time as salary meets or exceeds her proper salary. (00:Feb. 28, Hendershot)

Charter schools

Charter school is not bound by the salary policy in its charter application as these are only a guide; only the board of trustees can establish a salary policy, and not the founders who prepared the application; therefore, no amendment to the school's charter was necessary. (02:Feb. 11, Pleasantech, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-0375-02T3, Dec. 5, 2003)

Principals' salary schedule did not have to be based alone on years of service; applied retroactively and was in conformity with N.J.S.A. 18A:29-4.1 and 4.3; summary judgment granted to board. (98:July 22, Bauer)

Recoupment of salary overpayments mistakenly made to tenured custodians does not violate tenure rights. (94:Dec. 21, Trenton, rev'd St. Bd. 99:Dec. 1)

Secretaries tenure rights not affected by school board's recoupment of salary overpayment. Salaries were from part-time non-tenured positions in adult evening school. (96 N.J.A.R.2d (EDU) 264, Sklute, aff'd with modification St. Bd. 00:Feb. 2)

SCHOOL CALENDAR

Education Association appealed board's determination to set a school year start date of August 24, 2011, seeking start date on or after September 1. Board made decision at September 21, 2010 public meeting, making petition untimely. Bethlehem Ed. Ass'n, Commr 2011:September 22

SCHOOL FINANCE

Defendant, Borough of Seaside Park appeals from the June 7, 2012 order directing it to: (1) forward all future tax payments to plaintiff, Central Regional School District Board of Education to make such payments until and unless the Superior Court, Appellate Division, or the Commissioner, New Jersey Department of Education (DOE), determines otherwise regarding such payments; and (3) dismiss all remaining claims asserted by the Borough. Funds collected under *N.J.S.A.* 54:4-75 are trust funds, and that the local municipality is "merely the collection agent for the county and the school district of these funds as to which its relationship is basically custodial." Borough lacks the discretion to decline to remit the collected funds. To permit the exercise of such discretion would "result in a serious potential for grievous interference with a continuous and efficient school operation and for the creation of intolerable crisis and chaos throughout the school year." *Central Reg'l Sch. Dist. Bd. of Educ. v. Borough of Seaside Park*, No. A-5729-11T3 (App. Div. June 19, 2014)

SCHOOL FUNDING

Students deemed not to be residing with grandmother in district. While two court orders granted grandmother "residential custody" of the students, based on surveillance of grandmother's residence, it was determined that students actually resided with their mother in another community. No credible evidence that students actually lived with grandmother. Petitioner ordered to disenroll students and remit $15,472.08 in tuition to the school district. (B.W. o/b/o S.L. and N.A., Commr 2007:Aug. 21)

Department of Education properly disallowed $66,000 from the private special education school's tuition reimbursement. School failed to provide the mandated four hours of instructional time on 70 days of the 2003-04 school year when half-day sessions were held. (Titusville Academy, Commr. 2007:July 6)

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 levey 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)

Student entitled to a free public education in the school district as a properly enrolled affidavit student. Student lived with grandmother, who assumed all personal responsibility for the student and intends to support the student gratuitously beyond the school year. Parents are not capable of

supporting student due to a family or economic hardship and did not send him to the grandmother simply to receive a free education in the school district. (R.A.J. o/b/o C.A.P., Commr. 2007:July 27)

Federal Impact Aid - 20 U.S.C.S. 7709 authorizes a state that seeks to qualize per-pupil expenditures to reduce the amount of state aid to offset federal aid received to account for. (Zuni Public School District No 89, et al. v. Department of Education et al., _____ U.S._____ (2007), 2007 U.S. Lexis 4335 (April 17, 2007)).

NJ Supreme Court denied plaintiff's motion to order the legislature to authorize additional construction funding by June 30, 2007 as premature. Abbott v. Burke, M-1088, 2007 N.J. Lexis, 588, (N.J. May 24, 2007).

Federal Impact Aid - Pursuant to 20 U.S.C.S. 7709, Secretary of USDOE is to disregard districts with per-pupil expenditures above the 95% or below the 5% when determining whether a state's public school funding program equalizes expenditures throughout the state. (Zuni Public School District No 89, et al. v. Department of Education et al., _____ U.S._____ (2007), 2007 U.S. Lexis 4335 (April 17, 2007)).

Student from Colombia living with brother in district is neither domiciled in district nor living in the home of someone domiciled in the district due to family or economic hardship. Brother must pay board tuition in the amount of $5,163.84, plus $78.24 per day for each day of student's attendance after June 6, 2007. (J.A.M. o/b/o C.A.M., Commr. 2007:August 15)

State Board reaffirms 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. (IMO Referendum for Withdrawal of North Haledon from Manchester, St. Bd. 2007:Nov. 7)(Decision on motion) See also decision on motion, Commr.11/10/2004; Commr. 1/18/2005; decision on motion Comm'r, 3/15/2005; decision on motion by Commr., 3/17/2005; decisions on motions by the New Jersey Supreme Court, 4/5/2005,

Student deemed ineligible to attend school in the district. Student was neither domiciled in the district nor living in the home of another domiciled in the district because of family or economic hardship. Parent required to pay tuition to the board in the amount of $3,751.02 plus $59.54 per day for each day of the student's attendance in the district after April 4, 2007. (D.R.P. o/b/o B.L., DeP, Commr. 2007:July 25)

Federal Impact Aid - The "Disregard Clause" contained in 20 U.S.C.S. 7709 is ambiguous because both students and districts are of concern to the statute. Therefore, the disregard instruction can include a population of students or of school districts weighted by pupils and not just a ranked distribution of unweighted school districts alone. (Zuni Public School District No 89, et al. v. Department of Education et al., _____ U.S._____ (2007), 2007 U.S. Lexis 4335 (April 17, 2007)).

State Board denies Motion to Supplement the Record in township appeal of $ 5,170,982 in restoration of budget reductions by the Department of Education. Certification and credentials of state's interim fiscal monitor are not material to the issues presented on appeal. DAG's motion to participate on behalf of Commissioner is granted, St. Bd. 2007: March 7 (decision on motion). (Willingboro, St. Bd. 2007:June 6)

By court order, residential custody of student was shared between mother and grandmother; mother on the weekends and grandmother during the week. Student's residency for school purposes followed that of the grandmother during the week. Student was entitled to a free public education in the grandmother's school district. (V.S-L., o/b/o Z.M.M., Commr. 2007:July 9)

Motion to consolidate final decision and interlocutory decision in school district of residence matter granted. Interlocutory decisions are subject to review by the State Board upon appeal of a final decision from the Commissioner even if an application for interlocutory review had not been made or if the application had been denied. (Neptune, St. Bd. 2006:June 7)

Students, whose father was incarcerated, were living with mother. Mother lived in another school district and wanted students to remain in their schools for the sake of continuity until father returned and resumed custody. Mother did not appear nor provide reason for nonappearance. Commissioner ordered tuition reimbursement for the 2006-2007 school year in the amount of $14,812.56. (L.D.R. o/b/o T.M. and P.M., Commr. 2007:August 16)

Plaintiff's motion for a preliminary injunction denied. ALJ found that student has received some educational benefit in his current placement in small group resource room language arts and literacy instruction. Given the guidance of the Supreme Court of the United States that substantive compliance with the IDEA requires only that a student's IEP be "reasonably calculated to enable the child to receive educational benefits," Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982), the Court was disinclined to make a finding of irreparable harm or success on the merits. W.R. v. Union Beach Bd. of Educ., 2009 U.S. Dist. LEXIS 108148

Commissioner's request granted to adjust deadlines for submission of semi-annual reports concerning the achievement of racial balance in sending-receiving relationship Englewood Cliffs, St. Bd. 2005 May 4.

Appellate Division affirms final decision of the Commissioner of Education concluding that the Board violated N.J.A.C. 6A:13-3.1, a class size regulation promulgated pursuant to the 2008 New Jersey School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 et. seq. Appellate Division concluded that the regulation was not an unfunded mandate, and the OAL, the Commissioner and the judiciary have jurisdiction over the subject matter of the dispute, that respondents have standing, and the Commissioner acted properly in adopting the summary decision of the AOL. There was no basis on which to determine that the Commissioner

acted in an arbitrary or capricious manner. Elizabeth Educ. Ass'n v. Board of Educ., DOCKET NO. A-5506-09T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 3065, Decided December 16, 2011.

Appellate Division affirms Commissioner's decision, which reinstated and certified the School Funding Reform Act statutorily required minimum tax levy for the Elizabeth school district. Governing body had, in its review of the voter defeated budget, reduced the tax levy below the statutory required minimum. Appellants contend the Commissioner's decision was unconstitutional because it abrogates the statutory right of the voters to reject the budget proposed by the Board of Education and the statutory right of the City's governing body to recommend cuts in the school budget. The Commissioner's decision was essentially a ministerial one required by the SFRA; no discretion existed under the law to reduce the budget below the mandated statutory minimum. Bollwage v. Schundler, DOCKET NO. A-5736-09T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2966, Decided December 7, 2011. Certification denied by Bollwage v. Schundler, 2012 N.J. LEXIS 391 (N.J., Mar. 26, 2012)

SCHOOL SEARCHES

Settlement: board member agrees not to search closed desks or other private areas of professional staff. (99:Dec. 27, Parleveccio)

District's motion for judgment on the pleadings is denied, in matter where student claims that board had no reasonable basis to conclude that he had taken steroids based on one student's misinterpretation of an Advil given to him by his father. Court refuses to dismiss claims for (1) Section 1983 claims for illegal search and seizure (and violation of the rights to procedural and substantive due process) (2) retaliation (3) violation of *N.J.S.A.* 18A:40A-12, *N.J.A.C.* 6A:16-4, *N.J.A.C.* 6:29-6.1, and the board's own policies and procedures; (4) negligence; (5) the district's negligent training and supervision of the CSA; court could not find as a matter of law, at this stage of the litigation, that Defendants are entitled to statutory immunity; more facts are needed to ensure that Defendants exercised the requisite skill and care in handling Plaintiff's situation, specifically because the report of his drug use came from another student, allegedly antagonistic to Plaintiff, rather than an educator or administrator. *A.V. v. Pennsgrove/Carneys Point Reg'l Sch. Dist.,* Civil Action No. 13-1598 (D.N.J. March 27, 2014)

SCHOOLS AND SCHOOL BUILDINGS

Application to install lighting on athletic fields does not require DOE review for educational adequacy, but rather must be submitted to the municipal construction agency. Determining factor triggering DOE review of capital

project application is whether review is required pursuant to N.J.A.C. 6:22-1.11, and not whether a nexus exists between nighttime lighting and district's educational program. (01:July 2, Northern Highlands Regional, aff'd unpub. Op. Dkt. No. A-2109-01T2, March 11, 2003)

Board of education and planning board disagreed over whether planning board had authority to preclude board of education's land acquisition. Commissioner dismissed without prejudice due to expiration of statute of limitations and rejected ALJ's determination that ministerial decisions of the Office of School Facilities Financing must meet the same standards for quasi-judicial determinations as state agencies. (02:Aug. 29, Eastampton Twp., settlement approved, motions granted and matter remanded, St. Bd. 03:Jan. 8, on remand, approval of boards application to construct athletic fields still valid, 03:April 14)

Board's motion for summary judgment granted; expenditure of public funds (money raised through bonds) to promote the constuction of a new school, was not an improper use of those funds. (01:Aug. 6, Rural Tabernacle)

Commissioner cautioned all boards that failure to act in accordance with the standards established in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-1 et seq., may result in action to withhold state funds. (03:Feb. 5, Wicks)

Commissioner denies the issuance of $12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)

Commissioner determined that petitioner's complain alleging that the board violated N.J.A.C. 6:22-1.7 by advertising, bidding and awarding a contract for a roofing project before obtaining construction code approval was moot. Commissioner found that the county construction board of appeals had previously approved the now completed project; therefore, petitioner's appeal was now moot because there was no meaningful relief to be obtained. Commissioner cautioned all boards that failure to act in accordance with the standards established in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-1 et seq., may result in action to withhold state funds. (03:Feb. 5, Wicks)

Commissioner dismissed petitioner's claims that board violated N.J.A.C. 6:22-1.7 by advertising, bidding and awarding a contract for a roofing project before obtaining construction code approval. Commissioner held that petitioner was barred by the doctrine of *res judicata* and by the entire controversy doctrine because the matter was previously litigated under Wicks v. Bd. of Ed. of the Twp. Of Bernards. (00:Nov. 20, Wicks, aff'd St. Bd. 01:April 4)

Commissioner orders the issuance of $19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Condemnation: Board sought to condemn property owned by New Jersey Transit for educational purpose. Court held that there is no express or implied statutory authority which permits a board of education to condemn land

owned by the State. Elizabeth Bd. of Ed. v. New Jersey Transit, 342 N.J. Super. 262 (App. Div. 2001)

Educational Facilities Construction and Financing Act (EFCFA) does not violate the State Constitution's Debt Limitation Clause (Clause), N.J. Const., Art. VIII, section 2, para. 3. Plaintiff argued that the Debt Limitation Clause bars contract bond financing without voter approval. The Appellate panel affirmed the Law Division's ruling that while the Clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay without prior approval by public referendum, the Clause is not violated here because successive Legislatures are not bound to make the appropriations to pay on the bonds. Lonegan; Stop the Debt.com v. State of New Jersey, 341 N.J. Super. 465 (App. Div. 2001)

Lease purchase is a "capital project," but is not "indebtedness" as intended under N.J.A.C. 6:3-7.2; therefore, Commissioner will not grant declaratory judgment barring the dissolving regional district from passing a resolution regarding 10-year lease purchase agreement at the present apportionment rate per constituent district, with benefit beyond the dissolution period. (00:Feb. 25, Lower Camden)

Motion granted for participation of Commissioner in matter involving violations of Public School Contracts Law. In the Matter of the State Share of School Facilities Project Costs under N.J.S.A. 18A:7G-15, motion granted, St. Bd. 03:April 2.

Purchase of land: board may purchase land from surplus without passing referendum, but only if voters pass on budget that includes line item reflecting such appropriation of surplus. In the unique facts here, despite board's failure to include purchase of vacant land as a land item, State Board did not invalidate purchase where public was informed of the purchase and there was no opposition. (00:Aug. 2, Fairfield, St. Bd. rev'g'00:Feb. 17, decision on remand 01:July 16, aff'd St. Bd. 01:Oct. 3)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Sidewalk improvement: Board does not have the statutory authority to expend public funds to improve sidewalk owned by municipality, in connection with a joint effort with municipality to develop and construct a recreational field pursuant to N.J.S.A. 18A:20-22; Division of Finance must recover from school board all state aid received on the amounts inappropriately disbursed. (00:Feb. 26, Wildwood Crest)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

SCHOOL CALENDAR

The Education Association challenged the board's decision to move the start of its school year to August 24, to coincide with the start of the school year of North Hunterdon Regional High School. Challenge was brought 9 months after the board's approval (much after 90-days), and thus was time-barred. Exception to 90-day rule for matters arising out of statutory entitlement as per Lavin did not apply; there here is no statutory basis prohibiting the Board in this case from commencing the academic or school year on September 1. *Bethlehem Twp. Educ. Ass'n v. Bd. of Educ. of Bethlehem Twp.*, No. A-1168-11T2, 2013 N.J. Super. Unpub. LEXIS 2212 (App. Div. September 6, 2013) (unpublished)

SECTION 1983

Board of education was properly granted summary judgment in parent's 1983 action in son's death in residential school where board did not violate IDEA by placing child in school without IEP as parents agreed to placement. Tallman v. Barnegat Bd. of Ed., 2002 U.S. App. LEXIS 19051, ____ F.3d ____ (3d Cir. 2002), decided August 21, 2002.

High school band director's Sec. 1983 claim that his contract was non-renewed in violation of his first amendment rights to petition and free speech dismissed. State claims dismissed without prejudice. No linkage between non-renewal and any protected right. Kadetsky v. Egg Harbor Twp. Bd. of Educ., 164 F. Supp. 2d 425 (D.N.J. 2001)

Plaintiff students filed a class action suit under Section 1983 based on allegations that the defendant superintendent's and school board's vote to close a neighborhood school violated several federal and state laws and/or constitutional provisions. Court affirms that students did have a substantive right to a free education, but it was not being taken away. The students were merely being transferred to a different school. Their claim that the school board's action violated their First Amendment rights also failed because the First Amendment created a right to speak freely but did not create a corresponding obligation on the part of the government to listen. Mullen v. Thompson, 2002 U.S. App. LEXIS 4946, ____ F.3d ____ (3d. Cir. 2002), decided March 7, 2002.

Court affirms district court's summary judgment in favor of the district and principal on student's claim that district is liable under the Fourteenth Amendment and 42 U.S.C. § 1983 for violations of her right to bodily integrity under the state-created danger doctrine, in matter arising out of sexual assault by five students upon her in school during lunch hour; court finds that district took no affirmative action to place student in danger or make her more vulnerable to the assault than she otherwise would have been. Brown v. School District of Philadelphia, No. 10-4184 (3d Cir. Sept 20)(E.D. Pa.) (not precedential)

In a former employee's Section 1983 action, the Court of Appeals affirmed the District Court's summary judgment in favor of the mayor and council.

Employee did not have a constitutionally protected property interest in payment for unused sick leave. New Jersey law did not establish a legitimate claim of entitlement to payment for unused sick leave for municipal administrators and the local employee handbook did not create a protectable property interest. School law cases which addressed sick leave accumulation and payment as a protected property interest were not applicable. Pence v. Mayor & Twp. Comm. of Bernards Twp., No. 10-3496, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 453 Fed. Appx. 164; 2011 U.S. App. LEXIS 22206, Decided November 2, 2011.

In a Section 1983 action brought by numerous public employee affiliated groups challenging the changes to the state retirement system laws brought about by P.L. 2011, 78, motion to dismiss brought by state legislative defendants, the New Jersey Senate and the New Jersey General Assembly was granted. Plaintiffs alleged that the legislative changes were unconstitutional because they impaired pre-existing contracts, violated the Due Process Clause, and violated the Takings Clause. Plaintiffs further allege that these changes violate provisions of the New Jersey State Constitution and that Defendants are liable on a theory of promissory estoppel. State legislators are immune from liability under section 1983 and the Eleventh Amendment sovereign immunity prevents a suit against the state by citizens of the state. N.J. Educ. Ass'n v. New Jersey, Civ. No. 11-5024, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 142301, Decided December 12, 2011. Motion granted by N.J. Educ. Ass'n v. New Jersey, 2012 U.S. Dist. LEXIS 28683 (D.N.J., Mar. 5, 2012)

Court of Appeals affirms District Court judgment, dismissing plaintiff's civil rights action and denied injunctive relief. Plaintiff claimed that Defendants violated his constitutional rights by failing to include referendum questions regarding proposed religious educational content in a special election ballot form. The attorney general and commissioner were immune from suit for money damages due to sovereign immunity. Plaintiff's first amendment rights were not violated. Plaintiff failed to state a claim for violation of his equal protection rights. *Torres v. Davis,* No. 12-3068, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, Filed December 4, 2012. Petition for certiorari filed at, 05/01/2013

Plaintiff's Title VII and ADA claims against Defendant dismissed with prejudice because, after considering conflicting precedent, the Court concluded that those statutes do not provide for individual liability, even when the individual is sued in his official capacity. Plaintiff's § 1983 claim against the Board dismissed without prejudice because the Board is not vicariously liable for Defendant's actions under § 1983 and Plaintiff has not identified any Board policy or custom that caused her injuries. Plaintiff's IIED claim dismissed with prejudice because the New Jersey Tort Claims Act bars damages for pain and suffering unless the Plaintiff suffered a permanent injury and over $3,600 in medical expenses.

Gretzula v. Camden County Tech. Schs. Bd. of Educ., No. 12-7357 (JBS/JS), 2013 U.S. Dist. LEXIS 115193 (D.N.J. August 14, 2013).

Pro se parent who alleged their son was bullied by track team coach over one year and that coach denied the student the right to speak at practice with his father, brings declaratory judgment under Section 1983 for violations of their First and Fourteenth Amendment rights, and under Title VI and IX. Court holds that while claims brought pursuant to § 1983 and for violations of Title VI and IX do not require exhaustion of administrative remedies; and although there is no constitutionally protected right to play sports, all claims are dismissed with prejudice, except that First Amendment claim is dismissed without prejudice, and Title VI claim is dismissed without prejudice against the Board, but with prejudice as to the individual defendants. *Mears v. Sterling Reg. Bd. of Ed.*, Civil Action No. 13-3154 (NLH-JS) (D.N.J. March 31, 2014)

SENDING –RECEIVING RELATIONSHIPS

Agreements

Commissioner rejected severance application where responding district first opposed, then acquiesced in the severance. Specific regulatory procedures apply where a petition seeking to sever a sending-receiving relationship is not opposed. (Newfield, Commr., 2009:March 11)

Commissioner approves the settlement agreement for a phase out of the severance of a sending-receiving relationship between Newfield and Buena – Commissioner noted that all statutory requirements were satisfied, and that there had been a feasibility study and public comments. Newfield, Comm'r. Supplemental decision, 2009: June 11(ALJ decision not yet available online). See also, Commissioner stating that in an uncontested application for severance, procedural requirements in N.J.A.C. 6A:3-6.1 must be followed prior to severance, and ordering further proceedings accordingly. Newfield, Comm'r. 2009: March 11. (ALJ decision not available online)

Commissioner directed to submit status report on magnet program to alleviate racial imbalance at high school, including funding for program. (St. Bd. 02:Dec. 4, Englewood Cliffs, report submitted and matter referred to legal committee, St. Bd. 03:Jan. 8, record ordered to be supplemented, St. Bd. 03:Feb. 19, prohibition against admitting tuition students lifted and St. Bd. retains jurisdiction, St. Bd. 03:April 2, Commissioner's request to adjust reporting dates granted, St. Bd. 04:May 5, Commissioner's request to postpone Nov. 2005 report until January 2005 granted, St. Bd. 04:Dec. 1, motion granted and decision of April 2, 2003 modified for Commissioner to submit annual report at August and November State Board meetings, St. Bd. 05:May 4) See, Court reviewed appropriate allocation of specific responsibilities between the Commissioner of Education and the Englewood School District in relation to the development and

implementation of a voluntary plan that is designed to achieve an appropriate racial balance and educational quality by means of magnet and specialty schools. Court determines that the Commissioner and State Board retain the ultimate responsibility for developing and directing implementation of a plan to redress the racial imbalance. Bd. of Ed. of Borough of Englewood Cliffs v. Bd. of Ed. of City of Tenafly, 170 N.J. 323 (2002), aff'g 333 N.J. Super. 370 (App. Div. 2000), certification granted in part, 166 N.J. 604 (2000), aff'g St. Bd. final decision 98:Oct. 7)

Court held that New Jersey's sending-receiving statutory scheme allocation of only one vote to sending school district survived rational basis review and was not unconstitutional. Strict scrutiny did not apply because the residents of the sending district did not reside within the geographic district that elected members to the board. N.J.S.A. 18A:38-8.2 as applied to Lincoln Park does not violate the principle of "one-person, one vote." English v. Bd. of Ed. of the Town of Boonton, 301 F. 3d 69 (3d. Cir. 2002) See also 161 F. Supp. 2d 344 (D. N.J. 2001) and 135 F. Supp. 2d 588 (D. N.J. 2001)

Court reviewed appropriate allocation of specific responsibilities between the Commissioner of Education and the Englewood School District in relation to the development and implementation of a voluntary plan that is designed to achieve an appropriate racial balance and educational quality by means of magnet and specialty schools. Court determines that the Commissioner and State Board retain the ultimate responsibility for developing and directing implementation of a plan to redress the racial imbalance. Bd. of Ed. of Borough of Englewood Cliffs v. Bd. of Ed. of City of Tenafly, 170 N.J. 323 (2002).

District could not agree to 30-year sending-receiving agreement; N.J.S.A. 18A:38-20 authorizes a maximum of 10 years, with future boards having the right to enter into successor contracts in 10-year increments; however, irrespective of contractual timelines the relationship cannot be altered or terminated except upon application made to the Commissioner pursuant to N.J.S.A. 18A:38-13. (00:Jan. 4, Hammonton)

Emergent relief denied for additional funding for academies to alleviate racial imbalance. Failure to show that irreparable harm will result if additional funding is not given. (St. Bd. 03:May 14, Englewood Cliffs)

Indispensable Party

Pupil attending receiving district's school requests to attend in another district because of discrimination and abuse; matter dismissed for failure to name sending district as indispensable party. (99:Dec. 27, C.H.)

Modification

Modification of sending-receiving relationship and creation of new dual designation relationship is approved. (98:Aug. 28, Saddle River)

Motion granted for Englewood to consolidate the appeal in this matter with the appeal it filed in 2003. State Board dismisses that portion of the appeal that relates to funding for the 2003-04 school year as moot. Motion

granted for the Education Law Center and the New Jersey State Conference of the NAACP to appear as amicus curiae, but it is premature to consider those issues that relate to compulsory regionalization in determining whether the Englewood Board is entitled to emergent relief. Motion for emergent relief denied, but Commissioner directed to immediately take such measures as are necessary to establish a budget for the Englewood Board for the 2005-06 school year that conforms with all legal requirements and provides adequate fiscal support to enable the Board to continue to provide the programs approved by the DOE that are aimed at correcting the racial imbalance at the high school. State Board directs the Commissioner to develop benchmarks to measure the progress being made toward achieving a racial balance in the composite student body at the high school that conforms to the Appellate Division's decision, to assess that progress in his August 2005 report to the State Board, as well as in all subsequent reports made to the State Board pursuant to our decision of April 2, 2003, and to provide the State Board with his recommendations for adjustments in the approach being taken. (St. Bd. 05:June 1, Englewood Cliffs)

Parties proposed consent order to resolve Boonton's application to sever relationship with Lincoln Park is rejected; Commissioner must assure that sufficient record is developed to ensure that there is no substantial negative impact will result from severance. Parties ordered to proceed consistent with process for uncontested severance applications. (03:Dec. 23, Boonton)

Sending district representative

A sending representative may, as an effect of his status as a board member on the receiving board, vote on procedural/organizational matters necessary to ensure the effective operation of the board itself; this does not extend to those matters arising from the operation of the school district. (04:June 17, Bloomingdale)

Receiving district's motion for summary judgment was granted, holding that agenda items involving certain appointments, the designation of board accounts and required signatures, the approval of financial depositories, and the approval of outside organizations' use of facilities, are neither procedural matters necessary to ensure the effective operation of the board itself (as opposed to the operation of the school district) nor expressly emunerated under N.J.S.A. 18A:38-8.1, and therefore, were beyond the scope of matters upon which the sending district could vote. (04:June 17, Bloomingdale)

Settlement

Settlement to modify sending receiving agreement by terminating aspects of relationship, is approved. (99:March 23, Hi-Nella)

Commissioner rejects settlement. Resolution by the Orange Board of Education approving the settlement properly presented to the Commissioner, but the required resolution by the Hanover Board of Education was not. Nor, in the alternative, did counsel for the

Hanover Board execute the settlement document. Matter remanded to the OAL for those proceedings necessary to perfect the settlement or adjudicate the controversy. Hanover BOE v. Orange BOE, Commissioner 2011: April 13

Severance

Board could readopt its sending-receiving relationship with Port Jervis, located in New York; N.J.S.A. 18A:39-10 is constitutional; the fact that New York students take different tests does not mean they are failing to obtain a thorough and efficient education. (01:Nov. 19, K.R.S.)

Burden: In cases where termination of a sending-receiving relationship is sought by the receiver rather than the sender, sender bears the initial burden of demonstrating that there is no feasible educational alternative available to it. The receiver is then given the opportunity to show that a feasible educational alternative does exist. (St. Bd. Dec. on motion, 02:October 2, Mountain Lakes)

Burden of proof in severance cases: party seeking termination has initial burden of producing feasibility study; burden then shifts to other party to demonstrate that termination will result in negative impact outweighing benefits of termination. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1, on remand to Commissioner, negative racial impact precludes severance, 04:Dec. 15, decision on remand aff'd, St. Bd. 05:May 4)

District's request for the return of its seventh and eighth grades, denied; racial balance and quality of education in both districts would be substantially negatively affected; application of order from 18 years ago that would have permitted such severance, was barred by laches and waiver. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1, on remand to Commissioner, negative racial impact precludes severance, 04:December 15, decision on remand aff'd, St. Bd. 05:May 4)

Neither the State Board nor the Commissioner will approve termination of a sending-receiving relationship when it has been established that no feasible educational alternative exists. (St. Bd. dec. on motion, 02:October 2, Mountain Lakes)

N.J.S.A. 18A:38-13 only applies to withdrawal of high school students. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1, on remand to Commissioner, negative racial impact precludes severance, 04:Dec. 15, decision on remand aff'd, St. Bd. 05:May 4)

Request for severance denied for failure to state a claim, where feasibility study admits to substantial negative impact with respect to educational, financial and racial considerations. (98:Oct. 6, Kingsway)

Severance approved but not to take place until petitioning board has constructed own high school. (01:Nov. 2, Barnegat)

Severance of 8-12 sending agreement was granted where parties agreed to severance, feasibility study showed no substantial educational, financial or racial impact to either district; however, severance not to take effect unless and until sending board has constructed its own high school. (01:Oct. 17, Washington)

State Board of Education has obligation to ensure that students from a sending district have an educational alternative before allowing termination of a sending receiving relationship. (St. Bd. dec. on motion, 02:October 2, Mountain Lakes)

While the Legislature has not established statutory criteria for withdrawal from sending-receiving relationships pursuant to N.J.S.A. 18A:38-8, the Commissioner will insure that no unreasonable financial hardship to district or detriment to the educational interests of the students. (01:Feb. 15, Mine Hill, reversed in part and remanded in part St. Bd. 01:Aug. 1, on remand to Commissioner, negative racial impact precludes severance, 04:Dec. 15, decision on remand aff'd, St. Bd. 05:May 4)

Tuition

High school parking lot: Emergent relief denied in dispute over whether work on receiver's parking lot constitutes a capital expenditure and not includible in the tuition cost or work is maintenance and therefore includible in cost of tuition. (03:March 21, Lincoln Park, decision on motion)

Legal costs, since not specifically excluded from the administrative code calculation of actual cost per student for tuition purposes, properly included in tuition calculation except where between the parties. (03:May 15, Lincoln Park, aff'd St. Bd. 03:Nov. 5)

Receiving district's inclusion of legal costs attributable to litigation between the sending and receiving districts in tuition calculation deemed improper. Prohibited by "American Rule" – each party bears its own litigation fees. (03:May 15, Lincoln Park, aff'd St. Bd. 03:Nov. 5)

Receiving district's omission of the building use charge in the estimated calculation of tuition did not prejudice sending district; charges had to be paid as based on actual per pupil costs, and dictated by regulation and contract. (99:June 7, Spotswood)

Work performed at the receiving district's parking lot was a "capital expenditure" and not a "repair;" therefore, sending district could not include a portion of the expense in the sending district's tuition rate according to the parties' agreement, statute or code; moreover, tuition may not be charged in excess of the calculated "actual cost per student." (05:March 23, Lincoln Park, aff'd St. Bd. 05:Sept. 7)

Commissioner concurs with ALJ that sending district board members are not entitled to vote on the selection of a board attorney. (Evans, Commr. 2007:May 1, State Board affirms 2007:November 7) (See related case, Gallagher v.

Atlantic City Bd. of Ed., Civil No. 08-3262, 2009 U.S. Dist. Lexis 16548- board violated attorney's procedural due process rights (D. N.J. Feb. 27, 2009).

Voting representation

Court held that New Jersey's sending-receiving statutory scheme allocation of only one vote to sending school district survived rational basis review and was not unconstitutional. Strict scrutiny did not apply because the residents of the sending district did not reside within the geographic district that elected members to the board. N.J.S.A. 18A:38-8.2 as applied to Lincoln Park does not violate the principle of "one-person, one vote." English v. Bd. of Ed. of the Town of Boonton, 301 F.3d 69 (3d. Cir. 2002), decided August 2, 2002. See also 161 F.Supp.2d 344 (D.N.J. 2001) and 135 F.Supp.2d 588 (D.N.J. 2001).

District Court ordered remedial plan be implemented whereby Branchburg would appoint six (6) members to the Somerville board, each with one vote, giving Branchburg control of 40% of the votes on matters affecting their high school students while enabling Somerville to maintain a majority vote. Somerville's motion to stay the remedial plan denied because Somerville maintains majority vote and may continue to operate the district. No irreparable harm demonstrated. On appeal to Third Circuit Court of Appeals. Branchburg Bd. of Ed. v. Bd. of Ed. of Somerville, et al., United States District Court, District of New Jersey Civil No. 98-5557 (AET) and 99-822 (AET) (Consol.)(May 22, 2001) District Court (Sept. 7, 2000) had held that New Jersey's formula for sending districts' voting representation on receiving district boards of education is unconstitutional as applied to the sending-receiving relationship between the Somerville and Branchburg boards.

District Court determined that board of education violated board attorney's procedural due process rights where board permitted sending-district representatives to vote on the attorney's appointment to the receiving district. Board members were not entitled to legislative immunity because sending-district participation was beyond parameters established by the Legislature and therefore the appointment was not procedurally legislative. N. Gallagher v. Atlantic City Bd. of Ed., Civil No. 08-3262, 2009 U.S. Dist. Lexis 16548 (D. J. Feb. 27, 2009).

New Jersey's formula for sending district's voting representation on receiving district's board of education is unconstitutional as applied to the sending-receiving relationship between the Lincoln Park (sending) and Boonton (receiving) boards. District Court Judge Hochberg on Aug. 21 ordered majority status to Lincoln Park; stay of that order granted by U.S. Court of Appeals, pending a full hearing. Lincoln Park Bd. of Ed. v. Boonton Bd. of Ed.,

United States District Court, District of New Jersey Civil No. 00-5394 (March 26, 2001)

Commissioner dismisses petition brought by receiving school (Northern Highlands) for tuition rate adjustment to cover the cost of a full-time aid it provided for a special education student from sending school (Saddle River) who graduated in 2006, and for reimbursement for the cost of one-to-one instruction in English for another special education student currently enrolled in the receiving school; summary decision granted to sending district as petition is out of time pursuant to *N.J.A.C.* 6A:23A-17.1(f)(6) as to graduated student, and under the parties' current send-receive agreement, charging for one-to-one instruction in English is not permitted, as it is part of the student's educational program and not a related service. Northern Highlands Reg., Commr 2011:September 26.

Citizen challenges expansion of sending-receiving relationship where district sends all of its students to neighboring district. Receiving district agrees to lease sending district building to accommodate expanded relationship. By renting the school sender was seeking to discontinue, receiver would be able to accommodate all the pupils of both districts as follows: kindergarten classes held in one receiver school; first and second grade classes held in the sender school leased to and operated by receiver; and all third through fifth grade classes in another receiver school. In recognizing the existence of sending-receiving relationships that leave a non-operating district and directing merger of non-operating districts, the Legislature did not amend Chapter 38 of Title 18A to prohibit arrangements that result in creation of a non-operating district. Rather, the Legislature addressed the consequences in a way that provides another avenue for reaching the goal of consolidation through mergers that are consistent with the thorough and efficient education of children. N.J. Const. art. VIII, § 4, para. 1. The Commissioner concluded that this arrangement was within the authority expressly and impliedly delegated to the Boards. Court affirms. Edmondson v. Board of Educ. of Elmer, 424 N.J. Super. 256 (App.Div. 2012)

Chesilhurst's petition for severance of its sending relationship with the Winslow (respondent) receiving district, and return of its pre-kindergarten through sixth grade students to its elementary school are appropriately dismissed as a consequence of a referendum on the November 2011 General Election Ballot in Chesilhurst, wherein the community voted 77 to 58 to continue to send Chesilhurst kindergarten through sixth grade students to Winslow Township Public Schools; the outcome of this referendum has rendered petitioner's appeal moot. Chesilhurst, Commr. 2012: April 17. OAL Decision

Where neither Sea Isle City nor Ocean City opposed the Commissioner's Order to Show Cause why the Commissioner should not 1) determine that Sea Isle cannot operate effectively and efficiently in order to enable students to achieve the core curriculum content standards, and direct the closure of the Sea Isle School District, or 2) recommend to the State Board that it order Ocean City to expand the send/receive relationship with Sea Isle pursuant to N.J.S.A. 18A:38-8, Commissioner therefore orders that the Sea Isle City School District be closed effective June 30, 2012, and further requests the State Board of Education to order the expansion of the send/receive relationship between Sea Isle City and Ocean City to include grades kindergarten through third pursuant to N.J.S.A. 18A:38-8. Matter of Closing of Sea Isle City School District, Commr 2012: May 7.

Ventnor, a sending district, had standing to bring an action for tuition reimbursement from the Egg Harbor, where Ventnor had a sending-receiving relationship with Atlantic City High School for grades 9-12, paid tuition for the student to Atlantic City, but alleges that in fact the student lived in Egg Harbor. ALJ's finding that Ventnor had no standing ignored the fact that Ventnor, as sending district for grades 9-12, was responsible for paying student's tuition to the receiving district. Statute does not preclude sending district from seeking reimbursement for tuition it has paid to send its students in grades 9-12 to the receiving district when it is determined that such a student is not domiciled in the sending district. Matter remanded regarding Ventnor's entitlement to reimbursement. *Haymaker v. BOE of Ventnor*, Commr 2013: June 17.

Commissioner approves Woodbine Board's application for severance of its sending-receiving relationship with Millville City Board and establishment of a new sending-receiving relationship with the Middle Township board; feasibility study shows no substantial educational, financial or racial impact will inure to any of the parties by changing receiving district for its high school students. *Woodbine v. Millville (Cape May Cty), Commr 2013: July 29*

Commissioner dismisses as moot a request by the Harrison School District for emergent relief, demanding that East Newark be barred from withdrawing from the send-receive relationship with Harrison; East Newark rescinded its resolution to withdraw its high school students from the send/receive relationship with Harrison and East Newark approved and executed a tuition contract with Harrison. *Harrison v. East Newark*, Commr 2013:Dec 19.

Interlaken, a non-operating school district, sought to sever its sending-receiving relationship with Asbury Park and enter into sending receiving relationships with West Long Branch and Shore Regional. After review of Interlaken's feasibility study and

withdrawal of Asbury Park's opposition to severance, Administrative Law Judge determined that there was no substantial negative impact on the districts under *N.J.S.A.* 18A:38-13, and recommended granting Interlaken's request to sever its current relationship with Asbury Park and enter into a new send-receive relationship with West Long Branch and Shore Regional. Because of the lack of any adversarial perspective, each of the district boards of education must follow the process set forth in *N.J.A.C.* 6A:3-6.1 before Interlaken's application to sever its current relationship with Asbury Park and enter into a new send-receive relationship with West Long Branch and Shore Regional can be granted. *Interlaken, West Long Branch and Shore Regional*, Commissioner 2014: April 21

Commissioner grants Longport's application for severance of its send-receive relationship with Atlantic City subject to its entering into a new agreement with Ocean City for a minimum of five years; agrees with ALJ that there would be no substantial negative impact upon the educational and financial condition of the districts, but disagreed with the ALJ's extreme notion that the current racial balance of the receiving district is dispositive of whether a substantial negative impact will result from severance; insufficient evidence of aggravating circumstances in the record to support a finding that the otherwise *de minimis* 4% proportional change represents a "substantial negative impact" on the racial composition of ACHS; under all of the instant circumstances, severance will not have a substantial negative impact on the highly diverse racial composition of ACHS. *Longport Bd. of Ed.*, Commissioner 2014:June 5.

Commissioner approves the severance of Interlaken's send-receive relationship with Asbury Park and establishment of a sending relationship with the West Long Branch and Shore Regional school districts. The feasibility study and accompanying certifications and exhibits demonstrated that petitioners satisfied all of the statutory elements required for severance; the demographic enrollment in Asbury Park schools will not change if severance is granted; dissolution of the sending/receiving relationship and creation of the new relationships will have no negative impact upon the education of students in any of the implicated school districts; and the proposed changes to Interlaken's sending/receiving relationship will have little financial impact on any of the districts involved, with the exception of a possible tax increase for Interlaken residents. *Interlaken v. Asbury Park, West Long Branch and Shore Regional*, Commissioner 2014: July 17

SENIORITY

Commissioner dismisses on summary judgment, a challenge by tenured secretary whose position was abolished who claimed entitlement to a full-time secretarial/clerical position held by non-tenured and/or less senior tenured employees. Petition was filed out of time; no evidence presented to show that relaxing of 90-day rule is warranted. Polanco-Gomez, Commr 2011: June 15.

Teacher's claim that board violated her tenure and seniority rights in a RIF, reinstated. Teacher had moved to new residence and had not received notice of hearing. Commissioner concluded that interests of justice and fair play dictated that petitioner's explanation for her failure to appear – supported by her certification – be accepted and petitioner be given an opportunity to have her claim against the Board litigated. Clayton, Commissioner 2012: September 17

Commissioner determined that tenured teacher did not have greater seniority where she had not performed services under an acquired endorsement and consequently could not accrue seniority absent particular subject matter experience. Also, no evidence was provided indicating that a competing teacher's elementary endorsement prevented him from teaching 6th & 7th grade Social Studies (McKennedy v. Brielle Bd. of Educ., Commr: 2014, Dec. 29).

SETTLEMENTS

Commissioner declines to approve a settlement as neither the file nor agreement contained a copy of the board's resolution approving the settlement, and where the agreement is not signed by the board attorney, the board's duly authorized representative in litigation. D'Amelio, 2011:Dec. 12 (Hoboken)

SICK LEAVE

Accumulated sick days: Where teacher resigned prior to resolution of tenure charges and prior to his guilty plea for crime warranting forfeiture, district was ordered to pay him sick days accumulated prior to the date the district certified tenure charges against him. (98:Nov. 17, Reed)

Board improperly charged teacher sick leave for work-related injury. Commissioner cautions against effectuating terms of agreement prior to settlement. Settlement approved. (02:June 26, Butcher)

Board may require physician's certificate to be filed with secretary of board of education in order to obtain sick leave. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

Commissioner dismissed matter for lack of prosecution where it had been placed on the inactive list nine years previously due to a pending worker's compensation claim. (04:July 9, Skipper)

Current State education law, which differentiates between nonpublic school students and home-schooled students with respect to providing funds for speech therapy, is constitutional, but in the context of the facts of this case was unconstitutionally applied to the infant plaintiff who sought speech therapy at the public school facility and not at home. This service was offered to other nonpublic school students at the public school, to deny a home-school student the service was a denial of equal protection. Forstrom v. Byrne, 341 N.J. Super. 45 (App. Div. 2001)

Determination of eligibility for temporary disability benefits by Workers' Compensation court sufficient to enable Commissioner to make a determination whether sick leave benefits under N.J.S.A. 18A:30-2.1 exists. No need to await permanent disability award. Sick and vacation days ordered restored. (01:Feb. 26, Frabizio)

Employee's tenure rights not violated when board of education docked employee a day's pay for failure to provide sick leave verification for a day's absence. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

Nurse who settled workers compensation matter might be entitled to additional reimbursement for sick leave days pursuant to N.J.S.A. 18A:30-6, where she believed the settlement already included payment for those days, even though agreement evidenced a waiver of the right to seek sick leave. (00:Oct. 16, Sheridan, rev'd and remanded St. Bd. 01:June 6)

Person filing restoration of sick day claim under N.J.S.A. 18A:30-2.1 must file such claim within 90 days of receipt of notice that sick time is being exhausted; untimely petition is dismissed; equitable estoppel did not apply because it was unreasonable for teachers to forego filing their petition within the 90 days simply because they believed that the sick-day issue would be handled concurrently with the resolution of their workers' compensation claims. (98:July 17, Powell, et al., appeal dismissed 98:Nov. 4)

Settlement approved: sick leave restored following determination of temporary disability for work-related accident. (02:June 26, Magaw)(02:June 26, Cavera)

Settlement of workers compensation claim prior to determination of whether injury occurred in the course of employment, did not bar teacher from pursuing a claim for additional benefits under N.J.S.A. 18A:30-2.1, as no knowing waiver of such right occurred. (00:March 1, Marino, St. Bd. rev'g 99:April 13, settlement on remand, Feb. 16, 2001)

Tenure charge of incapacity was not premature just because teacher has not yet received workers compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Case dismissed with prejudice a bus driver's petition for restoration of sick time for injuries sustained during employment pursuant to N.J.S.A. 18A:30-2.1; matter had been placed on the inactive list while workers compensation matter was pending and had subsequently settled, but repeated attempts by ALJ and board counsel to obtain status update from petitioner's counsel went unanswered. Fiore, Commr 2011: June 3. (Morris)

Commissioner rejects secretary's claim that board improperly charged her sick leave bank for absences attributable to a work-related injury; she failed to file complaint within 90 days of the date of the Order approving settlement of her worker's compensation claim. Bishop, 2011: June 24.

Commissioner denied retired teacher's request for restoration of 77.5 sick days used with respect to injuries allegedly sustained in January 2004 fall while in the course of employment in the school district. Teacher had settled two worker's compensation claims without any findings on the underlying merits. Teacher failed to establish by a preponderance of the evidence that her neck injury was work-related. Medical evidence, given the lapse of time between the fall and the diagnosis of the neck injury, could not make a causal connection between the neck pain and the fall. Desai, Commissioner 2012:October 12

SPECIAL EDUCATION (See also, DISABILITIES, PUPILS WITH)

Annual cost per pupil: certain items, including investment and severance expenses, were non-allowable in the calculation of annual cost per pupil for tuition reimbursement by the state to private special education residential school, under N.J.A.C. 6:20-4.4. (01:April 12, Carrier Foundation, aff'd and remanded in part, St. Bd. 01:Oct. 3, settlement approved, 02:July 11, aff'd St. Bd. 02:Oct. 2)

Attorneys' Fees

Attorney fees: Parents of disabled child who never participated in mediation or requested a due process hearing, but simply met with members of the child's IEP team, could not recover attorneys' fees. B.C. v. Bd. of Ed. South Brunswick Twp., 348 N.J. Super. 654 (Law Div. 2001)

District Court determined that fees should not be reduced simply because plaintiff did not succeed on every contention of the petition. F.B. o/b/o M.B v. East Orange Bd of Ed., Civil No. 08-1206, 2008 U. S. Dist Lexis 75800 (D. N.J. Sept. 30, 2008)

District Court determined that hourly rate of $180.00 for attorney and $90.00 for student were reasonable. F.B. o/b/o M.B v. East Orange Bd of Ed., Civil No. 08-1206, 2008 U. S. Dist Lexis 75800 (D. N.J. Sept. 30, 2008)

District court held that in order to be deemed a prevailing party, the plaintiff must have achieved relief and must demonstrate a casual connection between the litigation and the relief. Court distinguished between the actions of the parents that reduced the award and the results obtained through the professional services rendered by counsel. W.C. and S.C. on behalf of

R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Where IDEA matter was settled privately, and the settlement included a provision stating that settlement was to have effect of judicial consent decree for fee-shifting purposes, entitling parents to seek attorney's fees, since settlement was not judicially sanctioned, it did not confer prevailing party status for IDEA ee-shifting purposes. Nathan F. v. Parkland Sch. Dist., 2005 U.S. App. LEXIS 11783 (3d. Cir. 2005).

District Court determined that hours expended were not reasonable where performed by student. Court also established rate of 8 minutes per page to edit court filings. F.B. o/b/o M.B v. East Orange Bd of Ed., Civil No. 08-1206, 2008 U. S. Dist Lexis 75800 (D. N.J. Sept. 30, 2008)

District Court determined that parent demonstrated causal connection between relief achieved and litigation where board was legally compelled to place student at local high school as a result of the litigation. F.B. o/b/o M.B v. East Orange Bd of Ed., Civil No. 08-1206, 2008 U. S. Dist Lexis 75800 (D. N.J. Sept. 30, 2008)

District Court determined that parent was prevailing party in a special education matter where relief granted was allegedly not on the merits of the matter. While the ALJ did not label the judgment as a final order, the ALJ dismissed the board's only defense. F.B. o/b/o M.B v. East Orange Bd of Ed., Civil No. 08-1206, 2008 U. S. Dist Lexis 75800 (D. N.J. Sept. 30, 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 had never been found to need special education services because of a learning disability. Although a court had ordered placement in an out-of-district residential treatment program while an evaluation was pending, the child was ultimately not 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)(not precedential)

Buckhannon applies to the fee-shifting provision of the Individuals with Disability Education Act, 20 U.S.C.S. § 1415. A stipulated settlement can confer prevailing party status where it alters the legal relationship of the parties and is judicially sanctioned. A stipulated settlement is judicially sanctioned where it: 1) contains mandatory language; 2) is entitled "Order," 3) bears the signature of the district court judge, not the parties' counsel; and 4) provides for judicial enforcement. Remanded to District Court. (P.N. v. Clementon Bd. of Ed., 442 F.3d 848 (3d Cir 2006) (Cert.denied, 127 S. Ct. 189 (2006))

For purposes of making a prevailing party determination, a resolution materially alters the legal relationship between the parties when it modifies the defendant's behavior in a way that directly benefits the plaintiff. The prevailing party inquiry does not turn on the magnitude of the relief obtained. The degree of the plaintiff's success does not affect eligibility for

a fee award. Remanded to District Court. (P.N. v. Clementon Bd. of Ed., 442 F.3d 848 (3d Cir 2006) (Cert. denied, 127 S. Ct. 189 (2006))

A plaintiff prevails the relief awarded on his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff. Plaintiffs may be considered "prevailing parties" for attorneys' fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit. To succeed, at a minimum, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Remanded to District Court. (P.N. v. Clementon Bd. of Ed., 442 F.3d 848 (3d Cir 2006) (Cert. denied, 127 S. Ct. 189 (2006))

Third Circuit reversed and remanded District Court and awarded prevailing party status and attorney fees to parent. The Third Circuit determined that in order to be a "prevailing party," a party must be successful in obtaining some relief by a court. This concept of "success," includes a defendant's voluntary compliance. A party benefiting from a settlement agreement can be a "prevailing party," provided the change in the legal relationship of the parties is in some way "judicially sanctioned." (P.N. v. Clementon Bd. of Ed., 442 F.3d 848 (3d Cir 2006) (Cert. denied, 127 S. Ct. 189 (2006))

District Court denied attorney's fees to plaintiff by holding that plaintiff was not a prevailing party where plaintiff's petition for fees was not caused by a settlement agreement. P.N. v. Clementon, 02-CV-1351 (D. N.J. Oct. 31, 2005) (P.N. v. Clementon Bd. of Ed., 442 F.3d 848 (3d Cir 2006) (Cert. denied, 127 S. Ct. 189 (2006))

Motion for attorney fees denied as premature. Issue of whether child was disabled was never adjudicated by the ALJ. (D.S. v. Neptune Twp. Bd. of Educ., Civil Action No. 05-5652 (AET), 2006 U.S. Dist. LEXIS 67379, (D. N.J. September 20, 2006))

On remand from the 3rd Circuit, the District Court examined the reasonableness of time expended and determined to reduce the lodestar hours through a line-by-line review instead of a straight percentage reduction. P.N. v. Clementon Bd. of Ed., No 02-1251, 2007 U.S. Dist. LEXIS 29289, (D. N.J. April 20, 2007).

On remand from the 3rd Circuit, the District Court determined that a $300 hourly lodestar fee was reasonable, but generous and only justified where the attorney shows the efficiency normally associated with his years of specialized practice in the field. P.N. v. Clementon Bd. of Ed., No 02-1251, 2007 U.S. Dist. LEXIS 29289, (D. N.J. April 20, 2007).

On remand from the 3rd Circuit, the District Court determined that a reasonable fee for hours spent preparing for a legal argument should be limited to hours reasonably necessary for a lawyer to become familiar with the facts and the law pertaining to the issue to be argued, analysis of the opponent's argument, and questions to be anticipated from the court. P.N. v. Clementon Bd. of Ed., No 02-1251, 2007 U.S. Dist. LEXIS 29289, (D. N.J. April 20, 2007).

On remand from the 3rd Circuit, the District Court determined that plaintiff's lodestar calculation of attorney's fees was unreasonable. Court reduced excessive hours. P.N. v. Clementon Bd. of Ed., No 02-1251, 2007 U.S. Dist. LEXIS 29289, (D. N.J. April 20, 2007).

District court held that plaintiff prevailed on significant issues in the litigation which achieved some of the benefit plaintiff sought in bringing the suit, despite the fact that the plaintiff did not prevail on the "driving force" behind the proceedings. The court noted that to the extent the degree of relief is relevant, it is only relevant to the amount of the fee award, not its availability. Attorney's fees limited to the degree of success attained by plaintiff based upon a careful review of an adequately supported fee application. J.N. v. Mt. Ephraim Bd. of Ed., No. 05-02520, 2007 U.S. Dist. LEXIS 21629, (D. N.J. March 26, 2007).

The Court granted the Defendant school board's motion to vacate a default entered against it in an action for prevailing party counsel fees under IDEA, as well as its motion for leave to file an Amended Answer, where the answer was served late due to questionable service of process and good faith was not in question. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)). See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473

Motion for attorney fees granted in part, denied in part; hourly rate of $300 deemed reasonable, application for $6600 in expert fees denied, attorney hours reduced from 173.95 to 139.3 resulting in attorney fees of $41, 370. R.C. v. Bordentown Reg'l Sch. Dist. Bd. of Educ., Civil Action No. 05-3309 (JBS) , 2006 U.S. Dist. LEXIS 72720, (D. N.J. September 29, 2006)

Plaintiff not deemed a prevailing party for purposes of attorney fees under the IDEA. Document signed by Plaintiff and Defendant entitled "Notice of Agreement," and not "Order." Agreement was not signed by a judge and did not provide for judicial enforcement. Plaintiff failed to satisfy three of the factors necessary to establish "prevailing party" status as set forth by the United States Supreme Court and the Third Circuit. A.B. v. Newark Bd. of Educ., Civil Action No. 05-CV-702 (DMC), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2006 U.S. Dist. LEXIS 5442, Decided February 10, 2006

Parents who are not attorneys may not bring a pro se action against a school board in an IDEIA action on behalf of their child. Parent given an extension of time to find counsel who will be given 30 days to review the file and submit a new complaint. (Derricotte v. S. Orange/Maplewood Bd. of Educ., Civil Action No. 06-CV-2792 (DRD), 2006 U.S. Dist. LEXIS 75600, (D. N.J. October 11, 2006)

Motion for attorney fees denied. Neither party obtained a "judicially sanctioned change in the legal relationship" from the ALJ; neither party was a prevailing party. (R.G. v. Union Twp. Bd. of Educ., Civil Action No. 05-

2302 (GEB), 2006 U.S. Dist. LEXIS 65982, (D. N.J. September 14, 2006))

Plaintiffs' motion for fees and costs and the parties' cross motions for summary judgment denied without prejudice. Parties directed to appear at hearing for discussion of preparation of motion papers, possible unauthorized practice of law, fees for lay advocate consultation v. non-compensable representation and reasonableness of fees ($123,687.50 v. school board attorney $5,220.00) including prevailing market rates for lay education consultants. 2006 U.S. Dist. LEXIS 3581 (D.N.J. Jan. 31, 2006).

District Court rejected attorney's assertion of hours reasonably expended where attorney billed at attorney rates for clerical tasks and billed for contemplating causes of action that were not pled. L.J. v. Audubon Bd. of Ed., No. Civil 06-5350, 2009 U.S. Dist. Lexis 31473 (D. N.J. April 13, 2009). See related proceeding at L.J. v. Audubon Bd. of Ed., No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337 (D.N.J. February 19, 2008). L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527

District Court rejected attorney's asserted hourly fee of $400 per hour where attorney could not produce evidence of having billed a single client at that rate. L.J. v. Audubon Bd. of Ed., No. Civil 06-5350, 2009 U.S. Dist. Lexis 31473 (D. N.J. April 13, 2009). See related proceeding at L.J. v. Audubon Bd. of Ed., No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337 (D.N.J. February 19, 2008). L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).

District Court substantially reduced attorney’s fees of prevailing party where special education attorney could not substantiate entitlement to an hourly rate of $400 per hour, and where records reflected excessive billing. L.J. individually and by his Parents V.J. and Z.J., v. Audubon Bd. of Ed., Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

Where parties could not agree on remedial plan and counsel fees in wake of court ruling that board violated IDEA and Rehabilitation Act and must compensate child for seventeen missed days of education in 2003, Court orders compensatory plan proposed by Tennessee school of current residence, minus the cost of simultaneous teachers. Parents entitled to counsel fees as prevailing parties; the fees incurred in advancing the two claims not proven are recoverable because they are inextricably related with the third successful claim; however, amount of counsel fees reduced to reasonable figure. L.T. v. Mansfield Twp. Sch. Dist., Civil Action No. 04-1381(NLH), 2009 U.S. Dist.

After being the prevailing party in a Rehabilitation Act of 1973, claims for attorney’s fees denied. The “fee request is so grossly exaggerated and

absurd that the request shocks the conscience of the court." M.G. v. E. Reg'l High Sch. Dist., 2009 U.S. Dist. LEXIS 98631 (D.N.J. Oct. 21, 2009)

In dispute concerning allocation of IDEA settlement, court orders that $25,000 be paid directly to counsel for Plaintiffs for attorney's fees and disbursements related to this litigation and that $50,000 be placed in a Special Needs Trust for student. C.T. v. Trenton Bd. of Educ., 2009 U.S. Dist. LEXIS 113868 (D.N.J. Sept. 24, 2009)

Board of education was properly granted summary judgment in parent's 1983 action in son's death in residential school where board did not violate IDEA by placing child in school without IEP as parents agreed to placement. Tallman v. Barnegat Bd. of Ed., 2002 U.S. App. LEXIS 19051, ____ F.3d ____ (3d Cir. 2002), decided August 21, 2002.

Board certified tenure charges against special education teacher for allowing special education students to engage in sexual activity during instructional time. ALJ found that the board failed to meet its burden. Commissioner modified the initial decision, finding that the teacher failed to properly monitor students thus charges of unbecoming conduct were sustained. Mitigating factors provided for loss of 120 days salary and salary increment. (02:Aug. 16, Noon)

Counsel fees available to "prevailing party" plaintiffs in challenge to special education regulations and amendments where they prevailed on 8 of their 60 challenges. IDEA attorney fees provision applies to challenges to regulations governing children with disabilities. Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001), certification denied 174 N.J. 193 (2002)

Court affirms denial of request for attorney's fees under IDEA. Parents sought reinstatement of child in high school, following suspension and assessment of educational needs of child. Parents who achieve favorable interim relief may be entitled to prevailing party attorney's fees as long as the interim relief granted derived from some determination on the merits. ALJ's interim order granting relief not determination on merits. J.O. v. Orange Township Bd. of Ed., 287 F.3d 267 (3d. Cir. 2002).

In granting motion for summary judgment, the district court determined that the parents' application for attorneys fees was time-barred because it was filed more than 30-days after the order granting prevailing party status was entered. *J.M. v. Wall Twp. Bd. of Educ.*, Dkt. No. 3:13-cv-4505; (D.N.J. Sept. 23, 2014)

Discipline

Commissioner denies emergent relief to pro se parent of 7-year old student who was suspended for violent disruptive behavior and placed on long-term suspension with home instruction, as most issues were mooted by board's agreement to return student to classroom and provide expedited assessments by child study team. B.G. v. East Orange Bd. of Ed., Comm'r 2008:May 20.

Commissioner denies emergent relief to pro se parent of 7-year old student who was suspended for violent disruptive behavior and placed on long-term suspension with home instruction, as most issues were mooted by board's agreement to return student to classroom and provide expedited assessments by child study team. (B.G., Comm'r., 2008:May 20).

District could eliminate all three positions of its basic CST and contract with jointure commission for basic child study team services with increased hours at reduced cost; the elimination of tenured psychologist and LDTC positions did not violate tenure rights and allowed permitted more economical delivery of CST services. (04:Dec. 20, Becton)

Dual residency: Issue of how districts addressed provision of Individualized Education Program (IEP) and funding for child who resided with each parent on alternate weeks under joint custody arrangement was one that appropriately could be addressed by regulation that would supercede court

order to share student's education costs. Somerville Bd. of Ed. v. Manville Bd. of Ed., 167 N.J. 55 (2001), aff'g 332 N.J. Super. 6 (App. Div. 2000), certification granted 165 N.J. 676 (2000), aff'd 167 N.J. 55 (2001)

Emergent Relief

District Court determined that the five-day rule was applicable to emergent relief hearing scheduled 18 days after petition was filed so as to require prior notice of witnesses called to testify by ALJ, who effectively merged emergent relief hearing into a due process hearing. ALJ improperly relied on student's non-compliance instead of conducting emergent relief analysis. *B.G. v. Ocean City Bd. of Educ.*, Dkt. No. 13-5166; (D.N.J. Sept. 26, 2014)

FAPE

Board's motion to dismiss action to enforce IDEA settlement agreement for lack of subject matter jurisdiction and untimeliness denied. W.K. v. Sea Isle City Bd. of Educ., CIVIL ACTION NO. 06-1815 (JEI), 2007 U.S. Dist. LEXIS 8342, Decided February 5, 2007.

District Court determined that IEP existing regular classroom IEP did not provide FAPE despite the use of classroom aides as evidenced by child's lack of academic progress. The same lack of progress indicated that a change to a more restrictive environment would be appropriate. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

District Court reversed ALJ's denial of summary judgment to parents, and ruled that parents were entitled to reimbursement for the unilateral placement of their daughter in a private school. The District Court determined that although no witness from the private school testified as to appropriateness of the private placement, several doctors and experts testified as to the appropriateness of the private school. Parents who unilaterally place their child into a private school need not prove either that the private school is approved by the board of education to teach special. F.D. v. Holland Twp. Bd. of Ed., No. 05-5237 U.S. Dist. LEXIS 49293 (D. N.J. July 9, 2007).

Where a disabled minor and his parents initiated a due process hearing challenging an IEP, they bore the burden of persuasion at the hearing because they initiated the petition for relief. While the IDEA was silent as to which party bore the burden, the ordinary default rule was that plaintiffs bore the risk of failing to prove their claims. (Schaffer v. Weast, 126 S. Ct. 528 (2005); 163 L. Ed. 2d 387; 2005 U.S. LEXIS 8554; 74 U.S.L.W. 4009).

District court affirms ALJ decision that the IEP offered by the District for the 2004-2005 school year would not have provided student with a free appropriate public education. Parents were entitled to reimbursement for their unilateral placement at a private school for the 2004-2005 school year. Under stay put, district was responsible for tuition payments beginning August 2005. Montgomery Twp. Bd. of Educ. v. S.C. ex rel.

D.C., Civil Action No. 06-398 (FLW), [8, 11, 12, 13] 2007 U.S. Dist. LEXIS 6071, Decided January 26, 2007

District Court determined that IEP proposed by the board provided FAPE in the LRE to disabled child. Board demonstrated that child could not be educated satisfactorily in a regular classroom supported by supplementary aides and services and that the board made appropriate efforts to mainstream the child whenever possible. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

The District Court determined that student's lack of academic progress as reflected in past standardized test scores did not constitute a demonstration of the inadequacy of the proposed IEP, where lack of progress could have stemmed from changes in the tests administered to student. P.D., v. Franklin Township BOE, Civ. No. 05-2363 (SRC), 2006 U.S. Dist. LEXIS 16440 (D.N.J., March 22, 2006)

Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. (Clementon Bd. of Educ. v. P. N., No. 06-7., 2006 U.S. LEXIS 7146 (3d Cir. Oct. 2, 2006)).

District court's ruling that school district provided child with a "free appropriate public education" (FAPE) as required by IDEA was affirmed; district court properly denied tuition reimbursement claim for 2001-2002 school year because at time due process was sought, district remained unaware of parents' dissatisfaction with its FAPE services. 2002-2003 tuition reimbursement also properly denied as district's IEP provided meaningful educational benefit. Due weight properly given to hearing officer's determination. Marissa F. v. William Penn Sch. Dist., NO. 05-4490, 2006 U.S. App. LEXIS 24364, (3d. Cir. September 27, 2006)

Motion to dismiss complaint as untimely denied. Plaintiffs' appeal from ALJ's IDEA decision under 20 U.S.C.S. § 1415(i)(2)(B) was denied because amendment shortening time limitations for filing appeal from two years to 90 days did not mean appeal had to be filed 90 days from amendment's effective date and amendment did not apply retroactively. Statute was amended 12/04, effective 7/1/2005. Third Circuit held statute had prospective application, presumption against retroactive application without clear Congressional intent. ALJ decision issued December 3, 2004, plaintiffs filed action October 3, 2005. (P.S. v. Princeton Reg'l Schs. Bd. of Educ., No. 05-4769 2006 U.S.

On remand, District Court determined that parents were entitled to damages under Section 504 of the Rehabilitation Act and educational services under IDEA. Parties ordered to brief issue of damages where district failed to provide 17 days of 5th grade educational services to student who is now in high school in another state. L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2009 U.S. Dist Lexis 21737 (D. N.J. March 17, 2009). See also, L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2007 U.S. Dist. LEXIS 58924 (D. N.J. August 10, 2007).

Cross motions for summary judgment granted in part and denied in part in matter involving autistic child's claim for compensatory education and reimbursement of costs. Claims for reimbursement of costs arising prior to September 1, 2003 are time barred. Claims for compensatory education remanded to ALJ. D.M. ex rel. R.M. v. Oakland Bd. of Educ., Civil Action No. 05-3589 (JAG), 2006 U.S. Dist. LEXIS 72814, (D. N.J. September 21, 2006)

Under the IDEA, plaintiffs must exhaust their administrative remedies before proceeding with a civil action in federal court. However, parents may bypass the administrative process where exhaustion would be futile or inadequate or where the issue presented is purely a legal question. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006).

Plaintiffs complaint was grounded in violation of the IDEA. Allegations of violations of the ADA, Section 504, the 14th Amendment and the NJ Constitution could not be used as a tool to avoid the requirement of exhaustion of administrative remedies. The court dismissed non-IDEA claims, without prejudice, pending the exhaustion of administrative remedies. (A.H. v. NJ Dept. of Ed., No 05-3307, 2006 U.S. Dist Lexis 84134, (D.N.J. Nov. 20, 2006). 3rd Circuit has noted that the requirements imposed pursuant to section 504 substantially duplicate the state's affirmative obligation under the IDEA. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Court declared parents motion to order district to revise IEP moot where parents and student moved out of state. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Parents of a learning disabled child were not entitled to reimbursement for tuition for unilateral private school placement because the public school district's individualized education program for the child supplied a free appropriate public education (FAPE) as required by the IDEIA, despite not providing the child with a personal laptop in tenth grade. Court found that testimony and evidence in the record clearly supported the ALJ determination that the school district had provided FAPE in both the ninth and tenth grade years. J.A. v. Mt. Lakes Bd. of Educ., Civil Case No. 05-CV-05953 (FSH), 2006 U.S. Dist. LEXIS 66991, (D. N.J. September 6, 2006)

Plaintiffs waived the possibility of monetary damages pursuant to Section 504 where they made no claim, failed to argue the point in a subsequent motion, and failed to raise the issue of monetary damages. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Court denied plaintiff's motion to amend complaint where plaintiff parents proposed to modify complaint to include a life coach for disabled student where parents and student had moved out of the district. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Court denied parents motion to amend complaint to include additional years of allegedly inappropriate placement where parents failed to exhaust their

administrative remedies for the additional years. (S.N. v. Old Bridge, No. 04-517, 2006 U.S. Dist. Lexis 83469, (D.N.J.))

Parents who are not attorneys may not bring a pro se action against a school board in an IDEIA action on behalf of their child. Parent given an extension of time to find counsel who will be given 30 days to review the file and submit a new complaint. (Derricotte v. S. Orange/Maplewood Bd. of Educ., Civil Action No. 06-CV-2792 (DRD), 2006 U.S. Dist. LEXIS 75600, (D. N.J. October 11, 2006)

On remand, District Court determined that parents failed to demonstrate that district denied classified child FAPE where IEP did not require extended school year services or transportation. L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2009 U.S. Dist Lexis 21737 (D. N.J. March 17, 2009). See also, L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2007 U.S. Dist. LEXIS 58924 (D. N.J. August 10, 2007).

The District Court parent failed to demonstrate that prodecural inadequacies in the development of student's IEP resulted in "the loss of educational opportunity" or hampered parent's oportunity to participate in the development of the IEP. P.D., v. Franklin Township BOE, Civ. No. 05-2363 (SRC), 2006 U.S. Dist. LEXIS 16440 (D.N.J., March 22, 2006)

On remand, District Court determined that school district acted with deliberate indifference with regard to parent request for transportation needs of special education child. That indifference denied the student FAPE. L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2009 U.S. Dist Lexis 21737 (D. N.J. March 17, 2009). See also, L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2007 U.S. Dist. LEXIS 58924 (D. N.J. August 10, 2007).

On remand, District Court determined that school district failed to provide FAPE where it failed to respond to parental request for transportation and failed to provide any educational services for 17 days. L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2009 U.S. Dist Lexis 21737 (D. N.J. March 17, 2009). See also, L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2007 U.S. Dist. LEXIS 58924 (D. N.J. August 10, 2007).

In a suit regarding an autistic student's education plan, a school district was granted summary judgment as to a student and her parents' Rehabilitation Act, 29 U.S.C.S. § 794(a), claims. The student was not denied equal treatment or discriminated against, and there was no evidence that the district acted to retaliate for the parents' advocacy. Deptford Township Sch. Dist. v. H.B., 2005 U.S. Dist. LEXIS 11602 (D.N.J. 2005) .

District Court determined that parent must inform the CST that they are rejecting the child's IEP and must submit written notice of the child's removal from school before district is obligated t pay for out-of-district placement. District Court read N.J.A.C. 6A:14-2.10(c)1 and 2.10(c)2 conjunctively to avoid a construction that would render part of the regulation inoperative, superfluous, or meaningless. 2006 U.S. Dist. LEXIS 22305, (D.N.J. March 30, 2006)

Reading N.J.A.C. 6A:14-2.10 in pari materia lead District Court to conclusion that parental notice of intent to withdraw special education student required notice at last CST meeting and written notice to district, before district would become liable to pay for unilateral out-of-district placement. 2006 U.S. Dist. LEXIS 22305, (D.N.J. March 30, 2006)

Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit denied. (A.H. v. S. Orange Maplewood Bd. of Educ., No. 05-11363., 2006 U.S. LEXIS 7453 (3d Cir. Oct. 2, 2006)).

Motion denied seeking reconsideration of order barring reimbursement for unilateral placement in private educational facility. T.H. v. Clinton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 40358 (D.N.J. June 16, 2006) See T.H. ex rel. A.H. v. Clinton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 27432 (D.N.J., Apr. 25, 2006)

Board's motion to dismiss granted in appeal of ALJ's decision denying plaintiffs reimbursement of costs associated with placement at private educational institution. Board had provided an IEP that would provide FAPE and a meaningful educational benefit. Plaintiffs had failed to engage in IEP process in good faith. E.G. v. Lakeland Reg'l High Sch. Bd. of Educ., Civil Action No. 05-3607 (GEB), 2007 U.S. Dist. LEXIS 4274, Decided January 22, 2007.

District bears the burden of demonstrating that FAPE was provided to a special education child and must show that the individualized education program offered was reasonably calculated to enable the child to receive meaningful educational benefits proportionate to her educational potential. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Parents were not entitled to reimbursement for the cost of an independent evaluation where the evaluation was unilaterally performed after the parents left the district. Parents are entitled to reimbursement for independent evaluations when they are collaborating with the local educational agency in developing an IEP. M.S. v. Mullica Twp. Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

In applying a modified de novo review, a district court is required to make findings of fact based on a preponderance of the evidence contained in the complete record, while giving some deference to the fact findings of the administrative proceedings. However, an administrative decision concerning a question of law is not entitled to such deference. D.L. and K.L. on behalf of J.L. v. Springfield Bd. of Ed., No 05-5129, 2008 U.S. Dist. Lexis 17727 (D. N.J. March 6, 2008).

District Court held that parents are not required, under the IDEA, to accept an inadequate placement in order to demonstrate the inadequacy of that placement before they can seek tuition reimbursement. D.L. and K.L. on behalf of J.L. v. Springfield Bd. of Ed., No 05-5129, 2008 U.S. Dist. Lexis 17727 (D. N.J. March 6, 2008).

Third Circuit held that District Court must afford "due weight" to the ALJ's determination. Those findings are to considered prima facie correct and if a reviewing court fails to adhere to them, it is obliged to explain why. Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

District court affirms ALJ's decision denying claim for reimbursement to parent for payments made to aides in connection with educational program provided to her 11-year-old son. ALJ found that board had offered FAPE in accordance with the IDEA and parent failed to follow regulations regarding reimbursement. Fisher v. Stafford Twp. Bd. of Educ., Civil Action No. 05-2020 (FLW), 2007 U.S. Dist. LEXIS 14003, Decided February 27, 2007.

Preliminary injunction granted to effectuate out of district stay put placement during pendency of due process appeal. Student had aged out of current placement. (M.K. v. Roselle Park Bd. of Educ., Civil Action No. 06-4499 (JAG), 2006 U.S. Dist. LEXIS 79726, (D. N.J. October 31, 2006)

District bears the burden of demonstrating that FAPE was provided to a special education child and must show that the individualized education program offered was reasonably calculated to enable the child to receive meaningful educational benefits proportionate to her educational potential. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Parents were not deprived of their right to participate where district failed to provide progress statements. M.S. v. Mullica Twp., Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

Third Circuit held that District Court improperly rejected ALJ determination that board of education had failed to provide disabled student with appropriate education given that the student displayed above-average intelligence but was performing below grade-level. District court must accept state agency's credibility determinations unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion. Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

District Court denied parental request for compensatory education for third through eighth grades, where student had gone on to college at the time of the request. Court determined that student could not benefit from those education services. R.P., V.P. and E.P. v. Ramsey Bd. of Ed., Civil No. 06-CV-5788, 2008 U. S. Dist. Lexis 70884.

An award of compensatory education allows a disabled student to continue a free education past the age of 21 in order to account for an earlier deprivation of FAPE. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Cross motions for summary judgment denied. Both parties dispute the timing of the school district's offer to pay the educational expenses associated with the student's residential placement. Trial ordered. R.S. v. River Vale Bd. of Educ., Civil Action No. 05-5968, 2006 U.S. Dist. LEXIS 67710, (D. N.J. September 21, 2006)

District court held that parent failed to demonstrate that the district student failed to progress while receiving related services from the district or that the services rendered were inadequate where parent's experts did not observe student while related services were provided. M.S. v. Mullica Twp. Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

The Rehabilitation Act of 1973 entitles a disabled student attending private school to related services at the public school so long as the student was enrolled dually in the public district and related services were needed to provide FAPE. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Preliminary injunction denied in IDEA matter where question of whether private-school placement will ultimately provide FAPE is extremely fact-intensive. No clear showing of irreparable harm. L.Y. v. Bayonne Bd. of Educ., 2009 U.S. Dist. LEXIS 84130 (D.N.J. Sept. 15, 2009)

District's failure to address special education student's behavioral problems in a systematic and consistent way denied her a FAPE. Third Circuit affirms the District Court's award of compensatory education. Lauren P. v. Wissahickon Sch. Dist., No. 07-3595, 2009 U.S. App. LEXIS 2835 (3d Cir. Feb. 12, 2009).

District Court dismissed parent complaint alleging a failure to provide FAPE in the least restrictive environment, where parents failed to exhaust administrative remedies by failing to request due process hearing. D.A. v. Pleasantville Sch. Dist., Civil No. 07-4341, 2009 U.S. Dist. Lexis 30104, (D. N.J. April 6, 2009).

District Court determined that district's IEP conferred significant learning and a meaningful educational benefit despite the fact that improvements to the IEP were possible. Parent petition for tuition reimbursement dismissed. G.B. and D.B. o/b/o J.B., v. Bridgewater-Raritan Regional Bd. of Ed., Civil No. 07-4300, 2009 U.S. Dist. Lexis 15671 (D. N.J. Feb. 29, 2009).

Court of Appeals affirmed District Court judgment. District court properly focused its inquiry on whether the move to an inclusion classroom was likely to significantly affect child's ability to learn and also accepted the findings made during administrative proceedings. Thus, district court did not err when it held that there was no violation of IDEA's stay-put provision, 20 U.S.C.S. § 1415(j). J.R. v. Mars Area Sch.Dist. (In re Educ. Assignment of Joseph R.), No. 07-2440, No. 07-2753, 2009 U.S. App. LEXIS 6287 (3d Cir. Pa, March 24, 2009)(not precedential).

District Court determined that parents failed to demonstrate that disabled child was denied FAPE where district did not provide extended school year or transportation services. At the beginning of the following school year, district failed to provide FAPE for 17 days when it failed to provide transportation after notice that parent was no longer able to provide transportation. L.T o/b/o B.T v. Mansfield Twp. Sch. Dist., Civil No. 04-1381, 2009 U.S. Dist. Lexis 21737, (D. N.J. March 17, 2009).

General

Commissioner affirms DOE's action to revoke the approval for a private school for students with disabilities, where as a result of expansion beyond

approved capacity, the facility was insufficient for enrollment and not compliant with health and safety rules. All Can Excel v. NJDOE, Comm'r 2008:May 16.

Appellate Division affirms State Board's affirmance of Commissioner's decision.Respondent tenured assistant principal removed from position due to unbecoming conduct. Issues included failure to review plan books, handle disciplinary matters, supervise a lunch room and inappropriate actions in special education matters. Petition for certification denied. In re Tenure Hearing of Sarduy, 188 N.J. 576, Decided November 6, 2006.

Parent of classified student alleged defamation, harassment, false light, negligence, intentional infliction of emotional distress, civil conspiracy, and retaliation for exercise of her First Amendment rights where district and private school allegedly engaged in retaliation against parent for filing a complaint with the US DOE. District Court rejected collective defendants' motion to dismiss First Amendment claims, but granted various individual defendants' motions on various claims. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

Motion denied seeking reconsideration of order barring reimbursement for unilateral placement in private educational facility. T.H. v. Clinton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 40358 (D.N.J. June 16, 2006) See T.H. ex rel. A.H. v. Clinton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 27432 (D.N.J., Apr. 25, 2006)

Court dismissed the motion made by Plaintiffs (three minors with Down Syndrome, their parents, and several organizations) for entry of final judgment as to dismissed claims and parties or for certification for immediate appeal of the ruling below, in a class action suit alleging a systemic failure on the part of the State of New Jersey to include the students in the least restrictive environment. No. 06-cv-4077 (PGS), 2008 U.S. Dist. LEXIS 3284 (D.N.J Jan 15, 2008)(unpublished)

Third Circuit held that when students display considerable intellectual potential, the IDEA requires a "great deal more than a negligible benefit." Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

Motion for Emergent Relief for approval to continue application process as a private school for the disabled denied. Petitioner cannot prevail on the merits of the claim and is seeking an exception to the requisites of the process which is not granted to other applicants. Approval would go the Office of Special Education Programs to grant preferential treatment compromising the integrity of the application process. (Y.E.S., Commr., 2007:August 15)

Board's motion to dismiss action to enforce IDEA settlement agreement for lack of subject matter jurisdiction and untimeliness denied. W.K. v. Sea Isle City Bd. of Educ., CIVIL ACTION NO. 06-1815 (JEI), 2007 U.S. Dist. LEXIS 8342, Decided February 5, 2007.

Third Circuit held that school districts need not maximize the potential of their disabled students. However, the district must provide more than a trivial educational benefit and is required to provide significant learning and confer meaningful benefit. Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

State Board reversed Commissioner decision to deny emergent relief application. Private school had previously appealed from Commissioner's revocation of private school status as approved provider of special education and related services. (Kentwood Acadamy, St. Bd., 2008: June 30).

In an IDEA case, the court must review the ALJ's decision under a modified version of de novo review. Under this standard, the court must make its own findings by a preponderance of the evidence but must also afford 'due weight' to the ALJ's determination. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Department of Education properly disallowed $66,000 from the private special education school's tuition reimbursement. School failed to provide the mandated four hours of instructional time on 70 days of the 2003-04 school year when half-day sessions were held. (Titusville Academy, Commr. 2007:July 6)

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 had never been found to need special education services because of a learning disability. Although a court had ordered placement in an out-of-district residential treatment program while an evaluation was pending, the child was ultimately not 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)(not precedential)

3rd Circuit affirmed District Court ruling that pupil can have more than one domicile, requiring districts to split the cost of out-of-district placement. Parents shared legal and physical custody. 293 Fed. Appx. 900 (3d Cir. 2008), see also Civil No. 05-cv-05488, 2007 U.S. Dist. Lexis 44212 (D N.J. June 18, 2007)

Commissioner affirms DOE's action to revoke the approval for a private school for students with disabilities, where as a result of expansion beyond approved capacity, the facility was insufficient for enrollment and not compliant with health and safety rules. (All Can Excel, Comm'r., 2008:May 16).

3rd Circuit upheld District Court decision dismissing plaintiff parent's motion to reopen previously resolved settlement. No evidence of duress despite pressure from her own counsel and time constraints. Ballard v. Phila. Sch. Dist. 273 Fed. Appx. 183 (3d Cir. April 14, 2008).

District Court determined that board was not entitled to an Order declaring the new self-contained placement as the "Stay-Put" placement during the pendency of he proceedings. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

On motion, District Court determined that parents could continue to appear pro se to prosecute parental rights under IDEA on their own behalf, so long as parents filed amended complaint asserting parental claims only, asserting the way in which defendant school district injured the parents, the legal rights violated, distinctly from son's claims. Parents could also hire an attorney to prosecute both parental and/or child's claims. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468.

District Court held that plaintiff's fraud claim must be dismissed where they could not demonstrate that administrators knowingly misrepresented a fact intending plaintiffs to rely on that fact in the development of an IEP. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

District Court held that plaintiff's civil conspiracy claim must be dismissed where they could not demonstrate that administrators acted in concert to commit an unlawful act in the development of an IEP. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

Where the board appealed the ALJ's order to immediately pay for an independent learning evaluation, and the parent moved to dismiss for the board's failure to comply with IDEA's statute of limitations, the Court denied the parents' motion (without prejudice); the Court held that Congress intended for Section 1415(i)(2)(B) to be treated as a statute of limitations subject to waiver, estoppel, and equitable tolling, and not to be treated as a jurisdictional bar. No. 07-3904 (MLC), 2008 U.S. Dist. LEXIS 7350 (D.N.J. January 30, 2008)

District Court held that Rehabilitation Act claims against individuals are unavailable unless that individual receives federal funds. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

Third Circuit held that if an administrative agency has heard live testimony and has found the testimony of one witness to be more worthy of belief than the contradictory testimony of another witness, that determination is due special weight. The District Court must accept the state agency's credibility determinations unless the non-testimonial, extrinsic evidence in the record could justify a different conclusion. Ringwood Bd. of Ed. v. K.H.J. on behalf of K.F.J., No. 05-5222 (3d Cir., Dec. 12, 2007), 2007 U.S. App. Lexis 28876.

District Court held that plaintiff's Intentional Infliction of Emotional Distress claim must be dismissed where plaintiff could not demonstrate that school administrators acted "recklessly in disregard of a high degree of probability that emotional distress would follow" in the development of an IEP. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

District Court held that plaintiff's breach of the duty of good faith and fair dealing must be dismissed where no contract existed. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

District Court held that it is improper to bring IDEA, ADA, and Rehabilitation Act claims pursuant to Section 1983 because Congress intended that those statutes supplant Section 1983. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

District Court held that plaintiff's novel hostile educational environment under the NJLAD claim was sufficiently plead to give notice of the plaintiff's claims and the grounds upon which they rested so as to survive a R. 12(b)(6) motion to dismiss. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

Council denied Commissioner's motion to dismiss complaint of county special services school districts where Commissioner failed to demonstrate that a new age span regulation fell within a constitutional exception allowing unfunded mandates in order to federal eligibility standards. Neither NCLB nor IDEA required age span reduction in order to remain eligible to receive federal funds. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

District court affirms ALJ decision that the IEP offered by the District for the 2004-2005 school year would not have provided student with a free appropriate public education. Parents were entitled to reimbursement for their unilateral placement at a private school for the 2004-2005 school year. Under stay put, district was responsible for tuition payments beginning August 2005. Montgomery Twp. Bd. of Educ. v. S.C. ex rel. D.C., Civil Action No. 06-398 (FLW), [8, 11, 12, 13] 2007 U.S. Dist. LEXIS 6071, Decided January 26, 2007.

District Court determined that board did not exclude parent from meaningful input where CST appeared at the IEP meeting with a draft IEP already prepared. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

District Court held that although alleged conduct may lead to claims that both the IDEA and Rehabilitation Act were violated, a violation of IDEA is not a per se violation of the Rehabilitation Act. Therefore, a plaintiff who brings an IDEA claim is not precluded from bringing ADA and

Rehabilitation Act claims. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

On motion, District Court determined that parents could file an amended complaint for special education matter and amendments must be permitted absent undue delay, unfair prejudice, bad faith, dilatory motive, or futility of amendment. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468. Upon the filing of parent complaint amended to include only parental NJLAD claims, the District Court determined that parents did not have a viable claim because they were not the aggrieved party.

District Court determined that statutory preference for mainstreaming has limits. Where a mainstreamed education has failed to provide a meaningful educational benefit, a self-contained classroom appeared reasonably calculated to enable the disabled child to receive educational benefits. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

District Court held that punitive damages are not available for violations of the ADA and Rehabilitation Act; that a plaintiff may not bring IDEA, ADA, or Rehabilitation Act claims pursuant to 42 U.S.C. 1983; that a plaintiff's use of the IDEA due process procedures does not preclude the plaintiff's 'ADA and Rehabilitation Act claims; and that plaintiff parents had produced sufficient evidence of a hostile school environment to survive defendant's R. 12(b)(6) motion to dismiss for failure to state a claim. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

On motion, 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 (3d Cir., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569. See prior decision, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468. Upon the filing of parent complaint amended to include only parental NJLAD claims, the District Court determined that parents did not have a viable claim because they were not the aggrieved party. Woodruff v. Hamilton Twp. Public Schools, No.

District Court determined that IEP was reasonable at the time it was created. Additional evidence supplied by parent did not contain information available to district at the time the IEP was created. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

District Court held that punitive damages are not available under ADA and Rehabilitation Act claims. J.M. and M.M. on behalf of A.M., J.M., and

M.M. v. East Greenwich Twp. B. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

Council denied Commissioner's motion to dismiss complaint of county special services school districts where Commissioner failed to demonstrate that a new age span regulation fell within a constitutional exception allowing unfunded mandates if they were applied to similarly situated governmental and non-governmental entities alike. Approved private schools would simply pass increased costs on to the public school district. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

District Court held that ADA claims against individuals are unavailable because individuals are not liable under Title I or Title II of the ADA. J.M. and M.M. on behalf of A.M., J.M., and M.M. v. East Greenwich Twp. Bd. of Ed., No. 07-2861, 2008 U.S. Dist. Lexis 23463 (D. N.J. March 25, 2008).

Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2007 U.S. Dist. LEXIS 53298 (D. N.J. July 23, 2007) The Court dismissed, for lack of subject matter jurisdiction, a parents' IDEA / § 504 claims because Plaintiffs failed to exhaust their administrative remedies with respect to those claims arising out of their 16-year old son's positive drug tests and subsequent expulsion. Alternatively, these claims must be dismissed because § 1983 is no longer an available means to remedy the alleged violations. The federal court further declined to exercise supplemental jurisdiction over state law claims.

District Court confirmed the board's classification of multiply disabled where CST classified disabled child as autistic, and with ADHA, learning disability, and a communication impairment. S.K. o/b/o/ N.K. v. Parsippany-Troy Hills, Civil No. 07-4631, 2008 U.S. Dist. Lexis 80616, (D. N.J. Oct. 9, 2008).

Preliminary injunction denied in IDEA matter where question of whether private-school placement will ultimately provide FAPE is extremely fact-intensive. No clear showing of irreparable harm. L.Y. v. Bayonne Bd. of Educ., 2009 U.S. Dist. LEXIS 84130 (D.N.J. Sept. 15, 2009)

Where parties could not agree on remedial plan and counsel fees in wake of court ruling that board violated IDEA and Rehabilitation Act and must compensate child for seventeen missed days of education in 2003, Court orders compensatory plan proposed by Tennessee school of current residence, minus the cost of simultaneous teachers. Parents entitled to counsel fees as prevailing parties; the fees incurred in advancing the two claims not proven are recoverable because they are inextricably related with the third successful claim; however, amount of counsel fees reduced to reasonable figure. L.T. v. Mansfield Twp. Sch. Dist., Civil Action No. 04-1381(NLH), 2009 U.S. Dist.

Plaintiff's motion for a preliminary injunction denied. ALJ found that student has received some educational benefit in his current placement in small group resource room language arts and literacy instruction. Given the guidance

of the Supreme Court of the United States that substantive compliance with the IDEA requires only that a student's IEP be "reasonably calculated to enable the child to receive educational benefits," Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982), the Court was disinclined to make a finding of irreparable harm or success on the merits. W.R. v. Union Beach Bd. of Educ., 2009 U.S. Dist. LEXIS 108148

District's failure to address special education student's behavioral problems in a systematic and consistent way denied her a FAPE. Third Circuit affirms the District Court's award of compensatory education. Lauren P. v. Wissahickon Sch. Dist., No. 07-3595, 2009 U.S. App. LEXIS 2835 (3d Cir. Feb. 12, 2009).

Third Circuit determined that school district's counter-claim was filed in a timely fashion although it was filed more than 90-days after the hearing officer's final decision. The IDEA's 90-day limitation only applies to complaints, not compulsory counter-claims. Jonathan H. v. Souderton Area School District, No. 08-2196, 2009 U.S. App. LEXIS 7794 (3d Cir. 2009) (precedential)

Parents were not entitled to reimbursement for the cost of a private tuition and other declaratory relief where the IEP provided a "meaningful benefit" despite the absence of parent's requested modifications to the IEP for homework accommodation and supplemental reading. G. N. and S. N., On Behalf of J.N., v. Bd. of Education Livingston, No. 2009 U.S. App. LEXIS 2455 (3d Cir. Feb. 4, 2009).

District Court denied Supplemental Security Income benefits where child's IEP reports failed to evidence marked limitations in two functional equivalent domains or an extreme limitation in one functional equivalent domain. Diaz o/b/o N.D. v. Commissioner of Social Security, Civil No. 07-5672, 2009 U.S. Dist. Lexis 23557 (D. N.J. March 26, 2009).

District Court dismissed parent complaint alleging a failure to provide FAPE in the least restrictive environment, where parents failed to exhaust administrative remedies by failing to request due process hearing. D.A. v. Pleasantville Sch. Dist., Civil No. 07-4341, 2009 U.S. Dist. Lexis 30104, (D. N.J. April 6, 2009).

Student with disabilities was entitled to free education in district where she resided with grandmother who had been awarded custody/guardianship by Superior Court order and where grandmother is domiciled in the school district—regardless of the reasons for the arrangement. Board's evidence that the student is not, in fact, domiciled within the school district is speculative at best. (Commr also noting that N.J.S.A. 18A:38-2 pertains only to court orders of placement in resource family (foster) homes, whereas present situation is governed by N.J.S.A. 18A:38-1.) B.C., Commr. 2009:Nov.18.

Third Circuit determined that school district's counter-claim was filed in a timely fashion although it was filed more than 90-days after the hearing officer's final decision. The IDEA's 90-day limitation only applies to complaints,

not compulsory counter-claims. Jonathan H. v. Souderton Area School District, No. 08-2196, 2009 U.S. App. Lexis 7794 (3d Cir. 2009).

In dispute concerning allocation of IDEA settlement, court orders that $25,000 be paid directly to counsel for Plaintiffs for attorney's fees and disbursements related to this litigation and that $50,000 be placed in a Special Needs Trust for student. C.T. v. Trenton Bd. of Educ., 2009 U.S. Dist. LEXIS 113868 (D.N.J. Sept. 24, 2009)

Where stipulation of settlement includes neither signature of the Jointure Commission's attorney nor resolution approving the settlement and designating who may execute it on behalf of the Commission, matter will be remanded to revise as to signatures, or if parties unable/unwilling to agree, for hearing . South Bergen Jointure, Commr. 2009:Dec. 11.

In motion seeking to amend the complaint involving special education dispute, court will allow equal protection, right to privacy, and NJLAD claims to move forward. M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 83419 (D.N.J. Sept. 11, 2009) See also M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 93643 (D.N.J. Sept. 11, 2009)

Private school for students with disabilities unsuccessfully appealed the DOE's revocation of its preliminary approval to operate; the school had not fulfilled the conditions contained in the settlement of prior litigation between itself and the DOE with regard to average daily enrollment. Kentwood Academy, Commr 2009: July 27

Parents' claims were dismissed; while they could prosecute their legally cognizable interests in their son's FAPE without an attorney, in the Third Circuit, they did not have the right to represent their son over NJLAD, procedural due process, or common law counts alleged in their Amended Complaint; further, they failed to pursue their administrative remedies. Woodruff v. Hamilton Twp. Pub. Sch., No. 08-2439, 2009 U.S. App. LEXIS 834 (3d Cir. Jan. 15, 2009).

Court orders ALJ to consider alternative sanctions less severe than dismissal of case where pro se plaintiff parent filed faulty responding papers on a motion in IDEA claim for reimbursement for the unilateral placement of daughter in a private school. D.A. v. Haworth Bd. of Educ., 2009 U.S. Dist. LEXIS 88716 (D.N.J. Sept. 24, 2009)

Private Schools for the Handicapped

Private School for the Handicapped(PSH) is granted a tuition increase of 17.39% for 2008-2009. The clear intent of N.J.S.A. 18A:46-21 is that the tuition charged by PSHs be fair and related to the educational services actually provided by the PSH, and regulations were promulgated by the Department to implement this statutory intent. N.J.A.C. 6A:23A-18.2(a)(2), requires PSHs to timely notify sending districts when proposed tuition increases will exceed 10%. N.J.A.C. 6A:23A-18.2(a)(2) does not expressly require formal approval of a PSHs' financial report prior to proposing a rate increase, and concluded that Brookfield substantially complied with the regulatory requirements. Accordingly, summary

decision in favor of petitioner ordered. Brookfield Schools, 2011 Commr July 28.

Petitioners challenged the Department's determination to restrict its 2008-2009 tuition rate to a 10% increase over its tentative per diem rate. Each school had established a tentative per diem tuition rate at the beginning of the 2008-2009 school year, but final certified tuition rates that exceeded their tentative rates by more than 10 percent. The Department contends that its action in restricting the tuition rate was warranted by the failure of these private schools to timely comply with N.J.A.C. 6A:23A- 18.2(a)(2), which requires PSHs to notify sending districts in a timely manner when proposed tuition increases will exceed 10%. The petitioners contend that the Department has imposed requirements that are not clearly expressed in the regulatory language, and that they have complied with the letter and spirit of the regulation. The Department has penalized the petitioning schools for violating what it perceives to be a rule of general application, and if it requires that these schools notify sending districts when year-to-date figures exceed 10% of the tentative rate, rather than only when they intend to actually "propose" a tuition increase, it needed to say so in clear and unambiguous language. Petitioners' respective requests for tuition increases of between 11.61 and 29.43% for the school year were granted. Celebrate the Children, Commr 2011 Aug 29

Procedural Due Process

District Court determined that procedural deficiencies prejudiced student's right to FAPE so as to require remand to Office of Administrative Law where ALJ called a fact witness without proper notice to student. *B.G. v. Ocean City Bd. of Educ*., Dkt. No. Civ. 13-5166; (D.N.J. Sept. 26, 2014)

Related Services

Student is entitled to reimbursement for private placement where the IEP is inappropriate and the private placement is proper. Placement is proper if it provides significant learning and confers meaning educational benefit. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Parents are entitled to an independent evaluation at no expense and are entitled to reimbursement even if they fail to express disagreement with the district's evaluation. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Private school is not required to have an IEP during a unilateral placement because the parent's rejection of the public school district's IEP is the reason for the unilateral placement. Reimbursement is not therefore barred by the private school's failure to meet state education standards or placement in a program not approved by the state. Lauren W., v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

Court held that adult student was entitled to continued extended school year services through the end of the school year in which he turned 21. Where adult student turned 21 after June 30, district was obligated to continue to provide related services through June 30, 2007. C.T. v. Verona Bd. of Educ., No. 06-4153, 2006 U.S. Dist. Lexis 88248, (D.N.J. Dec. 7, 2006).

