

ABOLITION OF POSITION

(Includes decisions on seniority rights and tenure entitlement claims)

Generally

After-acquired certificate: Teachers have tenure entitlements only to those positions for which they are properly certified for on the date of the RIF; after acquired endorsement does not expand tenure rights (96 N.J.A.R.2d (EDU) 995, Ressler II, reversed and remanded St. Bd. 98:Feb. 4, decision on remand 99:Feb. 5; aff'd St. Bd. 99:May 5, aff'd App. Div. unpub. opinion Dkt. No. A-5463-98T5, May 30, 2000)

Assistant Superintendent: Failure to file timely petition leads to dismissal of claim (94:May 2, Eberhard)

N.J.S.A. 18A:28-9 empowers a school board to reduce the size of its teaching staff whenever, "it is advisable to abolish any positions for reasons of economy or because of reduction in the number of pupils or of changes in the administrative or supervisory organization of the district or for other good cause." (96 N.J.A.R.2d (EDU) 106, Lightdale) (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7, aff'd App. Div. unpublished opinion Dkt. No. A-3406-97T1, April 7, 1999)

Reduction in hours of employment is a reduction in force (96 N.J.A.R.2d (EDU) 581, Ressler, aff'd in part, rev'd in part, St. Bd. 97:Oct. 1, aff'd App. Div. unpublished opinion Dkt. No. A-1457-97T1, December 28, 1998)

Reduction of full-time position to part-time: Commissioner's dismissal of petition concerning RIF improper (96:Aug. 1, Peters, rev'd and remanded St. Bd. 98:April 1)

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

Burden of proof

Tenured teacher has the ultimate burden when contesting action by a board of education demonstrating both that his/her seniority rights were violated and that he/she suffered harm so as to entitle him/her to redress as a result (96 N.J.A.R.2d (EDU) 229, Elson)

Child Study Teams

Boards of education may in good faith eliminate CSTs for reasons of economy and join with one or more boards of education or state agencies for basic CST services. Vicenzino v. Bedminster Bd. of Ed., 312 N.J. Super. 243 (App. Div. 1998), aff'g St. Bd. 1997 S.L.D. (July 7), aff'g 97 N.J.A.R.2d (EDU) 356, certif. denied by N.J. Supreme Court, C-87, 46,322, (Sept. 11, 1998)

ABOLITION OF POSITION

If a board of education establishes a CST, each CST shall be an employee of the board of education. Single positions may not be abolished. Vicenzino v. Bedminster Bd. of Ed., 312 N.J. Super. 243 (App. Div. 1998), aff'g St. Bd. 1997 S.L.D. (July 7), aff'g 97 N.J.A.R.2d (EDU) 356, certif. denied by N.J. Supreme Court, C-87, 46,322, (Sept. 11, 1998)

Decision to abolish/Board's authority to abolish

Abolishing the position of a "core" child study team member and reallocation of at least some of her duties to an Educational Services Commission is violative of N.J.A.C. 6:28-3.1(b) and 6:28-5.1(c) and petitioner must be reinstated to her school social worker position.

Vicenzino v. Bedminster Bd. of Ed., 312 N.J. Super. 243 (App. Div. 1998), aff'g St. Bd. 1997 S.L.D. (July 7), aff'g 97 N.J.A.R.2d (EDU) 356, certif. denied by N.J. Supreme Court, C-87, 46,322, (Sept. 11, 1998)

Accommodate employee rights; board of education need not structure programs or position (93 N.J.A.R.2d (EDU) 407, O'Neill, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. unpublished op. Dkt. No. A493-93T1, June 16, 1994)

Assistant Superintendent (89:2901, Kaprow, aff'd w/mod. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), certif. granted 130 N.J. 16 (1992), aff'd 131 N.J. 573 (1993)

Athletic Director position was not abolished where newly-created position of Director of Athletics and Activities encompassed the same duties as the Athletic Director position (96 N.J.A.R.2d (EDU) 861, Connor, settlement approved St. Bd. 97 N.J.A.R.2d (EDU) 255)

Attendance Officer (88:995, Harris, dismissed St. Bd. 88:1006, aff'd App. Div. unpub. op. (Dkt. No. A-2038-88T2, March 28, 1990))

Board decision to RIF part-time CST and subcontract services upheld; contracted for services supplemented services provided by full-time CST and did not properly supplant RIF'd CST duties (94 N.J.A.R.2d (EDU) 583, Mullin)

Board improperly RIF'd two employees while keeping employees with lesser seniority (97 N.J.A.R.2d (EDU) 283, Brueck and Fochesato, appeal dismissed St. Bd. 97 N.J.A.R.2d (EDU) 555)

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)

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- Board's RIF, abolishment of two positions and creation of new CEO/Marketing Education Coordinator was within its discretion and authority (96 N.J.A.R.2d (EDU) 665, Kopko)
- Declining enrollment; good faith; failure to formally abolish position before reassigning tenured teacher technical defect which does not invalidate board action (92:Feb. 20, English)
- District superintendent does not discriminate against school administrators by abolishing positions for non-discriminatory reasons (95 N.J.A.R.2d (EDU) 1, Walsh, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 204, aff'd App. Div. 97 N.J.A.R.2d (EDU) 315)
- Entire teaching staff (issued notice) not unlawful, teachers reemployed; no interruption of services (97 N.J.A.R.2d (EDU) 50, May)
- Failure to abolish position formally; position not abolished (90:340, Guerra, aff'd St. Bd. 90:354)
- Failure to abolish; tenured department head entitled to stipend attached to that position absent abolition of position, transfer to separately tenurable teaching position or certification of tenure charges (94 N.J.A.R.2d (EDU) 391, Wickenheisser, aff'd in relevant part St. Bd. 97 N.J.A.R.2d (EDU) 311)
- Full-time position rified to three part-time positions; record insufficient to determine whether board obligated to consolidate three part-time positions to protect teacher's tenure rights (93 N.J.A.R.2d (EDU) 189, Taxman, aff'd in part, rem'd in part St. Bd. 93:Sept. 1)
- Full-time to part-time (LDT/C position); failure to adjust its plan for special education and have adjustments approved by county superintendent before reducing was improper (93 N.J.A.R.2d (EDU) 91, Primka, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 94, aff'd with clarification App. Div. unpub. op. (Dkt. No. A-2427-92T3, Jan. 18, 1994)
- Notice - Curriculum specialist not entitled to 60 days notice of abolition of position and transfer to teaching position (96 N.J.A.R.2d (EDU) 688, Allen)
- Part-time; board had no obligation to accommodate a senior teacher reduced to part-time by restructuring curriculum to full-time (90:240, Nazarechuk)
- Part-time child study team abolished; retains full time child study team; ALJ services of outside are supplemental contracted services and permissible (96 N.J.A.R.2d (EDU) 229, Elson)

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Political motivation; feelings, innuendos and assumptions insufficient to prove improper (94 N.J.A.R.2d (EDU) 258, Gittleman, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 266; aff'd and remanded for modification and further proceedings, App. Div. 96 N.J.A.R.2d (EDU) 160; certif. den. 144 N.J. 585 (1996); remanded St. Bd. 6/5/96, decision on remand 97 N.J.A.R.2d (EDU) 200, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 420, aff'd App. Div. unpublished opinion Dkt. No. 5167-96T2, Sept. 3, 1998)

Position not legally mandated; board may abolish (Apprenticeship coordinator) (90:340, Guerra, aff'd St. Bd. 90:354)

Resignation does not effectuate a RIF; board not entitled to apply seniority standards in wake of resignation (96:Oct. 1, Ressler, St. Bd. rev'g in relevant part, 97 N.J.A.R.2d (EDU) 581, aff'd App. Div. unpublished opinion Dkt. No. A-1457-97T1, Dec. 28, 1998)

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

Superintendent; board obligated to consider recommendation to abolishing full-time positions in favor of part-time positions (but board is not bound) (93 N.J.A.R.2d (EDU) 91, Primka, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 94, aff'd with clarification App. Div. unpub. op. Dkt. No. A-2427-92T3, Jan. 18, 1994)

Superintendent; failure to consult prior to RIF renders board decision arbitrary and capricious (Primka, App. Div. unpub. op. Dkt. No. A-2427-92T3, Jan. 18, 1994, aff'g St. Bd. 93 N.J.A.R.2d (EDU) 94, aff'g 93 N.J.A.R.2d (EDU) 91, quoting DiNardo 82:858)

Superintendent's objection - following consultation board may undertake RIF over - no obligation to have superintendent's recommendation (Primka, App. Div. unpub. op. Dkt. No. A-2427-92T3, Jan. 18, 1994, aff'g St. Bd. 93 N.J.A.R.2d (EDU) 94, aff'g 93 N.J.A.R.2d (EDU) 91, quoting DiNardo 82:858) See Brescia, Rotondo, N.J.S.A. 18A:27-4.1

Superintendent's recommendation tainted; board's action improper (90:1391, Dearden, aff'd St. Bd. 91:2538, aff'd on motion to reconsider St. Bd. 91:2536)

Teaching duties; assignment of to tenured supervisor does not constitute a RIF (93 N.J.A.R.2d (EDU) 670, Gargano)

Good faith found

Assistant Business Administrator position validly abolished as part of reorganization (95 N.J.A.R.2d (EDU) 278, Thompson)

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- Attendance Officer (88:995 Harris, aff'd St. Bd. 88:1006, aff'd App. Div. unpub. op. (Dkt. No. A-2038-88T2, March 28, 1990))
- Clerk typist (93 N.J.A.R.2d (EDU) 407, O'Neill, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. unpub. op. (Dkt. No. A-493-93T1, June 16, 1994))
- Comprehensive reorganization (assistant superintendent) (91:1066, Eberhard, aff'd St. Bd. 93:March 3, rem'd App. Div. unpub. op. (Dkt. No. A-3984-92T3, June 27, 1994, rem'd St. Bd. 94:Aug. 3))
- Declining enrollment and economic considerations upheld; allowing five students to take abolished course at another high school does not constitute transfer of program under N.J.S.A. 18A:28-6.1 and does not trigger tenure rights at second school (building trades position) (93 N.J.A.R.2d (EDU) 600, Bausmith)
- Declining enrollment, and lack of job placement justified abolition of interior design position; age discrimination/free speech violation not established (96 N.J.A.R.2d (EDU) 331, Guarini, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 335)
- Defense of tenure charge found not to be basis for elimination of Attendance Officer (88:995, Harris, aff'd St. Bd. 88:1006, aff'd App. Div. unpub. op. (Dkt. No. A-2038-88T2, March 28, 1990))
- Economy, reduction in pupils, reorganization or other good causes (90:340, Guerra, aff'd St. Bd. 90:354)
- Extended sick leave: (Katzenbach School) abolition of art position was not pretext for removing incumbent (95 N.J.A.R.2d (EDU) 255, Marin)
- Food service department reorganize based on outside consultant's report (94 N.J.A.R.2d (EDU) 25, Nuber)
- Full-time positions to part-time; decline in pupil enrollment and defeat of current expense budget (93 N.J.A.R.2d (EDU) 438, McGlynn)
- Negotiations concerning public agency's employees' reduction of workweek were preempted by statutory and regulatory comprehensive demotional layoff scheme. State v. CWA, 285 N.J. Super. 541 (App. Div. 1995)
- Subcontract for custodial services made in good faith based on economic reasons (94 N.J.A.R.2d (EDU) 172, Angel, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 423)

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Subcontract with ESC for services upheld; decision made in good faith for economic reasons (speech correctionist) (92 N.J.A.R.2d (EDU) 197, Impey, aff'd St. Bd. 92 N.J.A.R. 2d (EDU) 427, aff'd 273 N.J. Super. 429 (App. Div. 1994), aff'd 142 N.J. 388 (1995)

Vacancy; RIF'd teacher not entitled to temporary position over long-term substitute; one year leave of absence does not create a vacancy. Lammers, 134 N.J. 264 (1993), rev'g 260 N.J. Super. 390 (App. Div. 1992), rev'g St. Bd. 91:2570, rev'g 90:1500)

Contracted services; supplanting or supplementing of the existing team members "involves a review of all surrounding facts and circumstances." (96 N.J.A.R.2d (EDU) 229, Elson)

Entire teaching staff (issued notice) not unlawful, teachers reemployed; no interruption of services (97 N.J.A.R.2d (EDU) 50, May)

Part-time clerk-typist positions in district cannot be combined because duties performed simultaneously at different locations (93 N.J.A.R.2d (EDU) 407, O'Neill, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. unpub. op. Dkt. No. A-493-93T1, June 16, 1994)

Privatization - Contracted were not supplementary, beyond authority of board to contract out (96 N.J.A.R.2d (EDU) 229, Elson)

Timing: Board's April decision to abolish constituted RIF which triggered teacher's tenure rights to full-time position even though teacher re-hired in September (93 N.J.A.R.2d (EDU) 419, Mueller, appeal dis. as moot when withdrawn on remand, 93:Aug. 18)

Fiscal Monitor's Authority to Abolish

Authority of fiscal monitor to abolish position: See ALJ decision (96 N.J.A.R.2d (EDU) 321, Dearden, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 331, aff'd App. Div. 97 N.J.A.R.2d (EDU) 318)

Commissioner's authority is sufficiently broad to encompass the appointment of a Fiscal Monitor with power to abolish a position and terminate an employee (96 N.J.A.R.2d (EDU) 20, Wollman, reversed on other grounds, St. Bd. 98:Jan. 7, aff'd App. Div. unpublished opinion Dkt. No. A-3406-97T1, April 7, 1999)

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Fiscal Monitor's authority to abolish positions without board's approval could not reasonably be inferred from scope of powers set forth in administrative order that appointed the fiscal monitor (98:Jan. 7, Wollman, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 20, aff'd App. Div. unpublished opinion Dkt. No. A-3406-97T1, April 7, 1999)
Notice - Curriculum specialist not entitled to 60 days notice of abolition of position and transfer to teaching position (96 N.J.A.R.2d (EDU) 688, Allen)