Parents of a learning disabled child were not entitled to reimbursement for tuition for unilateral private school placement because the public school district's individualized education program for the child supplied a free appropriate public education (FAPE) as required by the IDEIA, despite not providing the child with a personal laptop in tenth grade. Court found that testimony and evidence in the record clearly supported the ALJ determination that the school district had provided FAPE in both the ninth and tenth grade years. J.A. v. Mt. Lakes Bd. of Educ., Civil Case No. 05-CV-05953 (FSH), 2006 U.S. Dist. LEXIS 66991, (D. N.J. September 6, 2006)

Rather than formally extending a school year past June 30, an ESY is merely a supplemental program that provides some educational benefits in addition to those normally provided by the school. Order, C.T. Commr. 2006: Dec.7

District Court denied, in part, preliminary injunction ordering district to provide 15 hours per week of ABA-related services. District provided competent evidence that the appropriate level of services had been provided. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

District Court granted, in part, preliminary injunction ordering district to provide compensatory education to student for lost hours of home-based ABA related services. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

District Court granted, in part, preliminary injunction ordering district to conduct a functional behavioral assessment where issue was not the wisdom of the ALJ order, but whether the district complies with that order. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).See also related counsel fee matter, Civil No. 06-5350, 2009 U.S. Dist. Lexis 37473 (D. N.J. April 13, 2009).

Where a student is placed in a private institution pursuant to an agreed upon IEP, the district does not need a waiver of rights or a waiver of related services in addition to those provided for in the IEP. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

On remand, District Court determined that parents failed to prove that child was entitled to extended school year services or transportation. L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2009 U.S. Dist Lexis 21737 (D.

N.J. March 17, 2009). See also, L.T. v. Mansfield Twp. Sch. Dist., No. 04-1381, 2007 U.S. Dist. LEXIS 58924 (D. N.J. August 10, 2007).

District Court determined to grant parent's preliminary injunction directing school district to conduct a functional behavioral assessment and incorporate it into student's IEP; provide student with 15 hours per week of ABA related services; and designate school personnel responsible for implementing the IEP. Court declined to enter an order of contempt. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S. Dist. Lexis 81527 (D. N.J. Nov. 5, 2007)).

District Court denied, in part, preliminary injunction ordering district to set measurable goals and objectives and designate parties responsible for implementing the child's IEP. The Court found evidence of methodology and objective evaluation criteria as well as parental training. However despite the fact that the IEP failed to designate parties responsible for implementing the IEP, the Court found the IEP to be compliant with the ALJ's order. L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually and by his parents, V.J. & Z.J. v. Audubon Board of Education, No. 06-5350, 2007 U.S.

A Board of Education was held in contempt for failure 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. The Court held that unless the board complies or is excused for factors beyond its control, it will be assessed a fine of $ 250 for each day of material non-compliance. No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337 (D.N.J. February 19, 2008). L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007). (See related proceeding at L.J., a minor individually

Compensatory education, beyond the age of 21, is appropriate where the school knew or should have known that the student was receiving an inappropriate education. Jackson v. Ocean City Bd. of Ed., No. 04-2223, 2007 U.S. Dist. LEXIS 21604 (D. N.J. March 26, 2007).

Plaintiffs' claims that district violated the ADA and the Rehabilitation Act by failing to provide student with a 504 plan dismissed. However, claim that school personnel created a hostile environment survive summary judgment. Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., June 26, 2007), 2007 U.S. Dist. Lexis 46468. See decision on motion, Woodruff v. Hamilton Twp. Public Schools, No. 06-3815 (D. N.J., Dec. 20, 2007), 2007 U.S. Dist. Lexis 93569.

Board's use of a private contractor rather than a school employee to provide speech language services to a classified minor child was challenged. School district speech therapist received no loss of pay or benefits as a result of this decision. As there was no allegation of any violation of tenure, seniority rights, or any other school law rights, the matter was

dismissed for lack of jurisdiction. Long Beach Island Education Association, Commr. 2009: October 13

Transitional Services

District Court determined that student's non-compliance with attendance and curricular requirements contained in her IEP did not excuse the district from ensuring that appropriate transitional services were provided. Record failed to indicate whether student's non-compliance resulted from deficiencies in the delivery of services pursuant to her IEP. Matter remanded to OAL for full due process hearing. *B.G. v. Ocean City Bd. of Educ*. Dkt. No. Civ. 13-5166; (D.N.J. Sept. 26, 2014)

Tuition Reimbursement

District court affirms ALJ's decision denying claim for reimbursement to parent for payments made to aides in connection with educational program provided to her 11-year-old son. ALJ found that board had offered FAPE in accordance with the IDEA and parent failed to follow regulations regarding reimbursement. Fisher v. Stafford Twp. Bd. of Educ., Civil Action No. 05-2020 (FLW), 2007 U.S. Dist. LEXIS 14003, Decided February 27, 2007.

District Court dismissed district's claim that parent was not eligible for tuition reimbursement because parent unilaterally placed student in a parochial school and therefore does not enjoy all the protections of IDEA because the district failed to raise the argument before the ALJ. 2006 U.S. Dist. LEXIS 22305, (D.N.J. March 30, 2006)

District Court reversed ALJ's denial of summary judgment to parents, and ruled that parents were entitled to reimbursement for the unilateral placement of their daughter in a private school. The District Court determined that although no witness from the private school testified as to appropriateness of the private placement, several doctors and experts testified as to the appropriateness of the private school. Parents who unilaterally place their child into a private school need not prove either that the private school is approved by the board of education to teach special education. F.D. v. Holland Twp. Bd. of Ed., No. 05-5237 U.S. Dist. LEXIS 49293 (D. N.J. July 9, 2007).

Board's motion to dismiss granted in appeal of ALJ's decision denying plaintiffs reimbursement of costs associated with placement at private educational institution. Board had provided an IEP that would provide FAPE and a meaningful educational benefit. Plaintiffs had failed to engage in IEP process in good faith. E.G. v. Lakeland Reg'l High Sch. Bd. of Educ., Civil Action No. 05-3607 (GEB), 2007 U.S. Dist. LEXIS 4274, Decided January 22, 2007.

District court affirms ALJ decision that the IEP offered by the District for the 2004-2005 school year would not have provided student with a free appropriate public education. Parents were entitled to reimbursement for their unilateral placement at a private school for the 2004-2005 school year. Under stay put, district was responsible for tuition payments beginning August 2005. Montgomery Twp. Bd. of Educ. v. S.C. ex rel.

D.C., Civil Action No. 06-398 (FLW), [8, 11, 12, 13] 2007 U.S. Dist. LEXIS 6071, Decided January 26, 2007.

Parents of a learning disabled child were not entitled to reimbursement for tuition for unilateral private school placement because the public school district's individualized education program for the child supplied a free appropriate public education (FAPE) as required by the IDEIA, despite not providing the child with a personal laptop in tenth grade. Court found that testimony and evidence in the record clearly supported the ALJ determination that the school district had provided FAPE in both the ninth and tenth grade years. J.A. v. Mt. Lakes Bd. of Educ., Civil Case No. 05-CV-05953 (FSH), 2006 U.S. Dist. LEXIS 66991, (D. N.J. September 6, 2006)

District court determined that a pre-school student need not have "previously received" services from a local school district in order to qualify for reimbursement where parents unilaterally placed child in a private school prior to enrolling the child in public school. W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed., No. 06-5222 (D. N.J., Dec. 31, 2007), 2007 U.S. Dist. Lexis 95021.

Where the district insisted that parents execute a waiver of all federal and state claims related to parent's unilateral placement of their child in a private school that was not approved by the state, the 3rd Circuit found no retaliation because district's refusal was related to the private school's status as a non-approved school, not to the parent's exercise of a right or privilege. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir, 2007).

District court held that parent failed to demonstrate that the district student failed to progress while receiving related services from the district or that the services rendered were inadequate where parent's experts did not observe student while related services were provided. M.S. v. Mullica Twp. Bd. of Ed., No. 06-533, 2007 U.S. Dist. LEXIS 26952 (D. N.J. April 12, 2007).

Tuition reimbursement is required when the parent provides the district with reasonable notice that the parent plans to reject the placement offered by the district stating their concerns with that placement and of their intent to enroll the child in a private school at public expense. Parent need not accept an improper placement in order to qualify for the right to seek tuition reimbursement. D.L. and K.L. on behalf of J.L. v. Springfield Bd. of Ed., No 05-5129, 2008 U.S. Dist. Lexis 17727 (D. N.J. March 6, 2008).

District Court determined that parent's expert report did not provide notice to district of student's disabilities sufficient to find a violation of the district's Child Find obligations pursuant to the IDEA where parent's expert found no disability and parents failed to meaningfully cooperate with 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).

District Court denied parental request for tuition reimbursement where parents did not notify district of their intent to enroll disabled student in a private high school. R.P., V.P. and E.P. v. Ramsey Bd. of Ed., Civil No. 06-CV-5788, 2008 U. S. Dist. Lexis 70884.

Motion denied seeking reconsideration of order barring reimbursement for unilateral placement in private educational facility. T.H. v. Clinton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 40358 (D.N.J. June 16, 2006) See T.H. ex rel. A.H. v. Clinton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 27432 (D.N.J., Apr. 25, 2006)

District Court determined that district interventions that did not include a CST evaluation were sufficient to comply with the Child Find provisions of the IDEA. 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).

Parents forfeited their right to be reimbursed for unilaterally placing their child in a private school because they did not make the necessary effort to complete the IEP process. (K.H. v. North Hunterdon, No. 05-4925 2006 U.S. Dist. LEXIS 55522, (D.N.J. Aug. 10, 2006).

Cross motions for summary judgment denied. Both parties dispute the timing of the school district's offer to pay the educational expenses associated with the student's residential placement. Trial ordered. R.S. v. River Vale Bd. of Educ., Civil Action No. 05-5968, 2006 U.S. Dist. LEXIS 67710, (D. N.J. September 21, 2006)

Cross motions for summary judgment granted in part and denied in part in matter involving autistic child's claim for compensatory education and reimbursement of costs. Claims for reimbursement of costs arising prior to September 1, 2003 are time barred. Claims for compensatory education remanded to ALJ. D.M. ex rel. R.M. v. Oakland Bd. of Educ., Civil Action No. 05-3589 (JAG), 2006 U.S. Dist. LEXIS 72814, (D. N.J. September 21, 2006)

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).

Motion to consolidate final decision and interlocutory decision in school district of residence matter granted. Interlocutory decisions are subject to review by the State Board upon appeal of a final decision from the Commissioner even if an application for interlocutory review had not been made or if the application had been denied. (Neptune, St. Bd. 2006:June 7)

District Court determined that parent was not required to place child in an inappropriate placement in order to preserve their right to seek tuition reimbursement from the district that devised the inappropriate placement. 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).

District court's ruling that school district provided child with a "free appropriate public education" (FAPE) as required by IDEA was affirmed; district court properly denied tuition reimbursement claim for 2001-2002 school year because at time due process was sought, district remained unaware of

parents' dissatisfaction with its FAPE services. 2002-2003 tuition reimbursement also properly denied as district's IEP provided meaningful educational benefit. Due weight properly given to hearing officer's determination. Marissa F. v. William Penn Sch. Dist., NO. 05-4490, 2006 U.S. App. LEXIS 24364, (3d. Cir. September 27, 2006)

Department of Education properly disallowed $66,000 from the private special education school's tuition reimbursement. School failed to provide the mandated four hours of instructional time on 70 days of the 2003-04 school year when half-day sessions were held. (Titusville Academy, Commr. 2007:July 6)

Parents were not entitled to reimbursement for the cost of a private tuition and other declaratory relief where the IEP provided a "meaningful benefit" despite the absence of parent's requested modifications to the IEP for homework accommodation and supplemental reading. G. N. and S. N., On Behalf of J.N., v. Bd. of Education Livingston, No. 2009 U.S. App. LEXIS 2455 (3d Cir. Feb. 4, 2009).

District Court denied Supplemental Security Income benefits where child's IEP reports failed to evidence marked limitations in two functional equivalent domains or an extreme limitation in one functional equivalent domain. Diaz o/b/o N.D. v. Commissioner of Social Security, Civil No. 07-5672, 2009 U.S. Dist. Lexis 23557 (D. N.J. March 26, 2009).

Court orders ALJ to consider alternative sanctions less severe than dismissal of case where pro se plaintiff parent filed faulty responding papers on a motion in IDEA claim for reimbursement for the unilateral placement of daughter in a private school. D.A. v. Haworth Bd. of Educ., 2009 U.S. Dist. LEXIS 88716 (D.N.J. Sept. 24, 2009)

District Court determined that district's IEP conferred significant learning and a meaningful educational benefit despite the fact that improvements to the IEP were possible. Parent petition for tuition reimbursement dismissed. G.B. and D.B. o/b/o J.B., v. Bridgewater-Raritan Regional Bd. of Ed., Civil No. 07-4300, 2009 U.S. Dist. Lexis 15671(D. N.J. Feb. 29, 2009).

IDEA: IDEA and/or Section 504 falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. (03:March 5, J.B.)

Individualized Education Program (IEP) where special education student resided with each parent alternate weeks under joint custody arrangement participation by representatives of both districts in developing and reviewed IEP would not be inconsistent with Individuals with Disabilities Education Act (IDEA) or New Jersey Special Education regulations. Somerville Bd. of Ed. v. Manville Bd. of Ed., 167 N.J. 55 (2001), aff'g 332 N.J. Super. 6 (App. Div. 2000), certification granted 165 N.J. 676 (2000), aff'd 167 N.J. 55 (2001)

Parents not entitled to reimbursement for independent evaluation fee as they failed to initially consult with board of education as required under N.J.A.C. 6A:14-2.5c. Question of fact existed as to whether board had acceded to all items in settlement agreement prior to the start of litigation.

K.R. v. Jefferson Twp. Bd. of Ed., 2002 U.S. Dist. LEXIS 13267, decided June 25, 2002.

Parents of adult student, classified as eligible for special education and related services, challenged district policy that identified the pupil as a special education student via a notation on the pupil's high school transcript that all courses were transfer credits from other public or private schools, as a violation of the pupil's right to privacy pursuant to the Individuals with Disabilities Education Act. ALJ concluded that pupil was not harmed by the insertion and dismissed the petition. Commissioner agreed and further noted that violations of rights claimed under the IDEA fell outside the jurisdiction of the Commissioner. (03:March 5, J.B.)

Parents of disabled children and disabled children's advocacy groups challenged special education regulations and amendments. Appellate Division held that regulations regarding provision of documentation to parents, assessment of post-secondary outcomes, pool of community rehabilitation programs, disciplinary procedures for potentially disabled students, dissemination of procedural safeguards statement, eligibility for consideration as surrogate parent for disabled child, "child find" and documentation of dissenting opinion of IEP team members failed to comply with federal mandates of IDEA. Baer v. Klagholz, 339 N.J. Super. 168 (App. Div. 2001), certification denied 170 N.J. 84 (2001)

School board had standing and an express right of action under the IDEA to seek reimbursement of an autistic child's residential placement from the State Division of Developmental Disabilities and the State Department of Education. S.C. v. Deptford Twp. Bd. of Ed., 213 F.Supp.2d 452 (D.N.J. 2002).

Special education regulations no longer require that district of residence participate in placement decision made by other public agency. (99:Dec. 23, Highlands)

Where classified pupil was placed by DDD in group home, district of residence was responsible for tuition, but district where group home is located is responsible for transportation costs. Transportation is an "educational benefit" to be provided by district in which group home sits pursuant to N.J.S.A. 30:4C-26(c). (00:Sept. 5, West Windsor-Plainsboro, aff'd St. Bd. 02:April 3)

While the law requires that the IEP provide a FAPE in the LRE, it did not require that the board provide the best education in exactly the manner dictated by parents. Child receiving little benefit locally. Court ordered placement at one of placements identified by ALJ. M.A. v. Voorhees Twp. Bd. of Ed., 202 F.Supp.2d 345 (D.N.J. 2002).

Third Circuit affirms district court's finding that the parents were not deprived of meaningful participation in the IEPs, despite parents' contention that the district provided no information regarding its chosen methodology. The District Court concluded that the parents were provided with a meaningful opportunity to participate in the IEP process and the District's IEPs contained an instructional methodology, of which the parents were

informed. Once a court determines that the requirements of the Act have been met neither parents nor courts have a right to compel a school district to employ a specific methodology in educating a student. W.R. v. Union Beach Bd. of Educ., 2011 U.S. App. LEXIS 3131 (3d Cir. February 17, 2011) (not precedential)

Third Circuit affirms denial of tuition reimbursement to student with speech and language impediments. The Court determined that its review was confined to issues pertaining to the student's 2002-2003 IEP, and that claims involving the District's alleged refusal to offer objective evaluations over the years, deprivation of critical language therapy during her early years, loss of self-esteem and other lost opportunities, and the continuing impact of these alleged violations, could have been raised and heard as part of the IDEA claim in the administrative proceedings, but were not. To survive exhaustion, the ADA, Rehabilitation Act, and § 1983 damages claims had to be based on a set of circumstances for which the IDEA did not provide a remedy. R.R. v. Manheim Twp. Sch. Dist., 2011 U.S. App. LEXIS 2702 (3d Cir. Feb. 10, 2011) (not precedential)

The Third Circuit affirms the district court's ruling that a hearing-impaired child be placed for preschool at a planned public school classroom designed for children with hearing impairments. The Court rejects parents' argument that the hearing officer's discounting of certain testimony should have been rejected based on his purported bias, as he was a co-worker with the school's counsel and a current co-worker with the school's counsel's wife. The parents also claimed that it was improper to propose that the child be placed in a classroom that was not operational at the time the IEP was drafted. The District Court determined that even with the disputed testimony, the parents failed to satisfy the relevant legal standard as their evidence went primarily to whether the IEP would provide an ideal education, and not whether it was "reasonably calculated" to provide "meaningful educational benefits." A.B. v. Montgomery County Intermediate Unit, 2011 U.S. App. LEXIS 185 (3d Cir. January 27, 2011) (not precedential)

Court finds that N.J.S.A 18A:36A-11(b), (resident school district bears financial responsibility when the charter school's IEP calls for placement at a private school) clearly contemplates providing the school board of the student's district of residence the right to challenge through due process, the charter school's placement of a student in private school. Ruling rejects ALJ determination that the issue of district financial responsibility may only be challenged by appeal to the Commissioner. Here, where student enrolled in charter moved from Newark to East Orange, East Orange had standing to dispute charter's private placement of student; further, the stay-put provision of IDEA provided student an entitlement to remain in the private placement while due process proceedings were pending, at expense of district of residence. Where student subsequently moved to another state, and prevailing parents had not in fact paid for the private placement, the appropriate equitable remedy was to award

transportation expenses, even though the IEP did not reference transportation. E. Orange Bd. of Educ. v. E.M., No. 08-4778 (SRC), 2011 U.S. Dist. LEXIS 16502 (D. N.J. February 17, 2011) (not for publication)

Court grants Board's motion for summary judgment and affirms ALJ's dismissal of parent's due process petition that alleged violations of IDEA, Section 504, the ADA, and state law and sought remedies including compensatory education and compensatory damages. Court finds that compensatory education claim is not moot as student retains a concrete interest in seeking compensatory education, despite move to adjacent school district. Court also finds that parent exhausted her administrative remedies as challenge to IEP was explicitly adjudicated in earlier ALJ decision. However, parent cannot seek compensatory education under the IDEA because there is no evidence that the procedural violation of failing failure to develop an IEP for the 2004-2005 school year deprived student of an educational benefit or that board's failure to timely respond to parent's requests for records and an IEP meeting deprived her of meaningful involvement in the creation of the IEPs where parent ultimately had the opportunity to, and did, participate ; Section 1983 claim fails because it cannot be used to enforce the IDEA or Rehabilitation Act; and ADA and Section 504 claims must fail because they are derivative of her IDEA claim. N.P. v. E. Orange Bd. of Educ., No. 06-5130 (DRD), 2011 U.S. Dist. LEXIS 11171 (D. N.J. February 3, 2011)(not for publication)

Court grants summary judgment in favor of district and denies parents' motion for summary judgment. Court finds that ALJ correctly denied parents' motion to amend complaint, where amendments not expand the original complaint or add any additional causes of action. ALJ correctly denied motion to extend the 120 days for service on OAL as parents failed to demonstrate good cause. Court also affirms ALJ finding that student who had completed 12th grade was not denied FAPE or entitled to the requested remedies of school taxi service, compensatory education, and transition services. District's procedural violations (failure to develop goals and objectives for testing; lack of individually designed transition plan; discontinuance of OT therapy services without an IEP meeting; and failure to provide independent evaluations) did not rise to the level of a substantive deprivation or deny FAPE. Student passed the NJHSPA, received above average grades in most classes, had good socialization and life skills and parents were not deprived of the opportunity to participate in the decision making process. Third Circuit has not defined what amount of transition planning is required in an IEP but procedural defects in this case did not amount to deprivation of FAPE. District was not required to provide a cerebral palsy expert educator; level of expertise of the experts involved in this case was adequate. Rodrigues v. Fort Lee Bd. of Educ., No. 2:08-cv-05736 (SDW) (MCA), 2011 U.S. Dist. LEXIS 11480 (D.N.J. February 7, 2011) (not for publication)

Court grants parents' interlocutory appeal; stay-put determined to be sectarian school where parents and predecessor district of residence had agreed to

place student; however, as Court determines that it was not a permitted "Naples" placement, funds to be advanced by parents and reimbursed on monthly basis to avoid payment directly to sectarian school. Parties preserve the right to argue the substantive ruling of the ALJ that the Board could not and can not legally place a student at a sectarian school under the Naples Act. R.S. & M.S. v. Somerville Bd. of Educ., NO. 10-4215 (MLC), 2011 U.S. Dist. LEXIS 748 (D.N.J. January 4, 2011).

Petition for certification is denied, with regard to Appellate ruling that settlement between the parties limiting reimbursement for special education student's private school tuition was unenforceable for absence of indication the board approved the agreement. Lenape Reg'l High Sch. Dist. Bd. of Educ. v. G.P., 2011 N.J. LEXIS 197(February 1, 2011)

Petitioner claimed that District failed to offer FAPE. Court concludes that petitioner's claims barred by IDEA'S 2 year statute of limitations. District Court decision affirmed. School Dist. of Philadelphia v. Deborah A., No. 09-2190 (3d Cir. April 6, 2011)

IEP was appropriate and reasonably calculated to provide B.S. with a meaningful educational benefit, the Court need not consider the appropriateness of the Parents' unilateral placement at the Lewis School. As a result, the Court finds that the Parents are not entitled to reimbursement. G.S. v. Cranbury Bd. of Educ. No. 10-774 (D.N.J. April 26, 2011)

Court denies parents reimbursement for tuition for unilateral placement. District is not liable for failing to develop an appropriate IEP. Upper Freehold Regional Board of Education v. T.W., No. 09-1847, (D.N.J. March 31, 2011)

Resident district's challenge to charter school IEP team placement of student in private school for disabled dismissed. N.J.S.A. 18A:36A-11b is constitutional on its face. L.Y. v. Bayonne Board of Education, No. 10-05698, (D.N.J. March 29, 2011)

School district's motion for a stay denied where district has made no showing of a likelihood of success on the merits of the claim. School District had not complied with the IDEA in declassifying student who was disabled and thus eligible for special education services. Matter remanded to ALJ for hearing on appropriate remedy. M.B. v. South Orange-Maplewood Bd. of Educ. No. 09-5294 (D.N.J. March 23, 2011)

Court affirms findings of ALJ that district failed to provide FAPE for 2 years and that parent placement in ABA program at own expense was appropriate. West Windsor-Plainsboro Regional School District, Board of Education, v. M.F. No. 09-4326 (D.N.J. March 4, 2011)

Parent seeks tutoring and damages, on grounds that eighteen year old daughter was not provided state required physical education courses in high school. Commissioner dismisses the petition on summary judgment, finding that the claims are barred by res judicata and the entire controversy doctrine as well as being filed beyond the 90-day limit; student's excusal from physical education was due to a medical condition, she graduated with appropriate number of credits, had previously filed a due process claim,

which was settled and included a physical education accommodation in her 504 plan; a second due process petition seeking other special education services did not challenge the exemption from physical education. N.N., Commr 2011: May 2.

Margate, the sending district to Atlantic City, sought an order that it had no obligation to bear the costs associated with the extraordinary special education costs of a high school student residing in Margate; Commissioner orders Margate to pay the $175,000 to Atlantic City under settlement reached between parent and Atlantic City for out-of-district placements; contract between the districts states that under-billed special education tuition costs will be charged to the sending district; further, petition was untimely as 90-days began to run when Margate received notice of the settlement agreement between parents and Atlantic City. Margate, Commr 2011: June 2.

Request for an order protecting plaintiff from defendant board of education discovery requests denied. Plaintiff has failed to show that motion meets the criteria set out in Rule 26(c). H.A. v. Camden City Bd. of Educ., No. 10-0733 (D.N.J. July 28, 2011)

In an IDEA case, a district court's grant of a school board's motion for a judgment on the administrative record was affirmed in matter brought on behalf of student who had completed 12th grade and was seeking compensatory remedies; 14th Amendment claim against OAL was barred by the 11th Amendment; the IEP team was not deficient as district was not required to provide a cerebral palsy expert educator; and procedural flaws (failure to develop objectively measurable goals; imperfect description of transition plan) in the IEP did not affect a student's or her parent's substantive rights, as student passed the NJHSPA, received high grades, and parents were not deprived of the opportunity to participate in the decision making process. Rodrigues v. Fort Lee Bd. Of Ed., No. 11-1467(3d Cir. Sept 9, 2011)(not precedential)

Court grants students' motion for summary judgment on counsel fees and costs as prevailing parties under the ALJ-issued Consent Orders, under the fee-shifting provisions of the IDEA and section 504; applying the two-prong test used by the Third Circuit, court found that, although brought on motion for emergent relief, it cannot be deemed "interim relief" for which attorney's fees are not warranted since final relief was achieved on the settlement; board's cross-motion to reduce fees is denied. K.N. & B. v. Passaic City Bd. Of Ed., No. 11-399(JLL) (D.N.J. Oct 27, 2011)(not for publication).

Court grants school board's cross-motion for summary judgment, and denies parent's motion, and thereby upholds ALJ's decision that affirmed the board's declassification of a student with a "specific learning disability" requiring special education; although student had weaknesses, no longer showed a "severe discrepancy between her intellectual ability and achievement" and thus did not have a "specific learning disability." Nor was IEP deficient in outlining measurable goals-- since student was

educated in the regular curriculum, the use of examinations, grades, progress reports, standardized testing and advancement to the next grade level was a proper substitute for a more elaborate set of goals in the IEP. Nor did parents show that lack of a special education teacher for approximately two months lead to a loss of educational opportunity or benefit. H.M. v. Haddon Heights Bd. Of Ed., No. 09-293(NLH)(AMD)(D.N.J. Sept. 27, 2011)

In matter where advocacy groups allege that DOE and school numerous school districts have systematically failed to comply with IDEA, the court denies advocacy groups' motion seeking enforcement of subpoenas seeking classroom observations by unsupervised observers, of certain students with disabilities. Plaintiffs have not clearly articulated their need for the observations, and court is concerned about safety and disruption of the classroom. Disability Rights N.J. v. N.J. Dep't of Educ., No. 07-2978 (MLC), 2011 U.S. Dist. LEXIS 109665 (D.N.J. September 26, 2011).

Parents of an autistic child were entitled to private school tuition reimbursement because plaintiff school district denied FAPE when it declined to test the child and develop an IEP due to the child's private school enrollment; residency, rather than public school enrollment, triggered the district's obligations under the IDEA; district must ensure that a reevaluation is conducted if the child's parents request it, and develop an IEP, even if child is enrolled in private school. Court declines to give deference to DOE's FAQ posted on its website, to the extent it suggests a contrary interpretation of a board's obligation. Moorestown Twp. Bd. of Educ. v. S.D., No. 10-0312(RMB/JS), 2011 U.S. Dist. LEXIS 104744 (D.N.J. September 15, 2011).

Circuit court affirms District Court's judgment that student possessed no learning disability and was not entitled to any special education services, and rejected parent's request for reimbursement for their independent educational evaluation (IEE) as there was an administrative hearing during which the School District was able to show that its examination was "appropriate." See Warren G., 190 F.3d at 87; 34 C.F.R. § 300.502(b)(2). Council Rock School District v. Bolick, II , USDC for the E. Dist Pa., D.C. Civil No. 09-cv-05604 (Feb 7, 2012)(not precedential)

Parents sought reimbursement of tuition and other costs associated with their unilateral placement of their son at a private school during the 2009-2010 academic year, claiming that Board failed to offer their son a plan that complied with IDEA; Court grants summary judgment to school district, finding that the ALJ's determination that the parents failed to collaborate with district, as well as her finding that the District showed that the IEP was proper under the IDEA, was amply supported by the record. The proposed IEP would have conferred a meaningful educational benefit in the least restrictive environment, and was reasonably calculated to provide FAPE, which defeats the parents' claim for reimbursement. L.W. v. Norwood Bd. of Educ., 2012 U.S. Dist. LEXIS 20511 (D.N.J. Feb 17, 2012) (not for publication)

Court grants motion to remand to state court a lawsuit under the NJLAD, brought by student with disabilities through his mother; the lawsuit, relating to a school board's failure to provide an appropriate education to a student with disabilities, had been removed from state court to federal court by the school district; however, court finds that while allegations regarding the IEP *could* give rise to a cause of action under the IDEA, parent has chosen not to state such a claim or pursue a theory of liability predicated on the IDEA and thus the federal court lacks subject matter jurisdiction. A.K. v. Northern Burlington Reg'l Sch. Dist., 2012 U.S. Dist. LEXIS 12160 (Feb. 1, 2012)(not for publication)

A school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP for the child is under administrative or judicial review. Because the court examines the adequacy of the IEP as of the time it is offered to the student and not at some later date, Third Circuit agree with the District Court that, without notification of an intent to reenroll in public school, the school district was under no obligation to update IEP. D.P. v. Council Rock Sch. Dist., No. 11-2747 (3d Cir. Pa. Apr. 27, 2012)

Motion for summary judgment grant to parents where residential placement was shown to be in the least restrictive environment. Plaintiff to submit request for attorney's fees and costs. T.R. v. Cherry Hill Twp. Bd. of Educ., No. 11-2547 (D.N.J. Apr. 17, 2012)

Following special education litigation with district, court grants prevailing party attorney's fees with a 5 percent reduction in the lodestar amount. T.B. v. Mount Laurel Bd. of Educ., No. 09-4780 (D.N.J. Mar. 30, 2012)

Private Schools for handicapped claimed discrimination because of end of program where school received federally subsidized meals for financially eligible students even though the schools are for-profit entities. The Court concludes that the Plaintiff-Schools have carried their burden of establishing Article III standing to sue on behalf of themselves and their students, and that summary judgment should be denied as to the Rehabilitation Act, Americans with Disabilities Act, and Administrative Procedure Act claims. Deron Sch. of New Jersey, Inc. v. United States Dep't of Agric., No. 09-3477 (D.N.J. Mar. 30, 2012)

Plaintiff challenged placement of kindergarten special education students in inclusion class as violative of IDEA, Rehabilitation Act and NJLAD. Summary judgment granted to school district on IDEA and Rehabilitation Act. NJLAD claims dismissed for lack of subject matter jurisdiction. J.T. v. Dumont Pub. Sch., No. 09-4969(D.N.J. Mar. 28, 2012)

Court of Appeals affirms District Court judgment granting summary judgment in favor of school district. Pre-school autistic student received FAPE in the least restrictive environment, as had been previously determined by the administrative law judge. After disagreeing with the child study team placement, parent had unilaterally placed student in a different school and sought due process. L.G. v. Fair Lawn Bd. of Educ., No. 11-3014, UNITED STATES COURT OF APPEALS FOR THE THIRD

CIRCUIT, 2012 U.S. App. LEXIS 13227, Decided June 28, 2012, affirming L.G. v. Fair Lawn Bd. of Educ., No. 2:09-cv-6456 (DMC) 2011 U.S. Dist. LEXIS 69232 (D.N.J. June 27, 2011)

Court of Appeals affirms District Court judgment that parents were entitled to neither compensatory education nor reimbursement for tuition or transportation expenses when they unilaterally placed student in private school for students with disabilities between the student's first and second grade years. District Court had reversed Due Process Hearing Officer's decision which had awarded parents compensatory education for the 2007-2008 school year, as well as reimbursement of tuition for the 2008-2009 school year, and reimbursement for transportation, finding that the school district's IEP denied FAPE. Ridley Sch. Dist. v. M.R., No. 11-1447, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 680 F.3d 260; 2012 U.S. App. LEXIS 9908, Decided May 17, 2012.

District Court grants motion to supplement the record and remands matter to ALJ to reconsider finding that the School District offered a FAPE in consideration of the standardized test results proffered by Plaintiffs and E.S.'s previously undiagnosed learning disability as combined with the alleged severity of E.S.'s bipolar disorder. R.S. ex rel. E.S. v. Montgomery Twp. Bd. of Educ., Civil No. 10-5265 (AET), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 80321, Decided June 8, 2012.

In an IDEA case, a district court's entry of summary judgment in favor of the students on their claim for equitable relief was affirmed since, inter alia, a school district had denied the parents any meaningful participation in the development of the IEPs, and the court properly applied the modified de novo standard of review to the ALJ's decision. L.B. v. Gloucester Twp. Sch. Dist., No. 10-4630, 2012 U.S. App. LEXIS 14785) (3d Cir.)(July 19)

Court denies motion for summary judgment brought by special education student and her parents, seeking either a rehearing of petition de novo, or remand to different ALJ than the one who had dismissed her petition for failure to comply with a pretrial order, and had denied her motion for sanctions against the board for failing to appear at a pre-trial conference. Grants board's cross-motion for summary judgment. H.A. v. Camden City Bd. of Ed., No. 10-0733 (JBS/KMW), 2012 U.S. Dist. LEXIS 106524 (D. N.J. July 31, 2012)

To comply with the IDEA, a school district no longer responsible for educating a child can still be held responsible for its past transgressions. A claim for compensatory education is not rendered moot by an out-of-district move, even if that move takes the child out of state. D.F. v. Collingswood Borough Bd. of Educ., ___ F3d ___ (2012) (Sept 12, 2012).

District proposed in IEP that child be placed in kindergarten the following fall, but the parents urged that the child be placed in preschool for another year. Unable to resolve dispute, parents unilaterally placed the child in a preschool program. The district court found that the parents were not

entitled to reimbursement. The IDEA authorizes tuition reimbursement for parents who unilaterally decide to place their child in an out-of-district school if the IEP proposed by the school district failed to offer the child a FAPE and the placement the parents chose was proper under the IDEA. District court erred in denying reimbursement on equitable grounds based on the parents' conduct since the parties reached an impasse based on the parents' insistence on preschool and the district's insistence on kindergarten, and the parents did not disregard their obligation to cooperate and assist in the formulation of an IEP. District Court must determine whether the IEP proposed by the District offered student a FAPE, and, if not, whether the placement by parents was proper under the IDEA. Upper Freehold Reg'l Bd. of Educ. v. T. W., No. 11-2151 (3d Cir. N.J. Sept. 7, 2012)

Matter involves a case of first impression in Third Circuit on exceptions to IDEA statute of limitations. IDEA statute of limitations upheld unless it is shown that there were "specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint" or LEA withheld information from the parent that was required to be provided to the parent. In order to satisfy these requirements of misrepresentation, plaintiffs must show that the school intentionally misled them or knowingly deceived them regarding their child's progress. In order to show that LEA withheld information plaintiffs can satisfy this exception only by showing that the school failed to provide them with a written notice, explanation, or form specifically required by the IDEA statutes and regulations. Establishing evidence of specific misrepresentations or withholding of information is insufficient to invoke the exceptions; a plaintiff must also show that the misrepresentations or withholding caused her failure to request a hearing or file a complaint on time. The terms "prevented from" and "due to" denote a causation requirement. Thus, where the evidence shows, for example, that parents were already fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those safeguards. In instant case, plaintiffs failed to show that there was any error on part of LEA or SEA determination that plaintiffs were ineligible for exceptions to statute of limitations. Plaintiffs may not invoke common law equitable tolling doctrines where specifically enumerated exceptions governing federal statute are present; Student received FAPE and is not entitled to compensatory education award. D. K. v. Abington Sch. Dist., 696 F.3d 233 (3d Cir. 2012)

The Office of Special Education within the Department of Education has authority to investigate a complaint alleging a violation of the special education rules and regulations. N.J.A.C. 6A:14-9.2. Student's parents filed a complaint in which they claimed the district was not complying with N.J.A.C. 6A:14-4.8 because it was not providing the student the required number of hours of instruction per week. The complaint raised no issue as to the substantive content of the instruction provided to the

student. New Jersey Department of Education Complaint Investigation C2012-4341, No. A-1000-11T1 (App. Div. Oct 11, 2012)

In this IDEA matter, by way of a summary judgment motion, Plaintiff D.F. appeals the ALJ's dismissal of his due process petition due to insufficient factual pleading. Court denies renewed motion for summary judgment where plaintiff sought to include on remand an allegation of improper restraint of the student, an issue raised by an earlier due process petition for which inclusion had been denied by the ALJ; orders that remand will not include question of improper restraint, as complaint fails to allege related facts related such as the nature of restraints, perpetrator or restraints, the circumstances, and whether the IEP authorizes reasonable restraints if and when the student engages in behaviors which may be dangerous to self and/or others. *D.F. v. Collingswood Pub. Schs,* 2013 U.S. Dist. LEXIS 2624 (D.N.J. Jan 8, 2013)

Third Circuit affirms district court finding plaintiffs' allegation of a purely procedural violation failed to provide standing under IDEA or the Rehabilitation Act, and to the extent plaintiffs alleged a substantive violation, they failed to exhaust their IDEA administrative remedies before bringing their claim in federal court. The IDEA permitted schools to provide special education services in a centralized location. The district court was correct to find plaintiffs lacked standing. Plaintiffs did not dispute they would not have standing under the Rehabilitation Act if they contended they suffered the same harm as they contend they suffered under IDEA. There was no reason to excuse plaintiffs' failure to exhaust the IDEA administrative process, which was designed to address precisely the issue at hand. *J.T. v. Dumont Pub. Schs*, No. 12-2241(3d Cir. Apr. 26, 2013)

District Court affirmed that student was entitled to an independent educational evaluation at public expense as a matter of law, once reevaluation by school district was found to be inappropriate, as the assessment tools used did not provide relevant information needed to make a prospective determination of future eligibility for services. *M. Z. v. Bethlehem Area Sch. Dis*t., No. 11-2887 (3d Cir. Mar. 27, 2013)

Plaintiff's summary judgment motion denied where school board's policy choice to educate special education student in centralized location rather than neighborhood school was permissible under the IDEA. Schools have significant authority to determine the school site for providing IDEA services. The proximity presence or factor is not a presumption that a disabled student attend his or her neighborhood school. Proximity is only one of many factors to be considered in determining a student's placement. No federal appellate court has recognized a right to a neighborhood school assignment under the IDEA. *J.T. v. Newark Bd. of Educ., No.* 03566 (D.N.J. Apr. 5, 2013)

Prevailing plaintiff in IDEA matter sought $546,355.53 in fees awarded as prevailing party. Court reduced award to $414,140.85. Fees for experts are not recoverable under the IDEA. District showed that fee should be

reduced because of (1) problems inherent in block billing, (2) vagueness of the entries, (3) overstaffing, and (4) overbilling. *D.B. v. Gloucester Twp. Sch. Dist.*, No. 08-5667 (D.N.J. Mar. 28, 2013)

Parents had no right to tuition reimbursement for placement in private special education program where district court determined that IEP was designed to provide FAPE in-district. *R.G. v. Downingtown Area Sch. Dist., No. 12-3904 (3d Cir. June 3, 2013)*

Court grants district's motion to reconsider its earlier remand order, as all factual and legal issues had been resolved, including the claim for compensatory education, and there was no need for a remand. *A.C. v. Collingswood Pub. Schs, 2013 U.S. Dist. LEXIS 85997 No. 10-594 (D.N.J. June 19, 2013)*

Parents' motion for summary judgment is denied and matter is remanded; Parents filed for due process when they received letter from private school, advising that the private school would discontinue educating the child because it was terminating its contractual relationship with the public school. No violation as termination did not result in a deprivation where the child was not removed from Garden Academy until a settlement was reached. Furthermore, although Plaintiffs did not participate in an IEP meeting 10 days after the notice, this did not result in a deprivation of the parents' rights as parents' rights were protected in the mediation forum and subsequently before the OAL. Parents' right to provide input was not violated as placement discussions would not trump the implementation of the stay put provisions due to the parents filing for mediation. As to comp ed claim by parents for termination of home visits, the issue of whether IEP and thus stay-put, required home visitation by once per week by teachers or teachers' aides district staff as part of home programming, was a question for remand. *S.M. v. Marlboro Twp. Bd. of Educ., (MAS) (LHG), 2013 U.S. Dist. LEXIS 79773 No.10-4490 (D.N.J. May 31, 2013)* (*not for publication)*

Court rules, in matter where parent claims that district failed to implement student's IEP and therefor should pay for immediate placement in another district, that special education student Plaintiff is not excused from exhausting administrative remedies. In order to show futility, plaintiffs must allege systemic legal deficiencies and, correspondingly, request system-wide relief that cannot be provided (or even addressed) through the administrative process. Merely asserting that the administrative process is moving too slowly is not enough to overcome the exhaustion requirement. Court denies Plaintiff's request for emergent relief and dismisses the Verified Complaint without prejudice. *L.V. v. Montgomery Twp. Sch. Dist. Bd. of Educ., 2013 U.S. Dist. LEXIS 78662 No. 13-2595 (D.N.J. June 5, 2013)*(not for publication)

A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits. Court affirms ALJ that district was not liable for IDEA violation. Failure to include a statement of goals and objectives did not impede student's right

to FAPE, did not impede the parents' opportunity to participate in the decision-making process, and did not cause a deprivation of educational benefits. District was working to complete the IEP by the beginning of school and intended to produce an IEP containing goals and objectives shortly after child began the school year. *P.C. v. Harding Twp. Bd. of Educ., No. 2:11-06443 (WJM) 2013 U.S. Dist. LEXIS 107166 (D.N.J. July 31, 2013).*

Once a parent unilaterally removes a child from an existing state program governed by an IEP, the protections of the stay-put provision cease until the parent and the school agree on a new placement. Where child remained in the unilateral placement for several years prior to seeking due process hearing, the last educational placement of child for stay-put was the in-district placement pursuant to the IEP then in effect; court rejects parent's argument that that the stay-put provision should be restarted every school year, regardless of unilateral removal from an existing state program. Nor did settlement agreement approved by the board and ALJ constitute an agreement between the parties that the unilateral placement was an appropriate placement for R.L; it was simply an agreement for reimbursement of past tuition at private school, but specifically did not include agreement on stay-put rights. *K.L. v. Berlin Borough Bd. of Educ.*, 2013 U.S. Dist. LEXIS 111047 (D.N.J. Aug 7, 2013).

District Court does not have jurisdiction in breach of contract action arising out of an approved settlement agreement regarding the education of an autistic student. Parties had agreed that N.J. Superior Court, Union County would have sole and exclusive jurisdiction to adjudicate an action to enforce the settlement. *S.B. and E.B. o/b/o J.B. v. Summit Bd. of Ed.*, No. 2:13-03161 2013 U.S. Dist. LEXIS 117694 (WJM) (D.N.J. August 20, 2013)

Matter involved an eleven year old child with autism, generalized anxiety disorder, and a learning disability in the area of math. Complaint asserted claims against the school district arising under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, 42 U.S.C. § 1983 ("§ 1983"), Title IX of the Education Amendments of 1972, and New Jersey's Law Against Discrimination. Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), the District's motion will be granted as to the Title IX and NJLAD claim and denied as to the Section 504, ADA and 1983 claims. *D.V. v. Pennsauken Sch. Dist.*, CIVIL ACTION NO. 12-7646 (JEI/JS), 2013 U.S. Dist. LEXIS 111045, (D.N.J. August 7, 2013).

Third circuit remands for further proceedings after determining that the district court improperly granted summary judgment to a school district as to claims for compensatory damages by parents under the Rehabilitation Act and the ADA on the basis of the district having denied their daughter a FAPE; there was a genuine dispute of material fact as to whether the school district was deliberately indifferent. However, the district court did not err in refusing to consider supplemental evidence. *Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, No. 12-3574 (3d Cir. Sept. 17, 2013)(not precedential)

Third Circuit affirms district court in matter where student was erroneously identified as a having a disability under IDEA; student could not bring an action under IDEA based on violation of district's duty to properly assess students as not disabled, because the IDEA created a cause of action only for children with disabilities and the student never was a child with a disability; the school district's erroneous identification of the student as a child with a disability did not violate § 504 of the Rehabilitation Act, or the Americans with Disabilities Act because there was no evidence that the school district knew, prior to an independent education evaluator's determination that the student was improperly designated as disabled, that the student had likely been misidentified as having a learning disability. *S.H. v. Lower Merion Sch. Dist.*, No. 12-3264 2013 U.S. App. LEXIS 18458 (3d Cir. Sept. 5, 2013)(precedential)

Parent objected to transferring student with OTI from outside program to program newly created within the district. Noting that the preference for mainstreaming is secondary to the IDEA's goal that children receive a "meaningful educational benefit" the court found strong evidence in the record contradicting the ALJ's conclusion that the in-district placement would be a mirror-image of the outside program. Therefore, matter is remanded for further proceedings, including an evidentiary hearing. The ALJ was ordered to take special care to factor in consideration of the possibility that the student's placement in-district, as compared to the outside placement, will detrimentally affect his ability to receive a free appropriate public education. *In re R.C. & J. v. Great Meadows Reg'l Bd. of Educ*., No. 12-5241 (MAS) (TJB), 2013 U.S. Dist. LEXIS 145761 (D.N.J. October 8, 2013) (unpublished)

Parents of student with hearing problems challenged the Board's placement; requested reimbursement for services they paid for during the summer months ("ESY"), reimbursement for a hearing aid, and alleged numerous procedural violations of the IDEA. A desktop speaker, in conjunction with his hearing normal right ear, would have allowed G.A. to receive "meaningful benefit." Court grants Board's motion for summary judgment in part, and grants Plaintiffs' motion for summary judgment in part. Plaintiffs' cross-motion for post-administrative expenses is denied. Plaintiffs' request for reimbursement of a hearing aid, private tuition and related expenses is denied. Defendant shall reimburse Plaintiffs for the private evaluation. *G.A. v. River Vale Bd. of Educ*., Civil Action No. 11-3801 (FSH), (D.N.J. September 18, 2013) 2013 U.S. Dist. LEXIS 133911 (not for publication)

Court grants defendant board's motion to stay proceedings; plaintiffs had filed four due process proceedings, and had fully exhausted their administrative remedies with the first three and each time, the school Board failed to comply with the outcome, but had not exhausted its remedies with the fourth pending petition. The systematic failure exception to the exhaustion doctrine did not apply as the allegations speak to the Defendants' treatment of the student individually as opposed to involving the framework and

procedures for assessing and placing students in appropriate educational programs; further, the district court would benefit from further development of the administrative record. The Court stayed the proceedings until such time as the fourth due process petition is exhausted. *R.C.S. v. Shrewsbury Borough Sch. Dist. Bd. of Educ.*, 2013 U.S. Dist. LEXIS 126467 (D.N.J. Sept. 5, 2013).

Court dismisses *pro se* parent's complaint in special education matter, for failure to exhaust administrative remedies; no exclusion to the exhaustion requirement applied. *Allen v. State-Operated Sch. Dist.*, Civil Action No.: 12-3128 (ES), 2013 U.S. Dist. LEXIS 125923 (D.N.J. September 4, 2013)

Student alleged that defendant school district violated Title II of the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act, plaintiff's personal testimony regarding her experience in the district's special education program was insufficient to create a genuine dispute of material fact as to the district's knowledge that she might not have had a disability; Although the classification of plaintiff under the category of "other health impairment" may have been in technical noncompliance with the Individuals with Disabilities Education Act, that fact alone did not provide a basis for a claim under § 504 or the ADA; It could not be said that the district's continued evaluations and diagnoses throughout the course of plaintiff's education effectively put the district on notice that she had likely been misidentified. *A.G. v. Lower Merion Sch. Dist.*, 542 Fed. Appx. 193 (3d Cir. 2013)

A board of education did not violate the procedural safeguards of the Individual with Disabilities Education Act (IDEA), 20 *U.S.C.S.* § 1400 et seq., by challenging a student's Individualized Education Program (IEP) by initiating a due process proceeding; The safeguards under the IDEA were not implicated where a resident school district, which was not responsible for developing the IEP merely disputed that a charter school's IEP provided a free and appropriate education (FAPE) in the least restrictive educational environment; The board of education followed the appropriate procedures in initiating its due process petition; The proposed program met the FAPE and mainstreaming requirements of the IDEA. *L.Y. v. Bayonne Bd. of Educ.*, 542 Fed. Appx. 139 (3d Cir. 2013)

Compliance with the federal Individuals with Disabilities Education Act through the provision of a free appropriate public education did not immunize a program or practice from being challenged under the Americans with Disabilities Act and the Rehabilitation Act; Pennsylvania's funding formula did not violate the ADA or the RA because there was no evidence to show that the funding formula deprived the class members of a program, benefit, or service that was provided to the disabled students who attended schools in the non-class districts. *CG v. Pennsylvania Dep't of Educ.*, 734 F.3d 229 (3d Cir. 2013)

Motion to dismiss granted in part and denied in part. Lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and/or failure to state a claim upon which relief can be granted in matter concerning special education

student where it was alleged that services were not provided for number of years. *S.B. v. Trenton Sch. Dist*., 2013 U.S. Dist. LEXIS 167073 (D.N.J. Nov. 25, 2013)

In special education matter, the defendants moved to have plaintiffs' claims dismissed on several grounds, including lack of subject matter jurisdiction because plaintiffs failed to exhaust their administrative remedies. Matter stayed pending outcome of state administrative proceedings. *J.R. v. Camden City Bd. of Educ.*, 2013 U.S. Dist. LEXIS 163416 (D.N.J. Nov. 15, 2013)

Seeking emergent relief in special education matter, plaintiffs have failed to carry their high burden on this motion for a preliminary injunction to show a likelihood of success on the merits of their underlying claim. Preliminary injunctive relief is an extraordinary remedy and should be granted only in limited circumstances. *B.C. v. Wall Twp. Bd. of Educ*., 2013 U.S. Dist. LEXIS 175180 (D.N.J. Dec. 11, 2013)

Medicaid (SEMI) reimbursement is not mandated for special education services provided to parentally-placed disabled children in non-public schools. Congress did not intend to include service plans under a broader IEP framework. *Lakewood Bd. of Educ. v. Department of Human Servs.,*2013 N.J. Super. Unpub. LEXIS 2694(App. Div. Nov. 7, 2013)

Decision on denial of waiver of *N.J.A.C.* 6A:23A-18.3(c)1.iii that requires a private school for students with disabilities maintain a minimum Average Daily Enrollment of 16 public school placement students in a school year remanded where Commissioner failed to give any reasons for the denial of petitioner's waiver request, Court cannot make any determination whether his decision was arbitrary or in accord with legislative policy. A search of the record does not reveal the basis for his decision, either. *You & Me Preschool v. New Jersey Dep't of Educ*., 2013 N.J. Super. Unpub. LEXIS 2674 (App.Div. Nov. 4, 2013)

In a case in which a special needs student claimed that a school district violated the IDEA by refusing to provide in-class support services at the middle school located closest to her home, the appellate court concluded that the case was moot; the student could not raise a claim for compensatory education after she expressly waived that claim before the administrative law judge and did not discuss that claim in the district court or in the appellate court in her brief. The appeal was dismissed as moot, and the matter was remanded to the district court. *J.T. v. Newark Bd. of Educ*., No. 13-2299 (3d Cir. April 28, 2014) (not precedential)

Court dismisses parent’s request for injunctive relief, and rejects argument that the district committed numerous procedural and substantive violations of the IDEA over a period spanning several years. Noting that the action was filed initially to return the student to school after a suspension and to prevent him from graduating, it has since that time evolved into a referendum on his entire experience in the Township's schools; however, the IDEA has a defined, limited retrospective reach, and its exhaustion provisions required the Court to review only those matters that were

squarely presented. At this point, any "emergency" has long passed, the student has graduated and his placement has changed. *D.C. v. Mount Olive Twp. Bd. of Educ*., Civil Action No. 12-5592 (KSH) (D.N.J. March 31, 2014) not for publication

Parents of autistic son seek review of two administrative determinations upholding district's proposed new placement; issues involved (1) whether district violated IDEA or Section 504 by not reevaluating student prior to proposing a change in his placement; (2) whether the District gave adequate notice of the proposed change in placement; and (3) whether district should have convened an IFP team meeting before specifying classroom placement. Court denies motions for preliminary injunction and leave to file amended complaint, finding that district provided FAPE. *M.A. v. Jersey City Bd. of Educ.,* Civil Action No. 2:13-06946 (WJM) (D.N.J. March 18, 2014)

District sought out of district placement for student with frequent behavior problems such as spitting, hitting, toileting issues; ALJ found that District had denied FAPE by procedural violations, namely "for making a predetermined placement and failing to develop an IEP to justify the out-of-district placement." Court finds that the ALJ erred in determining that a procedural violation occurred, both as to the face of the IEP and predetermination of the IEP, and also misapplied the law, as a school district's failure to comply with the procedural requirements of IDEA will constitute a denial of a FAPE only if such violation caused substantive harm to the child or his parents. Under *Rowley*, second prong of inquiry is whether IEP confers a meaningful educational benefit. Only after the issue of the IEP's appropriateness was established, should the least restrictive environment be considered. Court grants Board's motion in part and denies the motion of Defendants and remands for reconsideration. *Alloway Twp. Bd. of Educ. v. C.Q.,* Civil Action No. 12-6812 (RMB/AMD) (D.N.J. March 14, 2014)

Court grants district a temporary restraining order barring multiply-handicapped eighteen-year-old who injured another student from returning its high school, and a preliminary injunction placing him in the alternative educational setting during the pendency of his disciplinary proceedings. Board had removed him for a period of 45 days for carrying a knife. After this removal, the school held a disciplinary hearing, at which point O.R. was given the one-year suspension at issue. His actions were not a manifestation of his disabilities and thus stay put provisions did not apply. Therefore, it appears that his then current setting would be the alternative setting. *Ocean Twp. Bd. of Educ. v. E.R. ex rel. O.R.*, Civil Action No. 13-1436 (D.N.J. March 10, 2014) not for publication

In IDEA matter, Third Circuit affirms district court determination that the school district established promissory estoppel. The district established promissory estoppel because, the mother agreed to the terms of a settlement agreement, wherein she promised to release all claims against the district in exchange for money that would be used to home-school the

student, she should have reasonably expected that her promise would induce action or forbearance on the part of the district, and the district relied on the mother's promise to home-school the student and refrained from initiating truancy proceedings. *B.K. v. Haverford Sch. Dist. (In re I.K.)*, No. 13-3797(3d Cir. May 21, 2014)

Plaintiff sought reimbursement for unilateral placement for placing student in private school for the disabled after plaintiff claimed that student not receiving FAPE. The IEP need not "maximize the potential" of the disabled student. Instead, all that is required to provide a disabled student with a FAPE is an IEP that is 'reasonably calculated' to enable the child to receive 'meaningful educational benefits in light of the student's 'intellectual potential.' District Court's review of record found that student made meaningful progress. Plaintiff's motion for summary judgment denied. Motion to Supplement the record denied. *C.P. v. Fair Lawn Bd. of Educ.*, No. 12-cv-05694 (D.N.J. May 1, 2014)

Parents' suit alleging retaliation in violation of the IDEA, ADA, and the Rehabilitation Act, properly dismissed for lack of subject matter jurisdiction because these claims had be to exhausted under the IDEA before the court could assert subject matter jurisdiction as the claims related to the enforcement of IDEA rights. Claims were not exempt from exhaustion. The implementation exception to exhaustion did not apply as the claims challenged more than the implementation of the student's IEP. The school district's alleged past failure to implement the student's IEP was an insufficient basis to excuse exhaustion, and thus, the futility exception to exhaustion did not apply. *Batchelor v. Rose Tree Media Sch. Dist.*, 759 F.3d 266 (3d Cir. Pa. 2014)

Student's Americans with Disability Act and Rehabilitation Act claims dismissed. IDEA claims are remanded for determination of compensatory education. *D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260 (3d Cir. Pa. 2014)

District upholds ALJ finding that parents entitled to reimbursement for unilateral placement in private school for students with disabilities where IEP failed to provide student with FAPE. *Millburn Twp. Bd. of Educ. v. J.S.O.*, No. 13-1208 (D.N.J. July 21, 2014)

Although a school district may lawfully utilize a severe discrepancy approach to determine whether a child has an Specific Learning Disability, and employ a statically sound formula to measure whether a child has a severe discrepancy between aptitude and actual achievement, that formula may not be the sole determinant of whether a child has a SLD. Rather, a school district must base its determination on all of its assessments of the child, N.J.A.C. 6A:14-3.5(c), and on careful, documented consideration of parent input, teacher input, test results, and information concerning the child's health and background. District in this case did not base its decision on all available information. *V.M. ex rel. B.M. v. Sparta Twp. Bd. of Educ.*, No. 12-892 (D.N.J. July 3, 2014)

Reimbursement for Unilateral placement denied where IEP was designed to provide FAPE; where parents failed to provide 10 day notice of intent to

enroll student in private school and failed to express concerns about IEP at most recent IEP meeting. *K.S. & M.S. v. Summit Bd. of Educ.*, No. 12-7202 (D.N.J. July 25, 2014)

Student to continue receiving the mainstreaming education dictated by her IEP in accordance with stay-put provision of IDEA at unapproved private school for student with disabilites, pending outcome of litigation. *D.M. v. N.J. Dep't of Educ.*, No. 14-4620 (D.N.J. Aug. 28, 2014)

STANDING

Commissioner dismisses matter for lack of standing, where petitioning parent initiated the appeal of board's determination to exclude her son from Honor Society, but where son turned 18 during pendency of matter and student neither submitted a Certification of Substitution nor placed on the record his desire to have his mother proceed as his representative. I.C.W. obo J.W. Commr 2011:Oct 14 (Mountain Lks)

The Commissioner agrees with the ALJ's conclusion that a Korean-American taxpayer had no standing to challenge the provision of State funds to the New Jersey Japanese School (NJJS), a nonpublic school, by the local board of education and the DOE for textbooks and nursing services, or the designation of NJJS as a nonpublic school recognized by the Department. Choi v. New Jersey Japanese School Board of Ed., Commr 2012: Feb 17 (Oakland)

Resident/taxpayer lacked standing to challenge district's decision to administer quarterly assessments designed to measure its students' readiness for college and careers, but to exempt from the testing those students who are taking AP courses. Petitioner claimed that the exemption disparately impacts African-American children since the majority of Montclair's AP students are white. However, petitioner does not currently have children in respondent's schools, and will therefore suffer no direct personal harm or inconvenience from the actions which respondent has decided to undertake. Further, while petitioner is a resident and taxpayer in Montclair, he has alleged no personal financial ramifications from respondent's testing plan. Thus, petitioner does not qualify as an "interested person" under the regulations governing disputes before the Commissioner, *see, N.J.A.C.* 6A:3-1.2. Nor is petitioner in a position adverse to other parties, have a palpable stake in the outcome of the litigation, or likely to suffer harm in the event of an unfavorable decision. His advocacy efforts are commendable, but they do not add up to the concrete, personal stake in respondent's current actions which standing contemplates. *Herron*, Commissioner 2014:June 2 (Montclair)

STATE AID

Abbott Appeals

Abbott district whole school reform funding request dismissed. District no longer wishes to continue its appeal. (02:May 20, Elizabeth/Westminster Academy)(02:May 20, Elizabeth/Elmora School)(02:May 20, Elizabeth/Alexander Hamilton Middle School)(02:May 20, Elizabeth/Abraham Lincoln School)(02:May 20, Elizabeth/Woodrow Wilson School)(02:May 20, Elizabeth/Grover Cleveland Middle School)

Based on Hammonton Appellate Division decision, district's state aid properly calculated pursuant to the Fiscal Year '04 Appropriations Act. (04:April 28, Woodbury)

Board did not demonstrate that preschool program would be inadequately funded. (04:April 22, Passaic)(04:April 22, Perth Amboy)

Learning Center's application for retroactive funding is denied for the period that allegedly operated as a *de facto* Abbott preschool, since it did not operate in compliance with Abbott regulations and had not been approved by DOE. Commissioner properly exercised jurisdiction over matter controlled by education regulations. (St. Bd. 04:April 7, aff'g Commissioner 03:Nov. 6)

Abbott challenge to 1999-2000 school year, to the extent it is not addressed by Supreme Court's determination of the "global issue" is rendered moot by fact that preschool pupils in question are no longer in preschool, and prospective preschool issues are being addressed in separate litigation. (01:Dec. 26, Hoyos)(01:Dec. 26, Aranda)

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

Annual cost per pupil: certain items, including investment and severance expenses, were non-allowable in the calculation of annual cost per pupil for tuition reimbursement by the state to private special education residential school, under N.J.A.C. 6:20-4.4. (01:April 12, Carrier Foundation, aff'd and remanded in part St. Bd. 01:Oct. 3, settlement approved 02:July 11, aff'd St. Bd. 02:Oct. 2)

Appeal seeking adequate funding to implement whole school reform plan under Abbott, settled. (02:Feb. 19, Elizabeth)(Eighteen separate decisions representing individual schools)

Authority to transfer revenues from the General Fund to the Property Tax Relief Fund is vested in the Director of the Division of Budget and Accounting, a Treasury Department Division. Neither DOE nor Commissioner have authority to retroactively transfer core curriculum standards aid,

inappropriately designated to another district based on a miscalculation of student population. (05:June 2, Milford)

Bilfurcation of Pre-K and K plans has no effect on Early Childhood Program Aid. Would not compromise provision of appropriate kindergarten programs to Abbott students. (ECPA). (02:April 15, Pemberton)

Board did not prove that student was not resident of the district when placed in correction center. Board responsible for tuition. State aid not restored. (02:May 31, South River) Decision on Remand

Board does not have the statutory authority to improve property of the municipality, and improperly expended funds to improve sidewalk owned by municipality, to jointly develop and construct a recreational field; Division of Finance must recover from school board all state aid received on the amounts inappropriately disbursed. (00:Feb. 26, Wildwood Crest)

Board's challenge to Notice of Determination regarding second level audit appeal of Title I funds dismissed. (02:May 16, Trenton)

Budget Item Added/Increased

ALJ erred in excluding certain of the district's encumbrances in the development of its maintenance budget, by wrongly concluding that only expenditures fully paid by June 30, 2003 were properly attributable to the 2002-03 "maintenance budget." The focus is properly the timing of the receipt of goods and services, not payment. (03:Oct. 20, Gloucester). See, also (03:Oct. 20, Vineland)(03:Oct. 20, New Brunswick)

CPI: Board's exhibits support its proposed revisions to the Department's calculations. (03:Oct. 20, Keansburg)

Custodian: Although district's custodial costs were excessive some adjustment to the DOE's calculation is warranted based on significantly updated undisputed square footage figures. DOE to apply its formula to the district's current, verified square footage exclusive of leased preschool space receiving custodial funding through Early Childhood, taking account of partial positions with the requisite increase in full-time equivalent positions (FTEs) but with no additional allowance for "satellite" coverage. (03:Oct. 20, Jersey City)

District's preliminary budget should be adjusted to reflect an increase in the amount of $24,241 for utilities, since DOE did not dispute the likelihood of increased utilities costs, and there is no potential for "double counting." (03:Oct. 20, New Brunswick)

In-class support for special education: District was entitled to increase. (03:Oct. 20, Phillipsburg)

Legal fees were not excessive. (03:Oct. 20, Phillipsburg)

Noncertificated staff: Although testimony was presented that use of non-certificated staff was not effective and efficient, budgetary reductions were not justified where Commissioner believed competing testimony that reduction of funding would result in an inability to provide important social programs and services

required by Abbott to address wide range of social problems from which old urban centers suffer. (03:Oct. 20, Asbury Park)

Nondiscretionary expenditure: Addition of six bus drivers is an allowable, non-discretionary item and is included in "maintenance" plan. (03:Oct. 20, Vineland)

Paraprofessional aides should be retained. (03:Oct. 20, Phillipsburg)

Part-time sub caller was not inefficient. (03:Oct. 20, Phillipsburg)

Preschool programs; full, rather than prorated salary amounts may be funded for teaching staff members who were assigned to smaller than permitted class sizes. (04:April 2, Vineland)

Resource Teachers/Coordinator positions; funds restored. (03:Oct. 28, Newark)

Same sex athletic trainers should be retained. (03:Oct. 20, Phillipsburg)

Special education: District successfully rebutted DOE's *prima facie* case by establishing difficulty in employing "in house" special education consultants, and because need for increased spending in new IEP's depends on the composition of the district and the requirements of each district's special education population. Petitioner's budget should not be reduced based on this inefficiency. (03:Oct. 20, Passaic)

Special education: Nondiscretionary expenditure: DOE concedes increase for special education tuition. (03:Oct. 20, New Brunswick)

Supplies and materials not reduced. (03:Oct. 20, Phillipsburg)

Budget Item Excluded/Reduced

*Abbott state a*id: DOE properly added to the District's fund balance a receivable representing the last payment of Additional *Abbott state a*id for the 2002-2003 school year. (03:October 20, Neptune)

Burden of proof: District did not offer documentary evidence to meet burden of proof demonstrating need for paraprofessionals, social workers, grade 7-8 science, and K-5 spelling programs, or a lease purchase payment for computer hardware. (03:October 9, Neptune)

Business office: DOE properly determined inefficiencies with the business cost center; wage freeze must take into account any superceding constraints of contractual and tenure rights of business personnel. (03:October 20, Passaic)

Cafeteria aides: district could not show that expense for hourly cafeteria aides was non-discretionary expenditure. (03:October 20, Harrison)

Capital outlay expenditures, health benefits, unspecified vocational programs, salary expenditures for non-instructional supervisors, and various "fund 11" accounts (technology, school-based non-salary accounts and aid in lieu of transportation) above 2002-03 levels, were properly excluded from the 2003-04 maintenance budget or reduced under regulatory standards of effectiveness and efficiency. (03:October 20, Camden)

Charter school tuition: Department properly adjusted the maintenance calculation. (03:October 28, East Orange)

Cooperative bid: Department properly reduced the District's maintenance budget for its ineffective use of its cooperative bid purchase contract under the inefficient standard. (03:October 28, Paterson)

Cost overruns in painting contract were excludable from maintenance budget. (03:October 28, Paterson)

Courtesy busing: Budget reduced where proofs do not establish that these routes are unsafe, and where Board did not exhaust other methods of shifting these costs to families or to town authorities. (03: October 20, Phillipsburg)

CPI: District did not document nondiscretionary increase in CPI beyond DOE's calculations. (03:October 20, New Brunswick)

CPI: DOE properly applied CPI adjustment of 2.11 percent rather than 3 percent. (03:October 20, Asbury Park)(03:October 20, Passaic)

CPI: DOE's maintenance calculations which incorporate Consumer Price Index (CPI) adjustments of 2.11% is upheld. (03:October 20, Passaic)

Custodial staff should be reduced; however decision by the local board to privatize custodial services should be reached only after careful consideration of all alternatives and not in the heated context of Abbott litigation. (03:October 20, Phillipsburg)

Decision to include special education preschool disabled population within scope of district-wide budget consistent with statute and code. (04:April 19, Gloucester City)(04:April 22, Perth Amboy)

Department did not arbitrarily limit salary increases in preschool budget. Increases are in line with district requests, do not prejudice district negotiations and are subject to increase when actual increases are negotiated. (04:April 22, Passaic)

District's additional $2 million tax levy is an "available resource" to the district and the Department properly allocated and reduced the district's discretionary aid by the amount of this tax revenue. (03: October 20, Neptune)

District failed to timely submit updated figures to the DOE; therefore, *Abbott* State Aid is adjusted based on the annual audit rather than on board's supplemental documentation; final adjustments will await the CAFR. (03:October 20, Plainfield)

Documentation lacking: District did not meet its burden to prove that the Department erred in excluding from maintenance budget an increase for joint venture with hospital that resulted in the construction of a special technical high school, as district provided no documentation. (03:October 20, New Brunswick)

Documentation lacking District did not meet its burden to prove that the Department erred in excluding from maintenance budget a nondiscretionary increase for transportation, as no documentation was provided by the district. (03:October 20, New Brunswick)

Documentation lacking District did not present sufficient proof for Commissioner to determine which encumbrances have become accounts payable by virtue of the receipt of the encumbered goods or services on or before June 30, 2003 so as to be considered 2002-2003 expenditures; therefore, DOE was correct to include the encumbered funds in the fund balance calculation; adjustments can be made during the course of the CAFR review scheduled to begin in November 2003. (03:October 20, Neptune) (October 28, Paterson)

DOE correctly excluded tuition and maintenance reserves in its calculation of the District's projected fund balance. (03:October 20, Neptune)

Early childhood: District did not establish that the Department's use of an *approved* plan-to-plan review to determine the District's Early Childhood Plan figure was unreasonable; process used by DOE, based on the only available "like" components for comparison, *i.e.*, approved 2002-03 and 2003-04 Early Childhood Plans, in order to determine the change in district need from one year to the next, was reasonable, fair and consistent where precise calculations must necessarily await the results of the CAFR. (03:October 20,Gloucester) (03:October 20, Keansburg)

Early childhood: Local Contribution to Special Revenue, Early Childhood Program Aid (ECPA), Demonstrably Effective Program Aid (DEPA) and Early Childhood Plan budgets; where board's methodology included use of later numbers, reflecting transfers, alterations and mid-year adjustments. Department's methodology using numbers from the approved 2002-03 General Fund Budget and approved Early Childhood Plan, allowed for consistent preliminary determinations where precise calculations must necessarily await the results of the CAFR. (03:Oct. 20, Keansburg)

Early childhood: The DOE properly adjusted the maintenance calculation for the difference in the early childhood plan by comparing early childhood Plan Year Budget to EC Plan Year Budget as it did consistently throughout all the districts; fact that it resulted in unfavorable outcome for this district did not invalidate the approach. (03:October 20, Plainfield)

Encumbrances were properly excluded from maintenance budget. (03:October 20, Burlington)

ESL and Balanced Literacy Positions were beyond the "maintenance" standard set forth in N.J.A.C. 6A:10-1.2. (03:October 28, Pemberton)

Fiscal monitor position was inefficient. (03:Oct. 28, Paterson)

Grant writer: DOE properly determined inefficiencies with the grant writer's position and funding was reduced. (03:Oct. 20, Passaic)

Health benefits: DOE methodology based on actual spending in '03 was proper. (03:Oct. 20, Phillipsburg)(03:Oct. 28, Paterson)

Inefficiencies: numerous inefficiencies identified; DOE's reductions are upheld. (03:Oct. 28, Newark)

Kindergarten: Aid was to be calculated on the basis of an underlying budget which must provide for full-day kindergarten, not increased by the dollar amount of second half-day kindergarten expenditures. (03:Oct. 9, Neptune)

Legal expenses not effective and efficient but rather grossly more than that of comparative districts; therefore, DOE established basis for reduction of maintenance budget. (03:Oct. 20, Asbury Park)

Medical provider: DOE properly excluded from maintenance budget, as potential need is variable and costs may be absorbed by efficiencies and the increase in the district's budget attributable to Consumer Price Index (CPI) allowances. (03:Oct. 20, Jersey City)

No Child Left Behind: District's request for funding to modify its No Child Left Behind Program is denied as proposed No Child Left Behind improvement plan is beyond the "maintenance" standard set forth in N.J.A.C. 6A:10-1.2. (03:Oct. 20, Vineland)

No Child Left Behind Supplementary Services and No Child Left Behind ESL Paraprofessional Position: District did not demonstrate that these items are "non-discretionary", where they are neither approved not provided in 2002-03, and where the district failed to present evidence that it considered other resources or reallocations in order to meet these new requirements. (03:Oct. 28, Pemberton)

No legal requirement to provide computers for teachers. State Technology Plan does not require a 5 to 1 ratio of computers for students. No requirement that each teacher have a computer. (04:April 15, Elizabeth)

Non-recurring costs like interest and principal on a lease-purchase are not part of maintenance budget. (03:Oct. 20, Phillipsburg)

Question of whether district is correct that it made an error in its request for additional Abbott aid, will not be remanded for evidentiary hearing in light of Supreme Court's order to expedite proceedings; rather, error will be reviewed as part of November CAFR review. (03:Oct. 20, Neptune)

Petitioning school district must use other potential funding sources and exhaust municipal revenues before applying for supplemental aid. (04:April 21, Phillipsburg)

Preschool disabled – State is not required to exclusively fund preschool programs in Abbott districts. Already included in CEIFA enrollment figures for state aid determination. (04:April 15, Elizabeth)(04:April 19, Gloucester City)(04:April 21, Phillipsburg)(04:April 22, Passaic)(04:April 22, Perth Amboy)

Preschool expansion aid: District is not entitled to the initial preschool expansion aid. (03:Oct. 20, Neptune); District did not demonstrate that the adjustment was "double counted" on the Department's 2003-04 calculations. (03:Oct. 20, Asbury Park)

Preschool expansion aid: DOE properly adjusted the preschool expansion aid for 02-03 to be zero based upon a lower enrollment than projected. (03:Oct. 20, Gloucester)

Preschool programs; private providers request for second custodian rejected. (04:April 2, Vineland)

Preschool programs; private providers request to additional compensation for office staff rejected. (04:April 2, Vineland)

Radon testing: DOE properly excluded from maintenance budget as may be deferred until 2004-05 and scrutinized for greater savings. (03:Oct. 20, Jersey City)

Reductions not restored in allowable encumbrances, salary adjustments and vacancies, workers' compensation reserves, special eduction tuition costs, CPI adjustments and utilities. (03:Oct. 28, Newark)

Revenue: DOE's calculation, based on historical performance and the district's demonstrated tendency to understate its revenues by half, is an acceptable approach to projecting miscellaneous revenue. (03:Oct. 20, Phillipsburg)

Salaries: DOE methodology upheld (03:Oct. 20, Phillipsburg)(03:Oct. 28, Newark)

Second Chance Program: Funding rejected for Second Chance Program to expand its hours of operation; does not comport with the maintenance budget standard set forth in N.J.A.C. 6A:10-1.2 as district did not shoulder burden of demonstrating that existing hours were ineffective. (03:Oct. 20, Vineland)

Special education: District did not meet proof of documenting need for special education tuition beyond that which was determined by the Department; nothing on record to document likelihood of 200 new special education as district projected. (03:Oct. 20, New Brunswick)

Special education: District failed to present a satisfactory explanation for any sudden and unexpected increase in tuition costs. (03:Oct. 20, Phillipsburg)

Special education: IDEA funds; district did not show necessity for additional funds. (03:Oct. 28, Paterson)

Special education: Where district included the costs of special education programs and services in the calculation of its maintenance budget, DOE appropriately included IDEA Part B revenues received to fund these services. (03:Oct. 20, New Brunswick)

Staffing: Amounts attributable to approved and budgeted, but unfilled, 2002-03 positions were properly deducted from the district's 2003-2004 "maintenance" budget, as were funds for the purchase of textbooks approved as part of the district's long-range curriculum plan but eliminated from the 2002-03 school budget. (03:Oct. 20, Irvington)

Sufficient state funding provided to provide 6 hours of quality preschool instruction. Additional ½ hour of instruction must be funded from another source. (04:April 21, Phillipsburg)

Supervisors. (03:Oct. 20, Phillipsburg)

Surplus: DOE appropriately directed reallocation of surplus in excess of 2% to support core purposes, rather than permit the board to seek additional aid for such purposes while using excess surplus for supplemental services not meeting requisite standards of demonstrated need, efficacy and efficiency. (03:Oct. 9, Neptune)

Surplus: DOE's error with regard to calculating district's surplus resulted in no entitlement to additional *Abbott v. Burke* state aid, since the board's excess surplus was still well above the level that would entitle it to such aid. (03:Oct. 20, Orange)

Teachers: Increase denied where enrollment in receiving district was largely attributable to population trends in the sending districts and district had the option of increasing tuition fees to defray any increased costs. (03:Oct. 20, Phillipsburg)

Technology staff reduced. (03:Oct. 20, Phillipsburg)

Utilities: Anticipated cost increase of 7% rather than 30% for utilities is upheld. (03:Oct. 20, Passaic)

Utilities: Proofs advanced by the district were devoid of any competent evidence that 30 percent natural gas cost increase in district's maintenance budget was warranted. Department offer of 15 percent increase not unreasonable. (03:Oct. 20, Gloucester)

Utilities: Proofs offered by the district in support of its projected utility rate cost increase were deficient. (03:Oct. 28, East Orange)

Vice principals: Four were inefficient and should be reduced. (03:Oct. 20, Phillipsburg)

Whole School Reform: Board is not entitled to include the balance of its Whole School Reform contract amount as part of its maintenance budget. Board presented no evidence that any portion of that contract for services actually provided in 2002-03 remains unpaid. (03:Oct. 20, Orange)

Workers compensation: Commissioner directed DOE to conduct an analysis of the district's workers' compensation needs and to make any necessary adjustments to the district's budget and supplemental aid. (03:Oct. 28, Newark)

Burden of proof will be on the plaintiff district in a petition challenging the accuracy of district income wealth data relied on by state to determine state aid. (99:May 19, Lakewood, leave granted to appeal, motion denied, St. Bd. 00:June 7)

CEIFA: Middle income school districts and taxpayers alleged that school funding system caused disparate tax burdens violating Equal Protection and T&E provisions of the New Jersey Constitution. Court held that school districts, as creatures of the State, lacked standing to bring either T&E or equal protection claims against the State. Taxpayers had standing to bring such

a challenge but did not set forth viable T%E or equal protection claims. Court held that CEIFA did not violate the State's Equal Protection clause. Staubus v. Whitman, 339 N.J. Super. 38 (App. Div. 2001), affirming Law Division, Mercer County, unpub. op. Dkt. No. L-1456-98. Certification denied, 171 N.J. 442 (2002)

CEIFA, the funding statute, expressly provides a district with the right to challenge the accuracy of district income wealth data that was utilized in the determination of its board's state aid entitlement for the 1998-99 school year; district's petition will not be dismissed on account of district's failure to provide facts to buttress its position, as the parameters of such appeals have not yet been explicated through rule or decisional law; matter to proceed. (99:May 19, Lakewood, leave granted to appeal, motion denied, St. Bd. 00:June 7)

CEIFA's stabilization aid provisions are constitutional. The Wildwood Board of Education argued that the stabilization aid provisions of the CEIFA, under which certain school districts received less than the full amount of state school aid to which they would have been entitled under the basic CEIFA funding formula, are unconstitutional because the figures used to determine the stabilization aid growth limit under CEIFA's stabilization provisions were based on a Quality Education Act (QEA) formula that the New Jersey Supreme Court had ruled unconstitutional. While the Court acknowledged that the New Jersey Supreme Court had declared the QEA unconstitutional, it pointed out that the Supreme Court's ruling was limited to the school aid formula as it applied to special needs school districts. The Supreme Court's ruling did not undermine the validity of the figures relied on by the stabilization provisions in calculating the amount of state aid Wildwood was entitled to under the CEIFA. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001)

CEIFA's stabilization aid provisions are constitutional. Wildwood argued that the CEIFA stabilization aid figures were premised upon QEA figures that had been declared unconstitutional by the New Jersey Supreme Court. QEA was declared unconstitutional as applied to "special needs" school districts of which Wildwood was not one. No evidence that Wildwood's school budgets decreased as a result of CEIFA's stabilization provisions. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001), aff'g St. Bd. 00:June 7, aff'g Commissioner 00: Jan. 10. See also, Wildwood v. Loewe, App. Div. unpub. op. Dkt. No. A-5337-97T1 and Wildwood v. Klagholz, App. Div. unpub.op. Dkt. No. A-6811-97T1, decided Feb. 17, 1999 certification denied 160 N.J. 477 (1999)

Challenge to Abbott district's early childhood state aid for 1999-2000 dismissed as moot; further, plaintiffs failed to timely notify judge of outstanding local "Abbott issues" after resolution of global issues. (01:Oct. 1, Anthony)(01:Oct. 1, De Witt)

Commissioner affirmed NJDOE's denial of district's special request for additional funding for its pre-school budget. No basis in the 2005-06

Private Provider Guidelines for executive, fiscal and administrative staff beyond that of director. (05:April 6, New Brunswick)

Commissioner approved district request for special funding for nine additional security guards for three stand-alone early childhood schools. Board demonstrated a particularized need due to the size of the schools, number of exist, layouts, parental traffic and tender age of the students. Commissioner specifically rejected DOE contention that guard could perform double-duties. (05:April 14, Elizabeth City)

Commissioner approved district request for special funding for six additional secretaries for three stand-alone early childhood schools. Commissioner noted that the *District One-Year Budget Instructions and Guidance School Year 2005-06* failed to address staffing for schools with large populations. Additional clerical support was necessary to ensure accuracy in the preparation of documents, support administrative staff and attend to parents and visitors. (05:April 14, Elizabeth City)

Commissioner approved district request for special funding for twelve custodians for three stand-alone early childhood schools. Commissioner determined that the *District One-Year Budget Instructions and Guidance School Year 2005-06* recommendation of three custodians was inadequate to maintain cleanliness in a young population with an attached lavatory and multiple snacks served each day. (05:April 14, Elizabeth City)

Commissioner denied district's special request for additional funding for its pre-school budget. District failed to demonstrate a high incidence of crime that poses an imminent threat to staff, students and property of the center, warranting an enhanced security system or security guard. (05:April 6, New Brunswick)

Commissioner denied district's special request for additional funding for its pre-school budget. DOE only to approve funding fringe benefits up to 12.5% of non-teaching staff salaries. Private provider has the discretion to supplement fringe benefits to match those of the district. An employer may have different classes of employees and provide them different levels of benefits without being discriminatory. (05:April 6, New Brunswick)

Commissioner denied district's special request for additional funding for its pre-school budget for private provider's cleaning contract with an outside cleaning contractor. Since the approved budgetary line item included costs for a janitor's salary and cleaning services, a special request for cleaning services was unwarranted. (05:April 6, New Brunswick)

Commissioner denied district's special request for additional funding for its pre-school budget. Private provider's practice of providing individual meals instead of DOE approved "family-style" meals did not warrant additional funding. Family-style meals serve an important function in the curriculum by teaching sharing, taking turns, table manners and conversational skills. (05:April 6, New Brunswick)

Commissioner denied unconditional approval of board's request for matching funds for a NJDHS preschool program grant. If grant approved by DHS, DOE would then re-examine district's budget to determine whether

additional funds could be re-allocated before approving the board's request if district funds were unavailable. (05:April 15, Vineland City)

Commissioner determined that board failed to prove that it should not be required to reimburse DOE $44,000 expended in excess of grant for WSR implementation. District staff had a duty to report DOE directed grant application revisions to the board and thereby allow board to curtail spending. (05:May 19, Trenton City)

Commissioner determined that salary and benefits for in-district food service worker in the district's preschool program was appropriately placed in the district-wide fund 50 rather than the district's preschool budget. (05:April 15, Vineland City)

Commissioner modified ALJ's decision finding that five of seventeen districts should be recommended for "special needs" status. Commissioner denied recommendation as to four districts, but approved Salem City as a special needs district. Commissioner determined that Salem exhibited a multiplicity of pervasive, durable social ills similar to that experienced by other *Abbott* districts. (03:Feb. 10, Bacon, motion to participate granted, St. Bd. 03:July 3, motion to strike portions of *amicus curiae's* brief denied, St. Bd. 03:Nov. 5, motion to strike portions of reply brief denied, St. Bd. 04:March 3)

Commissioner rejected district contention that the *District One-Year Budget Instructions and Guidance School Year 2005-06* had all the hallmarks of administrative rulemaking and should be subject to the APA. Commissioner determined that not every administrative policy must follow APA procedures, especially where adopted quickly in response to the drum roll of *Abbott* cases. (05:April 14, Elizabeth)

District in which student lived, albeit for a few weeks, prior to placement by DYFS in a Skill Development Home, was the district of residence responsible for the student's educational costs. N.J.S.A. 18A:7B-12b, N.J.A.C. 6A:23-5.2. (03:June 18, Wallkill Valley, settlement approved St. Bd. 04:Feb. 4)

District's complaint that DOE deprived students of T & E by applying CEIFA stabilization aid growth limit at N.J.S.A. 18A:7F-10, was dismissed for untimeliness and failure to plead requisite facts. (00:Jan. 10, D.S. and Wildwood, aff'd St. Bd. 00:June 7) aff'd Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001) See also, Wildwood v. Loewe, App. Div. unpub. op. Dkt. No. A-5337-97T1 and Wildwood v. Klagholz, App. Div. unpub. op. Dkt. No. A-6811-97T1, decided Feb. 17, 1999, certification denied 160 N.J. 477 (1999)

DOE's action to reduce school districts' extraordinary special education aid based on projected surplus in relation to actual surplus for the 2001-02 school year simply does not bear the characteristics of administrative rulemaking. As to the issue of the surplus comparison formula being arbitrary and ultra vires, the Commissioner remands the matter to OAL for further proceedings. (04:May 21, East Brunswick, motion to supplement record granted, St. Bd. 04:Sept. 1)

Early childhood program funding disbursed to private preschool provider is not a grant, it is state aid appropriated by the Legislature or from the local tax levy. (05:April 6, New Brunswick)

Educational Facilities Construction and Financing Act (EFCFA) does not violate the State Constitution's Debt Limitation Clause (Clause), N.J. Const., Art. VIII, section 2, para. 3. Plaintiff argued that the Debt Limitation Clause bars contract bond financing without voter approval. The Appellate panel affirmed the Law Division's ruling that while the Clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay without prior approval by public referendum, the Clause is not violated here because successive Legislatures are not bound to make the appropriations to pay on the bonds. Lonegan; Stop the Debt.com v. State of New Jersey, 341 N.J. Super. 465 (App. Div. 2001)

Educational Services Commission must refund DOE $90,709 in unused Chapter 192-93 funds with interest earned. Chapter 192-93 funds that were borrowed from that account to fund salary differential payments under TQEA had to be repaid. (99:April 16, Middlesex County)

Educational Services Commission that suffered embezzlement was ordered to repay to state total amount of assistance monies fraudulently charged to state and federal sources by Commission employee; state's recovery not limited to percentage of total amount of embezzled funds Commission recovered through insurance. (99:Feb. 5, Middlesex County)

Facilities: ALJ's ruling affirming State's denial of retroactive funding for the acquisition of property for an early childhood facility, remanded, as ALJ's ruling did not contain finding of facts and other essential elements for agency review. (05:Feb. 2, Perth Amboy)

Fiscal Year 2003 Appropriations Act superseded any and all statutory provisions which would increase state aid, including those under CEIFA. State aid formula in CEIFA must be deemed to be suspended by the adoption of the Appropriations Act. (03:Oct. 27, Hammonton, Egg Harbor, Galloway)

Framework document must be promulgated by August 2001; meanwhile, compliant preschool programs may be based on *Expectations* document. The State is not required to provide funds to bring Head Start or other community provider up to Abbott standards; finding provider is a district responsibility. (01:June 1, Matter of the Abbott Global Issues) Supreme Court reaffirms October 2001 schedule it set forth concerning its mandate for pre-school programs in Abbott districts. Court refuses to appoint special master. Court said that the day-to-day oversight is best left to those with the proper training and expertise, not the court system. Court also says "We must never forget that a 'thorough and efficient system of free public schools' is the promise of participation in the American dream. For a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future." Abbott v. Burke, 170 N.J. 537 (2002).

In Abbott districts, the pivotal question is one of *constitutional deficiency*, not one of disparity among districts or, for that matter, even of fundamental fairness. Abbott status is an extraordinary judicial remedy, not a solution for specific problems of less than constitutional dimension. For funding problems of less than constitutional dimension, these must be pursued through appropriate lawmaking processes so as to allow for full and free debate. (03:Feb. 10, Bacon, motion to participate granted, St. Bd. 03:July 3, motion to strike portions of *amicus curiae's* brief denied, St. Bd. 03:Nov. 5, motion to strike portions of reply brief denied, St. Bd. 04:March 3)

In dispute between *Abbott* regulations and tenure rights, tenure rights are paramount. Emergent relief granted. (03:March 6, Sanchez, aff'd St. Bd. 03:June 4)

Initial decision denying board's request for a recalculation of state aid, is remanded for further proceedings as necessary; initial decision does not contain the essential elements for adequate agency review, including failure to include: reasoning for grant of summary decision; certain findings of fact or basis of law; reasons to reject district's claim of a continuing violation of public rights; relief requested. (05:Jan. 31, Milford)

New Jersey Supreme Court clarified Abbott V to require the state to fund all costs of necessary facilities remediation and construction in Abbott districts. Districts can and have been added to the "Abbott" class. If circumstances demonstrate that a district no longer meets the criteria for Abbott designation, the State Board and Commissioner may take appropriate action. 164 N.J. 84.

(Non-Abbott)

Non-Abbott districts claiming inability to provide T & E with existing funding, were able to demonstrate to Commissioner that they had fully effectuated CEIFA, and thus were eligible to proceed with second phase of hearing to determine if they could not in fact deliver T & E; burden in second phase will be to prove that deficiencies exist and cannot be remedied by different programmatic and fiscal choices. (01:Feb. 9, Keaveney)

State Board dismisses appeal for failure to file notice of appeal in a timely manner. Even if the State Board has the authority to enlarge the time period for filing an appeal, no substantive reason existed for doing so. (Cerebral Palsy League, St. Bd. 2007:Jan. 3)

Nothing in Abbott precludes the SDOE from requiring separate operational plans for pre-K and kindergarten programs or for having kindergarten plans incorporated into school-based plans. (02:April 15, Pemberton)

One-year relaxation of the remedies for K-12 programs for the 2002-2003 school year provided for in Abbott IV and V upheld. Programs under the one year suspension include whole school reform models in middle and high schools and the formal evaluation of whole school reform. School district may appeal for more aid based on educational need within SDOE educationally-appropriate limits. Abbott v. Burke, 172 N.J. 294 (2002).

On remand, district petition, asserting that a miscalculation in student population should result in a retroactive adjustment of core curriculum standards aid pursuant to CIEFA, failed to survive DOE motion for summary judgment dismissal. The effect of the FY05 Appropriations Act was the suspension of CIEFA and challenges to funding awards pursuant to N.J.S.A. 18A:7F-15. (05:June 2, Milford)

Preschool is a significant legal right, but not a constitutional entitlement. Determinations regarding preschool programs may not be made on predetermined fiscal considerations but rather, on assessment of need. (01:June 1, Matter of the Abbott Global Issues) Supreme Court reaffirms October 2001 schedule it set forth concerning its mandate for pre-school programs in Abbott districts. Court refuses to appoint special master. Court said that the day-to-day oversight is best left to those with the proper training and expertise, not the court system. Court also says "We must never forget that a 'thorough and efficient system of free public schools' is the promise of participation in the American dream. For a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future." Abbott v. Burke, 170 N.J. 537 (2002).

Private provider's state and federal grant obligation to allocate expenses to its various programs does not obligate DOE to reimburse private provider for those allocated general and overhead costs over and above services determined by DOE to be necessary for a preschool program. (05:April 6, New Brunswick)

Request denied to re-examine allocation of district's Title I aid. Motion of Commissioner to participate in appeal granted. (St. Bd. 05:June 1, Passaic County Technical Institute, appeal dismissed St. Bd. 05:Sept. 7)

Request for early childhood education aid to rent and renovate temporary facilities, rejected; district's appeal is dismissed for failure to establish that it had, in fact, requested such funds. (01:Jan. 22, New Brunswick)

Request for supplemental Abbott funding; settlement. (02:Feb. 1, Gloucester)(02:Feb. 4, Asbury)

Retroactive increase in core curriculum standards aid to district, based on miscalculation of student population, would result in a proportionate retroactive reduction in aid districts where students actually reside, a result prohibited by FY05 Appropriations Act. (05:June 2, Milford)

Settlement approved in matter regarding Abbott district request for additional state aid. (02:April 18, East Orange)(02:April 29, Vineland)

State Board's public comment sessions are not required to be part of the administrative rulemaking process by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Court Rule 2:5-4 does not necessarily require the appellants to produce a transcript of the State Board meetings at which regulations that are subject of challenges were considered. (Motion to abbreviate record granted, In re N.J.A.C. 6A:26, St. Bd. 02:Jan. 2)

State's implementation of early childhood education is not in violation of Abbott V and VI. To ensure implementation, Department of Education must revise practices and procedures and develop rules regarding preschool programs in Abbott school districts, by August 31, 2001. (01:June 1, Matter of the Abbott Global Issues) Supreme Court reaffirms October 2001 schedule it set forth concerning its mandate for pre-school programs in Abbott districts. Court refuses to appoint special master. Court said that the day-to-day oversight is best left to those with the proper training and expertise, not the court system. Court also says "We must never forget that a 'thorough and efficient system of free public schools' is the promise of participation in the American dream. For a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future." Abbott v. Burke, 170 N.J. 537 (2002).

State's method for distributing state aid during 1993-94 and 1994-95 school years was not improper although districts with declining enrollment received a windfall at the expense of districts with declining enrollment. (00:Oct. 10, Bayonne)

Stay of the termination of Abbott preschool education contract denied. (01:Aug. 8, Craig)

Supplemental aid/preliminary maintenance budget

Burden of proof: Where DOE proposes T & E reductions to district's maintenance budget, DOE bears the burden of proof; where DOE does not propose reductions on T & E basis, district bears burden of demonstrating DOE's calculations are unreasonable. (03: October 20, New Brunswick)

Inefficiencies: district must demonstrate both that the structure(s), position(s) or service(s) are *specifically* necessary and that they *cannot* be more effectively or efficiently provided than they presently are. (03:October 28, Newark)

"Maintenance" standard requires that programs, services and positions must have been actually provided or filled in 2002-2003 in order to be aided for 2003-2004; distinction must be made between "encumbrances" and "accounts payable," (03:October 20, Harrison) (03:October 20, Neptune) (03:October 28, Paterson)

Methodology for staffing A methodology establishing the 2003-04 cost of providing funding for positions by determining, as nearly as possible without benefit of audit, the actual approved cost of providing for salaries and benefits in 2002-2003 and then allowing for reasonable, nondiscretionary adjustments, is a uniform, fair and rational method for estimating future expenditures for salaries and benefits, which cannot otherwise be determined with any degree of precision. To the extent that results may be imperfect, even after adjustment following audit, N.J.A.C. 6A: 10-3.1(g) provides a mechanism to obtain additional supplemental funding where unanticipated expenditures or unforeseen circumstances warrant.

(03:October 20, Vineland) (03:October 20, Irvington) (03:October 20, Orange) (03:October 20, Harrison) (03:October 20, New Brunswick) (03:October 20, Camden) (03:October 28, Pemberton)(03:October 28, Newark)(03:October 28, Paterson)

OAL does not have jurisdiction to determine, directly or indirectly, the validity of definition of "maintenance budget" in N.J.A.C. 6A:10-1.2, as such determination is solely within the jurisdictional purview of the Appellate Division or the Supreme Court. However, definition appears consistent with Court decisions. (03:October 20, Gloucester)(03:October 20, Vineland) (03:October 20, Orange)(03:October 20, Burlington) (03:October 20, Pleasantville) (03:October 20, Camden) (03:October 20, Jersey City) (03:October 20, Trenton)(03: October 20, Asbury Park) (03:October 20, Keansburg)(03:October 20, Neptune)(03:October 20, Passaic) (03:October 20, Elizabeth)(03:October 20, Plainfield) See Asbury Park Bd. of Ed. v. DOE, Appellate Division, A-840-03T5, February 27, 2004, not approved for publication, holding that the definition of "maintenance budget" is facially valid; reversed in part by order of N.J. Supreme Court, holding that any final budget subsequent to August 2003 issued by the DOE based on 2002-2003 actual expenditures violates the DOE's mediation proposal. (March 18, 2004)

Resolution of matter need not have awaited completion of the District's Comprehensive Annual Financial Report (CAFR); Board was clearly entitled to make, prior to the school year in question, the factual and legal record necessary to resolve the substance of its claims, subject to final adjustment of calculations following audit. (03:October 20, Keansburg)

Undesignated general fund: Timing of disbursements to undesignated general fund balance is appropriately deferred subsequent to completion of CAFR process and submission of district's supplementary information; adjustments will be made if supplementary information demonstrates that district's undesignated general fund balance is below two percent. (03: October 20, Gloucester) (03:October 20, Burlington)

Supplemental funding: Abbott supplemental funding request, settled. (01:May 4, Vineland)

Supplemental Senior Citizen Stabilization Aid: Constituent municipality of regional school district entitled to additional funds under CEIFA for fiscal year. (St. Bd. 99:May 5, Berkeley, reversed and remanded App. Div. Dkt. No. A-5555-98T1, August 22, 2000, remanded St. Bd. 00:Oct. 4)

The State has no duty to subrogate itself to the losses by embezzlement suffered by an Educational Services Commission. (99:Feb. 5, Middlesex County)

Unlawful rulemaking: Board's claim that DOE engaged in unlawful rulemaking in its effort to rectify erroneous method of calculating state aid, is dismissed; although DOE's recalculation of state aid should have been

accomplished through rulemaking, the district sought to return to original, erroneous state aid figures, which also should have been accomplished through rulemaking; therefore no relief could be afforded to the board. On clarification, St. Bd. reiterates that board has not demonstrated an entitlement to additional funding and there is no basis in the record for providing relief sought. Questions now raised by NJDOE about proper APA process not germane to current appeal and are tantamount to issuing an advisory opinion. (05:Jan. 14, Lacey, aff'd St. Bd. 05:May 4, decision clarified, St. Bd. 05:Oct. 19)

STATE BOARD OF EDUCATION

An administrative agency has the inherent power, in the absence of legislative restriction, to reopen or modify a previous determination. Such power, however, must be exercised reasonably and invoked only for good cause shown. (03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Appeal dismissed for failure to perfect for failure to file brief. (St. Bd. 03:June 4, Tuohy)

Appeals: N.J.S.A. 18A:6-28 requires that appeal to State Board must be taken within 30 days after Commissioner has filed his decision; agency is without the power to waive statutory filing deadlines absent legislative action. (01:May 24, J.M., dismissed for failure to perfect, St. Bd. 01:Aug. 1)(St. Bd. 01:June 6, Ibrahim Charter School)(See also 01:Aug. 27, H.M., appeal dismissed for failure to file within statutory time limit, St. Bd. 02:May 1)

Attorney General (AG) opinion on which State Board of Education felt constrained to rely, was not binding on court, especially in light of extensive changes in special education law since the rendering of the AG opinion. West Windsor-Plainsboro, App. Div. unpub. op. Dkt. No. A-4919-01T1, July 1, 2003.

Authority/Duties

Commissioner dismissed appeal of tenured custodian who asserted prejudice where the second administrative law judge reviewed transcripts instead of conducting an entirely new hearing after first judge recused himself. (McCullough, Commr., 2006: Feb. 17) Request to supplement the record denied (McCullough, State Board, 2006: Oct. 4) Request to take official notice of the audio cassette tape of the OAL hearing denied. (McCullough, State Board, 2006: Dec. 6) State Board affirmed, January 3, 2007. Dismissed with prejudice for failure to appear. (McCullough, Commr., 2007: Feb. 22)

State Board of Education affirms the findings of misconduct of teacher but disagreed with Commissioner's remedy of removal, imposing instead a six-month suspension, loss of pay, and loss of increments for two years. Court finds that State Board never exceeded or misapplied its power as the

final arbiter of school law controversies. In re Tenure Hearing of Ardeena Long, 2009 N.J. Super. Unpub. LEXIS 2519 (App.Div. Oct. 8, 2009)

Controversy over board placing superintendent on paid two-week administrative leave was not moot where CSA alleged that such action caused harm to his reputation as it could reasonably be inferred action was taken for disciplinary reasons. (Reversed and remanded St. Bd. 03:May 7, Carrington)

Counsel fees available to "prevailing party" plaintiffs in challenge to special education regulations and amendments. IDEA attorney fees provision applies to challenges to regulations governing children with disabilities. Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001), certification denied 174 N.J. 193 (2002).

Damages and mitigation: petitioners held by State Board to be improperly terminated by State District Superintendent (subject to final decision by Appellate Division) were entitled to the salary they would have earned from the time of termination until the effectuation of the reorganization, plus 60 days' pay; unemployment compensation benefits should be treated as mitigation of damages; consulting and rental income is not to be treated as mitigation; relief should include accrued leave time, but not value of enhanced benefits; no postjudgment interest. (01:Sept. 14, Gonzalez, aff'd as modified, St. Bd. 01:Oct. 3) But see, where "at-will" employees were terminated by action of the state superintendent rather than by abolishment of their positions pursuant to the takeover statute, they were not entitled to relief under the statute. (99:June 1, Gonzalez, rev'd St. Bd. 00:May 3; remanded for the computation of damages, appeal moves forward, App. Div. unpub. op. Dkt. No. A-5434-99T5, Dec. 8, 2000, remanded to Comm.; St. Bd. 01:Feb. 7, damages calculated by Comm. 01:Sept. 14, aff'd as modified, St. Bd. 01:Oct. 3, aff'd 345 N.J. Super. 175 (App. Div. 2001), certification denied 171 N.J. 339 (2002).

Dismissal of petition challenging decision to not certify tenure charges against principal accused of the sexual harrassment of students and staff proper where the staff member was no longer employed in the district. Because of person's continued employment in other schools, matter referred to State Board of Examiners. (Matter dismissed as moot, St. Bd. 03:Sept. 5, Pascack Valley)

Emergent relief denied: charter school failed to meet Crowe standard when it failed to demonstrate a likelihood of success on appeal of revocation of charter. (01:June 27, Greenville Community Charter School)

Emergent relief granted in dispute over transportation contract under N.J.A.C. 6A:4-3.3, which permits President of State Board and Chairperson of Legal Committee to decide applications for emergent relief. Restraints imposed by Superior Court reinstated to minimize impact on special needs students where stability in the provision of transportation services is heightened. Petitioner permitted to continue providing transportation until end of school year. (St. Bd. 03:April 16, New Jersey Lucky Tours, aff'd

and remanded to Commissioner, St. Bd. 03:June 4)(See also, emergent relief denied by Comm. 03:April 9)

Interlocutory appeals: N.J.A.C. 6A:4-2.3 is clear that a petitioner only has five days to appeal an interlocutory decision; where no justification given for relaxation, motion to appeal will be denied. (St. Bd. 01:March 7, Northern Highlands Regional)(see also 01:July 2, aff'd unpub. Op. Dkt. No. A-2109-01T2, March 11, 2003)(Commissioner dismisses school board's petition seeking review and approval for educational adequacy of board's application to install lighting)

Interlocutory review may be granted only in the interest of justice and for good cause shown. (Decision on Motion, St. Bd. 03:Dec. 3, Shinkle)

Jurisdiction

Commissioner now hears all appeals from State Board of Examiners decisions. Appeal dismissed for failure to perfect in a timely manner. (Tedesco, Commr., 2008:September 8)

Mitigation of damages, discussed. (01:Sept. 14, Gonzalez, aff'd as modified, St. Bd. 01:Oct. 3)

Motion for stay denied in dispute over change in district policy requiring payment of tuition by non-resident employees for their children to attend in-district preschool program. (St. Bd. 03:July 2, S.A.)

Motion granted by State Board of Education to supplement record with evidence of rehabilitation following revocation of certificates for presenting a fraudulent certificate in an effort to obtain school employment. St. Bd. stresses that appeal from State Board of Examiners must be taken to Commissioner not State Board. (St. Bd. 03:March 7, Elmezzi, matter remanded to State Board of Examiners for determination of rehabilitation, St. Bd. 03:Sept. 3)

Motion granted for petitioners to reopen appeal of residency dispute where petitioners mistakenly were told that withdrawal from district made dispute moot, yet residency controversy had yet to be determined by Commissioner. Interests of justice dictate that petitioners be permitted to reopen petition. (St. Bd. 03:April 2, M.S.)

Motion to reopen to receive additional testimony denied. While N.J.A.C. 1:1-18.5(b) authorizes agency head to reopen a matter after initial decision has been filed, in this case parties were granted an opportunity to request additional evidentiary hearings on whether a sending-receiving relationship was a quantifiable asset, which were not taken advantage of. Moving party provides no basis for reopening matter. Dividing liquid assets among four non-building districts in proportion to school taxes paid is most equitable allocation. Request for post-judgment interest is premature. (Motion denied, St. Bd. 03:Sept. 5, Lower Camden, aff'd St. Bd. 03:Oct. 1)

Parents of disabled children and disabled children's advocacy groups challenged special education regulations and amendments. Appellate Division held that regulations regarding provision of documentation to parents, assessment of post-secondary outcomes, pool of community rehabilitation

programs, disciplinary procedures for potentially disabled students, dissemination of procedural safeguards statement, eligibility for consideration as surrogate parent for disabled child, "child find" and documentation of dissenting opinion of IEP team members failed to comply with federal mandates of IDEA. Baer v. Klagholz, 339 N.J. Super. 168 (App. Div. 2001), certification denied 170 N.J. 84 (2001).

Parties to appeals before the State Board of Education are required to serve all other parties with a copy of their submissions and to provide the State Board with proof of such service. N.J.A.C. 1:1-7.1(b), which governs contested cases in administrative agencies, makes it clear that service is to be made upon all attorneys or other representatives and upon all parties appearing pro se. (04:Jan. 20, D.T., aff'd St. Bd. 05:Feb. 2)

Procedural Issues

State Board affirmed Commissioner's decision dismissing challenge to 2001 teacher non-renewal as untimely. No reason to relax the 90 day regulation of limitations. (Bradford, St. Bd. 2007:June 6)

Motion to compel production of personnel file and minutes of board meeting in appeal of non-renewal denied. Motion

filed nearly four years after initial petition filing with Commissioner and nearly a year after filing appeal with State

Board. No explanation given for delay. (Anderson, St. Bd. 2007:May 2)

State Board denies Motion to Supplement the Record in township appeal of $ 5,170,982 in restoration of budget reductions by the Department of Education. Certification and credentials of state's interim fiscal monitor are not material to the issues presented on appeal. DAG's motion to participate on behalf of Commissioner is granted, St. Bd. 2007: March 7 (decision on motion). (Willingboro, St. Bd. 2007:June 6)

Commissioner dismissed appeal of tenured custodian who asserted prejudice where the second administrative law judge reviewed transcripts instead of conducting an entirely new hearing after first judge recused himself. (McCullough, Commr., 2006: Feb. 17) Request to supplement the record denied (McCullough, State Board, 2006: Oct. 4) Request to take official notice of the audio cassette tape of the OAL hearing denied. (McCullough, State Board, 2006: Dec. 6) State Board affirmed, January 3, 2007. Dismissed with prejudice for failure to appear. (McCullough, Commr., 2007: Feb. 22)

State Board dismisses charter school's appeal of denial of application, for failure to file a brief to perfect the appeal. (Rites of Passage Preparatory Charter, St. Bd. 2008:April 16)

State Board grants Commissioner's motion to reply to Charter School's appeal of the denial of its application for a charter. (Trenton Education Charter School, St. Bd. 2008:April 16)

State Board dismisses appeal for failure to file notice of appeal in a timely manner. Even if the State Board has the authority to enlarge the time period for filing an appeal, no substantive reason existed for doing so. (Cerebral Palsy League, St. Bd. 2007:Jan. 3)

State Board affirmed Commissioner interlocutory decision regarding scope of issues remaining in litigation. Petitioner's claim that personnel file was "papered" was not addressed in Superior Court litigation and should not be removed from consideration in these proceedings. (Eisenberg, St. Bd. 2008:January 9)

State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency status and that the parent ensure that the student attend school pending resolution of the matter. (Y.E., St. Bd. 2007:June 6)

The Appellate Division determined that 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).

Regulations: Commissioner remands question of whether regulations are to apply retroactively (time-of-decision rule) or prospectively. (99:Dec. 23, Highlands)

Relaxation of 90-day rule permitted when necessary to effectuate the interests of justice. (Remanded to Commissioner, St. Bd. 03:Nov. 5, Eisenberg)

Relief granted to board of education following default judgment in affidavit pupil case. Board failed to get notices of appeal in timely manner. Resolving all doubts in favor of party seeking relief, State Board vacates judgment and remands back to Commissioner for further proceedings. (St. Bd. 03:Nov. 5, M.R.A.)(See also St. Bd. 03:Nov. 5, H.R., St. Bd. 03:Nov. 5, E.Y.)

Rights and Duties

Trial court did not err in vacating an arbitration award that would reverse the state monitor's RIF of twenty-two non-tenured special education aides; the award ignores monitor's function to implement policies to achieve sound fiscal management of the District, and is contrary to existing law and public policy; fact that there was no "just cause" for termination under the contract was irrelevant because a RIF is not arbitrable; award must be vacated as a "mistake of law." Pleasantville Board of Education v. Pleasantville Education Association, App. Div. unpublished decision (A-2123-08T3 Aug. 25, 2009)

State Board affirmed Commissioner's ruling that a student's request to be placed in another district due to off-ampus sexual assault by another student was moot, because the student removed herself from the State. However, the State Board noted that the student may have a harassment claim cognizable in another form. (C.V., Commr. 2006:Sept. 12)

Settlement approved: Board did not violate tenure and seniority rights of CST members when their positions were eliminated after local board contracted with Educational Services Commission for basic CST services. (00:Jan. 2, Anders, settlement approved St. Bd. 02:Jan. 2)

State Board remanded to Commissioner. Matter involved a citizen's direct appeal from the local board's denial of a request to place questions pertaining to school prayer, a bible-based curriculum and voting rights of convicted felons on a school election ballot. (05:Dec. 21, Camden)

State Board will not disturb Commissioner's decision not to issue a declaratory ruling absent an abuse of discretion. (St. Bd. 03:Aug. 6, Passaic County Elks)

Stay of revocation of certificates for unbecoming conduct following guilty plea to charge of sexual contact denied. State Board of Examiners properly revoked certificates, criminal sexual contact is a disqualifying offense, evidence of rehabilitation notwithstanding, as offense occurred after June 1998 amendments to N.J.S.A. 18A:6-7.1, prohibiting evidence of rehabilitation. (St. Bd. 03:July 2, Vereen, aff'd St. Bd. 03:Sept. 3)

Stay: Only after party has sought stay of Commissioner's decision before the Commissioner which is denied will State Board entertain a motion for stay in accordance with N.J.A.C. 6A:4-2.2. (Motion denied St. Bd. 03:March 5, In the Matter of the Withdrawal of the North Haledon School District)(See also, appeal dismissed as moot St. Bd. 03:July 2)

Where "at-will" employees were terminated by action of the state superintendent rather than by abolishment of their positions pursuant to the takeover statute, they were not entitled to relief under the statute. (99:June 1, Gonzalez, rev'd St. Bd. 00:May 3; remanded for the computation of damages, appeal moves forward, App. Div. unpub. op. Dkt. No. A-5434-99T5, Dec. 8, 2000, remanded to Comm.; St. Bd. 01:Feb. 7, damages calculated by Comm. 01:Sept. 14, aff'd as modified, St. Bd. 01:Oct. 3, aff'd 345 N.J. Super. 175 (App. Div. 2001), certification denied 171 N.J. 339 (2002).

Where resolution of issue has far-reaching implications for New Jersey's system of public education, public interest dictates that the State Board decide matter, regardless of mootness of claim. (Decision on motion, St. Bd. 99:Jan. 6, Colantoni)

STATE BOARD OF EXAMINERS

Appeal of a State Board of Examiners decision is to the Commissioner of Education and then State Board of Education, except for revocations or suspension of certificates as required by N.J.A.C. 6A:4-1.1(a)(2). (Matter remanded to Comm., St. Bd. 03:May 7, Krupp) Petitioner's conviction for a first degree crime renders him ineligible for a teaching certificate under N.J.S.A. 18A:6-7.1, petitioner's claims of rehabilitation notwithstanding. (04:June 24, Krupp, aff'd St. Bd. 04:Oct. 6) (See also, St. Bd. 03:Sept. 3,

Elmezzi)(See also, matter remanded to Comm., St. Bd. 03:Sept. 3, Tierney) (See also Krupp, St. Bd. remands to Commissioner, 05:Aug. 3)

Applicant must be afforded an adequate opportunity to present evidence material to resolution of whether or not provisional training program was in conformity with requirements. (St. Bd. 99:May 5, Avellino)

Applications for a county substitute certificate should be made to the county superintendent, not the Board of Examiners. (St. Bd. 03:July 2, Hanks)

Auditors and attorneys employed by district taken over by state, are not entitled to 60 days' severance pay. (99:Jan. 4, Caponegro, et al., aff'd St. Bd. 99:April 7, aff'd in part except to extent St. Bd. denied compensation for accumulated vacation sick days remanded for reconsideration and calculation of these benefits in accordance with board's policy and procedure manual and past practice, 330 N.J. Super. 148 (App. Div. 2000), remanded to Commissioner, St. Bd. 00:June 7)

Board of Examiners found that the appellant had engaged in unbecoming conduct in failing to properly supervise students for whom he was responsible during track meet, and it concluded that a suspension of his certificates for two years was the appropriate penalty. Motion for additional discovery denied. (St. Bd. 05:May 4, Younger)

Board of Examiners properly revoked the certificates of teacher who wrapped a special education student in duct tape and instructed two female students to drag him down a school hallway by his legs while another student videotaped the episode. Teacher was not only an active participant but he was actually the instigator of the highly inappropriate activity. (St. Bd. 04:Sept. 1, Stocker)

Certification denial on basis of conviction for homicide, upheld. (99:Sept. 13, Bilal)

Chronic and excessive absenteeism of over 500 days in five years sufficient to warrant revocation of certificates. (St. Bd. 05:March 2, Mikanda)

Denial of supervisor endorsement by State Board of Examiners upheld. Masters Degree obtained from American State University, an institution neither approved nor accredited. Petitioner not qualified for administrative certification with a supervisor's endorsement. (02:April 1, Dominianni)

Educational consultant whose services were discontinued after state-operated district was created, was neither entitled to 60 days' pay nor salary bonus, but was entitled to *quantum meruit* for work already performed. (00:Sept. 18, Kittrels)

Evidence presented in Lincoln Park v. Boonton, 97 N.J.A.R.2d (EDU) 592, insufficient to prove superintendent's conduct related to her employment as issue not litigated; remanded back to State Board of Education for further proceedings. (St. Bd. 00:Aug. 2, DeVincenzi)

Examiners properly revoked certificate where teacher admitted to defrauding SHBP, despite successful completion of PTI. Teachers are role models and activities outside the schoolhouse are subject to scrutiny. (St. Bd. Ex. 04:Oct. 28, Toler, aff'd St. Bd. 05:June 1)

Excessive absenteeism due to injuries suffered at work may justify tenure dismissal but do not justify suspension of certificate. (01:Jan. 3, Labib, St. Bd. rev'g St. Bd. Ex. 00:May 11)

Guilty plea to second degree manslaughter and leaving the scene of the accident constitutes conduct unbecoming a certificate holder. (St. Bd. 99:July 7, Kinzel)

Individuals who are denied the issuance of certification must be properly notified that such decisions may be appealed to the Commissioner of Education. (St. Bd. 99:May 5, Avellino)

Motion for stay denied following revocation proceedings for unbecoming conduct. (St. Bd. 00:Oct. 4, Loria, aff'g St. Bd. Examiners 00:Feb. 24)

Motion granted by State Board of Education to supplement record with evidence of rehabilitation following revocation of certificates for presenting a fraudulent certificate in an effort to obtain school employment. State Board stresses that appeal from State Board of Examiners must be taken to Commissioner not State Board. (St. Bd. 03:March 7, Elmezzi, matter remanded to State Board of Examiners for determination of rehabilitation, St. Bd. 03:Sept. 3)

Motion to supplement record denied. Appellant seeks to bring up matters which he could have brought up in his response to the order to show cause. Motion for oral argument denied. On appeal to State Board, matter reversed and remanded on issue of whether teacher knowingly submitted false credentials. (St. Bd. dec. on motion, 05:July 6, Carney, rev'd and remanded St. Bd. 05:Nov. 2)

Motions for a stay and reconsideration of decision denied in matter involving suspension of certificates for failing to adequately supervise students. (St. Bd. 05:Aug. 3, Younger)

Nonrenewal: Superintendent of state-operated district acted within authority in nonrenewing vice principal's contract based on one negative evaluation by assessor. (98:Oct. 7, Harvey)

Non-tenured teacher who worked one week in State Operated district and was then terminated was not entitled to damages as employment contract had never been consummated (never approved by State District Superintendent). (99:June 14, Fanego)

Provision requiring 60 days' pay to staff whose positions are abolished in takeover, means calendar days. (99:Jan. 4, Caponegro, et al., aff'd St. Bd. 99:April 7, aff'd in part except to extent St. Bd. denied compensation for accumulated vacation sick days remanded for reconsideration and calculation of these benefits in accordance with board's policy and procedure manual and past practice, 330 N.J. Super. 148 (App. Div. 2000), remanded to Commissioner, St. Bd. 00:June 7)

Relaxation not warranted. Petitioner not required to establish that she did not fraudulently acquire English endorsement in order to pursue her tenure rights claim. No ruling from State Board of Examiners necessary. Decision on remand. (02:March 4, Osman, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)

Revocation of both principal and supervisor certificates upheld for breaching security of HSPT. Appellate Division overturns decision to revoke teaching certificate as conduct was unrelated to that certificate. State Board of Education remands to Examiners to take action consistent with opinion. (St. Bd. 05:May 4, Black)

Revocation of certificates upheld for out-of-state conviction of public lewdness in accord with N.J.S.A. 18A:6-7.1. (St. Bd. 05:Aug. 3, Nardini)

Revocation of certificates without presentation of defenses not appropriate where ambiguity about notice to certificate holder existed, he was not represented by counsel and demonstrated little knowledge of the administrative process. Matter remanded to State Board of Education. (St. Bd. 01:Jan. 3, Battle)

Revocation of teaching certificate appropriate where certificate has been knowingly altered. (98:Sept. 24, Tannen, aff'd St. Bd. 99:Feb. 3)

Revocation: State Board of Examiners does not have the authority to set aside a disqualification. Petitioner must first apply to Criminal History Review Unit to have disqualification removed and then reapply to Examiners. (St. Bd. 02:Aug. 7, Rector)

Revocation upheld for writing threatening notes to Superintendent. (98:Nov. 5, Lucarelli, remanded St. Bd. 99:May 5; decision on remand, St. Examiners 99:Sept. 23; appeal dismissed for failure to file timely notice, St. Bd. 00:April 5)

Revocation upheld where documents forged, subverting certification process. (99:June 17, Crawford, remanded St. Bd. 00:Feb. 2, dec. on remand St. Bd. 01:May 10, aff'd St. Bd. 02:Jan. 2)

Standard of review of State Board of Examiners' denial of teaching certificate is whether board acted in arbitrary, capricious manner. Certification denial on basis of conviction for homicide, upheld. (99:Sept. 13, Bilal)

State Board of Education upholds Examiners' suspension of certificates for two years following tenure dismissal for excessive absenteeism where teacher was absent for over 650 days in a six year period. (St. Bd. 05:Dec. 7, Metallo)

State Board of Examiners did not revoke certificate, as there was no proof that teacher purposefully misrepresented the status of her certificate. (99:Dec. 20, Osman, aff'd St. Bd. 00:May 3, remanded App. Div. 01:Oct. 17, remanded to Commissioner, St. Bd. 01:Dec. 5)(See also decision on remand 02:March 4, aff'd St. Bd. 02:Aug. 7, aff'd App. Div. unpub. op. Dkt. No. A-3610-01T5, June 2, 2003)

State Board of Examiners must not issue standard certificates to provisional teachers who have not yet demonstrated compliance with regulatory requirements. (St. Bd. 03:April 2, Englewood on the Palisades) See App. Div. unpub. op. Dkt. No. A-2692-99T1, May 23, 2001 remanding to the State Board on the issue of staff certification.

State Board of Examiners properly denied petitioner's application for a supervisor's certificate as the masters and doctoral degrees he earned were from unaccredited out-of-state institutions not recognized under any reciprocal agreements with the NJDOE. (04:July 7, Nicolas)

State Board of Examiners without authority to consider petition for new county substitute certificate. (Appeal denied St. Bd. 99:Nov. 3, Gaba)(St. Bd. 03:Oct. 1, Weingarten)

State Board's public comment sessions are not required to be part of the administrative rulemaking process by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Court Rule 2:5-4 does not necessarily require the appellants to produce a transcript of the State Board meetings at which regulations that are subject of challenges were considered. (Motion to abbreviate record granted, In re N.J.A.C. 6A:26, St. Bd. 02:Jan. 2)

Stay of revocation of certificates for unbecoming conduct following guilty plea to charge of sexual contact denied. State Board of Examiners properly revoked certificates, criminal sexual contact is a disqualifying offense, evidence of rehabilitation notwithstanding, as offense occurred after June 1998 amendments to N.J.S.A. 18A:6-7.1, prohibiting evidence of rehabilitation. (St. Bd. 03:July 2, Vereen, aff'd St. Bd. 03:Sept. 3)

Teacher's certificate suspended for one year for failure to give proper notice of resignation. Engaged in unprofessional conduct. N.J.S.A. 18A:26-10. (02:April 29, Owens)

The mere fact that someone has been disqualified from school employment pursuant to N.J.S.A. 18A:6-7.1 does not mean automatic revocation of teacher's license. There is a statutory right to challenge accuracy of record. Matter referred to Commissioner for a determination on disqualification from employment. (St. Bd. 04:March 3, Scocco, Commissioner determined that possession of CDS was disqualification from employment, 04:March 11, certificates revoked, St. Bd. 04:Aug. 4)

Where charge of improper sexual conduct proven by a preponderance of credible evidence; certificates will be revoked on the basis of the egregious conduct. (00:June 15, M.S., aff'd St. Bd. 00:Dec. 6) See also, Newspaper was entitled to a redacted copy of ALJ's opinion in case involving teacher who allegedly committed sexual abuse against her students. Division of Youth and Family Services v. M.S., 340 N.J. Super. 126 (App. Div. 2001) and In the Matter of Allegations of Sexual Abuse at East Park High, 314 N.J. Super. 149 (App. Div. 1998)

Where tenure charges of absenteeism were dismissed upon teacher's retirement for disability, district has no obligation to notify State Board of Examiners under N.J.A.C. 6A:9-17.4, as the charges alleged neither criminal allegations nor conduct unbecoming. (04:Dec. 1, Robinson)

State Board of Examiners orders revocation of school psychologist certificate. Psychologist had agreed to the voluntary surrender of his license to practice professional counseling in New Jersey in accordance with a Consent Order entered into with the Professional Counselor Examiners

Committee of the New Jersey State Board of Marriage and Family Therapy Examiners. Consent Order resulted from allegations that psychologist had failed to maintain client records, had engaged in a dual relationship with a client and misrepresented his credentials. IMO Certificate of Davis, Exam. 2011: January 20.

State Board of Examiners orders revocation of substitute credential. Substitute teacher had been convicted of criminal sexual conduct and had been disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et. seq. Such conviction and disqualification constituted conduct unbecoming a certificate holder. IMO Credential of Genovese, Exam. 2011: January 20.

State Board of Examiners orders revocation of superintendent's Principal and School Administrator Certificates of Eligibility and his Teacher of Music, Supervisor, Principal and School Administrator certificates. Superintendent had pled guilty to theft by deception and official misconduct and had been disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et. seq. Such conviction and disqualification constituted conduct unbecoming a certificate holder. IMO Credential of Genovese, Exam. 2011: January 20.

State Board of Examiners orders revocation of teacher's Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing and Teacher of Health and Physical Education certificate. Teacher had pled guilty to Endangering the Welfare of a Child and Criminal Sexual Contact, and was court-ordered to forfeit his teaching certificates. The SBE accepted the relinquishment of the certificates with the full force and effect of revocation. IMO Certificates of Smith, Exam. 2011: January 20.

State Board of Examiners orders revocation of teacher's Teacher of English and Teacher of Elementary School Certificate. Teacher had pled guilty to Criminal Sexual Contact, and was court-ordered to forfeit his teaching certificates. The SBE accepted the relinquishment of the certificates with the full force and effect of revocation. IMO Certificates of Goffi, Exam. 2011: January 20.

State Board of Examiners orders revocation of teacher's Teacher of Elementary School Certificate of Eligibility and Teacher of Elementary School Certificate. Teacher, after having been charged with Aggravated Sexual Assault, had pled guilty to one count of Sexual Assault and was court-ordered to forfeit his teaching certificates. The SBE accepted the relinquishment of the certificates with the full force and effect of revocation. IMO Certificates of Defranco, Exam. 2011: January 20.

State Board of Examiners denies teacher's application for certification after revocation of her Teacher of Italian Certificate of Eligibility, Teacher of Italian Certificate and as a Teacher of Spanish Certificate. Teacher's certificates had been revoked as a result of a New York conviction for Grand Larceny; a disqualifying offense under N.J.S.A. 18A:6-7.1 et. seq. Teacher's disqualification from teaching pursuant to N.J.S.A. 18A:6-7.1 et. seq. serves as a permanent bar to her teaching in the public schools. In addition, teacher had not satisfied the four year waiting period since

revocation of her certificates. IMO Application for Certification after Revocation of Vurro, Exam. 2011: January 20.

Examiners accepts settlement to suspend superintendent's School Administrator Certificate of Eligibility and School Administrator certificate for five years and Principal Certificate of Eligibility and Principal certificate for two years in matter where DOE's Office of Fiscal Accountability and Compliance (OFAC) reports that he allowed unauthorized expenditures for school building projects, held the superintendent's position initially without proper certification and received separation pay that was neither approved by the Commissioner nor paid in an authorized manner. The individual also holds certificates for Teacher of Physical Education, Teacher of Health and Physical Education certificate, Teacher of Driver Education, and Supervisor. IMO Brown, Exam 2011:March 31

Examiners orders revocation of Teacher of Elementary School and Teacher of Mathematics Certificates of Eligibility With Advanced Standing and Teacher of Mathematics certificate, where teacher was convicted in July 2009 of second degree Sexual Assault and subsequently forfeited teaching certificates and was disqualified from public service pursuant to N.J.S.A.18A:6-7.1 et seq. IMO Koppenaal, Exam 2011: March 31.

Examiners orders revocation of Teacher of Elementary School and Teacher of Nursery School certificates, where teacher in good standing for 22 years altered her expired emergency Teacher of the Handicapped certificate in order to secure employment in a position for which she was not qualified was inappropriate and potentially harmful to students. Examiners is not limited to revoking certificates where a crime has been committed. IMO Ledden, Exam 2011: March 31.

Examiners orders revocation of certificate of Teacher of Elementary School in Grades K-5 Certificate of Eligibility, Teacher of Mathematics Certificate of Eligibility, Teacher of Elementary School With Subject Matter Specialization: Mathematics in Grades 5-8 Certificate of Eligibility, and Teacher of Mathematics Provisional certificate, where teacher pled guilty to lewdness and was sentenced to one year probation and counseling. IMO Padilla, Exam 2011: March 31.

Examiners orders revocation of substitute credential for individual who plead guilty to Endangering the Welfare of a Child and who was ordered to forfeit his teaching certificate and barred from holding any employment, office or position of trust, honor or profit under this State or any of its administrative or political subdivisions pursuant to N.J.S.A. 2C:51-2d, and who was disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et seq. IMO Powell, Exam 2011: March 31.

Examiners accepts relinquishment, and orders revocation, of Teacher of the Handicapped certificate and Teacher of Social Studies certificate where teacher, after pleading guilty to Endangering the Welfare of a Child, was court-ordered to forfeit his teaching certificates and agreed to forfeit his certificates with the force and effect of a revocation. IMO Riquelme, Exam 2011: March 31.

Teacher who plead guilty to Cruelty and Neglect of a Child, and was permanently barred from ever holding a public position in New Jersey, agreed to forfeit her Teacher of Chemistry Certificate of Eligibility With Advanced Standing and Teacher of Chemistry Certificate. IMO Almagro, Exam 2011: May 12.

Teacher agrees to forfeit Teacher of Carpentry Certificate of Eligibility, Teacher of Cabinet Making Certificate of Eligibility, and Teacher of Carpentry and Teacher of Cabinet Making Certificates with full force of revocation, as part of tenure charge settlement based on allegations that teacher had engaged in intimate relationship with a student, nurtured inappropriate relationships with students, provided transportation to students in his personal vehicle and spent time alone with female students in a locked classroom. IMO Aquilina, Exam 2011: May 12. (Elizabeth)

After being convicted of Official Misconduct, teacher was court-ordered to forfeit Teacher of Music Certificate of Eligibility and a Teacher of Music certificate; Examiners accepts relinquishment of certificates. IMO Broughton, Exam 2011:May 12.

Where teacher pled guilty to Endangering the Welfare of a Child and was sentenced to parole supervision for life and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq., Examiners orders revocation of Teacher of English Certificate of Eligibility and Teacher of English certificate; facts deemed admitted as he failed to respond to order to show cause. IMO Flynn, Exam 2011: May 12.

Teacher's conviction for Endangering the Welfare of a Child and subsequent disqualification constitute conduct unbecoming a certificate holder that warranted revocation of his Substitute Credential; facts deemed admitted as he failed to respond to order to show. IMO Harrington, Exam 2011: May 12.

Where teacher was convicted of third degree Assault by Auto, Examiners revokes her Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing and Teacher of Elementary School in Grades K-5 certificate. Behavior falls far short of a role model as she knowingly drove while under the influence of drugs and alcohol and caused serious bodily injury to others. Behavior outside the classroom may be relevant in determining qualifications and continued fitness to retain her certificates. The fact that she has undergone treatment for bipolar disorder, alcohol abuse and eating disorder has no bearing on the decision with regard to her certification. IMO Markakis, Exam 2011: May 12

Examiners orders revocation of Substitute Credential for teacher convicted of Criminal Attempt to Entice, Lure Child by Various Means and Criminal Attempted Aggravated Sexual Assault, where teacher was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq. IMO Oderanti, Exam 2011:May 12.

Examiners orders revocation of Teacher of Spanish Certificate of Eligibility, Teacher of Spanish certificate, and a Teacher of English As a Second Language certificate, where teacher was convicted of Filming Without

Consent of Another in violation of N.J.S.A. 2C:14-9b and who, as a result of the conviction, was disqualified from public school employment pursuant to N.J.S.A.18A:6-7.1 et seq. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. IMO Borja, Exam 2011:June 16.

Teacher was court-ordered to forfeit Teacher of Spanish Certificate of Eligibility and Teacher of Spanish certificate due to his conviction for Endangering the Welfare of Children; Examiners voted to accept his relinquishment, with the force and effect of a revocation. IMO Friery, Exam 2011:June 16.

Examiners revokes Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of Elementary School certificate, and Teacher of English certificate, of teacher who resigned from his nontenured position in the district as the result of allegations of inappropriate personal and intimate, secretive conversations with a female student. The Commissioner has long held that teachers serve as role models for their students and such conduct crosses the boundary of acceptable teacher behavior and demonstrates lack of professional judgment. IMO Kriesel, Exam 2011:June 16

Examiners orders revocation of Teacher of Physical Science certificate following settlement of a tenure case brought against a teacher under which teacher agreed to retire and relinquish certificates in settlement of charges of unbecoming conduct involving the alleged use of force against two students and the use of inappropriate language towards students. IMO Lee, Exam 2011: June 16 (Trenton)

Examiners orders revocation of guidance counselor's Student Personnel Services certificate and Teacher of Elementary School Certificate of Eligibility; she had entered into settlement to relinquish certificates after Office of Fiscal Accountability and Compliance (OFAC) concluded that she directed or authorized alterations to grades on student transcripts. IMO Meller, Exam 2011: June 16.

Examiners orders revocation of Substitute Credential of employee convicted of Aggravated Assault With Weapon-Bodily Injury, where as a result of the conviction, the teacher was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq. , sentenced to two years' probation and ordered to perform 100 hours of community service. IMO O'Neil, Exam 2011: June 16

Examiners orders revocation of Teacher of Elementary School Certificate of Eligibility, Teacher of Elementary School certificate, Principal Certificate of Eligibility, and Principal Provisional certificate, where employee resigned from his position in the district after being accused of inappropriate conduct including sending photos to a female employee's cell phone depicting male genitalia in a state of arousal. Revocation ordered despite apologies for his "sophomoric" behavior while inebriated, and claims of rehabilitation; the purpose of this proceeding is "to permit

the certificate holder to demonstrate circumstances to counter the charges, not to show rehabilitation." IMO Rhaney, Exam 2011: June 16.

Examiners orders revocation of Teacher of Health Occupations Certificate of Eligibility, and Teacher of Health Occupations certification, where teacher resigned from her position after an investigation revealed she had never been issued a license from the Board of Nursing. Falsifying her qualifications both as a nurse and as a teacher is not only egregious but also dangerous. IMO Steinmetz, Exam 2011: June 16.

Examiners orders revocation of Teacher of the Handicapped Certificate for employee who pled guilty to Uttering Forged Instrument, sentenced to 5 years' probation, ordered to relinquish his teaching certificates, and pursuant to N.J.S.A. 2C:51-2, permanently disqualified from ever holding any position in New Jersey. IMO Williams, Exam 2011: June 16.

Examiners orders revocation of Teacher of Biological Science Certificate of Eligibility and a Teacher of Biological Science certificate where teacher forfeited his position and was disqualified from public school employment as a condition of his acceptance into PTI, following conviction for Abuse of Child-Cruelty, Neglect. IMO Young, Exam 2011: June 16.

SBE ordered revocation of Teacher of Social Studies and Teacher of Psychology Certificates of Eligibility With Advanced Standing and Teacher of Social Studies and Teacher of Psychology for teacher who pled guilty to third degree theft and was court-ordered to forfeit her teaching certificates. In the Matter of the Certificates of: Karen B. Binder, Exam 2010: July 22

SBE ordered revocation of Teacher of English, Principal and Supervisor Certificates of Eligibility and his Teacher of English and Supervisor certificate of teacher who had been dismissed from his tenured position for unbecoming conduct, including corporal punishment of students. In the Matter of the Certificates of R.A., Exam 2011: July 28

SBE ordered revocation of Teacher of Art, Principal and Supervisor certificates of teacher who pled guilty to Aggravated Sexual Assault-Victim Under 13, and was sentenced to seven years in prison. In the Matter of the Certificates of Lawrence J. Butler, Jr., Exam 2011: July 28

SBE ordered revocation of School Business Administrator Certificate of Eligibility and School Business Administrator certificate of school business administrator who resigned from his position after it was alleged that he viewed sexually oriented pictures of young males on his district computer. SBE accepted settlement proposal from school business administrator in which he would relinquish his certificates with the force and effect of a revocation. In the Matter of the Certificates of Alan Chadrjian, Exam 2011: July 28

SBE ordered revocation of School Business Administrator Certificate of Eligibility and School Business Administrator certificate of school business administrator who issued Request for Disbursement Vouchers for two school construction projects and certified them to be accurate and in compliance with Department of Education standards, even though the expenditures exceeded the amounts approved by voters. SBE accepted

settlement proposal from school business administrator in which he would relinquish his certificates with the force and effect of a revocation. In the Matter of the Certificates of Morris Gartenberg, Exam 2011: July 28

SBE ordered revocation of Teacher of Social Studies Certificate of Eligibility With Advanced Standing and her Teacher of Social Studies certificate of teacher who pled guilty to Theft By Deception, was sentenced to 18 months' probation and ordered to relinquish her teaching position. Pursuant to *N.J.S.A.* 2C:51-2d, teacher was also permanently disqualified from ever holding any office, position of honor, trust or profit in the State of New Jersey or any of its administrative or political subdivisions. In the Matter of the Certificates of Megan Laboy, Exam 2011: July 28

SBE ordered revocation Teacher of Business: Finance/Economics/Law Certificate of Eligibility of person who was convicted of Lewdness, disqualifying him from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* In the Matter of the Certificates of Stephen Legler, Exam 2011: July 28

SBE ordered revocation of Teacher of Elementary School Certificate of Eligibility and Teacher of Elementary School certificate of teacher who had been dismissed from his tenured position for unbecoming conduct, including verbal altercation with female special education student, calling her N "untamed beast", insubordination toward his supervisor, leaving class unattended, calling another student "stupid and retarded", refusing to speak with parent in a conference, physical altercation with another faculty member. In the Matter of the Certificates of Brian Taylor, Exam 2011: July 28

SBE ordered revocation of Teacher of Music Certificate of Eligibility With Advanced Standing and Teacher of Music certificate of teacher who, after being charged with Endangering the Welfare of Children, entered a plea agreement and was required to forfeit his teaching certificates. In the Matter of the Certificates of Russell Tybus, Exam SBE 2011: July 28

SBE ordered revocation of Teacher of Elementary School in Grades K-5 Certificate of Eligibility and Teacher of Students With Disabilities Certificate of Eligibility of person who pled guilty to Criminal Sexual Contact and was court-ordered to forfeit her teaching certificates. In the Matter of the Certificates of Monique Ucelli, Exam, 2011: July 28

SBE ordered revocation of Principal Certificate of Eligibility and Teacher of English and Supervisor certificates of teacher who pled guilty to two counts of Fraudulent Use of Credit Card, was sentenced to three years' probation, ordered to relinquish her teaching position and barred her from future public employment. In the Matter of the Certificates of Jill Zell, Exam 2011: July 28

Teacher of Physical Education Certificate of Eligibility With Advanced Standing and Teacher of Physical Education and Teacher of Driver Education certificates are revoked where teacher falsified information by cutting and pasting from her roommates' certificate to obtain her certificate and her job; however, matter is dismissed against teacher from whom the theft

took place as she showed no complicity. IMO Guagliardo and Ramos, Exam: 2011:Sept. 22.

Examiners orders revocation of Teacher of Elementary School and Teacher of Mathematics certificates where teacher agreed to relinquish them after being charged with Child Abuse and Endangering the Welfare of Children, and having been accepted into a Pretrial Intervention Program for which forfeiture of the teaching certificates was a condition of entering the program. IMO Ivan, Exam 2011:Sept 22.

After entering a plea to Endangering the Welfare of Children, and being required to forfeit his r Teacher of English Certificate of Eligibility With Advanced Standing, and a Teacher of English certificate, Examiners accepts relinquishment with full effect of revocation. IMO Rokosz, Exam 2011:Sept. 22.

Notwithstanding her community service, numerous letters of support and her contentions of remorse and rehabilitation, Examiners revokes Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing, Teacher of Preschool Through Grade 3 Certificate of Eligibility With Advanced Standing, and Teacher of Preschool Through Grade 3 and Teacher of Elementary School in Grades K-5 certificates of teacher who had consumed alcohol and prescription medication was convicted of Knowingly Leaving a Motor Vehicle Accident with Serious Bodily Injury. IMO Pickul, Exam: 2011:Sept.22.

Examiners orders revocation of Teacher of General Business Certificate of Eligibility With Advanced Standing and Teacher of General Business certificate, where teacher was convicted of Criminal Attempt/Endangering the Welfare of Children and disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* . IMO Seiler, Exam: 2011:Sept. 22.

Examiners orders two year suspension of Teacher of Speech Arts & Dramatics Certificate of Eligibility, Teacher of Elementary School and Teacher of English Certificates of Eligibility, and Teacher of Speech Arts & Dramatics, Teacher of Elementary School and Teacher of English certificates, pursuant to a settlement proposal, where teacher had resigned following allegations that she had engaged in inappropriate sexual discussions with students, discussed her prior marijuana use in class, met with students away from school on a one-to-one basis and taught a theater class where students presented sexually explicit content. IMO Young, Exam: 2011:Sept 22.

Teacher of the Handicapped certificate revoked after teacher was accepted into a Pretrial Intervention program (PTI) in 2007 after being charged with Aggravated Assault, Possession of a Weapon, Obstructing the Administration of Justice and Resisting Arrest. Although the ALJ acknowledged that Barnes had a long, blemish-free career other than this one incident, she noted that "nevertheless, the severity of his conduct on the night in question was so egregious as to cast doubt on his fitness to serve as a teacher." Teacher offered nothing by way of mitigation of his

conduct. Rather, he focused only on his successful completion of PTI, which is a necessary prerequisite to having the charges dismissed. purpose of this proceeding is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." The fact that teacher may have a stellar record post arrest, while a step in the right direction, has no bearing on the decision the Board of Examiners must make with regard to his certification. In Re Barnes, Exam 2011: Nov. 1

Following conviction for official misconduct due to missing funds and mismanagement in student activity account, Examiners revokes Teacher of Social Studies Certificate of Eligibility With Advanced Standing and a Teacher of Social Studies certificate. Teacher failed to respond to order to show cause, despite opportunities to do so. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Under given circumstances, Board believes that the only appropriate sanction in this case is the revocation of certificates. In Re Belton, Exam 2011, Nov. 1

Following plea agreement after charge for Endangering the Welfare of Children, teacher was required to forfeit his teaching certificates. Teacher of Medical Assisting Certificate of Eligibility and Teacher of Medical Assisting certificate were revoked. In Re Forman, Exam 2011, Nov. 1

Following allegations of submitting fraudulent teaching certificates to the district, teacher agrees to forfeit his legitimately-held teaching certificates with the force and effect of revocation. Teacher of Health and Physical Education and Teacher of Driver Education certificates a Principal Certificate of Eligibility, and a Principal certificate are revoked. In Re Franks, Exam 2011, Nov. 1

After pleading guilty to Sexual Assault and Criminal Sexual Contact, teacher was required to forfeit his teaching certificates as a condition of his plea agreement. Teacher of English As a Second Language Certificate of Eligibility With Advanced Standing, a Teacher of Elementary School Certificate of Eligibility With Advanced Standing, and Teacher of English As a Second Language and Teacher of Elementary School certificates relinquished with full force and effect of revocation. In Re Levy, Exam 2011, Nov. 1

Teacher pled guilty in May 2010 to 2nd degree Theft by Deception. As a result of the conviction, Matarese was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq. In enacting the Criminal History Review statute, in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Theft by Deception fall squarely within this category. Teacher of General Business Certificate of Eligibility, and a Teacher of General Business certificate revoked. In Re Matarese, Exam 2011, Nov. 1

Teacher was convicted in December 2010 of Threatening to Kill. Teacher of Collision Repair Technology Certificate of Eligibility and a Teacher of Collision Repair Technology Provisional Certificate were revoked by Board of Examiners. In Re Rodriguez. Exam 2011, Nov. 1

Music teacher resigns following allegations of sexual relationship with student. Teacher agreed to relinquish Teacher of Music Certificate of Eligibility With Advanced Standing and a Teacher of Music certificate with full force and effect of revocation. In Re Russell, Exam 2011, Nov. 1

Teacher removed from its substitute teacher list after he was found to have sent inappropriate notes to a seventh grade student. Teacher agrees to relinquishment of his Teacher of Elementary School Certificate of Eligibility and a Teacher of Social Studies Certificate of Eligibility with full force and effect of revocation. In Re Cluggish, Exam 2011, Dec 16

Teacher was indicted for Attempted Murder, Conspiracy to Commit Murder, Tampering with Physical Evidence, Financial Facilitation of Criminal Activity, and Conspiracy to Commit Financial Facilitation of Criminal Activity. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain her Teacher of Elementary School certificate. Certificate suspended pending outcome of proceedings. If the charges are resolved in her favor, she shall notify the Board of Examiners for appropriate action regarding the suspension order. In Re Dorsett, Exam 2011, Dec. 16

Teacher surrendered his teaching certificates in Pennsylvania in June 2010 in lieu of discipline after he pled guilty in March 2010 to Corruption of Minors and Endangering the Welfare of Children. Examiners issues order to show cause on New Jersey certificates. Teacher currently holds a Teacher of Mathematics Certificate of Eligibility with Advanced Standing and a Teacher of Mathematics certificate. The Commissioner has long held that teachers serve as role models for their students. Clearly, a teacher convicted of Corruption of Minors and Endangering the Welfare of Children cannot claim status as a role model to anyone. Teacher's conviction therefore warrants revocation. In Re Hawkins, Exam 2011, Dec 16

Teacher of Elementary School Certificate of Eligibility with Advanced Standing and Teacher of Elementary School certificates revoked following conviction for lewdness. In Re Socrates, Exam 2011, Dec. 16

Teacher pled guilty in December 2010 to one count of Endangering the Welfare of a Child-Duty. Teacher of Psychology Certificate of eligibility and a Teacher of Elementary School Certificate of Eligibility revoked by Examiners. In Re Villapiano, Exam 2011 Dec. 16.

State Board of Examiners ordered the revocation of employee's Substitute Credential. Substitute pled guilty to one count of Offensive Language/Disorderly Conduct after originally being charged with harassment (Offensive Touching) and was sentenced to evaluation and counseling, ordered to have no contact with the victim or the victim's family and was fined. Such conduct and conviction constituted conduct

unbecoming a credential holder. The Commissioner has long held that teachers should serve as role models for students. Employee's conviction for Offensive Language demonstrates behavior that falls far short of the role model status expected of teachers. SBE found that revocation is the appropriate sanction. IMO the Credential of Bhatt: Exam. 2012: January 19

State Board of Examiners ordered the revocation of teacher's Teacher of Spanish Certificate of Eligibility With Advanced Standing, issued, Teacher of Spanish certificate, and Teacher of Students With Disabilities Certificate of Eligibility. In September 2009, Commissioner of Education in New York had revoked teacher's certificates there due to an inappropriate relationship that teacher had with a female student and inappropriate contact with another female student. Teacher had lied on his application for New Jersey teaching certification and had submitted a forged letter of recommendation. Teacher agreed to relinquish his certificates with the force and effect of a revocation to the State Board of Examiners, which accepted same. IMO the Certificates of Cuevas: Exam. 2012: January 19

State Board of Examiners ordered that teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing and Teacher of the Handicapped and Teacher of Elementary School certificates be suspended pending resolution of the criminal charges pending against the teacher. The Commissioner has long held that teachers should serve as role models for students. Teacher had been indicted on charges of Murder, Conspiracy to Commit Murder, Tampering with Physical Evidence, Disturbing or Desecrating Human Remains, Conspiracy to Disturb or Desecrate Human Remains, Financial Facilitation of Criminal Activity, Conspiracy to Commit Financial Facilitation of Criminal Activity, and Attempted Murder demonstrating behavior that falls far short of the role model status expected of teachers. IMO the Certificate of Dorsett: Exam. 2012: January 19

State Board of Examiners revoked teacher's Teacher of Social Studies certificate. Teacher had been found guilty of unbecoming conduct as a teacher and was removed from his tenured employment. Charges against the teacher included placing a seventh grade student at substantial risk of harm by directing and allowing the student to retrieve a book from a slanted roof approximately 20 feet over paved ground, violating school policy by removing a student's "hoodie" in the hallway, showing an R-rated movie to his class, allowing students to play cards in class during instructional time, failing to have his roll book with him during a fire drill, failing to pick up his students from the cafeteria in a timely manner, permitting more than one student out of his class at a time, failing to meet requirements of the Learning for Learning checklist and leaning on a student's desk, causing it to overturn and send the student to the floor. It was also alleged that the teacher's work attendance did not meet district guidelines and that his classroom was in violation of various fire codes. Teacher's unbecoming conduct and subsequent loss of tenure constituted

conduct unbecoming a certificate holder. There can be no dispute that the teacher's conduct, in its totality, including the roof incident, amply demonstrates his unfitness to continue to be a teacher. SBE concluded that the only appropriate response is the revocation of the teaching certificate. IMO the Certificate of Dougherty: Exam. 2012: January 19

State Board of Examiners ordered revocation of teacher's Teacher of Students With Disabilities Certificate of Eligibility and Teacher of Social Studies Certificate. Teacher had been arrested for Endangering the Welfare of a Child and had been accepted into a Pretrial Intervention Program. Teacher had allegedly inappropriately touched a 15 year old girl and during his police interview, had admitted to sexual contact with another 16 year old girl. As part of a settlement proposal regarding his teaching certification, teacher agreed to voluntarily relinquish his certificates with the full force and effect of a revocation. SBE accepted the proposal. IMO the Certificates of Loiseau: Exam. 2012: January 19

State Board of Examiners ordered revocation of teacher's Teacher of Social Studies Certificate. Teacher had pled guilty in federal court to Conspiracy to Deal in the Business of Firearms, was sentenced to 40 months in prison and fined $100,000. As a result of the conviction, he was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq* Such conviction and disqualification constituted conduct unbecoming a certificate holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. IMO the Certificate of Mayes: Exam. 2012: January 19

State Board of Examiners ordered revocation of employee's Teacher of Health and Physical Education Certificate of Eligibility, Substance Awareness Coordinator Certificate of Eligibility, School Social Worker certificate, Principal Certificate of Eligibility, School Administrator Certificate of Eligibility, and Supervisor and School Counselor certificates. Employee had pled guilty to Arson and Insurance Fraud and was sentenced to 364 days' imprisonment in county jail, one year of probation and fined. Such conviction and disqualification constituted conduct unbecoming a certificate holder. The employee's acts of Arson and Insurance Fraud demonstrate a dishonesty that falls far short of the role model status expected of teachers; the employee cannot lay claim to that status. His conviction resulted in a prison term and probation, demonstrating egregious behavior that warrants revocation. IMO the Certificates of O'Bryant: Exam. 2012: January 19

State Board of Examiners ordered revocation of teacher's Teacher of Elementary School Certificate. Teacher had pled guilty in New York federal court to one count of Possession of Child Pornography and was sentenced to 78 months in federal prison. SBE agreed to accept teacher's relinquishment of certificate with the full force and effect of a revocation pursuant to

N.J.A.C. 6A:9-17.8. IMO the Certificate of Reiner: Exam. 2012: January 19

State Board of Examiners ordered revocation of teacher's Teacher of Elementary School in Grades K-5 Certificate of Eligibility and his Teacher of Elementary School in Grades K-5 and Teacher of Elementary School With Subject Matter Specialization: Mathematics in Grades 5-8 certificates. Teacher pled guilty to Aggravated Assault with Bodily Injuries and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* Such conviction and disqualification constituted conduct unbecoming a certificate holder. IMO the Certificates of Ricardo: Exam. 2012: January 19

State Board of Examiners ordered revocation of Teacher of Students with Disabilities Certificate of Eligibility, Teacher of English Certificate and Teacher of Elementary School Certificate. Teacher had sent and received entirely inappropriate emails, largely involving matters related to sex and personal relationships, but, importantly, also including references, both of a general and a particular nature, to students, while at school and on school equipment and on the school account. Teacher's conduct was inappropriate and involved "an apparent breach of trust regarding personal information about a student that had in some manner come into [the teacher's] possession." His conduct negated his status as a role model for students. IMO Certificates of Voza, Exam. 2012: January 19

Examiners orders Teacher of English Certificate of Eligibility suspended pending the submission of proof of successful completion of PTI, for teacher who was convicted of Aggravated Assault; charges deemed admitted where teacher failed to respond to order to show cause.IMO Certificate of Arpaia, Exam 2012:March 1

Examiners orders revocation of School Psychologist certificate for individual who had his certificates and licenses revoked in Pennsylvania after pleading guilty to Indecent Assault and Endangering the Welfare of Children, and had been sentenced accordingly. IMO Certificate of Batoff, Exam 2012:March 1.

Examiners orders revocation of substitute credential of individual who was convicted of second degree Theft by Deception IMO Credential of Gendel, Exam 2012:March 1.

Examiners orders revocation of Teacher of Health and Physical Education certificate, of individual who pled guilty to Theft by Deception. Theft by Deception demonstrates a dishonesty that falls far short of the role model status expected of teachers. IMO Certificate of Gross, Exam 2012:March 1.

Examiners orders revocation of Substitute credential of individual who pled guilty to Contempt-Judicial Order in October 2010; her repeated violation of a court order when she had previously been charged with Stalking, resulted in a lengthy probation; behavior falls far short of the role model status expected of teachers. IMO Credential of Johnson, Exam 2012: March 1.

Examiners orders revocation of French Certificate of Eligibility for individual who pled guilty in Pennsylvania to Corruption of Minors and surrendered his certificates there. IMO Certificate of Key, Exam 2012:March 1.

Examiners accepts relinquishment of Teacher of Biological Science Certificate of Eligibility With Advanced Standing, and a Teacher of Biological Science certificate for individual convicted of four counts of Endangering the Welfare of Children who agreed to forfeit his teaching certificates and who agreed to relinquish his certificates with the force and effect of a revocation. IMO Certificate of Melchiorre, Exam 2012:March 1.

Examiners orders revocation of Teacher of Elementary certificate, for individual whose Pennsylvania certificate was revoked after he pled guilty to Homicide By Vehicle and was later diagnosed with Acute Obstructive Sleep Apnea and had taken early retirement. IMO Certificate of Skipper, Exam 2012:March 1.

Examiners orders revocation of School Business Administrator certificate of individual who was sentenced to seven years' imprisonment for Official Misconduct after 30 years of service, and who forfeited his public employment pursuant to N.J.S.A. 2C:-51-2A a, and was barred from future public employment. Acts of dishonesty fell far short of the role model status expected of teachers. IMO Certificate of Steele, Exam 2012:March 1.

Examiners orders revocation of Teacher of English Certificate of Eligibility With Advanced Standing and a Teacher of English certificate, where individual's certificates were revoked in Pennsylvania after she pled guilty to Corruption of Minors, Unlawful Contact or Communication With a Minor, Selling or Furnishing Liquor or Malt or Brewed Beverage to a Minor, and pled Nolo Contendere to Indecent Assault-Forcible Compulsion. She cannot claim status as a role model to anyone. IMO Certificate of Winkis, 2012: March 1

Examiners orders revocation of Teacher of Reading certificate and Reading Specialist certificate of individual who surrendered his certificates in Pennsylvania in lieu of discipline after pleading guilty to ten counts of Possession of Child Pornography and three counts of Dissemination Photo/Film of Child Sex Acts and was sentenced to prison. He cannot claim status as a role model to anyone. IMO Certificates of Zaleski, Exam 2012: March 1.

Examiners orders revocation of Teacher of Elementary School Certificate of Eligibility and Teacher of Elementary School certificate where individual pled guilty to Sexual Assault and was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.*. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. IMO Certificates of Bordenabe, Exam 2012: April 2.

Examiners orders revocation of Teacher of Elementary School certificate of individual who pled guilty in federal court to Possession of Child Pornography and was disqualified from public school employment

pursuant to N.J.S.A. 18A:6-7.1 *et seq.* An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. IMO Cholowinski, Exam 2012:April 2.

Examiners orders two year suspension of Teacher of Business: Finance/Economics/Law Certificate of Eligibility, School Business Administrator Certificate of Eligibility, and Teacher of Business: Finance/Economics/Law certificate, in matter where, pursuant to N.J.A.C. 6A:9-17.4, the teacher had resigned from his tenured position after being suspended for inappropriate communications with a student, and where teacher presented and board accepted a settlement proposal for the two-year suspension of the certificates. IMO Certificates of Bienvenido, Exam 2012: April 2.

Examiners orders revocation of Teacher of Elementary School and Teacher of Social Studies Certificates of Eligibility, Teacher of Elementary School and Teacher of Social Studies Certificates of Eligibility With Advanced Standing, Teacher of Elementary School certificate, and a Principal Certificate of Eligibility for individual convicted of Falsifying or Tampering with Records in the fourth degree who was sentenced to two years' probation and ordered to forfeit his public employment, was forever barred from holding public office pursuant to N.J.S.A. 2C:51-2d and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.*-- notwithstanding his vociferous arguments against revocation. IMO Certificates of Maurer, Exam 2012:April 2.

Examiners voted to accept individual's relinquishment of Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of Students With Disabilities Certificate of Eligibility, and Teacher of Elementary School certificate pursuant to N.J.A.C. 6A:9-17.8, where teacher plead guilty to Endangering the Welfare of Children. IMO Certificates of Peverada, Exam 2012:April 2.

Examiners orders revocation of Teacher of Nursery School and Teacher of Elementary School certificates, of teacher who resigned from her teaching position after the district filed tenure charges alleging unbecoming conduct and other just cause in regard to her conduct toward students. Examiners finds Judge Bass' recommendation for a two-year suspension of the certificates to be too lenient, noting that actions in humiliating and frightening young students in front of their peers cannot and should not be lightly dismissed. IMO Certificates of Pitcher, Exam 2012:April 2.

Examiners orders revocation of Teacher of Health and Physical Education certificate for individual who was convicted in N.J. of Simple Assault and Stalking in Pennsylvania and where he had been sentenced to jail for 90 days, fined, ordered to forfeit his public position.and was forever disqualified from holding future public positions pursuant to N.J.S.A. 2C:51-2d. IMO Certificates of Rushing, Exam 2012:April 2.

Examiners orders revocation of Teacher of Mathematics Certificate of Eligibility and Teacher of Mathematics certificate for individual convicted of Endangering the Welfare of Child-Duty and had been sentenced to a four year suspended sentence, parole supervision for life, Megan's Law registration, forfeiture of his public employment, and who as a result of the conviction, was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* IMO Certificates of Tippie, Exam 2012:April 2.

Substitute credential revoked where holder pled guilty to Criminal Sexual Contact. DeFeo, Exam 2012: May 17

Teacher of Handicapped certificate revoked where teacher pled guilty to three counts of Falsifying or Tampering with Records. Unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. In this instance, DeMatteo's conviction for Falsifying or Tampering with Records resulted in a lengthy probation and a permanent disqualification from public employment. Although tea claims of unfair treatment by both her district and her ex- husband, if true, are outrageous, the fact remains that her guilty plea was made knowingly. Moreover, her subsequent public employment ban militates in favor of revocation. DeMatteo, Exam 2012: May 17

Teacher presented a proposal to the Board in which her certificate would be voluntarily relinquished with the force and effect of a revocation. Teacher did not admit the allegations in the Order to Show Cause. Teacher of Elementary School certificate is hereby revoked. Gordon Exam 2012: May 17

Substitute credential revoked where teacher pled guilty to Abuse of Child-Cruelty-Neglect in April 2011. As a result of the conviction, teacher was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 et seq. Johnson, Jr. Exam 2012: May 17

Teacher of Social Studies certificate is hereby suspended until teacher's successful completion of his court-ordered PTI. Miers, Exam 2012: May 17

Teacher surrendered his Florida teaching certificates following allegations of inappropriate contact with students. Teacher currently holds a NJ Teacher of Music certificate, issued in May 1968. Teacher agreed to relinquish his certificate with the force and effect of a revocation and all attendant consequences. Morrison, Exam 2012: May 17

Teacher of Comprehensive Science certificate is suspended pending final agency action on an order to show cause. Norton, Exam 2012: May 17

Teacher convicted of Insurance Fraud sentenced to one year of probation. The court forever barred teacher from holding public employment pursuant to N.J.S.A. 2C:51-2(a)1. Teacher of the Handicapped certificate, a Supervisor certificate, and a Principal certificate are revoked. Wright-Stafford, Exam 2012: May 17

Teacher convicted of Corruption of Minors, Harassment/Stalking by Communicating Lewd/Obscene etc., False Imprisonment, Luring Child Into Motor Vehicle, Involuntary Deviate Sexual Intercourse by Threat of Forcible Compulsion, Simple Assault, Aggravated Assault and Kidnapping for Ransom cannot claim status as a role model to anyone. Teacher's convictions therefore warrant revocation. Teacher of Social Studies Certificate of Eligibility With Advanced Standing revoked. Booher, Exam 2012:June 21

Teacher was convicted of Manufacturing/Distributing CDS, CDS on School Property and Conspiracy to Knowingly Commit Health Care Fraud. As a result of the conviction, teacher was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* Teacher of Elementary School Certificate of Eligibility with Advanced Standing revoked. Cardinali, Exam 2012:June 21

Teacher convicted of Indecent Assault, Indecent Exposure, Corruption of Minors, Involuntary Deviate Sexual Intercourse and Statutory Sexual Assault. Teacher of Comprehensive Science certificate revoked. Dickinson, Jr. Exam 2012: June 21

Teacher pled guilty to Sexual Assault-Victim Between 13 and 16. Teacher was sentenced to five years in prison and parole supervision for life. Teacher of Industrial Arts certificate revoked. Farris Exam 2012: June 21

Teacher resigned from her teaching position after the district filed tenure charges alleging unbecoming conduct, insubordination and other just cause for dismissal. The district alleged that teacher humiliated students by sending them out of the classroom to the office to phone their parents when they were missing assignments and refused to discontinue the practice even after being reprimanded by her principal; failed to properly supervise students; using her cell phone and accessing personal dating websites in class; ignored administrative directives to keep 9/11 remembrances low key and instead allowed her students to view a CD that was upsetting; assigned extra-credit projects involving the viewing of R rated movies by sixth grade students; engaged in several incidents where she publicly humiliated students; discussed matters of a personal nature regarding students with other individuals and had angry outbursts in the hallway or in the principal's office in front of other individuals, including students. In assessing the appropriate penalty, ALJ "vehemently disagreed" that revocation warranted. The ALJ observed that teacher should not "have lost her tenure, much less her certificate." ALJ found that, at most, teacher should have suffered a loss of her increment, not the loss of her tenure as conduct unlikely to occur again. ALJ determined Order to Show Cause should be dismissed with prejudice. Examiners disagreed. Actions, both insubordinate and conduct unbecoming, cannot and should not be lightly dismissed. Thus, Board determines that a one year suspension of Teacher of Elementary School certificate is the appropriate penalty. Gleim, Exam 2012: June 21

Teacher was convicted in July 2011 of 2nd degree Death By Auto pursuant to *N.J.S.A.* 2C:11-5. As a result of the conviction, Keno was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* In enacting the Criminal History Review statute, N.J.S.A. 18A:6-7.1 et seq. in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Death By Auto fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. Teachers are professional employees to whom the people have entrusted the care and custody of school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment. Substitute credential revoked. Keno, Exam 2012: June 21

Teacher of General Business certificate and a Principal certificate revoked for guilty plea to Attempted Sexual Assault, 1st degree and failure to disclose that information. Teacher agreed to relinquish his certificates with the force and effect of a revocation and all attendant consequences. Roth, Exam 2012:June 21

Teacher of Mathematics Certificate of Eligibility With Advanced Standing and Teacher of Mathematics certificate are hereby suspended for a period of two and one-half years in accordance with settlement. Ruiz, Exam 2012:June 21

Examiners suspends Teacher of Elementary School Certificate of Eligibility With Advanced Standing for a period of six months following failure to disclosed forgery conviction. Act of misrepresenting his prior conviction status on his New Jersey application for certification, while falling short of the behavior expected of a role model, does not warrant the revocation of his certificate. Given the totality of his circumstances at the time of his initial crime, his unblemished record in the intervening years and his disclosure to his employer of his prior conviction revocation not warranted. Weindorfer, Exam 2012: June 21

State Board of Examiners ordered revocation of Teacher of the Handicapped, Teacher of Elementary School, Teacher of Driver Education and Student Personnel Services certificates. Teacher pled guilty to Theft By Unlawful Taking, was sentenced to two years' probation and ordered to pay restitution of $37,820.92. Such conviction and disqualification constituted conduct unbecoming a certificate holder. The Commissioner has long held that teachers serve as role models for their students. A teacher convicted of Theft By Unlawful Taking cannot claim status as a role model to anyone. IMO Certificates of Cummins, Exam. 2012: July 26

State Board of Examiners ordered revocation of Substitute Credential. Person was convicted in October 2011 of one count of Endangering the Welfare of Children and one count of Wrongful Impersonation. As a result of the conviction for Endangering the Welfare of Children, he was disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* In

enacting the Criminal History Review statute, N.J.S.A. 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger to them, such as individuals convicted of a crime such as Endangering the Welfare of a Child. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. A person convicted of Endangering the Welfare of Children cannot claim status as a role model. In addition his conviction for Wrongful Impersonation also warrants the revocation of his credential. IMO Credential of Domaradsky, Exam. 2012: July 26

State Board of Examiners ordered revocation of School Administrator Certificate of Eligibility and School Administrator certificate of former superintendent of schools. Former superintendent was admitted into a Pre-Trial Intervention Program (PTI) after being charged with Theft By Deception, a condition of which was to sign a Consent Order in which he agreed to "never seek nor accept employment in any New Jersey public school or public school system." The SBE determined that an individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Where, as here, an individual is forever barred from public school employment in the State of New Jersey, revocation is the appropriate sanction. IMO Certificates of Gallon, Exam. 2012: July 26

State Board of Examiners ordered revocation of Substance Abuse Coordinator Certificate of Eligibility. Individual had been convicted of health care claim fraud, Medicaid fraud and misconduct. Such conviction constituted conduct unbecoming a certificate holder and just cause to act against his certificate. The Commissioner has long held that teachers should serve as role models for their students. Acts of health care fraud, Medicaid fraud and misconduct are inexcusable for any individual, teacher or not. A teacher convicted of health care fraud, Medicaid Fraud and misconduct cannot claim status as a role model to anyone. Certificate revocation is the only appropriate sanction. IMO Certificate of Martin, Exam. 2012: July 26

State Board of Examiners accepted relinquishment with the effect of revocation of Teacher of Mathematics certificate of teacher whose Pennsylvania teaching certificates were revoked in 2000. IMO Certificate of Milich, Exam. 2012: July 26

State Board of Examiners ordered revocation of Teacher of Music Certificate of Eligibility with Advanced Standing. Teacher's Pennsylvania certificates had been revoked in 2001. Teacher surrendered his New York teaching certificates in 2008 based on sexual misconduct which did not result in a criminal conviction. A 2006 Pennsylvania federal court jury rendered a judgment against the teacher in a civil suit filed by a former student regarding involving a sexual relationship which started when she was 12. The teacher's conduct, the revocation of his Pennsylvania certificates and the surrender of his New York certificates, provide just cause to act against his New Jersey certificate. The acts of engaging in a sexual

relationship with a student starting when she was 12 are inexcusable for any individual, teacher or not. The Commissioner has long held that teachers serve as role models for their students. Clearly, a teacher who has engaged in a sexual relationship with a student cannot claim status as a role model to anyone. Certificate revocation is warranted. IMO Certificate of Nowotarski, Exam. 2012: July 26

State Board of Examiners ordered indefinite suspension of Teacher of Mathematics Certificate of Eligibility With Advanced Standing and Teacher of Mathematics certificate of teacher until such time that the Board can make a final determination on the merits of the matter, following the completion of a hearing at which the teacher is able to participate in his defense. IMO Certificate of Quartato, Exam. 2012: July 26

State Board of Examiners accepted teacher's relinquishment with the force of revocation of Teacher of Health and Physical Education certificate. Teacher resigned from his teaching position after allegations that he had used his district-supplied laptop computer and the district network to access pornography during school hours. IMO Certificate of Ranck, Exam. 2012: July 26

State Board of Examiners ordered indefinite suspension of Teacher of the Handicapped certificate, Substance Awareness Coordinator Certificate of Eligibility With Advanced Standing, Principal Certificate of Eligibility and a Supervisor certificate, until such time that the SBE can make a final determination on the merits of the teaching certification matter. IMO Certificates of Salaam, Exam. 2012: July 26

State Board of Examiners ordered revocation of Teacher of Elementary Education certificate. In 2002, the Pennsylvania Professional Standards and Practices Commission revoked the teacher's Pennsylvania certificate due to his 2001 conviction for Indecent Assault, Endangering the Welfare of Children and Corrupting a Minor. He was sentenced to a maximum of 23 months in prison and five years' probation. SBE determined that his conviction and the revocation of his Pennsylvania licenses constituted conduct unbecoming a certificate holder and provided just cause to act against his certificate. The teacher's acts of Indecent Assault, Endangering the Welfare of Children and Corrupting a Minor are inexcusable for any individual, teacher or not. The Commissioner has long held that teachers serve as role models for their students. A teacher convicted of Indecent Assault, Endangering the Welfare of Children and Corrupting a Minor cannot claim status as a role model to anyone. Certificate revocation is warranted. IMO the Certificate of Silverman, Exam. 2012: July 26.

State Board of Examiners accepted teacher's relinquishment with the force of revocation of Teacher of Music Certificate of teacher whose Pennsylvania teaching certificates were revoked in November 1997. IMO the Certificate of Snavely, Exam. 2012: July 26

State Board of Examiners ordered revocation of Substance Awareness Coordinator Certificate of Eligibility, Substance Awareness Coordinator

certificate, Supervisor certificate and Principal Certificate of Eligibility. Person had pled guilty to one count of Criminal Sexual Contact and one count of Sexual Assault-Victim 16-18 and was sentenced to three years' probation and 45 days confinement in the Passaic County Jail to be served on weekends. As a result of the conviction, person was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* SBE determined that the conviction and subsequent disqualification constituted conduct unbecoming a certificate holder and represented just cause to act against his certificates. In enacting the Criminal History Review statute, N.J.S.A. 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger to them. Individuals convicted of a crime such as Criminal Sexual Contact and Criminal Sexual Assault fall squarely within this category. The Commissioner has a long-standing belief that teachers must serve as role models for their students. A person who has been convicted of Criminal Sexual Conduct and Sexual Assault-Victim 16-18 cannot claim status as a role model to anyone. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. Certificate revocation is warranted. IMO Certificates of Titmas, Exam. 2012:July 26

State Board of Examiners ordered revocation of Teacher of Music Certificate. Teacher had pled guilty in South Carolina to Criminal Sexual Conduct with a Minor Victim under 16, 2nd degree, and was sentenced to six years in prison. As a result of the conviction, his teaching certificates were revoked in New York, North Carolina and South Carolina. SBE determined that teacher's conviction and the revocation of his New York, North Carolina and South Carolina licenses constituted conduct unbecoming a certificate holder and provided just cause to act against his certificates. The Commissioner has long held that teachers serve as role models for their students. A teacher convicted of Criminal Sexual Conduct With a Minor-Victim Under 16 Years of Age cannot claim status as a role model to anyone. Such acts are inexcusable for any individual, teacher or not. Certificate revocation is warranted. IMO Certificate of Zeltman, Exam. 2012: July 26.

Teacher of English who violated a local ordinance and provided an Unsworn Falsification to Authorities, occurrences that took place within a few months of each other, while falling short of the behavior expected of a role model, did not warrant the revocation of her certificate given the totality of the circumstances at the time of each offense; Board orders 2-year suspension of Non-citizen Teacher of English certificate. IMO Certificate of Bracok, Exam 2012: Sept. 21

Where teacher agreed to relinquish his certificates with the force and effect of a revocation after pleading guilty to Criminal Attempt Sale/Obscene Material, Examiners orders relinquishment of his Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of English Certificate of Eligibility With Advanced Standing, and a Teacher

of Elementary School certificate. IMO Certificates of Brown, Exam 2012:Sept 21

Examiners orders revocation of Teacher of Social Studies Certificate and a Supervisor Certificate of former teacher who resigned from his teaching position after being accused of unbecoming conduct involving his alleged interactions with female students; he made more than one female student uncomfortable and, on at least one occasion, maintained an inappropriate relationship with a student in direct contravention of his superiors' orders; evidence is sufficient without resolving issue of admissibility of certain testimony or appropriateness of including another student's e-mails. IMO Certificates of Brown, Exam 2012: Sept 21

Examiners revokes Teacher of Elementary School in Grades K-5 Certificate of Eligibility and Teacher of Elementary School in Grades K-5 Certificate, of teacher convicted of Endangering the Welfare of Children and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* IMO Certificates of Cardenas, Exam 2012:Sept 21

Examiners orders revocation of Substitute Credential in summary decision, where holder of credential pled guilty to one count of Criminal Sexual Contact and was sentenced to four years' probation and 180 days' confinement in jail. IMO Credential of Davis, Exam 2012: Sept 21

Examiners orders suspension of Teacher of Music Certificate of Eligibility With Advanced Standing and a Teacher of Music certificate, indefinitely, pending resolution of the criminal charges against him. IMO Certificates of Ernst, Exam 2012: Sept 21

Examiners orders revocation of Teacher of Elementary School Grades K-5 Certificate of Eligibility With Advanced Standing in summary decision, where holder pled guilty to Endangering the Welfare of a Child and had been disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* IMO Certificate of Gallegos, Exam 2012: Sept 21

Examiners orders revocation in summary decision, of holder's Teacher of Social Studies Certificate of Eligibility With Advanced Standing, Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of Social Studies and Teacher of Elementary School certificates, and a Principal Certificate of Eligibility, where he pled guilty to Conspiracy and Arson. IMO Certificates of Giovanelli, Exam 2012: Sept 21

Examiners accepts teacher's relinquishment of Teacher of Elementary School Certificate of Eligibility, Teacher of Elementary School certificate, Principal Certificate of Eligibility, and Teacher of Spanish certificate with the force and effect of a revocation, where Office of Licensure and Credentials had determined that he had submitted a certificate to obtain employment that was not authentic. IMO Certificates of Gutierrez, Exam 2012:Sept 21

Examiners accepts teacher's relinquishment of Teacher of Physical Education Certificate of Eligibility With Advanced Standing, a Teacher of Physical Education certificate, a Teacher of Health and Physical Education

certificate, and a Teacher of Driver Education certificate, with force and effect of a revocation, where he was convicted of Theft of Movable Property and had been disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq*. IMO Certificates of Mannick, Exam 2012: Sept 21

Examiners accepts teacher's relinquishment of Teacher of English Certificate of Eligibility With Advanced Standing, where he pled guilty to Sexual Assault, was sentenced to four years in prison with parole supervision for life and Megan's Law reporting and was ordered to forfeit his teaching license. IMO Certificate of Miltner, Exam 2012: Sept 21

Examiners orders revocation of School Business Administrator Certificate of Eligibility and School Business Administrator certificate, of holder who was convicted of Attempted Criminal Sexual Contact and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* IMO Certificate of Papa, Exam 2012:Sept. 21

Examiners accepts teacher's relinquishment of Teacher of Physical Education Certificate of Eligibility With Advanced Standing, with full force and effect of a revocation, where he pled guilty to Aggravated Criminal Sexual Contact and Criminal Sexual Contact and was ordered to forfeit his teaching license, and sentenced to Parole supervision for life and Megan's Law reporting. IMO Certificate of Pecora, Exam 2012:Sept 21

Examiners suspends indefinitely her Speech Language Specialist certificate, until such time as she has had her certificates reinstated by the Board of Speech Pathologists and the Board of Examiners has made a final determination on the issue of whether her teaching certificates should be revoked or suspended. IMO Certificate of Pennypacker, Exam 2012:Sept 21

Examiners orders revocation of Teacher of Elementary School Certificate of Eligibility With Advanced Standing and Teacher of the Handicapped certificate where she was convicted of Theft of Movable Property ($54,102) and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* and despite her argument of mitigating circumstances. IMO Certificates of Perez, Exam 2012:Sept 21

Examiners orders revocation of Teacher of Music Certificate where holder was convicted of Official Misconduct-Unauthorized Act after having been charged originally with four counts of Sexual Assault-Supervisory and one count of Official Misconduct-Unauthorized Act, sentenced to three years' imprisonment, ordered to forfeit his public office and disqualified from public school employment pursuant to N.J.S.A. 18A:6-7.1 *et seq.* IMO Certificate of Planas-Borgstrom, Exam 2012: Sept. 21

Examiners orders revocation of Teacher of the Handicapped certificate, where holder was convicted of Attempted Rape in New York and surrendered in lieu of discipline his New York licenses. IMO Certificates of Portalatin, Exam 2012:Sept 21

Examiners increases ALJ's suspension of Teacher of Mathematics and Teacher of Elementary School certificates from 3 months to one year where teacher who engaged in unbecoming conduct by facilitating two lunchtime

meetings between a student and a non-family visitor in contravention of school policy; the adult male was a former convict who had sent inappropriate messages to the student online. IMO Certificates of Sloan, Exam 2012: Sept 21

Examiners revokes Elementary School certificate, a Student Personnel Services certificate, a Supervisor certificate, and Principal and School Administrator Certificates of Eligibility, from guidance counselor who was removed on tenure charges from his position for unbecoming conduct, insubordination and other just cause for using profane, sexually explicit or inappropriate language in interactions with co-workers; although he claimed his "social filter" was affected by reliance on pain medication and that he was rehabilitated, revocation ordered since the purpose of this proceeding before Examiners is not to afford an opportunity to show rehabilitation. IMO Certificates of Young, Exam 2012: Sept 21

Examiners grants request to apply for certification after revocation. IMO Application for Certification after Revocation of Bellomo, Exam 2012:Sept 25

Certificate revoked where Teacher pled guilty in another state to one count of Possessing a Sexual Performance by a Child. Teacher was sentenced to sixty days' incarceration and ten years' probation. Other state's Commissioner of Education revoked teaching certificates. In New Jersey, teacher holds a Teacher of Physical Education certificate. Teacher filed no response to order to show cause. Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Teacher's act of Possessing a Sexual Performance by a Child is inexcusable for any individual, teacher or not. *Berke, Exam 2012: Nov 30*

Certificates voluntarily relinquished with the force and effect of a revocation. Teacher of Mathematics Certificate of Eligibility with Advanced Standing, Principal Certificate of Eligibility, and Teacher of Mathematics, Supervisor and Principal certificates are revoked effective immediately. *Boxley, Exam 2012: Nov 30*

Teacher's certificates revoked after she pled guilty to Criminal Mischief. On June 17, 2011 Teacher was sentenced to two years' probation. As a result of the conviction, Teacher was also disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 et seq. Teacher currently holds Teacher of Health and Physical Education and Teacher of Driver Education certificates, both issued in June 1977, a Supervisor certificate, issued in July 1999, a Principal Certificate of Eligibility, issued in July 1999 and a Principal certificate, issued in December 2000. Notwithstanding teacher's long unblemished career, revocation is appropriate where the Legislature has determined that such an offense disqualifies a person from public employment. *Covely, Exam 2012: Nov 30*

Teacher accepted into Pretrial Intervention program (PTI). PTI agreement prohibited him from accepting a teaching potion in New Jersey during the term of the PTI. Teacher agreed to voluntarily relinquish his Teacher of

Social Studies certificate, a Supervisor certificate, and a Principal Certificate of Eligibility. Relinquishment accepted with the force and effect of a revocation. *Daniw, Exam 2012: Nov 30*

Following proposal accepted by Board of Examiners, Teacher of Elementary School Certificate of Eligibility, and Teacher of Elementary School and Supervisor certificates are relinquished with full force and effect of revocation. *Gant, Exam 2012: Nov 30*

Following tenure dismissal for inefficiency, Board of Examiners revokes teacher's certificates citing his recalcitrance in seeking help or accepting it when offered for the past several years suggests that he was no longer suitable for the classroom. Teacher's conduct, in its totality, amply demonstrates his unfitness to continue to be a teacher. The Board therefore concludes that the only appropriate response to teacher's inefficiency is the revocation of his teaching certificate. *Gilmer, Exam 2012: Nov 30*

Teacher of Health and Physical Education and Teacher of Elementary School certificates revoked where he reported to work on two occasions under the influence of cannabinoids and cocaine, which was confirmed by urine drug screen tests. *Henderson, Exam 2012:Nov 30*

Teacher of Elementary School certificate be suspended effective immediately following indictment for Aggravated Sexual Assault, Endangering the Welfare of a Child and Sexual Assault. If the charges are resolved in his favor, he shall notify the Board for appropriate action regarding the suspension order. *Hildreth, Exam 2012: Nov. 30*

Teacher of Social Studies Certificate of Eligibility with Advanced Standing, and a Teacher of Social Studies certificate revoked where teacher convicted of Fourth Degree Aggravated Assault with Weapon and disqualified from public employment. *Iurato, Exam 2012: Nov. 30*

Substitute credential revoked where teacher admitted into a Pre-Trial Intervention Program (PTI) after being charged with Endangering the Welfare of Children. As a condition of PTI, teacher signed a Consent Order in which he agreed the he was "prohibited from any future employment working with children, including any schools or day-care centers, or participating/volunteering in organized children's activities, such as coaching youth sports, Boy Scouts or other youth organizations." *Janes, Exam 2012: Nov. 30*

Teacher of Music Certificate of Eligibility with Advanced Standing revoked where teacher pled guilty to Endangering the Welfare of a Child and was sentenced to three years' imprisonment, ordered to comply with the provisions of Megan's Law and ordered to forfeit his public employment. The court also forever disqualified teacher from holding any position of honor, trust or profit under this State or any of its administrative or political subdivisions pursuant to *N.J.S.A.* 2C:51-2d. As a result of the conviction, teacher was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* *Jerinsky, Exam 2012: Nov 30*

Teacher of Music Certificate of Eligibility with Advanced Standing and Teacher of Music certificate revoked where teacher convicted in Pennsylvania of

Possessing Instrument of Crime with Intent to employ it criminally and Recklessly Endangering another Person. As a result of the convictions, teacher was disqualified from public school employment in New Jersey pursuant to *N.J.S.A.* 18A:6-7.1 et seq. *Kelly, 2012: Nov 30*

Teacher convicted of Endangering the Welfare of a Child (Possession of Child Pornography). Teacher of English certificate revoked. *Kisselbach, 2012, Nov 30*

Teacher surrendered Pennsylvania Teaching Certificate in lieu of discipline after admitting to the abuse of children. New Jersey-issued Teacher of Latin certificate revoked. *Leneweaver, 2012 Nov 30*

School Nurse's School Business Administrator Certificate of Eligibility and School Nurse, Teacher of Health and Physical Education, Supervisor, and Principal certificates suspended for six months effective immediately following discrepancies in her medical records and alterations of the School Health Visit Logs after-the-fact. *Lentine, 2012 Nov 30*

Teacher pled guilty to Endangering the Welfare of a Child. Teacher was sentenced to five years' imprisonment and parole supervision for life upon release. As a result of the conviction, teacher was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 et seq. Teacher of Mathematics Certificate of Eligibility and Teacher of Mathematics certificate revoked. *Lindo, 2012 Nov. 30.*

Teacher of English Certificate of Eligibility immediately revoked following resignation where teacher communicated inappropriately with student. "Friending" a student on Facebook rather than communicating about school matters on a district-sanctioned website might be a "lapse in judgment." Detailing explicit sexual desires to that student is not. Rather, it is willful behavior at its most outrageous and cannot be countenanced. *Mifsud, 2012 Nov. 30*

Teacher of Industrial Arts, Student Personnel Services and Principal certificates revoked where teacher convicted of Endangering the Welfare of a Child. *Ponsi, 2012 Nov 30*

Teacher of Elementary School and Teacher of the Handicapped certificates voluntarily relinquished with the force and effect of a revocation. *Todzia, 2012 Nov 30*

Teacher's chronic and excessive absenteeism and tardiness, unbecoming conduct and insubordination results in the revocation of her Teacher of Elementary School, Teacher of Nursery School, and Teacher of the Handicapped certificates. *True, 2012 Nov 30*

Business Administrator pled guilty to Conspiracy and False Representation for Government Contract. School Business Administrator certificate relinquishment accepted with the force and effect of a revocation. *Berman, 2012 Dec 13*

Teacher of Mathematics Certificate of Eligibility with Advanced Standing, Teacher of Mathematics certificate, and a Supervisor certificate relinquished with the force and effect of a revocation where teacher pled guilty to Official Misconduct. *Maucione, 2012 Dec 13*

State Board of Examiners accepts teacher's proposal that his Teacher of Social Studies Certificate, issued in 1979, be voluntarily suspended for five years. *IMO The Certificate of Gary Basile: Exam 2013: January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Elementary School Certificate of Eligibility. Teacher pled guilty to Theft By Deception-False Impression, was sentenced to one year of probation, ordered to forfeit the right to hold public office, ordered to pay restitution to the Cumberland Regional Board of Education and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Theft By Deception fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Amy Brewer: Exam 2013:January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Elementary School Certificate of Eligibility. Teacher pled guilty to Third Degree Theft and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Third Degree fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Lorye Craver: Exam 2013:January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Music Certificate, issued in 1978. Teacher pled guilty to Theft by Unlawful Taking – Movable Property was sentenced to one year of probation, ordered to forfeit his public employment, and was forever barred from public employment. Music teacher had sold one of the band instruments

no longer in use at his high school when he sold off the stock of his personal music school. SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. An individual's conviction for Theft by Unlawful Taking – Movable Property and permanent, court-ordered disqualification from public employment clearly undermines his status as a role model. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Albert Crosta: Exam 2013:January 25*

State Board of Examiners ordered the suspension of teacher's Teacher of Elementary School Certificate of Eligibility with Advanced Standing, issued in August 1995, Teacher of Elementary School Certificate, issued in July 1997, Supervisor Certificate, issued in June 2007 and Principal Certificate of Eligibility, issued in June 2007, pending resolution of the criminal charges against him. Teacher was indicted on one count of Sexual Assault and two counts of Endangering the Welfare of a Child. SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of crimes such as Sexual Assault and Endangering the Welfare of a Minor fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual's potential disqualification from service in the public schools of this State because of his indictment on charges of Sexual Assault and Endangering the Welfare of a Child provides just cause to take action against his certificates. SBE found that suspension, pending resolution of the criminal charges, was the appropriate sanction. *IMO the Certificate of David Eidel: Exam 2013: January 25*

State Board of Examiners accepts teacher's proposal that his Supervisor and Principal certificates, both issued in September 1976 and a School Administrator certificate, issued in August 1983 be voluntarily suspended for four years and two days. Teacher's Teacher of the handicapped Certificate, issued in May 1971, was unaffected. *IMO The Certificates of Brian Gross: Exam 2013: January 25*

State Board of Examiners ordered the revocation of teacher's Supervisor Certificate, issued in September 2011. On December 14, 2011 the New York State Commissioner of Education revoked teacher's Teacher of Special Education and School District Administrator certificates. The revocation was based on the teacher's inappropriate relationship with several male students that included intimate, physical and/or sexual contact. SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. A teacher who

has engaged in inappropriate behavior with students and had his certificates revoked as a result cannot claim status as a role model to anyone. SBE found that teacher's conduct and revocation of his New York certificates warranted revocation of his New Jersey certificate. *IMO the Certificate of Jerry Lamb: Exam 2013: January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Elementary School in Grades K-5 Certificate of Eligibility. Teacher was convicted in November 2010 of Burglary and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Burglary fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Diana Martinez : Exam 2013:January 25*

State Board of Examiners ordered the revocation of non-tenured teacher's Teacher of Chemistry Certificate of Eligibility, issued in June 2008, Teacher of Chemistry Certificate, issued in April 2010, and Teacher of Biological Science certificate, issued in September 2001. School district reported to SBE that teacher had resigned from his non-tenured teaching position as a result of allegations that he had exchanged sexually explicit text messages with a student, detailing sexual acts that he wished to engage in with the student. SBE found that such conduct constituted conduct unbecoming a credential holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. A teacher who has engaged in inappropriate conduct with a student cannot claim status as a role model to anyone. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Daniel Padilla : Exam 2013:January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Social Studies Certificate of Eligibility With Advanced Standing, issued in October 2007, Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing, issued in October 2010 and Teacher of Elementary School with Subject Matter Specialization: Science in Grades 5-8 Certificate of Eligibility With Advanced Standing, issued in April 2011. Teacher was convicted of Harassment By Offensive Touching, was fined and ordered to forfeit his public office pursuant to *N.J.S.A.* 2C:51-2. The Commissioner has long held that teachers serve as

role models for their students. Clearly, a teacher convicted of Harassment By Offensive Touching cannot lay claim to that status. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Diana Martinez : Exam 2013:January 25*

Where teacher had been removed on tenure charges from her tenured social worker position, inefficiency, unbecoming conduct and insubordination. Examiners finds that while her conduct, in its totality, amply demonstrates her unfitness to continue to hold her educational services certificates, the Board cannot conclude that it has been demonstrated that a sufficient nexus exists between her behavior and her instructional certificate or that Parise would not work effectively under that certificate. Working as a School Social Worker as part of a CST or under a Student Personnel Services certificate have specific job requirements with regard to tracking and evaluating students that are not replicated to the same extent in an instructional setting. SBE determined that the appropriate response to social worker's inefficiency is the revocation only of her School Social Worker and Student Personnel Services certificates, but not her Teacher of Elementary School certificate.