Procedure

Although Fiscal Monitor's abolishment of position was ultra vires, it became lawful after board acted to ratify a proposal to abolish the position (98:Jan. 7, Wollman, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 20, aff'd App. Div. unpublished opinion Dkt. No. A-3406-97T1, April 7, 1999)

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Notice - Curriculum specialist not entitled to 60 days notice of abolition of position and transfer to teaching position (96 N.J.A.R.2d (EDU) 688, Allen)

Reinstatement

Board is prohibited from abolishing the position of school social worker, a core member of the Child Study Team, and contracting with an Educational Services Commission for those services (97:Aug. 20, Borough of Morris Plains, aff'd St. Bd. 98:Feb. 4)

Preliminary hearing not required for abolition of veteran's position (96 N.J.A.R.2d (EDU) 321, Dearden, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 331, aff'd App. Div. 97 N.J.A.R.2d (EDU) 318)

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Prevailing individual is entitled to appointment to an available position, seniority credits, back pay, stipend and other economic emoluments of employment, including appropriate pension fund adjustments (96 N.J.A.R.2d (EDU) 135, Kish)

Reinstatement, compensation, related emoluments and seniority remedy for improper RIF. Duty to mitigate compensation (97 N.J.A.R.2d (EDU) 283, Brueck and Fochesato, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 555)

Removal of tenured teacher did not result from abolition (91:1123, Savarese)

Supervisor (tenured); entitled to position of Facilitator/Subject Supervisor after RIF from position of Reading Resource Teacher/Facilitator Generalist (96 N.J.A.R.2d (EDU) 135, Kish)

Salary on Re-employment

Absent existing salary schedules, principal's salary upon reemployment should take into consideration the years she would have had in the district had the district maintained an eligibility list (98:June 25, Springer)

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

Non-binding arbitration; enforcement of order of salary is with the courts, not the Commissioner (96 N.J.A.R.2d (EDU) 27, Picot)

Reinstatement, compensation, related emoluments and seniority remedy for improper RIF. Duty to mitigate compensation (97 N.J.A.R.2d (EDU) 283, Brueck and Fochesato, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 555)

Secretaries

Part-time (1/2), 12-month secretary entitled to vacant 12 month full-time secretarial position (96 N.J.A.R.2d (EDU) 727, Sherrill, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 731)

Secretaries/Payroll Clerks

Board violated payroll clerks tenure rights when they voted to terminate them while retaining non-tenured individuals in positions that the payroll clerks could be qualified for; Board owed clerks a duty to notify them in a clear and unequivocal manner the steps necessary to demonstrate their qualifications (97:Dec. 4, Foster & Kling)

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Seniority

Generally

- Accrual of seniority commences on date actual service in category begins, not date certification acquired (93 N.J.A.R.2d (EDU) 891, Chammings)
- Acquisition; seniority and reduction in force statutes are not applicable where tenure not yet acquired (Director) (90:1073, Baskerville, aff'd St. Bd. 90:1082)
- Acquisition; staff member must have actual experience in the particular subject area or field (96 N.J.A.R.2d (EDU) 106, Lightdale)
- Affirmative action; board violated Title VII when it used race as a seniority tie breaker. Taxman v. Bd. of Ed. of Twp. of Piscataway, 91 F.3d 1547 (3rd Cir. 1996, certiorari granted U.S. Supreme Court _____), (matter settled; withdrawn)
- Assignment of teaching duties to tenured supervisor based on sound educational considerations and was not violative of supervisor's seniority rights (93 N.J.A.R.2d (EDU) 670, Gargano)
- Assignment of teaching duties to tenured supervisor while supervisor with less seniority was not assigned teaching duties not violation of senior tenured supervisor's rights absent RIF (93 N.J.A.R.2d (EDU) 125, Dallmeyer)
- Auto mechanics teacher with least seniority properly reduced to half-time position (96 N.J.A.R.2d (EDU) 657, Clapp)
- Board directed to adopt written policy governing selection of candidate in event of tie in seniority policy; absent policy governing selection in case of tie in seniority, *de facto* recognition must be given to candidate selected by board (93 N.J.A.R.2d (EDU) 891, Chammings)
- Board violated seniority and tenure rights by terminating individuals pursuant to a reduction in force and delegating responsibility for the instruction of those courses to other teachers having less seniority and/or tenure rights (97 N.J.A.R.2d (EDU) 283, Brueck & Fochesato, appeal dismissed, St. Bd. 97 N.J.A.R.2d (EDU) 555)
- Calculation; no error found (90:945, Taxman)
- Category; two tenured individuals, seniority determinative only if both have seniority in same category (91:1929, Weinstein, aff'd St. Bd. 92:Apr. 1)

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- Clerical employees; seniority rights do not accrue (95 N.J.A.R.2d (EDU) 66, Effenberger, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 203, aff'd App. Div. 96 N.J.A.R.2d (EDU) 690)
- Discontinuation of School: N.J.S.A. 18A:28-6.1 requires that teachers transferred to a receiving district upon the closure of sending district's school are entitled to have their prior service in sending district considered in establishing level of compensation, including longevity payments. Union could not bargain away the teachers' statutory rights to full credit for such prior service. Board of Ed. v. Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)
- Dissolution of Regional School District: Seniority will be preserved and honored as of the date of the actual dissolution, not the determination to dissolve (97 N.J.A.R.2d (EDU) 217, Stagaard, aff'd St. Bd. 97:Oct. 1)
- Eligible for endorsement; no seniority accrues; must be properly certified (90:1192, Morano)
- Endorsement; board violated seniority rights when it reduced full-time bookkeeping and accounting teacher to 3/5, retaining teacher who lacked proper endorsement and authorization (90:1192, Morano)
- Endorsement; Director of Guidance with director and guidance counselor endorsements, actual case load, and district required both certificates for position, director had seniority under both endorsements, and seniority over guidance counselor with only guidance counselor endorsement (96 N.J.A.R.2d (EDU) 106, Lightdale)
- Endorsement; educational media specialist endorsement not required (Elementary library position) (96 N.J.A.R.2d (EDU) 703, Metaxas/Wenger, aff'd St. Bd. w/mod. 96 N.J.A.R.2d (EDU) 708, aff'd App. Div. 96 N.J.A.R.2d (EDU) 716)
- Guidance Director with greater seniority bumps guidance counselor (96 N.J.A.R.2d (EDU) 106, Lightdale)
- Involuntary transfer to identical position incident to RIF (Department of Human Services) (Sheffield, St. Bd. 96 N.J.A.R.2d (EDU) 839, rev'g & remanding 93 N.J.A.R.2d (EDU) 26) Motion for Reconsideration denied St. Bd. (96 N.J.A.R.2d (EDU) 840, matter dismissed as moot 96 N.J.A.R.2d (EDU) 841)
- Jurisdiction; Commissioner has jurisdiction to ascertain whether a former school employee has rehiring rights to a particular position (96 N.J.A.R.2d (EDU) 27, Picot)

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- Military service: (Assistant Supervisor Department of Human Services) improper rif where no seniority credit for military service under N.J.S.A. 18A:28-11.1
- Military service for purpose of seniority credit; Teacher has burden to document claim, failure prior to RIF defeats instant tenure claim. Board directed to credit teacher for military service in all future determinations (94 N.J.A.R.2d (EDU) 45, Jabour, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 319, aff'd App. Div. 95 N.J.A.R.2d (EDU) 492)
- Negotiability; Commissioner has exclusive statutory authority to establish seniority standards for re-employment lists and consequently the criteria and procedures for re-employment are non-negotiable (96 N.J.A.R.2d (EDU) 27, Picot)
- Permanent instructional certificate acquired subsequent to reductions do not acquire tenure or seniority rights (95 N.J.A.R.2d (EDU) 467, Sefcik, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 141)
- Preferred eligibility list; board must first consider qualified candidates on preferred eligibility list when filling vacancy; improperly transferred tenured teacher into new position; board also violated RIF'd teacher's tenure and seniority rights by hiring non-tenured teacher for Job Training Partnership Act position (90:1580, Lewis)
- Preparatory summer employment prior to start date of contract does not count towards accrual of seniority (92 N.J.A.R.2d (EDU) 230, Polo I, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 459, aff'd App. Div. unpub. op. (Dkt. No. A-256-92T2, May 12, 1994))
- Resignation: seniority rights are not triggered by voluntary resignation, as this does not constitute a RIF; teacher's tenure rights were violated when board treated resignation in district as RIF and reassigned two of his classes and reduced him to part-time (97:Oct. 1, Ressler, St. Bd. rev'g in relevant part, 96 N.J.A.R.2d (EDU) 581, aff'd App. Div. unpub. op. Dkt. No. A-1457-97T1, Dec. 28, 1998)
- School psychologist's seniority properly based on years of service regardless of number of days worked per week (96 N.J.A.R.2d (EDU) 360, Reid, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 364)
- Seniority by virtue of actual service (business education teacher) (93 N.J.A.R.2d (EDU) 139, Fox)

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- Seniority regulations operate independently of school designations (93 N.J.A.R.2d (EDU) 59, Unterberger, appeal dismissed for failure to perfect St. Bd. 94:Aug. 3)
- Seniority rights determined as of date of RIF; board adopts (96 N.J.A.R.2d (EDU) 703, Metaxas/Wenger, aff'd St. Bd. w/mod. 96 N.J.A.R.2d (EDU) 708, aff'd App. Div. 96 N.J.A.R.2d (EDU) 716)
- Seniority rights remain inchoate until affected by RIF (91:1422, Ciarcia) (91:2194, Benson, aff'd St. Bd. 92:May 6) (96 N.J.A.R.2d (EDU) 135, Kish)
- Substitute prior to formal appointment functioned as regular teacher entitled to seniority credit from beginning of employment (92 N.J.A.R.2d (EDU) 606, Valentino, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 173)
- Summer service; academic year employee, may not receive seniority credit in excess of one academic year on basis of summer service (92 N.J.A.R.2d (EDU) 230, Polo I, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 459, aff'd App. Div. unpub. op. Dkt. No. A-256-92T2, May 12, 1994)
- Tenure acquired in position (Family Life). Seniority accrues in the category of endorsement (90:1541, Savarese, rem'd to ALJ, dismissed St. Bd. 91:2593)
- Transfer; seniority rights are not triggered by valid transfer within scope of certification (92 N.J.A.R.2d (EDU) 585, Moore, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 173)
- Transferred teachers' seniority rights preserved by N.J.S.A. 18A:28-6.1, pursuant to discontinuation of school, included longevity pay. Board of Ed. v. Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)
- Unrecognized title; N.J.A.C. 6:11-3.6 dictates that seniority attach to position title (94 N.J.A.R.2d (EDU) 258, Gittleman, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 266, aff'd and remanded for modification and further proceedings, App. Div. 96 N.J.A.R.2d (EDU) 160, certif. den. 144 N.J. 585 (1996); remanded St. Bd. 6/5/96, decision on remand 97 N.J.A.R.2d (EDU) 200, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 420, aff'd App. Div. unpub. op. Dkt. No. 5167-96T2, Sept. 3, 1998)
- Vacancies are to be filled from preferred eligibility list irrespective of interest of non-rifed senior staff (91:2194, Benson, aff'd St. Bd. 92:May 6)

ABOLITION OF POSITION

Categories

Assistant Superintendent (89:2901, Kaprow, aff'd St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), certif. granted 130 N.J. 16 (1993), aff'd 131 N.J. 573 (1993)

Department Chairperson; regulations do not support petitioner's view that the category of Supervisor must be broken down by specific grade level assignment (97 N.J.A.R.2d (EDU) 478, Lisa, aff'd St. Bd. 97:Aug. 6)

Departmentalized sixth grade classes fall under the secondary category for seniority purposes (93 N.J.A.R.2d (EDU) 59, Unterberger, appeal dismissed for failure to perfect St. Bd. 94:Aug. 3)

Director of Personnel; board did not violate administrator's tenure/seniority rights when it abolished director of personnel, position and transferred administrator to middle school vice principal rather than position last held (90:1073, Baskerville, aff'd St. Bd. 90:1082)

Director

Dual certification of Director and Guidance Counselor endorsements for Director of Guidance position was a permissible function of board action (96 N.J.A.R.2d (EDU) 106, Lightdale)

Elementary: physical education teacher's seniority should be determined in elementary category, even if fourth, fifth and sixth grades are departmentalized (96 N.J.A.R.2d (EDU) 581, Ressler, aff'd in part, rev'd in part St. Bd. 97:Oct. 1, aff'd App. Div. unpub. op. Dkt. No. A-1457-97T1, Dec. 28, 1998)

Family life assignments are subject to seniority claims where the program has been designated within a particular discipline (like health or biology), and then, only within that particular discipline (90:240, Nazarechuk)

Full-time and part-time positions

Reduced from full-time to part-time not entitled to assignment to in school suspension duty periods (92 N.J.A.R.2d (EDU) 501, Forte)

Speech correctionist with LDT/C endorsement RIF'd from full-time to part-time entitled to full-time employment under combined speech correctionist and LDT/C position (94 N.J.A.R.2d (EDU) 295, Kojak)

ABOLITION OF POSITION

High school English teacher not entitled to elementary basic skills position (90:1054, Eftychiou)

Previous positions, Tacking

Vice principal reverted to teaching position:

Years of service as teacher following vice principal service credited in seniority categories of teacher and vice principal under tacking provision of N.J.A.C. 6:3-1.10(h)

(90:Oct. 9, Choplick, aff'd St. Bd. 91:Feb.6)

School psychologist's seniority properly based on years of service regardless of number of days worked per week (96 N.J.A.R.2d (EDU) 360, Reid, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 364)

Two tenured individuals, seniority determinative if both have seniority in same category (91:1929, Weinstein, aff'd St. Bd. 92:Apr. 1)