State Board of Examiners ordered the revocation of social worker's Student Personnel Services certificate, issued in March 1982 and School Social Worker certificate, issued in December 1988. Acting Commissioner of Education had dismissed tenured social worker position for charges of inefficiency, unbecoming conduct and insubordination. The record was replete with instances which demonstrate that social worker's inefficiencies were not an aberration, nor the result of inexperience. Social worker was either unable or unwilling to accept the help and support that the school district continually offered her, even long before tenure charges were filed. This recalcitrance had a deleterious effect upon the district and its students. Social worker's negative interaction with superiors, colleagues and parents was determined to have been unacceptable. Social worker's conduct, in its totality, amply demonstrates her unfitness to continue to hold her educational services certificates. SBE could not conclude that a sufficient nexus exists between social worker's behavior and her instructional certificate or that she would not work effectively under that certificate. Working as a School Social Worker as part of a CST or under a Student Personnel Services certificate have specific job requirements with regard to tracking and evaluating students that are not replicated to the same extent in an instructional setting. SBE determined that the appropriate response to social worker's inefficiency is the revocation only of her School Social Worker and Student Personnel Services certificates. *IMO the Certificate of Maria Parise: Exam 2013:January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Elementary School Certificate of Eligibility, issued in April 2000, a Teacher of Elementary School certificate, issued in March 2002 and a Teacher of Elementary School With Subject Matter Specialization:

Mathematics in Grades 5-8 certificate, issued in September 2008. Teacher pled guilty to Theft By Deception-False Impression, was sentenced to one year of probation, ordered to forfeit the right to hold public office, ordered to pay restitution to the Cumberland Regional Board of Education and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Theft By Deception fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Kelly Richter-Jobes: Exam 2013: January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Art certificate, issued in May 1987. On November 13, 2006 the New York State Commissioner of Education revoked teacher's Teacher of Nursery-6 and Teacher of Art certificates based on teacher's inappropriate relationship with a male student that included intimate, physical and/or sexual contact, improper correspondence and/or communication and providing gifts to the student. SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. A teacher who has engaged in inappropriate behavior with students and had his certificates revoked as a result cannot claim status as a role model to anyone. SBE found that teacher's conduct and revocation of his New York certificates warranted revocation of his New Jersey certificate. *IMO the Certificates of F. Gloria Snauffer: Exam 2013: January 25*

State Board of Examiners ordered the revocation of nurse's School Nurse issued in June 2000. School district reported to SBE that nurse had resigned from her tenured school nurse position as a result of allegations that many student health records were incomplete; that student records were not kept in individual folders; that there was no medical documentation entered for any student in the district's student management system; that documents that should have been filed in student health files as far back as 2000 were not filed; that additional documents were shoved into nooks and crannies; that there were many inhalers and other medications found throughout the health office that had expired, some many years ago; that there were medications found belonging to students who no longer attended the school; that medication orders for the current year were not on file; that

current diabetic student health plans were not centrally located; and that the health office was excessively stocked with office supplies while being scarcely supplied with medical supplies. SBE found that such conduct constituted conduct unbecoming a credential holder. Nurse's sloppy record keeping and negligent office upkeep demonstrated more than a lack of organizational skills; she was a danger to students since the proper maintenance of medication and health records is an essential component of a school nurse's duties. She completely failed in her role as a caretaker for students' health and well-being. Her ineptitude was so severe that the SBE found that revocation was the appropriate sanction. *IMO the Certificate of Lia Trembath : Exam 2013:January 25*

State Board of Examiners ordered the revocation of teacher's Teacher of Elementary School in Grades K-5 Certificate of Eligibility, issued in December 2008. School district reported to SBE that teacher had created and submitted a fraudulent Teacher of Mathematics certificate in an effort to obtain a teaching position in the school district. SBE found that such conduct constituted conduct unbecoming a credential holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. Teacher's fraud negates her position as a role model and "undermines the notions of trust, truthfulness and veracity," all "essential qualities necessary to teach children." SBE found that revocation was the appropriate sanction. *IMO the Certificate of Deborah Cantz : Exam 2013:February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of Production, Personal or Service Occupation: Cosmetologist/Hairstylist Certificate, issued in October 1996. Acting Commissioner of Education had dismissed tenured teacher from his position, finding that the teacher had engaged in conduct unbecoming by engaging in an inappropriate and unauthorized, albeit consensual, relationship with an adult inmate. The relationship included sexually explicit notes and sexual touching. SBE agrees with the Commissioner's assessment that the teacher's conduct, in its totality, proves his unfitness to continue to be a teacher and would extend this finding to apply to any public school in New Jersey. SBE determines that the appropriate response to the teacher's unbecoming conduct is the revocation of his certificate. *IMO the Certificate of Anthony Coluccio: Exam 2013: February 28*

State Board of Examiners accepted the relinquishment of teacher's Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing, issued in June 2010 and a Teacher of Elementary School in Grades K-5 certificate, issued in June 2011. Teacher had pled guilty to Endangering the Welfare of Children. As part of his sentence, teacher was ordered to forfeit his teaching certificates. SBE accepted teacher's relinquishment of certificates with the force and effect of a revocation pursuant to *N.J.A.C.* 6A:9-17.*8*. *IMO the Certificates of Sean Coughlin: Exam 2013: February 28*

State Board of Examiners accepted the relinquishment of teacher's Substitute Credential which expires in January 2017. Teacher had pled guilty to Endangering the Welfare of Children. As part of his sentence, teacher was ordered to forfeit his teaching credential. SBE accepted teacher's relinquishment of his teaching credential with the force and effect of a revocation pursuant to *N.J.A.C.* 6A:9-17.8. *IMO the Certificates of Richard D'Amato, Jr.: Exam 2013: February 28*

State Board of Examiners ordered the suspension of teacher's Teacher of English certificate, issued in July 1989, for a period of two years, with reinstatement conditioned on the submission of proof of a driving record free of DUIs or DWIs during the suspension period. Teacher had pled guilty to False Report to Incriminate Another and Driving While Intoxicated (3rd offense) and was sentenced to 180 days in prison and one year of probation. Farrell currently holds a Teacher of English certificate, issued in July 1989. The Commissioner has long held that teachers serve as role models for their students. While the convictions for False Report to Incriminate Another and DWI (3rd offense) clearly undermine the teacher's status as a role model, the court saw fit to offer an attempt at rehabilitation and the teacher provided evidence that served to mitigate the penalty. However, the SBE would not be mindful of its responsibilities to New Jersey's public school children if it did not ensure that the teacher was ready to return to the classroom. The SBE believed that the appropriate penalty in this case is a two-year suspension of the teacher's certificate, with reinstatement conditioned on the submission of proof of a driving record free of DUIs or DWIs during the suspension period. *IMO the Certificate of Rose Farrell: Exam 2013: February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of Music Certificate of Eligibility With Advanced Standing, issued in September 2006. Teacher surrendered his Florida teaching certificate in November 2010 after an administrative complaint was filed against him alleging inappropriate contact with a 14-year-old boy. His Florida certificate was permanently revoked. Specifically, the complaint alleged that while a passenger on a commercial flight from New Jersey to Florida, the teacher had offered to purchase an alcoholic beverage for the boy, who was an unaccompanied passenger, and also placed his hand under the boy's shirt and rubbed his stomach and chest. The teacher also allegedly ran his hand up the boy's leg and touched the boy's genital area over his clothing and persisted in talking to and touching the boy even after the boy and another passenger told the teacher to stop. In October 2011, the Pennsylvania Professional Standards and Practices Commission revoked the teacher's Pennsylvania teaching certificate on the basis of the Florida charges. The SBE determined that the teacher's act of engaging in inappropriate contact with a 14-year-old boy is inexcusable for any individual, teacher or not. The Commissioner has long held that teachers serve as role models for their students. Clearly, a teacher who has engaged in inappropriate contact with a minor and had his certificates revoked as a result cannot claim

status as a role model to anyone. The SBE determined that the teacher's conduct and the revocation of his Florida and Pennsylvania certificates warranted the revocation of his New Jersey certificate. *IMO the Certificate of James Faux: Exam 2013 : February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of Preschool Through Grade 3 and Teacher of Students With Disabilities Certificates of Eligibility With Advanced Standing, both issued in September 2008 and Teacher of Preschool Through Grade 3 and Teacher of Students With Disabilities certificates, both issued in September 2009. As a condition of her acceptance into a Pre-Trial Intervention Program (PTI) after being charged with Forgery and Theft for falsifying payroll sheets, teacher was required to forfeit her public employment and was disqualified from future public employment. Teacher had provided home instruction to an autistic student, had signed the mother's signature and had included hours for days she had missed. While, having completed the PTI program, the teacher was not technically disqualified from public employment pursuant to *N.J.S.A.* 18A:6-7.1 et seq., SBE determined that a *de facto* disqualification had occurred. By agreeing to that term as a prerequisite to PTI, the teacher could never again work in a public school setting in New Jersey. The Commissioner's long-standing belief is that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should that person be permitted to continue to hold himself out as a teacher. In this case, the court imposed the condition of the Consent Order as a prerequisite to the teacher's admission into PTI. SBE found that there can be no question that where, as here, an individual is forever barred from public school employment in the State of New Jersey, revocation is the appropriate sanction. *IMO the Certificate of : Kathryn Schmicking Guerra: Exam : 2013 February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of the Handicapped certificate, issued in June 1996, a Teacher of Elementary School Certificate of Eligibility With Advanced Standing, issued in August 1996, a Teacher of Elementary School certificate, issued in September 1999, a Principal Certificate of Eligibility, issued in August 2003, a Supervisor certificate, issued in August 2003, a School Administrator Certificate of Eligibility, issued in April 2005 and a Principal certificate, issued in December 2005. In June 2011, teacher was convicted of third degree Theft of Moveable Property, was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.*, ordered to forfeit her public employment and was forever barred from holding any office or position of honor, trust or profit under the State of New Jersey or any of its administrative or political subdivisions pursuant to *N.J.S.A.* 2C:51-2. SBE found that such conduct and conviction constituted conduct unbecoming a certificate holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the

Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as third degree Theft of Movable Property fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. Furthermore, teacher was also permanently barred by the sentencing court from ever holding a public position. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Donna Johnson: Exam 2013: February 28*

State Board of Examiners ordered the suspension of teacher's Teacher of Elementary School certificate, issued in August 1993, pending resolution of the criminal charges against him. Teacher was indicted in Massachusetts on nine counts of Rape and Abuse of Child and three counts of Furnishing Liquor to Minors. SBE found that such conduct and conviction constituted conduct unbecoming a credential holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of crimes such as Rape and Abuse of Child and the Furnishing Liquor to Minors fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual's potential disqualification from service in the public schools of this State because of his indictment on charges of Rape and Abuse of Child and Furnishing Liquor to Minors provides just cause to take action against his certificates. SBE found that suspension, pending resolution of the criminal charges, was the appropriate sanction. *IMO the Certificate of Brendan Kenny: Exam 2013: February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of the Handicapped certificate, issued in July 2004. In June 2012, teacher pled guilty to Aggravated Assault and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq* . SBE found that such conduct and conviction constituted conduct unbecoming a certificate holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Aggravated Assault fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who

has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Tamara Reyes: Exam 2013: February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing, issued in February 2006 and a Teacher of Elementary School certificate, issued in August 2009. In June 2012, teacher was convicted of Endangering the Welfare of Children and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq* . SBE found that such conduct and conviction constituted conduct unbecoming a certificate holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Endangering the Welfare of Children fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Arnaldo Rodriquez: Exam 2013: February 28*

State Board of Examiners ordered the revocation of teacher's Substance Awareness *Coordinator Certificate of Eligibility With Advanced Standing, issued in July 2006. In June* 2009, teacher was convicted of Harassment, Unlawful Possession of a Weapon and Possession of a Weapon for Unlawful Purposes, was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.,* sentenced to five years' probation and barred from holding any employment, office or position of trust, honor or profit under this State or any of its administrative or political subdivisions pursuant to *N.J.S.A.* 2C:51-2d. SBE found that such conduct and conviction constituted conduct unbecoming a certificate holder. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Harassment, Unlawful Possession of a Weapon and Possession of a Weapon for Unlawful Purposes fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. SBE found that revocation was

the appropriate sanction. *IMO the Certificate of Tamica Ruffin: Exam 2013: February 28*

State Board of Examiners ordered the revocation of teacher's Teacher of the Handicapped certificate, issued in June 1973, a Teacher of the Deaf or Hard of Hearing certificate, issued in September 1981 and a Principal certificate, issued in June 1990. DCF affirmed the IAIU substantiated allegations of Physical Abuse/Cuts, Bruises, Welts, Abrasions and Oral Injuries, and Physical Abuse/Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare. Specifically, IAIU's investigation revealed that the teacher entered a classroom and found two boys in a closet. She attempted to keep the students in the closet by pressing on the door until it broke. When the two boys ran out of the closet, the teacher struck each of them with her cane. She hit one student in the back of the head and the other student in the back/neck area. Both boys were examined and treated by the school nurse and one was also examined at the emergency room of a local hospital. SBE found that such conduct and conviction constituted conduct unbecoming a certificate holder. The Commissioner's long-standing belief is that teachers must serve as role models for their students. This teacher's conduct with regard to striking two students with her cane and causing physical injury to them amply demonstrates her inability to be a role model for students. The inappropriate behavior speaks volumes about her unfitness to be a teacher and demonstrates egregious behavior that warrants revocation. SBE found that revocation was the appropriate sanction. *IMO the Certificate of Darrelle Tobe: Exam 2013: February 28*

State Board of Examiners accepted the relinquishment of teacher's Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in June 2007, a Teacher of Driver Education Certificate of Eligibility With Advanced Standing, issued in June 2007, a Teacher of Health and Physical Education certificate, issued in November 2008 and a Teacher of Driver Education, issued in November 2008. Teacher had pled guilty to Official Misconduct. As part of his sentence, teacher was ordered to forfeit his teaching certificates. SBE accepted teacher's relinquishment of certificates with the force and effect of a revocation pursuant to *N.J.A.C.* 6A:9-17.8. *IMO the Certificates of Gabriel Vasquez: Exam 2013: February 28*

Commissioner overturns State Board of Examiners decision to suspend certificates of tenured school nurse. Given the fact that the ALJ determined that the school nurse's conduct never rose to the level of unbecoming conduct and the fact that the State Board of Examiners never sustained any of its charges, the suspension of the school nurse's certificates cannot be justified. *Lentine*, Commissioner 2013: April 16

Holder of Teacher of Mathematics Certificate of Eligibility, issued in December 1992, and a Teacher of Mathematics certificate, issued in April 1994, voluntarily relinquished his certificates with the force and effect of a revocation. *IMO Certificates of Capparelli*, Exam 2013: April 12.

Examiners orders revocation of Teacher of Elementary School Certificate of Eligibility and Teacher of the Handicapped Certificate, of teacher against whom tenure charges had been settled. Teacher used school computer for accessing and enrolling in adult dating websites, taking a pornographic picture of himself and putting it on his school computer, placing inappropriate photographs of himself and others in a partially naked state on his school computer and intentionally giving false and misleading information to district authorities when they were investigating the inappropriate material. His combat military service and overcoming his own learning disabilities to become a special needs teacher, were not sufficient mitigation against the inappropriate conduct. *IMO Certificates of Daggett*, Exam 2013:April 12.

Examiners orders one year suspension of Teacher of Spanish Certificate of Eligibility where teacher was accepted into a Pretrial Intervention program (PTI) with a resulting dismissal of his indictment upon its successful completion, after having been arrested for Eluding, DWI and Resisting Arrest. *IMO Certificate of Guzman*, Exam 2013:April 12.

Examiners orders revocation of New Jersey teaching certificates based on his conduct and revocation of his New York certificates by the Professional Practices Subcommittee of the State Professional Standards and Practices Board for Teaching; New York certificate had been revoked after findings that while giving a student a ride home in his vehicle, Landa put his hands on the student's face, touched her hair and moved it from her face, and kissed her hand and her arm. *IMO Certificates of Landa*, Exam 2013:April 12.

Examiners orders revocation of Teacher of Mathematics Certificate of Eligibility and Teacher of Mathematics certificate where teacher pled guilty to Official Misconduct and as part of his sentence, he was ordered to forfeit his public employment and agreed to relinquish his certificates with the force and effect of a revocation. I*MO Certificates of Logandro*, Exam 2013: April 12.

Examiners orders revocation of Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, and a Teacher of Health and Physical Education certificate where teacher pled guilty to Hindering Prosecution and as part of his sentence, he was ordered to forfeit his teaching certificates. *IMO Certificates of Martinelli, Exam 2013:April 12.*

Examiners orders revocation of Substitute Credential where individual convicted of Sexual Assault agreed to relinquish his credential with the force and effect of a revocation. *IMO Certificates of Wea, Exam 2013:April 12.*

Examiners orders 3-year suspension of teacher's certificates, Teacher of English Certificate of Eligibility with Advanced Standing and Teacher of English certificate, where he continued to teach after his 1-year suspension in 2003. *IMO Certificates of Wunsch, Exam 2013:April 12*.

Teacher who Pennsylvania certificates suspended for three years, after having been charged with engaging in conduct that constituted immorality,

negligence and intemperance involving viewing inappropriate material on his classroom computer while students were in the classroom, constitutes conduct unbecoming a certificate holder, and warranted revocation of certificates of Teacher of Health and Physical Education. Certificate of Ammon, Exam 2013: May 16.

Examiners orders two –year suspension of Teacher of Biological Science Certificate of Eligibility and Teacher of Biological Science certificate of teacher who was dismissed by Freedom Academy Charter School following a physical confrontation with a student; mitigating factors in Coleman's favor including the fact that he had a good, albeit short, record, did not act punitively and was provoked and threatened by the student; however, Examiners diverges from the ALJ's assessment that these behaviors warranted only a one year suspension of certificates, and given the serious nature of this offense. Certificates of Coleman, Exam 2013:May 16.

Corcoran's conduct by engaging in an inappropriate relationship with a student, and the revocation of his Massachusetts and Pennsylvania licenses for such conduct, constitute conduct unbecoming a certificate holder in New Jersey and warrant the revocation of his Teacher of health and Physical Education and Teacher of Driver Education certificates. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Summary ruling as teacher failed to respond to the Order to Show Cause. Certificates of Corcoran, Exam 2013:May 16.

Examiners accepts relinquishment of certificates with full force and effect of revocation, for individual holding Teacher of Mathematics Certificate of Eligibility With Advanced Standing and Teacher of Mathematics certificate, where individual pled guilty to Official Misconduct and, as part of his sentence, was ordered to forfeit his teaching position and was also forever barred from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions. Certificates of Michielli, Exam 2013:May 16.

Examiners orders revocation of Teacher of English Certificate of Eligibility and Teacher of English certificate of individual who was convicted of Criminal Sexual Contact and sentenced to 364 days' imprisonment, 5 years' probation, and ordered to forfeit his public office and teaching license and register under Megan's Law. As a result of the conviction, Morales was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* "An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher." Summary ruling given failure to respond to Order to Show Cause and return of certified mail as "unclaimed. " Certificates of Morales, Exam 2013:May 16.

Examiners orders revocation of the certificates of Teacher of Social Studies and Student Personnel Services, of individual who had plead guilty to Wandering after having initially been charged with Conspiracy and Possession of CDS with Intent to Distribute, and to Assault By Motor Vehicle and was sentenced to two years' probation, and had signed a consent order barring him from holding public employment in the State of New Jersey. Convictions were related to his admitted substance abuse. Examiners has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom as these may be relevant in determining qualifications and continued fitness to retain certificates. Rehabilitation has no bearing on this proceeding, the purpose of which is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause." Certificates of Winkelried, Exam 2013:May

Teacher agrees to relinquish, with effect and force of a revocation, his Teacher of Elementary School Certificate of Eligibility With Advanced Standing, and a Teacher of Elementary School certificate following his tenure dismissal for conduct based on his arrest for lewdness. Bringhurst, Exam 2013: July 25.

Teacher agreed to relinquish his Teacher of Music Certificate of Eligibility With Advanced Standing, and a Teacher of Music certificate, with the force and effect of a revocation. *Carpenter, Exam 2013: July 25*.

Substitute teacher agreed to relinquish his substitute credential with the force and effect of a revocation following his acceptance into a pre-trial intervention program. *Davis, Exam 2013: July 25*.

Teacher agreed to relinquish her Teacher of English Certificate of Eligibility, a Teacher of English certificate, and a Supervisor certificate with the force and effect of a revocation following a conviction for Endangering the Welfare of a Child and receiving a three year suspended sentence with lifetime parole supervision and was ordered to register as a sex offender under Megan's Law. *Depalo, Exam 2013: July 25*.

Teacher of Comprehensive Business Certificate of Eligibility With Advanced Standing and Teacher of Comprehensive Business certificate suspended for a period of two years following tenure dismissal for unbecoming conduct, lack of professionalism and failure to respect the privacy rights of students. Given the teacher's otherwise long and unblemished record, coupled with her willingness to accept responsibility for the display of inappropriate photographs in her classroom, merits a less severe punishment than revocation. *Forsell, Exam 2013: July 25*.

Teacher agreed to relinquish his Teacher of Elementary School Certificate of Eligibility With Advanced Standing, and a Teacher of Elementary School certificate with the force and effect of a revocation following a guilty plea to one count of Sexual Assault in the second degree and two counts of Endangering the Welfare of a Child in the second degree. Teacher was sentenced to seven years in prison, parole supervision for life and ordered

to register as a sex offender under Megan's Law. He was also ordered to forfeit his public employment. *Gervasi, Jr., Exam 2013: July 25*.

Teacher agreed to relinquish his Teacher of Elementary School certificate with the force and effect of a revocation and all attendant consequences following a guilty plea to three counts of Aggravated Sexual Assault in the first degree and one count of Endangering the Welfare of a Child in the second degree. *Hildreth, Exam 2013: July 25*.

Holder of Teacher of Social Studies Certificate of Eligibility With Advanced Standing, a Teacher of Psychology Certificate of Eligibility With Advanced Standing, a Teacher of English As a Second Language Certificate of Eligibility With Advanced Standing, and Teacher of Social Studies, Teacher of Psychology, and Teacher of English As a Second Language certificates pled guilty to two counts of Criminal Sexual Contact in the fourth degree. On that same date, Leone was ordered to forfeit her public employment and was forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions pursuant to N.J.S.A. 2C:51-2a(2) and N.J.S.A. 2C:51-2d. Holder agreed to relinquish her certificates with the force and effect of a revocation and all attendant consequences. *Leone, Exam 2013: July 25.*

Holder of Teacher of Elementary School Certificate of Eligibility, a Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of Elementary School certificate, a Teacher of General Business certificate, a Principal Certificate of Eligibility, a Principal certificate, and a School Administrator Certificate of Eligibility pleads guilty to 30 counts of Endangering the Welfare of a Child and 29 Counts of Invasion of Privacy and agrees to relinquish his certificates with the force and effect of a revocation and all attendant consequences. *Lott, Exam 2013:July 25*.

Holder agreed to relinquish his Teacher of Social Studies certificate with the force and effect of a revocation and all attendant consequences following a plea of guilty to Debauching or Imperiling the Morals of a Child. *Murphy, Exam 2013:July 25*.

Following a conviction for lewdness, holder agreesto relinquish his Teacher of Nursery School and Teacher of Elementary School certificates with the force and effect of a revocation and all attendant consequences. *Ruppert, Exam 2013: July 25*.

Teacher of Elementary School certificate revoked following conviction for Aggravated Sexual Assault, Sexual Assault and Official Misconduct. *Santamaria, Exam 2013:July 25.*

State Board of Examiners ordered revocation of School Psychologist Certificate. School psychologist created and submitted three fraudulent letters of recommendation in order to obtain public employment. In reaching his initial decision, the ALJ noted that the school psychologist's conduct "tended to destroy public respect for the delivery of government services and constituted behavior that was unsuitable and inappropriate under the circumstances." The Commissioner has long held that teachers serve as

role models for their students. The school psychologist's fraud negates his position as a role model and undermines the notion of trust that is an essential quality necessary to teach children. Certificate revocation is the only appropriate response. *IMO Certificate of Beltran*, Exam. 2013: September 20

State Board of Examiners ordered revocation of Teacher of Social Studies certificate and Supervisor certificate. Teacher pled guilty to Bribery and Attempted Tax Evasion and was sentenced to 37 months in federal prison. SBE determined that teacher's conduct constituted conduct unbecoming a certificate holder. SBE has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. A federal conviction for Bribery and Attempted Tax Evasion constitutes conduct which implicates the employee's honesty and resulted in a lengthy prison sentence. The Commissioner has long held that teachers serve as role models for their students. The teacher's conviction indicates that his actions here are not those of a role model. Certificate revocation is the only appropriate sanction. *IMO Certificates of D'Alonzo*, Exam. 2013: September 20

State Board of Examiners ordered revocation of Principal Certificate of Eligibility. On March 1, 2011, the California Commission on Teacher Credentialing revoked teacher's teaching certificates there as a result of his conviction for Fraud in 2010. SBE determined that teacher's conviction and the revocation of his California certificates constituted conduct unbecoming a certificate holder. SBE has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. Teacher's conviction for Fraud, implicates his honesty, resulted in a prison sentence and is relevant in determining that person's qualifications and continued fitness to retain his certificates. The Commissioner has long held that teachers serve as role models for their students. A conviction for Fraud indicates that this person's actions are not those of a role model. The California Commission on Teacher Credentialing thought so and the SBE agrees. Certificate revocation is the only appropriate sanction. *IMO Certificate of Fiszer*, Exam. 2013: September 20

State Board of Examiners ordered suspension of teacher's Teacher of Earth Science and Teacher of Students With Disabilities Certificates of Eligibility. Teacher was indicted on charges of Aggravated Sexual Assault, Sexual Assault and Endangering the Welfare of Children. If convicted, he would be disqualified from public employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq*. SBE may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause.. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.*, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be dangerous. Individuals convicted of crimes such as Aggravated Sexual Assault, Sexual Assault and

Endangering the Welfare of Children fall squarely within this category. In this case, teacher has an indictment for crimes that directly involved danger to children. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain his certificate. Teacher'spotential disqualification from service in the public schools of this State because of his indictment on charges of Aggravated Sexual Assault, Sexual Assault and Endangering the Welfare of Children provides just cause to suspend his certificates. *IMO Certificates of Miller*, Exam. 2013: September 20

State Board of Examiners ordered revocation of teacher's Teacher of Comprehensive Science certificate. The Commissioner has long held that teachers serve as role models for their students. Teacher's conduct amply demonstrates that he misunderstands his position as a role model. The record was replete with instances of behavior in which no teacher or any adult supervising children should engage. Even at a minimum, his choice not to report students smoking marijuana or drinking proves his lack of judgment. His sexually explicit conversations with female students and his feeding of test question answers to certain students is further evidence that he crossed the fundamental boundaries that should exist between teacher and student. SBE determines that certificate revocation is the only appropriate response. *IMO Certificate of Norton*, Exam. 2013: September 20

State Board of Examiners ordered revocation of superintndent's Teacher of Elementary School certificate, Supervisor and Principal certificates, School Administrator certificate, and an Assistant Superintendent for Business certificate. Superintendent pled guilty to Scheme to Defraud Public and Conspiracy to Impede and Impair the Functions of the IRS and was sentenced to 135 months in federal prison. It is well established that the State Board of Examiners has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. Superintendent has a federal conviction for Scheme to Defraud Public and Conspiracy to Impede and Impair the Functions of the IRS, conduct which implicates his honesty and resulted in a lengthy prison sentence. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain his certificates. The Commissioner has long held that teachers serve as role models for their students. The superintendent's conviction indicates that his actions here are not those of a role model. SBE believes that certificate revocation is the only appropriate sanction. *IMO Certificates of Ritacco*, Exam. 2013: September 20

State Board of Examiners ordered revocation of Teacher of Art Certificate of Eligibility with Advanced Standing. Department of Children and Families, Institutional Abuse Investigation Unit (IAIU) substantiated allegations of Sexual Abuse/Sexual Molestation against defendant. Allegations of inappropriate conduct included an ongoing personal relationship with a student who was 16 years old, including a sexual interaction at his home

and sending the student a sexually explicit photograph of himself via text message. The SBE may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Defendant's act of engaging in a sexual relationship with a student is inexcusable for any individual, teacher or not. His conduct amply demonstrates his inability to be a role model for students. SBE believes that certificate revocation is the only appropriate sanction. *IMO Certificate of Shaw*, Exam. 2013: September 20

State Board of Examiners ordered revocation of defendant's Teacher of Music Certificate of Eligibility With Advanced Standing and Teacher of Music certificate. Defendant pled guilty to Endangering the Welfare of a Child and was sentenced to three years' probation, community supervision for life and ordered to comply with all provisions of Megan's Law. SBE may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Defendant's act of Endangering the Welfare of a Child is inexcusable for any individual, teacher or not. The Commissioner has long held that teachers serve as role models for their students. Clearly, a teacher convicted of Endangering the Welfare of a Child cannot claim status as a role model to anyone. SBE believes that certificate revocation is the only appropriate sanction. *IMO Certificates of Stauffer*, Exam. 2013: September 20

State Board of Examiners accepted teacher's relinquishment of his Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, with the full force and effect of a revocation. Defendant pled guilty to Criminal Sexual Contact and was disqualified from public school employment. *IMO Certificate of Stivers*, Exam. 2013: September 20

State Board of Examiners ordered revocation of defendant's Teacher of Music certificate. Defendant pled guilty to Attempted Online Solicitation of a Minor and Purchase Alcohol for a Minor, having sent inappropriate sexual text messages to a student and, on one occasion, having placed a bottle of alcohol in the student's vehicle. Defendant surrendered his teaching certificate in Texas. SBE may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause.

Defendant's acts of sending numerous inappropriate sexual texts to a student as well as placing alcohol in a student's vehicle are inexcusable for any individual, teacher or not. Commissioner has long held that teachers serve as role models for their students. Defendant's conduct and guilty plea indicate that his actions here are not those of a role model. The Texas State Board for Educator Certification thought so and the SBE agrees. SBE believes that certificate revocation is the only appropriate sanction. *IMO Certificates of Wygant*, Exam. 2013: September 20

Examiners orders revocation of Certificates of Teacher of Health and Physical Education, Teacher of Driver Education, and Substance Awareness

Coordinator Certificate of Eligibility With Advanced Standing, where holder of certificates pled guilty to Assault By Auto/Vessel in the third degree, and as a result was disqualified from public school employment. Behavior fell far short of a role model. *IMO Certificate of Bonner: Exam 2013: Nov 1.*

Examiners orders revocation of Teacher of Music Certificate of Eligibility With Advanced Standing, and a Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing where holder of certificates pled guilty to Showing Obscene Material to Person Under 18 to Arouse Self/Another and as a result was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* Conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. *IMO Certificate of Dorrell, Exam 2013:Nov 1.*

Examiners orders revocation of Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of the Handicapped certificate, and Teacher of Elementary School certificate, where holder agreed to relinquish her certificates with the force and effect of a revocation and all attendant consequences after having pled guilty to 1st degree Murder, Attempted Murder and Conspiracy to Desecrate Human Remains and having been sentenced to 58 years in prison. *IMO Certificates of Dorsett, Exam 2013: Nov. 1*.

Teacher of Elementary School Certificate of Eligibility, Teacher of Elementary School certificate, Principal Certificate of Eligibility, and Principal certificate where holder pled guilty to Simple Assault after having been indicted on charges of Criminal Sexual Contact, Aggravated Sexual Assault with Bodily Injury and Threatening to Kill and sentenced to one year of probation. *IMO Certificates of Folayan, Exam 2013: Nov. 1.*

Examiners orders revocation of Substitute Credential where substitute teacher had resigned from his assignment as a substitute teacher following allegations that he had made numerous inappropriate sexual comments to students, as well as inefficient classroom performance and practices, and where he did not respond to the order to show cause or hearing notice. *IMO Certificates of Hull, Exam 2013: Nov 1.*

Examiners orders revocation of Teacher of the Handicapped certificate where board of education had successfully litigated tenure dismissal charges against teacher who engaged in a continuing pattern of professional misconduct which included: ignoring or defying direct orders or suggestions of her supervisors; exhibiting anger, hostility and disrespectfulness in her communications with fellow teaching staff members, at times in the presence of students; and, in a number of instances, categorically refusing to perform the duties required by her position. *IMO Certificate of Kubicki, Exam 2013:Nov 1.*

Examiners orders revocation of Substitute Credential, where holder pled guilty to Conspiracy to Endanger the Welfare of a Child and Criminal Sexual Contact, and as a result agreed to relinquish his credential with the force

and effect of a revocation and all attendant consequences. *IMO Certificate of Lemunyon, Exam 2013: Nov. 1.*

Examiners accepts holder's proposal to suspend his Teacher of Music certificate for five years, where holder did not admit to the allegations in the Order to Show Cause. *Matter of the Certificate of Millner, Exam 2013: Nov. 1.*

Examiners accepts holder's proposal to suspend Teacher of Elementary School Certificate of Eligibility and a Teacher of Elementary School certificate "until such time as the final agency decision is rendered in the above-captioned matter." *IMO Certificates of Omert, Exam 2013:Nov. 1.*

Examiners accepts proposal to relinquish Teacher of Mathematics and Teacher of Physical Science Certificates of Eligibility, and Teacher of Mathematics and Teacher of Physical Science certificates voluntarily with the force and effect of revocation. *IMO Certificates of Schanne, Exam 2013:Nov 1.*

Examiners orders revocation of Teacher of the Handicapped certificate where holder was convicted in Pennsylvania of Rape of Child, Involuntary Deviate Sexual Intercourse with Child, Endangering the Welfare of Children-Parent/Guardian, Corruption of Minors and Indecent Assault of Person Less Than 13 Years of Age, and he failed to respond to the Order to Show Cause or the Hearing Notice. *IMO Certificate of Shero, Exam 2013:Nov 1.*

Examiners modifies its initial decision and orders the revocation of P.S.'s Teacher of Music Certificate of Eligibility and her Teacher of Music certificate 's certificates, where teacher had resigned from her tenured position after allegations that she "inserted a drumstick between student's buttocks over his underwear, stroked his buttocks and threatened to 'stick the drumstick all the way in'" while student was being held on the ground; her lengthy teaching experience and position as a mentor to students in the band made it more inexcusable; rejects categorization as "horseplay." *Matter of the Certificate of P.S. Exam 2013:Nov 1.*

Examiners orders revocation of Teacher of Social Studies Certificate of Eligibility and Teacher of Social Studies certificate where holder agrees to relinquish his credential with the force and effect of a revocation. *IMO Certificate of Tirri, 2013:Nov 1.*

Examiners voted to suspend Teacher of Music Certificate of Eligibility and Teacher of Music certificate pending resolution of the criminal proceedings against him where he was indicted on five counts of Sexual Assault, six counts of Criminal Sexual Contact, three counts of Endangering the Welfare of a Child and one count of Official Misconduct and where if convicted he would be disqualified from public employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq*. *IMO Certificate of Van Hoven, 2013:Nov 1.*

Examiners revokes Principal and School Administrator Certificates of Eligibility and his Teacher of Biological Science, Teacher of Comprehensive Science, Teacher of Data Processing and Supervisor certificates, where holder had resigned/retired from his tenured position following allegations that he had accessed pornographic, aberrant and deviant subject matter on

a district computer during work hours; revocation ordered despite his agreement to retire and seek psychological counseling, despite his 32 year heretofore-unblemished career, and that viewing took place in administrative building separated from students. *IMO Certificate of Dantinne, 2013:Dec. 6.*

Examiners orders revocation of Teacher of Mathematics Certificate of Eligibility With Advanced Standing and Teacher of Mathematics certificate where holder who pled guilty to Criminal Sexual Contact agreed to relinquish his certificates with the force and effect of a revocation. I*MO Certificate of Greco, 2013:Dec. 6.*

Examiners accepts the proposal to suspend Teacher of Elementary School Certificate of Eligibility, and Teacher of Elementary School certificate for six years. *IMO Certificate of Omert, 2013:Dec. 6.*

Examiners orders revocation of Substitute Credential of holder who had resigned and acknowledged that he had submitted a falsified college transcript from Lehigh University when he applied for a teaching certificate. *IMO Certificate of Ritter, 2013:Dec. 6.*

Examiners suspends Teacher of the Handicapped certificate for a period of one year where teacher did not properly administer the NJ ASK4 test insofar as OFAC reported that he breached test protocol by helping students on the test when he conducted math reviews prior to the test contrary to protocols, and reworded some questions on the test for students. *IMO Certificate of Evans, 2013: Dec. 6.*

Revocation of Certificates appropriate where teacher submitted fraudulent Supervisor's certificate in attempt to gain promotion. *Bonsu*, Exam 2014: January 17

School Social worker agrees to relinquish his certificate voluntarily with the force and effect of a revocation. *Esposito*, Exam 2014: January 17

Teacher of Mathematics Certificate of Eligibility with Advanced Standing and a Teacher of Mathematics certificate revoked where teacher pled guilty to Criminal Sexual Contact and was sentenced to three years' probation, ordered to comply with Megan's Law and ordered to forfeit her teaching certificates. *Garcia-Calle*, Exam 2014: January 17

Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing, Teacher of Preschool Through Grade 3 Certificate of Eligibility With Advanced Standing, Teacher of Students With Disabilities Certificate of Eligibility With Advanced Standing, Teacher of Preschool Through Grade 3 Provisional certificate and Teacher of Students with Disabilities Provisional certificate suspended for a period of three years following the revocation of her out-of state certificates for conducting an inappropriate relationship with a 16 year old student on Facebook. *Picklo*, Exam 2014: January 17

Principal Certificate of Eligibility, Substance Awareness Coordinator Certificate of Eligibility with Advanced Standing, Teacher of the Handicapped and Supervisor certificates are revoked after teacher engaged in explicit discussions of a sexual nature with his students the contents of which were

extremely offensive due to the graphic sexual acts described and the profanity used. *Salaam, Exam, 2014: January 17*

Teacher of Music, Supervisor, Principal and Teacher of Elementary School certificates revoked following voluntary relinquishment. *Strack, Exam 2014: January 17*

School Social Worker certificate revoked following guilty plea for lewdness. *Williams, Exam 2014: January 17*

Following tenure dismissal for conduct unbecoming by threatening a student with a knife, violating school policy by possessing a weapon and disciplining a student with corporal punishment, certificates revoked. Unsheathing a knife before a student in relation to a minor transgression, standing alone, warrants the strongest rebuke-revocation of Teacher of Industrial Arts certificate warranted. *Zawadski, Exam 2014: January 17*

Teacher pled guilty to a disorderly persons offense for Failing to Report Child Abuse, which touched upon her public position with school district. Teacher sentenced to one year of probation and ordered to forfeit her public position in the district. Principal and School Administrator Certificates of Eligibility and her Teacher of Comprehensive Science, Supervisor, and Principal certificates revoked. *DePaul, Exam 2014: Feb 27*

Teacher of Mathematics, Supervisor, Principal, School Administrator, and Assistant Executive Superintendent with Specialization in Supervision and Curriculum certificates following guilty plea to Endangering the Welfare of a child. *DeStefano, Exam 2014: Feb 27*

Following a plea of guilty to Official Misconduct and Possession of CDS, Teacher of Elementary School, Teacher of English, Supervisor and Principal certificates revoked. *Peters, Exam 2014: Feb 27.*

Suspend Teacher of Latin Certificate of Eligibility With Advanced Standing and his Teacher of Latin certificate for a period of six months for failing to disclose federal convictions for Customs Fraud and Tax Fraud. Sincere sense of remorse coupled with his cogent explanation of what transpired in his life warrant against revocation. *Ramo, Exam 2014: Feb 27.*

Commissioner determined that the record adequately supported the State Board of Examiners decision. There was nothing in the record to suggest that the SBE's decision was arbitrary, capricious or unreasonable. The Commissioner found no basis upon which to disturb the decision of the Board of Examiners. *IMO Certificates of Forsell*, Commissioner Appeal Decision 2014: March 5

State Board of Examiners ordered revocation of teacher's Substitute Credential. Substitute teacher's action of calling a student at her home, picking her up in his car and kissing her crossed a boundary that should exist between teacher and student. While substitute teacher claimed that student was infatuated with him as evidenced by the two notes she gave him, his failure to turn them in to school authorities undermined his credibility. Board of Examiners defers to ALJ's determination of witness credibility. *IMO the Credential of Bell*, Exam. 2014: April 4

State Board of Examiners ordered revocation of teacher's Substitute Credential. Teacher was convicted of Lewdness and was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq*. Teacher agreed to relinquish his Substitute Credential with the force and effect of a revocation and all attendant consequences. *IMO the Credential of Egles*, Exam. 2014: April 4

Teacher's New York certificates were revoked because of inappropriate interactions with students as well as negligence in exercising her duties as a teacher. New York allegations included that she had engaged in inappropriate behavior with students, including improper personal, physical and/or intimate contact, improper communications and failing to assist a student in obtaining medical assistance after the student was injured. Teacher failed to respond to correspondence from the State Board of Examiners so that allegations were deemed admitted. Board is not restricted to behavior that takes place in New Jersey. *IMO the Certificate of Elie*, Exam. 2014: April 4

State Board of Examiners accepted teacher's relinquishment of Teacher of Social Studies Certificate of Eligibility with Advanced Standing. Teacher had been convicted of Unlawful Possession of Weapons-Rifle/Shotgun and was ordered to relinquish his Teacher of Social Studies Certificate of Eligibility with Advanced Standing with the force and effect of a revocation and all attendant circumstances. *IMO the Certificate of Hartman*, Exam. 2014: April 4

State Board of Examiners revoked teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Teacher of Spanish Certificate of Eligibility With Advanced Standing, Teacher of Elementary School and Teacher of Spanish certificates, Principal Certificate of Eligibility, and a Supervisor certificate. Teacher pled guilty to Sexual Assault and was ordered to forfeit her teaching certificates. Haskell agreed to relinquish her certificates with the force and effect of a revocation and all attendant consequences. *IMO the Certificates of Haskell*, Exam. 2014: April 4

State Board of Examiners ordered revocation of employee's School Social Worker's certificate. Social Worker's exposing his penis to a female teacher on school grounds, coupled with his unwelcome comments made to four other female staff members demonstrated that social worker repeatedly crossed a boundary that should exist between professional colleagues. While the ALJ, in recommending a two year certificate suspension, lauded the social worker for his interactions with students, he is responsible for his conduct as a whole. On balance, the State Board of Examiners found that his conduct warrants certificate revocation, rejecting the ALJ's recommendation. *IMO the Certificates of Holloway*, Exam. 2014: April 4

State Board of Examiners ordered three month suspension of teacher's Teacher of Nursery School and Teacher of Elementary School certificates effective immediately. SBE adopted ALJ's decision that found that teacher had

breached test security during the administration of the 2010 NJASK5 as alleged. Such action constituted conduct unbecoming a teaching staff member warranting sanction. Teacher touched and pointed to students' test booklets during the test, helped a student on questions regarding symmetry, helped a student by explaining the meaning of two math questions to him, helped a student by rewording questions and helped a student by answering her question with regard to how something should be worded. Such actions constituted a clear violation of test security protocols set forth in the Test Security Agreement. *IMO the Certificates of Kelley*, Exam. 2014: April 4

State Board of Examiners suspended teacher's Teacher of Art Certificate of Eligibility With Advanced Standing and Teacher of Art Certificate pending the outcome of the criminal proceedings against him. Teacher was indicted on charges of Endangering the Welfare of Children, Luring or Enticing a Child, Sexual Assault, Hindering Apprehension or Prosecution, Official Misconduct, Attempted Endangering the Welfare of Children and Attempted Official *N.J.S.A.* 18A:6-7.1 *et seq.* The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9-17.5. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be dangerous. Individuals convicted of crimes such as Endangering the Welfare of Children, Luring or Enticing a Child, Sexual Assault, Hindering Apprehension or Prosecution, Official Misconduct, Attempted Endangering the Welfare of Children and Attempted Official Misconduct fall squarely within this category. The Commissioner's long-held belief is that teachers must serve as role models for students. In this case, the teacher has an indictment for crimes that directly involved danger to children. If the charges are resolved in the teacher's favor, the teacher may apply to the SBE for appropriate action. *IMO Certificates of Reilly*, Exam. 2014: April 4

State Board of Examiners suspended, with the consent of the teacher, teachers' Teacher of Music Certificate of Eligibility With Advanced Standing, and Teacher of Music certificate pending resolution of the criminal charges filed against him. *IMO Certificates of Scheck*, Exam. 2014: April 4

State Board of Examiners revoked teacher's Teacher of Physical Education certificate. Teacher had surrendered his teaching certificates in New York after allegations that teacher had made a sexual proposition to a 17 year-old student. Teacher had informed student that she could pass his class by performing "extra credit"; having sex with him. SBE determined that teacher's conduct constituted conduct unbecoming a certificate holder. The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. The Board is not restricted to behavior that takes place in New Jersey in determining whether that

person is fit to teach in this state. *IMO the Certificate of Stern*, Exam. 2014: April 4

State Board of Examiners revoked teacher's Teacher of Social Studies certificate, Teacher of Elementary School certificate, Supervisor certificate, Principal Certificate of Eligibility, and Principal certificate. Teacher pled guilty in federal court to Possession of Child Pornography, disqualifying himself from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.*

In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Possession of Child Pornography fall squarely within in this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. In this instance, teacher's conviction for Possession of Child Pornography demonstrates behavior that falls far short of a role model. The strong policy statement on the part of the Legislature set forth in *N.J.S.A.* 18A:6-7.1(b) also offers guidance to the Board as to the appropriate sanction in this matter. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. Accordingly, the Board believes that the only appropriate sanction in this case is the revocation of his certificates. *IMO the Certificates of Sysock*, Exam. 2014: April 4

Board of Examiners voted to revoke Burden's Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, in matter where Maine police informed the Board that Burden pled guilty to Assault in 2009 after being charged with Assault and Unlawful Sexual Contact and pled guilty to Loitering for the Purpose of Engaging in Prostitution in September 2013 when he answered an ad placed by an undercover police officer on Craigslist offering sexual favors in exchange for cash. *Certificate of Burden*, Exam May 22, 2014.

Principal Certificate of Eligibility, s Teacher of the Handicapped, Supervisor and Principal certificates are suspended for a period of three years, effective immediately where as a
condition of his entrance into a Pretrial Intervention Program, holder of certificates agreed to the suspension of his teaching certificates for a period of three years. *Certificates of Houser*, Exam May 22, 2014.

Principal Certificate of Eligibility, School Administrator Certificate of Eligibility, and Supervisor and Principal certificates are hereby SUSPENDED for a period of five years, effective immediately. *Certificates of Leon*, Exam May 22, 2014.

Lopez agreed to relinquish and Board voted to accept relinquishment of his Teacher of Elementary School in Grades K-5 Certificate of Eligibility, and

a Teacher of Elementary School in Grades K-5 Provisional certificate, as a condition of his entrance into a Pretrial Intervention Program, with the force and effect of a revocation and all attendant consequences in his affidavit to that effect to the Board. *Certificates of Lopez*, Exam May 22, 2014.

Board voted to revoke Maria Malanga's Principal Certificate of Eligibility and her Teacher of Elementary School, Supervisor and Principal certificates where she had pled guilty to Assault and Criminal Mischief-Damage Property and had been sentenced to two years' probation for which she was disqualified from public school employment pursuant to *N.J.S.A.*18A:6-7.1 *et seq.* Certificates revoked despite her claim that at the time of the incident leading to her arrest, unbeknownst to her, she was bi-polar and where she claimed that the charges were filed by her youngest sister who was suffering from severe depression and tried to kill her. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. *Certificates of Malanga*, Exam May 22, 2014.

Board voted to accept Miller's relinquishment of Teacher of Earth Science Certificate of Eligibility, 2007 and Teacher of Students With Disabilities Certificate of Eligibility, with the force and effect of a revocation pursuant to *N.J.A.C.* 6A:9-17.8, after he pled guilty to Endangering the Welfare of a Child. *Certificates of Miller*, Exam May 22, 2014.

Given the totality of circumstances, and taking into consideration teacher's 20 year unblemished record, the appropriate sanction was a two-year suspension of Painter's Teacher of Health and Physical Education and Driver Ed certificates, after teacher pled guilty to Obstructing the Administration of Law and was sentenced to one year of probation and community service after speaking to a student about her statements during an ongoing police investigation involving allegations that the student had had an inappropriate relationship with a teacher. However, the fact that the court did not believe her offense warranted the forfeiture of her public position had no bearing on this matter. *Certificates of Painter*, Exam May 22, 2014.

Examiners orders revocation of Teacher of Art Certificate of Eligibility With Advanced Standing and his Teacher of Art certificate where teacher agreed that they be relinquished after he pled guilty to Official Misconduct and Endangering the Welfare of a Child. *Certificates of Reilly*, Exam May 22, 2014.

Examiners accepts s relinquishment of Teacher of Art Certificate of Eligibility With Advanced Standing and Teacher of Art certificate, with the force and effect of a revocation where he was convicted of Criminal Sexual Contact and Tampering with a Witness; demonstrates behavior that falls far short of a role model, and one whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate nor be permitted to continue to hold himself out as a teacher. *Matter of the Certificates of Rubinetti*, Exam May 22, 2014.

Where teacher had been removed on tenure charges for engaging in corporal punishment due to an incident where she admitted that she slapped a student after he had drawn on another student's project with a red marker although she immediately realized she had acted inappropriately and tried to apologize. Examiner finds that while her conduct merits a strong rebuke, her immediate abject remorse, swift entry into in-patient treatment for mental health issues and the exigent personal circumstances with which she was contending in the days before the incident, lead the Board to believe that suspension for one year, not revocation, of her Teacher of Speech Arts and Dramatics Certificate of Eligibility and her Teacher of Speech Arts and Dramatics certificate is appropriate; no indication that she could not function successfully as a teacher elsewhere. *Matter of the Certificates of Sugarman*, Exam May 22, 2014.

Teacher agreed to relinquish Teacher of English, Teacher-Librarian, Teacher of Mathematics and Student Personnel Services certificates; will be revoked effective immediately. *Matter of Certificates of Yacabonis*, Exam May 22, 2014.

Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9-17.5. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (1943), aff'd, 131 N.J.L. 326 (E & A 1944). *Benson*, 2014 Exam, July 15.

Teacher of the Handicapped certificate revoked where teacher relinquished her certificate as a condition of entering pre-trial intervention program. *Boss*, 2014 Exam, July 15.

Teacher of Elementary School Certificate of Eligibility With Advanced Standing and Teacher of Elementary School With Subject Matter Specialization: Science in Grades 5-8 Certificate of Eligibility revoked following convictions for multiple counts of Statutory rape, Indecent Liberties with Child, Sex Offense Student, Sexual Exploitation of a Minor and Solicit Child By Computer in another state. The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9-17.5. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd.*

of Educ., 130 N.J.L. 369, 371 (1943), aff'd, 131 N.J.L. 326 (E & A 1944). *Canally*, 2014 Exam, July 15.

School Business Administrator Certificate of Eligibility, issued in January 1995 and a School Business Administrator certificate revoked following resignation of school business administrator who allegedly violated public bidding laws and then later trying to conceal his malfeasance by having the contractor submit multiple backdated quotes. *Cerra*, 2014 Exam, July 15.

Teacher of Music Certificate of Eligibility With Advanced Standing revoked following conviction in Pennsylvania for on two counts of Corruption of Minors. *Dinkins*, 2014 Exam, July 15.

Principal certificate revoked following after he pled guilty to Contributing to the Delinquency of a Minor in another State. *Feltz*, 2014 Exam, July 15.

Teacher of English certificate revoked following disqualification from public school employment as a result of her 2008 conviction for Burglary. *Finnigan*, 2014 Exam, July 15.

Teacher of English certificate revoked following entrance into PTI program following allegations that teacher hit several students. *Franklin*, 2014 Exam, July 15.

Teacher of Spanish Certificate of Eligibility With Advanced Standing and a Teacher of Spanish certificate revoked following plea of guilty to Endangering the Welfare of a Child. *Gross*, 2014 Exam, July 15.

Teacher of Music Certificate of Eligibility With Advanced Standing revoked following guilty plea for Sexual Assault, Aggravated Sexual Assault-Victim Helpless or Incapacitated, and Abuse of Child-Cruelty, Neglect. *Holmgren*, 2014 Exam, July 15.

Teacher of Elementary School Certificate of Eligibility with Advanced Standing revoked following conviction for Endangering the Welfare of a Child. *Johnson*, 2014 Exam, July 15

Teacher of Spanish Certificate of Eligibility and Teacher of Spanish certificate revoked following plea of guilty to Endangering the Welfare of a Child. *Morales*, 2014 Exam, July 15

Teacher of the Handicapped certificate, a Student Personnel Services certificate, issued in April 1980 and a Principal certificate, suspended for two and a half years. *Oberwanowicz*, 2014 Exam, July 15

Teacher of Social Studies Certificate of Eligibility revoked following substantiated claims of sexual abuse of student by Department of Children and Families. *Wright*, 2014 Exam, July 15

Teacher of Mathematics certificate revoked following guilty plea in Pennsylvania to Homicide by Vehicle and Accidents Involving Death or Personal Injury. *Angney*, 2014 Exam, July 15

Teacher agreed to relinquish her Teacher of Elementary School in Grades K-5 and Teacher of Students With Disabilities Certificates of Eligibility With Advanced Standing, and a Teacher of Students With Disabilities certificates with the force and effect of a revocation and all attendant

consequences following a plea of guilty to Endangering the Welfare of a Child. *Conroy*, 2014 Exam, July 15

Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing, and Teacher of Elementary School in Grades K-5 certificate revoked following plea of guilty to Endangering the Welfare of a Child for driving under the influence with two young children in her car. Notwithstanding contentions of rehabilitation, this is not the proper context for such considerations. The purpose of this proceeding is to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation. *Donaldson (Zappile)*, 2014 Exam, July 15.

Teacher of Preschool Through Grade 3 Certificate of Eligibility With Advanced Standing and a Teacher of Preschool Through Grade 3 certificate revoked where teacher used the social security number of another to obtain her certificates. *Ferreira*, 2014 Exam, July 15.

Teacher of Elementary School in Grades K-5 Certificate of Eligibility With Advanced Standing revoked following failure of teacher to reveal that his license had been suspended in another state for accessing inappropriate websites on a classroom computer. *Hurd*, 2014 Exam, July 15

Teacher of Elementary School certificate relinquished voluntarily with the force and effect of a revocation. *Johnson*, 2014 Exam, July 15

Teacher of Elementary School, Teacher of Data Processing, and Teacher of Computer Science Technology Certificates of Eligibility, and his Teacher of Elementary School, Teacher of Data Processing, Teacher of Computer Science Technology and Teacher of Law Enforcement certificates revoked following actions of inappropriately touching a student's leg and putting his hand up her skirt, exchanging sexually explicit texts with her, allowing her to rest her head on his shoulder on numerous occasions, and allowing her to enter his hotel room while on school field trips. *Moreno*, 2014 Exam, July 15.

Substitute Credential revoked where holder pled guilty to Disturbing the Peace, a local ordinance violation, after being charged with Child Abuse for allegedly leaving a four year old child unattended in her car on a hot day for over an hour. *Morsindi*, 2014 Exam, July 15

Teacher's Teacher of Physical Education Certificate of Eligibility and Teacher of Physical Education certificate suspended for a period of two years, following conviction in New York for Burglary-Illegal Entry of a Dwelling, Burglary-Causing Physical Injury, Criminal Mischief and Criminal Contempt.These convictions were vacated by the Appellate Division of the New York Supreme Court and reduced to Criminal Trespass. *Rumley*, 2014 Exam, July 15

Teacher of Elementary School certificate and a Teacher of Spanish certificate revoked in New Jersey following determination by the state of Florida that teacher had placed tape on one student's mouth and told another student to place tape on his mouth; in another incident, the teacher pulled a student's

hair In another incident the teacher inappropriately disciplined a student by pulling her by the hair and jerking her head back; in another series pushed and grabbed students, threatened them and forced them to stand for extended periods of time with book bags on their heads. *Wagensommer*, 2014 Exam, July 15.

Commissioner concurs with State Board of Examiners that Appellant's actions during the 2012 NJASK administration violated the NJASK testing policy protocols. Teacher assisted three special education students, giving them clues beyond what were appropriate accommodations under their IEP. Teacher reworded passages, clarified portions of the test and read aloud portions of the Language Arts portion of the test. Such action constituted unbecoming conduct and warranted the suspension of his teaching certificate for one year. *Evans*, Commissioner, 2014: September 30

Commissioner affirms State Board of Examiners decision revoking teacher's certificate. Teacher demonstrated a pattern of highly inappropriate and unprofessional behavior with serious and repeated lapses in judgment. Commissioner has long held that teachers serve as role models for their students. Teacher's conduct amply demonstrated that he misunderstood his position as a role model. The record was replete with instances of behavior in which no teacher or any adult supervising children should engage. Teacher's choice not to report students smoking marijuana or drinking proved his lack of judgment. His sexually explicit conversations with female students and his feeding of test question answers to certain students was further evidence that he crossed the fundamental boundaries that should exist between teacher and student. The only appropriate response to teacher's breach was the revocation of his certificate. *Norton*, Commissioner, 2014: September 26

Commissioner upheld decision of the State Board of Examiners that petitioner failed to meet the requirements for issuance of a certificate of eligibility (CE) for the position of school principal. The SBE contended that petitioner failed to complete five years of successful educational experience under a valid provisional or standard New Jersey or equivalent out-of-state certificate pursuant to *N.J.A.C.* 6A:9-12.5(a). Petitioner worked for approximately eight years as a teacher in two private schools in Westchester County, New York, but did not hold a teaching certificate during that period. Petitioner has worked under a provisional teaching certificate for four years at Wayne Valley High School. ALJ determined and Commissioner affirmed that petitioner had not fulfilled the requirements for a Principal CE as he did not have the five years of teaching experience under an appropriate certificate. *Mignanelli v. New Jersey State Board of Examiners*, Commissioner, 2014: October 29

State Board of Examiners suspended teacher's Teacher of Physical Education Certificate and Teacher of Spanish Certificate for one and one half years. While not admitting to the allegations set forth in the Order to Show Cause, teacher offered to agree a one and one half year suspension of his certificates. After reviewing the proposal, the State Board of Examiners

voted to accept the offer. *IMO the Certificates of Juan Davies*, Exam, 2014: September 14

State Board of Examiners ordered revocation of teacher's Teacher of Elementary School and Principal Certificates of Eligibility and his Teacher of Elementary School Certificate. In June 2010, the teacher surrendered his teaching certificates in New York after the Special Commissioner of Investigation for the New York City School District substantiated that he had engaged in an inappropriate relationship with a 15 year-old student, which included sexual comments and sexual contact. The New York Commissioner also found that he had had an inappropriate relationship with a 16 year old student. The teacher was also found to have harassed both students. Teacher did not admit to any of the allegations and failed to appear at his New Jersey hearing; the charges were deemed to be admitted. The Commissioner has long held that teachers serve as role models for their students. The teacher's conduct in engaging in an inappropriate relationship with two female students demonstrates behavior that falls short of the role model status expected of teachers. The teacher's inappropriate conduct with not one, but two, different students merits the strongest possible condemnation. The Board therefore believed that the only appropriate sanction in this case is the revocation of his certificates. *IMO the Certificates of Walter V. Davis*, Exam, 2014: September 19

State Board of Examiners accepted teacher's relinquishment of his Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, Teacher of Health and Physical Education certificate, and Teacher of Driver Education certificate with the full force and effect of a revocation pursuant to *N.J.A.C.* 6A:9B-4.8 Teacher had pled guilty to two counts of Aggravated Assault-Bodily Injury, was sentenced to 364 days in county jail, three years' probation and was fined. *IMO Certificates of Danny Del Valle*, Exam. 2014: September 19

State Board of Examiners ordered revocation of teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing and her Teacher of Elementary School and Teacher of English as a Second Language certificates. Teacher had pled guilty in federal court in Pennsylvania to Possession of a Controlled Dangerous Substance and was sentenced to two years' probation and eight months of home detention with electronic monitoring. The CHRU notified the SBE that, as a result of the conviction, teacher was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Possession of a Controlled Dangerous Substance fall squarely within in this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role

models for their students. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Teacher's conviction for Possession of a Controlled Dangerous Substance demonstrates behavior that falls far short of a role model. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. The SBE believes that the only appropriate sanction in this case is the revocation of her certificates. *IMO the Certificates of Kim Innocenti*, Exam. 2014: September 19

State Board of Examiners ordered revocation of teacher's Teacher of Elementary School and Teacher of Mathematics Certificates of Eligibility, and his Teacher of Elementary School and Teacher of Mathematics certificates. Teacher pled guilty to seven counts of Conspiracy to Possess CDS, two counts of Official Misconduct, one count of Conspiracy to Manufacture and Distribute CDS and one count of Conspiracy to Distribute and Possess CDS in a School Zone, was sentenced to five years' imprisonment and was fined. The court also ordered the teacher to forfeit his teaching certificates and not reapply for them even if granted an expungement. The CHRU notified the SBE that, as a result of the conviction, teacher was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* Since teacher did not file a response or appear at the hearing the charges were deemed admitted. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Conspiracy to Possess CDS, Official Misconduct, Conspiracy to Manufacture and Distribute CDS and Conspiracy to Distribute and Possess CDS in a School Zone fall squarely within in this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Teacher's conviction for Conspiracy to Possess CDS, Official Misconduct, Conspiracy to Manufacture and Distribute CDS and

Conspiracy to Distribute and Possess CDS in a School Zone demonstrates behavior that falls far short of a role model. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. The SBE believes that the only appropriate sanction in this case is the revocation of his certificates. *IMO the Certificates of Kevin Kane*, Exam. 2014: September 19

State Board of Examiners ordered revocation of teacher's Teacher of English Certificate. Teacher pled guilty to Possession of Marijuana/Hash Under 50 Grams, using a 17-yearold student to obtain drugs for her. Teacher was sentenced to one year of probation and ordered to forfeit her public employment. Pursuant to *N.J.S.A.* 2C:51-2d, she was also forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions. The CHRU notified the SBE that, as a result of the conviction, teacher was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* Since teacher did not file a response or appear at the hearing the charges were deemed admitted. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Possession of Marijuana/Hash Under 50 Grams falls squarely within in this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Teacher's conviction for Possession of Marijuana/Hash Under 50 Grams, demonstrates behavior that falls far short of a role model. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. The SBE believes that the only appropriate sanction in this case is the revocation of his certificates. *IMO the Certificates of Robyn Z. Kent*, Exam. 2014: September 19

State Board of Examiners accepted teacher's relinquishment of her Teacher of English Certificate of Eligibility With Advanced Standing and Teacher of English Certificate with the full force and effect of a revocation pursuant to *N.J.A.C.* 6A:9B-4.8. Teacher pled guilty to two counts of Sexual

Assault-Victim 16-18, was sentenced to four years in prison, ordered to forfeit her teaching certificates and subject to Megan's Law and parole supervision for life. *IMO the Certificates of Jaclyn P. Melillo*, Exam. 2014: September 19

State Board of Examiners ordered revocation of teacher's Substitute Credential. Teacher pled guilty to Endangering the Welfare of a Child, involving the distribution of child pornography. The CHRU notified the SBE that, as a result of the conviction, teacher was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* Since teacher did not file a response or appear at the hearing the charges were deemed admitted. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Endangering the Welfare of a Child, involving the distribution of child pornography falls squarely within in this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Teacher's conviction for Endangering the Welfare of a Child, involving the distribution of child pornography, demonstrates behavior that falls far short of a role model. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. The SBE believes that the only appropriate sanction in this case is the revocation of his substitute credential. *IMO the credential of Tray K. Barnard*, Exam. 2014: October 23

State Board of Examiners ordered suspension of teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing and Teacher of Elementary School Certificate. Teacher was indicted on charges of Endangering the Welfare of a Child, Sexual Assault and Aggravated Sexual Assault. If convicted, he would be disqualified from public employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq*. Since teacher did not file a response or appear at the hearing the charges were deemed admitted. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Endangering the Welfare of a Child, Sexual Assault and Aggravated Sexual Assault falls squarely within in this

category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Teacher has an indictment for a crime that directly involved danger to children. Accordingly, the State Board of Examiners finds that Fennes' potential disqualification from service in the public schools of this State because of his indictment on charges of Endangering the Welfare of a Child, Sexual Assault and Aggravated Sexual Assault provides just cause to take action against his certificates. The SBE voted to suspend teacher's certificates pending resolution of the criminal proceedings against him. If the charges are resolved in his favor, he shall notify the SBE for appropriate action regarding the suspension order. *IMO the Certificates of Jason B. Fennes*, Exam. 2014: October 23

State Board of Examiners ordered revocation of teacher's Teacher of Biological Science Certificate of Eligibility With Advanced Standing and his Teacher of Biological Science Certificate. Teacher was convicted of Official Misconduct and Attempting to Lure or Entice a Child. The CHRU notified the SBE that, as a result of his conviction, he was also disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* Since teacher did not file a response or appear at the hearing the charges were deemed admitted. In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Official Misconduct and Attempting to Lure or Entice a Child falls squarely within in this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Teacher's conviction for Official Misconduct and Attempting to Lure or Entice a Child, demonstrates behavior that falls far short of a role model. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to

continue to hold himself out as a teacher. The SBE believes that the only appropriate sanction in this case is the revocation of his certificates. *IMO the Certificates of Michael Furey,* Exam. 2014: October 23

State Board of Examiners ordered revocation of teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing, Substance Awareness Coordinator Certificate of Eligibility, and Teacher of Elementary School, Teacher of the Handicapped and Learning Disabilities Teacher-Consultant certificates. OFAC concluded that, during the administration of the 2009 and the 2010 NJ ASK tests, the teacher, a resource teacher and test proctor, influenced student examinees' responses through verbal and non-verbal communication. According to witness accounts, the teacher verbally stated that specific answers were incorrect, pointed to specific answers indicating their correctness or placed a check mark next to a correct answer. One witness stated that the teacher would tell students that an answer they had on the test was wrong. At other times she would draw an imaginary "X" through an answer with her finger, indicating the answer was wrong and then point to the correct answer. OFAC also concluded that the teacher breached test security by interfering with the independent work of students, coaching students during testing and failing to follow the test administration directions that were specified in the 2009 and 2010 Test Coordinator Manuals. Since teacher did not file a response or appear at the hearing the charges were deemed admitted. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this matter, the teacher's conduct in influencing students' answers on standardized tests and breaching NJ ASK test security protocols is not merely inappropriate, it is egregious. Her actions undermine the public's trust in its teachers and demonstrate behavior that falls so far short of a role model that the SBE believes that the only appropriate sanction in this case is the revocation of her certificates. *IMO the Certificates of Christine Krzeminski*, Exam., 2014: October 23

State Board of Examiners voted to suspend teacher's Teacher of Elementary School Certificate of Eligibility With Advanced Standing and her Teacher of Elementary School certificate for a period of one year. Teacher had resigned from her tenured position following allegations that she and others had posted inappropriate comments on Facebook about a student in her class. Since teacher did not file a response or appear at the hearing the charges were deemed admitted. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of*

Sammons, 1972 *S.L.D.* 302, 321. Teacher had posted comments on her Facebook page ridiculing a child's name. Regardless of whether or not she intended her comments to be made public, her conduct was immature and hurtful and falls below the "role model" status that is expected of teachers. Teacher's sincere sense of remorse coupled with her long and unblemished record and her cogent explanation of what transpired in her life during that time period, militate against the revocation of her certificates. Thus, the SBE believes that the appropriate sanction in this case is the suspension of the teacher's certificates. *IMO the Certificates of Yvette Nichols*, Exam. 2014: October 23

State Board of Examiners voted to suspend teacher's Teacher of Elementary School in Grades K-5 and Teacher of Elementary School With Subject Matter Specialization: Mathematics in Grades 5-8 Certificates of Eligibility, and his Teacher of Elementary School in Grades K-5 and Teacher of Elementary School With Subject Matter Specialization: Mathematics in Grades 5-8 certificates for two years. Teacher had altered an employment experience letter to increase the length of his employment and signed an individual's name to the letter on two occasions without authorization. The Commissioner has long held that teachers serve as role models for their students. The Board does agree with the ALJ that, although teacher's fraud does not comport with "role model" behavior, the mitigating factors in this case militate against the harsher penalty of revocation, which this Board has imposed when an individual has submitted a fraudulent certificate to gain employment. "Teachers… are professional employees to whom the people have entrusted the care and custody of … school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. However, teacher 's acts of forging his former employer's name on his employment verification letter on two occasions and altering his employment end date at Pride in order to gain an additional year of experience, call for something more than a one-year suspension of his certificates. Teacher's conduct was not de minimis in nature and should not be treated as such. The Board believes that the appropriate response is a two-year suspension of his certificates. *IMO the Certificates of Darryl T. Powell*, Exam. 2014: October 23

STATE HEALTH BENEFITS COMMISSION

Appellate Division affirms convictions of board of education security guard who committed theft by deception in psychiatrist's scheme to defraud the State Health Benefits program through the submission of false claims. Convictions on conspiracy to commit theft, conspiracy to commit official misconduct and official misconduct. State v. DeCree, 343 N.J. Super. 410 (App. Div. 2001).

Commission erred in denying retiree's request for free medical coverage. Retiree had more than 25 years of aggregate service credit from three retirement systems and was not required to have full credit from a single system. Barron v. State Health Benefits Commission, 343 N.J. Super. 583 (App. Div. 2001).

STATE INTERVENTION

Appellate Division finds that Commissioner did not act arbitrarily in refusing to recommend partial withdrawal of the State's intervention in the Newark in the areas of fiscal management, personnel and governance. Fluctuating scores indicate that the district has not exhibited "sustained and substantial progress" in satisfying the pertinent indicators of quality performance. Statute does not require the Commissioner to recommend withdrawal of State intervention merely because a district may have achieved a score of 80 percent or greater in a key area of effectiveness in a three-year comprehensive review; Commissioner must initiate withdrawal in area only if district has successfully implemented improvement plan and made sufficient progress in meeting the relevant quality performance indicators. The Commissioner retains broad discretion in making those findings. Affirmed in part, dismissed in part per representation at oral argument that Commissioner will initiate the process for partial withdrawal in fiscal management. *In re Newark QSAC Appeal, 2013 N.J. Super. Unpub. LEXIS 1682 (July 8, 2013)(published)*

Appellate Division finds the Commissioner did not act arbitrarily in declining to recommend the partial withdrawal of State intervention in Paterson and affirms. Although the district scored 88% in governance, the District had not demonstrated "sustained and substantial progress," and the Commissioner's decision reflects consideration of other factors. *In re Paterson Sch. Dist. QSAC, 2013 N.J. Super. Unpub. LEXIS 2046 (App. Div. August 15, 2013)(published)*

STATE MONITOR

State Monitor's decision overturning reinstatement of employee by board of education upheld where it was not arbitrary and capricious for the Commissioner to conclude that the "exposure to potential legal liability" provided "a valid fiscal rationale" for the action taken; that the monitor's decision was "related to the fiscal management of school funds, and thus falls within the statutory authority of a state monitor." Rankins v. Board of Educ. of Pleasantville, No. A-1662-10T4, A-1697-10T4 (App.Div. Oct. 22, 2012)

STATE OPERATED SCHOOL DISTRICTS

Takeover statute supercedes implied contract claim; executive administrators whose positions were abolished during state takeover were not entitled to full contractual salary or accrued sick, vacation or personal leave days; statutory 60 days' pay ordered to all except accountant. (99:Jan. 4, Caponegro, et al., aff'd St. Bd. 99:April 7, aff'd in part except to extent St. Bd. denied compensation for accumulated vacation sick days remanded for reconsideration and calculation of these benefits in accordance with board's policy and procedure manual and past practice, 330 N.J. Super. 148 (App. Div. 2000), remanded to Commissioner, St. Bd. 00:June 7)

Tenured central office administrator/supervisor, whose position was abolished pursuant to takeover, and who was placed upon reorganization in separately tenurable, non-central office, school-based administrative position (vice principal), did not acquire tenure on first day of employment; N.J.S.A. 18A:7A-44(c), did not apply to non-central office staff. (00:Oct. 2, Di Como, aff'd St. Bd. 01:April 4, aff'd App. Div. unpub. op. Dkt. No. A-4903-00T3, May 20, 2002)

When a central office supervisory position is abolished pursuant to state takeover, all tenure and seniority rights to and originating from that position are also abolished. (99:June 14, Leong)

Where "at will" employees were terminated by discretionary action of State superintendent rather than abolishment of their positions pursuant to the takeover statute, they were not entitled to relief under the statute. (99:June 1, Gonzalez, rev'd St. Bd. 00:May 3; remanded for the computation of damages, appeal moves forward, App. Div. unpub. op. Dkt. No. A-5434-99T5, Dec. 8, 2000, remanded to Commissioner; St. Bd. 01:Feb. 7, damages calculated by Comm. 01:Sept. 14, aff'd as modified, St. Bd. 01:Oct. 3, aff'd 345 N.J. Super. 175 (App. Div. 2001), certification denied 171 N.J. 339 (2002).

STATUTE OF LIMITATIONS

Court dismissed several asserted causes of action alleging violations of 42 *U.S.C.* 1983 and remanded several state claims to superior court. Complainant failed to file within the two year statute of limitations. Allegations of retaliation are personal injury claims that are subject to the two year statute of limitations contained in the New Jersey Civil Rights Act. Each alleged act was a discrete incident giving rise to a separate cause of action and could not be considered as a continuing course of conduct. *Borello v. Elizabeth Bd. of Educ.,* Dkt. No. Civ. No. 14-3687 (D.N.J. Oct. 22, 2014)

STAY

Motion for stay of civil proceeding pending outcome of criminal proceeding granted. High school principal accused of engaging in a continuing pattern of extremely inappropriate, unwelcome, harassing, and sexually suggestive communications with Plaintiff. Defendant is charged with

multiple criminal offenses included multiple counts of lewdness, sexual contact and aggravated sexual contact, criminal coercion, and luring and/or enticing. Colombo v. Bd. of Educ. for the Clifton Sch. Dist., Civil Action No. 11-00785 (CCC), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 127771, Decided November 4, 2011.

STUDENTS - Admission/Enrollment

By court order, residential custody of student was shared between mother and grandmother; mother on the weekends and grandmother during the week. Student's residency for school purposes followed that of the grandmother during the week. Student was entitled to a free public education in the grandmother's school district. (V.S-L., o/b/o Z.M.M., Commr. 2007:July 9)

State Board reverses Commissioner's 2004 ruling that board did not violate student's right to a free public education when it gave the student no option but to attend a non-credit basic skills adult program, after she had failed all her classes due to poor attendance record; State Board finds that an adult school may not be used as a vehicle for providing an alternative educational plan for students who, by virtue of their age, still have an entitlement to T&E. (G.C., St. Bd. 2007:April 4)

No property interest of constitutional proportions is implicated when school transferred student to another program instead of expelling him. Transfer to another school for disciplinary reasons is not a form of punishment. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

Although district could have performed manifestation determination, in light of the fact that district could have suspended student for 45 days for drug use, ALJ's order returning pupil to school reversed. A.P. v. Pemberton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 32542 (D.N.J. May 15, 2006)

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., Commr., 2008: Feb. 25.

Student did not prove that she was denied admission to district's schools by board's placement of student in non-credit basic skills adult program, after pupil had failed all her classes due to poor attendance record; board is not required to create an IEP for a non-special education pupil. Motion to supplement the record denied. C.G., St. Bd. 2005: May 4.

Commissioner dismisses parent's request that district place her son in the school of her choice because the school in which he was placed did not meet AYP under the No Child Left Behind Act; the NCLBA contains no provision for individuals to enforce the notice, transfer or SES provisions; enforcement action is vested solely in the Secretary of Education. (F.R.P., Commissioner 2008: December 8)

Commissioner determined parent failed to prove that the district acted arbitrarily, capriciously, or unreasonably where district transferred student to an alternative educational program for disciplinary and academic reasons. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

State District Superintendent's transfer of student from regular program to alternative placement was not arbitrary or unreasonable and lacks the punitive nature of suspension or expulsion. Transfer was a measured response to the student's behavioral and academic deficiencies. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

Petitioners who filed with the Commissioner alleging that their child's application for admission to the Governor's School of Engineering and Technology was rejected on the basis of racial discrimination, could not simply transfer the matter to the Division on Civil Rights (DCR) as if originally filed with that agency; rather, they must file new complaint with DCR while instant complaint is held in abeyance. (J.C., Commr. 2007:June 12)

Commissioner reinstates and denies parent's application for emergent relief claiming that restrictions placed on her access to school property are unlawful and make it impossible for her to send her 8-year old child to school; Commissioner grants board's counterclaim for interim judgment requiring the parent to send her son to the district school or some other school; Commissioner directs Board to initiate truancy proceedings if parent fails to provide schooling for her son within a week. A.M.M. o/b/o G.M., Commr. 2009:Nov. 30.

Commissioner lacked jurisdiction to decide mother's claim for emergent relief based on allegations of racism, retaliation and other improper motives involving district's placement of her son at alternative school following an alleged assault; since mother disenrolled student, Commissioner lacks jurisdictional authority to grant relief. R.W. o/b/o A.W., Commr. 2009:Dec. 2.

Parent challenged school district's ability to test students to determine grade placement after a year of home schooling. Emergent relief application was denied as "it is well settled that school districts may test children to determine grade placement" and "the statutes specifically reserve to the local school district the right to prescribe its own rules for promotion." Final decision raised issues of tutoring under NCLB, for which there is no private right of action, slander or libel, which can be adjudicated in Superior Court and civil rights and discrimination claims which can be brought to the Division of Civil Rights. Petition was dismissed. R.W., Commr. 2009: October 30

Father's request for emergent relief to have child removed from private school in which her mother placed her in 2006 or 2007 and enrolled in the school district, is denied. Standards for emergent relief not met. The child's current enrollment precludes a finding of irreparable harm, and petitioner has not demonstrated a settled right, let alone a likelihood that his claim can succeed. The correct forum for this claim is Superior Court, Family Division. Commissioner has no jurisdiction under the school laws to

adjudicate custody rights, or to order a non-party parent to transfer her child from private school to a public school. R.C., Commr. 2009: October 7

Student of separated parents, who resided with father while mother recuperated from illness in another town, was resident of father's school district. Board's decision to disenroll student reversed. M.K., Commr. 2009: August 26

Curriculum

A Board of Education was held in contempt for failure 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. The Court held that unless the board complies or is excused for factors beyond its control, it will be assessed a fine of $ 250 for each day of material non-compliance. L.J. v. Audubon Bd. of Ed., No. 06-5350 (JBS), 2008 U.S. Dist. LEXIS 12337 (D.N.J. February 19, 2008). L.J. v. Audubon Bd. of Ed., No. 06-5350, 2007 U.S. Dist. LEXIS 62080 (D. N.J. Aug. 22, 2007).

State Board affirms Commissioner determination that board of education's refusal to issue student laptop computer for the 2005-2006 school year was reasonable and permissible, as student's parents refused to comply with school district computer use policy. (R.H., St. Bd., 2007:May 2).

Discipline

Commissioner denies emergent relief to pro se parent of 7-year old student who was suspended for violent disruptive behavior and placed on long-term suspension with home instruction, as most issues were mooted by board's agreement to return student to classroom and provide expedited assessments by child study team. (B.G., Comm'r., 2008:May 20).

Commissioner determined that student has the right to contest short term suspension to Commissioner. (E.T. o/b/o/ T.T., Commr., 2008: July 7)

Commissioner determined that pursuant to N.J.A.C. 6A:16-7.3 (a) (11), after a formal hearing a district must provide a student's parents with a statement setting forth the charges that were brought, a summary of the evidence, its factual findings and determinations, the terms and conditions of the suspension, the educational services to be provided during the suspension and an advisement that the parent may appeal to the Commissioner. Here, the facts upon which the charge was based, the policy number alleged to have been violated, and articulation of T.T.'s due process rights (see N.J.A.C. 6A:16-7.2 (a) (3) (ii), (iii) and (iv)) were not evident in the notice. (E.T. o/b/o/ T.T.,

Commissioner upheld board's suspension of student who brought air pistol to school. The soft air pistol shot pellets, and met the definition of a firearm as set forth in N.J.S.A. 2C:39-1f. Student admitted that he had the gun on the school bus and in his locker on school property; there was no violation of procedural due process; and the Board's disciplinary action was not arbitrary, capricious, or unreasonable. (D.H. o/b/o/ G.H., Commr., 2007: April 5).

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., Commr., 2007: Dec. 27)

Court upheld district reasonable suspicion drug testing policy despite the absence of a provision requiring parental consent prior to testing. Board's motion for summary judgment granted in part and denied in part. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Commissioner adopted Initial Decision finding that board's disciplinary actions in suspending students and removing them from the honors program for plagiarism and unauthorized downloads was not arbitrary, capricious or unreasonable. (T.B.-M. o/b/o M.M., Commr., 2008:April 7)

Commissioner adopted Initial Decision dismissing parent's appeal of district's decision to transfer child to alternative school as moot where parent withdrew child from the district rather than send the child to an alternative school during the pendency of the proceedings. (R.W. o/b/o Minor Child A.W., Commr., 2008:March 18)

District failed to prove that student's act of pushing two girls' heads down toward his groin constituted a violation of district policy against harassment, intimidation or bullying. No evidence that act was motivated by any actual or perceived characteristic such as gender… and harmed, caused fear or demeaned the students in such a way as to cause disruption or substantial interference with the orderly operation of the school. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

Board's motion to dismiss granted in appeal of ALJ's dismissal of plaintiff's due process complaint regarding student suspensions. Complaint deemed insufficient for failure to allege facts related to the suspensions and failure to propose a remedial plan. M.S.-G v. Lenape Reg'l High Dist. Bd. of Educ., Civil Action No. 06-cv-02847 (JHR), 2007 U.S. Dist. LEXIS 5414, Decided January 24, 2007. Court of appeals affirmed the dismissal of parents' challenge to the suspension of their disabled son; the parents' complaint failed to conform to the IDEA's pleading standards. M.S.-G v. Lenape Reg'l High Sch. Dist. Bd. of Educ., No. 07-1567, 2009 U.S. App. LEXIS 604 (3d Cir.

Commissioner determined that student faced with short-term suspension is not entitled to due process protections that included a hearing before the board of education, or a written explanation of the reason for the short-term suspension. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Pro se parent's repeated refusal to file their brief on the district's attorney resulted in dismissal of the parents' challenge to disciplinary action imposed by the school district. (D.T. v. Bridgewater Bd. of Ed. St. Bd. Feb. 2, 2005, aff'd App. Div. May 12, 2006, No. A-3629-04T13629-04T, Certification denied September 6, 2006).

Neither N.J.S.A. 18A:37-3 nor any other statute authorizes the Commissioner to award counsel fees to a school district arising out of its pursuit of disciplinary action against a student; nor may a Board withhold or threaten

to withhold diplomas in order to collect discipline-related counsel fees. (Licciardi, Commissioner 2008: December 5)

Although district could have performed manifestation determination, in light of the fact that district could have suspended student for 45 days for drug use, ALJ's order returning pupil to school reversed. A.P. v. Pemberton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 32542 (D.N.J. May 15, 2006)

State Board denies leave to appeal the Commissioner's denial of motion for interlocutory review of the ALJ's denial of motion to compel answers to student's latest set of interrogatories, in student suspension case involving a student with a knife. (R.O. o/b/o R.O., St. Bd., 2006: March 1) (Decision on Motion). (R.O., St. Bd. 2007:Oct. 17)

Commissioner determined that district lacked rational basis to continue a student's suspension indefinitely where psychologist indicated that risk of physical harm to other students was minimal, student had no prior history of violence, and student was harassed by peers. Commissioner reminded district of its obligation to ensure a harassment-free educational environment. (O.E. o/b/o Minor Child A.E., Commr., 2007: Dec. 7)

Commissioner determined that parent had the burden of demonstrating by a preponderance of the credible evidence that the board's decision to continue a student's suspension indefinitely was arbitrary, capricious, or unreasonable. Commissioner reminded district of its obligation to ensure a harassment-free educational environment. (O.E. o/b/o Minor Child A.E., Commr., 2007: Dec. 7)

Commissioner granted parent petition to reinstate child to regular education program after he was indefinitely 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., Commr., 2007: Dec. 7)

Commissioner determined parent failed to prove that the district acted arbitrarily, capriciously, or unreasonably where district transferred student to an alternative educational program for disciplinary and academic reasons. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

Commissioner adopted and modified Initial Decision that found district was not arbitrary, capricious, or unreasonable where it imposed discipline upon D.L. that limited his 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., Commr., 2008:March 7)

Commissioner determined that board's nullification of five day bus suspension and any and all disciplinary actions made matter moot, hearing not required. Matter dismissed with prejudice. (D.T. Commr., 2003: Oct. 29) (Affirmed St. Bd. 2005: Feb. 2) (Affirmed App. Div. May 12, 2006) DOCKET NO. A-3629-04T) (Certif. denied, 188 N.J. 352 (2006)).

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., Commr., 2008: Feb. 25.

State Board of Education reverses the State Board of Examiners' decision to revoke the certificates of the teacher's Teacher of Nursery School and Teacher of Elementary School certificates. There was no proof that teacher had urged victimized students to hit others; nor was forcing a student to mix chocolate milk with her lunch and then eat the mixture as a mode of discipline a serious enough infraction to warrant revocation of her certificate, especially where her increments had already been withheld by the district. The State Board ordered the teacher's certificates to be reinstated. (Troublefield, Exam, 2006: March 8, aff'd St. Bd. 2007:Jan 3)

Charge that student used force against another student in locker room incident sustained. Penalty of one-day suspension deemed excessive under the circumstances of the incident. One-day suspension reduced to written reprimand. (L.L., Commr., 2008:October 15)

Student's OPRA complaint is dismissed where student, who was suspended from middle school for ten days and adjudicated in the Family Part for weapons possession, sought criminal investigatory records from police, including all narrative reports and complaints related to weapons possessions on school grounds over 6-year period. Appellate Division affirms summary judgment dismissal,as investigatory reports and juvenile records are exempt from production. R.O. v. Plainsboro Police Dep't, (A-5906-07T2) 2009 N.J. Super. Unpub. LEXIS 1560 (App Div June 17, 2009.)seeking information related to the number and racial composition of juvenile arrests and charges.

Board's long term suspension of student for incident involving profanity, threatening behavior and intimidation, combined with student's record of disciplinary infractions was not arbitrary, capricious or unreasonable. Board's discipline upheld. A.F., Commr. 2009: September 15

Commissioner lacked jurisdiction to decide mother's claim for emergent relief based on allegations of racism, retaliation and other improper motives involving district's placement of her son at alternative school following an lleged assault; since mother disenrolled student, Commissioner lacks jurisdictional authority to grant relief. R.W. o/b/o A.W., Commr. 2009:Dec. 2.

District court determined that parent claims alleging a violation of the NJLAD in allowing a hostile school environment to exist were sufficient to survive a motion for summary judgment. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

Parents sought reversal of son's suspension for 5 school days and expungement of record where son was caught with one allergy pill under Board's zero tolerance policy. Court affirms Commissioner's dismissal for failure to file within 45-days; however, constitutional challenge to the board's policy is remanded to Law Division. P.P. v. Board of Educ. of the Pinelands Reg'l Sch. Dist., NO. A-2683-09T2, 2011 N.J. Super. Unpub. LEXIS 66 (App. Div. January 11, 2011).

Appellate Division affirms Law Division's dismissal of complaint by classified student who, in 2000, was expelled with homebound instruction until age 16 after testing positive a second time for illegal drugs; court finds that student had abandoned administrative remedies prior to exhaustion, and instead attempted to vindicate his rights in district court and Law Division. Further, law in 2000 did not require alternative educational services pending completion of the administrative proceedings, and parents had not been diligent in assuring student's enrollment in drug treatment that would have made alternative education options more feasible. Gutin v. Washington Twp. Bd. of Educ., A-1736-09T3, 2011 N.J. Super. Unpub. LEXIS 431 (App. Div. February 24, 2011).

Commissioner grants board's motion to dismiss petition as petitioning student and his counsel failed to appear; Petitioner's counsel's explanation, namely that he did not want to appear because his request for an adjournment and his request to brief an issue had been denied, were not sufficient cause to excuse the failure to appear. Matter involved petition for expungement from student's record of a one-day out-of-school suspension, reinstatement to the hockey team, and removal from his school record of all disciplinary actions relative to a "swirly" incident. Masini, Commr 2011:Oct 21 (Hunterdon Central)

Parents challenged the Board's decision to suspend their son from varsity basketball games and scrimmages as discipline for under-aged consumption of alcohol off school grounds. Matter was dismissed as moot where, in the interim, student served his suspension from the basketball team, participated in balance of the basketball season, and graduated. Commissioner declines to hear case despite parent's argument that underlying issues are likely to reoccur, but capable of evading review. Temporary exclusion from the privilege of extracurricular athletics flowed not just from respondent's policies, but also from a contract between parties. S.N.K. and S.K., 2011:Nov 17 (Highlands Reg)

Emergent relief denied to student athletes challenging board decision prohibiting their participation in extra-curricular activities including football game, where pending criminal charges were filed against them after physical altercation off school grounds after a party and where administrator's certification demonstrates nexus and impact on operation of the schools regarding administrative time and concern for student safety. Crowe standards not met with respect to settled nature of claim, likelihood of success or equities. L.A., o.b.o. R.A. et al, 2011:Dec. 2 (Wayne).

Emergent relief denied to student athlete who is also plaintiff in companion case challenging suspension from extra-curricular activities relative to a separate incident; Commissioner rejects his due process arguments and his retaliation argument; student fails to meet Crowe standards. Monaghan, 2011:Dec. 2 (Wayne)

Commissioner remands to the OAL for further disposition of matter where mother whose son was suspended wished to litigate the issue of home bound instruction, but failed to appear at the hearing; she filed hand-written

exceptions to the ALJ's decision dismissing the matter explaining that her failure to appear was beyond her control and that she was waiting for an attorney to assist her. R.W., obo, J.W. , Commr 2012: Jan 23. (Wash Twp-Gloucester)

Commissioner adopts ALJ recommendation that any document referencing a long-term suspension between December 20, 2011 and January 25, 2012 be expunged from student's school records. Student not afforded due process rights attendant to a long term suspension; formal hearing, decision by the board, home instruction after 5 days. Request for compensatory education dismissed. Commissioner of Education does not have jurisdiction to adjudicate challenges to the IDEA, nor may he award remedies designed to compensate students for IDEA violations. *A.K. o/b/o L.K.*, Commissioner 2014: March 21

Discrimination

District court granted partial summary judgment in favor of school district and employees who allegedly engaged in discrimination and violated parent and child's civil rights under the Fourteenth Amendment, the NJLAD, and various other state and federal claims by using racially derogatory terms and participating in a conspiracy. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

District court determined that parent demonstrated sufficient evidence of a civil conspiracy involving local police and school district officials to survive summary judgment motion. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

District court determined that parent claims alleging a violation of the NJLAD were not barred by the 11th Amendment where the district has not demonstrated that it is immune from federal suit due to its status as an arm of the state. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

District court determined that superintendent was not immune from parental claim of malicious prosecution under the NJ Tort Claims Act where superintendent allegedly intentionally contributed to fraudulent criminal charges. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

A school district may be held liable under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, when students harass another student because of his perceived sexual orientation. A school district will be liable for such harassment if it knew or should have known of the harassment but failed to take reasonable remedial actions, under a modified, Lehmann workplace standard.L.W. v. Toms River Regional Schools Bd. of Ed.___ N.J. ___(2007), 2007 N.J. LEXIS 184

District court determined that parent demonstrated facts sufficient to defeat a motion for summary judgment under the NJLAD where parent claimed that district administrators allowed a hostile school environment to exist. Court determined that a jury could find that the discriminatory conduct

merited punitive damages against the administrators. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

Parent who was seeking assurances about protection against religious-based hate crimes upon student's reenrollment, but then changes mind and decides to home school student. Therefor, there is no longer any controversy and matter is dismissed for lack of jurisdiction.(Comm'r 2007:June 14.)

Parent failed to prove that transfer of student from regular program to alternative placement was in retaliation for parent's involvement in PTO. Complaints about student came from varied individuals. (V.W., Commr. 2006: Sept. 7, aff'd St. Bd. 2007:March 7).

District court determined that teacher who allegedly excluded student from practicing for the Christmas play because she was Black, was not entitled to qualified immunity because the facts demonstrated a constitutional violation and alleged conduct was violative of a clearly established right to equal protection. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

Petitioners who filed with the Commissioner alleging that their child's application for admission to the Governor's School of Engineering and Technology was rejected on the basis of racial discrimination, could not simply transfer the matter to the Division on Civil Rights (DCR) as if originally filed with that agency; rather, they must file new complaint with DCR while instant complaint is held in abeyance. (J.C., Commr. 2007:June 12)

District court determined that parent who alleged that superintendent used racial slurs against her, conspired to file a false police report, and failed to stop 18 months of abuse of parent's child by peers, raised sufficient basis of discriminatory impact and motive so as to defeat motion for summary judgment. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

District Court denied parent's section 504 claim that school district failed to provide a manifestation determination where parents refused classification. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

District Court determined to dismiss special education student's sect. 1983 claims because sect. 504 and the IDEA have comprehensive remedial schemes, therefore sect. 1983 is not available to enforce those statutes. 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).

District Court determined that school district's offer of special education and related services and/or 504 accommodation was irrelevant where parents claimed discrimniation on the basis of a perceived disability, where parents sought entry into regular education program for non-disabled child. M.G. v. Crisfield, No. 06-CV-5099, 2008 U.S. Dist. Lexis 16953 (D. N.J. March 5, 2008)

District court determined that plaintiff who alleged that superintendent excluded student from practicing for the Christmas play because she was Black, produced evidence of intentional invidious race-based discrimination

sufficient to survive summary judgment motion. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

District Court determined that parent need not prove intentional discrimination in order to prove a section 504 violation. 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).

District court determined that district and administrators were not entitled to qualified immunity against parent's Section 1983 and NJLAD claims alleging retaliatory conduct against parent and her children where administrators repeatedly spoke to children about a pending lawsuit. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

Request for emergent relief denied where board was seeking order for the provision of additional aid. Motion for participation as amicus curiae and to consolidate appeals granted. Commissioner ordered to take measures necessary to continue funding programs aimed at addressing racial imbalance and to develop benchmarks measuring progress toward achieving racial balance. Englewood Cliffs, St. Bd. 2005: June 1.

District court determined that district and administrators were entitled to qualified immunity against parent's 14th Amendment claim alleging the existence of a hostile school environment. The 14th Amendment does not automatically embrace nonfeasance by school officials where evidence of harassment by peers is found. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

District court determined that chief of police/board member was entitled to qualified immunity against parent's 14th Amendment claim where a reasonable school board member would not have known that withholding information related to a criminal complaint from the board would have been unlawful. Joyce v. City of Sea Isle, No. 04-5345, 2008 U.S. Dist. Lexis 25880 (D. N.J. March 31, 2008).

In motion seeking to amend the complaint involving special education dispute, court will allow equal protection, right to privacy, and NJLAD claims to move forward. M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 83419 (D.N.J. Sept. 11, 2009) See also M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 93643 (D.N.J. Sept. 11, 2009)

Parent challenged school district’s ability to test students to determine grade placement after a year of home schooling. Emergent relief application was denied as “it is well settled that school districts may test children to determine grade placement” and “the statutes specifically reserve to the local school district the right to prescribe its own rules for promotion.” Final decision raised issues of tutoring under NCLB, for which there is no private right of action, slander or libel, which can be adjudicated in Superior Court and civil rights and discrimination claims which can be brought to the Division of Civil Rights. Petition was dismissed. R.W., Commr. 2009: October 30

In the context of a peer sexual harassment suit, the Court held that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for 42 U.S.C. §1983 suits as a means of enforcing constitutional rights. Absent contrary evidence, Congress intended Title IX to allow for parallel and concurrent 42 U.S.C. §1983 claims. Fitzgerald v. Barnstable School Comm., 129 S. Ct. 788 (2009).

Board of education did not violate the NJLAD when Biddy Basketball League, which used board of education facilities, refused 12 year old girl's request to play on 5th and 6th grade boys team. J.A. v. Vill. of Ridgewood Bd. of Educ., No. 07-1179 (DRD), 2009 U.S. Dist. LEXIS 41100 (D.N.J. May 13, 2009.)

Court denies district's motion for reconsideration of its decision denying in part district's motion for summary judgment, in a matter alleging district violations of the student's rights to due process, equal protection and under the LAD, and Civil Rights Act , when it acted with deliberate indifference to a racially hostile environment by transferring student to an alternative placement after he had been the victim of several racially harassing incidents. Lee v. Lenape Valley Reg'l Bd. of Educ., Civil Action No. 06-CV-4634 (DMC), 2009 U.S. Dist. LEXIS 76997 (D. N.J. August 26, 2009) (not for publication)

Parent alleged that the district was deliberately indifferent to a racially hostile environment when the district transferred E.L. to an alternative placement after he had been the victim of several racially harassing incidents. Motion for summary judgment denied for claims under due process and equal protection clauses, 42 U.S.C. §1983, Law Against Discrimination, and Civil Rights Act. Student's claims of deliberate indifference under Title VI are dismissed because Title VI requires a showing of intentional discrimination. Lee o/b/o/ E.L., v. Lenape Valley Reg'l Bd. of Ed., Civil No. 06-CV-4634, 2009 U.S. Dist. Lexis 26788, (D. N.J. March 31, 2009).

Parents' claims were dismissed; while they could prosecute their legally cognizable interests in their son's FAPE without an attorney, in the Third Circuit, they did not have the right to represent their son over NJLAD, procedural due process, or common law counts alleged in their Amended Complaint; further, they failed to pursue their administrative remedies. Woodruff v. Hamilton Twp. Pub. Sch., No. 08-2439, 2009 U.S. App. LEXIS 834 (3d Cir. Jan. 15, 2009).

Dress Codes

Commissioner determined that board adhered to statutory requirements in adopting a uniform policy. Parents failed to show that any harm would result to the student if required to wear a uniform. (Rittberg-Snuffer, Commr., 2009: Jan. 7)

Challenge to Board's student uniform policy was dismissed because it was filed outside the 90-day limitation period; Petitioners provided no factual or legal justification which would warrant relaxation of rule (Coles, Commr 2006: Dec. 8).

Plaintiffs entitled to reasonable attorneys' fees in the amount of $574,244.60 as prevailing party in case concerning First Amendment issues arising from board's enforcement of dress code policy. Sypniewski v. Warren Hills Reg'l Bd. of Educ., 2006 U.S. Dist. LEXIS 39285 (D.N.J. May 18, 2006)

The delay of three years from the conducting of a parent survey to the implementation of its student uniform policy, did not render the policy invalid where the community had consented and the requirements of N.J.S.A. 18A:11-8, including those with regard to disadvantaged students, were met. (Dare, Commr. 2007:May 18)

State Board affirms ruling below denying parents emergent relief from application of the district's school uniform policy; parents filed outside the 90-day limitation period set forth in N.J.A.C. 6A:3-1.3(d) and provided no factual or legal justification which would warrant relaxation of this rule, nor did they establish grounds for medical or religious exemptions. (Coles, St. Bd. 2007:April 4)

After board adopted a dress code policy, parents contested the constitutionality of the law authorizing boards to adopt dress code policies. Appellate Division upheld the district dress code policy. Statute was deemed constitutional even though it failed to contain an opt-out provision; the law was neither vague or overbroad. Board policy was adopted in conformance with statute. Dempsey v. Alston, 405 N.J. Super. 499 (App. Div. 2009), certification denied, Dempsey v. Alston, 199 N.J. 518 (May 21, 2009)

Extra Curricular Activities

Appellate Division dismissed complaint of former basketball player who filed suit because the high school yearbook contained a game photograph in which complainant's genitals were exposed. No evidence of willful misconduct so as to avoid the requirement to show objective evidence of permanent injury under the Tort Claims Act. No evidence of emotional distress. Bennett v. Freehold Regional BOE, A-3240-04 (App. Div. June 23, 2006) (unpublished slip op. at 5), certif. denied October 17, 2006, No. 59,866.