Supervisors/Administrators

Acquisition, seniority accrued only in specific supervisory position in which individual served (91:1929, Weinstein, aff'd St. Bd. 92:Apr. 1)

Board requirement that Supervisor of Elementary Education possess elementary education endorsement. Matter remanded for determination of whether duties of Supervisor of Elementary Education position were such so as to require endorsement possession (97 N.J.A.R.2d (EDU) 551, St. Bd. aff'g and remanding 96:July 12) (See also 95 N.J.A.R.2d (EDU) 52, 97 N.J.A.R.2d (EDU) 312)

Category, tenured supervisors have no seniority rights to newly created supervisory position; N.J.S.A. 6:3-1.10(1)12 mandates that each supervisory title shall be a separate category (91:252, Paszamant, St. Bd. dismissed appeal for failure to perfect, 92 N.J.A.R.2d (EDU) 329, aff'd App. Div. unpub. op. (Dkt. No. A-4812-91, Sept. 28, 1993))

Department chair substantially different from supervisory position; seniority categories different (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd & rem'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, dec. on remand 94 N.J.A.R.2d (EDU) 485, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU) 166)

ABOLITION OF POSITION

- Department chairs were deemed tenured as supervisors; however, seniority only possessed in categories of actual assignment, e.g., supervisor-science, supervisor-English (90:1, MacMillan, appeal dismissed St. Bd. 90:24)
- Each supervisory title is separate category under regulations; tenured supervisor had no seniority rights to any newly created department chairmanships (92 N.J.A.R.2d (EDU) 568, Notaro)
- Elementary endorsement who taught science in departmentalized setting for grades six, seven and eight accrued seniority in secondary category (93 N.J.A.R.2d (EDU) 438, McGlynn)
- High school guidance counselor has superior seniority claim to newly created "Coordinator of 7th and 8th Grade Programs", a guidance counselor position inferred to be classified in the secondary category (91:252, Paszamant, St. Bd. dismissed appeal for failure to perfect, 92 N.J.A.R.2d (EDU) 329, aff'd App. Div. unpub. op. (Dkt. No. A-4812-91, Sept. 28, 1993))
- Home economics educational services certificate, and nursery school who taught pre-kindergarten children home economics accrued seniority only under her home economics certificate (91:2155, Miller)
- RIF'd Supervisor of Physical Education may be entitled to Supervisor of Elementary Education position. Matter remanded to determine whether elementary education endorsement required by the board was legally required to perform the functions of the Supervisor of Elementary Education position. No entitlement to principal position (96 N.J.A.R.2d (EDU) 846, White, remanded St. Bd. 97 N.J.A.R.2d (EDU) 552) (See also 97 N.J.A.R.2d (EDU) 312, 95 N.J.A.R.2d (EDU) 52)
- RIF'd supervisors not entitled to "bump" into position which is separately tenurable pursuant to N.J.S.A. 18A:28-5 (97 N.J.A.R.2d (EDU) 478, Lisa, aff'd St. Bd. 97:Aug. 6)
- Science supervisor has tenure entitlement to supervisor of special services position (89:2148, Herbert, aff'd St. Bd. 90:1759, aff'd App. Div. unpub. op. Dkt. No. A-318-90T1, May 22, 1991)

ABOLITION OF POSITION

Service as instructional supervisor resulted in accrual of seniority in category of "supervisor", not category of "assistant superintendent" (92 N.J.A.R.2d (EDU) 134, Kish, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 367)

State takeover, N.J.S.A. 18A:7A-44(c) clearly provides that tenured supervisors whose positions were abolished following state takeover of district retain no tenure or seniority rights to supervisory positions (91:1712, VanDyke, aff'd St. Bd. 92:Feb. 5)

Supervisor and assistant superintendent entirely separate categories for seniority calculation (92 N.J.A.R.2d (EDU) 134, Kish, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 367)

Supervisor/Teacher position created by the board which required supervisors to provide direct services to students was valid; as petitioners did not possess any of the four subject area endorsements to teach such subjects they were not entitled to those positions currently held by non-tenured individuals (97 N.J.A.R.2d (EDU) 478, Lisa, aff'd St. Bd. 97:Aug. 6)

Tenure rights as supervisor dictate employment in the position over a non-tenured individual (96 N.J.A.R.2d (EDU) 135, Kish)

Transfer of art teacher from secondary to elementary level absent a reduction in force does not give rise to enforceable seniority claim (91:1422, Ciarcia)

Unrecognized title; N.J.A.C. 6:11-3.6 requires that seniority attaches to that position title (94 N.J.A.R.2d (EDU) 258, Gittelman, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 266, aff'd and remanded for modification and further proceedings, App. Div. 96 N.J.A.R.2d (EDU) 160, certif. den. ____ N.J. ____ (May 7, 1996))

Unrecognized title of Learning Specialist accrued seniority under her educational services certificate; board erred in calculating her seniority under her instructional certificate (93 N.J.A.R.2d (EDU) 301, Rubin)

Certification

Acquisition, certification acquired after the date of the RIF cannot be used to establish tenure or seniority rights (96 N.J.A.R.2d (EDU) 708, Metaxas/Wenger, aff'd w. mod. St. Bd. 96 N.J.A.R.2d (EDU) 715, aff'd App. Div. 96 N.J.A.R.2d (EDU) 716)

ABOLITION OF POSITION

- After-acquired certificate: Teacher not entitled to be recalled from preferred eligibility list where teacher acquired appropriated endorsement after the RIF fact that teacher had successfully proven previous RIF's violated seniority did not affect his rights (96 N.J.A.R.2d (EDU) 955, Ressler II, reversed and remanded St. Bd. 98:Feb. 4, decision on remand 99:Feb. 5; aff'd St. Bd. 99:May 5, aff'd App. Div. unpub. op. Dkt. No. A-5463-98T5, May 30, 2000)
- Automobile Service I course properly taught by holder of various endorsements including teacher of industrial arts. Instructional rather than vocational (96 N.J.A.R.2d (EDU) 657, Clapp)
- Board requirement that Supervisor of Elementary Education possess elementary education endorsement. Matter remanded for determination of whether duties of Supervisor of Elementary Education position were such so as to require endorsement possession (97 N.J.A.R.2d (EDU) 551, White, St. Bd. aff'g and remanding 96:July 12) (See also 95 N.J.A.R.2d (EDU) 52, 97 N.J.A.R.2d (EDU) 312)
- Certification(s) required for position with unrecognized title based upon specific duties to be performed (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd & rem'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, decision on remand 94 N.J.A.R.2d (EDU) 485, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU) 166) (92 N.J.A.R.2d (EDU) 670, Wallen, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 301)
- Certification, RIF'd individual on a preferred eligibility list is "qualified" under N.J.S.A. 18A:28-12 if he holds the appropriate certification; no additional qualifications may be imposed (89:1053, Bodine, aff'd St. Bd. 89:1064, w/op. appeal dismissed App. Div. unpub. op. (Dkt. No. A-6532-88T1, January 16, 1990))
- Family life; authorization to teach (90:240, Nazarechuk)
See also N.J.A.C. 6:29-7.1(c)
- Holders of subject certificates are authorized and trained to teach at all levels in all public schools (91:2155, Miller)
- Petitioner not entitled to COE/Marketing Education Coordinator position as she did not hold the two endorsements required for the position (96 N.J.A.R.2d (EDU) 665, Kopko)