Commissioner upheld NJSIAA decision to place high school basketball program on probation for two years in order to to compel Camden to address systemic flaws and gaps in the supervision and operation of its basketball program to be a reasonable exercise of the NJSIAA's authority and responsibility for oversight of interscholastic athletic activity statewide. (Camden, Commr., 2006: Dec. 28)

Commissioner upheld NJSIAA's findings and conclusions that charter school had engaged in athletic recruitment in violation of Article V, Section 4D of the NJSIAA bylaws. Commissioner also upheld penalty placing boys' basketball team and its coach on probation, and were disqualified from tournament competition, for a period of two years. (Leap Academy University Charter School, Commr., 2007: April 3).

3rd Circuit held that school district failed to show that materials distributed by the fellowship represented "school-sponsored" speech and therefore upheld the preliminary injunction prohibiting the district from discriminating against petitioner. (Child Evangelism Fellowship v. Stafford Twp Sch.

Dist., No. 02-4549 2006 U.S. Dist. LEXIS 62966 (D.N.J. Sept. 5, 2006) on remand from 386 F.3d 514, 2004 U.S. App. LEXIS 21473 (3d Cir. N.J. 2004)

Commissioner determined that NJSIAA did not act arbitrarily, capriciously, or unreasonably in denying student-athletic eligibility after transfer from private school to public school. Transfer to address academic issues did not constitute a hardship under NJSIAA rules. (D.S.J. o/b/o minor child J.J., Commr., 2009:March 13)

Parent was unsuccessful in invasion of privacy claim that PTA exploited her daughter for its commercial benefit by selling videotape of play in which she tripped; parent signed consent form issued by board, proceeds went to charity, only incidental use of her likeness, any damage merely speculative; case interesting for its analysis of tort of invasion of privacy. Jeffries v. Whitney Houston Academy PTA and East Orange BOE, App. Div. unreported decision (A-1888-08T3, July 20, 2009)

Board of education did not violate the NJLAD when Biddy Basketball League, which used board of education facilities, refused 12 year old girl's request to play on 5th and 6th grade boys team. J.A. v. Vill. of Ridgewood Bd. of Educ., No. 07-1179 (DRD), 2009 U.S. Dist. LEXIS 41100 (D.N.J. May 13, 2009.)

Grades

State Board reverses Commissioner's 2004 ruling that board did not violate student's right to a free public education when it gave the student no option but to attend a non-credit basic skills adult program, after she had failed all her classes due to poor attendance record; State Board finds that an adult school may not be used as a vehicle for providing an alternative educational plan for students who, by virtue of their age, still have an entitlement to T&E. (G.C., St. Bd. 2007:April 4)

Parents of adult student, classified as eligible for special education and related services, challenged district policy that identified the pupil as a special education student via a notation on the pupil's high school transcript that all courses were transfer credits from other public or private schools, as a violation of the pupil's right to privacy pursuant to the Individuals with Disabilities Education Act. Commissioner concluded that pupil was not harmed by the insertion and dismissed the petition and further noted that violations of rights claimed under the IDEA fell outside the jurisdiction of the Commissioner. (J.B., Commr., 2003: March 5).

Graduation/Promotion

A board may not withhold or threaten to withhold diplomas in order to collect discipline-related counsel fees. (Licciardi, Commissioner 2008: December 5)

Commissioner dismissed complaint of student who challenged board decision not to issue her a diploma. Student had attained 121 credits of the 140 necessary to graduate. (Dowling, Commr., 2008: Feb. 5)

Commissioner dismisses parent's petition for reimbursement for summer chemistry class their daughter had taken after failing chemistry; their

petition was barred by the 90-day rule as the 90 days began to run as of the district's decision in May 2006 not to investigate or correct the alleged mistreatment of S.B. by her chemistry teacher; even absent a timeliness problem the Commissioner did not have jurisdiction to award consequential damages. (T.B. and M.B., Commr. 2007:May 24, aff'd St. Bd. 2007:Sept. 5)

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 conducted on an expedited basis to occur prior to student's graduation, since it would be rendered moot upon graduation. (C.W., Comm'r., 2008:June 13).

Health/Safety Issues

NJ Supreme Court held that private school stands in loco parentis to its students under the Child Sexual Abuse Act, where school provided food, shelter, education, recreation and succor to resident students. School also regulated the personal hygiene, monitored the cleanliness of their rooms, dictated the amount of money each student could have on campus, required students to write letters home and other activities. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

NJ Supreme Court held that neither Child Sexual Abuse Act nor Charitable Immunity Act immunized private school against liability for intentional torts committed 31 years earlier when plaintiff was sexually abused as a student. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

Defendant's D.N.J., Civ. R. 7.1(i) reconsideration motion was denied. Parents sought damages for loss of companionship, arising out of intentional injuries allegedly inflicted on their child by the individual, an employee of the school district. Individual defendant failed to show that court's denial of summary judgment on parents' loss of companionship claim was contrary to clearly settled New Jersey law. Legal precedent indicated that parents could recover for loss of companionship, arising from intentional injuries inflicted on child. H.T. v. E. Windsor Reg'l Sch. Dist., Civil No. 04-1633 (AET), 2007 U.S. Dist. LEXIS 2879, Decided January 12, 2007.

NJ Supreme Court held that private school is a person pursuant to the Child Sexual Abuse Act. Hardwicke v. American Boychoir, 188 N.J. 69 (2006).

Commissioner dismissed parent appeal of bus stop location. The Commissioner determined that placement of the bus stop was not in a dangerous location. (Goldberg, Commr., 2009:March 31)

District Court denied defendant's motion to dismiss plaintiff's claim under the Child Sexual Abuse Act as untimely. Face of complaint showed that it was brought within two years of discovery of the causal connection. Nunnery v. Salesian Missions Inc. 2008 U.S. Dist. Lexis 31207 (D. N.J. April 15, 2008).

District Court determined that district qualified as a "household" as defined in the Child Sexual Abuse Act. Nunnery v. Salesian Missions Inc. 2008 U.S. Dist. Lexis 31207 (D. N.J. April 15, 2008).

The Court dismissed, for lack of subject matter jurisdiction, a parents' IDEA / § 504 claims because Plaintiffs failed to exhaust their administrative remedies with respect to those claims arising out of their 16-year old son's positive drug tests and subsequent expulsion. Alternatively, these claims must be dismissed because § 1983 is no longer an available means to remedy the alleged violations. The federal court further declined to exercise supplemental jurisdiction over state law claims. Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2007 U.S. Dist. LEXIS 53298 (D. N.J. July 23, 2007)

District Court determined that district stood in loco parentis to students, even where the school was not a boarding school. Nunnery v. Salesian Missions Inc. 2008 U.S. Dist. Lexis 31207 (D. N.J. April 15, 2008).

The Court of Appeals affirmed a summary judgment motion against a parent who had brought a 1983 action against the school district and guidance counselor alleging that they were liable for her daughter's suicide under a state-created danger theory as well as negligence against the guidance counselor; the counselor's actions did not violate substantive due process (did not shock the conscience) as she followed district protocol and the student showed no suicidal signs during their discussion. (Sanford v. Stiles, No. 04-4496, (3d Cir. Aug. 2, 2006))

District Court denied defendant's dismiss plaintiff's negilgence, intentional infliction of emotional distress, and breach of fiduciary duty common law claims where the school's former principal was found to be an active abuser and the school was found to ba a passive abuser. Nunnery v. Salesian Missions Inc. 2008 U.S. Dist. Lexis 31207 (D. N.J. April 15, 2008).

Appellate Division found no evidence of willful misconduct where district employees failed to stop incident of hazing that injured student and deprived him of the ability to play guitar. Lapp v. Jackson Twp. BOE, A-5938-04 (App. Div. June 12, 2006) (unpublished slip op. at 31).

Appellate Division determined that the Institutional Abuse Investigation Unit of the N.J. Dept. of Human Services acted appropriately in issuing findings that teacher's disciplinary conduct was unjustified and inappropriate despite it's determination that allegations of abuse were unfounded. However, Court found that the Unit inappropriately sent letters to teacher and superintendent and ordered that they be amended to provide more information and to clarify that the findings were not binding upon the district. I.M.O. Physical Abuse Concerning A.I., 393 N.J. Super. 114 (App. Div. 2007).

Plaintiff student failed to deminstrate that supervising principal or teachers engaged in willful misconduct when they failed to stop a hazing incident involving band students. No evidence that employees knew or should have known of alleged long-standing practice of hazing. Lapp v. Jackson Twp. BOE, A-5938-04 (App. Div. June 12, 2006) (unpublished slip op. at 31).

Parent failed to establish that bus stop was dangerous or that board's decision to deny parental request to change the location of the stop was arbitrary, capricious or unreasonable. (F.P. on behalf of minor child K.P., Commr., 2007:Oct. 17, aff'd St. Bd. 2008:March 19.)

In order to successfully assert a 14th Amendment deprivation argument, plaintiff must raise a material issue of fact concerning the existence of an unofficial custom that is so pervasive as to be tantamount to law. A pervasive custom can be established by way of evidence that the relevant policymaking authorities knew of and acquiesced to the challenged practice. Patrick o/b/o/ Rosenberg v. Great Valley School Dist., No. 06-4270, 2008 U.S. App. Lexis 21340, (3d Cir. Oct. 9, 2008).

Appellate Division affirms Law Division order granting summary judgment to defendants and dismissing plaintiff's personal injury complaint. Matter involved student who missed the bus, tried to catch up to the bus and was struck by a car while crossing the road. Andrew Snyder, individually, Barbara Snyder and Gene Snyder, his parents vs. William J. Payne, Jr., Buena Board of Education and Judy Goodwin Unpublished Opinion, Dkt. No. A-3476-05, Decided November 28, 2006.

Commission may not deny coverage for medically necessary treatment for a dependent autistic child. The SHB Program's contractual exclusion of benefits for non-restorative speech, physical and occupational therapy, did not apply because the child's medical evaluations indicated that the therapy is the only treatment modality for an autistic child. Denial of the treatment amounts to exclusion from coverage of a class of dependents, notably afflicted children, based on the nature of their mental illness, which is beyond the limits of the statutory authority of the SHBC. In the Matter of Jacob Micheletti, 389 N.J. Super 510 (App. Div. 2007)

Court dismissed district's motion for summary judgment under the NJ Tort clams Act where student's allegations of sexual abuse against the district arose out of negligent hiring and/or supervision and not from the crime or willful misconduct of the alleged abuser who was employed as a campus monitor. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

Court denied district's motion for summary judgment where parents presented evidence showing that district policies concerning reporting child abuse and sexual harassment were not implemented. Court held that a triable issue of fact existed as to whether the district's alleged acts and omissions constituted deliberate indifference, or established a custom, policy, or practice that caused the student constitutional harm pursuant to 42 U.S.C. 1983. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

Appellate Division affirmed the trial court dismissal of parental complaint asserting negligent supervision, after daughter was struck in the eye by a computer mouse ball thrown by another student. The District's negligence, if any, was not the proximate cause of the injury. Lebitz v.

Phillipsburg BOE, A-5243-03 (App. Div. May 9, 2006) (slip op. at 10), certif. denied, Sept. 6, 2006, 188 N.J. 354(2006).

Commissioner affirms DOE's action to revoke the approval for a private school for students with disabilities, where as a result of expansion beyond approved capacity, the facility was insufficient for enrollment and not compliant with health and safety rules. All Can Excel v. NJDOE, Comm'r 2008:May 16.

Third Circuit dismissed parental complaint alleging that public health center violated unemancipated minor daughter's constitutionally protected right to bodily integrity, parental guidance, and freedom of religious exercise where the health center provided daughter with emergency contraception without notifying her parents. Anspach v. City of Philadelphia Dept. of Public Health, No. 05-3632 (3d Cir., Sept. 21, 2007), 2007 U.S. App. Lexis 22527.

The Tort Claims Act bar on pain and suffering claims against government defendants is intended to apply to the "intangible, subjective feelings of discomfort that are associated with personal injuries." Lapp v. Jackson Twp. BOE, A-5938-04 (App. Div. June 12, 2006) (unpublished slip op. at 31).

NJ Supreme Court affirmed Appellate Division decision that held that school's responsibility for its younger students does not end when the dismissal bell rings where the school may take reasonable steps to ensure that students are protected from foreseeable risks of harm which occur when they are dismissed from school without supervision. Jerkins v. Anderson, A-49-06, (N.J. June 14, 2007), A-1575-04 (App. Div. June 20, 2006) (slip. op. at 15).

Third Circuit affirmed District Court grant of summary judgment in favor of district but reversed grant of summary judgment in favor of boys' wrestling coach where coach directed plaintiff/student to scrimmage against an opponent who was 90 lbs heavier and who subsequently injured plaintiff/student. There was no evidence that the district had a policy or unofficial custom that allowed a state-created danger. Patrick o/b/o/ Rosenberg v. Great Valley School Dist., No. 06-4270, 2008 U.S. App. Lexis 21340, (3d Cir. Oct.9, 2008).

To prevail on a state-created danger claim, plaintiff must prove: (1) the harm to the plaintiff was foreseeable and fairly direct; (2) a state actor acted with a degree of culpability that shocks the conscience; (3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts; and (4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all. Patrick o/b/o/ Rosenberg v. Great Valley School Dist., No. 06-4270, 2008 U.S. App. Lexis 21340, (3d Cir. Oct.

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school day, issue of fact remained as to whether district breached that duty where district advised all parents of early dismissal. Jerkins v. Anderson, A-49-06, (N.J. June 14, 2007), A-1575-04 (App. Div. June 20, 2006) (slip. op. at 15).

Appellate Division held that a district's responsibility for students includes the duty to exercise reasonable care to ensure that younger students are properly supervised when dismissed at the end of the school day. Jerkins v. Anderson, A-49-06, (N.J. June 14, 2007), A-1575-04 (App. Div. June 20, 2006) (slip. op. at 15).

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NJ Supreme Court modified Appellate Division decision that held that the risk of harm was foreseeable where elementary school student was dismissed early from school without adult supervision. Supreme Court indicated that the ability to foresee harm does not in itself establish the existence of a duty but is crucial element in determining whether the imposition of a duty is appropriate. Jerkins v. Anderson, A-49-06, (N.J. June 14, 2007), A-1575-04 (App. Div. June 20, 2006) (slip. op. at 15).

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Commissioner dismisses as untimely, a student's constitutional challenge to district's zero tolerance drug policy as applied to his possession of an over- the- counter- allergy pill; however, separate challenge on facial constitutionality is outside jurisdiction of Commissioner but may be refiled in Superior Court. A.S., Commr. 2009:Dec. 16.

Personal injury action by student who was victim of assault by other students, is dismissed where 2-year statute of limitations was exceeded; injuries occurred in May 1981; no equitable tolling permitted as plaintiff knew of injuries when they occurred. Lawsuit not filed until June 2009. Webb v.

Perkiomen Sch., 2009 U.S. App. LEXIS 23027 (3d Cir. Pa. Oct. 19, 2009)(not precedential)

Appellate Division reverses trial court decision granting summary judgment to a school board and school and dismissing a former student's personal injury action for student struck by automobile on the way home from school; former student had complied with the notice requirements of New Jersey Tort Claims Act, N.J.S.A. § 59:8-8, when she sent such notice at the time of the accident, 10 years prior to the filing of her complaint; level of detail in the notice of claim was sufficient Lebron v. Sanchez, 407 N.J. Super. 204 (App. Div. 2009) (May 21, 2009.)

Appellate Division affirms in part and vacates in part trial court summary judgment dismissing plaintiff's complaint for damages under the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3 arising out of a high school cheerleading accident. Court affirms that plaintiff's injuries failed to satisfy the Act's verbal threshold for non-economic claims, but vacated and remanded as to plaintiff's economic damages. Baligian v. Hunterdon Central Reg. High School Bd. of Ed. , Docket No. A2026-08, App. Div., unpublished, Nov. 12, 2009.

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Home Instruction

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., Commr., 2008: Feb. 25.

Charter School is responsible for costs of special education student on home instruction, not local school district. (Golden Door Charter School, Commr., 2007: March 15, affirmed State Board, 2007: Aug. 1)

Parent challenged school district's ability to test students to determine grade placement after a year of home schooling. Emergent relief application was denied as "it is well settled that school districts may test children to determine grade placement" and "the statutes specifically reserve to the local school district the right to prescribe its own rules for promotion." Final decision raised issues of tutoring under NCLB, for which there is no private right of action, slander or libel, which can be adjudicated in Superior Court and civil rights and discrimination claims which can be brought to the Division of Civil Rights. Petition was dismissed. R.W., Commr. 2009: October 30

Commissioner reinstates and denies parent's application for emergent relief claiming that restrictions placed on her access to school property are unlawful and make it impossible for her to send her 8-year old child to school; Commissioner grants board's counterclaim for interim judgment requiring the parent to send her son to the district school or some other school; Commissioner directs Board to initiate truancy proceedings if parent fails to provide schooling for her son within a week. A.M.M. o/b/o G.M., Commr. 2009:Nov. 30.

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Privacy/Records

Commissioner determined that district use of juvenile court records was not improper in responding to parent appeal of short-term suspension. N.J.S.A. 2A:4A-60(c)(2) allows disclosure of delinquency proceeding records to agency which filed the complaint; building principal filed criminal complaint alleging that student brought knife onto school grounds. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Commissioner determined that district's absence as a party in delinquency proceedings did not bar the use of issue preclusion doctrine by the district, where district sought to use the findings of those proceedings as a basis to impose short-term suspension against student. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

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. Pursuant to N.J.S.A. 18A:36-19 and N.J.A.C. 6A:32-2.1, the records are student records which must be returned to the Board as the counselor is no longer assigned educational responsibility for these students. (Welty, Comm'r., 2008:May 12).

Commissioner determined that district use of juvenile court records was not improper in responding to parent appeal of short-term suspension. N.J.S.A. 2A:4A-60(A)(6) allows disclosure of family court proceeding records to agency with an interest in the case where the request is made through counsel. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Student's OPRA complaint is dismissed where student, who was suspended from middle school for ten days and adjudicated in the Family Part for weapons possession, sought criminal investigatory records from police, including all narrative reports and complaints related to weapons possessions on school grounds over 6-year period. Appellate Division affirms summary judgment dismissal,as investigatory reports and juvenile records are exempt from production. R.O. v. Plainsboro Police Dep't, (A-5906-07T2) 2009 N.J. Super. Unpub. LEXIS 1560 (App Div June 17, 2009.)seeking information related to the number and racial composition of juvenile arrests and charges

GRC does not have the jurisdiction to determine alleged denials of requests for pupil records. General access to pupil records is controlled by the Family Education Rights and Privacy Act ("FERPA") and by N.J.A.C. 6A:32-7.5. Watson, GRC 2009: Dec 22

Parent was unsuccessful in invasion of privacy claim that PTA exploited her daughter for its commercial benefit by selling videotape of play in which she tripped; parent signed consent form issued by board, proceeds went to charity, only incidental use of her likeness, any damage merely speculative; case interesting for its analysis of tort of invasion of privacy. Jeffries v. Whitney Houston Academy PTA and East Orange BOE, App. Div. unreported decision (A-1888-08T3, July 20, 2009)

Custodian lawfully denied access to unredacted audiotape of student disciplinary hearing. Unredacted audiotape contained reference to another student and

could not be released. Student/requestor was offered a redacted version of the audiotape. The identity of the requestor is not a consideration in deciding whether an exemption applies to a requested OPRA government record. (White v. William Paterson University Custodian of Records No. 2008-216 (GRC August 11, 2009))

In motion seeking to amend the complaint involving special education dispute, court will allow equal protection, right to privacy, and NJLAD claims to move forward. M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 83419 (D.N.J. Sept. 11, 2009) See also M.G. v. Crisfield, 2009 U.S. Dist. LEXIS 93643 (D.N.J. Sept. 11, 2009)

Commissioner determined that district use of juvenile court records was not improper in responding to parent appeal of short-term suspension. N.J.S.A. 2A:4A-60(c)(2) allows disclosure of delinquency proceeding records to agency which filed the complaint; building principal filed criminal complaint alleging that student brought knife onto school grounds. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

Commissioner determined that district's absence as a party in delinquency proceedings did not bar the use of issue preclusion doctrine by the district, where district sought to use the findings of those proceedings as a basis to impose short-term suspension against student. (R.O. o/b/o/ R.O. II, Commr., 2006: March 17)

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Religion

District Court granted parents' motion for summary judgment where parents alleged a 1st Amendment Freedom of Speech violation through 42 U.S.C. 1983 after the district denied student the right to sing "Awesome God" at a school-sponsored, after-hours talent show. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

District court erred by considering school district's official policy banning all religious music from the public schools, when it granted district's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Father's action, pursuant to the First Amendment and 42 U.S.C.S. § 1983, did not rely on the official policy; he never quoted the policy, which was less restrictive than the father claimed. Father claimed that district policy conveyed a government message of disapproval and hostility toward religion. Matter remanded to afford the father a chance to show that the policy in place was different from the official policy. Stratechuk v. Bd. of Educ. , No. 05-4703, 2006 U.S.

District's attempt to avoid an Establishment Clause violation did not constitute a compelling state interest that would allow it to engage in viewpoint discrimination, where district precluded student from singing "Awesome God" at an after-hours, school-sponsored student talent show. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

District Court noted that a limited public forum is created when the government intentionally opens a nontraditional public forum for public discourse. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

District Court determined that strict scrutiny is applicable in non-public forum. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

District Court determined that the legitimate pedagogical concern test identified in Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988) only applied when a student's school sponsored speech could be viewed as the speech of the school itself. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

School district did not create a closed forum when it sponsored a after-hours talent show that was open to students and certain adult community members. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

District engaged in impermissible viewpoint discrimination when it precluded a student from singing "Awesome God" at a school-sponsored, after-hours talent show. (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

District Court noted that in a non-public forum, the government may issue content based regulations that are "reasonable in light of the purpose served by the forum and are viewpoint neutral." (O.T. v. Frenchtown, No. 05-2623, 2006 U.S. Dist. Lexis 89301, (D.N.J. Dec. 11, 2006)).

School district and school officials' refusal to allow the parent of a kindergarten student to read Bible verses to the class did not violate the parent's First Amendment rights. The age of the students was a factor in determining the appropriateness of restrictions on classroom speech, and defendants' actions were reasonable. The fact that the parent was invited to speak did not prevent defendants from placing reasonable restrictions on her speech content. Defendants' actions were meant to prevent promotion of a religious message in the kindergarten class; a permissible purpose to ensure Establishment Clause compliance. Busch v. Marple Newtown Sch. Dist., No. 07-

Commissioner determined that parents domicile did not change despite temporary out-of-district living arrangements due to marital difficulties. (R.C., Commr., 2006: Dec 5).

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Commissioner determined that parents domicile did not change despite temporary out-of-district living arrangements due to marital difficulties. (R.C., Commr., 2006: Dec 5).

Residency

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. o//b/o minor child, P.T., Commr., 2008: Feb. 28). State Board dismissed for failure to perfect appeal. (L.T. o/b/o minor child P.T., St. Bd., 2008: May 21).

Parents established by a preponderance of the evidence that there was no change of domicile, despite Board's assertions. Board's counterclaim for tuition denied. (R.C., Commr., 2006: Dec 5).

Commissioner dismissed aunt's appeal of board's determination of enrollment ineligibilty based on residency. Parent provided for all of student's expenses while he resided with the aunt. (S.B., Commr. 2007: Feb 5).

Commissioner remanded prior dismissal where parent failed to appear at ALJ hearing due to a death in the family. (S.B., Commr., 2006: Nov. 2)

Parents have the burden of proof by a preponderance of the evidence standard to establish residency and that the unorthodox post-divorce relationship supported residency. Board granted tuition payments of $16,831.10. (M.R.N., Commr., 2003: Feb. 24).

Commissioner determined that aunt demonstrated that she supported her nephew gratis, as if he were her own child. Parent's appeal of board's determination of non-residency granted. (F.A.C., Commr., 2007: July 30)

Student from Colombia living with brother in district is neither domiciled in district nor living in the home of someone domiciled in the district due to family or economic hardship. Brother must pay board tuition in the amount of $5,163.84, plus $78.24 per day for each day of student's attendance after June 6, 2007. (J.A.M. o/b/o C.A.M., Commr. 2007:August 15)

Commissioner dismissed parent appeal of board's determination of enrollment ineligibility based on lack of residency where parent failed to appear. (Buena Regional, Commr., 2007: Feb. 8).

Commissioner ordered parent to pay $9,443 for child's period of ineligible attendance where parent failed to prosecute her appeal. (S.T. on behalf of minor child K.T., Commr., 2008: Feb. 7).

Students, whose father was incarcerated, were living with mother. Mother lived in another school district and wanted students to remain in their schools for the sake of continuity until father returned and resumed custody. Mother did not appear nor provide reason for nonappearance. Commissioner ordered tuition reimbursement for the 2006-2007 school year in the amount of $14,812.56. (L.D.R. o/b/o T.M. and P.M., Commr. 2007:August 16)

State Board affirms Commissioner that student was entitled to free education in the district; she remained domiciled there despite temporarily staying with mother's boyfriend in Kearny. (D.D., St. Bd., 2007: April 4).

Commissioner dismissed parent appeal of board's determination of ineligibility based on parent's failure to appear. (Clifton City, Commr., 2007: Feb. 8).

Commissioner dismissed parent's residency appeal for failure to prosecute. Commissioner assessed tuition in the amount of $7,751. (D.G. Sr., o/b/o/ D.G. Jr., Commr., 2007: Dec. 19)

State Board affirms Commissioner's determination that student was entitled to free public education in the school district. Domicile of child is domicile of parent. Fact that mother sent child to live with her parents when she discovered that her live-in boyfriend was a convicted sex offender did not affect domicile. (E.A.E., St Bd., 2007: May 2) see also (E.A.E., Commr., 2006: Dec. 19).

Commissioner dismissed parent petition with prejudice due to parent's non-appearance. (S.A., Commr. 2007: Jan. 18).

Students deemed not to be residing with grandmother in district. While two court orders granted grandmother "residential custody" of the students, based on surveillance of grandmother's residence, it was determined that students actually resided with their mother in another community. No credible evidence that students actually lived with grandmother. Petitioner ordered to disenroll students and remit $15,472.08 in tuition to the school district. (B.W. o/b/o S.L. and N.A., Commr 2007:Aug. 21)

State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency status and that the parent ensure that the student attend school pending resolution of the matter. (Y.E., St. Bd. 2007:June 6)

Motion to supplement the record with documents pertaining to Superior Court proceedings granted in student residency matter. (D.E., St Bd, 2006: May 3)

Commissioner adopted Initial Decision finding that parent failed to prosecute her appeal of board determination of non-residency. C.I.S. on behalf of minor children A.P.S. and A.S., Commr., 2008: Jan. 18.

Commissioner found waiver of tuition claim is not properly characterized as a residency dispute. (C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Commr., 2008: Jan. 23).

Commissioner determined that student was not eligible for a free public education in the district. Student's parents lived in another country and there was no claim made of any kind of hardship. Parents ordered to pay for period of ineligible attendance. (M.P. and D.P., Commr, 2007:April 2).

Commissioner denied motion for post-judgment interest as premature. (M.P. and D.P., Commr, 2007:April 2).

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., Commr., 2008: Feb. 25.

Commissioner adopted Initial Decision finding that parent failed to prosecute her appeal of board determination of non-residency. (S.M. o/b/o/ Minor Children S.M. and Y.M., Commr., 2008: Jan. 11)

Commissioner dismissed parent's petition of appeal for failure to prosecute. (C.I.S., Commr., 2008: Jan. 18).

Student deemed ineligible to attend school in the district. Student was neither domiciled in the district nor living in the home of another domiciled in the district because of family or economic hardship. Parent required to pay tuition to the board in the amount of $3,751.02 plus $59.54 per day for each day of the student's attendance in the district after April 4, 2007. (D.R.P. o/b/o B.L., DeP, Commr. 2007:July 25)

Commissioner found board had the authority to waive tuition during a period of contested residency. (C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Commr., 2008: Jan. 23).

By court order, residential custody of student was shared between mother and grandmother; mother on the weekends and grandmother during the week. Student's residency for school purposes followed that of the grandmother during the week. Student was entitled to a free public education in the grandmother's school district. (V.S-L., o/b/o Z.M.M., Commr. 2007:July 9)

Commissioner upheld board decision denying enrollment to student despite the fact that one-third of the property was located in district, the parents voted in district and mailing address was in district. Two-thirds of the property lay in an adjacent district. Board's decision was not arbitrary, capricious or unreasonable. (Commr, 2004: Sept. 1, W.H.S.)

Commissioner, notwithstanding N.J.S.A. 18A:38-1(b)2, mandating tuition reimbursement to the district, is not precluded from considering principles of fundamental fairness and equitable estoppel in determining whether tuition should be assessed for any period of ineligible attendance. (M.R.N., Commr., 2003: Feb. 24).

Student entitled to a free public education in the school district as a properly enrolled affidavit student. Student lived with grandmother, who assumed all personal responsibility for the student and intends to support the student gratuitously beyond the school year. Parents are not capable of supporting student due to a family or economic hardship and did not send him to the grandmother simply to receive a free education in the school district. (R.A.J. o/b/o C.A.P., Commr. 2007:July 27)

On remand from M.L.P. v. Bloomfield Bd. of Ed., No. A-4265-06, (App. Div. July 8, 2008) (slip op.), the Commissioner determined that child's domicile was that of the parent, despite the fact that the child resided with grandmother in a different district. M.L.P., on behalf of minor child, C.L.P., Commr., 2008: Dec. 29. See also, State Board affirmed Commissioner decision reversing Initial Decision finding of non-residency where student spent each school week with a grandparent who was not domiciled within the district. Parent resided in the district, therefore her

child was entitled to free public education within the district. (M.L.P., St. Bd. 2007:March 7)

Commissioner reversed board's residency determination where parent presented credible evidence of residency although child spent some nights with grandmother and aunt who lived out of the district. (N.B., Commr., 2007:Dec. 3)

Commissioner granted parents petition for domicile where district failed to file an answer after having accepted service of process. (03: Feb. 11, D.H.)

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., Comm'r., 2008:May 9).

Commissioner found that non-resident students were entitled to remain in district for the balance of the school year, without paying tuition, 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., Commr., 2008: Jan. 23).

Commissioner adopted Initial Decision determination that 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., Commr., 2008:March 5)

Commissioner reversed district determination of ineligibility based on lack of residency where parent resided out of district for 18 months due to vandalism to domicile. Despite the change in residence due to repairs to the home, parent maintained the intent to return to his home within the district. (A.P., Commr. 2007: Jan. 18).

Commissioner determined that N.J.S.A. 18A:38-3b does not apply in this case, as it does not apply to the members of the regular U.S. Army but only to members of the N.J. National Guard and to reserve components of the U.S. military. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7). The Commissioner further holds 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. The father, a sergeant in the U.S. Army, was domiciled within the district despite the fact that he was seldom present in the district, that he did not maintain the Commissioner determined that sergeant in the U.S. Army was domiciled within the district despite the fact that he was seldom present in the district, that he did not maintain the accoutrements of daily living in the district, and paid no rent, taxes, fees, utilities, or insurance premiums on an apartment in the district. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd., 2008: March 19) State Board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Commissioner determined that presumption that child will attend school in the district in which he is actually living cannot be employed to preclude

education of the child of a New Jersey domiciliary where the child neither resides in the district nor qualifies for education elsewhere in the state. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd. 2008:March 19). State Board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Commissioner declined to read N.J.S.A. 18A:38-1 et seq. to require the child of a New Jersey domiciliary to be educated outside the perview of New Jersey law and therefore deprive the parent and child of their rights under New Jersey law. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd. 2008:March 19). State Board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Commissioner determined to affirm district's residency determination and refused to accept parent's justification for withholding her domicile from the district. Parent claimed that she feared for her safety due to alleged threats from former landlord. (Z.A. o/b/o Minor Child J.K., Commr., 2008:April 23)

Commissioner dismissed godparent appeal of district's residency determination for failure to prosecute. Godparent ordered to pay $3,314.44 for period of ineligible attendance. (C.M. o/b/o H.R.S.B., Commr., 2008:April 10)

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., Commr., 2008:March 12)

Commissioner denied parent's emergent relief request where parent could not show imminent harm because actual district of residence had not denied enrollment. Parent also failed to show a likelihood of success on the merits. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan 8).

Parent who was seeking assurances about placement of student upon reenrollment, changed mind and decided to home school student; there was no longer any controversy and matter is dismissed. (K.V., Commr., 2007:June 14)

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., Commr., 2008: March 3). State Board dismissed parent appeal for failure to perfect. (S.J. o/b/o/ V.J., St. Bd., 2008: May 21).

3rd Circuit affirmed District Court ruling that pupil can have more than one domicile, requiring districts to split the cost of out-of-district placement. Parents shared legal and physical custody. 293 Fed. Appx. 900 (3d Cir.

2008), see also Civil No. 05-cv-05488, 2007 U.S. Dist. Lexis 44212 (D N.J. June 18, 2007)

Matter was initially dismissed by ALJ for lack of prosecution. Commissioner found that parent was unable to find the hearing site on the day of the hearing. Matter remanded to ALJ because parent provided explanation for her non-appearance. (L.C. Commr., 2008: Aug. 14)

Mother and children were evicted from several apartments in Belleville due to non-payment of rent, during which times they occasionally and temporarily resided with various family members in Irvington and Newark, New Jersey. As the children became homeless in Belleville and Belleville was their last regular permanent place of residency, the Belleville school district was responsible for the cost of the children's education, including the cost of transporting them from other districts where they were temporarily located. (Belleville, Commr., 2007:Nov. 19)

Student, whose parents are in Haiti where they are poor and in fear of political persecution, and who resides with her uncle who provides her support gratis, was entitled to a free education as an affidavit student. The fact that initial documents presented by the resident were deficient, did not affect the determination where supplemental submissions and testimony established the student's entitlement. District's request for tuition is denied. (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

County Superintendent's determination of homelessness upheld, and district of origin is responsible for costs of tuition and transportation. (Belleville, Commr., 2007: Nov. 19)

Where parents had been living temporarily (for approximately 5 months) in another district in order to care for a sick relative in that district, but continued to own and maintain contacts with their district home, the children were still entitled to a free education in the district. (OAL decision not posted) (M.L., Commissioner 2008: November 12)

Commissioner determined that board was not entitled to tuition where students sat in the principal's office instead of attending class due to an ongoing residency dispute. (Port Republic, Commr., 2007: Oct. 9).

Commissioner dismissed parent petition of appeal of the district's residency determination for failure to prosecute. Parent ordered to pay $13,952 for period of ineligible attendance. (D.B. o/b/o Minor Child A.P.G-B, Commr., 2008:March 18)

Adult student directed to pay tuition to the Board in the amount of $6,586.92 (114 days @ $57.78) for the period of her ineligible attendance. (White, Commr., 2008:September 10)

Commissioner determined that student was ineligible to establish residency with her sister where parents were capable of providing support but sent student to live with her sister for emotional reasons. (J.D. o/b/o minor child, A.D., Commr., 2009:April 3)

Commissioner determined that grandmother had standing to contest the district's determination of non-residency, despite the fact that the grandmother did

not have legal custody of the child nor did she support the student gratis. Board elected to waive any tuition due because of student's ineligible attendance. (P.B. o/b/o minor child C.K., Commr., 2009:April 2)

Board demonstrated that student attended district schools while ineligible, before grandmother obtained legal custody during the pendency of the matter. Tuition ordered for period of ineligible attendance in the amount of $7,826. (C.P., on behalf of minor child, Z.P., Commr., 2009:March 30)

Commissioner granted summary decision in residency dispute in favor of the Board. Parents ordered to remit to the Board tuition in the amount of $71,442 for the three years in which their children were ineligible for a free education in the district's schools. (Rutherford, Commr., 2008:October 9)

Petitioner's children not entitled to free education as petitioner is not domiciled in the school district. Petitioner ordered to remit $7,550.40, representing the cost of tuition for 143 days of ineligible attendance. (A.S., Commr., 2008:October 3)

Commissioner determined that district failed to prove parent was not domiciled within the district for 06-07 where parent produced competent evidence of current residency and district relied on investigation conducted during the 05-06 school year. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan 8).

Sisters required to reimburse the board for tuition for the period of ineligible attendance of their children; M.J-M. to reimburse the Board for tuition in the amount of $15,392; N.J. to reimburse the Board for tuition in the amount of $7,128. (M.J-M. and N.J., Commr., 2008:September 15)

Parent failed to prove that district's 05-06 ineligibility determination was arbitrary or capricious where guardian submitted a notarized affidavit indicating that the child no longer resided with the guardian contrary to parent's assertions. Commissioner may defer to the credibility determinations made by the ALJ who had the opportunity to observe the demeanor of witnesses. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan. 8, aff'd St. Bd. 2007:June 6).

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. o//b/o minor child, P.T., Commr., 2008: Feb. 28). State Board dismissed for failure to perfect appeal. (L.T. o/b/o minor child P.T., St. Bd., 2008: May 21).

Parents established by a preponderance of the evidence that there was no change of domicile, despite Board's assertions. Board's counterclaim for tuition denied. (R.C., Commr., 2006: Dec 5).

Commissioner dismissed aunt's appeal of board's determination of enrollment ineligibilty based on residency. Parent provided for all of student's expenses while he resided with the aunt. (S.B., Commr. 2007: Feb 5).

Commissioner remanded prior dismissal where parent failed to appear at ALJ hearing due to a death in the family. (S.B., Commr., 2006: Nov. 2)

Parents have the burden of proof by a preponderance of the evidence standard to establish residency and that the unorthodox post-divorce relationship supported residency. Board granted tuition payments of $16,831.10. (M.R.N., Commr., 2003: Feb. 24).

Commissioner determined that aunt demonstrated that she supported her nephew gratis, as if he were her own child. Parent's appeal of board's determination of non-residency granted. (F.A.C., Commr., 2007: July 30)

Student from Colombia living with brother in district is neither domiciled in district nor living in the home of someone domiciled in the district due to family or economic hardship. Brother must pay board tuition in the amount of $5,163.84, plus $78.24 per day for each day of student's attendance after June 6, 2007. (J.A.M. o/b/o C.A.M., Commr. 2007:August 15)

Commissioner dismissed parent appeal of board's determination of enrollment ineligibility based on lack of residency where parent failed to appear. (Buena Regional, Commr., 2007: Feb. 8).

Commissioner ordered parent to pay $9,443 for child's period of ineligible attendance where parent failed to prosecute her appeal. (S.T. on behalf of minor child K.T., Commr., 2008: Feb. 7).

Students, whose father was incarcerated, were living with mother. Mother lived in another school district and wanted students to remain in their schools for the sake of continuity until father returned and resumed custody. Mother did not appear nor provide reason for nonappearance. Commissioner ordered tuition reimbursement for the 2006-2007 school year in the amount of $14,812.56. (L.D.R. o/b/o T.M. and P.M., Commr. 2007:August 16)

State Board affirms Commissioner that student was entitled to free education in the district; she remained domiciled there despite temporarily staying with mother's boyfriend in Kearny. (D.D., St. Bd., 2007: April 4).

Commissioner dismissed parent appeal of board's determination of ineligibility based on parent's failure to appear. (Clifton City, Commr., 2007: Feb. 8).

Commissioner dismissed parent's residency appeal for failure to prosecute. Commissioner assessed tuition in the amount of $7,751. (D.G. Sr., o/b/o/ D.G. Jr., Commr., 2007: Dec. 19)

State Board affirms Commissioner's determination that student was entitled to free public education in the school district. Domicile of child is domicile of parent. Fact that mother sent child to live with her parents when she discovered that her live-in boyfriend was a convicted sex offender did not affect domicile. (E.A.E., St Bd., 2007: May 2) see also (E.A.E., Commr., 2006: Dec. 19).

Commissioner dismissed parent petition with prejudice due to parent's non-appearance. (S.A., Commr. 2007: Jan. 18).

Students deemed not to be residing with grandmother in district. While two court orders granted grandmother "residential custody" of the students, based on surveillance of grandmother's residence, it was determined that students actually resided with their mother in another community. No credible

evidence that students actually lived with grandmother. Petitioner ordered to disenroll students and remit $15,472.08 in tuition to the school district. (B.W. o/b/o S.L. and N.A., Commr 2007:Aug. 21)

State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency status and that the parent ensure that the student attend school pending resolution of the matter. (Y.E., St. Bd. 2007:June 6)

Motion to supplement the record with documents pertaining to Superior Court proceedings granted in student residency matter. (D.E., St Bd, 2006: May 3); State Board reverses Commissioner

Commissioner adopted Initial Decision finding that parent failed to prosecute her appeal of board determination of non-residency. C.I.S. on behalf of minor children A.P.S. and A.S., Commr., 2008: Jan. 18.

Commissioner found waiver of tuition claim is not properly characterized as a residency dispute. (C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Commr., 2008: Jan. 23).

Commissioner determined that student was not eligible for a free public education in the district. Student's parents lived in another country and there was no claim made of any kind of hardship. Parents ordered to pay for period of ineligible attendance. (M.P. and D.P., Commr, 2007:April 2).

Commissioner denied motion for post-judgment interest as premature. (M.P. and D.P., Commr, 2007:April 2).

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., Commr., 2008: Feb. 25.

Commissioner adopted Initial Decision finding that parent failed to prosecute her appeal of board determination of non-residency. (S.M. o/b/o/ Minor Children S.M. and Y.M., Commr., 2008: Jan. 11)

Commissioner dismissed parent's petition of appeal for failure to prosecute. (C.I.S., Commr., 2008: Jan. 18).

Student deemed ineligible to attend school in the district. Student was neither domiciled in the district nor living in the home of another domiciled in the district because of family or economic hardship. Parent required to pay tuition to the board in the amount of $3,751.02 plus $59.54 per day for each day of the student's attendance in the district after April 4, 2007. (D.R.P. o/b/o B.L., DeP, Commr. 2007:July 25)

Commissioner found board had the authority to waive tuition during a period of contested residency. (C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Commr., 2008: Jan. 23).

By court order, residential custody of student was shared between mother and grandmother; mother on the weekends and grandmother during the week. Student's residency for school purposes followed that of the grandmother

during the week. Student was entitled to a free public education in the grandmother's school district. (V.S-L., o/b/o Z.M.M., Commr. 2007:July 9)

Commissioner upheld board decision denying enrollment to student despite the fact that one-third of the property was located in district, the parents voted in district and mailing address was in district. Two-thirds of the property lay in an adjacent district. Board's decision was not arbitrary, capricious or unreasonable. (Commr, 2004: Sept. 1, W.H.S.)

Commissioner, notwithstanding N.J.S.A. 18A:38-1(b)2, mandating tuition reimbursement to the district, is not precluded from considering principles of fundamental fairness and equitable estoppel in determining whether tuition should be assessed for any period of ineligible attendance. (M.R.N., Commr., 2003: Feb. 24).

Student entitled to a free public education in the school district as a properly enrolled affidavit student. Student lived with grandmother, who assumed all personal responsibility for the student and intends to support the student gratuitously beyond the school year. Parents are not capable of supporting student due to a family or economic hardship and did not send him to the grandmother simply to receive a free education in the school district. (R.A.J. o/b/o C.A.P., Commr. 2007:July 27)

On remand from M.L.P. v. Bloomfield Bd. of Ed., No. A-4265-06, (App. Div. July 8, 2008) (slip op.), the Commissioner determined that child's domicile was that of the parent, despite the fact that the child resided with grandmother in a different district. M.L.P., on behalf of minor child, C.L.P., Commr., 2008: Dec. 29. See also, State Board affirmed Commissioner decision reversing Initial Decision finding of non-residency where student spent each school week with a grandparent who was not domiciled within the district. Parent resided in the district, therefore her child was entitled to free public education within the district. (M.L.P., St. Bd. 2007:March 7)

Commissioner reversed board's residency determination where parent presented credible evidence of residency although child spent some nights with grandmother and aunt who lived out of the district. (N.B., Commr., 2007:Dec. 3)

Commissioner granted parents petition for domicile where district failed to file an answer after having accepted service of process. (03: Feb. 11, D.H.)

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., Comm'r., 2008:May 9).

Commissioner found that non-resident students were entitled to remain in district for the balance of the school year, without paying tuition, 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., Commr., 2008: Jan. 23).

Commissioner adopted Initial Decision determination that 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., Commr., 2008:March 5)

Commissioner reversed district determination of ineligibility based on lack of residency where parent resided out of district for 18 months due to vandalism to domicile. Despite the change in residence due to repairs to the home, parent maintained the intent to return to his home within the district. (A.P., Commr. 2007: Jan. 18).

Commissioner determined that N.J.S.A. 18A:38-3b does not apply in this case, as it does not apply to the members of the regular U.S. Army but only to members of the N.J. National Guard and to reserve components of the U.S. military. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7).

Commissioner determined that sergeant in the U.S. Army was domiciled within the district despite the fact that he was seldom present in the district, that he did not maintain the accoutrements of daily living in the district, and paid no rent, taxes, fees, utilities, or insurance premiums on an apartment in the district. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd., 2008: March 19) State Board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Commissioner determined that presumption that child will attend school in the district in which he is actually living cannot be employed to preclude education of the child of a New Jersey domiciliary where the child neither resides in the district nor qualifies for education elsewhere in the state. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd. 2008:March 19). State Board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Commissioner declined to read N.J.S.A. 18A:38-1 et seq. to require the child of a New Jersey domiciliary to be educated outside the perview of New Jersey law and therefore deprive the parent and child of their rights under New Jersey law. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd. 2008:March 19). State Board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Commissioner determined to affirm district's residency determination and refused to accept parent's justification for withholding her domicile from the district. Parent claimed that she feared for her safety due to alleged threats from former landlord. (Z.A. o/b/o Minor Child J.K., Commr., 2008:April 23)

Commissioner dismissed godparent appeal of district's residency determination for failure to prosecute. Godparent ordered to pay $3,314.44 for period of ineligible attendance. (C.M. o/b/o H.R.S.B., Commr., 2008:April 10)

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., Commr., 2008:March 12)

Commissioner denied parent's emergent relief request where parent could not show imminent harm because actual district of residence had not denied enrollment. Parent also failed to show a likelihood of success on the merits. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan 8). State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency status and that the parent ensure that the student attend school pending resolution/

Parent who was seeking assurances about placement of student upon reenrollment, changed mind and decided to home school student; there was no longer any controversy and matter is dismissed. (K.V., Commr., 2007:June 14)

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., Commr., 2008: March 3). State Board dismissed parent appeal for failure to perfect. (S.J. o/b/o/ V.J., St. Bd., 2008: May 21).

3rd Circuit affirmed District Court ruling that pupil can have more than one domicile, requiring districts to split the cost of out-of-district placement. Parents shared legal and physical custody. 293 Fed. Appx. 900 (3d Cir. 2008), see also Civil No. 05-cv-05488, 2007 U.S. Dist. Lexis 44212 (D N.J. June 18, 2007)

Matter was initially dismissed by ALJ for lack of prosecution. Commissioner found that parent was unable to find the hearing site on the day of the hearing. Matter remanded to ALJ because parent provided explanation for her non-appearance. (L.C. Commr., 2008: Aug. 14)

Mother and children were evicted from several apartments in Belleville due to non-payment of rent, during which times they occasionally and temporarily resided with various family members in Irvington and Newark, New Jersey. As the children became homeless in Belleville and Belleville was their last regular permanent place of residency, the Belleville school district was responsible for the cost of the children's education, including the cost of transporting them from other districts where they were temporarily located. (Belleville, Commr., 2007:Nov. 19)

Student, whose parents are in Haiti where they are poor and in fear of political persecution, and who resides with her uncle who provides her support gratis, was entitled to a free education as an affidavit student. The fact that initial documents presented by the resident were deficient, did not affect the determination where supplemental submissions and testimony

established the student's entitlement. District's request for tuition is denied. (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

County Superintendent's determination of homelessness upheld, and district of origin is responsible for costs of tuition and transportation. (Belleville, Commr., 2007: Nov. 19)

Where parents had been living temporarily (for approximately 5 months) in another district in order to care for a sick relative in that district, but continued to own and maintain contacts with their district home, the children were still entitled to a free education in the district. (OAL decision not posted) (M.L., Commissioner 2008: November 12)

Commissioner determined that board was not entitled to tuition where students sat in the principal's office instead of attending class due to an ongoing residency dispute. (Port Republic, Commr., 2007: Oct. 9).

Commissioner dismissed parent petition of appeal of the district's residency determination for failure to prosecute. Parent ordered to pay $13,952 for period of ineligible attendance. (D.B. o/b/o Minor Child A.P.G-B, Commr., 2008:March 18)

Adult student directed to pay tuition to the Board in the amount of $6,586.92 (114 days @ $57.78) for the period of her ineligible attendance. (White, Commr., 2008:September 10)

Commissioner determined that student was ineligible to establish residency with her sister where parents were capable of providing support but sent student to live with her sister for emotional reasons. (J.D. o/b/o minor child, A.D., Commr., 2009:April 3)

Commissioner determined that grandmother had standing to contest the district's determination of non-residency, despite the fact that the grandmother did not have legal custody of the child nor did she support the student gratis. Board elected to waive any tuition due because of student's ineligible attendance. (P.B. o/b/o minor child C.K., Commr., 2009:April 2)

Board demonstrated that student attended district schools while ineligible, before grandmother obtained legal custody during the pendency of the matter. Tuition ordered for period of ineligible attendance in the amount of $7,826. (C.P., on behalf of minor child, Z.P., Commr., 2009:March 30)

Commissioner granted summary decision in residency dispute in favor of the Board. Parents ordered to remit to the Board tuition in the amount of $71,442 for the three years in which their children were ineligible for a free education in the district's schools. (Rutherford, Commr., 2008:October 9)

Petitioner's children not entitled to free education as petitioner is not domiciled in the school district. Petitioner ordered to remit $7,550.40, representing the cost of tuition for 143 days of ineligible attendance. (A.S., Commr., 2008:October 3)

Commissioner determined that district failed to prove parent was not domiciled within the district for 06-07 where parent produced competent evidence of current residency and district relied on investigation conducted during the

05-06 school year. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan 8).

State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency status and that the parent ensure that the student attend Sisters required to reimburse the board for tuition for the period of ineligible attendance of their children; M.J-M. to reimburse the Board for tuition in the amount of $15,392; N.J. to reimburse the Board for tuition in the amount of $7,128. (M.J-M. and N.J., Commr., 2008:September 15)

Parent failed to prove that district's 05-06 ineligibility determination was arbitrary or capricious where guardian submitted a notarized affidavit indicating that the child no longer resided with the guardian contrary to parent's assertions. Commissioner may defer to the credibility determinations made by the ALJ who had the opportunity to observe the demeanor of witnesses. Matter remanded for plenary hearing on parent's current domicile. (Y.E., Commr. 2007: Jan. 8, aff'd St. Bd. 2007:June 6).

Commissioner determined that parent changed the domicile and left student with grandmother for the purpose of attending school within the district. No evidence of family or economic hardship. Tuition assessed in the amount of $5,360.58. (Clifton, Commr., 2009:February 19)

Commissioner determined that petitioning parent maintained her domicile within the district, despite being absent from the home for two years while the home was re-built following a fire. (B.F.-H., on behalf of minor child, A.C., Commr., 2009:February 9)

Commissioner determined that parent's evidence of residency was supportive of her position, but not conclusive. Commissioner upheld district's determination of non-residency and awarded tuition in the amount of $13,159.72. (C.A.S., on behalf of minor children C.A.H. and C.B.S., Commr., 2008:December 29)

Motion granted to supplement the record in student residency matter. Appellants appealed Commissioner decision directing payment of $ 22,499.40 in tuition. (Hamilton, Commr. 2007:May 31)

Commissioner determined that district ws the district of residence where student was placed in a residential facility during the school year. Commissioner found that mother resided in the district on the last school day prior to October 16, the date that annual enrollment is established. (Bound Brook, Commr. 2008:December 29)

Commissioner determined that custodial arrangement providing that grandparents living out-of-state would care for disabled child was temporary in nature despite the extended power-of-attorney granted to grandparents. Parent retained guardianship and legal custody, therefore domicile did not shift from parent to grandparent. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7, aff'd St. Bd. 2008:March 19). State board denied motion to supplement the record in residency case. (A.M.S., St. Bd. 2008:January 9)

Residency appeal dismissed for failure to prosecute. Board proved its entitlement to tuition reimbursement in the amount of $5,700.44. (A.P., Commr., 2008:September 17)

Parents were prevented, on the principle of "accord and satisfaction,"from obtaining reimbursement for tuition they paid to the school district for the attendance of their non-resident children, as the parties had earlier entered into and fulfilled a settlement agreement permitting the children to attend for a reduced amount of tuition paid in installments. (Barry, Commr. 2007:May 9, aff'd St. Bd. 2007: Sept. 5)

Commissioner denied parent appeal of district's residency determination for failure to prosecute. Matter remanded for determination of tuition rate and number of days of ineligible attendance. (O.B. o/b/o K.C., Commr., 2008: July 14)

Commissioner determined that petitioner was legal guardian of nephews where district failed to respond to L.P.'s appeal of district determination of non-residency. District ordered to educate minor children without charge so long as their residency status remains unchanged. (L.P. o/b/o minor children J.P. and B.P., Commr., 2008: July 14)

Commissioner determined that parents were not domiciled in district despite having drivers licenses and voter registration cards showing residency. Parents did not sleep in district residence nor did they give up prior out-of-district residence. (K.L. and K.L. o/b/o minor children M.L. and C.L., Commr., 2008: July 23)

Commissioner determined that parent was liable for tuition for that portion of the year wherein students were not domiciled where parent left the distrct mid-year and then returned to the district before the school year ended. (M.B., Commr., 2008:August 21)

Commissioner determined that N.J.S.A. 18A:38-3b does not apply in this case, as it does not apply to the members of the regular U.S. Army but only to members of the N.J. National Guard and to reserve components of the U.S. military. (A.M.S. o/b/o/ Minor Child A.D.S., Commr., 2007: Sept. 7).

Commissioner agreed with ALJ that petitioner parent had wantonly and willfully violated the ALJ's Prehearing Discovery Order. Petitioner's assertions were incredible and unbelievable. Board's motion for sanctions was granted with the appropriate remedy being deemed suppression of the claim and dismissal of the petition. (L.A. and C.A. o/b/o P.M.A., Commr., 2007:July 18)

The proper place to appeal the county superintendent's determination with regard to educating homeless children following a determination of the last known residence of the children's mother, is with the Division of Finance in the Department of Education pursuant to N.J.A.C. 6A:17-2.8(b) and N.J.A.C. 6A:23-5.2(d-f). The Commissioner lacks jurisdiction for failure of the board to exhaust its administrative remedies. (West Orange, Commr. 2007:May 31)

Commissioner determined that settlement agreement did not support removal of children from district schools if the family failed to establish residency by a date certain. (Port Republic, Commr., 2007: Oct. 9).

Where, after ample notice, a parent failed to answer the board's petition seeking tuition reimbursement for the ineligible attendance of her children in the district's schools. The Commissioner ordered that the parent pay back tuition in the amount of $29,303.08. (Hamilton., Comm'r., 2008: June 25).

Student was not entitled to free education as affidavit student since resident who supported the student in her home gratis did so for a temporary period, but did not intend to keep and support him for longer than the school year; also, his mother failed to demonstrate that she is incapable of supporting or providing care for her son due to family or economic hardship; ALJ granted the Board's application for tuition reimbursement for student's ineligible attendance. (S.H., Commr., 2007: June 13).

Student had no entitlement to a free education in district; she and mother were only temporarily staying there while mother and her husband were separated, until the family unit was reunited. (M.L., Commr. 2007: June 19)

Matter deemed moot in case where parent whose residency was based on a month-to-month lease, abandoned her petition of appeal challenging the authority of the Board to require her to file a monthly certification of residency to have her two children retain continuing eligibility to attend Port Republic schools. Moreover, her claim was moot because she had removed her children from the school. (D.B., Comm'r., 2008:June 19).

Commissioner determined that in a residency dispute, important factors to consider are (1) whether there had been an actual and physical taking up of an abode in a particular state; (2) whether the subject had an intention to make his home there permanently or at least indefinitely; and (3) whether the subject had an intention to abandon his old domicile. Commissioner upheld district's determination of non-residency. (N.V. o/b/o/ minor children N.V.V. and V.N.V., Comm'r, 2008: July 23)

Commissioner grants entry of back tuition assessment for child's illegal attendance, on the judgment docket of the Superior Court pursuant to N.J.S.A. 2A:58-10 in the name of parent as well as in her alias. Z.A., Commr. 2009: July 16.

Court sanctioned agreement regarding residency could not be applied retroactively. Prior to agreement date, February 2005, residency would be established by residency code. Custody was shared on a shared, equal time, alternate week basis. On October 15, student resided in Westville, making Westville responsible for tuition in 2004-2005. Westville v. Oaklyn, Commr. 2009: September 29

Student of separated parents, who resided with father while mother recuperated from illness in another town, was resident of father's school district. Board's decision to disenroll student reversed. M.K., Commr. 2009: August 26

Parent failed to prosecute her appeal on daughter's behalf; Commissioner orders $12,535.56 in tuition for period of daughter's illegal attendance. M.Y., Commr 2009: August 4. (West Orange)

Commissioner determined that student did not change domicile where parents changed residence temporarily to care for a sick relative. M.L. o/b/o G.R.C.L., Commr., 2008: Nov. 12.

Commissioner determined that district was the district of residence where student was placed by the State in a residential facility during the school year. Commissioner relied on DYFS investigators and found that mother resided in the district on the last school day prior to October 16, the date that annual enrollment is established, and is therefor responsible for the costs of the student's education. Bound Brook Bd. of Ed., Commr., 2008: Dec. 29.

Homeless students: Deciding a dispute over which of three districts is responsible for providing a free education to children who have been homeless since 2003 when they lost their home in Magnolia, the Commissioner determined that since 2003, Magnolia was the district of residence and beginning January 5, 2005, the Deptford Township became the district of residence. Magnolia's appeal of the County Superintendents' determination was dismissed as untimely under N.J.A.C. 6A:23-5.2(d). Magnolia and Deptford, Comm'r. 2009: May 5.

Although her mother moved out of the home to another district, 18-year old student who remained behind in the family home with her aunt, could maintain her own residence under N.J.A.C. 6A:22-3.1(a)2 and was entitled to free education as she intended to remain there indefinitely. Marshall, Commr. 2009:July 15

Uncle's pro se residency appeal is dismissed for failure to prosecute; Commissioner orders tuition reimbursement of $ 3,494.82.M.H., Commr. 2009:Nov. 10.

Residency matter is dismissed as moot; board no longer contests student's eligibility to attend school in the district. S.K., Commr 2009: August 4.

Although her mother moved out of the home to another district, 18-year old student who remained behind in the family home with her aunt, could maintain her own residence under N.J.A.C. 6A:22-3.1(a)2 and was entitled to free education as she intended to remain there indefinitely. (Marshall, Commr., 2009:July 15)

Deciding a dispute over which of three districts is responsible for providing a free education to children who have been homeless since 2003 when they lost their home in Magnolia, the Commissioner determined that since 2003, Magnolia was the district of residence and beginning January 5, 2005, the eptford Township became the district of residence. Magnolia's appeal of the County Superintendents' determination was dismissed as untimely under N.J.A.C. 6A:23-5.2(d). (Magnolia and Deptford, Commr., 2009:May 5)

Parent could not provide any proof that after she moved from her home in North Plainfield, she maintained residency in North Plainfield; district may

immediately remove child, and parent is ordered to pay back tuition of $22,810.00 for period of child's illegal attendance. (L.C., Commr., 2009:June 8)

Although parent failed to prosecute her claims before the board and OAL, Commissioner rejects ALJ's finding that parent owes $10,643 in back tuition and continued payment for each day child continues to attend West Orange schools; orders further proceedings to determine whether in fact parent received notice of the OAL hearing, and whether family may be homeless. L.E.H., Commr.2009:July 2. (update---ECS said not homeless, awaiting Comm'r decision or settlement)

Although parent failed to prosecute her claims before the board and OAL, Commissioner rejects ALJ's finding that parent owes $10,643 in back tuition and continued payment for each day child continues to attend West Orange schools; orders further proceedings to determine whether in fact parent received notice of the OAL hearing, and whether family may be homeless. (L.E.H., Commr., 2009:July 2)

Where parent blamed her initial failure to prosecute her appeal of the board's residency determination on her failure to receive notice after becoming homeless, and after being served again failed to prosecute, her appeal was dismissed and the board is awarded tuition reimbursement in the amount of $8,199.36. L.E.H.o/b/o Z.H., Commr. 2009:Nov. 10.

Commissioner grants entry of back tuition assessment for child's illegal attendance, on the judgment docket of the Superior Court pursuant to N.J.S.A. 2A:58-10 in the name of parent as well as in her alias. (Z.A., Commr., 2009:July 16)

Residency matter is dismissed as moot; board no longer contests student's eligibility to attend school in the district. (S.K., Commr., 2009:August 4)

Student with disabilities was entitled to free education in district where she resided with grandmother who had been awarded custody/guardianship by Superior Court order and where grandmother is domiciled in the school district—regardless of the reasons for the arrangement. Board's evidence that the student is not, in fact, domiciled within the school district is speculative at best. (Commr also noting that N.J.S.A. 18A:38-2 pertains only to court orders of placement in resource family (foster) homes, whereas present situation is governed by N.J.S.A. 18A:38-1.) B.C., Commr. 2009:Nov.18.

Student, by his own admission and his father's admission, no longer resides in Fort Lee and in light of the uncontradicted evidence that he resides in New York, Fort Lee has no obligation to educate him. Fort Lee, Commr. 2009:Nov. 12.

The reasonableness of a search depends on (1) the nature and scope of the privacy interest upon which the search intrudes; (2) the character of the intrusion complained of; and (3) the nature and immediacy of the governmental

concern at issue and the efficacy of the means for meeting it. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Search and Seizure

Court denied the district's summary judgment motion for dismissal where student was expelled on his 16th birthday. Under IDEA, student was entitled to FAPE until his 18th birthday. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

The "reasonableness" of a governmental search is the "touchstone" of its constitutionality. In light of several Supreme Court decisions, it is beyond dispute that in the context of school officials' searches of high school students, a reasonable search "does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law." (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Court upheld district reasonable suspicion drug testing policy despite the absence of a provision requiring parental consent prior to testing. Board's motion for summary judgment granted in part and denied in part. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Parents seeking monetary damages in federal court in a 1983 action must first exhaust their administrative remedies to allow the administrative agency with the relevant expertise to develop an evidentiary record prior to judicial review. (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Third Circuit affirmed District court's dismissal of parent appeal of district seizure of student bank accounts based on the "Rooker-Feldman" doctrine. The lower court applied the doctrine to bind not only the parties to the prior state court suit, but also their privities. Claims and issues decided against an entity bind also its parties in privity for Rooker-Feldman purposes. Privity "refers to a cluster of relationships . . . under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party." Restatement (Second) of Judgments, ch. 1 (1982). O'Brien v. Valley Forge Specialized Education Services,

Consent is a separate and independent basis for supporting the constitutionality of a search, rather than a necessary requirement of a search based on reasonable suspicion. A search "conducted pursuant to consent" is merely "one of the specifically established exceptions to the requirements of both a warrant and probable cause." (Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2006 U.S. Dist. Lexis 92451, (D.N.J. Dec. 21, 2006)).

Speech

3rd Circuit found that a public school's recognition of a religious student club would not be perceived as endorsement of that religion where the school

recognized a "broad spectrum" of clubs and allowed its students to initiate and organize additional student clubs. (Child Evangelism Fellowship v. Stafford Twp Sch. Dist., No. 02-4549 2006 U.S. Dist. LEXIS 62966 (D.N.J. Sept. 5, 2006) on remand from 386 F.3d 514, 2004 U.S. App. LEXIS 21473 (3d Cir. N.J. 2004)

Student editors of student-run campus newspaper seeking a preliminary injunction against the college administration for exercising unconstitutional prior restraint over the content of articles published in the paper and for retaliating against the students; the court partially grants the injunction as some of the administration's actions constituted retaliation or efforts to limit or control the content, and certain actions did not, and some were speculative or did not pose danger of irreparable harm. (Coppola v. Larson, No. 06-2138, 2006 U.S. Dist. LEXIS 51205 (D.N.J. July 25, 2006).

District court erred by considering school district's official policy banning all religious music from the public schools, when it granted district's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Father's action, pursuant to the First Amendment and 42 U.S.C.S. § 1983, did not rely on the official policy; he never quoted the policy, which was less restrictive than the father claimed. Father claimed that district policy conveyed a government message of disapproval and hostility toward religion. Matter remanded to afford the father a chance to show that the policy in place was different from the official policy. Stratechuk v. Bd. of Educ. , No. 05-4703, 2006 U.S.

3rd Circuit determined that the parental notification clause of a newly enacted Pennsylvania statute violated the school students' freedom of speech rights and was therefore unconstitutional. The parental notification clause clearly discriminated among students based on the viewpoints they expressed because it was only triggered when a student exercised his or her First Amendment right not to speak. he Circle School v. Pappert 2004 U.S. App. LEXIS 17569

3rd Circuit held that a district's desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint is not enough to justify the suppression of speech. (Child Evangelism Fellowship v. Stafford Twp Sch. Dist., No. 02-4549 2006 U.S. Dist. LEXIS 62966 (D.N.J. Sept. 5, 2006) on remand from 386 F.3d 514, 2004 U.S. App. LEXIS 21473 (3d Cir. N.J. 2004)

3rd Circuit held that district created a limited public fora in allowing community groups to distribute materials to students and could not therefore exclude speech where its distinction was not reasonable in light of the purpose served by the forum, nor may it discriminate against speech on the basis of its viewpoint. (Child Evangelism Fellowship v. Stafford Twp Sch. Dist., No. 02-4549 2006 U.S. Dist. LEXIS 62966 (D.N.J. Sept. 5, 2006) on remand from 386 F.3d 514, 2004 U.S. App. LEXIS 21473 (3d Cir. N.J. 2004)

Plaintiffs entitled to reasonable attorneys' fees in the amount of $574,244.60 as prevailing party in case concerning First Amendment issues arising from board's enforcement of dress code policy. Sypniewski v. Warren Hills Reg'l Bd. of Educ., 2006 U.S. Dist. LEXIS 39285 (D.N.J. May 18, 2006)

Substance Abuse

The Court dismissed, for lack of subject matter jurisdiction, a parents' IDEA / § 504 claims because Plaintiffs failed to exhaust their administrative remedies with respect to those claims arising out of their 16-year old son's positive drug tests and subsequent expulsion. Alternatively, these claims must be dismissed because § 1983 is no longer an available means to remedy the alleged violations. The federal court further declined to exercise supplemental jurisdiction over state law claims. Gutin v. Washington Twp. Bd. of Educ., No. 04-1947, 2007 U.S. Dist. LEXIS 53298 (D. N.J. July 23, 2007)

Although district could have performed manifestation determination, in light of the fact that district could have suspended student for 45 days for drug use, ALJ's order returning pupil to school reversed. A.P. v. Pemberton Twp. Bd. of Educ., 2006 U.S. Dist. LEXIS 32542 (D.N.J. May 15, 2006)

Commissioner dismisses as untimely, a student's constitutional challenge to district's zero tolerance drug policy as applied to his possession of an over- the- counter- allergy pill; however, separate challenge on facial constitutionality is outside jurisdiction of Commissioner but may be refiled in Superior Court. A.S., Commr. 2009:Dec. 16.

STATE MONITOR

State-appointed monitor in Pleasantville did not exceed his statutory authority in overriding a board vote, and approving the settlement of a CEPA claim where the board had rejected the proposed settlement against board counsel's advice. Appellate Division affirms Commissioner's ruling. *Bd. of Educ. v. Riehman*, 2013 *N.J. Super*. Unpub. LEXIS 312 (App. Div. Feb 11, 2013).

STATUTE OF LIMITATIONS

Appellate Division affirms Law Division's denial of second motion for reconsideration of an order dismissing his complaint. Plaintiff claimed that he was subjected to racially discriminatory educational practices in 1953 while he was a student at Robert Treat Junior High School in Newark. Plaintiff was eleven years old when these incidents occurred. Plaintiff filed his complaint in the Law Division on February 3, 2012. *N.J.S.A.* 59:8-8 requires that a claim against a public entity be filed "not later than the 90th day after accrual of the cause of action." However, plaintiff had never filed a notice of claim. In addition, the trial court judge found that, once plaintiff reached the age of majority, he had two years to file a complaint against defendant. Because plaintiff did not file his complaint for over fifty years after he was subjected to discrimination, the trial court judge ruled that the

complaint must be dismissed. Appellate Division affirmed. *Fortney v. Board of Educ.*, DOCKET NO. A-0081-12T3 (App. Div. February 13, 2014).

Subcontracting

Commissioner determined that the board did not act in bad faith when it exercised its managerial prerogative to subcontract unit work and terminate bargaining unit paraprofessionals. Union failed to demonstrate that board's desire to privatize was due to any other factor than cost savings. (Winslow Twp. Para. v. Winslow Twp. Bd. of Educ.: Commr, 2014, Nov. 10).

SUBSTITUTES

A person disqualified under N.J.S.A. 18A:6-7.1 mandates denial of application for county substitute certificate. (St. Bd. 03:July 2, Hanks)(St. Bd. 03:Oct. 1, Weingarten)

County superintendent is directed to determine district's compliance with regulation where district had individual holding only a county substitute certificate to serve in school nurse position for two years. (00:Aug. 18, Woodbine)

County superintendent, not State Board of Examiners, has authority to issue substitute certificate as this certificate is not a teaching certificate. (Appeal denied St. Bd. 99:Nov. 3, Gaba)(St. Bd. 03:Oct. 1, Weingarten)

County superintendents, not State Board of Examiners, have authority over county substitute certificates. However, Commissioner of Education, as chief administrative officer to whom county superintendents report, also has authority over substitute certificates. Matter over rescission of certificates properly transferred to Commissioner. In Re Procedures for the Rescission of Eighty-five Certificates, St. Bd. 04:May 5.

Persons who hold substitute certificates are to be employed only in the matter prescribed by N.J.A.C. 6:11-4.5; the board may not employ a paraprofessional holding a substitute certificate and then assign to her tasks which are reserved for professional staff. (99:Sept. 9, Pennsville)

Subsequent termination of a permanent employee does not convert a substitute's temporary employment to permanent employment. (01:Jan. 25, Vincenti, appeal dismissed for failure to perfect, St. Bd. 01:June 6)

Substitute's certificate is not a teaching certificate and is issued by the county superintendent, not State Board of Examiners. (St. Bd. 03:July 2, Hanks)

Tenure acquisition: Where vacant position filled on full-time basis and teacher has served time needed to acquire tenure as regular teacher, person is tenurable regardless of the fact that title was that of "substitute" (03:March 14, Calabria)

SUBSTITUTE TEACHER

Board violated N.J.A.C. 6:28-3.1 and Elson by subcontracting LDTC services to Ed. Services Commission as substitute during LDTC's sabbatical leave. (98:Oct. 5, South Amboy)

SUPERINTENDENTS

A board may not reduce a superintendent's compensation in the event the board unilaterally terminates the contract; the board may either file tenure charges, or pay the superintendent the amount of compensation he would have received had he served the remainder of the contract, subtracting any mitigation of damages by superintendent through other employment (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part and remanded for calculation of damages, St. Bd. 02:Nov. 6)

Commissioner had subject matter jurisdiction to hear superintendent's contract claims. (01:June 5, Howard, aff'd St. Bd. 01:November 7, aff'd App. Div. unpub. op. Dkt. Nos. A-1699-01T1 and A-2584-01T1, October 11, 2002)

Contract: Clause requiring automatic extension of five-year contract, thus becoming 6-year contract in violation of N.J.S.A. 18A:17-15, did not render new contract invalid. (01:June 5, Howard, aff'd St. Bd. 01:Nov. 7, emergent relief denied St. Bd. 02:Feb. 6, aff'd App. Div. unpub. op. Dkt. Nos. A-1699-01T1 and A-2584-01T1, October 11, 2002)

Contract: Failure to renew superintendent's contract before July 1 or give notice of nonrenewal pursuant to N.J.S.A. 18A:17-20.1, triggered new contract with same provisions as expired contract including 5% salary increases. (01:June 5, Howard, aff'd St. Bd. 01:Nov. 7, emergent relief denied St. Bd. 02:Feb. 6, aff'd App. Div. unpub. op. Dkt. Nos A-1699-01T1 and A-2584-01T1, October 11, 2002)

Contract provision that permits the Board to terminate superintendent's five-year contract after three years and reduce him in position and salary, was not authorized by N.J.S.A. 18A:17-15 or other statute, and therefor the Board's actions pursuant to the contract are reversed as to the reduction in position and salary. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

Contract: Settlement agreement, once approved by Commissioner, is a binding contract. Superintendent only entitled to salary payment through the effective date of resignation, per terms of agreement, even though, absent terms, superintendent would have been entitled to salary payment until date of Commissioner's approval of settlement. (01:Feb. 26, Williams)

Controversy over board placing superintendent on paid two-week administrative leave was not moot where CSA alleged that such action caused harm to his reputation as it could reasonably be inferred action was taken for disciplinary reasons. (Reversed and remanded St. Bd. 03:May 7, Carrington)

In CSA contract dispute where the contract requires board to give 2 years notice of non-renewal, Commissioner upholds notice provision. N.J.S.A. 18A:17-20.1 provides a nonnegotiable framework requiring both notice to the superintendent and reappointment to the position upon the board's failure to provide it; all that is left to contractual agreement is how much more than one year's notice the parties may additionally choose to require. Case remanded to ALJ for additional determinations. (04:June 24, Solomon, aff'd St. Bd. 04:Oct. 6)

Mitigation: Superintendent who successfully challenged Board's termination of his employment and placement of him in Director position with reduction in salary, was required to mitigate his damages; entitled to restoration to superintendent position with full superintendent salary and benefits. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

Superintendent cannot simultaneously hold full-time positions of superintendent and principal. (see ALJ decision, 01:Nov. 5, settled.)

Interim CSA challenged termination of contract. Contract only required 30 days notice. CSA entitled to $21,000 for the period of notice. Persi v. Brick Bd. of Ed. 2011 Commr Feb 24.

Board resolution seeking to extend CSA contract from four years to five years failed as vote was 4 yes, 2 no, 3 abstentions. Resolution to extend contract did not receive yes votes from a majority of the full board (5 votes) as required under N.J.S.A. 18A:17-15. Nor did it satisfy the common law voting rule of a majority of those present and voting as there were nine board members present and only four yes votes. In addition, the board did not have the statutory authority to approve an appointment or contractual extension that would take effect on a date beyond the current board's natural lifetime. Here the contract extension would take effect more than two months after the 2010-2011 board's lifetime would expire and thus was void. The effect of the no vote on the contract extension was a non-renewal. Even though the board did not expressly vote on a non-renewal, the CSA was not automatically reappointed pursuant to N.J.S.A. 18A:17-20.1 where a motion to renew had failed. Negron, Commissioner 2011: March 28

Where CSA's four-year contract began July 1, 2007, and was set to expire on June 30, 2011, and where the board failed to provide notice of non-renewal one year in advance as required by the terms of the contract, the CSA was deemed reappointed for another four-year term on July 1, 2011. The Board correctly adjusted her salary as of July 1, 2011 pursuant to revised regulations that became effective in February 2011 which limit the maximum CSA salary according to the number of students enrolled in the school district. The reduction in salary did not violate her tenure rights, as – pursuant to N.J.A.C. 6A:23A-3.1(c) and N.J.S.A. 18A:7-8(j) – her reappointment contract was not enforceable until the Board submitted the

contract for review and approval by the Executive County Superintendent. Bacher v. Mansfield Bd. of Education, Commr 2012: March 5.

Commissioner adopts ALJ ruling that where Board failed to give Superintendent one year notice of an intent to terminate his contract under the contract's termination provision, and no new agreement was successfully negotiated prior to July 1, 2010, petitioner's contract was renewed on that date – by operation of law, *N.J.S.A.* 18A:17-15 *et seq.* – for another three years, with the salary provisions that were contained in the previous contract; therefore, any attempt to apply the salary limitations contained in *N.J.A.C.* 6A:23A-3.1 – which was not in effect until February 2011 – would involve a retroactive application of the regulation. The salary caps would apply if the contract is renewed in the future, whether by operation of law or negotiations. Marciante,Commr 2012:April 9 (Manalapan-Englishtown)» OAL Decision

Board sought administrative review of a decision of Executive County Superintendent voiding a new long-term contract of employment entered into between the CSA and the Board shortly before the effective date of the new regulations capping salaries, February 7, 2011. Commissioner dismissed the emergent applications, finding that DOE lacked jurisdiction over the matter in light of Commissioner's memorandum dated November 15, 2010 to all Executive County Superintendents and that only recourse was the court; Appellate reversed, and concludes that DOE has primary jurisdiction over the dispute of whether the new contract between was lawfully approved and executed before the effective date of the salary caps. Remanded to the Acting Commissioner of Education to adjudicate the emergent applications. Dolan v. Centuolo, A-2470-10T4, A-2710-10T4, 2012 N.J.Super Unpub. LEXIS 1627 (April 23, 2012)(App. Div.) (July 9)

Court grants board's motion to dismiss superintendent's complaint for lack of jurisdiction; superintendent's claims for breach of contract and breach of the implied covenant of good faith and fair dealing are part of the same "single, integrated dispute" as those involved in the tenure proceeding before the Commissioner and derive from the board's defendant's refusal to renew the superintendent's employment contract; Court is persuaded that dismissal of claims is proper because (1) jurisdiction rests with the Commissioner; (2) plaintiff has failed to exhaust his administrative remedies; and (3) plaintiff has failed to meet the timing requirements of N.J.A.C. 6A:3-1.3(i), which may not be avoided by simply filing a claim in a civil action. Moreover, the Commissioner would have primary jurisdiction even if the issues raised were not identical to the tenure issues; remedies before the Commissioner are the same that the Court could award noting that, in the absence of a contractual agreement to pay attorney fees, they are not available in breach of contract actions. Costanzo v. Leb. Borough Bd. of Ed., No. HNT-L-296-12, 2012 N.J. Super. Unpub. LEXIS 1729 (L. Div. July 13, 2012).

Commissioner remands matter to the OAL for a determination on whether the placement of the superintendent of schools, who was employed under a three year contract, on paid administrative leave, was arbitrary, capricious and unreasonable. While the ALJ found that the board properly invoked the Doctrine of Necessity in making its decision, the Commissioner held that the intent and spirit of the Accountability Regulations, particularly regarding the section on early termination of the superintendent, requires a substantive finding that the board is acting in the best interests of the students of the district. Caffrey, Commissioner, 2012:October 25

Appellate Division affirms decision of Acting Commissioner that board of education was not legally bound to renew the superintendent's contract for three years and did not act to extend his existing contract for an additional one-year period. The Board gave legally valid notice to Negron that his contract would not be renewed, and the affirmative votes of five Board members were required to extend his contract. While no separate formal action to non-renew was undertaken by the Board, the Board ratified the board secretary's notice of non-renewal by its formal adoption of the two September 2010 resolutions confirming its decision not to renew the superintendent's employment. *Negron v. Board of Education of South Plainfield*, DOCKET NO. A-4406-10T1, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2634, Decided December 3, 2012.

Commissioner dismisses with prejudice for failure of either party to appear, a matter initiated by former Superintendent seeking removal of her annual evaluation from her file on allegations that the Board's conclusions in the evaluation were arbitrary, capricious and unreasonable, and that the Board failed to comply with its legal requirement to complete her annual written performance evaluation report in a timely fashion. *Granthan v. Pleasantville BOE*, Commr 2013:May 15.

Commissioner affirmed action of Executive County Superintendent denying board of education application for a waiver of the maximum salary amount for superintendents established pursuant to *N.J.A.C.* 6A:23A-1.2 and *N.J.S.A.* 18A:17-24.1. The ECS determined that the Learning Center – a magnet school program operated by the Board and overseen by the district superintendent – did not constitute "an additional school district" within the intent of applicable regulations and did not qualify for an additional $ 10,000 in salary. Statutory and regulatory scheme provided no leeway to grant the salary increment sought. *Ridgefield*, Commissioner, 2014: August 8

Commissioner determined that the Interim Executive County Superintendent correctly denied board of education request to include long-term care insurance for the superintendent and spouse in the superintendent's 2013-2014 contract. Long-term care insurance is a form of supplemental health insurance. Pursuant to *N.J.A.C.* 6A:23A-3.1(e) (6), no superintendent contract shall include benefits that supplement or duplicate benefits that are otherwise available to an employee in the district. Since the

superintendent is covered by the same group health insurance policy that covers other employees, long-term care insurance cannot be offered to the superintendent. It is a form of supplemental health care insurance and prohibited under *N.J.A.C.* 6A:23A-3.1(e) (6). Petition was dismissed. *New Milford Bd. of Ed. v. NJSDOE*, Commissioner, 2014: October 14

SUSPENSION

Board failed to prove, by a preponderance of the credible evidence, that custodian's absenteeism was excessive; a custodian is not held to the same attendance requirements as a teacher. Loud abusive response to principal's questions constitutes unbecoming conduct. Suspension ordered. (02:Sept. 6, McCullough, aff'd St. Bd. 03:April 2)

Board improperly suspended teacher without pay, absent indictment of certification of tenure charges. (01:March 14, Kemmet)

Commissioner adopted ALJ's dismissal of parent's complaint objecting to district imposition of a five-day transportation suspension. Board determined to nullify suspension and withdraw disciplinary records. Matter dismissed as moot. (04:Jan. 20, D.T., aff'd St. Bd. 05:Feb. 2)

Five-day suspension without pay for non-tenured custodian was not within Commissioner's jurisdiction. If custodian were tenured, suspension without pay would have been minor disciplinary action lawfully imposed by the board. Remedy lies within confines of collective bargaining agreement. (02:March 14, Heminghaus)

Parent challenged her son's assignment to the alternative school for involvement in disciplinary actions, poor attendance and academic progress, asserting the ineffectiveness of the alternative school program. Parent failed to show that board's transfer to the alternative high school for a combination of poor attendance, discipline and academic performance was arbitrary, capricious and unreasonable. (02:Sept. 16, C.R.)

Bus driver challenged determination to suspend his school bus endorsement for 6 months pursuant to N.J.S.A. 18A:39-28 et seq. where he failed to do a walk-through of the bus and a child was left; Commissioner concurred with the ALJ that the Office of Criminal History Review (CHR) is entitled to summary decision dismissing the bus driver's petition; CHR was directed to notify the MVC of its obligation to suspend the endorsement and to notify his employer. Durant, 2012:Dec. 13.

TAX ISSUES

In challenge by mayor and taxpayer to the formula the Commissioner of Education used to apportion the tax levy between two merged districts (Victory Gardens and Dover), on grounds that tax levy figures used to calculate the apportionment were falsely inflated due to anomaly in the school funding formula, the Court finds that the mayor lacked standing,

and the taxpayer failed to exhaust her administrative remedies. Victory Gardens v. State of New Jersey 2011 N.J. Super. Unpub. LEXIS 453 (App. Div. Feb. 25, 2011).

Society of the Holy Child Jesus, appeals from a final order of the Tax Court affirming the revocation of a long-standing tax exemption on its property due to change in use from nun residence to school. Court reverses, holding that if the taxpayer complies with the requirements of N.J.S.A. 54:4-3.6 (organized exclusively for the exempt purpose; exclusively used for the tax-exempt purpose; and property not used for profit) it is entitled to the exemption from real property taxes even if the use of the property does not comply with the municipal zoning ordinance. Society of the Holy Child Jesus v. City of Summit, NO. A-1126-09T3, 2011 N.J. Super. LEXIS 31 (App. Div. 2011) Approved for Publication February 17, 2011.

Appellate Division affirms tax court judge's ruling rejecting arguments made by Jefferson Twp to the method of equalization of property values used by the Director of the Division of Taxation in determining the distribution of school aid for 2010 and 2011. Township had challenged the averaging step in the equalization process, arguing that as the result of using averaging in a declining real estate market, the Township's school aid is lessened and county taxes are unfairly increased. Township had failed to proffer definite evidence of what the impact would be of stopping the averaging, and thus could not demonstrate that the table was arbitrary, capricious, or unreasonable. Township of Jefferson v. Director, Div. of Taxation, 2012 N.J. Super. LEXIS 134 (August 6, 2012) Approved for Publication August 6, 2012.(approved for publication in the New Jersey Tax Court Reports)

Motion judge did not err by sanctioning the Committee's decision to rely on the reduction in tax revenue for the school district, as a basis for finding significant injury to the Township sufficient to deny deannexation of Strathmere from Upper Township. Citizens for Strathmere & Whale Beach v. Township Committee, A-1528-10T4, 2012 N.J. Super. Unpub. LEXIS 1849 (App. Div. August 1, 2012).

TENURE ACQUISITION

"Acting" Positions

Time served in "acting" position, serving in the place of another, not eligible for tenure acquisition. Jannarone specifically overruled. (04:April 12, Lustberg, aff'd St. Bd. 04:Sept. 1)

Aide: even though district required certification for aide position, and her aide duties contained an instructional component, teacher's year of employment as an instructional aide did not count for tenure acquisition purposes; therefore, teacher had no right to reemployment after serving the district for one year as an aide and three years as a teacher. (02:July 8, Poruchynsky, aff'd St. Bd. 03:June 4)

An endorsement is not invalidated simply because it is no longer issued. (99:Nov. 29, Ziegler)(on remand 03:Dec. 22, Ziegler)

Commissioner determined that board failed to terminate secretary prior to her having served the requisite amount of time for tenure to accrue. Notice of non-renewal given prior to end of third year contained an effective date equal to the end of the three year statutory period for tenure to accrue. (05:Dec. 6, Emmett)

Commissioner determined that non-tenured teachers in a regional district were not entitled to non-tenured positions in the constituent districts upon dissolution of the regional district, despite the guarantee of employment upon dissolution contained in N.J.S.A. 18A:13-64. Statute only protects entitlements possessed prior to dissolution and non-tenured teachers were only entitled to continued employment for the duration of the school year. (05:April 13, Lower Camden County Regional)

Commissioner determined that office aide/secretary did not acquire tenure pursuant to N.J.S.A. 18A:17-2, where she served two years as an aide followed by three years as a secretary. Secretary position is a separately tenurable position, requiring three years and a day of service. (05:April 1, Giardina, aff'd St. Bd. 05:Sept. 7)

Day care: teachers assigned to an extended-day kindergarten program could not acquire tenure or seniority credit for service in that program even though they were required to hold teaching certificates and otherwise treated them like teachers, since the nature of the employment was related to quality child care and not T & E, and the Board did not adopt the curriculum. (02:Oct. 24, Brown)

Educational Media Specialist: Person who performed duties of Educational Media Specialist but did not possess appropriate certification, not entitled to tenure or employment in the district. (96:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

Matter of whether certified teaching positions in fee-based, extended-day kindergarten program were tenure-eligible is not ripe not for relief, but is better suited for declaratory ruling pursuant to Commissioner's discretion under N.J.A.C. 6A:3-2.1; teachers ordered to amend their petition to proper format. (01:Aug. 6, Brown)

Appellate Division held that secretary who worked one academic year as an aid and two academic years as a secretary before being non-renewed by the board was not entitled to tenure as a secretary. N.J.S.A. 18A:17-2 does not provide for tacking time employed as a clerk to time employed as a secretary nor to back tack time served as a secretary to time served as a clerk to gain secretarial tenure. Giardina v. Pequannock Twp. BOE, A-0822-05 (App. Div. June 19, 2006) (unpublished slip op. at 5).

Commissioner detemined that tenured clerical who voluntarily transferred to non-tenurable classroom aide position did not retain tenure rights as a clerk after she was non-renewed as a classroom aide. (Colon-Serrano, Commr., 2008: Jan. 28, affirmed St. Bd., 2008: June 18).

Commissioner determined that teacher acquired tenure on October 3, 2004. Board directed to compensate teacher for the difference in health insurance costs between individual and family coverage for the period she

should have been granted tenure status. (Milano, Commr., 2009:March 25)

Commissioner re-emphasized that assistant-principal and vice-principal are separately tenurable positions. (Austin, Commr., 2007: April 26).

Commissioner determined that service as interim principal would not allow tenure to accure as interim principal, but tenure would continue to accrue as vice and assistant principal while serving as interim principal. N.J.S.A. 18A:16-1.1. (Austin, Commr., 2007: April 26).

Commissioner detemined that attendance aide acquired tenure as a clerk where her duties were primarily clerical in nature. (Colon-Serrano, Commr., 2008: Jan. 28, affirmed St. Bd., 2008: June 18).

Home instructors act in the place of other teachers, are essentially substitute teachers, and do not accrue time toward tenure acquisition. Petition for certification denied. Donvito v. Board of Educ. of the N. Valley Reg'l High Sch., 188 N.J. 577; 911 A.2d 69; 2006 N.J. LEXIS 1740, Decided, November 9, 2006.

Third Circuit affirmed District Court decision that granted school district's motion for summary judgment where non-tenured provisional teacher alleged that immediate termination caused injury because he needed to complete a provisional training program in order to be properly certified. While teacher may have a breach of contract claim, he had no constitutionally protected property interest in his position. Goodmann v. Hasbrouk Heights School District, Nos. 06-3676 and 06-3209, 2008 U.S. App. Lexis 8683 (3d Cir. April 21, 2008).

Third Circuit determined that non-tenured had no constitutionally protected property interest in his position. Goodmann v. Hasbrouk Heights School District, Nos. 06-3676 and 06-3209, 2008 U.S. App. Lexis 8683 (3d Cir. April 21, 2008).

Commissioner determined that time teaching under a county substitute certificate did not accrue towards tenure eligibility. (Davis, Commr., 2006: Dec. 8).

Commissioner determined that employee was not a "teaching staff member" as defined in 18A:1-1 until he acquired a provisional teaching certificate. Certificate of eligibility to seek employment as a provisional teacher was not the equivalent to the certification required by 18A:1-1. (Davis, Commr., 2006: Dec. 8).

Commissioner determined that a substitute teacher was not "in [a position] which required him to hold appropriate certificates issued by the board of examiners." N.J.S.A. 18A:28-5.1 Petitioner's employment was allowed by N.J.S.A. 18A:16-1.1, which permits districts to hire persons to act in the place of absent employees. Under the terms of that statute, such surrogate employees may not accrue tenure while acting in the absent employee's stead. (Davis, Commr., 2006: Dec. 8).

Teacher who did not possess the appropriate endorsement for County Apprenticeship Coordinator position, did not acquire tenure as such. Although he had served in the position, it was under a waiver permitting the district to hire a less-than-fully certified person and thus his service

could not be construed as tenure-eligible service. (Lagrutta, Commr., 2007:June 7, affirmed State Board 2007:November 7)

Commissioner determined that N.J.S.A. 38:16-1 did not provide tenure status to military veterans who had been appointed to a fixed term of employment. (Ruby, II, Commr. 2007: Jan. 22).

Alternate route teacher is provisionally certified by virtue ofparticipation in alternate program and therefore enjoys dueprocess rights analogous to other non-tenured teachers(87:1803, Griskey, rev'd St. Bd. 88:August 3)

Voluntary, unpaid leaves of absence do not count towardseniority (80:866, Berkowicz)

Commissioner remanded matter for appropriate review where ALJ failed to determine ripeness of teachers claim to tenure where she has suffered no adverse action. (Milano, Commr., 2008: July 25)

Commissioner determined that vice-principal had acquired tenure as principal where he was promoted to principal from the tenure-eligible position of vice-principal and had served two consecutive calandar years in the principal position. (Austin, Commr., 2007: April 26).

Commissioner determined that because a Type II district lacks the authority to appoint a school business manager, petitioner could not gain tenure in that position. (Ruby, II, Commr., 2007: Jan. 22).

Commissioner adopted board's dismissal of teacher who had consented to certificate suspension without the necessity of complying with tenure removal procedures. Commissioner determined that tenure protection does not protect teaching staff members who are not holders of "proper certificates in full force and effect." (Schailey, Commr., 2009:Feb. 19)

Commissioner determined that financial officer/accounts payable employee performed clerical duties that made his position tenure eligible. Commisisoner also determined that effective date of board's termination superseded superintendent's notice of termination; therefore, employee's length of service was sufficient to achieve tenure. Commissioner ordered board to reinstate employee with back pay and emoluments. (Sharkey, Commr., 2009:December 29)

Commissioner adopted Initial Decision finding that 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, Commr., 2008:March 14)

Time served as interim principal does not count toward tenure as principal until resignation becomes effective and vacancy exists. Tenure is not acquired at the end of the two year period but after completion of the two year probationary period with reemployment. (Walton, Commr. 2007:August 8)

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, Commr., 2008:April 14)

Commissioner determined that 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, Commr., 2008:April 18)

Commissioner determined that despite never having been employed as a conventional classroom teacher, tenured program director could not be terminated pursuant to a reduction in force while a position within the scope of her instructional certificate was held by a non-tenured teacher. (04: Aug. 19, Trionfo)

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, Comm'r., 2008:June 13).

District suspension of teacher without pay was wrongful because under N.J.S.A. 18A:6-14, board may only suspend without pay if tenure charges have been filed or employee has been indicted; therefore, board must return pay withheld and provide prospective pay until certification of tenure charges or indictment; Commissioner declines to consolidate issue with separate pending matter involving whether teacher may perform his teaching duties while the criminal charges are pending. (Flynn, Commr., 2009:August 3)

Where teacher in correctional facility failed to respond to charges that he showed an unauthorized movie to his students during class time -- charges deemed admitted; Commissioner orders 90-day suspension without pay. (Teure Hearing of Harper, Commr., 2009:July 14)

Teacher who served as substitute for several years was never tenured; there was never a vacancy to be filled; therefore tenure never accrued. Giacomazzi v. Board of Educ. of the S. Orange-Maplewood Sch. Dist., 2009 N.J. Super. Unpub. LEXIS 2352 (App.Div. Sept. 2, 2009)

English teacher was insubordinate and engaged in unbecoming conduct when she used her cell phone for a personal call during class, did not respond appropriately to an incident which occurred while she was on that phone call, and later made a related foray into another teacher's classroom; a reprimand and loss of the 120 days salary, are a sufficient penalty given the circumstances in this matter. (Tenure Hearing of Getty, Commr., 2009:July 17)

Commissioner dismisses techer who failed to respond to charges, noting that teacher showed such evidence of deviation from normal mental health that

the Board placed him on paid leave pending the results of a psychiatric evaluation and that he has not cooperated in securing such an evaluation to ascertain his ability to return to his teaching position. (Tenure Hearing of Kous, Commr., 2009:July 17)

Appellate Division affirms State Board's determination that board wrongly terminated a tenured teacher coordinator of cooperative industrial education on grounds of lack of proper certification, where he held an obsolete certificate of "employment orientation" and a 1982 certificate in skilled trades; the certifications in fact enabled him to teach basic level courses that he was in fact teaching such as shop, maintenance and repair with carpentry emphasis, and industrial technology; App. Div. also affirms State Board's reduction of back-pay to $140,167.24, reflecting period time that he would have been subject to RIF and on preferred eligibility list. Ziegler v. Bayonne Bd. of Ed. App. Div.

Commissioner finds that Petitioner did not accrue tenure in her Director of Administration position and thus no tenure rights were violated when the board terminated her; no evidence that this was an approved title or that it required a certificate; nor did it provide her tenure as a business administrator since the duties performed by the Director of Administration were not similar to those performed by a BA, with the exception of some insurance work; nor did she at any point devote full time to the responsibilities of a business administrator. In Cheloc, 2011: Nov. 23(Elizabeth)

Dismissal

Parent sought removal of teacher who allegedly struck and injured his son during a field trip. Board investigation concluded that incident was an accident. Matter moot, given that board determined that no action was necessary. (G.J., Commr., 2008:October 22)

Tenure charges of conduct unbecoming and allegations of improper touching dismissed against tenured school social worker; student witness was not credible and no corroborating evidence was presented. (Pitts, Commr., 2008:October 27)

Appellate Division affirms final determination of the Commissioner removing employee as a tenured teacher based on a finding of "conduct unbecoming and other just cause" predicated on allegations of engaging in improper sexual contact with a minor student. While the Department of Children and Families, through its Institutional Abuse Investigation Unit, had made an independent determination that the charges were unfounded, that fact did not statutorily preclude the school district from bringing the tenure charges. In re Young, (A-0309-08T3) 2009 N.J. Super. Unpub. LEXIS 1686 (App. Div. June 25, 2009.) See below: (Young, Commr., 2008:August 18)

In challenge to board's refusal to certify tenure charges brought by football coach against principal, Commissioner remanded case to board and ordered board to make proper discretionary decision within next 45 days. (Galante, Commr., 2008:August 21)

Physical education teacher is ordered removed from his position for insubordination toward his supervisors; habitual lateness and absence from work; use of disrespectful and unprofessional language and vulgar gestures towards colleagues; and use of inappropriate language toward a student. Lack of mitigating factors and his failure to show remorse or take responsibility for any of the aforelisted actions provided additional support for removing him. (Hill, St. Bd. 2007:Oct. 17) See also (I.M.O. Hill, Commr. 2007:May 15)

Commissioner agrees with ALJ that, contrary to the employee's assertion, tenure charges were based on drug possession and not 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 121th day after filing of charges to the Commissioner's decision. (I.M.O. Tenure Hearing of Thomas, Commr., 2008:May 23)(I.M.O. Tenure Hearing of Thomas, Commr., 2007:Nov.

Board violated the tenure rights of a tenured basic skills teacher who served under her elementary endorsement, when it eliminated her basic skills instructor position, terminated her employment and continued to employ non-tenured elementary school teachers. (Taibi, Commr., 2008:September 24)

Commissioner determined that board proved charges of unbecoming conduct for failing to create, widely publish, and monitor an attendance policy, but failed to prove unbecoming conduct in Special Review Assessment administration or assignment of improperly certified teaching staff. Six-month suspension ordered. (I.M.O. the Tenure Hearing of Tracey, Commr., 2009:April 8)

Commissioner determined that board had proven charges of unbecoming conduct, where teacher directed students to touch him inappropriately in class; engaged in personal work during his class time; and used obscenities and vulgar hand gestures in the presence of his students. (I.M.O. the Tenure Hearing of Powell, Commr., 2009:March 18)

Commissioner dismissed tenured music teacher charged with unbecoming conduct where teacher chose not to deny charges. Paraskevopoulos, Commr., 2008: Feb. 28.

Commissioner upheld tenure charges against teacher who had been absent 161 days during the 2005-06 school year, and accordingly had her 2006-07 increment withheld, and was subsequently declared unfit for duty by the district physician. Commissioner encouraged board to consider filing an application for ordinary disability retirement on respondent's behalf pursuant to N.J.S.A. 18A:66-39. (LaCross, Commr., 2008: July 14)

Commissioner determined that board failed to properly determine whether probable cause existed to credit the allegations contained in the tenure chargers or that the conduct did not warrant punishment. Remanded for

appropriate board investigation and consideration. (Galante, Commr, 2008: Aug. 21).

Commissioner rejected initial decision directing board to certify charges to the Commissioner. ALJ substituted her judgment for that of the board in determining that the charges were true in fact. (Galante, Commr, 2008: Aug. 21).

Commissioner determined that board failed to meet the standard for consideration of tenure charges where no support was proffered for the Board's conclusory statements that petitioner's charges were not creditable and that they did not – even if assumed true – rise to the level of warranting dismissal or reduction in salary. (Galante, Commr, 2008: Aug. 21).

Commissioner determined that arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. (Galante, Commr, 2008: Aug. 21).

Commissioner refused to dismiss tenure charges that were procedurally defective where board accepted the filed charges and the target of the charges fully responded. (Galante, Commr, 2008: Aug. 21).

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 prohibits hitting a student. Matter forwarded to State Board of Examiners for appropriate action. (I.M.O. Tenure Hearing of Gall, Commr., 2007: Dec. 26; affirmed St. Bd., 2008: June 18).

Board proved tenure charges of insubordination, conduct unbecoming and neglect of duty against three teachers, based on allegations that they were involved in a fraudulent attempt to receive payment for attendance at meetings of their respective School Leadership Councils - when no such meetings ever took place - and then attempted to cover up the facts during the district's investigation by filing fabricated documents and giving false information. Dismissal was the appropriate penalty, notwithstanding prior unblemished records, absence of venal motives, and circumstances that helped explain their conduct. (Duran, Vinson and Jones, Commr. 2007:July 5)

Commissioner increases penalty from 70 days' salary withheld to 120 days', where the board proved only two of the nine incidents alleged: the presentation by the teacher of a birthday gift to his minor female student, and the establishment of a clandestine email account for secret communications with her. Teacher must learn the need for 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)

The Board certified tenure charges of unbecoming conduct against respondent Culinary Arts teacher for allegedly exercising poor judgment during an overnight school-sponsored trip. (Rosencranz, Commr, 2004: Jan. 8).

On remand, the Commissioner dismissed tenure charges of inefficiency where didtrict failed to provide PIP or reasonable, positive assistance in overcoming her inefficiencies during the 90-day remediation period. (Parise, Commr, 2008: August 8). Commissioner rejected ALJ attempt to re-categorize inefficiency charges as incompetency and called into doubt the continue viability of such action. Matter re-remanded for factual findings on conduct unbecoming and other just cause charges. (Parise, Commr., 2007: April 11).(Parisi, Commr. 2005: June 10) Re-remanded on other matters.

Tenure charges of conduct unbecoming a teacher upheld. Proven charges included unprofessional and offensive behavior towards students and staff including physical abuse of students and disabilities. (Robinson, Commr., 2008:October 3)

Board proved tenure charges of unbecoming conduct against tenured secretary. Secretary, on several occasions, left work early without permission, failed to heed Board policy prohibition against selling commercial items, despite warnings, and used disrespectful and unprofessional language. Suspension for six months and loss of salary increment deemed appropriate penalty. (McCain, Commr. 2007:July 16, aff'd St. Bd. 2007:December 5)

Teacher failed to give proper attention to his teaching duties, falsified time and attendance records, failed to heed numerous warnings regarding his behavior, and violated an order prohibiting him from attending sports tournaments. Commissioner referred to State Board of Examiners for appropriate action. Ash, Comm'r, 2008: July 10.

Tenure charges upheld against teacher for conduct unbecoming where teacher engaged in unprofessional and inappropriate comments toward students and fellow staff members over the course of several school years. The Board proved that respondent exhibited unbecoming conduct. ALJ found testimony of the respondent was less credible than that of the students and teachers presented by the Board; the honest and forthright testimony of the student witnesses revealed consistent stories of a raucous classroom environment rife with name-calling, sarcasm, and sexual innuendo; respondent's references to several female students as prostitutes and whores disrespected and demeaned these students in a personal way, and violated all standards of decency in relating to his students; the preponderance of credible evidence established that the respondent's conduct toward one of his co-workers, a female teacher, included sexual innuendo and direct sexual references to his desire to view her kissing another female staff member, as well as repeated unwanted invitations on Facebook and in person; teachers are required to exercise a high degree of self-restraint and controlled behavior as they are entrusted with the custody and care of children. Commissioner upholds charges against teacher. *I/M/O Tenure Hearing of Lang*, Comm., 2014: Jan. 13

Court affirms tenure dismissal of physical education teacher for conduct unbecoming, including, at various times beginning in or about 2003 to the present," of engaging "in deceptive and untruthful conduct; acting "in an

inappropriate, defiant and insubordinate manner, and repeatedly demonstrating a blatant disregard for and open defiance of administrative directives despite numerous warnings and admonitions, including alleged non-compliance with, and open defiance of, a ninety-day action plan designed to correct his behavior. *In re Harriman*, No. A-1386-12T3 (App. Div. March 12, 2014) (not for publication)

Board did not prove charges of unbecoming conduct against superintendent of schools. Board failed to prove that superintendent engaged in either retaliation or dishonesty as charged. Administrative assistant never filed a complaint against superintendent and suffered no adverse employment consequences. Tenure charges dismissed and superintendent restored to his tenured position with back pay and all emoluments. *IMO Tenure Hearing of Costanzo*, Commissioner 2014: April 4

Tenure matter dismissed as moot. Respondent pled guilty to Criminal Sexual Contact and agreed to relinquish, with the force and effect of revocation, the teaching certificates issued by the State Board of Examiners. Examiners' decision to revoke certificates rendered tenure matter moot as teacher prohibited by law from continuing his tenured employment with the board or with any other public school in New Jersey. *IMO Tenure Hearing of Greco*, Commissioner 2014: April 24

Board certified tenure charges of incapacity, conduct unbecoming, and neglect of duty against tenured teacher. Teacher had been chronically and excessively absent from his duties as a teacher, resulting in an adverse impact on the continuity of the educational process for the students of petitioner's district. Teacher's failure to respond rendered allegations deemed to be admitted Commissioner found that petitioner's charges of incapacity, unbecoming conduct, and neglect have been proven and warrant respondent's dismissal. *IMO Tenure Hearing of Dazz*, Commissioner 2014: April 28

Commissioner dismissed tenure dismissal action as moot where tenured teacher resigned his employment after criminal charges of endangering the welfare of a child were filed and teacher entered into pre-trial intervention program. (I.M.O. the Tenure Hearing of Castel, Commr., 2008:March 17)

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, Commr., 2008:March 19)

Commissioner found that guidance counselor may not have had a full hearing before the ALJ with respect to presentation of testimony, evidence and submission of briefs; matter was remanded for further findings as to whether guidance counselor misrepresented his credentials and improperly served as acting principal from August 25, 2003 through his removal in December 2003, as well as spreading on the record the as to why remaining charges should be dismissed or withdrawn. (Clayton, Commr., 2008:December 18)

State Board of Education affirmed State Board of Examiners two-year suspension of appellant's teaching certificates for conduct unbecoming a teacher.

Matter involved DYFS substantiated allegations of sexual misconduct at an overnight field trip to the Penn Relays. (Younger, St. Bd., 2006: Jan. 4) Appellate Division affirms, finding that the State Board's determination was supported by the record and was not arbitrary, capricious nor unreasonable. (I.M.O. the Suspension of the Certificates of Corey Younger By the State Board of Examiners, No. A-2800-05T32800-05T3 (App. Div. Nov. 15, 2006) (slip op.).

Board appealed a final determination of the Director of the Office of Administrative Law, finding that its law firm was disqualified from representing the Board in this tenure matter involving the Superintendent of Schools. Law firm, on behalf of the board, had represented the superintendent in an FMLA matter. Appellate Division affirmed. (Kittrels, Commr., 2008:August 26)

Appellate Division affirms State Board's affirmance of Commissioner's decision.Respondent tenured assistant principal removed from position due to unbecoming conduct. Issues included failure to review plan books, handle disciplinary matters, supervise a lunch room and inappropriate actions in special education matters. Petition for certification denied. In re Tenure Hearing of Sarduy, 188 N.J. 576, Decided November 6, 2006.

Tenured elementary school teacher dismissed. Charges of inefficiency upheld. District provided assistance and a reasonable opportunity for correction during a probationary period. Teacher failed to properly implement Core Curriculum Content Standards, and Board academic achievement policies. (Jones, Commr., 2008:September 29)

Commissioner dismissed tenured custodian. Failure to appear at hearing, the charges against him – previously found sufficient, if true, to warrant dismissal or reduction in salary – were deemed admitted, and custodian was dismissed from his employment as of the date of this decision. (Williams, Commr., 2007: April 11).

Commissioner determined that superintendent's abuse of authority by attempting to recoup leave time that had been forfeited by directing subordinates to roll forfeited days into other categories of leave did not warrant dismissal from office. Superintendent suspended for six months without pay. (I.M.O. Tenure Hearing of Witmer, Commr., 2007: Dec. 24); aff'd St. Bd. for the reasons expressed in the Commissioner's decision; (Witmer, St. Bd., 2008: May 21).

Commissioner determined that tenure charges were rendered moot where employee’s public office was forfeited in a judgment issued by the sentencing court. (Iglesias, Commr., 2007: Oct. 2).

Commissioner determined that tenured assistant secretary should be dismissed where repeated warnings, increment withholding, and professional improvement plan failed to improve attendance. (Battle, Commr., 2007: Sept. 20, aff'd St. Bd. 2008:February 20)

State Board dismisses Board’s appeal for failure to perfect, leaving Commissioner’s decision intact. Commissioner had directed board to arrange for anger management training, conflict resolution and handling

difficult and disruptive students where such issues were evident, but did not support tenure dimsissal. (Poston, St. Bd. 2007:April 4)

Commissioner affirmed ALJ determination that excessive absenteeism and tardiness constitute conduct that renders the workplace inefficient, despite the fact that another person was present to fill tenured secretary's duties while she was tardy. (Battle, Commr., 2007: Sept. 20, aff'd St. Bd. 2008:February 20)

Commissioner summarily ordered the dismissal of tenured secretary for chronic absenteeism and tardiness over a nine-year period, despite the lack of detrimental impact on district operations. (Battle, Commr., 2007: Sept. 20, aff'd St. Bd. 2008:February 20)

Commissioner dismissed tenure charges, without prejudice, against a tenured staff member for the board's failure to specify the alleged unprofessional conduct in the tenure charges. Charges were so general in nature that teacher was unable to submit a written statement of position, failed to state a time or dates of the alleged violations, or provide the names of alleged victims of his unprofessional conduct. (King, Commr. 2007: Sept. 18).

District Court awarded attorney fees to school board attorney who was the prevailing party in a frivolous § 1983 action. Federal claims were instituted as a pretext to duplicate claims that were already in litigation in state court. Moran v. Southern Regional High School District Board Of Education, 2006 U.S. Dist. LEXIS 21100 (DNJ, April 10, 2006)

Commissioner removed tenured custodian for conduct unbecoming. Custodian failed to respond to tenure charges. (Buongiorno, Commr., 2008: Jan. 24).

Commissioner dismissed tenured custodian who failed to contest charges of excessive absenteeism and abandonment of position. (I.M.O. Tenure Hearing of Sowinski, Commr., 2007: Dec. 14)

Commissioner suspended contractually tenured superintendent for six months without pay for conduct unbecoming by failing to report vacation days, misdirecting leave time, intentionally deceiving the board, and abusing his authority. Superintendent suspended for six months without pay. (I.M.O. Tenure Hearing of Witmer, Commr., 2007: Dec. 24); aff'd St. Bd. for the reasons expressed in the Commissioner's decision; (Witmer, St. Bd., 2008: May 21).Appellate Division affirms State Board decision that contractually tenured superintendent was guilty of unbecoming conduct for failing to report vacation days, misdirecting leave time, and intentionally deceiving the

Distinction between incapacity, incompetency and inefficiency discussed,see ALJ decision. (00:March 10, Finn)

Commissioner determined "[u]nbecoming conduct" is an elastic term broadly defined to include any conduct "which has a tendency to destroy public respect for [government] employees and competence in the operation of [public] services." Behavior rising to the level of unbecoming conduct "need not be predicated upon a violation of any particular rule or regulation, but may be based merely upon a violation of the implicit standard of good behavior which devolves upon one who stands in the

public eye as an upholder of what is morally and legally correct. Superintendent suspended for six months without pay. (I.M.O. Tenure Hearing of Witmer, Commr., 2007: Dec. 24);

Commissioner determined that superintendent's failure to report vacation days taken until two weeks after they had been used did not constitute unbecoming conduct. Superintendent did report the use of the vacation days and was properly charged for them. Superintendent was suspended for six months without pay. (I.M.O. Tenure Hearing of Witmer, Commr., 2007: Dec. 24); aff'd St. Bd. for the reasons expressed in the Commissioner's decision; (Witmer, St. Bd. 2008:May 21)Appellate Division affirms State Board decision that contractually tenured superintendent was guilty of unbecoming conduct for failing to report vacation days, misdirecting leave time, and intentionally deceiving

Teacher properly dismissed from tenured position for criminal conviction and forfeiture of teaching certificates following sexual misconduct with students. (Thorp, Commr, 2007: March 19).

State Board dismisses Board's appeal for failure to perfect, leaving Commissioner's decision intact. Commissioner had rejected ALJ's penalty recommendation of 30 days loss of salary where teacher exercised poor judgment in using expletives in her classroom on one specific occasion. Commissioner had imposed 120 days loss of salary to make it clear that obscene and derogatory language will not be tolerated in the school setting no matter how the teacher was provoked. (Poston, St. Bd. 2007:April 4)

State Board affirms 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, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

Teacher demonstrated a serious lack of judgment and concern for the proper education of her students when she made copies of a personal form and attempted to cover the infraction by integrating the form into a lesson. State Board affirms 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, Commr. 2006: Oct. 26, reversed as to

Teacher engaged in unbecoming conduct when she stole the staff sign-out book. Teacher's conduct exhibited a significant lack of judgment, insubordination and a total disregard for district property and procedures. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

Commissioner determined that teacher engaged in conduct unbecoming where she lied about having entered an administrator's file cabinet. Dismissal ordered for this and other reasons. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

Teacher's repeated and vociferous denial of obviously demonstrated facts left commissioner to conclude that teacher was either incapable of recognizing the truth or recognized it, but lied repeatedly in order to avoid the consequences of her actions. In either event, such behavior was directly contrary and inimical to the expectations of teaching staff members, most particularly those in alternative schools for troubled youth. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

Commissioner held that even one act of theft, regardless of the value of the item, is sufficiently flagrant to require a school district employee's removal from his tenured position. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).).

Commissioner defined unbecoming conduct as an elastic term broadly defined to include any conduct which has a tendency to destroy public respect for government employees and competence in the operation of public services. (Long, Commr. 2006: Oct. 26, reversed as to penalty, St. Bd. 2008:April 16).

Commissioner determined that tenure charges that had been held in abayance during the pendancy of criminal prosecution were rendered moot with tenured teacher's entry in to PTI and order of forfeiture. (Whaley, Commr., 2006: Nov. 28).

Commissioner determined that petitioner’s forfeiture of her position and prohibitions against employment with any governmental entity in the State were conditions of her entry into PTI, not of successful completion of PTI. (Whaley, Commr., 2006: Nov. 28).

Teaching staff member’s teacher of music certificate of eligibility with advanced standing and teacher of music certificate revoked due to conviction of possession of child pornography. (Lapetina, Exam, 2006: Sept. 21).

Commissioner determined that superintendent engaged in unbecoming conduct when he ordered subordinates to carryover vacation days and to roll personal days into sick days without a proper entitlement to such benefits. Intimidation or undue influence was present due to the disparate balance of power existing between the superintendent and staff members. Superintendent suspended for six months without pay. (I.M.O. Tenure Hearing of Witmer, Commr., 2007: Dec. 24); aff'd St. Bd. for the reasons expressed in the Commissioner's decision; (Witmer, St. Bd., 2008: May 21).

Commissioner dismissed teacher of the developmentally disabled for a single instance of loss of control in a 41 year career. Matter forwarded to State Board of Examiners for appropriate action. (I.M.O. Tenure Hearing of Gall, Commr., 2007: Dec. 26; affirmed St. Bd., 2008: June 18).

State Board of Examiners revoked the certificate of tenured elementary school teacher for slapping student and puncturing his neck with a chair after the student threw a book at her. I.M.O. Tyson, Bd. Exam. 2006: June 12.

State Board of Examiners ordered two-year certificate suspension of a tenured special education teacher for assaulting a special education student. I.M.O. Kendrick, Bd. Exam. 2006: June 12

After teacher entered into a settlement agreement with the district which was approved by the Commissioner, State Board of Examiners revoked his certificates for engaging in unbecoming conduct by placing ice cubes down student's blouse. I.M.O. Chavez, Bd. Exam. 2006: May 10.

Commissioner determined that district had no obligation to take any action on tenured secretary's resignation in good standing, while tenure charges were pending. Secretary pleaded guilty to theft of public funds pursuant to an order of forfeiture of public office. (Whaley, Commr., 2006: Nov. 28).

Tenured special education teacher was dismissed from his teaching position with the New Jersey State Juvenile Justice Commission following his arrest for alleged possession of heroin and failure to timely report his arrest and criminal charge for drug related activity in violation of the JJC's Drug Free Workplace Policy. Such conduct constituted conduct unbecoming a teaching staff member, particularly in a position such as his where he teaches children, many of whom are involved with illicit drugs. (Guarni, Commr. 2007:July 23)

Commissioner determined that superintendent engaged in unbecoming conduct where he misdirected vacation and personal leave time and deceived the board of education. Superintendent suspended for six months without pay. (I.M.O. Tenure Hearing of Witmer, Commr., 2007: Dec. 24); aff'd St. Bd. for the reasons expressed in the Commissioner's decision; (Witmer, St. Bd., 2008: May 21).

State Board affirms State Board of Examiners revocation of tenured music teacher's certification. Teacher was dismissed from his teaching position after personal relationship with a 15 year old student culminated when appellant kissed him on the lips. Egregious breach of trust negated any positive teaching ability, recognition of work or community involvement. (Fox, Examiners, 2005: Nov. 15).

Commissioner dismissed tenured custodian for rude and abusive conduct during a meeting with his supervisors during which the custodian made clear that he was capable of violence. Work history demonstrated a potential for danger if he returned to work. (McCullough, Commr., 2006: Feb. 17) Request to supplement the record denied (McCullough, State Board, 2006: Oct. 4) Request to take official notice of the audio cassette tape of the OAL hearing denied. (McCullough, State Board, 2006: Dec. 6) State Board affirmed, January 3, 2007. Dismissed with prejudice for failure to appear. (McCullough, Commr., 2007: Feb. 22)

Commissioner dismissed tenure charges as moot where tenured secretary resigned from her tenured employment and held no certificate issued by the N.J.

Dept. of Ed. (I.M.O. the Tenure Hearing of Taussi, Commr., 2008: Feb. 19)

State Board affirms decision of the State Board of Examiners to revoke teacher's instructional certification as a Teacher of Social Studies, Teacher of Elementary School and Teacher of the Handicapped. (Rosen, Examiners, 2005: Sept. 22).

The Appellate Division determined that 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).

Voluntary relinquishment as part of settlement of tenure charges, Commissioner ordered record of matter forwarded to Board of Examiners for formal revocation of certificate (84: January 10, Fischer); Cf. (84: March 30, Lesch-Palmer)

Although some photos taken during field trip showed teacher in a questionable position with towel positioned between his legs, the ALJ was convinced that his action was inadvertent and, as such, did not rise to the level of unbecoming conduct constituting just cause for dismissal. As to the charge of consuming alcohol on the trip, although the testimony indicated that respondent, along with the other two chaperones, consumed wine at dinner, the District's policy on field trips does not forbid the consumption of alcohol by adult chaperones. (Rosencranz, Commr, 2004: Jan. 8).

Commissioner upheld unbecoming conduct dismissal of tenured Social Studies teacher for engaging in a sexual relationship with 11th grade student. (Shinkle, Commr., 2004: Aug. 19).

Commissioner dismissed tenured math teacher who failed to respond to the charges. (Howard, Commr., 2007: Oct. 26)

Commissioner dismissed tenured special education teacher for abandonment, chronic and excessive absenteeism and insubordination where teacher failed to respond to the board's charges. (Rothacker, Commr., 2007: Feb. 1)

Commissioner determined that reflexive slap of a developmentally disabled student, while understandable even reasonable in another context, raises questions about an employee's ability to function in a developmentally disabled educational environment. Matter forwarded to State Board of Examiners for appropriate action. (I.M.O. Tenure Hearing of Gall, Commr., 2007: Dec. 26; affirmed St. Bd., 2008: June 18).

Public school employers were improperly granted summary judgment on principal's First Amendment retaliation claim. Employers' failure to renew the employee's employment contract constituted adverse employment action for purposes of employee's First Amendment retaliation claim for "whistleblowing" activities. Principal's resignation occurred only after

notification that employer planned to non-renew his contract. Non-renewal was actionable conduct; a demotion in title and salary. Lapinski v. Bd. of Educ., No. 04-1709, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 163 Fed. Appx. 157, 2006 U.S. App. LEXIS 1989, Filed January 24, 2006.

Commissioner dismissed tenured custodian that failed to respond to charges alleging excessive absenteeism and insubordination. Absences adversely affected the efficient operation of the schools. (Dulack, Commr. 2006: Sept. 1).

Commissioner dismissed tenured custodian who failed to respond to the charges. I.M.O. the Tenure Hearing of Buongiorno, Commr., 2008: Jan. 24.

Commissioner dismissed tenured clerk for conduct unbecoming and insubordination for unsatisfactory work product, poor time management, and problems working with staff. Commissioner deemed charges admitted where clerk refused service. (I.M.O. Tenure Hearing of Bailey, Commr., 2007: Dec. 26)

Although board proved 3 of the 5 charges it brought against a confidential secretary, the penalty of tenure dismissal is too harsh where she had 17 years of unblemished service and her acts (discarding important documents, lacking candor during an investigation; and failing to perform her duties to answer general counsel's telephone), while showing extremely poor judgment, were not premeditated, cruel or vicious. Commissioner adopts ALJ decision for loss of 120 days' pay and loss of increment for one year. (Tenure Hearing of Weaver, Commr., 2009:June 1)

The Commissioner upheld tenure charges for inefficiency, tardiness and absenteeism over a 5-year period; teacher failed to improve teaching skills, classroom management techniques and other deficiencies despite district's efforts over 90-day period; however, her employment did not terminate until the rendering of Commissioner decision, and not according to law judge's ruling that her position be forfeited retroactively from date of suspension. (Tenure Hearing of Ashe-Gilkes, Commr., 2009:May 28)

Tenured custodian dismissed from employment. Proven charges included unbecoming conduct, misbehavior, insubordination, inability to complete duties and other just cause. Respondent was absent from his post during his assigned shift on multiple occasions, verified by video surveillance tapes, and was found sleeping in his car. School administration expressed repeated informal concerns about the cleanliness of respondent’s assigned work area; and respondent was previously warned about leaving his post without permission, and about unclean conditions in his work area. Basulto, Commr. 2009: October 15

Tenured physical education teacher, who had tenure charges pending, was found guilty of third degree witness tampering and second degree official misconduct and, by order of the court, forfeited her public employment with the district pursuant to N.J.S.A. 2C:51-2, effective December 18,

2008. The tenure charges were dismissed as moot, and the matter was transmitted to the State Board of Examiners for appropriate action against respondent's certificates. Painter, Commr. 2009: September 29

District suspension of teacher without pay was wrongful because under N.J.S.A. 18A:6-14, board may only suspend without pay if tenure charges have been filed or employee has been indicted; therefore, board must return pay withheld and provide prospective pay until certification of tenure charges or indictment; Commissioner declines to consolidate issue with separate pending matter involving whether teacher may perform his teaching duties while the criminal charges are pending. Flynn, Commr 2009: August 3

English teacher was insubordinate and engaged in unbecoming conduct when she used her cell phone for a personal call during class, did not respond appropriately to an incident which occurred while she was on that phone call, and later made a related foray into another teacher's classroom; a reprimand and loss of the 120 days salary, are a sufficient penalty given the circumstances in this matter. Tenure Hearing of Getty, Commr. 2009:July 17 (Asbury Park)

Commissioner dismisses teacher who failed to respond to charges, noting that teacher showed such evidence of deviation from normal mental health that the Board placed him on paid leave pending the results of a psychiatric evaluation and that he has not cooperated in securing such an evaluation to ascertain his ability to return to his teaching position. Tenure Hearing of Kous, Commr. 2009: July 17.

Where teacher in correctional facility failed to respond to charges that he showed an unauthorized movie to his students during class time —charges deemed admitted; Commissioner orders 90-day suspension without pay. Tenure Hearing of Harper, Commr. 2009: July 14.

Tenured science teacher dismissed. Unbecoming conduct included failing to control his temper, exercising poor judgment, making disparaging remarks about students, allowing his feelings of frustration and anger to overwhelm his professional demeanor, and engaging in behaviors which caused staff members to feel physically threatened. Matter referred to the State Board of Examiners for further proceedings. Taylor, Commr. 2009: September 21

State Board of Education affirms the findings of misconduct of teacher but disagreed with Commissioner's remedy of removal, imposing instead a six-month suspension, loss of pay, and loss of increments for two years. Court finds that State Board never exceeded or misapplied its power as the final arbiter of school law controversies. In re Tenure Hearing of Ardeena Long, 2009 N.J. Super. Unpub. LEXIS 2519 (App.Div. Oct. 8, 2009)

Where teacher in correctional facility failed to respond to charges that he showed an unauthorized movie to his students during class time —charges deemed admitted; Commissioner orders 90-day suspension without pay. Tenure Hearing of Harper, Commr. 2009: July 14.

Currently incarcerated tenured teacher, convicted of aggravated sexual assault, endangering the welfare of a child, and criminal sexual conduct, sought

reinstatement to his position, with back pay and benefits. Petitioner's suspension without pay, beginning on September 14, 1999, was valid and proper; petitioner has been either under indictment, convicted, or had tenure charges certified against him since that time. Petitioner's convictions included crimes that require automatic forfeiture of his tenured teaching position. Petition was dismissed. Hilkevich, Commr. 2009: October 15

Commissioner vacates earlier decision sustaining tenure charges against custodian where he had failed to answer; custodian's attorney filed answer with explanation for late filing; Commissioner transmits matter to OAL for expedited hearing. Tenure Hearing of Johnson, Commr. 2009:Dec. 9 (amended). Earlier decision: Custodian is ordered dismissed from his position where he filed no answer to tenure charges of neglect, misbehavior and conduct unbecoming; charges deemed admitted. Tenure Hearing of Johnson, Commr. 2009:Nov. 18.

Teacher of Social Studies and Teacher of the Handicapped certificates revoked following settlement of tenure charges for conduct unbecoming where teacher used school computer visible to students to send and receive sexually explicit and racist e-mails during his instructional time, sent negative e-mails concerning the district and its students and visited a strip club during lunchtime of an in-service day and returned to school late with the smell of alcohol on his breath. IMO Certificates of Howarth, Exam 2009: Dec 2.

Board failed to prove any of the 28 tenure charges brought against principal for matters involving lack of leadership, action, concern and oversight; in fact she was not involved in the decision to reconstitute the ninth grade repeater program; under her tenure as principal, the drop-out rate was reduced dramatically, test scores rose, and the graduation rate increased significantly. Tenure Hearing of Dawson, Commr. 2009:Dec. 4.

Examiners revokes certificates of teacher of health, physical education and driving education who was dismissed on tenure charges due to unbecoming conduct and insubordination despite an otherwise unblemished record. IMO the Certificates of Hill, Exam 2009: Sept. 17.

Examiners adopted a three-year suspension of the certificate of English teacher who resigned while tenure charges of unbecoming conduct and insubordination were pending. (Suabedissen, Exam, 2009: May 11)

Biology teacher voluntarily relinquished his certificate after tenure charges were certified to the Commissioner based on the teacher's alleged use of district computers to access pornographic websites. (I.M.O. the Certificates of O'Neil, Exam, 2009: June 22)

Teacher of Media Arts dismissed for conduct unbecoming for taking the electronic signature of the prison administrator without authorization and affixing it to a document; downloading a "bootleg" movie still in general release in the theaters; downloading software on the prison's computer to

bypass the encryption code on rented DVDs in order to copy the films prior to their return to the rental company; and using prison inmates to edit video footage produced by respondent's private company. IMO Tenure Hearing of Morgan, Commr 2011 Jan 11.

Tenured administrative secretary dismissed for conduct unbecoming and insubordination for defiant, combative, and unprofessional behavior; failure to adhere to expectations regarding punctuality and absenteeism; failure to adhere to the district's dress code policy; and failure to comply with the professional improvement plan(s) developed for her. Commissioner concluded the Board has carried its burden to prove the charges against respondent, and ordered her dismissed and removed from tenured employment. IMO Tenure Hearing of Nicholson, Commr, 2011 Jan 24.

Tenured custodian had charges brought against him for leaving school building before the end of his shift on several occasions and for falsification of time sheets. Respondent contended that he was forced to leave his post early whenever his co-worker – a custodian who possessed a "black seal' license to operate the building's boilers – wanted to leave early, because respondent did not hold the "black seal" license and was therefore not allowed to remain in the building alone to complete his shift. Board met its burden of proof relative to the charges of conduct unbecoming and misbehavior, but did not meet its burden on the neglect charge as the record reflects that respondent performed his actual duties and was by all accounts a good employee; respondent's lack of any disciplinary history and his reputation as a good worker who performed the tasks required of him – and who advised his immediate supervisor about the problem with his co-worker insisting that he leave early – mitigate against his dismissal from his tenured position. Commissioner orders reinstatement to tenured position with 120 suspension without pay. IMO Johnson 2011 Commr Feb 3.

Board's termination of principal violated her tenure rights because there was no "meeting of the minds" and therefore, no settlement agreement. Matter remanded to Commissioner for determination of back pay and position to which she will be reinstated consistent with her seniority and tenure rights. Pollack v. South Orange-Maplewood Bd. of Educ, No. A-3386-09T4 (App. Div. March 23, 2011)

Tenured Department of Corrections teacher dismissed from his employment for conduct unbecoming a public employee. Neither teacher nor any attorney filed an answer to the petition. Allegations that teacher met five times with ex-inmate at his home, received inmate's phone number while inmate was a teacher's aide, teacher provided contraband to inmate while incarcerated, had ex-inmate perform construction work at teacher's home upon release and had sexual contact with ex-inmate at teacher's residence, deemed admitted. Harper, Commissioner 2011: April 1

Tenured Department of Corrections teacher dismissed from his employment for conduct unbecoming a public employee. Neither teacher nor any attorney

filed an answer to the petition. By teacher's own admission and the findings of an SID investigation, it was determined that teacher introduced his personal cell phone into the lobby of A.C. Wagner YCF and purposely left the unauthorized item unattended in an area frequented by inmates while teacher entered the institution to finish his workday. Piccoli, Commissioner 2011: April 1

Tenured custodian dismissed from employment for conduct unbecoming by engaging in inappropriate sexually harassing workplace conduct. Board sustained its burden of proving that custodian was insubordinate in disregarding administrative directives and flagrantly violating the board's sexual harassment policy. While ALJ made no penalty recommendation, Commissioner adopted ALJ's finding as to conduct unbecoming and insubordination and dismissed custodian from his tenured position. Doerbecker, Commissioner 2011: April1

Tenured secretary, a confidential administrative assistant to the superintendent of schools, dismissed from employment for unbecoming conduct. Secretary sexually harassed a school resource officer, made false statements about the activities of sitting Board members, and slandered and defamed members of the Board by falsely implicating them in crimes of official misconduct. Secretary admitted to making false statements to the school resource officer. Commissioner agreed with ALJ that board had proven its case of unbecoming conduct against secretary, dismissing her from her tenured employment. Busnelli-Aljallad, Commissioner 2011: April 12

Tenured custodian had criminal and tenure charges dismissed. Tenured school employees who have been exonerated of tenure charges are entitled to be reinstated with back pay and emoluments, but have a duty to mitigate damages by seeking similar employment. Assistant Commissioner found that: custodian was entitled to a credit for the vacation time he accrued but did not use prior to his suspension, not a monetary reimbursement; and respondent should have returned to work immediately following the dismissal of tenure charges in November 2010 and is consequently not entitled to any additional sick or incremental pay beyond November 30, 2010. Custodian was awarded back pay and increments due totaling $52,411.64, and was credited with 96 sick days through November 30, 2010 and 15 vacation days earned but not used prior to his suspension. No additional vacation time was warranted since respondent was paid for the entire amount of time he was wrongfully suspended. Melillo, Commissioner 2011: April 25

Loss of tenure was excessive penalty against special education teacher with otherwise unblemished record, for single incident of unbecoming conduct in which she slapped a handicapped student across his face after student had slapped her, claimed she acted reflexively and was remorseful; Commr agrees with ALJ recommendation for forfeiture of employment and adjustment increases for one year and forfeiture of the 120 days of pay, but modifies ALJ recommendation to also add suspension for 4

months without pay in light of seriousness of her errors. Tenure Hearing of Craft, Commr 2011:September 1.(Franklin Twp)

Tenure charges were sustained against science teacher in accelerated program, where she was excessively absent or tardy for over one quarter of the total days each year during a 4-year period, and where board demonstrated the negative effect of her absenteeism on pupils, and had provided ample warning of its dissatisfaction with her attendance through written evaluations and the withholding of three consecutive annual salary increments. Tenure Hearing of Rosa, Commr 2011:September 1 (Jersey City)

Tenure charges against special education teacher in alternative education program who allegedly engaged in unbecoming conduct of instructing boys on how to engage in sex, were dismissed as moot based on the teacher's resignation; board is ordered to notify the State Board of Examiners through its Superintendent pursuant to the requirement of *N.J.A.C.* 6A:9-17.4 (requiring that if a tenured staff member resigns while accused of unbecoming conduct, the Board must notify Examiners). Tenure Hearing of Salaam, Commr 2011:Sept 26. (Irvington)

Tenure charges and challenge to withholding increments, are mooted by death of teacher. Tenure Hearing of Cornforth, and Cornforth (consolidated), Commr 2011:Oct 7.

Commissioner dismisses physical education teacher, for unbecoming conduct where she placed tape on second grader, allowed and/or encouraged other students to follow her lead which humiliated the student, and when she falsely denied her role in the incident; teacher dismissed despite her 21 years' experience and claim that she acted in the spirit of fun. Tenure Matter of Parezo, Commr 2011:Oct. 12(Lakehurst)

Commissioner agrees that absences of a teacher of culinary arts at the Juvenile Justice Commission's Training School were excessive where he failed to return from an approved leave of absence, but that school had not established that absences were sufficient grounds for dismissal under *White* and similar cases; Commr denies board's motion for summary decision, grants teacher's motion for a ruling that he did not abandon his position; and ordered that the record of this matter be developed to allow a full application of the required legal analysis for time period specified in the tenure charges. Tenure Hearing of Amodei, Commr 2011:Oct 13/14

Commr disagrees with ALJ recommendation of lesser penalty, and orders dismissal of custodian who violated procedures related to time off, was caught sleeping on the job, and was chronically absent; custodian had reason to be aware of the district's rules and expectations, and there is no statutory mandate in tenure matters to impose progressive discipline. Tenure Hearing of Dudley Commr, 2011:Oct. 21(Neptune)

Teacher guilty of single incident of making stereotypical and derogatory racial and ethnic statements to an honors chemistry class during a lesson on percent abundance of isotopes was guilty of unbecoming conduct; Commissioner disagreed with ALJ's recommendation of suspension

without pay and loss of increments, and instead upheld the charges and ordered termination of teacher. Tenure Hearing of Chaki, 2011:Dec. 12 (Franklin Twp)

Teacher's Facebook comments were not protected by the First Amendment rights, as they were not intended to address a matter of genuine public concern but rather were a personal expression of job dissatisfaction; her thoughtless comments on Facebook showed a disturbing lack of self-restraint and inappropriate behavior which was detrimental to her role as a professional educator; Despite teacher's otherwise unblemished service, Commissioner upholds tenure charges and orders termination of teacher from Paterson school system. Commissioner declines to address charges of libel and slander for lack of jurisdiction. Tenure Hearing of O'Brien, 2011:Dec. 12 (Paterson)

Giving due consideration of her lengthy and previously discipline-free career, Commissioner nonetheless dismisses teacher of business education on tenure charges of unbecoming conduct, for lack of professionalism, and failure to respect the privacy rights of students, against respondent – a teacher of business education – for, *inter alia*, behavior that included allowing the display of inappropriate photographs in the classroom, discussing a student's family finances in inappropriate circumstances; and referring to classified students in a derogatory manner. Tenure Hearing of Forsell, Commr 2012: Jan 9

Tenure charges are sustained and teacher is dismissed for stealing cash and checks in the amount of $250 from a classroom; security videotape entered into evidence showed that she and the special education teacher who had been collecting the money in question for a school fundraising activity, were the only two persons in the classroom during the period in which the money went missing. Tenure Hearing of Perella, Commr 2012:Jan 11(Bridgeton)

Indictment on 33 counts of Aggravated Sexual Assault, Sexual Assault and Endangering the Welfare of a Child for incidents involving students at his school – may be deemed admitted and are sufficient to warrant termination of the respondent from his tenured position. Matter of Tenure Hearing of Derek, Commr 2012:Jan 23 (Lawrence)

Board established unbecoming conduct where teacher employed by the district for more than 30 years made misrepresentations concerning medical and psychiatric examinations requested by the Board, exhibited a pattern of tardiness, insufficient class preparation and engagement, lack of communication, and incomplete paperwork related to field trips. Conduct did not rise to the level necessary for termination in light of overall successful teaching history and nature and relatively brief period of her problematic conduct. She was suspended for a period of one year without pay; will forfeit her salary increments for the year in which she returns to service; and was ordered to produce a medical report certifying her readiness to return to work prior to her reemployment. Tenure Hearing of Bruno, Commr 2012: Jan 30 (South Hunterdon Reg.)

Commissioner approves consensual withdrawal of tenure dismissal case against administrator alleging altering school records, as administrator is currently on medical leave for a chronic illness and has advised the District that she will resign and apply for retirement at the end of her leave, effective December 31, 2012. Referred to State Board of Examiners. Tenure Hearing of Leon, Commr 2012: Feb 24 (Elizabeth)

Commissioner sustains six of seven tenure charges charges of conduct unbecoming and excessive absenteeism brought against tenured secretary employed by the district since 1993, where she conducting personal business on board's computer during school hours; printed out personal information about another District employee without permission; smoked on school grounds; unsatisfactory work performance; and abuse of leave by taking days off before and after holidays, vacations, and on pay days. Tenure Hearing of Banks, Commr 2012:Feb 6.

Board established good cause that between 2003 and 2011, math teacher repeatedly conducted herself in an insubordinate manner, and met its burden of proving that respondent repeatedly engaged in conduct unbecoming a teacher where she repeatedly criticized the district administration and her colleagues by challenging their honesty and integrity, refused to obey directives, and showed a combativeness that undermined the morale and efficiency of the district's high school. Tenure Hearing of Toorzani, Commr 2012:Feb 8. (Elmwood Pk)

Following certification of tenure charges against special education teacher where she was found to have committed conduct unbecoming a teacher by: (1) exhibiting abusive behavior towards students, improperly restraining students, and otherwise using improper physical contact with students; and (2) failing to follow procedures set forth by the Department of Education for security during APA testing, and breaching the security measures as provided by the Department of Education. Appellate Division reverses and remands to Commissioner of Education.

Appellate Division upholds tenure dismissal of special education teacher who told students their behavior was "stupid" and that they were "acting like monkeys," cursed at students, grabbed one student and hit another, snapped a rubber band at another saying student "deserved it," told a staff member that she was going to "flatten" two students. Findings made by the ALJ that were adopted and relied upon by the Commissioner were sufficiently supported by substantial credible evidence in the record and warranted imposition of a sanction. *In re Tenure Hearing of Courtney Watson*, No. A-3650-12T1 (App. Div. June 4, 2014)

Commissioner provided no reasons for rejecting the ALJ's recommended penalty, and failed to conduct a Fulcomer analysis or consider mitigating factors and the proportionality of the penalty. An administrative agency must conduct an independent evaluation of all relevant evidence and legal arguments presented in support of and in opposition to proposed administrative agency action. *In re Eisenhour*, No. A-3403-12T4 (App. Div. June 18, 2014)

Commissioner affirms ALJ's dismissal of tenure dismissal matter, not because of respondent's failure to appear at conference dates but because the matter was rendered moot upon respondent's retirement in 2006. Accordingly, the petition was dismissed. *Matter of Tenure Hearing of Williams,* Commissioner 2014:June 6.

Tenure dismissal against special education teacher upheld where Commissioner issued well-reasoned decision supported by the evidence that showed that teacher hit student with computer cord, leaving welt on back. Teacher's assertion that he was defending himself is not supported by video record. Further, describing his students as "murderers, attempted murderers [and] . . . gang members" are expected sentiments to be uttered by a tired and frustrated Corrections Officer after completing an extra-long tour of duty inside a maximum security prison, but not for an educator charged with the responsibility of teaching our most vulnerable children. Appellant's reference to working "in the hood," as an attempt to explain why his use of corporal punishment against the student is an acceptable means of maintaining discipline in a middle school connotes a bigoted, stereotypical image of school children in urban areas as dangerous street-thugs, who can only be controlled through the use of physical force. Appellant's actions are not an aberration. *In re Tenure Hearing of Goodwater v. Camden Board of Educ.*, No. A-4909-11 (App. Div. Aug. 20, 2014)

Commissioner decision dismissing tenured teacher from position upheld. Teacher failed to satisfactorily complete coursework in pedagogy as required, despite being given a year-long extension to do so. *E. Windsor Reg'l Sch. Dist. Bd. of Educ. v. Geurds*, No. A-3696-12 (App. Div. July 11, 2014)

Teacher who held a standard instructional certificate with endorsements for Teacher of Students with Disabilities (TOSD) and Elementary School Teacher in Grades K-5 – was employed as a special education teacher at Indian Hills High School from 2005 until 2012; worked as an in-class support teacher, supporting special education students in the regular classroom setting, and as a teacher in the resource center, teaching a variety of subject areas. The TOSD endorsement authorizes teaching students with disabilities, when the teacher has an instructional certificate with the corresponding endorsement for the grade level or subject area in which they are assigned to teach. Teacher did not possess the appropriate grade level or subject area endorsements. Since the teacher was not properly certified to teach the high school subject matter areas, no time was earned toward tenure in the school district. No tenure or seniority rights were violated when the board terminated him in 2012. Teacher was primarily responsible for ensuring possession of the required certification. *Andrews*, Commissioner, 2014: August 21

Board filed tenure charges of excessive absenteeism and conduct unbecoming a teaching staff member against tenured teacher. Teacher was absent for all of the 2010-2011 and 2011-2012 school years, utilizing her sick time. During the 2012-2013 school year, teacher reported to the Educator Without Placement Site for four days, and thereafter was Absent Without

Leave (AWOL) for the remainder of the 2012-2013 school year and all of the 2013-2014 school year. No response to the charges was forthcoming. Charges were deemed to be admitted and were sufficient to warrant termination of the teacher from her tenured position. DeSouza-Alves, Commissioner, 2014: September 17

State superintendent certified tenure charges of chronic and excessive absenteeism against tenured teacher. Teacher resigned from the district making the matter moot. Matter was dismissed. Brown, Commissioner, 2014: September 25

Commissioner upheld tenure charges of inefficiency against tenured teacher. Board charged that teacher failed to implement curricular goals and objective(s), failed to design coherent instruction, failed to assess student learning, failed to create an environment of respect and rapport, failed to manage student behavior, failed to manage classroom procedures, failed to establish a culture of learning, failed to communicate clearly and accurately, failed to use questioning and discussion techniques with flexibility and responsiveness, failed to engage students in learning, failed to provide feedback to students, failed to attain student achievement that meets or exceeds performance benchmarks, failed to reflect on teaching, failed to contribute to the School and District, failed to grow and develop professionally and failed to demonstrate promptness and attendance. Neither teacher nor any attorney acting on his behalf responded to the board's charges. Commissioner deemed charges to be admitted, dismissed teacher from his tenured position and forwarded a copy of the decision to the State Board of Examiners for review and action. I/M/O Tenure Hearing of Newton, Commissioner, 2014: October 28

Board filed tenure charges of excessive absenteeism and conduct unbecoming a teaching staff member against tenured teacher. Teacher was absent for all of the 2010-2011 and 2011-2012 school years, utilizing her sick time. During the 2012-2013 school year, teacher reported to the Educator Without Placement Site for four days, and thereafter was Absent Without Leave (AWOL) for the remainder of the 2012-2013 school year and all of the 2013-2014 school year. No response to the charges was forthcoming. Charges were deemed to be admitted and were sufficient to warrant termination of the teacher from her tenured position. *DeSouza-Alves*, Commissioner, 2014: September 17

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Early tenure

Principals: question of board's intent in creating and then rescinding early tenure to limited category of employees was relevant; board action creating and then rescinding early tenure was within discretionary authority; insufficient proof of bad faith action by board. (01:Jan. 26, Swaim, decision on remand 98:Aug. 10)

Office aide/secretary could not "back-tack" her time served as a secretary to the time served as an aide because N.J.S.A. 18A:17-2 does not provide for tacking for clerical or secretarial positions. (05:April 1, Giardina, aff'd St. Bd. 05:Sept. 7)

Positions of Director and supervisor are each separately tenurable; tenure rights accrued in position of Director cannot be transferred to the separately tenurable position of supervisor. (99:Dec. 3, Duva, settlement rejected, decision on merits aff'd St. Bd. 02:March 6)

Entitlements

Petitioner challenged RIF as violation of tenure; threshold issue in this case is whether the petitioner earned tenure as a teaching staff member in accordance with N.J.S.A. 18A:28-5; to earn tenure, an employee must work for at least three consecutive years and hold a "proper certificate in full force and effect"; petitioner worked for more than three years as a SAC, but held only a provisional certificate, which is not a "proper certificate" for the position; petitioner's failure to earn a standard certificate as a Student Assistance Coordinator is fatal to his tenure claims; accordingly, the petitioner was not employed under tenure at the time of his reduction in force; the Commissioner remanded the matter for factual findings concerning whether or not petitioner satisfied the conditions of provisional certification and the requirements for standard certification. The Commissioner found that although prior case law, Anson v. Bridgeton Bd. of Ed., 1972 S.L.D. 638 – held that service under provisional certification might count toward tenure, such tenure was contingent upon the employee's satisfaction of the conditional requirements of that provisional certification. Ruiz, 2011 Commr Aug 17.

RIFd Teacher of Psychology claimed entitlement to Teacher of Chemistry position in which board retained non-tenured teacher, based on endorsement obtained May 26, after the Board effected the RIF, May 11, but before her employment was terminated. Francey v. Board of Educ. of the City of Salem, 286 N.J. Super. 354 (App. Div.1996), controls, in which the court found that a tenured teacher's right to re-employment may not be expanded by teaching certificates or additional instructional endorsements acquired after the date that the teacher's position was abolished through a RIF. Tenure rights are fixed on the date the Board passes its resolution effectuating a RIF; in this case May 11, which preceded – by approximately two weeks – the date of issuance of petitioner's endorsement to teach chemistry. Teacher's after-acquired certificate affords her no rights to the chemistry positions presently held by non-tenured teachers in the district. Petition was dismissed. Lobello, Commissioner 2011: April 27

Promotional tenure

N.J.S.A. 18A:28-6(c) applies to staff members employed on both an academic and calendar year. (97 N.J.A.R.2d (EDU) 616, Dues), overruled to the extent that it applies to the academic year only. (01:Dec. 17, Donnelly, rev'd St. Bd. 02:Nov. 6)

Principal did not acquire tenure when be began work for third "contract year." Failed to serve two calendar years or two academic years with reemployment as required by statute. (04:March 1, Braimah)

Principal did not acquire tenure when he served, in a promotional appointment, from 8/22/00 to 8/12/02, a period of time short of two calendar years. Nor did he serve for two academic years with reemployment in the third academic year. Donnelly distinguished. (04:March 1, Braimah)

Principal gained tenure where he served as acting principal and then as principal as "acting" designation counted toward tenure under N.J.S.A. 18A:28-6(c). (01:Dec. 17, Donnelly, rev'd St. Bd. 02:Nov. 6)

Service as long-term substitute did not count towards tenure acquisition. (04:April 12, Lustberg, aff'd St. Bd. 04:Sept. 1)

Salary agreements, standing alone, are not appointments for a fixed term; rather these agreements are indicia of tenure status of employee. (02:Jan. 15, McCullough, dismissed for failure to perfect St. Bd. 02:April 3)

Services of any teaching staff member who does not hold proper certification may be terminated without charge or trial. (96:July 22, Bjerre, aff'd as clarified St. Bd. 00:July 5)

Seniority and Other Rights

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that a wrongfully terminated employee did not fail to mitigate his damages where he used time while unemployed to obtain a degree and become certified in an area unrelated to his original

certification. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19.)

Commissioner determined that N.J.A.C. 6A:32-5.1(e), allows accrual of seniority where the employee has yet to obtain a standard certificate, but who later achieves standard certification in the same field as the emergency certificate under which they were serving, or acquires a standard certificate after serving under a provisional certificate. (Kelly, Commr., 2006: Nov. 9, aff'd St. Bd. 2007:May 2)

Commissioner determined that teacher of Nursing Assistant and teacher of Practical Nursing are two separate endorsements. Possession of one does not qualify the holder to teach the subject matter of the other, and seniority is not interchangeable between the two. (Kelly, Commr., 2006: Nov. 9, aff'd St. Bd. 2007:May 2)

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that wrongfully terminated employee has a duty to seek "similar employment" in order to reduce damages. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19.)

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that unless an open position is available, a wrongfully terminated employee's rights are vindicated by placement on an appropriate recall list. Allegations of the board's failure to re-employ may be pursued as a new cause of action. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19).

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that a wrongfully terminated employee was not entitled to back-pay and sick leave time during the period that he would have been subject to a RIF. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19).

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that failure to mitigate is an affirmative defense and the burden of proof lies with the breaching employer. Here, the board failed to prove that the employee failed to mitigate his damages. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19)

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that where a wrongfully terminated employee made no claim that the board failed to re-employ, the employee could not use the determination of eligibility for re-employment as a basis for back-pay. Nor could the employee use the remand proceeding, limited to the issue of mitigation of damages, as a vehicle for demanding reinstatement to active employment. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19).

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that the "lowered sights principle" depends not only on the passage of a reasonable period of time, but also to the particular circumstances of the matter and "is to be applied with

caution…" (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19).

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that wrongfully terminated employee was entitled only to five years worth of salary because during the final three years of the litigation, the board had no open position within the scope of the employee's certification. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March19)

Commissioner determined that because practical nursing teacher was teaching under a substitute credential, she was ineligible to accrue time toward tenure or toward seniority in the Practical Nursing category. Absent tenure, an individual may assert no seniority claim. (Kelly, Commr., 2006: Nov. 9, aff'd St. Bd. 2007:May 2)

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that a wrongfully terminated employee's damages should not be reduced where he was not at fault for the extensive delay in the proceedings at OAL. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19).

Board violated the tenure rights of a tenured basic skills teacher who served under her elementary endorsement, when it eliminated her basic skills instructor position, terminated her employment and continued to employ non-tenured elementary school teachers. (Taibi, Commr., 2008:September 24)

Tenured part-time Russian teacher who also covered food classes in the absence of the regular home economics teacher, and whose Russian position was abolished, did not have a tenure right to the food services position because that home economics position required an instructional certificate with an endorsement of "Teacher of Family and Consumer Sciences" and her instructional certificate bore the vocational endorsement of Teacher of Production, Personal or Service Occupations: Food Production. Her certificate did not qualify her to teach in the Family and Consumer Science position. (Suchanek, Commr., 2008:November 18)

District Court determined that where the board was required to place former employee on recall list, board did not violate employee rights when it decided not to re-hire the former employees, but hired new employees who were not on the recall list. Plaintiffs were not qualified, failed to respond to the board's phone calls, or were found to be unworthy (because of an unsatisfactory interview) for the recall positions. In addition, a more qualified candidate was available, and thus hired based on the new candidate's dual certification. Hayes v. Pittsburgh Bd. of Pub. Educ., 279 Fed. Appx. 108.

Commissioner declined to review tenured Spanish teacher's seniority after she was reinstated following a RIF with no break-in-service. Matter rendered moot by virtue of the reinstatement with no loss of emoluments. (Gambino, Commr., 2008:April 23)

Petition for certification denied. Donvito v. Board of Educ. of the N. Valley Reg'l High Sch., 188 N.J. 577; 911 A.2d 69; 2006 N.J. LEXIS 1740, Decided, November 9, 2006.

On remand from the State Board on the issue of mitigation of damages, the Commissioner determined that a wrongfully terminated employee could not use the State Board decision ordering reinstatement for back-pay for an upcoming school year, where reemployment is necessarily dependent upon the existence of an open position in the district which the employee is qualified to occupy that is not held by a more senior staff member. (Ziegler, Commr., 2007: Sept. 17, affirmed St. Bd. on remand, 2008:March 19).

Commissioner ruled that board reduced the salary in violation of the tenure rights of a custodial supervisor when it transferred him from a high school to another school, as this resulted in a loss of his contractual premium of $1,850. However, the proper remedy was not to reinstate the premium indefinitely, but rather to restore the difference in salary until it is surpassed by the negotiated salary he would receive at the new school. (Potocki, Commr., 2008:December 8)

Commissioner dismissed, without prejudice, a RIF'd teacher's claim that she had rights over a non-tenured teacher to the position of permanent substitute for the in-school suspension program that was assigned to a non-tenured applicant; remanded to county superintendent for a determination of whether position was a teaching staff position subject to the tenure laws and if so which certification is required, or whether it only required a county substitute certificate. (Macchia, Commr., 2008:December 5)

Commissioner determined that tenured gym teacher who also received a stipend for coaching field hockey was entitled to her full salary without loss of sick time pursuant to N.J.S.A. 18A:30-2.1, but was not entitled to stipend after being injured as a result of her employment. (Daganya, Commr., 2008:December 30)

Commissioner determined that ALJ appropriately decided teacher's LAD claim as being primarily within the context of the school laws and secondarily as an LAD claim. Teacher initiated matter as a school law dispute instead of a civil rights violation. (Varjian, Commr., 2007: Oct. 15, aff'd St. Bd., 2008: May 21). Motion to supplement the record denied. (Varjian, St. Bd. 2008:Feb. 20)

Commissioner determined that board violated the tenure rights of assistant principal who acquired tenure as an assistant principal while serving as a principal pursuant to the tacking rights contained in N.J.S.A. 18A:28-6. District ordered to reinstate to the position of assistant principal and to pay back pay and emoluments, less mitigation. (Smith, Commr., 2006: Nov. 2, Settlement approved by State Board 2007: Aug. 1).

Board’s termination of teacher who possessed elementary teaching certificate did not violate her tenure rights as she had never acquired tenure where she had been employed as media specialist -- first as a long term substitute for a teacher on leave, and then under an emergency certificate -- and where

she taught Character Education, a subject for which no certificate is required. Matter remanded for findings with regard to whether there was an entitlement to 60-days' notice of termination. (Boyce, Commr., 2007:May 21)

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 since the regulation does not provide a time frame nor require "hands-on" experience, he met the regulatory requirements. Board was ordered to provide back pay and emoluments, less income received. (Savage, Comm'r., 2008: May 23).

State Board affirms Commissioner determination that petitioner, teacher of practical nursing did not demonstrate that she possessed greater seniority that teacher retained by school district in RIF. Petitioner forfeited her tenure by declining a recall in 2002. (Kelly, Commr., 2006:Nov. 9, aff'd St. Bd. 2007:May 2)

Commissioner detemined that tenured clerical who voluntarily transferred to non-tenurable classroom aide position did not retain tenure rights as a clerk after she was non-renewed as a classroom aide. (Colon-Serrano, Commr., 2008: Jan. 28, affirmed St. Bd., 2008: June 18).

Commissioner determined that by declining the recall position offered by district, practical nursing teacher forfeited her tenure (and therefore her seniority). (Kelly, Commr., 2006: Nov. 9, aff'd St. Bd. 2007:May 2)

The Commissioner found that the board's termination of the employment of a tenured secretary because she refused to sign employment contracts (due to her concerns over the 10-day notice of termination clause) violated her tenure rights; it did not equate to constructive resignation or abandonment of her position. However, her request should have been filed as a regular position, and not as a request for a declaratory ruling. Commissioner orders reinstatement with back pay less mitigation, and emoluments. (Bush, Commr., 2009:May 27)

RIFd tenured teacher of television technology claimed that board violated her tenure rights when it appointed a non-tenured person to the position of in-school suspension monitor. ECS reviewed position as an unrecognized title and determined that it was not an instructional position and did not require certification. As such, no tenure entitlement existed. Macchia, Commr. 2009: October 9

Board did not violate tenured physical education teacher's tenure/seniority rights, and followed N.J.S.A. 18A:28-9 thru -13, when it terminated her position and created the position of Health and Physical Education Teacher which requires endorsements in both subject areas; teacher had been given opportunity, but failed, to obtain health endorsement. (Francin, Commr. 2009:August 20)

Board did not violate tenured physical education teacher's tenure/seniority rights, and followed N.J.S.A. 18A:28-9 thru -13, when it terminated her position

and created the position of Health and Physical Education Teacher which requires endorsements in both subject areas; teacher had been given opportunity, but failed, to obtain health endorsement. Francin, 2009: August 20.

Board's use of a private contractor rather than a school employee to provide speech language services to a classified minor child was challenged. School district speech therapist received no loss of pay or benefits as a result of this decision. As there was no allegation of any violation of tenure, seniority rights, or any other school law rights, the matter was dismissed for lack of jurisdiction. Long Beach Island Education Association, Commr. 2009: October 13

District suspension of teacher without pay was wrongful because under N.J.S.A. 18A:6-14, board may only suspend without pay if tenure charges have been filed or employee has been indicted; therefore, board must return pay withheld and provide prospective pay until certification of tenure charges or indictment; Commissioner declines to consolidate issue with separate pending matter involving whether teacher may perform his teaching duties while the criminal charges are pending. Flynn, Commr 2009: August 3

Abolition of full-time position; board not obligated to create two part-time positions to accommodate seniority rights 88 S.L.D. 2409, aff'd St. Bd. 89 S.L.D. 2995.

Teaching staff member's teacher, supervisor and principal/supervisor certificates suspended for four years. Elementary principal had engaged in nbecoming conduct when she drove a first grade student who had had an asthma attack to the student's baby sitter's apartment and left the student without assuring that the baby sitter was present. DYFS sustained a finding of neglect and county prosecutor charged principal with second degree endangerment, leading to PTI. (Fairbanks, Exam. 2006: September 21)

Commissioner determined that petitioning board secretary/business administrator voluntarily resigned his position and therefore relinquished any tenure rights he may have had. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7).

State Board affirms Commissioner decision upholding board's decision to subcontract board secretary and school business administrator position in favor of Interlocal Services Agreement with county vocational district. (Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7).

Commissioner determined that where district subcontracted, instead of sharing the services of the board secretary/business administrator, credit toward tenure acquisition accrues only in the primary district of employment.(Raimondi, Commr 2005: Dec. 23, aff'd St Bd 2006: June 7).

After teacher entered into a settlement agreement with the district which was approved by the Commissioner, State Board of Examiners revoked his certificates for engaging in unbecoming conduct by placing ice cubes down student's blouse. I.M.O. Chavez, Bd. Exam. 2006: May 10.

Reinstated employee refuses position in district, terminating her right to tenured position. Matter remanded to ALJ for determination of back pay due petitioner. Bush v. Warren Co. Vo-Tech 2011 Commr Feb 9.

Where secretary was reduced from a twelve month to a ten month position, and asserted tenure right to an administrative assistant position held by a non-tenured person, Commissioner remanded to OAL the question of whether the secretary had the requisite skills to execute the more complex and varied responsibilities of the administrative assistant position, noting that the written job descriptions were vastly different although the job qualifications for the two positions were very similar. Salimbene , 2011: Nov. 10 (Dennis Twp)

Settlements/Withdrawals

Commissioner determined that her concern for the public interest extends beyond the boundaries of the particular district certifying tenure charges. (I.M.O. the Tenure Hearing of Langley, Commr., 2008: Feb. 19)

Commissioner determined that the mere fact that a teaching staff member agrees to resign or retire does not ensure that Cardonick standards are satisfied. (I.M.O. the Tenure Hearing of Langley, Commr., 2008: Feb. 19)

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, Commr., 2008: Jan. 31)

State Board of Examiners accepted settlement agreement calling for revocation of teaching certificates. I.M.O. Vaughn, Bd. Exam. 2006: May 5.

Commissioner rejected proposed settlement that only offered the board's desire to avoid the cost, uncertainty, and inconvenience of litigation. Board failed to spread forth on the record a reasonably specific explanation of why such charges need no longer be pursued or why it is now in the public interest not to pursue them. (I.M.O. the Tenure Hearing of Langley, Commr., 2008: Feb. 19)

State Board of Examiners accepted settlement agreement calling for revocation of teaching certificates. I.M.O. Marshall, Bd. Exam. 2006: May 5.

Commissioner found that district's financial interest in withdrawing a tenure dismissal matter was not synonymous with the public's interest where district's motion for withdrawal indicated that the teacher should not be teaching within the district. (Swaminathan, Commr. 2006: Oct. 25).

Commissioner rejected and remanded 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, Commr., 2007: Dec. 26)

Commissioner rejected and remanded settlement agreement where it omitted a board resolution approving the settlement and authorizing the board president to execute the agreement, nor was the agreement signed by the

board attorney as the board's duly authorized representative in litigation. (Hunter, Commr., 2009:January 28)

State Board of Examiners accepted settlement agreement calling for revocation of teaching certificates. I.M.O. Kurdilla, Bd. Exam. 2006: May 5.

Commissioner rejected district's attempts to withdraw tenure dismissal matter due to financial considerations. Once tenure charges have been filed, financial considerations alone do not justify abandoning the action. (Swaminathan, Commr. 2006: Oct. 25).

Commissioner rejected partial settlement where she was unable to determine whether global issues surrounding the tenure dismissal action met Cardonick standards. (Kittrels, Commr, 2008: Aug 26).

Commissioner determined that board violated the tenure rights of assistant principal who acquired tenure as an assistant principal while serving as a principal pursuant to the tacking rights contained in N.J.S.A. 18A:28-6. District ordered to reinstate to the position of assistant principal and to pay back pay and emoluments, less mitigation. (Smith, Commr., 2006: Nov. 2, Settlement approved by State Board 2007: Aug. 1).

Commissioner rejected settlement agreement (without prejudice) that was signed by chief education officer of charter school but failed to include board resolution approving the settlement and designating chief education officer authority to sign the agreement on behalf of the board. Neither was the settlement signed by the board attorney, who is the board's authorized representative in litigation. (I.M.O. the Suspension of the Teaching Certificate of Lamb, Commr., 2009:April 14)

Settlement of tenure charges approved for tenured teacher accused of insubordination and unbecoming conduct. Two weeks after communications among attorneys and the court indicated that parties had agreed to settlement, teacher refused to sign settlement agreement, having changed her mind. Enforcement motion denied as Commissioner does not have jurisdiction to enforce settlements. (Jones, Commr. 2007:August 9)

State Board dismisses Board's appeal for failure to perfect, leaving Commissioner's decision intact. Commissioner approved the withdrawal of charge as de minimus, where the charge was impeding the school nurse's ability to quickly access her emergency cards and pen at a time of urgent need. (Poston, St. Bd. 2007:April 4)

Rationale provided by the petitioning school district in its renewed request for leave to withdraw the tenure charges satisfied the six standards required by N.J.A.C. 6A:3-5.6(a), and provides satisfactory explanations concerning: the district's need for a teacher to provide educational services to students on long-term suspension; why the respondent would be suitable for this position; and how her reassignment would best serve the public interest. Request to withdraw tenure charges granted. (Swaminathan, Commr. 2007:July 5)

Commissioner rejected proposed withdrawal of tenure charges where there was no explication of the circumstances justifying withdrawal and no showing

that the withdrawal was in the public interest. (Swaminathan, Commr. 2006: Oct. 25).

Commissioner rejected district's motion to withdraw tenure charges where there was nothing in the record to indicate that respondent teacher understood her rights or that she consented to the withdrawal. (Swaminathan, Commr. 2006: Oct. 25).

State Board dismisses Board's appeal for failure to perfect, leaving Commissioner's decision intact. Commissioner approved the district's withdrawal of two counts of the charges against middle school teacher where the district lacked sufficient proof or charges were based on erroneous information. (Poston, St. Bd. 2007:April 4)

North Brunswick's challenge to the Somerset County Executive County Superintendent's determination that it was the district of origin for the children of a particular family, is dismissed as not timely filed. Bd. of Educ. of N. Brunswick v. Bd. of Educ. of Somerville, (A-6082-07T2) 2009 N.J. Super. Unpub. LEXIS 1390 (App. Div. June 8, 2009).

Commissioner declines to approve settlement because it is signed on behalf of the Board by the Board Secretary and Board President, there was no indication that the Board approved the agreement and designated these officials to sign it on the Board's behalf; nor, was it signed by the Board attorney. (West Milford, Commr., 2009:June 18)(ALJ decision not available online)

Tenure settlement rejected where teacher allegedly pushed disruptive child against wall; seriousness of charge requires greater explanation especially in light of agreement that matter of his certificate not be referred to State Board of Examiners-- and thus did not meet Cardonick standards. Alvarez, Commr. 2009: September 4

District Court dismissed false light and defamation claims as barred by the one-year statute of limitations. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

Specific Positions

Custodian appointed on fixed term contracts; rights not violated when board non-renewed. (00:Jan. 6, Cromwell, aff'd St. Bd. 00:June 7) Parties amicably resolve disputed issues, appeal dismissed with prejudice, App. Div. unpub. op. Dkt. No. A-6138-99T2, July 30, 2001.

Custodian: Custodian did not acquire tenure as a result of 1955 board resolution because 1995 resolution revoked the 1955 resolution. As a result, custodian was a non-tenured employee. Board was not required to follow tenure removal procedures in terminating his employment. (05:July 22, Nelson, aff'd St. Bd. 05:Nov. 2)

Custodian: Tenure is afforded to all employees within the general custodial class of employment, regardless of title, and there is no right to a certain title. (98:July 8, Reinertsen, aff'd St. Bd. 98:Oct. 7, aff'd St. Bd. 00:March 1)

Custodian who receives permanent position with board and thereafter only receives annual notice of salary is not appointed for a fixed term and thus entitled to custodial tenure as of date of appointment to permanent position. (02:Jan. 15, McCullough, dismissed for failure to perfect St. Bd. 02:April 3, see, also, tenure charges remanded based on decision that respondent is tenured employee)

Custodians: Board could not reduce salary of tenured custodians when it abolished their positions as head custodian and reassigned them to other custodial positions. (99:Oct. 7, Atlantic City; aff'd St. Bd. 00:May 3; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)

Custodians: Recoupment of salary overpayment mistakenly made to tenured custodians does not violate tenure rights. (94:Dec. 21, Trenton, rev'd St. Bd. 99:Dec. 1)

Custodians: Where collective bargaining agreement provided for custodian tenure after three years, statute requires that such tenure extend to all types of custodial assignments including stockroom worker custodian and chief janitor. Tenure status does not attach to particular subcategories of janitor and thus abolition of custodial position requires board to RIF custodial employee based on overall seniority as custodian. (99:Oct. 7, Atlantic City; aff'd St. Bd. 00:May 3; aff'd App. Div. unpub. op. Dkt. No. A-4015-99T2, June 26, 2001)

Foreign languages supervisor possessing both supervisor and instructional certificates who taught on .4 basis acquired tenure as supervisor and foreign languages teacher entitling her to position over non-tenured teacher because she worked under both certificates. (01:June 22, Barca)

Teacher had acquired tenure and held appropriate endorsement to teach employment orientation in Alternative Education program; fact that Office of Licensing and Credentials discontinued the issuance of his endorsement, namely Teacher of Employment Orientation, does not invalidate the endorsement or prevent teacher from accruing tenure thereunder. (99:Nov. 29, Ziegler) On remand, Commissioner finds that the shop, maintenance, repair and Industrial Technology classes at issue required specialized certification and did not fall within scope of his Employment Orientation endorsement. (03:Dec. 22) State Board reverses, given the nature of employment orientation, which provides an introduction to the basic skills required in a variety of trades, the holder of a skilled trades endorsement, regardless of the particular experience which qualified him or her for that endorsement, is authorized by virtue of such certification to teach employment orientation. Board directed to reinstate petitioner with back pay and emoluments, less mitigation. Matter remanded to Commissioner on issue of damages. (St. Bd. 05:July 6, Ziegler)

Teaching staff member does not accrue tenure as a coach; a board may discontinue a coaching assignment at its discretion. (99:Dec. 10, Scelba, aff'd St. Bd. 00:April 5)

Tenure rights never attached where vice principal served for five years on misrepresentation that she held principal certification; district's negligence in checking did not excuse her dishonesty and contract was void ab initio. (00:Feb. 2, Desmond)

Tenured central office administrator/supervisor, whose position was abolished pursuant to takeover, and who was placed upon reorganization in separately tenurable, non-central office, school-based administrative position (vice principal), did not acquire tenure on first day of employment; N.J.S.A. 18A:7A-44(c), did not apply to non-central office staff. (00:Oct. 2, Di Como, aff'd St. Bd. 01:April 4, aff'd App. Div. unpub. op. Dkt. No. A-4903-00T3, May 20, 2002)

Special Population Coordinator – despite fact that teacher has never taught in classroom setting, job description required certification, which she possessed entitling her to tenure upon completion of statutory time. (04:Aug. 19, Trionfo)

Substitute: Where vacant position filled on full-time basis and teacher has served time needed to acquire tenure as regular teacher, person is tenurable regardless of the fact that title was that of "substitute" (03:March 14, Calabria)

Teacher obtained tenure after service for the equivalent of more than three academic years within four consecutive academic years. (03:Dec. 4, Donvito, intervenor appeal dismissed for failure to file timely appeal, St. Bd. 04:March 3, motion for stay of Commissioner's decision denied, St. Bd. 04:April 7, motion to appear as amicus granted, St. Bd. 04:May 5)

Service as a Home Instructor does not accrue towards the acquisition of tenure. While employment as a Home Instructor is such that an individual must possess appropriate certification in order to serve in that capacity, a Home Instructor is acting in the place of a student's regular classroom teacher when he or she provides instruction in a student's home as a result of the student's absence from school. Since Home Instructors are acting in the place of classroom teachers, they fall within the exception set forth in N.J.S.A. 18A:16-1.1 and cannot acquire tenure on the basis of such employment notwithstanding that it is of such character as to require possession of appropriate certification. (03:Dec. 4, Donvito, intervenor appeal dismissed for failure to file timely appeal, St. Bd. 04:March 3, motion for stay of Commissioner's decision denied, St. Bd. 04:April 7, motion to appear as amicus granted, St. Bd. 04:May 5, rev'd St. Bd. 05:June 1)

Tenure acquired under an endorsement on an instructional certificate entitles the holder to tenure under all other endorsements obtained under the instructional certificate. (02:Jan. 10, Tomassini)

Tenure laws cannot be trumped by *Abbott* regulations. Emergent relief granted. (03:March 6, Sanchez, aff'd St. Bd. 03:June 4)

The Commissioner determined that the position of office aide was a tenure eligible position pursuant to N.J.S.A. 18A:17-2. Petitioning aide/secretary could not assert tenure as an aide because she only served two years as an aide before being transferred to a secretary position where she served three years before being non-renewed prior to serving the additional day necessary to claim tenure. Petitioner could not "tack" secretarial time to time served as an aide because unlike N.J.S.A. 18A:28-6, tacking is not applicable to tenure gained pursuant to N.J.S.A. 18A:17-02. (05:April 1, Giardina, aff'd St. Bd. 05:Sept. 7)

Teacher claims that board's non-renewal violated her tenure rights; Commissioner finds that teacher had not acquired tenure; time served as long-term substitute for 2005-2006 did not count toward tenure acquisition; as far as employment during 2006-7, 2007-8, 2008-9, and to 2009-10, period of sick leave for nine weeks in 2007 did not deprive the board of opportunity to evaluate her and would have counted; however, her paid and unpaid leave of absence for the entire 2008-2009 academic year precludes application of that year towards tenure and therefore, she had not completed three consecutive calendar years, nor three consecutive academic years, nor the equivalent of more than three academic years within a period of any four consecutive academic years. Jacobs, Commr 2011: May 6.

Secretary, hired August 13, 2007, whose annual contract was renewed for a fourth year in 2010-11 but was terminated on July 21, 2010 under the 30 day notice of termination clause, did not acquire tenure under N.J.S.A. 18A:17-2 as she had not served as a secretary in the district for three consecutive calendar years. Miller, Commr 2011:Sept. 21.

Tenured teacher, who was certified only as an athletic trainer and held no proper teaching certificate when initially hired in 2001, and who subsequently earned standard instructional certificates in health and physical education through the alternative route program, challenged the board's decision to terminate her employment claiming violation of her tenure and seniority rights. Deputy Commissioner agrees with ALJ that the administration was fully aware of the petitioner's certification status at the time of her hire, she made no misrepresentations, and the board enabled her to complete the alternate route program; Deputy Commissioner held that the action terminating her employment was without basis in law, and ordered that she be reinstated as a teaching staff member together with retroactive salary, benefits, and emoluments. Sakewicz Bower, 2012:June 11 (Salem)

Teacher who served three academic years, was then non-renewed, and then, in January served to replace a teacher on maternity leave, did not acquire tenure; filling in for a position that is not vacant does not count towards tenure. Harris v. Bridgeton, Commr 2012: May 3.

N.J.S.A. 18A:17-3 was not applicable to petitioner's employment; petitioner did not earn tenure; and the Board did not act in contravention of her statutory rights when it terminated her employment; although she was never

appointed for a fixed term and claimed to be a janitor, she did not serve as a janitor; although she performed some janitorial tasks, these appear to have been assigned to keep her busy and cannot be considered her primary duties, which was as a maintenance/driver/aide in District's transportation department. Roberts, Commr 2012: May 18

Court affirmed that petitioner could not earn tenure as a bus driver, and as a part-time utility worker with fixed term appointments, she qualified neither for tenure under N.J.S.A. 18A:17-3 nor the tenure benefit provided in the applicable collective bargaining agreement. The factual record was undisputed, and appellant has made no showing that the Commissioner failed to follow the law or that his action was otherwise arbitrary, capricious or unreasonable. Cross v. Bd. of Educ. of Elmwood Park, No. A-0188-11T4 (App.Div. Oct. 3, 2012)

Director of Administration was not a recognized title eligible for tenure. Though she performed some duties of business administrator, she neither possessed appropriate certification nor dedicated herself full time to business administrator duties as required by N.J.S.A. 18A:17-2(a). Appellate Division determined that Commissioner's finding that petitioner did not attain tenure was neither arbitrary nor unreasonable. Arguments challenging Board's actions in terminating her employment in district were wholly without merit. Cheloc v. Bd. of Educ. of Elizabeth, No. A-1885-11T1 (App.Div. Oct. 3, 2012)

Commissioner rejects ALJ decision. Matter remanded to the OAL for a determination of the petitioner's tenure and seniority rights in the District based upon the fact that she received a valid Standard Certificate – Principal on August 11, 2010 with a September 2009 effective date. ALJ's determination that DOE practice of backdating certifications was an *ultra vires* act which violated rulemaking requirements under *Metromedia*, exceeded his authority. Petitioner was eligible to receive certificate in September 2009 as all requirements had been met. Francisco, Commissioner 2012: September 14

Petitioning teacher had not acquired tenure and board did not violate her tenure rights when it failed to renew her contract, because during the 2010-2011 year she served in a position where there was no vacancy, which did not count toward acquisition of tenure; the teacher she replaced was on a leave of absence and serving in a temporary teaching position in the district funded through a federal grant; further, the petitioner was employed for that same year under a contract that advised that no tenure credit would accrue to her during the year. *Platia v. Hamilton Bd. of Ed., Commr 2012:Nov. 2.*

Commissioner rejected ALJ decision, and found that the teacher on full year's unpaid maternity leave never acquired tenure under *N.J.S.A.* 18A:28-5 where she worked for the 2002-2003, 2003-2004, and 2004-2005 academic years, before taking leave for the 2005-2006 school year. The leave year did not count toward employment under *N.J.S.A.* 18A:28-5

although she would have earned tenure had she worked one day during the 2005-2006 school year (more than 3 within 4 consecutive years) but failed to do so. Distinguishes *Kletkin, Mendez-Azzollini, Jarmond*. Relaxation of the service requirements of *N.J.S.A.* 18A:28-5 were not warranted; she had no tenure rights when the board non-renewed her in in 2007. *Kolodziej v. Southern Reg.*, Commr 2013: May 16.

Commissioner determines in "a case of first impression" that the period of a principal's paid suspension-- based on allegations which were later determined to be unfounded in a DYFS report-- may be counted toward the accrual of his tenure. Therefore, the board acted improperly when it demoted him from principal to vice principal where they had taken no action to demote or remove him until after the presumptive date of his tenure. Relying on *Kletkin, Mendez-Azzollini, Jarmond*, the Commissioner found that he continued to be an "employee" during the suspension and the Board had enough time to evaluate him during his probationary period. Accordingly, on the particular facts, the Commissioner granted petitioner's motion for summary decision and ordered the Board to restore petitioner to the position of principal with back pay and emoluments. *Valentino v. Camden*, Commr: 2013:May 16.

Appellate Division affirms Commissioner's ruling that substance abuse counselor (SAC) had not acquired tenure and board did not violate tenure rights when he was RIF'd, as he only held a provisional certificate when serving as a SAC for more than three years, which is not a "proper certificate" for the position; nor had he satisfied the conditions of provisional certification and the requirements for standard certification prior to the RIF. The Commissioner found that although prior case law, *Anson v. Bridgeton Bd. of Ed.*, 1972 S.L.D. 638 – held that service under provisional certification might count toward tenure, such tenure was contingent upon the employee's satisfaction of the conditional requirements of that provisional certification. *Ruiz v. Bd. of Educ. of Fort Lee*, 2013 N.J. Super. Unpub. LEXIS 1676 (July 8, 2013)

Commissioner addresses issue of whether teacher tenure despite an extended medical leave of absence, where he was hired in September 2005, was assaulted by a student in November 2005 (hip fracture, herniated disc, torn tendon) and went on worker's compensation. He remained on leave 2005-06 school year, returned in October 2006, but again placed on medical leave in November 2006 –through June 2009. He returned to work in the 2009-10, 2010-11, and 2011-12 school years. ALJ ruled that he was an "employee" during three years and one day in a four year period; pension and other benefit contributions were made continuously on petitioner's behalf by the District from September 2005 until his termination on September 1, 2012, consistent with the treatment of an employee in active service; the District had ample opportunity to evaluate petitioner's job performance, and did perform a final, positive evaluation. Commissioner reverses ALJ, and finds that teacher did not satisfy the necessary statutory criteria. He did not perform services during *each* of the contract years as

required pursuant to *N.J.S.A.* 18A:28-5(c), and the circumstances in this case are distinguishable from those in *Kletzkin v. Board of Education of the Borough of Spotswood, Middlesex County*, 136 *N.J.* 275 (1994). Kletzkin had been "employed" by the respondent district for the requisite period of time, since: she performed services during each of the contract years. *Kowalsky, Commr 2013: July 29.*

Appellate Division reversed Commissioner of Education decision, which upheld board of education decision denying tenure to a teacher under the temporary employee exception to the Tenure Act, N.J.S.A. 18A:16-1.1. While teacher Platia served for one year as a long term substitute under a contract which stated that it was non-tenurial, she served in a position which was vacant. To be considered a "substitute" be it long term or short term, the employee must be serving in the place of another who is absent from the position and intends to return. Prior special education teacher Snyder was transferred to the position of Special Education Literacy Resource Coach from the Robinson School to the Lalor School. Platia taught at the Greenwood School, not the Robinson School. The record failed to support findings that Snyder was "absent" for the year in which Platia was hired as a "Long Term Substitute" or that Platia filled a position that was available by virtue of Snyder's "absence." *Platia v. Board of Educ. of the Twp. of Hamilton*, DOCKET NO. A-1730-12T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, ___ N.J. Super. ___ (App. Div. 2014) Decided January 29, 2014.

Vice principal did not acquire tenure prior to school district RIF and his reassignment to a teaching position. Vice principal served for only 13 months under his provisional administrative certificate and did not complete his two year residency requirement. Earlier service as an "acting" vice principal and vice principal prior to his obtaining his provisional administrative certificate did not count towards tenure acquisition. *Jackson,* Commissioner 2014: April 10

TENURE CHARGES

Abandonment of position

(03:May 1, Gilliams)

Assignment

Assignment of elementary teacher to basic skills at junior/senior high school when she was reinstated following dismissal of criminal charges against her, was not disciplinary, nor did it violate her tenure rights, as a holder of elementary certificate may teach common branch subjects such as remedial math and language, in secondary school. (04:Sept. 15, Mueller)

Certification of charges should not be dismissed as violative of the Open Public Meetings Act where the board did not record the vote to certify charges in its minutes; the tenure law requires that such vote take place in closed session, and such closed session minutes are not to be made promptly available; do so would violate the tenure law. (03:Oct. 14, McDonald)

Appellate Division affirms determination of the Office of Administrative Law that the OAL has jurisdiction to determine the tenure charges brought against plaintiff by the State-Operated School District of the City of Newark. District brought tenure charges against her based on excessive absenteeism, absence without leave/abandonment of position, and incapacity as a teacher due to absenteeism. Pursuant to *N.J.A.C.* 6A:3-5.1, the State district superintendent certified that probable cause existed for the tenure charges. Commissioner deemed the charges to be "sufficient, if true, to warrant dismissal or reduction in salary." Pursuant to *N.J.S.A.* 18A:6-16, the matter was referred to the OAL. Hearing was delayed in the OAL because teacher had pending workers' compensation claim pending against the district. Various state and federal claims regarding authority of the State district superintendent, First Amendment and ADA violations were presented and rejected. *State-Operated Sch. Dist. of Newark v. Gillespie*, DOCKET NO. A-0391-11T2, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, Decided January 6, 2014

Certification of charges

Board's decision not to certify tenure charges against teacher/coach not arbitrary, capricious or unreasonable. Allegations centered around failure to remove pitcher from softball game when her arm hurt. (03:Jan. 31, Miller)

Charges admitted – Failure to respond

Failure to answer within the prescribed period, where no extension has been applied for or granted, will result in the charges being deemed admitted by the employee. (03:May 1, Gilliams)

Charges dismissed

Board accepted teacher's resignation. Matter moot. (02:March 25, Reindel)

Commissioner adopted ALJ's determination that tenured vocational education teacher's unilateral resignation during the pendency of

the matter rendered the tenure charges moot and therefore dismissed the tenure charges. (03:Feb. 6, I.M.O. Jenkins)

Commissioner dismissed charges of chronic and excessive absenteeism in light of superior court determination that district failed to provide a reasonable accommodation of teacher's handicap and were filed in retaliation for teacher's LAD claim. (05:June 9, Cook)

Dismissal of petition challenging decision to not certify tenure charges against principal accused of the sexual harrassment of students and staff proper where the staff member was no longer employed in the district. Because of person's continued employment in other schools, matter referred to State Board of Examiners. (Matter dismissed as moot, St. Bd. 03:Sept. 5, Pascack Valley)

Tenure charges dismissed against teacher for unbecoming conduct on overnight field trip where teacher was photographed in questionable position and consumed alcohol with other adult chaperones at dinner. ALJ determined photographs were inadvertent and board had no policy against the consumption of alcohol on school-sponsored trips by adult chaperones. Commissioner adopted findings as his own. (04:Jan. 8, Rosencrantz)

Charges involving teacher's admission during discovery of sexual relationship with minor, could not be dismissed as moot although teacher resigned; Commissioner will grant dismissal only if finds that would be in the public's interest, see Kotkin, Barshatky. (03:April 3, Bennett) See, also (04:Oct. 21, decision on remand)(charges dismissed by operation of law, as subsequent revocation of his certificate by State Board of Examiners prohibits continued employment)

Charges of conduct unbecoming and other just cause were proven against tenured principal for violations of school district policies, regulations and procedures. Principal violated district policy by improperly requesting and allowing monies to be taken out in cash to pay security guards, mishandled proceeds from the school play by failing to properly account for them and keep them in a safe, improperly transferred funds from the yearbook account to pay for baseball championship rings, improperly failed to report missing funds from football game proceeds and then covered up the shortage, violated policy by conducting rapid dismissal fire drills instead of traditional fire drills, failed to conduct the appropriate number of statutorily required monthly fire drills, allowed pizza sales to take place during a rapid dismissal fire drill, and allowed staff to remain in the building during another rapid dismissal fire drill, in violation of district policy. *Simon*, Commissioner 2013: March 7

Charges of conduct unbecoming proven against tenured special education teacher for inappropriate language and conduct directed toward her 2011-2012 fifth grade resource room special needs students. She told her rowdy special needs students that their behavior was "stupid" and that they were "acting like monkeys"; uttered profanities in the classroom on various

occasions; grabbed the shirt of a student and hit him; forced a pupil back to his seat by grabbing his shirt or arm, grabbed a rubber band from another student, causing it to snap back and inflict pain; telling the student after the rubber band incident that she "deserved it"; and told a fellow staff member that she was "going to flatten" two of her students. Teachers are required to exercise a high degree of self-restraint and controlled behavior as they are entrusted with the custody and care of children; respondent in this matter failed to uphold implicit standards of good behavior. Teacher was dismissed from her tenured position. *Watson, Commissioner 2013: March 13*

Tenured teacher failed to fulfill the requirements of a disciplinary sanction imposed by the Commissioner in an August 2010 decision. Teacher's unprofessional conduct, while proven, did not rise to the level of tenure dismissal. (120 days' salary, salary increment withheld, completion of coursework in pedagogy which addressed inappropriate behavior and classroom demeanor) Classwork not completed in a timely manner and when completed, final grade was "F". ALJ recommended giving teacher one last opportunity to enroll in and pass an appropriate course. Commissioner disagreed, finding that teacher's "astoundingly casual approach" to her coursework requirements, when considered in light of her previous behavior, required that she be dismissed from her tenured position. *Geurds*, Commissioner 2013: March 27

Charges of incapacity, neglect of duty and abandonment of position proven by board of education in matter of tenured teacher. Due to an injury incurred at school, teacher was absent for 124 days during the 2007-08, 2008-2009 and 2009-2010 school years; as a result of a second in-school injury teacher was absent for 60 days in the 2010-2011 school year; was unable to work for the entire 2011-2012 school year; and has not resumed her duties in the 2012-2013 school year. Board is encouraged to consider, if appropriate, filing an application for ordinary disability retirement for the teacher. *Biricik*, Commissioner 2013: April 16

Charges of unbecoming conduct proven by the board of education against tenured social worker who had sex with a minor student and attempted to stop the victim from speaking to the police once the social worker became aware of the investigation. Social worker dismissed from her tenured employment. *Johnson*, Commissioner 2013: April 16

Charges of incapacity, unbecoming conduct, and neglect of duty based on chronic and excessive absenteeism and tardiness proven by board of education against tenured teacher. Teacher has been absent from his duties nearly 123 days and tardy 37 times during the course of his six year employment with the District, 46 days in the first four months of the 2012-2013 school year alone, which has caused an adverse impact on the continuity of the educational process for District students. Neither teacher nor his attorney filed an answer, allowing the charges to be deemed admitted. Teacher was dismissed from his tenured employment. *Mays*, Commissioner 2013: April 18

Charges of seventeen counts of conduct unbecoming and insubordination proven by board of education against tenured teacher. Charges detailed inappropriate behavior that included urinating in a garbage can in his classroom; urinating in a plastic urinal in the classroom and having students empty the urinal; inappropriate conduct with students, including unauthorized emails and telephone calls to students' homes; driving students home; having students run personal errands for him and failure to follow proper procedures during fire drills. Respondent denied the charges, contended that he is physically handicapped and wheelchair-bound, asserted that necessary accommodations for his handicap were refused by the school administration. The commissioner determined that regardless of the difficulties that the respondent may have faced because of his health issues, urinating in the classroom is never an appropriate solution. *Tuitt*, Commissioner 2013: April 18

Commissioner finds that Administrative II secretary should be dismissed, where he failed to processing transcript requests – and turn over the money orders submitted as payment for transcripts – in a timely fashion; and where a 4-year backlog of transcript requests, student records, and money orders – was discovered under his desk, and where he removed school documents without permission, mishandled funds entrusted to him, failed to take advantage of the accommodations made by the district to deal with work stress and failed to comprehend the district's needs with regard to his job function despite assistance offered by the administration. *Tenure Hearing of Asim*, Trenton, Commr: 2013:May 28.

Commissioner finds ALJ's recommendation for tenure dismissal of Physical Education Supervisor/ Athletic Director to be unduly harsh, and instead orders forfeiture of 120 days' pay already withheld as well as suspension for an additional six months without pay and forfeiture of one future salary increase, where during school hours the respondent had placed a bag of dog feces on the windshield of the car parked on school grounds belonging to his ex-wife, also a district teacher. While the conduct was highly improper and in violation of the standards of conduct expected of educators, taking in account analysis of factors required by *Fulcomer*, the Commissioner finds that the conduct stemmed from a domestic matter not associated with school duties, that he was obtaining counseling and that the incident did not establish the teacher's unfitness to discharge his duties. *Tenure Hearing of Carr*, Commr 2013: May 15.

Commissioner upholds tenure charges against tenured teacher where attendance and punctuality had been unsatisfactory, and – on at least one occasion – the cause had been consumption of alcohol. Respondent was absent for 49.5 days during the 2007-08 school year, 83.5 days in the 2009-2010 school year, 183.5 days in the 2010-2011 school year, 91.5 days in the 2011-2012 school year and 71 days in the current school year. Commissioner deems allegations to be admitted due to teacher's failure to respond, and rules that they warrant respondent's dismissal from tenured employment. *Tenure Hearing of Fay*, Commr 2013: May 6.

Commissioner grants board's motion to dismiss the petition of a former security guard that he was illegally terminated, as that determination must be made by a grievance arbitrator. Here, guard initially alleged that he was illegally suspended without pay following the certification of tenure charges for unbecoming conduct which were ultimately dismissed by the Commissioner for lack of subject matter jurisdiction as security guards do not obtain statutory tenure. The board converted his suspension to a retroactive termination, whereupon he sought reinstatement with back pay and benefits under *N.J.A.C.* 18A:6-30. The Commissioner holds that the legality of his termination is contingent on the arbitrator's determination of whether he was terminated without good cause under the collective bargaining agreement. *Newby v. Hillside Bd. of Ed.*, Commr 2013:May 10.

Computer teacher's plea to second degree sexual assault and five year prison sentence and Megan's Law registration, in connection with allegations brought against him by a former middle school student, rendered tenure charges of conduct unbecoming moot; charges had been held in abeyance pending the resolution of the related criminal case. *Tenure Hearing of DeFranco*, 2013:May 31 (Denville)

Commissioner upholds tenure charges of conduct unbecoming, insubordination, and other just cause against respondent, a tenured teacher; failure to file an answer to the petition, charges that she refused to comply with the District's order to undergo an independent medical examination, and has exhibited insubordinate behavior towards district administrators deemed admitted and are sufficient to warrant summary decision for termination of the respondent from her tenured position. *Tenure Hearing of Johnson*, 2013:May 4 (Newark)

Commissioner grants summary decision dismissing tenured teacher from his position where he filed to file an answer to the petition; allegations were deemed admitted and are sufficient to warrant termination of employment. T*enure Hearing of McMeekan*, 2013: June 17 (Scotch Plains-Fanwood.