ABOLITION OF POSITION

Remand to OAL to determine the job duties of the COE/Marketing Education Coordinator so as to assess necessary certification (96 N.J.A.R.2d (EDU) 665, Kopko)

RIF'd supervisor lacked proper certification to bump into supervisor/teacher position (97 N.J.A.R.2d (EDU) 478, Lisa, aff'd St. Bd. 97:Aug. 6)

RIF'd supervisor of health and physical education not entitled to supervisor of elementary education position - did not possess elementary education certification (96 N.J.A.R.2d (EDU) 846, White, remanded St. Bd. 97 N.J.A.R.2d (EDU) 552) (See also 97 N.J.A.R.2d (EDU) 312, 95 N.J.A.R.2d (EDU) 52)

Tenured Business Education Teacher had superior tenure and seniority rights to either computer position or In School Suspension position; board ordered to draft job descriptions, set certification requirements and delineate responsibilities for same (97 N.J.A.R.2d (EDU) 459, Lewis, settlement approved St. Bd. 97:Oct. 1; rev'd and remanded for determination of whether in-school suspension was a teaching staff position and whether petitioner has entitlement thereto after November 1994 St. Bd. 98: Aug. 5)

Tenured carpentry teacher with "skilled trades" and "teacher of industrial arts" endorsement not properly certified to teach plumbing or custodial training (93 N.J.A.R.2d (EDU) 498, Polo II, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 36, aff'd App. Div. 95 N.J.A.R.2d (EDU) 105)

Tenured teacher with comprehensive business education endorsement not properly certified to teach marketing (93 N.J.A.R.2d (EDU) 139, Fox)

Unrecognized title of Learning Specialist is LDT/C endorsement on educational services certificate (93 N.J.A.R.2d (EDU) 301, Rubin)

Duties of position, no entitlement to newly created administrative assistant to superintendent of curriculum and instruction position after abolition of instructional supervisor position; duties of position substantially different (92 N.J.A.R.2d (EDU) 134, Kish, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 367)

Preferred eligibility list

Absent bad faith, a tenured teacher's seniority rights are not triggered when a school board abolishes the teacher's position and assigns the teacher to teach different subjects within his certification without reducing the teacher's salary or benefits. Carpenito, 322 N.J. Super. 522 (App. Div. 1999), rev'g St. Bd. 98:Feb. 4, rev'g 96 N.J.A.R.2d (EDU) 959.

ABOLITION OF POSITION

- Acquisition, nature and extent of tenure rights established by certification and endorsements held at time of RIF; not expandable through subsequent acquisition of additional endorsements (92 N.J.A.R.2d (EDU) 449, Francey, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 347, aff'd App. Div. 286 N.J. Super. 354 (App. Div. 1996)
- Failure to maintain preferred eligibility list; remedy was to credit petitioner with the time between the point at which she should have been recalled and the point at which she resumed service in the district (98:June 25, Springer)
- Failure to notify, music teacher improperly hired during period board failed to notify RIF'd teacher on preferred eligibility list of openings (93 N.J.A.R.2d (EDU) 714, McAloon)
- No statutory time limit on individual's preferred eligibility (89:1053, Bodine, aff'd St. Bd. 89:1064, w/op. appeal dismissed App. Div. unpub. op. Dkt. No. A-6532-88T1, January 16, 1990)
- Petitioner's recall rights were not violated when Board created a new position which required dual certification (97:Sept. 17, Yucht, aff'd St. Bd. 00:July 5)
- Qualified candidates on preferred eligibility list considered first when filling vacancy; improperly transferred teacher into new position; board also violated RIF'd teacher's tenure and seniority rights by hiring non-tenured teacher for Job Training Partnership Act program (90:1580, Lewis)
- Recall right of employee from a preferred eligibility list arise whenever a vacancy comes into existence (96 N.J.A.R.2d (EDU) 229, Elson)
- Recall rights established as of date board voted to abolish positions (94 N.J.A.R.2d (EDU) 208, Skowronski, aff'd in part, rev'd in part St. Bd. 95 N.J.A.R.2d (EDU) 451, stay denied St. Bd. 95:Oct. 5, cross appeals dismissed; settled App. Div. unpub. op. Dkt. No. A-6443-94T3, May 21, 1996)
- Recall rights frozen on date of RIF; acquisition of additional certification after notification of RIF does not expand recall rights (92 N.J.A.R.2d (EDU) 506, Johnstone, aff'd St. Bd. 94:Oct. 5, aff'd App. Div. unpub. op. Dkt. No. A-1271-94T2, Jan. 9, 1996)
- Temporary RIF'd teacher not entitled to position over long-term substitute; one year leave of absence does not create a vacancy. Lammers, 134 N.J. 264 (1993), rev'g 260 N.J. Super. 390 (App. Div. 1992), rev'g St. Bd. 91:2570, rev'g 90:1500)

ABOLITION OF POSITION

Tenured Special Education teacher entitled to position after being RIF'd where position filled with non-tenured staff and board did not give adequate notice of opening to those on eligibility list (96 N.J.A.R. (EDU) 1015, Arnold)

Tie breaker, seniority standards in case of tie in service, can be set by duly adopted policy of school board (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. (Dkt. No. A-2695-87T1, June 7, 1990))

Vacancies are to be filled from preferred eligibility list irrespective of non-rifed senior staff (91:2194, Benson, aff'd St. Bd. 92:May 6)

Voluntarily relinquishment, RIF'd tenured teacher did not relinquish tenure rights by rejecting positions for which she was qualified; board failed to notify her of openings (93 N.J.A.R.2d (EDU) 714, McAloon)

Relief

Back pay, calculation of back pay awards due to improper RIF of supplemental instructors; (Commissioner provides detailed discussion of mitigation and "lowered sights" principles) (95:August 22, West Orange Supplemental, decision on remand)

Back pay, remanded to decide whether calculation of back pay awards for improper RIF of supplemental teachers should assume existence of valid contract where none existed (95:August 22, West Orange Supplemental, decision on remand)

Damages, monetary damages owed teacher, who successfully challenged entitlement to position, (unaffected by fact that position was funded through state grant) (90:355, Keller)

Damages, teacher improperly RIF'd entitled to monetary compensation for lost medical benefits, contributions to pension fund and Social Security and restoration of seniority (93 N.J.A.R.2d (EDU) 184, Takakjian)

District ordered to calculate sums due petitioners from date of RIF to date on which petitioners were offered other positions in the district (97 N.J.A.R.2d (EDU) 459, Lewis, settlement approved St. Bd. 97:Oct. 1; rev'd and remanded for determination of whether in-school suspension was a teaching staff position and whether petitioner has entitlement thereto after November 1994 St. Bd. 98: Aug. 5)

Justiciability, employee improperly RIF'd obtained employment in another district at higher salary, suffered no monetary damages, seniority issue still justiciable (96 N.J.A.R.2d (EDU) 229, Elson)

ABOLITION OF POSITION

Petitioner's claim for back pay she would have received in positions as bedside instructor and summer school teacher denied as such positions were speculative and separate and distinct from her teaching position (97 N.J.A.R.2d (EDU) 459, Lewis, settlement approved St. Bd. 97:Oct. 1; rev'd and remanded for determination of whether in-school suspension was a teaching staff position and whether petitioner has entitlement thereto after November 1994 St. Bd. 98: Aug. 5)

Reimbursement for salary and emoluments at the highest level administrative position to which he was entitled from 10/18/94 to 8/14/95 less \$7,000 earned as a consultant (96 N.J.A.R.2d (EDU) 751, Jefferson)

Salary adjustment to take into consideration the years petitioner would have had in the district had the district maintained an eligibility list; recalculation of accumulated sick leave to recognize unused sick leave accumulated in other districts (98:June 25, Springer)

Subcontract, psychologist subject to RIF when board subcontracted, entitled to seniority from time of RIF to date he was offered a part-time position but refused it (96 N.J.A.R.2d (EDU) 229, Elson)

Tenured Special Education teacher entitled to position after being RIF'd where position filled with non-tenured staff and board did not give adequate notice of opening to those on eligibility list (96 N.J.A.R. (EDU) 1015, Arnold)

Reorganization of Program

Department Supervisor/Athletic Director is a new position, not merely a new title affixed to an existing position; therefore neither Petitioner or other staff member were entitled to position by virtue of their seniority (97:Sept. 8, Nester)

Educational basis, remand to determine based on educational grounds (marketing/distributive education coordinator) (88:2202, Grossman, aff'd St. Bd. 89:March 1, aff'd in part, rev'd and remanded in part, App. Div. unpub. op. (Dkt. No. A-3270-88T1, May 17, 1990))

Endorsement, seniority claim denied; petitioner never served under distributive occupations endorsement (88:2202, Grossman, aff'd St. Bd. 89:March 1, aff'd in part, rev'd and remanded in part, App. Div. unpub. op. (Dkt. No. A-3270-88T1, May 17, 1990))

ABOLITION OF POSITION

Endorsement, seniority claim denied; practical law course was markedly different in scope and content from business law - social studies endorsement needed (88:2202, Grossman, aff'd St. Bd. 89:March 1, aff'd in part, rev'd and remanded in part, App. Div. unpub. op. (Dkt. No. A-3270-88T1, May 17, 1990))

On remand, ALJ concludes that the job duties of the COE Marketing Education Coordinator properly calls for two endorsements as required by the Board; as petitioner does not possess two endorsements, the petition is dismissed (97:Oct. 30, Kopko)

Tie Breaker

Affirmative Action: board violated Title VII when it used race as a tie breaker. Taxman v. Bd. of Ed. of Twp. of Piscataway, 91 F.3d 1547 (3rd Cir. 1996, certiorari granted U.S. Supreme Court ____), (matter settled; withdrawn)

Lottery system to break seniority tie is not unfair (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. (Dkt. No. A-2695-87T1, June 7, 1990))

Settlement

Change of duties does not constitute relinquishment of tenure if some tenurable duties are assigned to an individual (96 N.J.A.R.2d (EDU) 135, Kish)

Stipulation does not abrogate petitioner's tenure rights. Tenure is statutory (96 N.J.A.R.2d (EDU) 135, Kish)

Voluntarily relinquishment of position, does not waive his/her tenure rights (96 N.J.A.R.2d (EDU) 135, Kish)

Tenure entitlement claims

Acquisition, home economics teacher who acquired elementary school endorsement after RIF had no entitlement to employment as elementary teacher (92 N.J.A.R.2d (EDU) 449, Francey, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 347, aff'd App. Div. 286)

Acquisition, teacher who acquired additional certification after notification of RIF but before end of employment by board not entitled to re-employment in new job category (92 N.J.A.R.2d (EDU) 506, Johnstone, aff'd St. Bd. 94:Oct. 5, aff'd App. Div. unpub. op. Dkt. No. A-1271-94T2, Jan. 9, 1996)

ABOLITION OF POSITION

- Affirmative action, supervisor, entitled to newly created supervisory position over non-tenured employee; disparity in male-female administrator ratio no justification for ignoring tenure rights (92 N.J.A.R.2d (EDU) 540, Bourhis)
- Apprentice Coordinator; no entitlement to position of; board properly abolished position for reasons of economy and did not offer apprenticeship program following abolition of position (93 N.J.A.R.2d (EDU) 690, Guerra, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 317)
- Area chair person was not entitled to math supervisor position where teaching math was historically an integral duty of position (although not in job description) and he was not certified to teach math (98:Feb. 2, Kendrick)
- Assistant Superintendent for Curriculum and Instruction entitled to hold and vacant administrative position or position held by a nontenured individual in accordance with his tenure rights (96 N.J.A.R.2d (EDU) 751, Jefferson)
- Assistant superintendent for curriculum only entitled to other assistant superintendencies on recall. No entitlement to other positions for which he held certification but had not served (89:2885, Kaprow, aff'd w/mod. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992) aff'd 131 N.J. 572 (1993))
- Assistant superintendent had no entitlement to position of teacher, principal or superintendent; placed on preferred eligibility list for Assistant Superintendent position (89:2901, Kaprow, aff'd w/mod. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div. 1992) aff'd 131 N.J. 572 (1993))
- Athletic Director transferred to newly-created position of Director of Athletics and Activities had his salary improperly reduced where the two positions were fundamentally the same (96 N.J.A.R.2d (EDU) 861, Connor, settlement approved St. Bd. 97 N.J.A.R.2d (EDU) 255)
- AV library technician entitled to tenure protection as clerk based on job duties (96 N.J.A.R.2d (EDU) 370, Roach)
- Basic Skills Instructor with reading endorsement entitled to developmental reading position over non-tenured English teacher (90:1156, Bosco)
- Board did not violate tenure and seniority rights of office secretary whose position was abolished, by failing to appoint her to a new position as soon as it was established; board appointed her one month later; board's hard bargaining over salary did not constitute bad faith, and it appointed her as soon as it learned she would accept its salary proposal (98:March 9, Kenilworth, aff'd St. Bd. 98:July 1)