Court affirms Commissioner's dismissal of tenured physical education teacher, for unbecoming conduct where she placed tape on second grader, allowed and/or encouraged other students to follow her lead which humiliated the student, and when she falsely denied her role in the incident; teacher dismissed despite her 21 years' experience and claim that she acted in the spirit of fun. Rejects teacher's arguments that the ruling is unsupported by substantial credible evidence, violates statutory law, that judge's *in camera* examination of two children violated her right to due process, and that her dismissal as contrary to the doctrine of progressive discipline. *In re Tenure Hearing of Susan Parezo, 2013 N.J. Super. Unpub. LEXIS 2134 (App. Div. August 28, 2013)*

Court affirms acting Commissioner's to dismiss tenured teacher for unbecoming conduct unbecoming a teacher, finding that it is not too extreme of a penalty where, in an attempt to illustrate a chemistry concept, the teacher made inappropriate comments about Caucasians, Hispanics, Asians and African-Americans. The ALJ had recommended a lesser penalty of

suspension without pay, forfeiture of increments and remedial training. Teacher's behavior, albeit a single incident, was sufficiently egregious to warrant termination. She consciously introduced racial stereotyping into her lesson plan, which was negatively perceived by her students. *Tenure Charges Against Chaki, 2013 N.J. Super. Unpub. LEXIS 2032 (App. Div. August 13, 2013) . (per curiam)*

Court upholds dismissal of special education teacher in Special Services School District. Teacher disparaged, confronted and intimidated special education student in geometry classroom setting. Commissioner specifically noted the negative reinforcement Roth's conduct had on his students, many of whom had behavior problems, and the impact his conduct had on the administration and confidence of the community in same. Use of intimidation, ridicule and disparagement has no place in the school environment. Remarks included that no one in the public would care that the student was "special" and chastised the student for objecting to the use of the term. Teacher referred to the Special Services School District name and the fact that the student would never make it back to "regular ed." Teacher's actions were surreptitiously recorded on a cell phone; resulting video was used in evidence. Properly considered teacher's successful teaching history, his honest concern for student and severe remorse, but this did not outweigh gravity of conduct. (Note: ALJ had found that teacher's conduct violated school district's HIB policy and constituted unbecoming conduct, but in light of mitigating factors had recommended 120 days forfeiture of pay, suspension without pay for the rest of the 2011-2012 school year, withholding of salary increment for the 2012-2013 and 2013-2014 school years, completion of anger management training at teacher's expense and written apologies to student, his parents and all other student present. *In the Matter of the Tenure Hearing of Steven E. Roth, 2013 N.J. Super Unpub. (App. Div. July 1, 2013)*

Court reverses Commissioner's decision dismissing tenure charges that had been brought against custodian for conduct unbecoming due to his sexual advances, inappropriate physical contact and sexual remarks made to minors employed by the board in the summer program, where custodian had been acquitted after a bench trial for same behavior. Court finds that credibility determinations of ALJ and Commissioner were not reasonable or supported by the record, and that the ALJ erroneously used the federal criminal standard for 'sexually explicit conduct' instead of the standard for 'conduct unbecoming' applicable under tenure laws, which gave Court the feeling that the findings were clearly mistaken. Remanded for new findings before another ALJ. *In re Tenure Hearing of Melillo, 2013 N.J. Super. Unpub. LEXIS 1866 (App. Div. July 25, 2013)*

Court upholds determination by Commissioner that dismissal of teacher who had engaged in unbecoming conduct was too harsh a penalty given the circumstances, despite ALJ's recommended penalty of dismissal; applies deferential standard, and penalty does not shock sense of fairness. Loss of

respondent's increment for one year, along with the 120 days salary withheld. Special education and physical education teacher gave student "light slap," and joked about giving student "100s" for the rest of the year, and tolerated student provocation and horseplay. Proven conduct does not establish respondent's unfitness to discharge the duties of his position, nor was respondent's behavior "premeditated, cruel or vicious, or done with the intent to punish" as per *In re Fulcomer*-1967 appellate division case.*In re Tenure Hearing of Forman, 2013 N.J. Super. Unpub. LEXIS 1821 (July 12, 2013*)

Commissioner dismisses teacher who failed to respond to allegations of unbecoming conduct, neglect of duty and insubordination, involving teacher who was caught with a controlled substance for the second time in less than two years, which resulted in her teaching license being suspended, and who failed to comply with the conditions of her return to work agreement with the District that settled her previous tenure charges; who was late and filed to provide information to administrators about her the status of the pending criminal charges, her substance abuse treatment or when she will be able to return to work, despite attempts by the District to reach out to her. *Tenure Hearing of Gallo, Commr 2013: July 1.*

Commissioner dismisses teacher where she fails to respond to charges of chronic and excessive absenteeism (total of 326 days during the 2009-2010, 2010-2011, 2011-2012 and 2012-2013 school years) constituting conduct unbecoming. *Tenure Hearing of Wall, Commr 2013: July 25*.

Tenured math teacher with long history of unacceptable behavior constitutes unbecoming conduct and insubordination, and the number and nature of the instances of her conduct are such that the proper penalty in this case is termination of tenure. *Tenure Hearing of Weekesser, Commr 2013: July 29.*

Commissioner concluded that tenure charges of unbecoming conduct against two tenured physical education teachers were substantiated and teachers must be removed from their tenured employment. Teachers exhibited a lack of professional judgment when they participated in a racially derogatory verbal exchange in reference to a group of African American students. The exchange took place in the girls' locker room, during school hours, and was witnessed by several students. The teachers' remarks fell well below the acceptable standard of conduct for an educational institution and created ongoing concern about the negative impacts on the school environment. *Geiger and Jones*, Commissioner 2013: October 7

Commissioner concluded that tenure charges of unbecoming conduct against tenured math teacher were substantiated and that teacher must be terminated from her tenured employment. Teacher failed on numerous occasions to properly maintain grade books as required by district policy, repeatedly refused to follow her supervisors' instructions regarding timely entering of grades; continued a pattern of tardiness despite notifications from her supervisor that such behavior was not acceptable; failed to adhere to an administrative directive that prohibited cell phones in testing

rooms during the HSPA; communicated in a highly inappropriate manner with students – including calling one "a loser like you" on Facebook, made sarcastic comments in the classroom and challenged the integrity and honesty of her superiors. Such unacceptable behavior constitutes unbecoming conduct and insubordination, and the number and nature of the instances of her conduct are such that the proper penalty in this case is termination of tenure. Matter was forwarded to the State Board of Examiners for action as may be appropriate. *Weckesser*, Commissioner 2013: September 16

Appellate Division held that Commissioner's decision that tenured secretary retained her secretarial tenure rights and could "bump" a non-tenured secretarial employee when her voluntarily accepted position of assistant school business administrator was eliminated, was unauthorized by the applicable statutory scheme and reversed. The language of *N.J.S.A.* § 18A:17-2 limited the retention of tenure to the time during which the employee held her secretarial office, position or employment. Had the New Jersey Legislature had intended for a secretary, who acquired tenure pursuant to *N.J.S.A.* § 18A:17-2 (b) or (c), to retain tenure upon relinquishment of his or her secretarial position, it would have provided for such protection in the statute, similar to the provisions found in other tenure retention provisions. The New Jersey Legislature has enacted *N.J.S.A.* §§ 18A:28-6 and 18A:17-20.4, which afford tenure retention rights to teachers and superintendents notwithstanding promotion or transfer. Had they intended to similarly preserve the rights of secretaries, they would have done so. *Dinapoli v. Board of Educ. of the Twp. of Verona*, 434 *N.J. Super*. 233 (App. Div. 2014) Decided January 22, 2014

Board filed tenure charges of excessive absenteeism and conduct unbecoming a teaching staff member against tenured teacher. Teacher was absent for all of the 2010-2011 and 2011-2012 school years, utilizing her sick time. During the 2012-2013 school year, teacher reported to the Educator Without Placement Site for four days, and thereafter was Absent Without Leave (AWOL) for the remainder of the 2012-2013 school year and all of the 2013-2014 school year. No response to the charges was forthcoming. Charges were deemed to be admitted and were sufficient to warrant termination of the teacher from her tenured position. *DeSouza-Alves*, Commissioner, 2014: September 17

Dismissed as moot

Charges were dismissed as moot where teacher who had been brought on charges of excessive absenteeism, resigned and retired on an ordinary disability pension. District has no obligation to notify State Board of Examiners under N.J.A.C. 6A:9-17.4, where tenure charges only involve excessive absenteeism alone, and neither criminal allegations nor conduct unbecoming are alleged. (04:Dec. 1, Robinson)

Dismissal unwarranted; no penalty imposed

Board failed to meet its burden of proof that basic skills instructor used school computer to access and view pornography on the Internet during school hours; sole witness' testimony was not credible and computer data evidence was contaminated. Teacher reinstated with back pay. (00:June 20, Grundfest, aff'd St. Bd. 00:Nov. 1)

Board permitted to offer expert testimony as case involves "substantive issues of transcendent importance". (98:Dec. 17, Leggett, reversed and remanded, St. Bd. 99:June 2, affirmed on remand, 00:June 26, aff'd St. Bd. 00:Nov. 1)

Charge against a superintendent of knowingly entering into an invalid employment contract, standing alone, did not warrant dismissal or reduction in salary, where companion charge that should have been categorized as inefficiency, was dismissed for board's failure to follow the distinct procedures for inefficiency. Superintendent was reinstated with full pay from date of suspension. (04:June 7, Lewis)

Charges dismissed: pending tenure charges should be dismissed when there is a unilateral resignation or retirement; the broader public interest is addressed by the requirement that the district must notify the State Board of the alleged conduct. N.J.A.C. 6A:3-5.6; N.J.A.C. 6:11-3.6(a)(2). (02:Jan. 10, Jean)

Charges that Community Facilitation Teacher (DHS) struck a child were found untrue; matter turned exclusively on credibility determinations. (99:June 11, Fitzpatrick)

Corporal punishment charge not proven; teacher's version more credible. (99:Feb. 11, Jakubiak)

Dismissal not warranted in light of teacher's long record of performance and willingness to change; Commissioner ordered progressive discipline involving forfeiture of the 120 days' pay, as well as any increments due for two years, where, despite warnings, teacher created atmosphere of sexual discrimination by virtue of inappropriate comments regarding female students' appearance, and inappropriate, although not overtly sexual, touching. (04:May 20, Blust)

Distinction between incapacity, incompetency and inefficiency discussed, see ALJ decision. (00:March 10, Finn)

Incapacity and excessive absenteeism: where injuries suffered at workplace and employee steadily increases working hours upon returning to work, employee will be reinstated and charges of incapacity and excessive absenteeism will be dismissed. Back pay, less any mitigation, will be given. (99:June 9, Vereen, record ordered to be supplemented, St. Bd. 99:Oct. 6, rev'd St. Bd. 01:July 10)

Incapacity: Inefficiency charges were properly cast as incapacity, and are dismissed for failure to provide teacher with 90-day improvement period. Matter remanded for further proceedings on remaining

charges involving leaving the classroom unattended and permitting an aid to teach without supervision, which are sufficient to warrant dismissal if true. (00:March 10, Finn)

Inefficiency: Charge against the superintendent for failure to lead and manage the district, should have been properly categorized as inefficiency, and as board did not comply with inefficiency procedures, the charge was therefore dismissed. (04:June 7, Lewis)

Previous determination to dismiss charges of unbecoming conduct against teacher who used improper techniques to rescue students in pool. (98:Dec. 17, Leggett, rev'd and remanded St. Bd. 99:June 2, affirmed on remand, 00:June 26)

Principal with previously unblemished record is reinstated; charges of gross misconduct and conduct unbecoming were not established based on ALJ's credibility determinations, charges involved irregularities in the administration of 4th grade ASK tests to 504 and other students. (04:Sept. 17, Giglio)

The plain meaning of "inefficiency" and "unbecoming conduct" discussed, in context of a superintendent. (04:June 7, Lewis)

Vice principals did not engage in unbecoming conduct by failing to act on/report the continuous long-term violation of the law requiring 2 fire drills/month; the duty to conduct the prescribed number of fire drills is placed squarely upon the principal by N.J.S.A. 18A:41-1. (01:Aug. 24, Jackus and Gaines, reversed St. Bd. 02:April 3, aff'd unpub. Op. Dkt. No. A-4421-01T1, May 1, 2003)

Unbecoming conduct charges dismissed; board provided no evidence regarding proper standard of conduct for physical education teacher following allegation that teacher did not use proper techniques to rescue swimming student. (98:Dec. 17, Leggett, rev'd and remanded St. Bd. 99:June 2, affirmed on remand, 00:June 26, aff'd St. Bd. 00:Nov. 1)

Unbecoming conduct charges for alleged inappropriate sexual contact with student dismissed as moot where teacher admitted to pre-trial intervention probation and resigned tenured position. (01:March 19, Clothier)

Board filed tenure charges of excessive absenteeism and insubordination against tenured secretary. Neither secretary nor any attorney acting on her behalf filed an answer to the petition. Commissioner concluded that, pursuant to *N.J.A.C.* 6A:3-5.4(h), the charges of excessive absenteeism and insubordination may be deemed admitted and are sufficient to warrant termination of the respondent from her tenured secretarial position. Hart, Commissioner 2012: September 27

Commissioner concluded that tenure charges of unbecoming conduct, insubordination and other just cause against tenured physical education teacher were substantiated and that teacher must be

terminated from employment. Charges alleged deceptive and untruthful conduct; inappropriate, defiant and insubordinate conduct; failure to follow administrative directives; failure to enroll in anger management classes; and disregard of corrective plans, relating to several specific incidents as well as ongoing issues involving respondent's consistently negative interactions with his supervising administrators. Actions involved unprofessional, inappropriate and combative interactions with the NJSIAA and numerous negative interactions with school administrators and voluminous "rebuttal" memoranda. Matter was referred to State Board of Examiners for action as may be appropriate. Harriman, Commissioner 2012: October 12

Board filed tenure charges of unbecoming conduct and other just cause against tenured secretary. Neither respondent nor any attorney acting on her behalf filed an answer to the petition. Commissioner concluded that, pursuant to *N.J.A.C.* 6A:3-5.4(h), the charges of unbecoming conduct and other just cause may be deemed admitted and are sufficient to warrant termination of respondent from her tenured secretarial position. Loyal, Commissioner 2012: October 26

Board filed tenure charges of excessive absenteeism and incapacity against tenured teacher. Neither respondent teacher nor any attorney acting on her behalf filed an answer to the petition. Commissioner concluded that, pursuant to *N.J.A.C.* 6A:3-5.4(h), the charges of excessive absenteeism and incapacity may be deemed admitted and are sufficient to warrant termination of the respondent from her tenured teaching position. Stapleton, 2012: October 26

Dismissal unwarranted; penalty imposed

Board proved unbecoming conduct charges against custodian for unauthorized absence from worksite and several instances of failing to clock out at end of shift. Employee directed to forfeit salary already withheld. (03:Sept. 15, Williams)

Board sustained its burden of proving that teacher was guilty of unbecoming conduct for failure to properly supervise students which led to their viewing of inappropriate movie; dismissal unwarranted in light of mitigating factors; teacher reinstated; loss of salary for 30 days. (01:Aug. 20, Prinzo)

Loss of six months salary plus increments for two years along with mental examination prior to reinstatement for complaining to students in class that a condom was too small for him, turning condom into balloon-type giraffe, making comments of a sexual nature to female students, teaching students profane words in French and using a book to tap female students on the buttocks. (00:March 22, Allegretti, aff'd St. Bd. 00:Aug. 2, aff'd App. Div. unpub. op. Dkt. No. A-259-00T1, August 29, 2001)

Penalties imposed were jurisdictionally permissible, supported by sufficient credible evidence in the record and neither arbitrary nor unreasonable. (00:March 22, Allegretti, aff'd St. Bd. 00:Aug. 2, aff'd App. Div. unpub. op. Dkt. No. A-259-00T1, August 29, 2001)

Unbecoming conduct: Although elementary teacher exhibited a pattern behavior arising to inappropriate conduct toward students, including insensitivity, racial remarks and inability to maintain her composure, removal was too severe in light of teacher's long unblemished career, her other attributes, and Board's failure to follow its own procedures and take corrective action earlier; ordered, permanent reduction of one step on salary guide and 120 days' salary, plus loss of additional six months' salary and emoluments. Teacher also directed to attend a program in anger management, handling disruptive students and special education students. Board is reminded of its responsibility to provide proper PIP's are developed. (02:Oct. 21, Emri, aff'd as modified St. Bd. 03:Dec. 3)

In order to sustain tenure charges for excessive absenteeism, a board must show (1) that it considered the number of days and the particular circumstances of the absences; (2) the impact the absences had on the district; and (3) that the appropriate warning was given. The Acting Commissioner's decision to adopt the findings of the ALJ was not arbitrary or capricious. In light of all the circumstances, teacher's termination for excessive absenteeism and unbecoming conduct stemming from an act of insurance fraud, is not "shocking to one's sense of fairness." In re Tenure Hearing of Castro, No. A-4875-10T3 (App.Div. Apr. 25, 2012)

Court affirms dismissal of reading specialist for unbecoming conduct, where she resisted implementing the district's balanced literacy program, in particular the teaching of BSI as remediation rather than as an enrichment program. Superiors met repeatedly with her in vain attempts to overcome her obstructionism toward the ESL program. Her failure to cooperate with several classroom teachers and her public displays of intransigence and hostility demonstrated an inability or unwillingness to understand and to correct her misconduct, and thus the likelihood that she would continue to repeat it. The school district gave appellant ample opportunity for corrective action that was never followed. In Re Tenure Hearing of Ziznewski, No. A-0083-10T1 (App.Div. Apr. 13, 2012)

Commissioner upholds tenure removal charges for conduct unbecoming against high school business teacher where he directed students to internet sites like Utube and Ning that contained sexually suggestive and salacious material that was inappropriate for students and without pedagogical value, and where he logged over 800 views of YouTube during school time, most occurring when

he should have been teaching, observing, or preparing to teach, and used school technology for reasons other than learning in violation of the school district's Acceptable Use Policy. *Tenure Hearing of Holmes*, Commr 2013:Jan 4(Brick)

Commissioner upholds tenure dismissal charges for conduct unbecoming against tenured clerk in the guidance office at a Camden district middle school, where he engaged in an inappropriate relationship with a 13-year-old student involving visits to the child's house, smoking marijuana in front of the child, and communications via Facebook that included improper language, admissions of his use and sale of marijuana, an offer to sell the minor marijuana, and discussion of pornography. *Tenure Hearing of Crump*, Commr 2013:Jan 18 (Camden)

Commissioner upholds tenure dismissal charges for conduct unbecoming against tenured special education teacher following a party at her home, during which other school staff members smoked marijuana and drank alcohol with the teacher's minor son. Further, she had failed to report her arrest or charges against her within fourteen calendar days, as required by board policy and *N.J.A.C.* 6A:9-17.1(c); nor did she report on her acceptance into a PTI program. *Tenure Hearing of Bessellieu*, Commr 2013:Jan 15(Hopewell Reg.)

Special education teacher who engaged in single incident of conduct unbecoming for using excessive force on a student to get him to stand up when he refused to get up from the floor, and for breaching APA testing protocols, is suspended without pay for 120 days plus an additional 360 days, and her increment withheld for two years. This penalty represents a modification of the ALJ's lesser recommended penalty. Commissioner also orders that teacher receive, at her own cost and expense, the appropriate training and assistance in the use of assistive techniques for dealing with difficult students and the protocol for the APA. *Tenure Hearing of Eisenhour*, Commr 2013: Feb 11 (Howell)

Corporal punishment

Charges proven – teacher kicked pupil who was misbehaving. Withholding of increment was appropriate penalty for this isolated incident of corporal punishment. No further penalty warranted. (02:April 8, Miller)

Excessive, chronic tardiness: 170 tardies over 3 year period was disruptive, but dismissal of teacher not warranted in light of improvement in recent years; loss of 120 days pay. (99:Feb. 16, Pais)

Loss of 120 days plus 2 months' salary, referral to State Board, for Athletic Director misrepresenting he possessed supervisory certificate; dismissal unwarranted in light of teacher's long service,

prompt action upon learning of deficiency, and board's role in deficiency. (98:Aug. 6, Dombloski)

Mitigating circumstances such as unblemished record, fact that lack of supervision of pupil was for short period, and pupil's poor behavior, warranted penalty less than dismissal. (99:Feb. 11, Jakubiak)

Racial remarks, profanity, failure to counsel students and excessive force for discipline; special education teacher/guidance counselor is dismissed. (03:Nov. 10, Hammary)

Racist, sexist and insensitive comments constituted unbecoming conduct; however, in light of fact that conduct was unintentional, and long, unblemished record, forfeiture of 120 days plus two months' salary and merit increments for year; suggests teacher attend sensitivity training class. (00:June 26, Mamunes, aff'd St. Bd. 00:Nov. 1)

Sexually harassing comments: measured against recent tenure dismissal cases for inappropriate remarks to students, dismissal not warranted for teacher found to have made imprudent and unprofessional comments to students of allegedly sexually harassing nature where record is otherwise unblemished. 120 days pay restored but increment ordered withheld. (01:Feb. 26, Wannemacher)

Supervision: Loss of one month's salary ordered where librarian left pupil unsupervised for 5 minutes as disciplinary measure. (99:Feb. 11, Jakubiak)

Unbecoming conduct including belittling new teacher in front of students, refusal to perform duties, raising voice to colleague and referring pejoratively to children, constituted repeated and unrepentant behavior warranting permanent reduction of one step on salary guide as well as loss of 120 days' pay and additional two months' salary and emoluments. (99:Aug. 4, Motley, aff'd St. Bd. 99:Dec. 1)

Unbecoming conduct and subordination charges warranted dismissal of assistant principal who failed to perform duties. (03:Dec. 11, aff'd St. Bd. 04:May 5, Sarduy)

Vice principal not dismissed, but is permanently reduced on salary guide for mishandling pupils suspected of being under influence of alcohol or drugs. (00:Sept. 21, Graceffo, aff'd with modification St. Bd. 01:Dec. 5, aff'd unpub. Op. Dkt. No. A-2402-01T5, April 8, 2003)

Dismissal warranted – Procedural issues

Commissioner finds without merit petitioners argument that 90-day time limitation for disputing tenure charges is inapplicable to such charges because his claim is a statutory entitlement within the intendment of Lavin. (03:Oct. 2, Colucci)

Court dismissed tenured teacher's claim for false light invasion of privacy where teacher failed to prove the board disclosed the information

with knowledge of the falsity where board filed tenure dismissal charges alleging unbecoming conduct. 2004 U.S. Dist. LEXIS 14449, Emri)

Court dismissed tenured teacher's claim for interference with contract where teacher failed to prove that protected contractual right, that defendants intentionally and maliciously interfered with that right and that she suffered damages. (2004 U.S. Dist. LEXIS 14449, Emri)

Court dismissed tenured teacher's claim of defamation based on the board's disclosure of tenure dismissal charges to the press. Teacher failed to prove the statement was false and disclosed to another with actual malice. 2004 U.S. Dist. LEXIS 14449, Emri)

Court dismissed tenured teacher's claim of intentional infliction of emotional distress in tenure dismissal. Teacher failed to produce any evidence of intentional and outrageous conduct on the part of the board. (2004 U.S. Dist. LEXIS 14449, Emri)

Court dismissed tenured teacher's claim that her procedural due process rights were violated where she was suspended with pay prior to receiving notice or the opportunity to be heard. Court determined that a temporary removal from class duties does not constitute a deprivation of employment for procedural due process purposes. (2004 U.S. Dist. LEXIS 14449, Emri)

Court dismissed tenured teacher's claim that her procedural due process rights were violated where the OAL's tenure hearing was not completed within 120 days. Court found no such requirement. (2004 U.S. Dist. LEXIS 14449, Emri)

Custodian dismissal warranted: custodian fails to answer charges of excessive absenteeism, abandonment of position and unbecoming conduct. (00:Jan. 4, Carmona)

Custodian dismissal warranted: custodian fails to answer charges of unbecoming conduct involving possession of stolen goods, condoning theft, conspiring to commit fraud. (02:Feb. 1, Marmora)

Custodian resigned and withdrew his defense to charge of theft of school funds. (99:August 19, Williams)

Custodian: Unbecoming conduct and excessive absenteeism; failure to answer charges. (00:Aug. 30, Randolph)

Failure to answer charges; Commissioner finds that teacher's actions amounted to unbecoming conduct, insubordination, inefficiency and other just cause, but due to TPAF approval of teacher's disability retirement, board unable to move forward with charges; matter dismissed due to retirement. (99:March 3, Fuqua)

Failure to answer charges; custodian dismissed for abandoning his position. (99:March 10, Crossland)

Failure to answer charges; custodian dismissed for absenteeism. (99:April 8, Taylor)

Failure to answer charges; custodian dismissed for alcohol abuse on the job after having previously been suspended and reinstated while attending abuse program. (00:Nov. 3, Arera)

Failure to answer charges; custodian dismissed for insubordination and other just cause. (98:Oct. 19, Pietronico)

Failure to answer: charges deemed admitted; custodian is dismissed for absenteeism, abandonment of position, unbecoming conduct and insubordination. (00:June 19, Kidd)

Failure to answer charges; dismissal ordered against light cleaner for absenteeism. (98:Aug. 12, Davis)

Failure to answer charges; dismissal ordered against teacher in State op. district, on grounds of inefficiency and incapacity. (98:Sept. 29, Battle)

Failure to answer charges; dismissal ordered for unbecoming conduct for, while chaperoning trip with minors, showing pornographic films and providing alcohol. (98:Oct. 6, Lamperty, appeal dismissed for failure to perfect, St. Bd. 99:Jan. 6)

Failure to answer charges; summary judgment for dismissal ordered on grounds of incapacity/excessive absenteeism and unbecoming conduct of forging sick day donor requests. (99:July 7, Joyner)

Failure to answer charges – teacher dismissed. (01:May 7, Indar)(01:May 14, Luciano – secretary, excessive absenteeism)(01:July 25, Sconier, incapacity, etc.)

Failure to answer charges within the prescribed period, charges deemed admitted by the employee. Teacher dismissed due to incapacity, chronic absenteeism, abuse of sick leave and abandonment of position. (03:May 1, Gilliams)

Failure to reply to specific charges. (99:July 7, Allegretti)

Failure to submit answer within 15 days; teaching staff member dismissed for unbecoming conduct, insubordination, inefficiency and/or other just cause. (99:March 3, Geveke, rev'd and remanded St. Bd. 99:Oct. 6)

Failure to submit timely answer and absence of good cause for extension of time; crisis intervention teacher deemed to have admitted charges of excessive absenteeism and unbecoming conduct. (99:Dec. 23, Johnson)

Plenary hearing not provided in tenure matter where teacher's conduct was fully and fairly litigated and decided in prior criminal proceeding; assault constituted conduct unbecoming warranting teacher's dismissal. Board of education has the authority, pursuant to N.J.S.A. 2C:51-2(g) to apply for an order of forfeiture. Remanded to St. Bd. (App. Div. A-6729-98T3, Nov. 28, 2000) (00:May 1, Ercolano, decision on remand, decision on motion, matter dismissed as moot, St. Bd. 01:June 6) State v. Ercolano, 335 N.J. Super. 236 (App. Div. 2000), certification denied 167 N.J. 635 (2001).

Summary judgment to district, where charges of defrauding State Health Benefits Program no longer contested. (00:Jan. 21, Lister)

Withdrawal of opposition to tenure charges; charges of abandonment/incapacity deemed admitted; secretary dismissed. (99:July 30, Harder)

Dismissal warranted---Absences

Chronic and excessive absenteeism may constitute incapacity and unbecoming conduct even where the absences were caused by legitimate medical reasons. (03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Custodian's absences adversely affected Board's ability to provide sanitary and secure facilities and created morale problem for other custodians. (99:June 9, Prusakowski)

Custodian's stipulated three-year absence due to legitimate use of sick leave affected Board's ability to provide sanitary and secure facilities and morale of other custodians; custodian dismissed (99:July 22, Kasony, aff'd St. Bd. 00:Jan. 5)

Dismissal ordered; custodian did not file answer to charge of chronic, excessive absenteeism. (98:Aug. 7, Scott)

Dismissal ordered for teacher of handicapped who did not dispute that her absenteeism over eight years adversely impacted her performance, and where district warned teacher of the problem which teacher does not assert will improve. (98:Nov. 17, Labib)

Excessive absenteeism (90 days) alone warranted teacher's removal; insubordination charges including failure to submit sub plans, failure to prepare report cards or to report absences, also proven; abandonment not proven. (98:July 15, Richardson, aff'd St. Bd. 99:Jan. 6)

Excessive absenteeism (720 days over 7 years) warranted teacher's dismissal despite legitimate illness; caused impact on continuity of instruction. Abuse of sick leave charge dismissed for lack of evidence. (00:April 17, Segall)

Pattern of absenteeism for over 23 days from January through April, and failure to comply with procedures for reporting to work was attributable to speech therapist's refusal to teach in a particular environment and not to a medical problem, established excessive absenteeism; also unprofessional conduct and neglect of duties were established. (02:Oct. 9, Thomas)

Special education teacher dismissed on grounds of incapacity due to chronic absenteeism and lateness over five-year period and conduct unbecoming. (01:March 2, Brooks)

Teacher dismissed for excessive absenteeism, excessive tardiness, unbecoming conduct and insubordination. No reply from teacher, charges deemed admitted. (02:April 30, Moore)

Teacher had an abusive pattern of absences – 72% of the time over two years. Straddles absences over weekends, holidays and other days when schools were closed. Did not comply with district sick leave procedures. (03:May 1, Gilliams)

Teacher's chronic and excessive absenteeism constituted unbecoming conduct and incapacity and warranted dismissal. (03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Teacher terminated for excessive absenteeism including absence due to work-related injury. Penalty of increment withholding for separate incident of insubordination rejected by Commissioner since increment withholding applies prospectively. (00:May 15, Folger)

Tenured teacher's pattern of excessive absences and its resultant negative impact on the school district, constituted unbecoming conduct warranting dismissal. (03:June 24, Banks)(03:June 30, Pioquinto-Okoszka)

Commissioner upholds charges filed by school district against tenured physical education teacher for failure to uphold the implicit standards of good behavior expected of a teacher, as his remarks offended publicly accepted standards of decency; he referred to students as "nigger," "mad Mexican," and "spic," as well as other demeaning names, and engaged in the use of profanity in their presence; and, despite several warnings and being given many "second chances," failed to learn from his mistakes, and continued to make inappropriate comments about race and socio-economic status to and about his students. *Matter of Tenure Hearing of Surace*, Commr 2013: Nov 1. (East Windsor).

Dismissal warranted -- Corporal Punishment

Evidence of anti-union animus not permitted because charges of corporal punishment, if proven, would sustain removal even in presence of anti-union animus, and witnesses were not part of administration who could harbor union sentiment, charges did not arise out of protected activity. (99:May 10, Hernandez, aff'd St. Bd. 99:Oct. 6)

Excessive use of force on four occasions when disciplining pupils, along with verbal abuse warranted dismissal of teacher. (00:June 26, Cotto, aff'd St. Bd. 00:Nov. 1)

Knocking ball away from student and pushing him against wall, making inappropriate ethnic remark, together with other incidents and warnings regarding touching pupils, warranted removal of physical education teacher. (98:Dec. 28, Miller, aff'd St. Bd. 99:May 5)

Rough handling of pupils when imposing discipline warranted teacher's dismissal, especially where problem was noted in his professional improvement plan. (99:May 10, Hernandez, aff'd St. Bd. 99:Oct. 6)

Dismissal warranted—criminal conduct

Appellate Division can think of no more egregious conduct than a superintendent of schools who engages in deliberate, calculated pattern of dishonesty in under-reporting income earned from public monies in the performance of public duties. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002)

Charges dismissed as moot upon resignation of teacher who pled guilty to defrauding State Health Benefits Plan. (00:Nov. 20, Baker)

Commissioner adopted ALJ's decision finding teacher guilty of unbecoming conduct when she acted to elude police, even though charge was eventually dismissed. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)

Conduct giving rise to superintendent's federal conviction for tax evasion amply established charges of unbecoming conduct without the need for an additional plenary hearing; removal from tenured position warranted. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002))

Conviction for assaulting a student constituted conduct unbecoming and warranted teacher's dismissal. (00:May 1, Ercolano, decision on remand, decision on motion, matter dismissed as moot, St. Bd. 01:June 6) See State v. Ercolano, 335 N.J. Super. 236 (App. Div. 2000), certification denied 167 N.J. 635 (2001).

Embezzlement of school funds and other irregularities by school business administrator, to which charges he entered guilty plea in federal court, constituted unbecoming conduct warranting removal. (01:Oct. 12, Davis)

Forfeiture pursuant to N.J.S.A. 2C:51-2, as amended in 1995, not within the jurisdiction of education. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002))

Fraud: teachers dismissed for participating in scheme to defraud State Health Benefits Program by conspiring with doctor to submit claims for services never rendered. (99:Feb. 11, Dykes, appeal dismissed for failure to perfect, St. Bd. 99:June 2; aff'd App. Div. unpub. op. Dkt. No. A-6596-98T1, June 14, 2000) (Physical education teacher) (99:Feb. 25, Lester, aff'd St. Bd. 99:July 7; aff'd App. Div. unpub. op. Dkt. No. A-7034-98T3, May 19, 2000) (middle school teacher)

Guilty pleas to 4th degree offense of criminal contempt, and later disobeying restraining order required dismissal despite teacher's obsessive compulsive disorder. (99:June 23, Dombloski)

In light of guilty pleas to sexual conduct with minors, tenure charges are sustained. (00:Aug. 18, Wood)

Secretary arrested for theft of school funds. (01:March 19, Nurse)

Secretary intended to convert money if not for police sting operation; dismissal warranted, although criminal theft conviction was reversed on appeal. (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)

Single incident of theft sufficiently flagrant, despite unblemished record. (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)

Teacher plead guilty in criminal court for fraudulent health insurance scheme, including forfeiture of position; failure to appear before Commissioner in tenure deemed admission; teacher dismissed. (00:Oct. 2, Woolard)

Theft: Single incident of theft of school monies by custodian justified dismissal. (99:May 3, Tighe)

Dismissal warranted---Drugs/Alcohol

Board policy providing for prompt testing of teachers suspected of being under the influence of alcohol upheld as reasonable. Teacher smelled of alcohol during school hours. Under the circumstances, and in accordance with the Board's reasonable regulation related to matters of this sort, prompt testing was appropriate as it was in the best interests of students, staff members, the public and the teacher itself. (04:Jan. 8, Bayonne Teacher's Association)

Cocaine and drug paraphernalia possession by teacher: Dismissal ordered as plea bargain likely to fall through as teacher has fled and bench warrant out for arrest, indictment likely to result in forfeiture, and teacher failed to answer tenure charges. (98:Oct. 14, Ceccarelli)

Cocaine and drug paraphernalia possession off school premises warranted dismissal of industrial arts teacher; mitigating circumstances not demonstrated. (99:July 30, Morton)

Commissioner adopted ALJ's determination that teacher was guilty of unbecoming conduct when she admitted to possession of CDS with intent to distribute in allowing her residence to be used for the preparation and distribution of CDS, despite teacher's allegation that drug dealers commandeered her residence. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)

Commissioner dismissed tenured custodian where custodian failed to respond to tenure charges of conduct unbecoming based on arrest for drug possession. (05:June 23, Mata)

Custodian's possession of cocaine, marijuana and paraphernalia, warranted dismissal even through he successfully completed PTI and criminal charges were dropped, and although custodians are not held to same standard as teachers. (00:Oct. 2, Santiago, aff'd St. Bd. 01:March 7, aff'd App. Div. unpub. op. Dkt. No. A-4356-00T5, April 10, 2002)

Reasonable accommodation: assuming drug addiction is in fact a handicap, 45-day rehab program was reasonable accommodation. (99:July 30, Morton)

Dismissal Warranted – incapacity

Chronic and excessive absenteeism may constitute incapacity and unbecoming conduct even where the absences were caused by legitimate medical reasons. (03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Multi-year absences by injured custodian established incapacity warranting removal, although his absenteeism constituted legitimate use of sick leave and possibility remained that he could once again be capable of resuming duties. (99:June 9, Prusakowski)

Purchasing specialist removed for incapacity due to excessive absenteeism, after failed to answer charges. (01:March 22, Davis)

Special education teacher dismissed on grounds of incapacity due to chronic absenteeism and lateness over five-year period and conduct unbecoming. (01:March 2, Brooks)

Teacher's chronic and excessive absenteeism constituted unbecoming conduct and incapacity and warranted dismissal. (03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Teacher's excessive absences demonstrated incapacity of fulfilling duties as a teacher. (03:May 1, Gilliams)

Teacher who is injured, has protracted absence for several years and fails to respond to board's repeated requests for clarifications of work status is incapable of fulfilling duties and has engaged in unbecoming conduct. (03:Jan. 21, Abernathy)

Dismissal warranted -- insubordination

ALJ recommended dismissal of gym teacher, accused of grabbing, pushing, screaming at second grade students, and instructing one student to strike another. Commissioner affirmed teacher's dismissal and transmitted matter to State Board for appropriate action against teacher's certificate. (02:Nov. 6, Kendle)

Conduct unbecoming by virtue of hostile behavior toward other staff members, insubordination, and poor performance warranted dismissal. (99:Jan. 14, Radwan, decision on motion, St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3, aff'd 347 N.J. Super. 451 (App. Div. 2002), certification denied 174 N.J. 38 (2002))

Discrimination: Custodian's claim that other staff singled him out because of religious or ethnic discrimination was unfounded by testimony; he was singled out because he was belligerent and behaved badly. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3, aff'd 347 N.J. Super. 451 (App. Div. 2002), certification denied 174 N.J. 38 (2002))

Guilty plea to 4th degree offense of criminal contempt, and later disobeying restraining order required dismissal despite teacher's obsessive compulsive disorder. (99:June 23, Dombloski)

In determining discipline for unbecoming conduct, the Commissioner considers the nature and circumstances of the incident, the individual's prior record and current attitude, and the likelihood that the behavior will recur; dismissal may be imposed even if the conduct did not occur in the course of a teacher's employment. (99:June 23, Dombloski)

Insubordination and incapacity charges were sustained; charges deemed admitted where teacher failed to respond to charges. (05:Feb. 10, Turner)

Insubordination charges including failure to submit sub plans, failure to prepare report cards or to report absences were proven; however excessive absenteeism (90 days) alone warranted removal. (98:July 15, Richardson, aff'd St. Bd. 99:Jan. 6)

Refusal to cooperate with school and refusal to comply with board directive to undergo physical and psychiatric evaluation sufficient to warrant dismissal. (02:June 27, Ingram, aff'd St. Bd. 02:Nov. 6, aff'd App. Div. unpub. op. Dkt. No. A-2078-02T5, Nov. 6, 2003)

Teacher contended that her disability required different accommodations than those reasonable accommodations offered by the board and refused to perform assigned teaching duties and stayed home from work despite warning by board that tenure charges would ensue. (01:Dec. 31, Megargee, aff'd St. Bd. 02:May 1, motion to settle record granted, St. Bd. 03:Jan. 8)

Tenured plumber engaged in a pattern of conduct that demonstrated a consistent, obstructive and defiant attitude toward board policies, personnel and supervisors; demonstrated insubordinate behavior; neglected his duties; abused his sick leave; left early without authorization; and demonstrated conduct unbecoming by engaging in general harassment and interference with the proper discharge of supervisors' and other employees' duties. (03:June 24, Valdes, aff'd St. Bd. 04:Aug. 4, motion for reconsideration granted but original decision aff'd St. Bd. 04:Oct. 6)

Dismissal warranted – performance/inefficiency

Charges of inefficiency did not comply with procedural requirements and contained only one classroom observation; however, record established pattern of incidents constituting unbecoming conduct that warranted dismissal. Board reminded of its obligation to provide teaching staff members with observation, evaluation and PIP's in accordance with regulations. (02:Oct. 15, Zofchak, appeal dismissed for failure to correct procedural deficiencies, St. Bd. 03:Feb. 5, motion granted to reinstate appeal, St. Bd. 03:April 2, aff'd for the reasons expressed in Comm. Decision, St. Bd. 03:June 4)

Incapacity: Tenure charge was not premature just because teacher has not yet received workers compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Industrial arts teacher: Chronic lateness and failure to follow safety protocols warrants dismissal. (02:July 1, Varano)

Inefficiency: School psychiatrist's repeated failure to complete and file psychological assessments in a timely manner despite extensive efforts by board to assist her, warranted dismissal despite many years of service and adequate performance in certain areas. (00:Aug. 18, Sidberry, aff'd St. Bd. 01:Jan. 3)

Janitor's poor performance of responsibilities, as well as conduct unbecoming by virtue of hostile behavior toward other staff members, and insubordination, warranted dismissal. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3, aff'd 347 N.J. Super. 451 (App. Div. 2002), certification denied 174 N.J. 38 (2002))

Court affirms ALJ and Acting Commissioner's rulings affirming district's dismissal of Paterson teacher dismissal on tenure charges of unbecoming conduct , where she had posted statements on Facebook: " I'm not a teacher — I'm a warden for future criminals!" and "They had a scared straight program in school — why couldn't [I] bring [first] graders?" The posting of such derogatory and demeaning comments about first-grade students showed a lack of self-control, insensitivity and a lack of professionalism, and were not protected speech under the Pickering balancing test. *In re Tenure Hearing of O'Brien,* 2013 *N.J. Super*. Unpub. LEXIS 28 (App. Div. Jan 11, 2013)

Dismissal warranted – procedural issues

Commissioner determined that board proved that special education teacher engaged in unbecoming conduct by engaging in an ongoing pattern of unbecoming conduct where district had proven six charges of unbecoming conduct. Teacher dismissed for this and other reasons. (05:Dec. 12, Molokwu)

Commissioner determined that board proved that special education teacher engaged in unbecoming conduct by engaging in threatening and insubordinate behavior during an administrative review of his teaching performance. Teacher dismissed for this and other reasons. (05:Dec. 12, Molokwu)

Commissioner determined that board proved that special education teacher engaged in unbecoming conduct by falsely claiming that he attended mandatory training for the administration of standardized tests. Teacher dismissed for this and other reasons. (05:Dec. 12, Molokwu)

Commissioner determined that board proved that special education teacher engaged in unbecoming conduct by having failed to perform assigned duties by failing to supervise students placed in detention. Teacher dismissed for this and other reasons. (05:Dec. 12, Molokwu)

Commissioner determined that board proved that special education teacher engaged in unbecoming conduct by obtaining a medical leave of absence under false pretenses. Teacher dismissed for this and other reasons. (05:Dec. 12, Molokwu)

Commissioner determined that board proved that special education teacher engaged in unbecoming conduct by reviewing mail reserved to the special education department mailbox without administrative permission. Teacher dismissed for this and other reasons. (05:Dec. 12, Molokwu)

Commissioner determined that board failed to terminate secretary prior to her having served the requisite amount of time for tenure to accrue. Notice of non-renewal given prior to end of third year contained an effective date equal to the end of the three year statutory period for tenure to accrue. (05:Dec. 6, Emmett)

Denial of motion to reconstruct the record not reversible error; no prejudice demonstrated by defendant. (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5, aff'd St. Bd. 00:May 3, aff'd 347 N.J. Super. 451 (App. Div. 2002), certification denied 174 N.J. 38 (2002)).

Failure to answer charges; secretary dismissed for excessive absenteeism, incapacity. (01:Oct. 15, Hernandez)

Failure to respond to charges; teacher of developmentally disabled is suspended for ten days without pay for chronic and excessive absenteeism. (02:Feb. 22, Dillon)

Withdrawal of answer; misappropriation by Director of funds, multiple schemes to defraud board deemed admitted. (00:March 22, Hagopian)

Special Education teacher in district dismissed following the board substantiating its charges of excessive tardiness and leaving early, using demeaning language with her students, leaving students unattended in the hallway, pushing one of her students, and disobeying a directive from the superintendent. True, 2011 Commr Aug 15

Tenured teacher dismissed for inefficiency where he showed poor teaching performance, including unsatisfactory pedagogical technique, inadequate classroom management, and failure to meet professional obligations such as, inter alia, timely submission of lesson plans, management books, and report cards. Board carried its burden of proving the tenure charges of inefficiency against respondent. Gilmer, 2011 Commr July 28

Following Appellate Division remand, Six month suspension without pay, served prospectively, is the appropriate penalty for charge of unbecoming conduct against respondent, principal of Daylight/Twilight High School, for failing to properly administer the attendance policy of the District. Tracy, 2011 Commr July 21

Teacher of Cosmetology at correctional institution dismissed for conduct unbecoming after having an improper and unauthorized relationship with an inmate. Commissioner disagrees with ALJ's penalty of one year suspension and imposes penalty of dismissal. I/M/O Coluccio 2011 Commr July 5.

Teacher who was sentenced to five years in prison for sexual relationship/assault of student and terms of negotiated plea required him to be subject to Megan's Law upon completion of his incarceration, and to forfeit his teaching position, was removed on tenure charges; his removal is statutorily mandated under N.J.S.A. 18A:6-7.1. Tenure Hearing of Lindo, Commr: 2012: May 21. (Union City))

Commissioner finds that tenure charges of excessive absenteeism and insubordination against respondent, a tenured special education teacher, are deemed admitted and are sufficient to warrant termination of the teacher from her tenured position, where teacher filed no answer denying the charges. Matter of Tenure Hearing of Robinson, Commr 2012: May 3 (Camden)

Allegations of chronic and excessive absenteeism and conduct unbecoming against a tenured Spanish teacher, are deemed admitted as they are not contested, and Commissioner enters summary decision granting board's petition to terminate his employment with the district, and forwards a copy of this decision to the State Board of Examiners for action against his certificate as that body deems appropriate. Tenure Hearing of Economou, Commr 2012: June 14 (Metuchen)

Commissioner agrees with ALJ that board's tenure charges of conduct unbecoming and insubordination against tenured teacher of industrial arts should be sustained and teacher should be dismissed, following an incident in which he threatened a student with a knife-- albeit without intention to harm student-- in violation of various school policies including the prohibition against possession of a weapon on school grounds, and where in previous incidents he made physical contact with students and/or disobeyed Board policy, resulting in prior discipline and increment withholdings. Tenure Hearing of Zawadzki, Commr 2012:June 14 (Old Bridge)

Commissioner rejects ALJ's finding that elementary teacher's excessive absenteeism constituted incapacity, but otherwise concurred with ALJ that excessive absenteeism constituted incapacity, unbecoming conduct and just cause warranting her removal, where

she was absent for 197 days over a six year period; absences likely impacted the education of her students; her salary increment was withheld three times; she failed to demonstrate that she or her child had a chronic health condition that cause her absences; and she had ample warning of dissatisfaction with her attendance through written evaluations and withholding of increments. Tenure Hearing of Dugan, 2012:June 14 (Jersey City)

Matter dismissed as moot due to teacher's death. In earlier case, Commissioner agreed that absences of a teacher of culinary arts at the Juvenile Justice Commission's Training School were excessive where he failed to return from an approved leave of absence, but that school had not established that absences were sufficient grounds for dismissal under White and similar cases; Commissioner denied board's motion for summary decision, granted teacher's motion for a ruling that he did not abandon his position; and ordered that the record of this matter be developed. Tenure Hearing of Amodei, Commr 2012: June 14.

Commissioner--- disagreeing with ALJ recommendation for suspension, loss of increment, anger management training and other penalties--orders removal of special education teacher with otherwise unblemished record, after incident of unbecoming conduct where teacher disparaged, intimidated and harassed a student in front of the class, in violation of Board's HIB policy; derogatory remarks were surreptitiously video recorded on a cell phone and demonstrated a lack of discretion, judgment, and maturity in dealing with students. Egregious nature of the conduct and effects on students overshadow teacher's remorse. Tenure Hearing of Roth, Commr 2012: June 25 (Gloucester)

Tenure charge adjudication in which former teacher was dismissed from her position on February 8, 2012 for unbecoming conduct and insubordination, rendered moot the issue of whether the board properly withheld her 2011-12 salary increment, as she is no longer an employee of the district and can therefore no longer claim any right to restoration of an employment increment for service which has been determined to be unsatisfactory. Teacher's petition is dismissed. Toorzani, Commr 2012: June 27 (Elmwood Pk)

Commissioner finds insufficient basis to approve the proposed settlement, as there is no resolution in the file evidencing petitioner's ratification of the agreement, no signature by her attorney, and no evidence that the State Monitor has signed off on the settlement – as required by the settlement. Moreover, it purports to resolve both the instant tenure matter and an action for overtime pay, although the settlement contains no papers relating to the latter litigation. Matter remanded to OAL to perfect the settlement and Initial

Decision, or for further proceedings as appropriate. Tenure Hearing of Morales, Commr 2012: June 27 (Pleasantville)

Dismissal warranted -- racial remarks

Knocking ball away from student and pushing him against wall, making inappropriate ethnic remark, together with other incidents and warnings regarding touching pupils, warranted removal of physical education teacher. (98:Dec. 28, Miller)

Dismissal warranted -- Sexually inappropriate behavior/profanity/ inappropriate remarks

Board certified tenure charges against special education teacher for allowing special education students to engage in sexual activity during instructional time. ALJ found that the board failed to meet its burden. Commissioner modified the initial decision, finding that the teacher failed to properly monitor students thus charges of unbecoming conduct were sustained. Mitigating factors provided for loss of 120 days salary and salary increment. (02:Aug. 16, Noon)

Comments and inappropriate past actions with female students, by industrial arts/special education teacher, amounting to sexual harassment, warranted removal for unbecoming conduct and demonstrated incapacity and unfitness. (02:July 8, Slaughter)

Conviction for aggravated sexual assault of a minor pupil. (00:Dec. 18, Duffield)

Guilty plea to second degree sexual assault on student; charges deemed admitted where no reply submitted. (01:Oct. 1, Elwell)

History teacher of 23 years dismissed for sexually inappropriate behavior and remarks to students in class as well as actions intended to dissuade students from testifying against him. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part and rev'd in part on other grounds, unpub. Op. Dkt. No. A-3610-01T5, June 2, 2003, remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003))

Inappropriate comment directing special education student to "kiss my butt" to attend class trip, although single act, sufficiently flagrant to warrant removal. (01:March 22, Cooper)

Inappropriate relationship with student admitted by teacher warranted removal. Defense of bi-polar disorder as factor mitigating against removal rejected. Disorder may have mitigated against other unbecoming conduct (sending suicide notes to students) but not efforts to forge romantic relationship. (01:March 2, Ing)

In light of guilty pleas to sexual conduct with minors, tenure charges are sustained. (00:Aug. 18, Wood)

Residuum rule served to require dismissal of allegation that during class, teacher announced names of pupils who complained about him. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Sexual relationship by music/band teacher with teenage pupil; a teacher who is sexually involved with a student must be stripped of his tenure; no other result can be allowed. (99:March 1, Yatauro)

Sexual relations with blind client, and attempting to conceal guilty by falsifying records and threatening client. (99:Feb. 9, Cerutti) (Dept Human Services)

Single act of sexual contact with student (kissing) warranted dismissal, despite teacher's unblemished prior record and laudable contributions to the school, as teacher placed himself in the role of counselor to an extremely troubled adolescent and exploited that vulnerability. (05:Feb. 10, Fox)

Teacher in middle school: Despite lengthy, unblemished record, and possible alcoholism disability, dismissal warranted due to seriousness of charges that teacher left vulgar, obscene messages on answering machine for two pupils. (00:April 17, Dunham, aff'd St. Bd. 00:Sept. 6)

Unbecoming conduct; discussions with class about torturing and killing another student, and about purchasing guns over the internet. (00:July 27, Komorowski, aff'd St. Bd. 00:Dec. 6, aff'd App. Div. unpub. op. Dkt. No. A-2486-00T2, March 4, 2002)

Commissioner grants motion to reconsider earlier decision terminating employment for failure to answer charges, where employee's failure to file was because he mistakenly sent his response to the attorney listed on the notice rather than the Commissioner. Vacated and remanded for hearing on the merits. Tenure Hearing of Piccoli, Commr 2011:May 6.

Commissioner orders dismissal of tenured attendance officer for excessive absenteeism and conduct unbecoming for insurance fraud stemming from an incident in which his medical insurance was billed for treatment of a person posing as his estranged wife. Commissioner finds disingenuous his argument that his paid suspensions from work should not be considered towards his absences; suspensions were due to serious criminal charges that were later dismissed. Tenure Hearing of Castro, Commr 2011:May 2.

Commissioner dismisses tenured custodian brought on tenure charges of excessive absenteeism and other just cause; as she failed to answer

charges they are deemed admitted and sufficient to warrant termination. Tenure Hearing of Aleman, Commr 2011: June 14.

Commissioner grants board's motion for summary judgment granting removal of tenured teacher, where tenure charges had been stayed pending disposition of a criminal matter, and where criminal matter ultimately resulted in teacher's permanent disqualification from employment under N.J.S.A. 18A:6-7.1; there is no statutory authority for teacher's position that disqualification is not mandatory. Tenure Hearing of Socrates, 2011: June 24.

Commissioner orders dismissal of tenured special education teacher. Sixteen witnesses for the Board presented credible testimony that the teacher was hostile, aggressive, demanding and unresponsive to reasonable requests for grades, progress reports, test scores and student information. Teacher's own testimony during the hearing was repeatedly unresponsive; her behavior was inappropriate and inconsistent with the decorum and responsibility expected of a professional educator. Tenure Hearing of Kubicki, Commr 2011: May 21.

Superior Court Order directing Spanish teacher to resign his position and forfeit his certificate renders the Board's tenure charges moot. He had been subject to a plea agreement whereby he was sentenced to 364 days in the Somerset County Jail and parole supervision for life, and been ordered to be subjected to the requirements of Megan's Law. Accordingly, the tenure charges, which had been held in abeyance, were dismissed and the matter was transmitted to the State Board of Examiners for effectuation of the Court's Order. Tenure Hearing of Friery, Commr 2011: May 18.

Dismissal warranted – Unbecoming conduct

Board certified tenure charges against special education teacher for allowing special education students to engage in sexual activity during instructional time. ALJ found that the board failed to meet its burden. Commissioner modified the initial decision, finding that the teacher failed to properly monitor students thus charges of unbecoming conduct were sustained. Mitigating factors provided for loss of 120 days salary and salary increment. (02:Aug. 16, Noon)

Board established pattern of unbecoming conduct (yelling at children, corporal punishment, profanity, rigidity, etc.) and insubordination; teacher's claim that charges were in retaliation for Workers Compensation claims, or for a case due to her disability under the Law Against Discrimination, were unfounded, and the board had provided reasonable accommodation for her disability. (02:Feb. 25, King)

Chronic and excessive absenteeism may constitute incapacity and unbecoming conduct even where the absences were caused by legitimate medical reasons. (03:May 12, Metallo, matter dismissed

for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Commissioner adopted ALJ's finding that teacher was guilty of unbecoming conduct when she was inattentive to her students for six or seven minutes. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)

Commissioner adopted and amplified ALJ's decision to dismiss tenure charges for board's failure to prove by a preponderance of the credible evidence that school nurse was guilty of conduct unbecoming in failing to notify parents in writing of suspected scoliosis diagnosis where neither regulation or board policy required written notification. (04:Jan. 23, Kenny)

Commissioner agreed with ALJ that teacher was guilty of unbecoming conduct when she failed to follow proper call-out procedures. Teacher's dismissal ordered and matter referred to State Board for appropriate action. (03:Aug. 5, Mapp)

Commissioner determined that interlocutory decision, calling for a hearing on the issue of whether a second suspension without pay was inequitable, did not require a plenary hearing that included an exchange of discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses or make arguments. The submission of briefs and certifications satisfied due process. (05:April 1, Howard, aff'd St. Bd. 05:Sept. 7)

Commissioner determined that summary decision was appropriate where respondent superintendent admitted that he lied under oath in a previous tenure dismissal hearing. No material facts were in dispute. (05:April 1, Howard, aff'd St. Bd. 05:Sept. 7)

Commissioner determined that the board's filing of a second set of tenure charges was not timed to deprive respondent superintendent of an additional 120 days of salary where superintendent objected to consolidation of charges. Second salary withholding justified based on underlying conduct involving perjury in previous tenure dismissal matter. (05:April 1, Howard, aff'd St. Bd. 05:Sept. 7)

Commissioner determined that while recantation of perjured testimony is an affirmative defense to perjury, it did not excuse superintendent's deceptive and dishonest conduct. Lying under oath was a violation of the public trust and as such constituted conduct unbecoming, warranting the most severe sanction available. (05:April 1, Howard, aff'd St. Bd. 05:Sept. 7)

Court dismissed tenured teacher's claim of malicious prosecution in a tenure dismissal complaint where 21 counts of a 56 count complaint alleging unbecoming conduct were proven. Teacher failed to prove malice, successful outcome, and "special grievance." (2004 U.S. Dist. LEXIS 14449, Emri)

Custodian's possession of cocaine, marijuana and paraphernalia, warranted dismissal even through he successfully completed PTI and criminal charges were dropped, and although custodians are not held to same standard as teachers. (00:Oct. 2, Santiago, aff'd St. Bd. 01:March 7, aff'd App. Div. unpub. op. Dkt. No. A-4356-00T5, April 10, 2002)

Engaging in violent behavior towards student and hostile, disrespectful, and uncooperative conduct towards school principal was a flagrant deviation from the civil behavior expected of a professional teacher. (02:Dec. 6, Ashley, aff'd St. Bd. 03:May 7)

Misappropriation by Director of funds, multiple schemes to defraud board; withdrawal of answer renders matter uncontested. (00:March 22, Hagopian)

Repeated viewing of teenage pornography on school computer and using computers for personal and financial gain warranted dismissal. (02:Dec. 23, Gomes)

Series of incidents including making defamatory comments to students, leaving classroom unattended, failing to report certain student activity, and rude and offensive behavior towards other staff members, constituted unbecoming conduct. Board reminded of its obligation to provide teaching staff members with observation, evaluation and PIP's in accordance with regulations. (02:Oct. 15, Zofchak, appeal dismissed for failure to correct procedural deficiencies, St. Bd. 03:Feb. 5, motion granted to reinstate appeal, St. Bd. 03:April 2, aff'd for the reasons expressed in Commissioner decision, St. Bd. 03:June 4)

State Board finds that the appellant's conduct in leaving the student unattended in the hallway after he was injured and neither escorting him to the nurse's office nor seeking assistance was inexcusable. Dismissal affirmed. (St. Bd. 05:Nov. 2, V.R.)

Superintendent of schools dismissed for conduct unbecoming a chief school administrator. Proven conduct included use of school employees to perform work at his home on school time, improper use of an annuity, relocating his office at significant cost without board approval, hiring and firing of emergency special education teacher to do screenplay work. Pattern of deceit and misrepresentation. (02:April 1, Howard, motion to enlarge record granted, St. Bd. 02:July 2, aff'd as modified, St. Bd. 04:March 3)

Supervisor of Mathematics dismissed for distribution of mathematics portion of early warning test and lying to supervisor about number of copies distributed. (98:March 2, McNutt, aff'd St. Bd. 98:Oct. 7, aff'd App. Div. unpub. op. Dkt. No. A-1710-98T2, Jan. 28, 2000)

Teacher dismissed for excessive absenteeism, excessive tardiness, unbecoming conduct and insubordination. No reply from teacher, charges deemed admitted. (02:April 30, Moore)

Teachers are entrusted with the care and custody of children and so their duties require a degree of self restraint and controlled behavior unlike most other types of employment. (02:Dec. 23, Gomes)

Teacher's chronic and excessive absenteeism constituted unbecoming conduct and incapacity and warranted dismissal. (03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

Teacher who is injured, has protracted absence for several years and fails to respond to board's repeated requests for clarifications of work status is incapable of fulfilling duties and has engaged in unbecoming conduct (03:Jan. 21, Abernathy)

Tenure charges upheld against teacher who engaged in sexual relationship with 11th grade sixteen year-old student. (04:Aug. 19, Shinkle, aff'd St. Bd. 04:Dec. 1)

Tenured plumber engaged in a pattern of conduct that demonstrated a consistent, obstructive and defiant attitude toward board policies, personnel and supervisors; demonstrated insubordinate behavior; neglected his duties; abused his sick leave; left early without authorization; and demonstrated conduct unbecoming by engaging in general harassment and interference with the proper discharge of supervisors' and other employees' duties. (03:June 24, Valdes, aff'd St. Bd. 04:Aug. 4, motion for reconsideration granted but original decision aff'd St. Bd. 04:Oct. 6)

Tenured teacher's pattern of excessive absences and its resultant negative impact on the school district, constituted unbecoming conduct warranting dismissal. (03:June 24, Banks)(03:June 30, Pioquinto-Okoszko)

Unbecoming conduct; discussions with class about torturing and killing another student, and about purchasing guns over the internet. (00:July 27, Komorowski, aff'd St. Bd. 00:Dec. 6, aff'd App. Div. unpub. op. Dkt. No. A-2486-00T2, March 4, 2002)

Unprofessional conduct and neglect of duties were established by speech therapist who wore earplugs while teaching, disconnected PA system, failed to follow proper fire drill procedures, refused to undergo physical and psychiatric examination, and showed pattern of absenteeism attributable to her refusal to teach in a particular environment and not to a medical problem. (02:Oct. 9, Thomas)

Commissioner dismisses special education teacher on tenure charges of unbecoming conduct, neglect of duty and insubordination against respondent, as teacher fails to deny charges and they are deemed admitted. Tenure Hearing of Williams, Commr: 2012:March 16.

Commissioner denies appeal to reopen the tenure litigation that was concluded against employee him resulting from petitioner's failure to answer the tenure charges. It had been 933 days since the Commissioner issued final decision at issue in this matter;

petitioner presented no excusable justification for such a delay. Kous,Commr 2012:April 3.

Commissioner disagrees with ALJ recommendation of lesser penalty. Video evidence. Orders dismissal on charges of unbecoming conduct, neglect of duty, and insubordination of a tenured special education teacher for allegedly striking a student with a computer cord, failing to take the student to the nurse after observing the child's injured back, using inappropriate language toward his students, and failing to properly aid in the investigation of the incident in question. Tenure Hearing of Goodwater, 2012:April 27 (Camden)

Appellate Division affirms Commissioner's decision to sustain charges of conduct unbecoming and impose a penalty of suspension without pay for 240 days, as well as all increments for the 2011-2012 school year, for a teacher who slapped an 8-year old special education student in the face after the student slapped her. Appellate Division delays the loss of increments until the next year in which teachers receive increments, as requested by the Board, since teachers union had agreed to frozen salaries in current year. Tenure Hearing of Craft, No. A-0415-11T2, 2012 N.J. Super. Unpub. LEXIS 1600(App Div. July 5, 2012)

Court affirms Commissioner decision removing tenured cosmetology teacher from employment with the New Jersey Department of Corrections; he had improper relationship with inmate; In re Coluccio, No. A-0772-11T2 2012 N.J. Super Unpub. LEXIS 1883 (App. Div. August 6, 2012)

Court upholds dismissal of custodian for failure to follow attendance and reporting procedures; sleeping on the job; chronic absenteeism (fifty-three days in an eight-month period and sixty-two days in one three-month period) ; and a pattern of neglect, misbehavior and other offenses. Although the ALJ recommended a six-month suspension as discipline, the Commissioner concluded that termination was appropriate, notwithstanding principles of progressive discipline. Court restates analytic paradigm to be applied in assessing issue of progressive discipline. In re Dudley, No A-1502-11T1, 2012 N.J. Super. Unpub. LEXIS 1941 (App. Div. Aug.9, 2012)

Teacher engaged in unbecoming conduct by failing to properly supervise his students during study hall, leading to a misuse of instructional time and the use of forbidden electronic devises by the students. Teacher also failed to report to duty and did not provide the school with notice before the start of his morning classes. Teacher also failed to notify the substitute service as required by policy. However, Board failed to prove that the respondent provided erroneous information at the time of his hire or prove that teacher shoplifted. Commissioner orders forfeiture one year of salary

increment and the 120 days' salary withheld under N.J.S.A. 18A:6-14, plus an additional four months suspension without pay. Colandriello, Cmmr 2012:July 30

Tenured Custodian charged with unbecoming conduct, misbehavior, insubordination, and other just cause for operating vending machines in the schools without authorization, misappropriated public property by operating and receiving the proceeds from a vending machine, neglecting his duties as a custodian when he serviced these vending machines; and made intentionally false statements to the superintendent and his direct supervisors regarding his conduct. Commissioner determines that no evidence was presented to show that respondent was servicing the vending machines when he should have been working; respondent did, however, fail to disclose the fact that he had been operating a machine in one school when it became obvious that an investigation was ongoing regarding the machine in another. Respondent has an otherwise unblemished career of service in the District. Respondent's failure to disclose the existence of the second vending machine constituted an act of insubordination, but that the Board failed to meet its burden of proof on the other charges. Custodian ordered to forfeit 120 days of pay, and be returned to his tenured position as custodian. Valladares, Cmmr 2012:Aug. 3

Commissioner upheld determination of unbecoming conduct where tenured special education and physical education teacher gave student "light slap, " and where his joking offer to give student "100s" for the rest of the year was inappropriate, as was his tolerance of student provocation and horseplay. The teacher's responses to his students' misbehaviors were improper for a teacher and in fact encouraged other students to misbehave. While the ALJ noted that the teacher was remorseful, cared deeply about his students and had no malicious intent, the ALJ concluded that – given current precedents and ongoing efforts through the anti-bullying laws to change how students conduct themselves in relation to each other – the loss of respondent's tenure was the appropriate penalty. Commissioner differed as to penalty, determining that the ALJ failed to conduct the requisite analysis of the factors to be taken into account in determining the appropriate penalty in a tenure case (In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967)). Commissioner determined that removal is an unduly harsh penalty given all of the circumstances existing in this matter, and is not justified because the proven conduct does not establish respondent's unfitness to discharge the duties of his position, nor was respondent's behavior "premeditated, cruel or vicious, or done with the intent to punish." Loss of respondent's increment for one year, along with the 120 days salary withheld pursuant to N.J.S.A.

18A:6-14 following the certification of tenure charges, is a sufficient penalty to impress upon respondent the seriousness of his errors in judgment displayed in this matter. Forman, Cmmr 2012: Aug. 8

Charter School Tenure: Tenure charges against business manager are settled, with terms of resignation agreement set on the record. *Arbitration Between: Trenton Community Charter and Birnberg, DOE, Dec 1, 2011.*

Commissioner grants board's motion to dismiss petition of three teachers who claimed that board's failure to renew their contracts violated tenure rights; in fact they had served as replacements for specific teachers who were on maternity leave and therefore did not fill vacant positions; such time did not count towards acquiring tenure; argument for equitable estoppel fails because there is no evidence that the Board ever made a material representation to the teachers that their replacement time would count towards the attainment of tenure. *Bridgewater-Raritan Ed. Ass'n v. Bd. of Ed., Commr 2012: Nov. 21*.

Failure to certify charges

Commissioner may entertain motion challenging board's failure to certify tenure charges. (00:Jan. 3, Parisi)

Forfeiture

Boards of education may make application to a New Jersey court for an order of forfeiture, consistent with Ercolano and N.J.S.A. 2C:51-2. (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002)

Forfeiture of public office: The Commissioner of Education is without jurisdiction to enter an order of forfeiture of public employment. (99:May 3, Tighe) (St. Bd. 00:April 5, Vitacco, aff'g 97 N.J.A.R.2d (EDU) 449, aff'd 347 N.J. Super. 337 (App. Div. 2002)

Forfeiture: Termination moot where teacher forfeited position for scheme to defraud SHBP. (00:Dec. 22, James)

Teacher was convicted of crime of dishonesty (defrauding State Health Benefits Plan) and court ordered forfeiture: tenure matter moot. (00:Sept. 1, Butler)

Increments

Teacher's retirement from district following filing of tenure charges moots tenure dismissal proceedings and teacher's challenge to increment withholding. (04:June 21, Mucci, aff'd St. Bd. 04:Dec. 1)

Mitigation

Board has discretion to plead failure to mitigate as an affirmative defense. (05:May 11, McCullough, aff'd St. Bd. 05:Nov. 2)

Commissioner denied pre and post-judgment interest pursuant to *N.J.A.C.* 6A:3-1.17 where there was no showing of bad faith on the board's part in denying a wrongfully terminated employee's claims for back pay. No evidence of a deliberate violation of statute or rule. Denial of back pay was based on dispute over precise amount due. (05:May 11, McCullough, aff'd St. Bd. 05:Nov. 2)

Commissioner determined that wrongfully dismissed janitor had a common law duty to mitigate damages during the period of his improper termination by making reasonable efforts to secure alternative employment, notwithstanding the wrongful termination. (05:May 11, McCullough, aff'd St. Bd. 05:Nov. 2)

Diagnosis of and treatment for bi-polar disorder found not to mitigate against tenure dismissal of teacher who admitted to attempting to forge a romantic relationship with a student, although may have mitigated against unbecoming conduct of sending suicide notes to students. (01:March 2, Ing)

Mitigation of penalty was made less likely where teacher had previously been found guilty of conduct unbecoming. (99:June 23, Dombloski)

Superintendent who successfully challenged Board's termination of his employment and placement of him in Director position with reduction in salary, was required to mitigate his damages; entitled to restoration to superintendent position with full superintendent salary and benefits. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

No entitlement to payment of salary during time of suspension – delays all attributed to School Business Administrator. (97 N.J.A.R.2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded Docket No. A-6218-99T1 (App. Div. March 28, 2002), dec. on remand St. Bd. 02:May 1, Comm. Dec. on remand 02:May 13)

Prejudgment Interest

Where board twice filed defective tenure charges, no bad faith shown; no pre-judgment interest awarded teacher. (See ALJ decision. Dismissed as moot by Commissioner.) (00:May 3, McHarris); See also, 00:April 5, St. Bd. rev'g Commissioner decision that dismissed tenure charges without prejudice for procedural defects in certification of charges; aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1 (July 3, 2001) See also Settlement rejected. Terms do not meet Cardonick standard. (02:May 2, McHarris, settlement approved on remand 00:Oct. 18)

Procedure under Tenure hearing Act

Accumulated sick days: Where teacher resigned prior to resolution of tenure charges and prior to his guilty plea for crime warranting forfeiture, district was ordered to pay him sick days accumulated prior to the date the district certified tenure charges against him. (98:Nov. 17, Reed)

ALJ's credibility determination is entitled to the Commissioner's deference, see N.J.S.A. 52:14B-10(c). (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Behavior rising to level of unbecoming conduct need not be violation of rule or regulation, but may be based on implicit standard of good behavior. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Board's second attempt to certify identical tenure charges is dismissed as moot in light of State Board's ruling in first case, that because Ott rights were invoked, board was restrained from pursuing tenure charges pending disposition of criminal charges. (00:May 3, McHarris); See also, 00:April 5, St. Bd. rev'g Commissioner decision that dismissed tenure charges without prejudice for procedural defects in certification of charges; aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1 (July 3, 2001) See also Settlement rejected. Terms do not meet Cardonick standard. (02:May 2, McHarris, settlement approved on remand 00:Oct. 18)

Burden of proof: Board has burden of proving charges by fair preponderance of the credible evidence. (99:July 30, Morton) (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)

By law, the entire record of any tenure proceeding adjudicated before the Commissioner is a mater of public record, unless for good cause the record is ordered sealed. (00:Jan. 13, Pantalone)

Classroom deficiencies, although sounding in inefficiency, were brought instead as unbecoming conduct, and would be evaluated as such where Board did not follow procedures for bringing charges of inefficiency. (02:Oct. 21, Emri, aff'd as modified, St. Bd. 03:Dec. 3)

TENURE CHARGES

Commissioner declines to address ALJ's discussion of whether teacher could be granted a stay of tenure matter as a consequence of an ongoing related criminal "investigation." (00:Aug. 18, Wood)

Commissioner may entertain motion challenging board's failure to certify tenure charges. (00:Jan. 3, Parisi)

District did not deny teacher his procedural due process with regard to its investigation of the matter prior to certification of tenure charges. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Employee's past disciplinary record may be considered at penalty phase only if it resulted in a formally adjudicated action or if the charge was admitted by the employee. Unpub. op. Dkt. No. A-3610-01T5, June 2, 2003, aff'g in part, and rev'g in part (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Evidence of anti-union animus not permitted because charges of corporal punishment, if proven, would sustain removal even in presence of anti-union animus, and witnesses were not part of administration who could harbor union sentiment, charges did not arise out of protected activity. (99:May 10, Hernandez, aff'd St. Bd. 99:Oct. 6)

Failure to answer within the prescribed period, where no extension has been applied for or granted, will result in the charges being deemed admitted by the employee. (03:May 1, Gilliams)

Failure to file a written response to tenure charges within 15 days after charges have been filed with the Commissioner will result in the charges being deemed admitted by the charged employee. (03:June 24, Banks)(03:June 30, Pioquinto-Okoszko)

General letter of warning issued five years earlier could not be basis for charge of insubordination. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Interlocutory review of decision to allow addendum to tenure charges alleging sex with student denied. Good cause not demonstrated. (Decision on motion, St. Bd. 03:Dec. 3, Shinkle)

Jurisdiction: Commissioner declines to exert primary jurisdiction over consolidated matter regarding whether teacher can be relieved of his tenure due to epilepsy; Division on Civil Rights should make initial determination of teacher's claim of discrimination, retaliation and failure to accommodate; Commissioner will thereafter determine tenure dismissal matter. (01:Sept. 14, Ford, order of consolidation and predominant interest)

Motion to reopen record denied, as there was no reason why respondent's theory could not have been developed with reasonable diligence prior to close of the record before ALJ. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Motion to reopen record for further testimony granted: ALJ's findings and conclusions regarding teacher's credibility on question of whether he sexually harassed special education student, were based on facts not supported by evidence in the record. (00:Dec. 11, Brewer)

Petition to invalidate 1990 settlement agreement regarding inefficiency charges and increment withholding untimely filed. Parties' obligations under settlement agreement were to be completed by the end of the 1990-1991 school year. Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

Reconsideration of charges by board; board is not precluded from reconsidering charges that it filed, but were deemed dismissed for board's failure to determine probable cause within 45 days pursuant to N.J.S.A.18A:6-13. (99:Feb. 11, Jakubiak)

Settlement agreement of tenure charges would not be set aside when challenged five years after its entry; fact that Superior Court order transferred matter to Commissioner did not affect 90-day rule bar; relaxation not justified. (00:Feb. 28, Grompone, aff'd St. Bd. 00:Aug. 2, aff'd App. Div. unpub. op. Dkt. No. A-0331-ooT5, March 26, 2002)

Settlements: Voluntary resignation prior to removal for cause in tenure matter permitted superintendent to avoid the effect of the mandatory forfeiture provisions on his deferred retirement benefits; preservation of pension rights is a legitimate consideration of the commissioner in considering tenure charges. (00:May 15, Mullen – involved CSA)

Student testimony against a teacher must be viewed with great caution. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Teacher fails to establish that record did not contain sufficient findings of fact by ALJ for Commissioner's review. (01:Sept. 7, Mujica, aff'd St. Bd. 02:Feb. 6, aff'd in part, and rev'd in part on other grounds, unpub. op. Dkt. No. A-3610-01T5, June 2, 2003), remanded to Commissioner, St. Bd. 03:Aug. 6. On remand Commissioner determination that pattern of conduct, without consideration of past unproven allegations, sufficient to warrant dismissal. Comm. 03:Sept. 2, aff'd St. Bd. 04:Feb. 4. See also, cert. denied 178 N.J. 32 (2003)

Training: Teacher to attend training classes as part of punishment for the determination of unbecoming conduct. (02:Oct. 21, Emri, aff'd as modified St. Bd. 03:Dec. 3)

Salary payment issue

A board is obligated to resume payment to an employee who is the subject of pending tenure charges, upon the 121st day; the legislature has not provided any discretion to a board to wait beyond that date. Even where the employee was later dismissed, equitable principles did not apply to justify board's withholding of payment beyond 121st day. (99:Oct. 13, d not apply to justify board's withholding of payment beyond 121st day. (99:Oct. 13, Yatauro)

Back pay: Where court-ordered forfeiture was reversed and appeal thereof is pending, and teacher is meanwhile dismissed on tenure charges, teacher was entitled to back pay from end of 120-day period, despite fact that if forfeiture order is reinstated teacher will have no entitlement to back pay. (00:May 1, Ercolano, decision on remand) Decision on motion, matter dismissed as moot (01:June 6) See State v. Ercolano, 335 N.J. Super. 236 (App. Div. 2000), certification denied 167 N.J. 635 (2001)

Board improperly suspended teacher without pay, absent indictment of certification of tenure charges. (01:March 14, Kemmet)

Fundamental fairness dictates that where indictment was dismissed, teacher who was previously suspended without pay is entitled to back pay and emoluments for the entire period of his suspension. (03:Nov. 6, Lopez, rev'd St. Bd. 04:Nov. 3)

In uncontested tenure matter resulting in dismissal of custodian for extorting funds from the board, Commissioner orders board to reimburse custodian for sums improperly withheld prior to certifying charges. (99:Dec. 13, Lynch)

Legislative policy of N.J.S.A. 18A:6-14 is that charged employee cannot unfairly benefit from delay occasioned by his or her own requests. The delay in meeting the 120 day requirement, waiting until the federal criminal charges were resolved, was an accommodation to the employee. Employee's request for salary entitlement denied. Remand for adoption of administrative decision adopting the recommendation of the ALJ. (97:Feb. 13, Morano, aff'd St. Bd. 00:June 7, rev'd and remanded App. Div. unpub. op. Dkt. No. A-6218-99T1, March 28, 2002)

Mitigation: back pay award must be reduced by money teacher actually earned during period of suspension for substituted employment; board may not reduce award for potential, as opposed to actual, earnings. (99:Oct. 13, Yatauro)

No back pay for period of suspension for teacher who forfeited position for defrauding SHBP. (00:Dec. 22, James, settled on remand 01:July 20)

No entitlement to back pay under N.J.S.A. 18A:6-8.3 for period of suspension by reason of assistant principal's indictment for sexual assault on child, where charges were subsequently dismissed upon completion of PTI, see Pawlak. (01:Aug. 30, Busler, aff'd St. Bd. 02:Feb. 6, clarified by Lopez, St. Bd. 04:Nov. 3)

Salary withheld upon indicment: Where a tenured employee seeks to recover salary which was withheld after an indictment from which the employee obtains a favorable disposition, but where the employee has later been proven in a tenure proceeding to have committed the same misconduct that was the subject of the criminal charge, the employee may not recover the salary withheld during the pendency of the indictment. (99:Oct. 13, (99:Oct. 13, Yatauro)

Summer months count toward calculating the 120 days; employee entitled to be returned to payroll on the 121st day of suspension notwithstanding that he is compensated on a 10-month pay scheduled. (00:Dec. 11, Brewer)

The entitlement to be paid after the 120th day does not terminate upon the initial finding of misconduct by the ALJ, but rather upon a final determination by the Commissioner. (99:Oct. 13, Yatauro)

Single incident: single incident of unbecoming conduct can warrant dismissal where sufficiently flagrant. (99:Feb. 11, Dykes, appeal dismissed for failure to perfect, St. Bd. 99:June 2)

Voting to certify charges: Board violated statute that prohibits actions of board on tenure charge from taking place at public meeting when it voted on tenure charge by roll call public vote; question of whether tenure charge is void or whether this is merely a technical violation for which there is no statutory or court-established remedy, is dismissed; motion not brought in tenure proceeding, but rather in different pending matter. (99:March 1, Williams, motion for leave to appeal denied, St. Bd. 99:May 5)

Reduction in Salary in Violation of Tenure Law

Reduction in salary

A board may not reduce a superintendent's compensation in the event the board unilaterally terminates the contract; the board may either file tenure charges, or pay the superintendent the amount of compensation he would have received had he served the remainder of the contract, minus any mitigation of damages. (01:Sept. 14, Kohn, leave to participate as amicus granted, St. Bd. 02:March 6, aff'd in part, rev'd in part, and remanded for calculation of damages, St. Bd. 02:Nov. 6)

Board did not violate elementary teacher's tenure or seniority rights by transferring her to middle school after a RIF at elementary level; no reduction in salary or benefits. (01:July 2, Zitman, aff'd St. Bd. 01:Nov. 7)

Board violated tenure law when it reassigned tenured teacher to teacher/facilitator position and reduced her annual salary where both positions required instructional certificate. (02:Jan. 10, Tomassini)

Board violated tenured secretary's tenure rights when it abolished her position and transferred her to a lower paying secretarial position; she was entitled to the higher salary because she remained in the same tenurable position of school secretary even after the transfer. (00:Oct. 30, Custode, aff'd St. Bd. 01:April 4, motion to reconsider denied St. Bd. 01:June 8)

Commissioner determined that business administrator's use of district vehicle, after school hours, was not compensation and the board could thereafter terminate such after-hours use without reducing his compensation in violation of N.J.S.A. 18A:6-10. (04:July 12, Kramer)

Commissioner dismisses petition by former employee who was terminated in 2001 after a criminal indictment, incarcerated, and who claimed that when the Supreme Court reversed his criminal conviction in 2013, he was entitled to reinstatement and back pay to the date of his wrongful termination. Employee had never earned tenure as he served under renewals of his emergency certification as an educational media specialist (an endorsement on the educational services certificate) throughout his entire employment with the school district; although he also had a Certificate of Eligibility as an elementary school teacher he never served under that endorsement; any appeal to his termination in 2001 should have been made within 90 days of that date. *Nash v. Newark*, Commr 2013: Nov 25.

Dissolution of regional district, tenure rights of teachers: N.J.S.A. 18A:28-6.1 which preserves employment of tenured teachers, is triggered only if a district closes a school and agrees with another district to send its pupils from the closed school to that district; does not apply simply because limited purpose regional district dissolves. (00:Jan. 4, Hammonton)

PERC laws authorize suspension of tenured teacher without pay for minor discipline if so negotiated by board and union representative; not an illegal reduction in salary. (00:July 13, Tave, letter to counsel, aff'd St. Bd. 00:Nov. 1)

Reduction in salary: Illegal reduction in *per diem* compensation occurred when tenured teacher, who was transferred to constituent district upon dissolution of regional school district, had increased work year pursuant to constituent district's bargaining agreement; retroactive reimbursement ordered. (99:Feb. 22, Riegel)

Reduction in salary: it is a violation of tenure law to, upon negotiation of new collective bargaining agreement, reduce salary of teachers who were paid higher salary under continuation of expired collective bargaining agreement; board may freeze teachers' salaries until new salary guide "catches up." (98:Aug. 6, Schalago-Schirm, aff'd St. Bd. 98:Dec. 2)

Reduction in salary (prorated) did not violate tenure law when teacher's 12-month position was abolished and he was reassigned to 10-month position. (99:July 8, DiMaggio)

Reduction in salary: tenure attached within general category of custodian; therefor, it was illegal reduction in custodian's salary when district reduced "head custodian" to custodian, with reduced salary. (98:July 8, Reinertsen, aff'd St. Bd. 98:Oct. 7)

Reduction of two full-time teachers each to 4/5 time, violated tenure rights of senior teacher who should have kept full-time position; district's educational justification was not sufficiently compelling to defeat obligation to aggregate positions in light of tenure rights. (04:Sept. 17, Smith)

Stipend: While ordinarily, the failure to reappoint a staff member as advisor with stipend is not considered illegal reduction in compensation, where stipend is actually additional compensation for services directly related to primary employment as a custodian, reduction of such compensation is a reduction in salary in violation of tenure law. (98:July 8, Reinertsen, aff'd St. Bd. 98:Oct. 7)

Where the Commissioner had previously ordered the board to reinstate a principal to the principal position because the board had transferred her to position of Director of Special Projects and salary without a valid board vote, her subsequent withdrawal of an additional claim to the position of Supervisor of Basic skills, rendered the matter concluded. (04:Dec. 23, Mazzeo)

Salary payment

Municipal court did not address forfeiture of employee who plead guilty to disorderly persons offense; therefor, employee entitled to back pay for period of suspension until date board filed tenure charges, unless forfeiture order is subsequently entered. (99:July 30, Morton)

Seniority and Other Rights

Commissioner determined that tenured teacher, assigned duties as a subject area coordinator and paid a stipend that was treated as an integral part of his teaching salary, was not entitled to retain the stipend when transferred within the district. Teacher suffered no reduction in salary due to his progression on the salary guide. (05:Dec. 19, Manley)

Tenured teacher did not acquire tenure in subject-area coordinator position that was extracurricular in nature. Position only required an instructional certificate and subject appropriate endorsement, leading to tenure as a teacher, not as subject area coordinator. (05:Dec. 19, Manley)

Settlement approved

(98:Sept. 20, Katsanos) (98:Oct. 26, Peppers) (on charges that teacher attempted to defraud state health benefits program) (98:Oct. 29, Forman) (98:Nov. 18, Hollingsworth) (98:Dec. 15, Gavlick) (Dept Human Services) (98:Aug. 5, Carmona) (custodian) (99:Jan. 4, Dreyer) (on remand) (99:Jan. 4, Davis) (99:Jan. 21, Edmonson) (99:Jan. 25, McKenty) (99:Feb. 9, Shaw) (99:Feb. 18, Johnson) (99:Feb. 18, Ross) (99:Feb. 22, Arrington) (99:Feb. 24, Yandolino) (99:Feb. 24, Tumolo) (99:March 10, Stuart on remand) (98:Sept. 8, Harper) (98:Sept. 21, Albert) (98:July 6, Weber) (98:July 15, Siefert) (98:Aug. 14, Scott) (98:Aug. 28, Lederer) (on remand)(99:April 12, Massey)(99:April 22, Johnson)(99:April 26, Mysko)(99:April 29, Lloyd)(99:May 10, Howard)(99:May 17, Iglesias)(99:May 24, Solmar)(on remand)(99:May 24, Hagen)(99:June 1, King)(99:June 23, Thomas)(on remand)(99:June 25, Eubanks)(99:June 29, Wenisch)(99:July 9, Firoz)(99:July 22, Reid)(99:Oct. 12, Brogan)(99:Oct. 25, Blackwell)(99:Oct. 28, Van Dycke)(99:Nov. 17, Moore)(99:Nov. 17, Taylor) (00:Jan. 10, Jackson)(00:Jan. 10, Urban)(00:Jan. 24, Williams – involved CSA)(00:April 11, Longo)(00:April 12, Wilson, decision on remand)(00:April 20, Felder)(00:April 20, Brown)(00:May 15, Mullen – involved CSA)(00:July 13, Driscoll, decision on remand)(00:Sept. 8, Bourelos)(00:Sept. 11, Ngo)(01:Feb. 2, on remand, Black)(01:Feb. 7, Kimble)(01:March 26, Witkowski)(01:April 6, Carmona)(01:May 9, Kaska)(01:June 5, Stewart)(01:June 14, Connor)(01:July 20, Cina)(01:Aug. 15, Holman)(01:Sept. 14, Goldberg)(01:Sept. 17, Agugliaro)(01:Sept. 17, Cash)(01:Sept. 21, Bennett)(01:Nov. 5, Negron)(01:Nov. 5, Van Santen)(01:Nov. 29, D'Angelo)(02:Jan. 10, Indar)(02:Feb. 22, Varanelli, decision on remand)(02:March 13, Brewer)(02:March 25, Rieger)(02:April 8, DeWoody)(02:May 7, DiManche)(02:Jully 29, Kemmet)(02:Oct. 18, Ford)(03:April 14, Koerner)(03:Oct. 17, Kamler)

Approved with clarification that parties should not effectuate terms of settlement until Commissioner has approved. (01:June 11, Petrovey)

Approved, with clarification that terms cannot be construed to infringe in any way on the right of the board to be fully forthcoming in responding to any inquiries that might arise concerning teacher's employment with the board. (98:July 22, Bush III)

Cardonick requires that proposed settlement be accompanied by documentation of nature of charges, circumstances justifying settlement, consent by district and teacher, ALJ's findings that agreement is in public interest, entered into with full understanding of rights. Does not require relinquishment of rights before Board

of Examiners. Such relinquishment not permitted. (00:Oct. 16, Mitchell, rev'd St. Bd. 00:March 7)

Cardonick standard applies to settlement of tenure matters of non-certificated as well as certificated employees. (99:May 17, Iglesias)

Commissioner cautions parties that they act at their own peril when they effectuate terms of a settlement agreement prior to its approval by Commissioner. (01:Feb. 26, Williams)

Disability retirement. (03:July 18, Zimic)

Meets with Cardonick standard. (03:July 18, Zimic)(03:May 15, Allen)(03:June 3, Kearney)

Settlement agreement, once approved by Commissioner, is a binding contract. Superintendent only entitled to salary payment through the effective date or resignation, per terms of agreement, even though, absent terms, superintendent would have been entitled to salary payment until date of Commissioner's approval of settlement. (01:Feb. 26, Williams)

Settlement approved where employee pled guilty to the crime of third degree arson, forfeiting employment. Comports with Cardonick standard. (02:March 13, Brewer)

Teacher engaged in physical contact with pupil; settlement approved; Commissioner was wrong to reject settlement for its failure to specify that teacher will not oppose proceedings before the State Board of Examiners (Allen); nor does settlement imply that teacher's resignation is contingent on actions of Division of Pensions; nor does the provision requiring confidentiality by the parties violate Executive Order 11. (01:March 7, Mitchell, rev'g 00:Oct. 16)

Tenured secretary. Meets with Cardonick standard. (03:May 15, Allen)

Settlement approved, with reservations

Agreement may not preclude board from providing future employers or other members of public with reasons for employee's separation from service (Executive Order 11). (00:Dec. 21, Horner)

Board's failure to investigate fully before filing charges resulted in board's inability to prosecute and needless expenditure of tax money and damage to person's reputation. (99:April 8, Connors)(99:May 3, Ferrugia)

Parties' agreement to keep litigation and settlement confidential can only bind parties' own disclosures; further, parties must comply with Executive Order 11. (99:June 7, Covello)

Provision requiring parties to keep confidential the terms of agreement and negotiations leading thereto is not binding, in light of Appellate Division ruling that filing of tenure charges and tenure charge documents are matter of public record. Further, administrative code requires that records of all tenure hearings be open to public

inspection unless ordered sealed by the ALJ. (00:July 13, Montgomery)

To avoid gift of public funds, board must assure that duties as teacher on special assignment are commensurate with 11-month work schedule and are those of a teaching staff member. (00:July 13, Montgomery)

Settlement rejected and remanded

Agreement required board's official record to reflect that teacher with drug addiction resigned "in good standing" and required board to provide her with a letter of reference so indicating. (99:April 19, Pullen, settlement approved on remand 99:Sept. 27)

Agreement with superintendent is devoid of content and analysis, does not indicate Commissioner's duty to refer to State Board of Examiners, and contains payment terms that have already been effectuated (at board's own peril). (00:July 7, Mann; settlement rejected again on remand for failing to remedy flaws, and reminding boards that they should fully investigate and evaluate evidence prior to filing charges, 00:Dec. 7, settlement approved on remand 01:Aug. 20)

Charges were serious and record contained dearth of information regarding teacher's defenses or reason it is in public's interest to settle and pay considerable public funds; further, characterization of resignation as "voluntary" was misleading, and agreement was made contingent on "not" being referred to State Board of Examiners. (99:Dec. 13, Wannemacher)

Commissioner is not persuaded that there is insufficient evidence to move forward and that settlement of sexual assault matter upon pupil is in public's interest. (98:Oct. 29, Seabrook, settlement approved, 99:Oct. 25)

Failure to contain explanation and analysis of why charges should no longer be pursued; and failure to advise of Commissioner obligation to refer to State Board of Examiners for possible revocation of certificate. (01:Feb. 8, Coleman)(01:May 24, Young, settlement approved 01:Sept. 7)

Failure to indicate that Commissioner must refer to State Board of Examiners for possible revocation of certificate. (99:Jan. 19, Thomas) (98:Aug. 28, Solmar)(99:Oct. 18, Wilson)

Failure to indicate understanding of what status of agreement to continue teacher as employee on leave until attainment of 25 years of credited pension service would be in the event the State Board of Examiners determines to move forward with revocation of teaching certificate prior to attainment of full pension service. (01:June 1, Mabli, settlement approved 01:Sept. 4)

Failure to set forth nature of charges or explanation of circumstances justifying settlement; nor does it demonstrate why placing employee on paid leave of absence is in the public interest.

(01:Dec. 31, Brown, settlement approved and matter dismissed 02:June 27)

Ratification by the board must be accomplished prior to Commissioner's approval of tenure settlement. (99:June 7, Idec)

Rejected because settlement was contingent on actions of another agency (i.e., Division of Pensions' recognition of additional pension credit). (00:Nov. 27, Miller)

Rejected in absenteeism case where board filed charges before completing full investigation, and where board alluded to newly discovered information without informing Commissioner of the nature of the information. (99:May 24, James)

Rejected where charges were serious, involving disparate treatment of minority students and sexual activity, foul language and other activity, and board fails to set forth a specific explanation as why the charges should not be pursued. (01:Oct. 10, Kenney)

Rejected where explicitly provided for parties to waive statutory procedural requirements for refiling tenure charges in the event disability retirement is not approved by PERS; Commissioner notes that the parties may mutually consent to hold tenure proceedings in abeyance pending review of disability retirement by PERS. (99:April 22, Kasony, aff'd St. Bd. 00:Jan. 5)

Rejected where provision could be interpreted to imply that the board exonerated itself from its duty to cooperate in proceedings before State Board of Examiners. (99:April 19, Pullen, settlement approved on remand 99:Sept. 27)

Rejected where there was no indication that teacher was advised of possible revocation of certificate and where board failed to "spread forth on the record" a reasonably specific explanation of why it is in public's interest not to pursue the tenure charges. (98:Jan. 23, Jean), tenure charges dismissed as moot on remand where teacher resigned. (02:Jan. 10)

Settlement approved (02:June 26, Matushewsky)

Settlement approved: Settlement of charges of inefficiency, excessive absenteeism and insubordination approved. (02:June 26, Matushewsky)

Settlement rejected where it was contingent upon satisfaction of conditions by another agency, namely, Division of Pensions. (99:Oct. 4, Jean)

Settlement rejected where meaning of "administrative leave" was not explained where respondent was suspended. (99:Oct. 4, Jean)

Settlement rejected, where record failed to indicate why in public's interest to dismiss charges of physical abuse and where record contains no copies of tenure charges which were initially certified. (99:Sept. 17, Tyson) Commissioner refuses to approve withdrawal of matter; withdrawal must be predicated on approval of settlement agreement. (99:Sept. 23, Tyson)

Settlement rejected, where serious allegations concerning pupils were raised, and record failed to indicate why in public's interest to dismiss charges; teacher's resignation alone does not insure that Cardonick standards were met. (99:July 7, Younger)(99:Oct. 4, Jean)(99:Nov. 10, Driscoll)

Settlement was not accompanied by documentation of the nature of the charges and circumstances justifying settlement, and it failed to reflect duty to refer to State Board of Examiners for possible revocation of certificate. (02:Feb. 25, Hammary)

"Side Bar" clause required board to present form letter to prospective employers not containing reason for separation; Executive Order No. 11 (1974) requires such information be made available upon request. (98:Dec. 28, Wilson)

Terms of settlement do not meet Cardonick standard. Parties envision that matter will not be forwarded to State Board of Examiners or that board will not cooperate in such proceedings. Matter remanded. (02:May 10, McHarris, settlement approved on remand 02:Oct. 18) See also 00:May 3, McHarris, 00:April 5, St. Bd. rev'g Commissioner dismissal of tenure charges without prejudice for procedural defects in the certification of charges. Aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1, July 3, 2001.

Where record provided no information regarding the position the teacher will actually hold between resuming employment with Board and the effective date of retirement, or how the sum for payment of accumulated sick, vacation and personal days was calculated, which sum further does not contain contingency for days that may be used prospectively. (00:June 15, Kimble)

Where teaching staff member continues to dispute the charges, and absent factual findings on record, settlement will be rejected unless teaching staff member agrees not to oppose proceedings before the State Board of Examiners to suspend or revoke the certification. (00:June 12, Black)(00:June 19, Allen, settlement approved St. Bd. 00:Nov. 1)

Statement of Evidence

Hearsay evidence was not presented by sworn statement and therefore defective, inconsistent with allowance of hearsay evidence authorized in Cowan. (See ALJ decision.) (00:May 3, McHarris); See also, 00:April 5, St. Bd. rev'g Commissioner decision that dismissed tenure charges without prejudice for procedural defects in certification of charges; aff'd App. Div. unpub. op. Dkt. No. A-5008-99T1 (July 3, 2001) See also Settlement rejected. Terms do not meet Cardonick standard. (02:May 2, McHarris, settlement approved on remand 00:Oct. 18)

Tenure charges rendered moot by resolution of criminal matter and forfeiture of position. (97 N.J.A.R.2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded Docket No. A-6218-99T1 (App. Div.

March 28, 2002), dec. on remand St. Bd. 02:May 1, Comm. Dec. on remand 02:May 13)

Tenure charges withdrawn/moot

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Charges dismissed as moot where teacher retired and granted disability pension retroactive to date prior to institution of tenure charges. (01:July 9, Quadrini)

Charges involving teacher's admission during discovery of sexual relationship with minor, could not be dismissed as moot although teacher resigned; Commissioner will grant dismissal only if finds that would be in the public's interest, see Kotkin, Barshatky. (03:April 3, Bennett)

Charges of absenteeism against custodian are dismissed as he resigned. (01:July 20, Wilson)

In light of disability retirement, charges are dismissed; Board's may file additional charges if in the future, TPAF determines that teacher should return to duty because disability has diminished. (99:April 27, Mosley)

Teacher's retirement from district following filing of tenure charges moots tenure dismissal proceedings and teacher's challenge to increment withholding. (04:June 21, Mucci, aff'd St. Bd. 04:Dec. 1)

Tenure charges moot by teacher's resignation; matter withdrawn; district to comply with N.J.A.C. 6:11-3.5 by reporting conduct to State Board of Examiners. (00:May 19, Johnson)(00:Jan. 27, Badomi)

Unbecoming conduct charges for alleged inappropriate sexual contact with student dismissed as moot where teacher admitted to pre-trial intervention probation and resigned tenured position. (01:March 19, Clothier)

Upon forfeiture in Superior Court, it is unnecessary to proceed with tenure hearing; tenure charges rendered moot by forfeiture; matter dismissed. (99:May 24, Wilburn)

Withdrawal of charges is rejected by Commissioner in light of serious nature of charges including allegations of mental incapacity and unbecoming conduct towards students. (02:Dec. 23, Zimic)

Withdrawal of charges: once charges have been certified to the Commissioner, they may be withdrawn or settled only with the Commissioner's approval. (02:Feb. 5, Gregg)(02:Dec. 23, Zimic)

Withdrawn where teacher refused to sign modified settlement agreement, and he resigned from district two years ago; would not be in public interest to again remand. (00:Jan. 13, Pantalone)

Tenure dismissal cases (listed by position)

Business education teacher (99:June 23, Dombloski)

Crisis intervention teacher (99:Dec. 23, Johnson)

Custodian (99:Dec. 13, Lynch)

Janitors: (98:Oct. 19, Pietronico) (98:Aug. 7, Scott) (99:Jan. 14, Radwan, decision on motion St. Bd. 00:Jan. 5; aff'd St. Bd. 00:May 3, aff'd 347 N.J. Super. 451 (App. Div. 2002, certification denied 174 N.J. 38 (2002) (99:March 10, Crossland)(99:April 8, Taylor) (99:May 3, Tighe)(99:June 9, Prusakowski)(99:July 22, Kasony, aff'd St. Bd. 00:Jan. 5)

Custodian's possession of cocaine, marijuana and paraphernalia, warranted dismissal even through he successfully completed PTI and criminal charges were dropped, and although custodians are not held to same standard as teachers. (00:Oct. 2, Santiago, aff'd St. Bd. 01:March 7, aff'd App. Div. unpub. op. Dkt. No. A-4356-00T5, April 10, 2002)

Librarian: (99:Feb. 11, Jakubiak)

Physical education teacher: (98:Dec. 17, Leggett, rev'd and remanded, St. Bd. 99:June 2, affirmed on remand, 00:June 26, aff'd St. Bd. 00:Nov. 1) (98:Dec. 28, Miller) (99:Feb. 11, Dykes, appeal dismissed for failure to perfect, St. Bd. 99:June 2) (98:Aug. 6, Dombloski) (Athletic Director)

Plumber

Tenured plumber engaged in a pattern of conduct that demonstrated a consistent, obstructive and defiant attitude toward board policies, personnel and supervisors; demonstrated insubordinate behavior; neglected his duties; abused his sick leave; left early without authorization; and demonstrated conduct unbecoming by engaging in general harassment and interference with the proper discharge of supervisors' and other employees' duties. (03:June 24, Valdes, aff'd St. Bd. 04:Aug. 4, motion for reconsideration granted but original decision aff'd, St. Bd. 04:Oct. 6)

Secretary: (99:Dec. 3, Marrero, aff'd St. Bd. 00:May 3)

Special Education Teacher

Charges proven – teacher kicked pupil who was misbehaving. Withholding of increment was appropriate penalty for this isolated incident of corporal punishment. No further penalty warranted. (02:April 8, Miller)

Superintendent

Commissioner dismissed a chief school administrator for lying under oath during a deposition. The district was not obligated to consolidate the pending tenure charges with earlier charges and could file successive charges and suspend without pay for 120 days for each set of charges. (05:April 1, Howard II, aff'd St. Bd. 05:Sept. 7)

Superintendent of schools dismissed for conduct unbecoming a chief school administrator. Proven conduct included use of school employees to perform work at his home on school time, improper use of an annuity, relocating his office at significant cost without board approval, hiring and firing of emergency special education teacher to do screenplay work. Pattern of deceit and misrepresentation. (02:April 1, Howard, motion to enlarge record granted, St. Bd. 02:July 2, aff'd as modified, St. Bd. 04:March 3)

Supervisor of Mathematics dismissed for distribution of mathematics portion of early warning test and lying to supervisor about number of copies distributed. (98:March 2, McNutt, aff'd St. Bd. 98:Oct. 7, aff'd App. Div. unpub. op. Dkt. No. A-1710-98T2, Jan. 28, 2000)

Teachers: (98:Oct. 14, Ceccarelli) (98:Nov. 17, Labib) (98:Sept. 29, Battle) (98:Oct. 6, Lamperty, appeal dismissed for failure to perfect, St. Bd. 99:Jan. 6) (99:Jan. 8, Jabour) (99:Feb. 9, Cerutti) (Dept Human Services) (99:Feb. 25, Lester, aff'd St. Bd. 99:July 7, aff'd App. Div. unpub. op. Dkt. No. A-7034-98T3) (99:March 1, Yatauro) (98:July 15, Richardson) (99:Feb. 16, Pais)(99:Aug. 4, Motley, aff'd St. Bd. 99:Dec. 1)(01:March 2, Ing) (01:March 22, Cooper)(03:May 1, Gilliams)(03:May 12, Metallo, matter dismissed for failure to perfect following approved withdrawal of counsel, St. Bd. 04:Jan. 7, motion for reconsideration granted and appeal dismissed, St. Bd. 04:April 7)

ALJ refused to allow board to withdraw tenure charges subsequent to teacher's retirement due to the board's failure to comply with In re Cardonick, 1990 S.L.D. 842. Subsequent to ex parte hearing, ALJ determined that tenure charges were moot because employee had retired and was no longer subject to disciplinary proceedings. (02:Aug. 12, Gregg)

Teacher dismissed for excessive absenteeism, excessive tardiness, unbecoming conduct and insubordination. No reply from teacher, charges deemed admitted. (02:April 30, Moore)

Board violated tenure rights of teacher of Italian when it non renewed him; *N.J.A.C.* 6A:9-9.1(a)(5) provides that teachers who hold versions of endorsements issued before 2004 creation of specialized elementary endorsement

categories, may continue to teach in the subject areas in which they were authorized to teach under the former rules; *N.J.A.C.* 6A:9-9.2(b)(2)(iii) authorizes teachers holding an elementary endorsement to teach world languages pursuant to *N.J.A.C.* 6A:9-11.10; and petitioner therefore attained tenure in respondent's district. Board must reinstate petitioner, calculation of back pay and emoluments are remanded to OAL. *Girimonte v. Kearny*, Commr 2013: Feb. 25 (Kearny)

Testimony by children

(98:Dec. 28, Miller)

Discovery timelines: board's expert report barred where untimely; prejudice to respondent by delay was overriding consideration in denying reconsideration of ALJ's order barring late submission. (98:Dec. 17, Leggett, rev'd and remanded St. Bd. 99:June 2, aff'd on remand 00:June 26, aff'd St. Bd. 00:Nov. 1)

Recollection of pupils was questionable. (99:Feb. 11, Jakubiak)

To the extent that plaintiff's 42 U.S.C.S. § 1983 claim asserted that the tenure charges should have been certified by the local school board of education, rather than defendant State District superintendent of State operated school district, the claim was unsustainable. The statute of limitations on any substantive due process claim had expired, and plaintiff could not show that the conduct of any named defendant was arbitrary, capricious, or so egregious as to shock the conscience (an administrative regulation explicitly authorized the superintendent's actions). Dismissal without leave to amend was warranted because tenure charge proceedings were still pending; because plaintiff was on leave without pay status when the tenure charges were filed and remained on that status to date, any Fourteenth Amendment procedural due process claim was premature. The district court also properly dismissed as time-barred plaintiff's remaining claims for fraud, retaliation and discrimination in violation of § 1983, and breach of contract. Gillespie v. Janey, No. 10-2013 (3d Cir. N.J. Aug. 16, 2011) (not precedential)

TENURE ENTITLEMENTS

Newly created District-Wide Supervisor of instruction position not substantially different, not separately tenurable position. New position had no additional teaching duties and no additional certifications required. (04:March 18, Matarazzo, aff'd St. Bd. 04:Aug. 4)

RIF'd tenured Supervisor of Instruction entitled to District-Wide Supervisor of Instruction over non-tenured supervisor. (04:March 18, Matarazzo, aff'd St. Bd. 04:Aug. 4)

Board violated tenured secretary's rights when it terminated her without cause in 2007. Secretary entitled to reinstatement, back pay and emoluments. Teacher did not accept board offered CST secretary position in 2009. Back

pay and emoluments due to secretary from 2007 until 2009 when secretary position refused CST secretary position. Tenure rights forfeited at that point. Total award to petitioner including 4% pre-judgment interest: $79,190.29. Bush, Commissioner 2012: September 27

TENURE RIGHTS

Employee's tenure rights not violated when board of education docked employee a day's pay for failure to provide sick leave verification for a day's absence. (04:March 18, Weisberg, aff'd St. Bd. 04:Aug. 4)

TERMINATION

Complaint dismissed where Commissioner determined that petitioner could not earn tenure as a bus driver, and as a part-time utility worker with fixed term appointments, she qualified neither for tenure under N.J.S.A. 18A:17-3 nor the tenure benefit provided in the applicable collective bargaining agreement. Cross, 2011 Commr July 28.

Custodian under a series of one-year contracts is not entitled to a *Donaldson* hearing upon termination. Such a hearing only applies to non-renewal of employment. Wonsetler, 2011 Commr. Aug 17.

Court affirms district court ruling granting summary judgment to school district, in matter brought by school bus driver who refused to take a random workplace drug and alcohol test, which refusal ultimately to her termination; District Court properly analyzed the state and federal constitutional dimensions of this claim under the "special needs" test; court determined that drug test did not constitute illegal search and seizure because there was no private cause of action for violation of procedural protections and neither violations of protocol nor testing procedure violated Fourth Amendment. *Freeman v. Middle Twp. Bd. of Educ.*, 2013 U.S. App. LEXIS 13456, *No.* 12-3728 (3d Cir. June 28, 2013) (not precedential)

Summary judgment granted in favor of school district where terminated employee failed to offer support for her claims of Violations of the Civil Rights Act of 1964, Defamation;Theft of Property; Intentional Infliction of Emotional Distress; Records Tampering and Providing False Statements; and Attempted Murder and Terroristic Threats. Williams v. Fort Lee Pub. Sch., 2013 U.S. Dist. LEXIS 179757 (D.N.J. Dec. 23, 2013)

THOROUGH AND EFFICIENT EDUCATION (See STATE AID)

CEIFA: Middle income school districts and taxpayers alleged that school funding system caused disparate tax burdens violating Equal Protection and T&E provisions of the New Jersey Constitution. Court held that school districts, as creatures of the State, lacked standing to bring either T&E or

equal protection claims against the State. Taxpayers had standing to bring such a challenge but did not set forth viable T&E or equal protection claims. Court held that CEIFA did not violate the State's Equal Protection Clause. Staubus v. Whitman, 339 N.J. Super. 38 (App. Div. 2001), affirming Law Division, Mercer County, unpub. op. Dkt. No. L-1456-98. Certification denied. 171 N.J. 442 (2002).

CEIFA's stabilization aid provisions are constitutional. Wildwood argued that the CEIFA stabilization aid figures were premised upon QEA figures that had been declared unconstitutional by the New Jersey Supreme Court. QEA was declared unconstitutional as applied to "special needs" school districts of which Wildwood was not one. No evidence that Wildwood's school budgets decreased as a result of CEIFA's stabilization provisions. Sloan v. Klagholz, 342 N.J. Super. 385 (App. Div. 2001), aff'g St. Bd. 00:June 7, aff'g Commissioner 00:Jan. 10. See also, Wildwood v. Loewe, App. Div. unpub. op. Dkt. No. A-5337-97T1 and Wildwood v. Klagholz, App. Div. unpub. op. Dkt. No. A-6811-97T1, decided Feb. 17, 1999, certification denied 160 N.J. 477 (1999).

Commissioner denies the issuance of $12.2 million in bonds for additions at two elementary schools. Elementary additions not necessary to provide T&E. (03:June 2, Clark)

Commissioner orders the issuance of $19.2 million in bonds for repairs and renovations at the district high school. Without the project, the district will be unable to provide T&E. (03:June 2, Clark)

Relevant inquiry is whether the existing configuration of school facilities is inadequate to afford students a thorough and efficient education. (03:June 2, Clark)

Under N.J.S.A. 18A:7G-12, when a school district has unsuccessfully sought voter approval for a school facilities project twice within a three year period, the Commissioner has the authority to issue bonds if the project is necessary for a thorough and efficient education in the district. (03:June 2, Clark)

TITLE VII

In a Title VII Civil Rights Act of 1964 action, the Court of Appeals affirmed the District Court's order permanently enjoining North Hudson Regional Fire and Rescue's residency requirement as it had a disparate impact on African-American applicants. While residency requirements are permissible under New Jersey's Civil Service laws, North Hudson's requirement had a disparate impact on the 3.4% African-American community. Only 2 African-American firefighters (0.62% of the firefighter population) had been hired in the more than 10 years of the Regional District's existence. The District's business necessity arguments failed as they were not tied to minimum firefighter qualifications and less discriminatory alternatives were available. NAACP v. N. Hudson Reg'l Fire & Rescue, No. 10-3965, No. 10-3983, UNITED STATES COURT

OF APPEALS FOR THE THIRD CIRCUIT, 665 F.3d 464 (3rd Cir. 2011) Decided December 12, 2011.

In a Title VII Civil Rights Act of 1964 and Pennsylvania Human Rights Act action, the Court of Appeals affirmed the District Court's grant of summary judgment in favor of the school district. Employee's hostile work environment claim failed as he failed to exhaust administrative remedies and the two comments of which the employee complained did not create an atmosphere of harassment; a continuous period of harassment was not demonstrated. Employee's retaliation claim failed as the sexual harassment investigation instituted by the principal was not causally connected to the employee's complaint of the principal's racially charged remarks. Huggins v. Coatesville Area Sch. Dist., No. 10-4484, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 452 Fed. Appx. 122; 2011 U.S. App. LEXIS 23112, Decided November 17, 2011.

In a Title VII Civil Rights Act of 1964 action, the District Court granted defendant's motion to dismiss the claim that Plaintiff's removal from the substitute list was the result of discrimination on the basis of his race, ethnicity, and ancestry, related to his Cuban heritage. Individual employees are not liable under Title VII and defendant Nacer did not name the school district as a defendant. No prima facie case of discrimination was established and plaintiff was removed as a substitute teacher for not being effective. Nacer v. Caputo, Civil Action 2:10-cv-04494 (DMC)(JAD), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 137200, Decided November 30, 2011, Affirmed by Gomez v. Caputo, 2012 U.S. App. LEXIS 7903 (3d Cir. N.J., Apr. 19, 2012)

TORT CLAIMS ACT

All employee arguments were without sufficient merit. Employee failed to assert her tort and contract claims in a timely manner. Tenure issues and enforcement of DOE approved settlement were disputes arising under the school laws and properly before the Commissioner of Education. (Grompone, App. Div. unpub. op. Dkt. No. A-4219-98T5, Feb. 22, 2001, aff'g Law Div., Monmouth County Dkt. No. L-2819-96, June 9, 1997) See also Grompone v. State Operated School District of Jersey City, App. Div. unpub. op. Dkt. No. A-0331-00T5, March 26, 2002, aff'g St. Bd. 00:Aug. 2, aff'g Commissioner 00:Feb. 28.

Cheerleader injured during fall while performing "human pyramid" stunt. Claim filed under Tort Claims Act. Court determined that while the injuries were painful and caused discomfort, she did not suffer a permanent loss of a bodily function that was substantial allowing recovery under the Act. Newsham v. Cumberland Regional High School, 351 N.J. Super. 186 (App. Div. 2002)

Though New Jersey has a statute providing that a public entity was not liable for the criminal acts of a public employee, allegations of board's negligence implicated a duty upon the Board encompassing an obligation to protect the students from the harm caused by the principal, and the state had strong public policy of protecting students from sexual abuse. Court rules that where board did not implement effective reporting procedures and disregarded critical information concerning acts of abuse by principal, the Tort Claims Act requires apportionment between the negligent public entity and the intentional tortfeasor. Matter remanded to Law Division for trial on apportionment of damages. Frugis v. Bracigliano, 351 N.J. Super. 328 (App. Div. 2002), aff'd in part, rev'd and remanded in part 177 N.J. 250 (2003).

Appellate Division found that board had no liability for the willful misconduct of its employees under the Tort Claims Act where building principal and teacher acted in concert to deprive provisional ESL teacher of her liberty without due process. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

District Court determined that private school was not protected from suit by the Tort Claims Act. No evidence, at the summary judgment stage of the proceedings, that private school was implementing the board's "plans and specifications" such that immunity should apply, when private school employees allegedly improperly restrained a disabled child. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

District Court dismissed claim for punitive damages against the board of education, but not the provate school. At the summary judgment state, provate school had not demonstrated that it was entitled to protection under the Tort Claims Act. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

District Court determined that under the Tort Claims Act, individual defendants were not entitled to dismissal of the intentional infliction of emotional distress claim under the verbal threshold rule pursuant to individual defendants' summary judgment motion. Dismissal is only appropriate where plaintiff's own allegations show that a defense exists that legally defeats the claim for relief. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

Appellate Division found that building principal and teacher could not assert the injury threshold to preclude damages for liability for false arrest, assault, battery, false-light invasion of privacy, and intentional infliction of emotional distress claims under the Tort Claims Act where building principal and teacher acted in concert to deprive provisional ESL teacher of her liberty without due process. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

District Court determined that under the Tort Claims Act, board of education was immune from defamation, false light, intentional infliction of emotional distress, and civil conspiracy claims. A public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct, where disabled child was allegedly improperly restrained. R.K. v. Y.A.L.E. Schools Inc., No. 07-5918, 2008 U.S. Dist. Lexis 88623 (D. N.J. Oct. 30, 2008).

Appellate Division found that building principal and teacher could be held liable for punitive damage claims where they allegedly engaged in willful misconduct or acted with actual malice against provisional ESL teacher to deprive her of her liberty interests without due process. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Appellate Division found that claims against building principal and teacher alleging false arrest, assault, battery, false-light invasion of privacy, and intentional infliction of emotional distress should not have been dismissed by trial court based on good-faith immunity under the Tort Claims Act. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Appellate Division affirms Law Division order granting summary judgment to defendants and dismissing plaintiff's personal injury complaint. Matter involved student who missed the bus, tried to catch up to the bus and was struck by a car while crossing the road. Andrew Snyder, individually, Barbara Snyder and Gene Snyder, his parents vs. William J. Payne, Jr., Buena Board of Education and Judy Goodwin Unpublished Opinion, Dkt. No. A-3476-05, Decided November 28, 2006.

Court granted district's summary judgment motion to dismiss parent's claims of intentional and negligent infliction of emotional distress. Parents did not witness assault against their daughter. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

Appellate Division found that board could be held liable for breach of contract claims where board allegedly failed to properly mentor provisional ESL teacher. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Defendant's D.N.J., Civ. R. 7.1(i) reconsideration motion was denied. Parents sought damages for loss of companionship, arising out of intentional injuries allegedly inflicted on their child by the individual, an employee of the school district. Individual defendant failed to show that court's denial of summary judgment on parents' loss of companionship claim was contrary to clearly settled New Jersey law. Legal precedent indicated that parents could recover for loss of companionship, arising from intentional injuries inflicted on child. H.T. v. E. Windsor Reg'l Sch. Dist., Civil No. 04-1633 (AET), 2007 U.S. Dist. LEXIS 2879, Decided January 12, 2007.

Appellate Division dismissed complaint of former basketball player who filed suit because the high school yearbook contained a game photograph in which complainant's genitals were exposed. No evidence of willful misconduct so as to avoid the requirement to show objective evidence of permanent injury under the Tort Claims Act. No evidence of emotional distress. Bennett v. Freehold Regional BOE, A-3240-04 (App. Div. June 23, 2006) (unpublished slip op. at 5)certif. denied October 17, 2006, No. 59,866. .

The Tort Claims Act bar on pain and suffering claims against government defendants is intended to apply to the "intangible, subjective feelings of discomfort that are associated with personal injuries." Lapp v. Jackson Twp. BOE, A-5938-04 (App. Div. June 12, 2006) (unpublished slip op. at 31).

N.J. Tort Claims Act does not provide immunity from federal claims under 42 U.S.C.S. 1983. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Appellate Division determined that district's insurance carrier must extend coverage to employee alleged to have engaged in both intentional sexual acts and negligent unspecified but offensive conduct where district policy expressly excluded coverage for intentional acts but did not exclude coverage for negligent acts. Leonia BOE v. Hannover Insurance, A-3957-04 (App. Div. June 20, 2006) (unpublished slip op. at 4).

The Court dismissed claims against the school board and the school for punitive damages and any claims insofar as they involved crimes or intentional, willful misconduct on the part of a physical education teacher, who had taped student to a chair during class; however, claims for the negligent infliction of emotional distress were not barred against the board and school, and would turn on whether a jury finds that the teacher was acting within the scope of his employment. (M.K. v. Hillsdale Bd of Ed., No. 06-1438, 2006 U.S. Dist. LEXIS 55683, (D.N.J. June 28, 2006).

Court dismissed district's motion for summary judgment under the NJ Tort clams Act where student's allegations of sexual abuse against the district arose out of negligent hiring and/or supervision and not from the crime or willful misconduct of the alleged abuser who was employed as a campus monitor. (H.T. v. East Windsor Reg. Sch. Dist., No 04-1633, 2006 U.S. Dist. Lexis 80833 (D.N.J. Nov. 3, 2006)).

Appellate Division found that provisional ESL teacher who had been detained in the nurse's office following her alleged threat to kill 22 students demonstrated that she had been deprived of her constitutional right to liberty without due process and that the right was clearly established such that defendants teacher and building principal were not entitled to qualified immunity. Leang v. Jersey city Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Appellate Division found that a good-faith immunity defense is not available in a defamation, slander, and libel claim. Building principal and teacher acted in concert to restrain provisional ESL teacher against her will based on unreasonable allegations against the provisional ESL teacher. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Appellate Division found that board had no respondeat superior liability for employee violations of federal law because a local government may not be sued under a 42 USC 1983 claim for an injury inflicted solely by its employees and not by the execution of official policies. Building principal and teacher acted in concert to restrain provisional ESL teacher against her will based on unreasonable allegations against the provisional ESL teacher. Leang v. Jersey City Bd of Ed, No. A-5777-05 (App. Div. April 2, 2008), 2008 N.J. Super Lexis 77.

Appellate Division affirms in part and vacates in part trial court summary judgment dismissing plaintiff's complaint for damages under the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3 arising out of a high school cheerleading accident. Court affirms that plaintiff's injuries failed to satisfy the Act's verbal threshold for non-economic claims, but vacated and remanded as to plaintiff's economic damages. Baligian v. Hunterdon Central Reg. High School Bd. of Ed. , Docket No. A2026-08, App. Div., unpublished, Nov. 12, 2009.

In an altercation between a police officer and a parent over the improper parking of the parent's car on school property, summary judgment granted for school district where facts alleged do not create sufficient nexus between police conduct and the district. Rothman v. City of Northfield, 2009 U.S. Dist. LEXIS 91310 (D.N.J. Sept. 30, 2009)

Personal injury action dismissed where 2-year statute of limitations was exceeded; injuries occurred during 1974-75 school year, no equitable tolling permitted as plaintiff knew of injuries when they occurred. Lawsuit not filed until June 2009. Webb v. Warner Middle Sch., 2009 U.S. App. LEXIS 23049 (3d Cir. Del. Oct. 19, 2009)(not precedential)

Court affirms summary judgment dismissal of plaintiff's claim (and husband's per quod claim) for injury that resulted when she fell on ice in the school parking lot, as doctor reports showed that the injury had fully healed and was not permanent and thus her injuries failed to satisfy the requirements of the Tort Claims Act. Acevedo v. Edgewater Pk. Bd. of Ed., App. Div. unpublished decision (A-1397-08, August 17, 2009)

Student suffered injury to nose in floor hockey in gym class. Summary judgment appropriate where tortfeasor's conduct was not reckless or intentional. The "societal importance" of mandatory physical education, as embodied in the legislative mandate of N.J.S.A. 18A:35-5 and -7, warrants such a heightened standard. Saracino v. Toms River Reg'l High Sch. East, 2009 N.J. Super. Unpub. LEXIS 2623 (App.Div. Oct. 20, 2009)

Appellate Division reverses trial court decision granting summary judgment to a school board and school and dismissing a former student's personal injury action for student struck by automobile on the way home from school; Court finds that former student had complied with the notice requirements of New Jersey Tort Claims Act, N.J.S.A. § 59:8-8, when she sent such notice at the time of the accident, 10 years prior to the filing of her complaint; level of detail in the notice of claim was sufficient Lebron v. Sanchez, 407 N.J. Super. 204 (App. Div. 2009) (May 21, 2009.)

Personal injury action by student who was victim of assault by other students, is dismissed where 2-year statute of limitations was exceeded; injuries occurred in May 1981; no equitable tolling permitted as plaintiff knew of injuries when they occurred. Lawsuit not filed until June 2009. Webb v. Perkiomen Sch., 2009 U.S. App. LEXIS 23027 (3d Cir. Pa. Oct. 19, 2009)(not precedential)

Appellate Division affirms trial court summary judgment order dismissing lawsuit by mother who fell down school steps, against board of education, for mother's failure to satisfy the verbal threshold of the Tort Claims Act ("TCA"), N.J.S.A. 59:9-2(d); she had not demonstrated "a permanent loss of a bodily function" of sufficient severity to permit the recovery of pain and suffering damages from a public entity. Zuniga v. Paterson Bd. of Educ., (A-1139-08T2) 2009 N.J. Super. Unpub. LEXIS 1235, (App. Div. May 21, 2009)

Where teacher in correctional facility failed to respond to charges that he showed an unauthorized movie to his students during class time —charges deemed admitted; Commissioner orders 90-day suspension without pay. Tenure Hearing of Harper, Commr. 2009: July 14.

Court grants school district’s motion to dismiss claims by parents of first grader who was injured while playing unsupervised during recess on the monkey bars in school playground with cement surface. Court dismisses claim of constitutional right to bodily integrity based on a state created danger theory, as a school board's allocation of resources is not the kind of affirmative action that should form the basis of such claim; Court dismisses claim that board deprived Plaintiff of his constitutional due process liberty interest in bodily integrity through their cost-cutting policies, as maintaining cement surface did not rise to the required level of conscience shocking, arbitrary government action, in light of need to allocate resources based on economic concerns; Section 1983 action fails as there was no showing that board was responsible for any constitutional violations; Court declines to retain jurisdiction over state negligence claims as no federal questions remain, and denies without prejudice. Goss v. Alloway Twp. Sch., NO. 10-5515 (JEI/JS), 2011 U.S. Dist. LEXIS 11420 (D.N.J. February 7, 2011)

In a matter brought by a New Jersey Nets patron over injuries suffered when one of an unruly group of high school students fell on her at the Izod Center, the jury did not find that negligence by the Sports and Exposition Authority, or negligent supervision by the students' high school, which

sponsored their outing, was the proximate cause of her injuries. The "excited utterance" exception to the hearsay rule did not allow admission of a spectator's statement indicating the teenager had been pushed. Novembre v. Snyder High School, A-3426-09 (App. Div. Jan 17, 2012) (unpublished)

Court affirms prior order granting partial summary judgment to board of education, in matter brought by visitor to school who fell down the school stairs; her complaint for pain and suffering under the Tort Claims Act had been dismissed on grounds that she had not shown by objective medical evidence that she sustained a permanent loss of a bodily function that is substantial. Tyree v. Orange Bd. of Educ., No. A-3695-10T2, 2012 N.J. Super. Unpub. LEXIS 282 (App. Div. Feb. 9, 2012)(unpublished)

Summary judgment in favor of defendant jointure commission where plaintiff's expert failed to explain basis for student's prognosis, failed to differentiate student's present condition from his preexisting condition; and he failed to state that student's injury was permanent. Therefore, plaintiffs were unable to satisfy the requirements of N.J.S.A. 59:9-2(d) and defendants were entitled to summary judgment as a matter of law. Kowaleski v. Wolff, No. A-5173-10T4 (App.Div. Apr. 26, 2012)

Plaintiff did not file the notice of tort claim within ninety days of the happening of the accident, did not demonstrate the "extraordinary circumstances" required by N.J.S.A. 59:8-9 and did not file her cause of action against BOE within two years of the happening of the accident, which is the outermost time limit for filing suit against a public entity. Plaintiff did not act with reasonable diligence in investigating whether defendant was in the course of her employment with BOE at the time of the collision. The deposition occurred more than three years after the accident occurred. Court cannot countenance such potentially unlimited liability exposure on the part of a public entity. The Tort Claims Act requires otherwise. Lugo v. Kennedy, No. A-4493-10T1 (App.Div. Apr. 4, 2012)

District Court grants school district's motion for judgment on the pleadings in matter alleging constructive discharge, tortious interference and harassment, intentional infliction of emotional distress, tortious interference with a contract, hostile work environment, and two Section 1983 claims, all resulting from an incident where a teacher/coach riding in a caravan with the football team dangerously passed the team bus. Woodend v. Lenape Reg'l High Sch. Dist., CIVIL ACTION NO. 11-5724 (JEI/JS), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2012 U.S. Dist. LEXIS 87795, Decided June 25, 2012.

Court reverses and remands to provide both an opportunity to the parties for oral argument and for the judge to provide expanded reasons for his decision to allow plaintiff, a food service worker who had been wheel-chair bound since slipping in the school cafeteria, permission to file a late notice of claim against the board, pursuant to N.J.S.A. 59:8-9. Barnes v. East Orange Bd. of Ed., et al v. Sodexo Management, No. A-2609-10T4, A-

1976-11T4, 2012 N.J. Super. Unpub. LEXIS 1996 (App. Div. August 22, 2012).

Bus aide who was also working as a school aide for another district brought suit charging the Board and its business administrator with malicious abuse and use of process, libelous defamation and negligently accusing her of theft in dispute where she was accused of presenting timesheets reflecting same hours to both districts. The trial judge dismissed her claims based on defamation and negligence for failure to file a timely notice of claim as required by the Tort Claims Act, N.J.S.A. 59:8-3 to 8-11. Subsequently, the judge granted summary judgment in favor of defendants on the malicious prosecution claims. Appellate Division affirmed. Arguments plaintiff presents to establish error, include no references to the record or legal authority, are without sufficient merit to warrant discussion in a written opinion. Ford-White v. Landgraf, No. A-0685-11T1 (App.Div. Oct. 2, 2012)

In case involving personal injury and student's IEP, the trial court reasoned that it would have been futile to grant plaintiff's motion to file a second amended complaint because the additional claims in the proposed complaint "were previously settled." Appellate Division concluded there was substantial credible evidence to support the trial court's decision, and there was no abuse of discretion. L.E.G. v. East Orange Bd. of Educ., No. A-1178-10T4 (App.Div. Sept. 7, 2012)

Appellate Division affirmed trial court judgment after a jury trial dismissing parents' complaint for personal injuries their child suffered at an after-school Halloween event, hosted by the Home and School Association. While playing tag with other children, the child slipped and fell resulting in a displaced fracture of the femur, which required surgery. The jury determined that neither the conduct of the Home and School Association nor the board of education was the proximate cause of the injury. *Vinci v. Clifton Bd. of Educ.*, DOCKET NO. A-4828-10T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 2572, Decided November 21, 2012.

Board employee injured himself while using a fitness machine in the weight room at Monmouth Regional; while New Jersey has not recognized tort action for spoliation, if such existed, employee's action for spoliation of evidence began to run when he learned the machine had been sent back to the distributor, and not when his product liability case was dismissed; therefor, he failed to file timely notice of tort claim. *Smith v. Monmouth Reg'l Bd. of Educ*., 2013 *N.J. Super*. Unpub. LEXIS 376 (App. Div. February 20, 2013).

Court affirms lower court's decision to allow plaintiff to file late notice of tort claim against school district in car accident matter, where plaintiff did not learn that school district was a party until she received DWI report indicating that other driver had been drinking at school Christmas party. *Valentin v. Twp. of Pemberton*, 2013 *N.J. Super*. Unpub. LEXIS 413 (Feb 25, 2013).

Court reverses appellate ruling and holds that under the circumstances of the case, a school principal owed no duty of care to a third party who decided to use school property after hours for personal purposes and was injured by a stray animal that is neither owned nor controlled by school personnel. Disagrees with appellate division's finding that a jury could find that the school principal had a duty to take measures to prevent entry of a known dangerous dog onto school property, and that a jury could find that the school principal breached that duty. *Robinson v. Vivirito*, 217 *N.J.* 199 (2014) (March 26, 2014)

Court affirms grant of summary judgment in favor of defendant Hauser Refrigeration, Inc. dismissing complaint of food service kitchen manager for personal injuries when she fell in a walk-in freezer at the School; she failed to establish negligence; no evidence or expert opinion showing that Hauser's prior repairs to the freezer exacerbated, caused or contributed to the defect that caused water and ice to accumulate on the floor, or that the defect pre-existed Hauser's last service on the freezer. *Westcott v. Board of Educ and Hauser Refrigeration*, No. A-2774-12T4 (App. Div. March 14, 2014) (not for publication)

TPAF

Commission erred in denying retiree's request for free medical coverage. Retiree had more than 25 years of aggregate service credit from three retirement systems and was not required to have full credit from a single system. Barron v. State Health Benefits Commission, 343 N.J. Super. 583 (App. Div. 2001).

State Health Benefits Commission erred in denying retiree's request for free medical coverage. Retiree had more than 25 years of aggregate service credit from three retirement systems and was not required to have full credit from a single system. Barron v. State Health Benefits Commission, 343 N.J. Super. 583 (App. Div. 2002).

Employees who worked three additional days beyond the contractual 183 day work year were entitled to pension credit for the three additional days. The additional days were mandated by the contract and that the work described and performed by the employees on those days was a permanent and integral part of their regular responsibilities and work, not extra duties or temporary work. Morris Hills Reg'l Dist. Educ. Ass'n v. Board of Trs. of the Teachers' Pension & Annuity Fund, DOCKET NO. A-3474-10T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1090, Decided May 17, 2012

TRANSFER

A board may not transfer a tenured individual between positions requiring different certifications. (02:July 2, Iraggi)

Board did not violate tenure rights of former principal when they assigned him to a vice principal position. Employee had not acquired tenure as a principal. (04:March 1, Braimah)

Where the Commissioner had previously ordered the board to reinstate a principal to the principal position because the board had transferred her to position of Director of Special Projects and salary without a valid board vote, her subsequent withdrawal of an additional claim to the position of Supervisor of Basic Skills, rendered the matter concluded. (04:Dec. 23, Mazzeo)

Commissioner dismisses on summary judgment teacher's challenge to transfer from high school to middle school by board roll call vote; no violations of the Open Public Meetings Act, N.J.S.A. 10:4-12(b)(8) or of N.J.S.A. 18A:25-1; Rice notice not required both because the courts have held that a transfer without loss of salary and without impacting tenure rights is not an adverse action warranting a "Rice" notice, nor was there any discussion of the transfer at this meeting, privately or publicly. Bilse, Commr 2011:June 24

TRANSPORTATION

Bidding

Bidder substantially complied with stockholder disclosure requirements; defects in completing statement were minimal. (98:Aug. 28, Murphy Bus)

Commissioner adopted ALJ's Initial Decision granting petitioner's emergent motion, enjoining board's award of transportation contract and ordering an immediate rebidding. ALJ concluded that contract award without rebidding would place an economic burden on taxpayers. (03:Aug. 14, Dehart)

Deviations from bid specifications concerning maintaining buses at depot or dispatch facility, and the use of multiple dispatchers and base radio/dispatch facility clause were not material or substantial so as to preclude award of transportation contract. (99:March 9, Byram)

District acted within its authority when, after having taken bids it realized that it would be less expensive to renew existing transportation contract, and thus rejected all bids; lowest bidder's claims of implied contract and agency based on Jointure Commission's notice are dismissed. (Note: see ALJ's detailed discussion of public school transportation contracting and bidding laws). (99:Feb. 24, Taranto Bus)

Neither law nor bid specs precluded submission of two bids (all package bid and individual route package bid) by a single bidder, nor was it precluded by administrator's announcement at prebid conference that only one bid per bidder would be accepted. (98:Aug. 28, Murphy Bus)

Petitioner established that it was lowest responsible bidder with respect to certain individual route package bids. (98:Aug. 28, Murphy Bus)

Specifications: Board was within its power top establish bid specification beyond DOE transportation specifications set forth in N.J.A.C. 6:21-13.2. (99:March 9, Byram)

Bus routes/stops

Although walk to the designated bus stop was long and potentially hazardous, parents were unsuccessful in challenging the reasonableness of the location of the stop; children were not treated differently from other children similarly situated. (98:Aug. 28, Lemma)

Board acted reasonably in assigning one bus stop for children who share time between divorced parents (alternate weeks) residing in separate residences in the same school district. Assigning one seat on one bus route was a reasonable policy, neither arbitrary nor capricious. (03:June 5, T.B.R.)

Board's decision denying parent's request to relocate bus stop closer to their home on an unpaved road, was not arbitrary or discriminatory and is upheld. (03:Dec. 17, Bailey)

Board's decision to locate child's bus stop at the bottom of street not arbitrary, capricious or unreasonable. (03:March 5, B.S., appeal dismissed for failure to perfect, St. Bd. 03:June 4)

Board's refusal to accommodate parents' request to establish alternative bus stop was arbitrary and capricious where walking route was dangerous, and bus stop was near abandoned landfill, known as feeding place for bears. Board is directed to select alternative route allowing for van service to pupil's driveway. (00:May 19, J.F.N., Jr.)

Emergency relief granted to parents seeking bus transportation to charter school, pending outcome on the merits. (99:Dec. 27, A.L.G.)

It is the municipality, not the school board, who must insure safe walkways for children. (98:Aug. 28, Lemma)

Commissioner adopted ALJ's grant of summary judgment in favor of the district where parents failed to show that the district's redistricting plan was arbitrary, capricious or unreasonable, in violation of the Rehabilitation Act of 1973, the New Jersey Law Against Discrimination or the New Jersey Constitution. The plan required students who walked to their neighborhood school to be transported by bus to a more distant school. Petitioning parents failed to show bad faith or wrongdoing as the motive for the board's actions. (03:Feb. 3, J.P. and M.P.)

Contracts

State Board affirms the decision of the Acting Commissioner to dismiss the matter as moot. Local association alleged that board procedures subcontracting custodial, maintenance and bus transportation services for the 2002-03, 2003-04 and 2004-05 school years violated public bidding laws. (Lyndhurst, St. Bd. 2007:May 2)

Commissioner determined that statute did not authorize district to lease buses to groups not enumerated in N.J.S.A. 18A:39-22. Murphy Transportation Inc, Commr., 2009: Feb. 24

County Superintendent's determination of homelessness upheld, and district of origin is responsible for costs of tuition and transportation. (Belleville, Commr., 2007: Nov. 19)

Commissioner granted summary judgment in favor of district where parents failed to show that the district's redistricting plan was arbitrary, capricious or unreasonable, in violation of the Rehabilitation Act of 1973, the New Jersey Law Against Discrimination or the New Jersey Constitution. Plan required students who walked to be transported by bus to a more distant school. Petitioning parents also failed to show bad faith or wrongdoing as the motive for the board's actions. (03: Feb. 3, J.P. and M.P.)

Distance

Public entrance is any door through which students and teachers are permitted to enter. Fact that, for security reasons, public is only permitted to enter the front door, does not make it the only entrance to the school. (04:Marach 29, B.M. and M.M., aff'd as modified, St. Bd. 04:Aug. 4)

Shortest route must be one that complies with New Jersey Motor Vehicle laws regarding pedestrian travel. (04:March 29, B.M. and M.M., aff'd as modified, St. Bd. 04:Aug. 4)

Eligibility

Student eligible for transportation. Route from home to school more than two miles. N.J.S.A. 18A:39-1 requires a district board to provide an elementary school student with transportation if the student would have to walk more than two miles either to or from school. The Commissioner's decision in Dreifuss v. Board of Education of the Township of Chatham, 1988 S.L.D. 960, to the extent that it provides for the measurements to be averaged in order to determine eligibility for transportation if the distance the student would be required to walk from school is more than two miles but the walk to school is less than two miles. (04:March 29, B.M. and M.M., aff'd as modified, St. Bd. 04:Aug. 4)

Emergent relief granted in dispute over transportation contract under N.J.A.C. 6A:4-3.3, which permits President of State Board and Chairperson of Legal Committee to decide applications for emergent relief. Restraints imposed by Superior Court reinstated to minimize impact on special needs students where stability in the provision of transportation services is heightened. Petitioner permitted to continue providing transportation until end of school year. (St. Bd. 03:April 16, New Jersey Lucky Tours, aff'd and remanded to Commissioner, St. Bd. 03:June 4)(See also, emergent relief denied by Comm. 03:April 9)

Insurance carrier for school bus company may be required to indemnify and defend board of education. Remanded as to duty to defend. Rosario v. Haywood, 351 N.J. Super. 521 (App. Div. 2002).

Entitlement to

Parent failed to establish that bus stop was dangerous or that board's decision to deny parental request to change the location of the stop was arbitrary, capricious or unreasonable. (F.P. on behalf of minor child K.P., Commr., 2007:Oct. 17, aff'd St. Bd. 2008:March 19.)

Commissioner rejected initial decision that parent request for transportation services was moot due to child's graduation from middle school. Matter is not moot where potential for recurrence exists. (See also (T.F.S., Commr., 2006: Aug. 4)(T.F.S. State Board, 2007: April 4))(Aff'd St. Bd. 2008:February 20)

Board did not act arbitrarily in discontinuing courtesy transportation to domestic violence shelter that operates before and after-school daycare; dismisses petition by daycare center as board's decision resulted from periodic rotation of bus routes under its uniformly applied policy, to achieve cost efficiencies. (Strengthen our Sisters, Commr. 2009:July 8)

District Court determined that parents failed to demonstrate that disabled child was denied FAPE where district did not provide extended school year or transportation services. At the beginning of the following school year, district failed to provide FAPE for 17 days when it failed to provide transportation after notice that parent was no longer able to provide transportation. L.T o/b/o B.T v. Mansfield Twp. Sch. Dist., Civil No. 04-1381, 2009 U.S. Dist. Lexis 21737, (D. N.J. March 17, 2009).

Motion to consolidate final decision and interlocutory decision in school district of residence matter granted. Interlocutory decisions are subject to review by the State Board upon appeal of a final decision from the Commissioner even if an application for interlocutory review had not been made or if the application had been denied. (Neptune, St. Bd. 2006:June 7)

Obligation to provide

Commissioner adopted ALJ's decision that petitioner lacked standing to pursue U.S. Constitution and Federal Law claims, where taxpayer failed to establish that he suffered an injury from which he is legally protected by the U.S. Constitution or Federal Laws. Petitioner alleged the district spend public monies to implement an unconstitutional courtesy busing policy. Motions for the production of documents denied. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner adopted ALJ's finding that district was responsible to reimburse charter school for transportation costs, pursuant to N.J.S.A. 18A:36A-13 and N.J.A.C. 6A:27-3.1(d). Charter school obtained transportation for remote students when district replaced bus service with bus tickets on public transportation. (03:Aug. 8, Community Charter School)

Commissioner disagreed with ALJ's finding that petitioner lacked standing to pursue state constitutional claims, where petitioner established that as a resident taxpayer, he was directly affected by

the annual expenditure of $2 million for the courtesy busing of district students. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner found that board of education's decision to spend 50% of busing funds on courtesy transportation was within the board's authority pursuant to N.J.S.A. 18A:39-1.1, and therefore not contrary to law. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. Dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner found that petitioner failed to demonstrate an Establishment Clause violation, where district used public funds to provide gender segregated courtesy busing to students attending gender segregated private schools. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner found that petitioner failed to establish a violation of the NJLAD where district courtesy busing policy provided for separate buses for girls and boys attending religious schools that were segregated based upon gender. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner found that petitioner failed to meet his burden of presenting specific facts that district courtesy busing policy was being applied in a discriminatory manner in violation of Art. I.1 and/or 5 of the New Jersey Constitution. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Commissioner reversed ALJ's finding that petitioner's discriminatory busing complaint was not timely filed, pursuant to N.J.A.C. 6A:3-1.3(d), where courtesy busing policy had been in effect for seven years. Commissioner held that respondent waived statute of limitations and laches defenses by failing to assert them as affirmative defenses. Commisisoner further held that the implementation of a discriminatory busing policy would constitute a pattern of discrimination and a continuing violation of law; therefore, statute of limitations is tolled until wrongful action ceases. (03:Aug. 26, Osborne, motions denied, St. Bd. 04:Jan. 7, Comm. dec. aff'd and motion to compel denied, St. Bd. 04:April 7)

Distance: Route from pupil's home not to be measured along Route 46, dangerous state highway, for purpose of calculating distance from school for determining entitlement to transportation. (00:Nov. 9, G.A.)

Distance: School routes are not theoretical abstractions, but must be capable of being walked by real children; cannot be measured in a manner contrary to motor vehicle laws. (00:Nov. 9, G.A.)

District has obligation to provide transportation to Vo-Tech for home-schooled student residing in district. (St. Bd. 99:Dec. 1, Jacobs)

Home schooled student was entitled to tuition costs and transportation to attend vocational school in the afternoon. (99:June 24, Jacobs)

Pupils attending both a private school and a vocational school on a shared-time basis were statutorily entitled to transportation to both schools. (99:Nov. 29, S.V.)

There is no obligation to provide transportation to private school students whose schools are located more than 20 miles from pupils' residence. (00:Aug. 25, J.D.K.)

Subscription busing

Board is not obligated to provide subscription busing or courtesy busing to non-public school pupils who do not live remote, even where it provides such busing to public school pupils. (99:Sept. 29, M.J.K.D.)

Commissioner agrees with ALJ's recommendation for six month suspension of school bus endorsement (mandatory penalty for a first offense) of bus driver who left a student on the bus and failed to perform the vehicle inspection of the vehicle's interior before exiting that is required by N.J.S.A. 18A:39-28. Driver was directed to notify the Motor Vehicle Commission of its obligation pursuant to N.J.S.A. 18A:39-28 et seq. to suspend petitioner's school bus endorsement and to notify petitioner's employer that she is ineligible for the period of suspension for continued employment as a school bus driver. Firman, Commissioner 2011: March 24

Six month suspension of school bus driver's school bus S endorsement on her driver's license for leaving a student on the bus after the completion of her route upheld. Bus driver failed to appear at OAL hearing and gave no explanation for her nonappearance. Challenge to suspension dismissed. *Bridgeman*, Commissioner 2013: March 22

Commissioner denies emergent relief and remands for an adjudication on the disputed material facts and the merits. Petitioner AAA School, LLC (AAA), alleged that the route specifications of the Passaic County Educational Services Commission, which required 16-passenger yellow school buses, rather than seven-passenger mini-vans, discriminated against the company as it only owned seven-passenger minivans and did not own any 16-passenger yellow school buses. Petitioner urges that the 16-passenger yellow school bus requirement is an unnecessary and prejudicial impediment to its ability to compete. Petitioner failed to show the presence of any of the four standards for emergent relief – i.e., that the petitioner will suffer irreparable harm if relief is not granted, the legal right underlying petitioner's claim is settled, the petitioner has a likelihood of prevailing on the merits of the underlying claim, and when the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent if relief is not granted. The Commissioner stressed that the burden of proof is on the petitioner to identify specific

statutes and/or regulations which he contends have been contravened by respondent. AAA School, LLC and El Sayed Eldesouky v. Passaic County Educational Service Commission, Commissioner, 2014: October 16.

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TUITION

Aunt and uncle failed to show they were supporting child gratis. No economic or family hardship shown. 35 days tuition owed to board. (02:April 8, S.M.)

Board did not prove that student was not resident of the district when placed in correction center. Board responsible for tuition. (02:May 31, South River) Decision on Remand.

Board generally has no obligation to provide educational services to a pupil it has expelled. (99:Sept. 7, Somerset County)

Board had to pay tuition of expelled student adjudicated delinquent where court ordered placement in lieu of incarceration. (99:Sept. 7, Somerset County)

Board's refusal to waive policy imposing tuition charges after 60 days on those planning to move to district, held to be reasonable. (98:Oct. 29, M.M.)

Board was required to pay transportation and tuition for child to attend magnet high school (vocational-technical school for science, math and technology), where district did not offer comparable program (99:July 12, D.F.)

Commissioner adopted ALJ's determination, pursuant to N.J.S.A. 18A:13-1 to 81, that a non-resident pupil who sought admission to a tuition placement, had her application rendered moot by virtue of her entry into college. (03:Aug. 19, A.K.)

Commissioner determined, pursuant to N.J.S.A. 18A:54-20.1 and N.J.A.C. 6A:19-3.1, that sending-district was required to pay tuition for students attending vocation school, despite the fact that sending-district offered identical courses. (05:June 27, Passaic County Vo-Tech)

Commissioner determined that GCIT properly excluded post-secondary, out-of-county students from its calculation of tuition. (05:Oct. 12, Gloucester County Institute of Technology)

Commissioner has primary jurisdiction over contract disputes arising under the school laws. Archway sought payment for educational services rendered to Pemberton Township Board. Commissioner entitled, in exercise of plenary jurisdiction over school law matters, to resolve administrative issues before court exercised jurisdiction. Archway Programs v. Pemberton Twp. Bd. of Ed., 352 N.J. Super. 420 (App. Div. 2002).

Commissioner remanded ALJ decision assessing tuition against parents. OAL failed to provide proper hearing notice to parents thereby depriving them of their right to appear and be heard. Hearing was necessary in light of district policy providing for waiver of tuition for temporary residence. (05:Oct. 17, D.L.)

Commissioner reversed NJDOE's disallowance of certain costs associated with field trips for private school for the disabled. Field trip allowed students to practice social skills outside the classroom and was integral to the behavior modification plan implemented by the private school. Field trip funds were appropriately included in school's tuition rate. (05:Oct. 14, Bergen Ctr. For Child Development)

District in which student lived, albeit for a few weeks, prior to placement by DYFS in a Skill Development Home, was the district of residence responsible for the student's educational costs. N.J.S.A. 18A:7B-12b, N.J.A.C. 6A:23-5.2. (03:June 18, Wallkill Valley, settlement approved St. Bd. 04:Feb. 4)

District must pay tuition for home-schooled student living in district wishing to attend vo-tech. (St. Bd. 99:Dec. 1, Jacobs)

DOE correctly disallowed non-profit school for disabled to include in calculation of tuition for its public school students, the cost of lump sum payments to staff and the salary of an uncertified teacher. (03:Nov. 12, Search Day)

For the purpose of N.J.S.A. 18A:54-20.1(a) and N.J.A.C. 6A:19-3.1, a local board may not refuse to pay tuition/transportation for its resident students in attendance at a county vocational school, unless the local district operates its own "vocational school"; a local or regional school district does not operate its own "vocational school" simply because it offers a curricular track centered on a DOE-approved, CIP-coded vocational program. (04:Oct. 8, Somerset)

Home schooled student was entitled to tuition costs and transportation to attend vocational school in the afternoon. (99:June 24, Jacobs)

Legal costs, since not specifically excluded from the administrative code calculation of actual cost per student for tuition purposes, properly

included in tuition calculation except where between the parties. (03:May 15, Lincoln Park, aff'd St. Bd. 03:Nov. 5)

Parents contested the board's denial of resident status where parents purchased a new home within the district, but split time between the new "in-district" residence and old "out-of-district" residence until old home was sold. Commissioner agreed that parents were not "domiciled" in the new district. Parents ordered to reimburse the district $27,292.38 in prorated tuition. Appellate Division reversed in part finding that petitioners had demonstrated by a preponderance of the evidence that they were domiciled in district for at least part of the time in question. (02:Sept. 16, D.L., aff'd St. Bd. 03:Jan. 8, remanded to State Board for determination of tuition for period in question, App. Div. No. A-3183-02T3, 04:February 5, matter remanded to Commissioner for determination consistent with Court opinion, St. Bd. 04:June 2)

Petitioner ordered to pay tuition for the period of ineligible attendance; 1/180 of the total annual per pupil cost multiplied by the number of days of ineligible attendance. (02:April 2, T.W.J.)

Petitioners, private schools for the disabled, not barred from utilizing straight-line depreciation on a stepped-up basis to calculate rental costs for tuition rate purposes. Straight-line depreciation is an actual allocated cost of ownership. (02:Yale School)

Prior regulation was unclear with regard to when the 45-day period during which private school for disabled must notify district of increased tuition in excess of 10%, begins to run. New regulations, N.J.A.C. 6A:23-4.2(a)(2), clarify notification deadlines. (04:Oct. 14, Youth Consultation Services)

Private school for handicapped and committee from which it leased premises, were related parties; therefore, lease agreement was not an arms length transaction; rental costs were thus improperly included as allowable cost in school's tuition rate (99:July 6, Passaic County Elks Cerebral Palsy, aff'd St. Bd. 99:Dec. 1)

Providers of resident placement and full-day special education services challenged the NJDOE's determination that they were related parties, the disallowance of salaries for non-certified staff and the NJDOE's allocation of occupancy and food expenses. The ALJ found a relationship between the two entities because the chancellor of the diocese was a member of the second provider's board and because of other business relationships. ALJ then upheld NJDOE's disallowance of food expenses but dismissed rental and salary expenses. (03:Feb. 3, Catholic Family)

Pupil assessed tuition for period of ineligible attendance. Parent failed to prove that pupil resided in district for the time period in question. Expressed an intent to return but never did so. (03:July 10, K.L.)

Pupil assessed tuition for period of ineligible attendance. Petitioner failed to demonstrate that pupil's parents, who relocated to Florida, were unable to support or care for the pupil due to family or economic hardship. Mother provided health insurance and father claimed pupil as dependent. (03:July 31, P.P.M.)

Pupil assessed tuition for period of ineligible attendance. Petitioner failed to demonstrate that pupil's parents, who reside in Hong Kong, were unable to support or care for the pupil due to family or economic hardship. Pupil lived with another in the district solely for the purpose of obtaining a free public education. (04:March 18, W.C.K.)

Pupil assessed tuition for period of ineligible attendance. Petitioner never established that she and her children were domiciled in the school district. (03:June 23, S.H.)

Pupils attending both a private school and a vocational school on a shared-time basis were statutorily entitled to transportation to both schools. (99:Nov. 29, S.V.)

Pupils not domiciled in the district. Parent ordered to pay tuition for period of children's ineligible attendance, $17,935.90 plus $47.44 per day. (02:April 8, R.T.)

Receiving district's inclusion of legal costs attributable to litigation between the sending and receiving districts in tuition calculation deemed improper. Prohibited by "American Rule" – each party bears its own litigation fees. (03:May 15, Lincoln Park, aff'd St. Bd. 03:Nov. 5)

Receiving district's omission of the building use charge in the estimated calculation of tuition did not prejudice sending district; charges had to be paid as based on actual per pupil costs, and dictated by regulation and contract. (99:June 7, Spotswood)

Students assessed tuition costs for period of ineligible attendance. Students were never domiciled in the district and therefore not entitled to a free public education. While family intended to move into the district, closing on house never took place. (03:June 23, S.H.)

Settlements

Parents agree to pay tuition in monthly payments. (02:April 12, E.K. and D.H.)(02:April 22, B.G.)(02:May 17, D.F.)

Settlement approved regarding payment of tuition and transportation by school board for pupil's attendance at county vocational school. (98:Oct. 19, M.R.v. Pompton Lakes)

Work performed at the receiving district's parking lot was a "capital expenditure" and not a "repair;" therefore, sending district could not include a portion of the expense in the sending district's tuition rate; moreover, tuition may not be charged in excess of the calculated "actual cost per student." (05:March 23, Lincoln Park, aff'd St. Bd. 05:Sept. 7)

A 45-day notice requirement was applicable to both new, as well as established, private schools proposing to charge a final tuition rate in excess of 10% of the tentative rate. State Board dismisses appeal for failure to file notice of appeal in a timely manner. Even if the State Board has the authority to enlarge the time period for filing an appeal, no substantive reason existed for doing so. (Cerebral Palsy League, St. Bd. 2007:Jan. 3)

Private school for the handicapped could not demonstrate that DOE wrongly concluded that the school improperly included numerous items in tuition rate over several years; with only a few exceptions, these overcharges,

discovered during an audit, must be returned to the sending districts and matter remanded to OAL to calculate proper amount of reimbursement; private school was not entitled to equitable estoppel despite DOE's failure to notify the school of the improper items early enough for it to have changed its tuition practices. (Archway Programs, Commr., 2008:December 4)

An "employee merit award" was a term interchangeably used with "merit pay awards" for the purposes of inclusion of same in tuition charged by private school for the disabled; they are non-allowable if inconsistent with a plan on file with the Commissioner. State Board dismisses appeal for failure to file notice of appeal in a timely manner. Even if the State Board has the authority to enlarge the time period for filing an appeal, no substantive reason existed for doing so. (Cerebral Palsy League, St. Bd. 2007:Jan. 3)

Motion granted to supplement the record in student residency matter. Appellants appealed Commissioner decision directing payment of $ 22,499.40 in tuition. (Hamilton, Commr. 2007:May 31)

Providers of resident placement and full-day special education services challenged the NJDOE's determination that they were related parties, the disallowance of salaries for non-certified staff and the NJDOE's allocation of occupancy and food expenses. Relationship between the two entities existed because chancellor of diocese was member of second provider's board. (Catholic Family, Commr., 2003: March 3).

Commissioner determined that tuition was not due where one-third of the property was located in district, the parents voted in district and mailing address was in district, but two-thirds of the property lay in an adjacent district. Student was not permitted to enroll in the district. (Commr, 2004: Sept. 1, W.H.S.)

Department of Education properly disallowed $66,000 from the private special education school's tuition reimbursement. School failed to provide the mandated four hours of instructional time on 70 days of the 2003-04 school year when half-day sessions were held. (Titusville Academy, Commr. 2007:July 6)

State Board affirms Commissioner's determination that student was entitled to free public education in the school district. Domicile of child is domicile of parent. Fact that mother sent child to live with her parents when she discovered that her live-in boyfriend was a convicted sex offender did not affect domicile. (E.A.E., St Bd., 2007: May 2) see also (E.A.E., Commr., 2006: Dec. 19).

Commissioner determined that individuals holding the unrecognized title of head teacher primarily involved direct student instruction and correlated to the duties of certified Teachers of the Handicapped. The lack of a supervisor's certificate was not a basis to disallow their salaries and fringe benefits in the private school for the disabled's tuition assessment. (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner found that by treating grandparent's petition for a tuition waiver as a residency dispute, requiring students to remain in district, the board caused grandparent to incur additional tuition liability. The assessment of tuition against the grandparent would therefore be unjust. (C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Commr., 2008: Jan. 23).

County Superintendent's determination of homelessness upheld, and district of origin is responsible for costs of tuition and transportation. (Belleville, Commr., 2007: Nov. 19)

Commissioner determined that duties of CEO and CFO of a private school for the disabled were much broader than business administrator and assistant business administrator and were more consistent with the duties of director and assistant director. Commissioner previously recognized that salaries are attributable towards tuition where duties of CEO are properly analogized to CSA/Executive Director/Director in private school for the disabled. (Youth Consultation Service, Commr., 2007:July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner dismisses parent's petition for reimbursement for summer chemistry class their daughter had taken after failing chemistry; their petition was barred by the 90-day rule as the 90 days began to run as of the district's decision in May 2006 not to investigate or correct the alleged mistreatment of S.B. by her chemistry teacher; even absent a timeliness problem the Commissioner did not have jurisdiction to award consequential damages. (T.B. and M.B., Commr. 2007:May 24, aff'd St.Bd. 2007: Sept. 5)

Commissioner determined that employees did not hold speech language or school nurse certification. Salaries and fringe benefits disallowed as part of tuition charge from priviate school for the disabled. (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that employee did not perform the duties of the recognized title of director of speech. Uunrecognized title submitted by private school for the disabled suggested supervisory responsibilities where employee did not possess a supervisory certification. Salaries and fringe benefits disallowed as part of tuition charge from priviate school for the disabled. (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that training coordinator position had supervisory authority and responsibility requiring supervisor's certificate. Salaries and fringe benefits disallowed as part of tuition charge from priviate school for the disabled.(Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that private school for the disabled could modify job titles on the Annual Program and Fiscal Information form to reflect actual job titles and duties. Both positions required undergraduate degrees, but did not require certification by State Board of Examiners. (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that the job description for mental health clinician, an unrecognized title, correlated to that of school psychologist and therefore

required a certificate. Salaries and fringe benefits disallowed as part of tuition charge from priviate school for the disabled. (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that private school for the disabled is not entitled to include salaries and benefits in the cost of tuition for employees who are not properly certified for the position they are holding or are serving in unrecognized titles. (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that private school for the disabled is not entitled to assess a tuition fee that includes salaries and fringe benefits of professional staff who are not certified but functioning in a position requiring certification or a bachelor's degree. (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner agreed with ALJ that petitioner parent had wantonly and willfully violated the ALJ's Prehearing Discovery Order. Petitioner's assertions were incredible and unbelievable. Board's motion for sanctions was granted with the appropriate remedy being deemed suppression of the claim and dismissal of the petition. (L.A. and C.A. o/b/o P.M.A., Commr., 2007:July 18)

Commissioner of Education had no jurisdiction over Family Part Judge's order in juvenile delinquency matter for DYFS to place the student in at KidsPeace as part of his probationary sentence, with the district of residence to pay for the educational placement. (Neptune, Commr., 2006:March 23)

Student, whose parents are in Haiti where they are poor and in fear of political persecution, and who resides with her uncle who provides her support gratis, was entitled to a free education as an affidavit student. The fact that initial documents presented by the resident were deficient, did not affect the determination where supplemental submissions and testimony established the student's entitlement. District's request for tuition is denied. (Youth Consultation Service, Commr., 2007: July 26) (Youth Consultation Services, Commr., 2007: Oct. 4).

Council denied Commissioner's motion to dismiss complaint of county special services school districts where Commissioner failed to demonstrate that a new age span regulation fell within a constitutional exception allowing unfunded mandates if they were applied to similarly situated governmental and non-governmental entities alike.

Approved private schools would simply pass increased costs on to the public school district. (I.M.O. Special Services School Districts, CLM, 2007: July 26.)

District court affirms ALJ's decision denying claim for reimbursement to parent for payments made to aides in connection with educational program provided to her 11-year-old son. ALJ found that board had offered FAPE in accordance with the IDEA and parent failed to follow regulations regarding reimbursement. Fisher v. Stafford Twp. Bd. of Educ., Civil

Action No. 05-2020 (FLW), 2007 U.S. Dist. LEXIS 14003, Decided February 27, 2007.

Where, after ample notice, a parent failed to answer the board's petition seeking tuition reimbursement for the ineligible attendance of her children in the district's schools, the Commissioner ordered that the parent pay back tuition in the amount of $29,303.08. (Hamilton, Comm'r., 2008: June 25).

Parents were prevented, on the principle of "accord and satisfaction," from obtaining reimbursement for tuition they paid to the school district for the attendance of their non-resident children, as the parties had earlier entered into and fulfilled a settlement agreement permitting the children to attend for a reduced amount of tuition paid in installments. (Barry, Commr., 2007:May 9, aff'd St. Bd. 2007: Sept. 5)

Commissioner found waiver of tuition claim is not properly characterized as a residency dispute. (C.H. o/b/o Minor Grandchildren, B.M., Z.M., and G.P., Commr., 2008: Jan. 23).

The Commissioner affirms DOE's disallowance of a tuition increase for private school for the disabled, in excess of the 10% limit over the school's tentative rate, and also affirms DOE's refusal to consider "employee merit awards" as an allowable expense under N.J.A.C. 6A:23-4.4(a)(15). State Board dismisses appeal for failure to file notice of appeal in a timely manner. Even if the State Board has the authority to enlarge the time period for filing an appeal, no substantive reason existed for doing so. (Cerebral Palsy League, St. Bd. 2007:Jan. 3)

Students deemed not to be residing with grandmother in district. While two court orders granted grandmother "residential custody" of the students, based on surveillance of grandmother's residence, it was determined that students actually resided with their mother in another community. No credible evidence that students actually lived with grandmother. Petitioner ordered to disenroll students and remit $15,472.08 in tuition to the school district. (B.W. o/b/o S.L. and N.A., Commr 2007:Aug. 21)

State Board affirms Commissioner's disallowance on April 6, 2006, of legal fees in the calculation of tuition where persons were convicted of theft by deception. NJDOE's disallowance represented an appropriate exercise of agency expertise in the field of school financing and does not detract from the established principle that schools may include professional fees related to bona fide educational purposes in their tuition rates. (Windsor Learning Center, St. Bd. 2006, Nov. 1).

Students, whose father was incarcerated, were living with mother. Mother lived in another school district and wanted students to remain in their schools for the sake of continuity until father returned and resumed custody. Mother did not appear nor provide reason for nonappearance. Commissioner ordered tuition reimbursement for the 2006-2007 school year in the amount of $14,812.56. (L.D.R. o/b/o T.M. and P.M., Commr. 2007:August 16)

Student from Colombia living with brother in district is neither domiciled in district nor living in the home of someone domiciled in the district due to

family or economic hardship. Brother must pay board tuition in the amount of $5,163.84, plus $78.24 per day for each day of student's attendance after June 6, 2007. (J.A.M. o/b/o C.A.M., Commr. 2007:August 15)

Commissioner denied tuition reimbursement to parent who removed students to a nearby district and paid non-resident tuition where the district of residence barred parent from district property without prior approval. Parent unilaterally removed the children from the district before appealing the district's action to the Commissioner. (Kelly, Commr. 2007: Jan. 3).

Student entitled to a free public education in the school district as a properly enrolled affidavit student. Student lived with grandmother, who assumed all personal responsibility for the student and intends to support the student gratuitously beyond the school year. Parents are not capable of supporting student due to a family or economic hardship and did not send him to the grandmother simply to receive a free education in the school district. (R.A.J. o/b/o C.A.P., Commr. 2007:July 27)

Student deemed ineligible to attend school in the district. Student was neither domiciled in the district nor living in the home of another domiciled in the district because of family or economic hardship. Parent required to pay tuition to the board in the amount of $3,751.02 plus $59.54 per day for each day of the student's attendance in the district after April 4, 2007. (D.R.P. o/b/o B.L., DeP, Commr. 2007:July 25)

State Board affirms Commissioner's determination that student was not a resident of the district for the time period January – June 2006, that parent owed the district tuition for that time period, that the matter be remanded to the OAL for a plenary hearing on the student's current residency status and that the parent ensure that the student attend school pending resolution of the matter. (Y.E., St. Bd. 2007:June 6)

Commissioner determined that tuition paid by a sending district is subject to the 90-day rule. (Mountainside Bd. of Ed., Commr., 2008: Jan. 17).

Commissioner determined that 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., Commr., 2008: Jan. 17).

State Board affirmed Commissioner decision holding that regulations establishing a maximum allowable salary for purposes of the tuition rate chargable to public school districts applied to President/CEO of multi purpose social service organization, a position which the DOE analogized to a CSA/Executive Director. (Youth Consultation Service, Inc., St. Bd. 2007:March 7)

The Commissioner determined that State Board of Education's adoption – on September 8, 2006 – of rules establishing a mechanism for refund of excess surplus to sending districts, and the Department's October 20, 2006 application of that rule to 2004-05 balances for all special services districts, including BCSSD mooted district's petition. Commissioner action, where State Board has already spoken would cause the

Commissioner to engage in improper rulemaking through her decision in this matter. Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313 (1984). (Pemberton, Commr., 2007: April 12).

The Commissioner dismissed Pemberton's petition as to recoupment of 2000-01 tuition overpayment because it was untimely, district should have filed its appeal within 90 days of receiving notice of the recertified rates in February 2004. (Pemberton, Commr., 2007: April 12).

Commissioner disallowed the cost of increased pension benefits of private school for the disabled. Benefits were paid under the school's Social Security Integration Pension Benefit plan. Audit findings showing that benefits paid to four of petitioner's employees did not meet the equitable standard of distribution required by N.J.A.C. 6A:23-4.5(a)23. Commissioner concludes that these expenses are disallowed. Argument of equitable estoppel can only be invoked to prevent manifest injustice; does not allow petitioner to ignore regulations. (Deron, Commr., 2007: March 7, aff'd State Board, 2007: Aug. 1).

Commissioner determined that salaries and related benefits of certain employees should be disallowed or limited where uncertified individuals were serving in positions requiring certification at private school for students with disabilities; where employees were improperly functioning in unrecognized position titles without Department approval; and where the salary of an individual functioning in an administrative position which does not require certification was in excess of the maximum allowable salary in the county where the school is located. (Youth Consultation Services, Commr., 2007: Oct. 4).

Commissioner determined that speech language specialists were properly certified for a good portion of the school year, therefore only a portion of their salaries should be disallowed for tuition computation purposes. (Youth Consultation Services, Commr., 2007: Oct. 4).

Where parent blamed her initial failure to prosecute her appeal of the board's residency determination on her failure to receive notice after becoming homeless, and after being served again failed to prosecute, her appeal was dismissed and the board is awarded tuition reimbursement in the amount of $8,199.36. L.E.H.o/b/o Z.H., Commr. 2009:Nov. 10.

Uncle's pro se residency appeal is dismissed for failure to prosecute; Commissioner orders tuition reimbursement of $ 3,494.82.M.H., Commr. 2009:Nov. 10.

North Brunswick's challenge to the Somerset County Executive County Superintendent's determination that it was the district of origin for the children of a particular family, is dismissed as not timely filed. Bd. of Educ. of N. Brunswick v. Bd. of Educ. of Somerville, (A-6082-07T2) 2009 N.J. Super. Unpub. LEXIS 1390 (App. Div. June 8, 2009).

Parent failed to prosecute her appeal on daughter's behalf; Commissioner orders $12,535.56 in tuition for period of daughter's illegal attendance. M.Y., Commr 2009: August 4. (West Orange)

Although parent failed to prosecute her claims before the board and OAL, Commissioner rejects ALJ's finding that parent owes $10,643 in back tuition and continued payment for each day child continues to attend West Orange schools; orders further proceedings to determine whether in fact parent received notice of the OAL hearing, and whether family may be homeless. L.E.H., Commr.2009:July 2. (update---ECS said not homeless, awaiting Comm'r decision or settlement)

Commissioner grants entry of back tuition assessment for child's illegal attendance, on the judgment docket of the Superior Court pursuant to N.J.S.A. 2A:58-10 in the name of parent as well as in her alias. Z.A., Commr. 2009: July 16.

Commissioner orders docketing of judgment with Superior Court for back tuition award be corrected to reflect correct spelling of names. Rutherford, Commr. 2009: Dec. 7.

Sending districts alleged that improper methodology used by Millville in the calculation of tuition for the 2006-2007 school year resulted in an overcharge of $1,543 per student. Settlement was later reached with the respondent using an actual cost per student of $4,657, and petitioners received tuition credits to reflect the difference. Issue was moot and petition was dismissed by ALJ. Commissioner agreed. Maurice River, Commercial Township, Lawrence, Woodbine, Commissioner 2011: March 14

Commissioner returns the matter of audit of five years of private school for the handicapped tuition to the OAL. Department had previously disallowed approximately $ 9 million in non-allowable costs and expenses and ordered tuition overcharges returned to the sending school districts. Determination of first audit year overpayments was appealed by the private school to the Appellate Division, which found the appeal to be premature as all five years of calculations and all claims as to all parties had yet to be resolved. On return, ALJ was requested to calculate the monetary figure owed by the private school for each of the five audit years in question. Archway, Commissioner 2011: March 18

Commissioner grants motion filed by Toms River to have itself and its former superintendent dismissed from a larger case, in which Berkeley Township Board of Education and Central Regional School District alleged that the Seaside Park board of education and municipal government had conspired to siphon students away from Central Regional by allowing these students to attend respondent's schools tuition- free rather than attend their district of residence, Central Regional. *Berkeley and Central Reg. v. Toms River and Ritacco*, Commr 2013:Jan 10

Board challenged constitutionality of the State Facilities Education Act, *N.J.S.A.* 18A:7B-1 *et seq.* as applied to the school district, arguing that other wealthier school districts and the Department of Education had greater resources. Commissioner of Education lacked jurisdiction to determine the issue. Matter dismissed. *Boonton*, Commissioner 2014: April 10

Unemployment Benefits

Part-time non-tenured paraprofessional teacher aide who received notice in May of her reappointment for the following school year but did not receive an actual contract until August was not entitled to unemployment benefits. Employee had "reasonable assurance" of returning to work " in any such capacity" in the succeeding academic year. Boland v. Board of Review, DOCKET NO. A-2334-10T3, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2012 N.J. Super. Unpub. LEXIS 1411, Decided June 19, 2012.

UNEMPLOYMENT COMPENSATION

Board of review determination reversed. County vo-tech employee who worked during summer in non-instructional lab administrator capacity entitled to benefits. N.J.S.A. 43:21-4 was intended to apply to vacation periods at educational institutions. Weber-Smith v. Board of Review, 337 N.J. Super. 319 (App. Div. 2001).

The granting of former principal's application for unemployment benefits does not establish that he was constructively discharged and suffered an adverse employment action under the NJLAD when he was required to go to the ninth floor of the school administration building which was accessible by elevator for mandatory training. Fusco v. Bd. of Ed. of Newark, 349 N.J. Super. 455 (App. Div. 2002).

Court affirms final determination of the Board of Review, which found that she was ineligible for unemployment compensation benefits for the period of summer recess-- June 14, 2009, through September 5, 2009-- where she worked as a substitute teacher in 2008-9 and had a "reasonable assurance" of employment as a substitute teacher for 2009-10. Fact that she had worked as a full-time teacher in earlier year and had no "reasonable assurance" of employment as a full-time teacher, had no bearing on her eligibility. Michener v. Board of Review, A-5823-09T3 (App. Div. Oct. 11, 2011) (unpublished)

Unemployment compensation statute permitted retired school administrator appointed to a temporary position in a school district for one year to collect unemployment benefits at the conclusion of the contract, while simultaneously receiving his pension benefits as well as contractual compensation; rejects board's public policy argument. Midland Park Bd. of Ed. V. Bd. of Review, A-0235-10T4 (App. Div. Sept. 29, 2011) (unpublished)

Court affirms final decision of the Board of Review that affirmed an appeal tribunal's determination that a former employee who initially received benefits was in fact ineligible for unemployment benefits, in accordance with *N.J.S.A.* 43:21-5(a), because he was discharged from his employment for gross misconduct connected with the work. Court finds that Delaware Valley Regional High School Board of Education did not lack good cause for filing its appeal five days late. The delay in filing the appeal was

neither foreseeable nor within the employer's control. *Walsh v. Board of Review, DOL and Delaware Reg. Bd. of Ed.*, No. A-4993-11T4 (App Div. March 26, 2014) (not for publication)

Court rejects school district's argument that lower court judge erred by finding the terms of the collective bargaining agreement were sufficiently broad to vest the arbitration Panel with authority to decide an issue of "substantive arbitrability" *i.e.*, whether the union had the right to arbitrate these or any grievance because the Agreement had expired; district had argued that the judge, not the panel, should have decided that issue and that because the Agreement expired, CASA had no right to arbitration. Court found that the Agreement includes a clear expression of the parties' intent to have the Panel, not the court, interpret the Agreement. *Newark Pub. Sch. Dist. v. City Ass'n of Supervisors*, No. A-1087-12T2 (App. Div. March 14, 2014)

UNRECOGNIZED TITLES

Board acted arbitrarily in creating the new position of Director of Pupil Personnel Services (PPS), which is not a recognized title in the regulations, was not approved by the County superintendent, and required a "Principal Certificate" – a certificate which does not exist in regulations; pursuant to N.J.A.C. 6A:9-13.7, the Board should have required an Administrative Certificate with an appropriate endorsement for the new position, which includes in its duties district- wide oversight of the administration of special education; neither tenure nor seniority applies across certificates; and accordingly, the petitioner who was a Director of Guidance and Counseling was not entitled to hold the position of Director of PPS as it currently exists. Giardina, 2011 Commr Aug 19

VOCATIONAL SCHOOLS

A comprehensive high school may not also qualify for vocational school status so as to enable the operating local or regional board of education to absolve itself from any obligation for tuition and transportation for resident students wishing to attend a county vocational school program in the same approval area. Prejudgment interest not warranted. (04:Oct. 13, Bergen County Vo-Tech, aff'd St. Bd. 05:Feb. 2)

A local board may permit a pupil to attend a vocational program offered by another district and may pay for attendance if the district does not offer a comparable program; but the local board is not required to do so. (00:Nov. 28, J.K.H., motion granted, St. Bd. 01:March 7, aff'd St. Bd. 01:July 10, aff'd App. Div. unpub. op. Dkt. No. A-6162-00T3, December 17, 2002)(see also 00:Nov. 28, D.M., motion granted St. Bd. 01:March 7, aff'd St. Bd. 01:July 10)

Board was required to pay transportation and tuition for child to attend magnet high school (vocational-technical school for science, math and technology), where district did not offer comparable program (99:July 12, D.F.)

Commissioner determined, pursuant to N.J.S.A. 18A:54-20.1 and N.J.A.C. 6A:19-3.1, that sending-district was required to pay tuition for students attending vocation school, despite the fact that sending-district offered identical courses. (05:June 27, Passaic County Vo-Tech)

Commissioner rejects ALJ's suggestion that a program in performing arts cannot be "vocational"; rather each program must be assessed against the regulatory criterion. Gloucester County Institute of Technology (GCIT) performing arts program is an approved vocational program under then-existing and current statute, and neither absence of DOE-developed competency nor lack of meaningful placement data undermines that finding, nor is it a private vocational school. GCIT may charge tuition and non-resident fees to sending district for nonresidents pursuant to N.J.S.A. 18A:54-20.1(c) and transportation costs pursuant to N.J.S.A. 18A:39-1. (02:July 18, K.B. and Gloucester, decision on remand, aff'd St. Bd. 03:July 2) See also, motion for emergent relief denied 97:Sept. 25; Commissioner decision 97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1)

County Institute of Technology seeking tuition and transportation from sending district, could rely on DOE's final approval to establish that it complied with vocational program approval procedures set forth in administrative code (N.J.A.C. 6:43-8.2), where DOE may have destroyed related records and no affirmative evidence was presented to show it did not comply. (02:July 18, K.B. and Gloucester, decision on remand, aff'd St. Bd. 03:July 2) See also, motion for emergent relief denied 97:Sept. 25; Commissioner decision 97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1)

District fails to allege facts that would demonstrate it offers program comparable or superior to that offered by vocational tech magnet school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

District not obligated to pay tuition and transportation for pupils to attend dance program at Red Bank Regional; Red Bank's special status as LAVSD terminated upon repeal of code provision. (00:Nov. 28, J.K.H., motion granted St. Bd. 01:March 7, aff'd St. Bd. 01:July 10, aff'd App. Div. unpub. op. Dkt. No. A-6162-00T3, December 17, 2002)(See also 00:Nov. 28, D.M., motion granted St. Bd. 01:March 7, aff'd St. Bd. 01:July 10; and 02:Dec. 6, Union County Vo-Tech, aff'd for the reasons expressed therein, St. Bd. 03:May 7)

District is responsible for transportation costs of student's attendance at Gloucester County Institute of Technology Academy of Performing Arts as district does not have a comparable program available to student. (97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1, decision on

remand 02:July 18, aff'd St. Bd. 03:July 2) see motion for emergent relief denied 97:Sept. 25)

District was time-barred from avoiding payment for current year to vocational magnet school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

Elimination of LAVSD in code in 1991 did not signify demise of such programs, although mandatory and permissible enrollment was affected; as per 1994 AG opinion, district of residence is only required to pay tuition if it approves the placement, pursuant to a sending-receiving relationship or otherwise (unlike county vocational schools). (00:Nov. 28, J.K.H., motion granted, St. Bd. 01:March 7, aff'd St. Bd. 01:July 10, aff'd App. Div. unpub. op. Dkt. No. A-6162-00T3, December 17, 2002)

For the purpose of N.J.S.A. 18A:54-20.1(a) and N.J.A.C. 6A:19-3.1, a local board may not refuse to pay tuition/transportation for its resident students in attendance at a county vocational school, unless the local district operates its own "vocational school"; a local or regional school district does not operate its own "vocational school" simply because it offers a curricular track centered on a DOE-approved, CIP-coded vocational program. (04:Oct. 8, Somerset)

Home schooled student was entitled to tuition costs and transportation to attend vocational school in the afternoon. (99:June 24, Jacobs)

Magnet school operated by county vo-tech is not a gift of public funds, does not contravene Perkins Act nor constitution, if based on an approved vocational program. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

N.J.S.A. 18A:54-20.1(a) and N.J.A.C. 6:43-3.11 require a district to pay tuition and transportation of a resident home-schooled pupil who has been accepted by the district's own county vocational school. (99:June 24, Jacobs, set aside and remanded, St. Bd. 00:June 7)

Performing arts program was an approved vocational education for which district of residence, having no comparable program, must pay tuition. (99:Dec. 16, Gloucester, remanded St. Bd. 00:June 7, aff'd with clarification, St. Bd. 00:Aug. 2)

Policy precluding vo-tech magnet school students from participating in sports at sending school violated NJSIAA Bylaws. (99:Nov. 29, G.W.S.)

Programs and courses of study, and not individual school, must be approved by Commissioner in vocational school and placed in DOE's official directory. (00:July 10, Ramapo Hills, aff'd St. Bd. 02:Feb. 6)

Program's inclusion in the Department of Education's Directory of Verified Occupational Educational Programs, without giving parties an opportunity to challenge designation, is insufficient to be considered a vocational program under the vocational education statute. (97:Dec. 29, K.B., rev'd and remanded St. Bd. 00:March 1, decision on remand 02:July 18, aff'd St. Bd. 03:July 2) see motion for emergent relief denied 97:Sept. 25)

Pupils attending both a private school and a vocational school on a shared-time basis were statutorily entitled to transportation to both schools. (99:Nov. 29, S.V.)

School not entitled to exemption in 18A:54-20.1 where vocational programs delivered through comprehensive high school rather than through county vocational school. (02:Dec. 6, Union County Vo-Tech, aff'd for the reasons expressed therein, St. Bd. 03:May 7)

Settlement approved regarding payment of tuition and transportation by school board for pupil's attendance at county vocational school. (98:Oct. 19, M.R.v. Pompton Lakes)

Standing: District whose pupils are allowed to attend vocational school's magnet program had standing to mount challenge against vocational school. (00:Sept. 22, Scotch Plains-Fanwood, aff'd St. Bd. 02:Feb. 6)

The "comparable program" threshold requirement in the regulations exceeds the enabling statute. (00:July 10, Ramapo Hills, rev'd St. Bd. 02:Feb. 6)

Vocational student's failing grade due to attendance problems, rendering him ineligible for a second year for the second year of his vocational education program, was not arbitrary or capricious. (04:Sept. 30, K.D.)

Vo-tech academies ("magnet schools") that offered college preparatory programs were approved pursuant to N.J.A.C. 6:43-8.2 and conformed to state and federal definitions of "vocational education." District's programs were not comparable to the programs provided in the Academy; therefor district is liable for tuition and related costs to Academy for resident students. (00:July 10, Ramapo Hills, aff'd St. Bd. 02:Feb. 6)

VOLUNTEERS

Use of uncertified volunteer to teach Spanish under supervision of certified teacher dismissed as moot because arrangement at issue ceased to exist and because amendment to Professional Licensure Standards Code providing for conditional certification of world languages teachers adopted. (01:March 7, Middletown Ed. Assn.)

WHISTLEBLOWER

Application for preliminary injunction denied. Whistleblowers sought injunction temporarily and permanently enjoining school district from conducting an investigation to determine the identities of those who had disclosed the fact that children of a board member and two employees were receiving free lunch benefits to which they were not entitled. Plaintiffs failed to demonstrate the likelihood of success on a CEPA claim, first amendment claim or contract claim. Whistleblower 1 v. Bd. of Educ. of Elizabeth, Civil Action No. 11-6480 (SDW)(MCA), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 2011 U.S. Dist. LEXIS 135203, Decided, November 22, 2011.

WITHDRAWAL

Parents withdrew challenge to movement of their children to another school as part of a school district redistricting plan. V.L and C.L., Commissioner, 2012: October 26

WORKERS COMPENSATION

Board improperly charged teacher sick leave for work-related injury. Commissioner cautions against effectuating terms of agreement prior to settlement. Settlement approved. (02:June 26, Butcher)

Custodian filed a petition before the Commissioner seeking restoration of sick and personal leave asserting that his absences were a work-related disability caused by the psychological stress induced by harassment from fellow employees. Commissioner adopted ALJ's dismissal for want of jurisdiction, noting that the custodian had failed to file a claim before the Division of Worker's Compensation and holding that the Commissioner should refrain from exercising jurisdiction until the Division has determined the work relatedness of the asserted injury. (04:Feb. 5, Graziosi)

Determination of eligibility for temporary disability benefits by Workers' Compensation court sufficient to enable Commissioner to make a determination whether sick leave benefits under N.J.S.A. 18A:30-2.1 exists. No need to await permanent disability award. Sick and vacation days ordered restored. (01:Feb. 26, Frabizio)

Extended sick leave under N.J.S.A. 18A:30-2.1

District found that teacher was not injured in an accident arising out of her employment and properly charged her sick leave, where teacher had a car accident while looking for a parking spot after signing in at the work premises; Workers Compensation Court had approved a settlement but had not determined whether she was injured in the course of her employment. (04:June 17, Elliott)

Failure of teacher to file workers compensation claim requires dismissal of her claim that absences were due to work-related incident, and that they therefore should not be charged to sick leave. (00:Nov. 8, Schmidtke)

Ninety-Day Period

Petition dismissed as untimely. Custodian failed to file his claim within the 90-day period prescribed by N.J.A.C. 6A:3-1.3(d)(1). (04:March 31, Huhn)

Nurse who settled workers compensation matter not entitled to additional reimbursement for sick leave days pursuant to N.J.S.A. 18A:30-2.1, where she believed the settlement already included payment for those days, and agreement evidenced a waiver of the right to seek sick leave. (00:Oct. 16, Sheridan)

Part-time private school psychologist for special education students was an employee and not an independent contractor. Therefore, injuries sustained

during student-staff touch football game arose out of and were in the course of his employment and, thus, compensable under workers' compensation. Auletta v. Bergen Center for Child Development, 338 N.J. Super. 464 (App. Div. 2001)

Petitioner seeking sick leave under N.J.S.A. 18A:30-2.1 must file petition under school law within 90 day filing period, even though Commissioner should hold matter in abeyance until determination by Division of Workers Compensation is rendered. (99:Sept. 7, Shereshewsky)(99:Sept. 7, Yaffee)

Settlement approved. (02:May 14, Arena)(03:June 2, McDay)(03:July 17, Evans)

Settlement approved restoring sick leave for injury on the job. (03:July 17, S.H.)(03:July 24, Menstrasi)

Sick leave under N.J.S.A. 18A:30-2.1 is not limited to the time period for which benefits are awarded by the Division of Workers Compensation (see Verneret); therefore, where leave was directly attributable to effects of earlier injury and subsequent surgery, shop teacher was entitled to full salary without loss of sick time under N.J.S.A. 18A:30-2.1, even though leave extended beyond period of time for which workers compensation benefits were awarded. (02:Oct. 30, Collins)

Teacher claimed that when board charged her sick days for a work related injury, it violated N.J.S.A. 18A:30-2.1. A letter advising her that her absence would be treated as if due to personal illness and not work-related injury leave, served as final notice and immediately triggered the 90 days. That time period was not tolled by her filing a Workers Compensation claim. Even if an alleged work-related injury also is the subject of a worker's compensation petition, any school law claim under N.J.S.A. 18A:30-2.1 must still be filed within ninety days of the Board's denial. (05:Jan. 20, Abercrombie, parties ordered to supplement the record on appeal, St. Bd. 05:May 4, St. Bd. affirms Commissioner decision for the reasons expressed therein, 05:July 6)

Teacher claiming "psychological injury due to stress" was not entitled to leave benefit under N.J.S.A. 18A:30-2.1 where she failed to demonstrate an illness that "arose out of an in the course of her employment" pursuant to the standard applicable in workers compensation cases. (01:Sept. 20, Franks)

Teacher out of time to challenge district's charging sick days for work-related injury. (99:Dec. 23, Mello)(03:April 14, Gillespie)

Teacher's acceptance of lump-sum workers' compensation settlement does not preclude claim for sick leave benefit under N.J.S.A. 18A:30-2.1 unless there is an intentional relinquishment of that right. (01:Sept. 20, Franks)

Teacher's complaint for full salary under N.J.S.A. 18A:30-2.1 is dismissed as she voluntarily decided not to file a workers' compensation claim; the determination of work-relatedness of an injury should be made in a workers' compensation case except in limited instances such as where the Division of Workers' Compensation has no jurisdiction or the workers compensation case is settled. (02:Oct. 7, Bruno-Schwartz)

Temporary disability: sick leave restored after determination of temporary disability. (02:June 26, Magaw)(02:June 26, Cavera)

Tenure charge of incapacity was not premature just because teacher has not yet received Workers Compensation determination of whether injury arose from employment; total disability was not disputed, and district's obligation under N.J.S.A. 18A:30-2.1 would survive the tenure determination. (99:Jan. 8, Jabour)

Where teacher failed to file a Worker's Compensation claim and instead chose to rely on a representation allegedly made by district personnel that her injury was work-related, her leave would be charged against her sick time, as she was not entitled to the benefits of N.J.S.A. 18A:30-2.1. (05:Jan. 12, Wilkerson)

Where teacher never received a determination from the Division of Worker's Compensation that his absences were due to a work-related injury, the absences were not improperly charged to his sick leave bank. (00:Jan. 24, Medeiros)

Where teacher settled Workers Compensation matter, he waived his right to any claim for benefits under N.J.S.A. 18A:30-2.1; relief under that statute is dependent upon resolution of the contested issue of whether the accident was the "cause" of his injury; having chosen to forego such determination, petitioner may not seek more favorable outcome from Commissioner. (99:April 13, Marino)

Petitioner failed to prove that the Board's rejection of her claim for additional workers' compensation days rather than sick days was arbitrary, capricious, unreasonable, or not otherwise in accordance with the law. Gusler, Commr, 2011 Jan 3.

Board violated N.J.S.A. 18A:30-2.1 when it docked grounds and maintenance employee for nine vacation days during a period of time when he was out of work and receiving worker's compensation during the 2009-2010 school year. Docking the petitioner for vacation time against his entitlement for the subsequent year has the same effect as assessing an employee vacation time while being out on workers compensation-related leave. Gray, Commissioner 2011:March 14

Appellate Division affirms Workers Compensation Court dismissal of plaintiffs' 2004 petition for workers compensation benefits as time barred. Plaintiff was employed by the board between 1990 and 1993 while the asbestos remediation program was underway in schools in which he worked. There is no requirement that the WCJ consider expert testimony before granting a motion to dismiss based on the statute of limitations. Russo v. Hoboken Bd. of Educ., DOCKET NO. A-1861-10T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2011 N.J. Super. Unpub. LEXIS 2910, Decided November 29, 2011.

Court affirms orders that were issued by a judge of compensation requiring the school board to pay a 25% statutory penalty to injured teacher, where the board unilaterally decided, without the approval of the compensation judge, to refuse to issue any further payments of previously-ordered

workers' compensation temporary disability payments. Court rejects argument that teacher's receipt of SSD benefits entitled the board to refuse to pay workers' compensation benefits; further, record does not indicate that the award of benefits for the summer created a windfall (see Outland). Ferguson v. Trenton Bd. of Ed., No. A-3053-10T4, 2012 N.J. Super. Unpub. LEXIS 227 (App. Div. February 3, 2012)(per curiam) (unpublished)

Matter dismissed for failure to prosecute. Employee claimed that board failed to pay full salary without loss of sick time for an injury suffered in the course of his employment. Matter was inactive, pending resolution of Workers' Compensation case. When matter was activated, employee failed to respond to telephone conference, settlement terms communication and ALJ letter. ALJ concluded case had been abandoned. Commissioner concurred. Weiss, Commissioner 2012: October 26

Appeal asserting that the Board failed to pay full salary without loss of sick time for an injury sustained in the course of employment, was placed on the inactive list pending resolution of a related Worker's Compensation case, and later dismissed for failure to prosecute. *Wallace v. Mount Olive Bd. of Ed., Commr 2012:Nov. 1.*

Appellate Division reverses order of the workers' compensation judge denying the Board's motion for reimbursement from employee for overpayment of workers' compensation. The Appellate Division reversed and remanded the claim back to the Division for further proceedings, to include an evidentiary hearing wherein the net worth of the petitioner, the amount of petitioner's income and expenses and whether or not a payment plan would be appropriate, would be considered. The court's basis for the remand was "given the paucity of evidence, there was no reasonable basis for the judge of compensation's factual finding that petitioner had limited resources and therefore it would be inequitable to require him to repay the duplicative payments for the same disability." *Weiner v. Elizabeth Bd. of Educ*., No. A-0627-12T2, 2013 N.J. Super. Unpub. LEXIS 1729 (App. Div. July 15, 2013)

Commissioner dismisses matter for failure to prosecute matter in which board charged her accumulated sick leave for absences related to a work-related injury, which matter had been the subject of a pending Worker's Compensation case that was repeatedly placed on the inactive list between 1999 and 2013, and then scheduled for a hearing where neither party appeared. *Longo-Sare*, Commissioner 2014:June 10.

Speech therapist contended that the Board improperly docked her sick leave bank and placed her on unpaid leave following a work–related injury, in contravention of *N.J.S.A.* 18:30-2.1. Petitioner was injured on March 1, 2013. The injury was determined to be work-related and compensable under Workers' Compensation. Commissioner agreed with ALJ that speech therapist was disabled until October 1, 2013; her injuries were compensable until that date. The extent and duration of the speech therapist's disability remains in contention before the Division of

Workers' Compensation. The Commissioner is without jurisdiction until the Division makes its final determination in this matter, making the petition filing premature; matter dismissed without prejudice. *Weiss*, Commissioner, 2014: September 4

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ZONING

In action in lieu of prerogative writs, Appellate Division finds that Law Division did not err in the standard of review it used over Planning Board's determination that there was a change in use requiring a variance, when

congregation sought to operate a religious school at a synagogue that was a pre-existing nonconforming use, finding it was an expansion of such use. Board did not act arbitrarily nor did its decision violate the anti-discrimination provisions of N.J.S.A. 40:55D-66(b). Congregation Anshei Roosevelt v. Planning & Zoning Bd. , NO. A-1390-09T3, 2011 N.J. Super. Unpub. LEXIS 291 (App. Div. February 9, 2011).

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