ABOLITION OF POSITION

- Board requirement that Supervisor of Elementary Education possess elementary education endorsement. Matter remanded for determination of whether duties of Supervisor of Elementary Education position were such so as to require endorsement possession (97 N.J.A.R.2d (EDU) 551, White, St. Bd. aff'g and remanding 96:July 12) (See also 95 N.J.A.R.2d (EDU) 52, 97 N.J.A.R.2d (EDU) 312)
- Board violated Petitioner's tenure rights by reducing her salary after it abolished the position of Computer Operations/Coordinator Office Manager and transferred petitioner to her old position of secretary because the job functions required and responsibilities were essentially the same under both positions (97 N.J.A.R.2d (EDU) 523, Bove)
- Board's desire to appoint non-tenured candidate of different background and experience cannot defeat tenured candidate's right to position for which he was properly certified (92 N.J.A.R.2d (EDU) 509, Snack)
- Building trades instructor RIF'd due to declining enrollment and economic concerns not entitled to position at neighboring school where five students elected to take course no longer offered in district (93 N.J.A.R.2d (EDU) 600, Bausmith)
- Burden of proof, individual has the ultimate burden when contesting an action by a board of education of demonstrating that his/her rights were violated and that he/she suffered harm so as to entitle him/her to redress (96 N.J.A.R.2d (EDU) 135, Kish)
- Business education teacher not certified in mathematics not entitled to teach computer courses offered by mathematics department (94 N.J.A.R.2d (EDU) 348, Dombloski, aff'd St. Bd. 94:Aug. 3)
- Business education teacher qualified to teach academic support classes has superior right to assignment over non-tenured teacher (93 N.J.A.R.2d (EDU) 139, Fox)
- Business education teacher subject to RIF has superior claim than non-tenured teacher to assignment to teach business education classes during maternity leave of another tenured teacher (93 N.J.A.R.2d (EDU) 139, Fox)
- Calculation, tenure rights as of date board acted to reduce staff, not effective date of RIF (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, decision on remand 94 N.J.A.R.2d (EDU) 484, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU) 166)

ABOLITION OF POSITION

- Certification, carpentry teacher with "skilled trades" and "teacher of industrial arts" endorsements tenure rights not violated; improper certification to teach plumbing or custodial training (93 N.J.A.R.2d (EDU) 498, Polo II, aff'd w/modif. 94 N.J.A.R.2d (EDU) 36, aff'd App. Div. 95 N.J.A.R.2d (EDU) 105)
- Certification, Librarian/media specialist with educational service certificate and instructional certificate with English endorsement earned tenure in educational service position; no service under Instructional certificate; no entitlement to English teaching position (92 N.J.A.R.2d (EDU) 670, Wallen, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 301)
- Certification, CST member who served in district only under educational services certificates prior to RIF had no tenure rights in positions requiring an instructional certificate (94 N.J.A.R.2d (EDU) 583, Mullin)
- Certification, speech correctionist entitled to LDTC position - held educational services certification (89:2244, Ellicott, rev'd St. Bd. 90:1714, aff'd 251 N.J. Super. 342 (App. Div. 1991))
- Certification, teacher's rights violated when board RIF'd and assigned math/science instruction to teachers with educational (vocational) services certification (96 N.J.A.R.2d (EDU) 731, Smith, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740)
- Chairperson, supervisor, "Department Chairperson-Social Studies, entitled to social studies supervisor position over non-tenured supervisor (90:685, Rogers, aff'd St. Bd. 90:691)
- Claim of tenure and seniority violations dismissed, where teacher represented that she would not return to employment in the district unless she were paid more than she is presently receiving in another school district, and that conditions cannot be met (94:Nov. 18, McGhee)
- Clerk
Courts have recognized that a wide range of titles can fall within the clerical classification and that the classifications of secretary and clerk are not synonymous; clerk is commonly a person who keeps records, attends to correspondence or filing, and manages routine and detail work within the traditional office setting; however, not all non-secretarial office related functions are "clerical" (96 N.J.A.R.2d (EDU) 120, Dempster)

ABOLITION OF POSITION

- Computers: Despite Commissioner guidelines stating that teachers with elementary endorsements may teach computers, elementary teacher not qualified for class where computers are used as a tool rather than taught as a substantive area (96 N.J.A.R.2d (EDU) 290, aff'd St. Bd. 96:May 1)
- Department head not estopped from asserting tenure claim to position by agreement. Department head position never abolished (94 N.J.A.R.2d (EDU) 391, Wickenheisser, aff'd in part St. Bd. 97 N.J.A.R.2d (EDU) 311)
- Director, tenure acquired in the position of principal, for job description required principal endorsement (93 N.J.A.R.2d (EDU) 741, Schaefer, aff'd St. Bd. 95:Aug. 2)
- Dissolution of Regional School District: Tenure entitlement claims fix as of the date of the dissolution itself, not date of the determination to dissolve (97 N.J.A.R.2d (EDU) 217, Stagaard, aff'd St. Bd. 97:Oct. 1)
- Duties, class supervisor duties were not substantially similar to guidance counselor's former duties so as to deprive guidance counselor of tenure protection (Dennerly, 131 N.J. 626 (1993), rev'g 251 N.J. Super. 144 (App. Div. 1991), rev'g St. Bd. 90:1007, aff'g 90:974)
- Duty and grade level distinctions play a crucial role in seniority determinations; but do not limit the rights of tenured staff against non-tenured staff in a RIF (90:268, Brusky)
- Educational Services: Apprentice Coordinator acquired tenure under Educational Services Certificate and thus could not transfer tenure to Coordinator of Recruitment position, which required supervisory certificate (97 N.J.A.R.2d (EDU) 4, Zachau, aff'd St. Bd. 97:Sept. 4)
- Educational services certificate holder has tenure rights against non-tenured teachers in all areas of endorsement on that certificate (Ellicott, 251 N.J. Super. 242 (1991), aff'g St. Bd. 90:1714, aff'g Commissioner 89:2244)
- Educational Services Certificate may be transferred to other endorsements possessed under that certificate (Dennerly, 131 N.J. 626 (1993), rev'g 251 N.J. Super. 144 (App. Div. 1991), rev'g St. Bd. 90:1007, aff'g 90:974)
- Elementary certification did not qualify teacher to teach high school communication and computation courses (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)

ABOLITION OF POSITION

- Elementary certification did not qualify teacher to teach high school math class which was more advanced than "common branch" arithmetic (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)
- Elementary teacher, reasonable to infer petitioner had tenure as an elementary teacher. Held position as teacher for one year and other positions requiring teaching duties. The fact petitioner held supervisory positions in addition to teaching functions was not determinative (96 N.J.A.R.2d (EDU) 135, Kish)
- Elementary teacher was not entitled to positions held by nontenured teachers when such positions were not covered by her credentials and endorsements (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)
- Endorsement, department head obtained tenure in position of supervisor; organizational and subject endorsement requirements cannot be used to defeat her tenure rights (92 N.J.A.R.2d (EDU) 271, Brown)
- Endorsement, RIF'd teacher rights to ISS (in school suspension) position may not be defeated by requiring specific endorsements (90:702, Baruffi)
- Endorsement, Supervisor may not "bump" into position requiring principal's endorsement since duties are separably tenurable pursuant to N.J.S.A. 18A:28-5 (94 N.J.A.R.2d (EDU) 22, Halpern) (93 N.J.A.R.2d (EDU) 741, Schaefer, aff'd St. Bd. 95:Aug. 2) (94 N.J.A.R.2d (EDU) 208, Skowronski, aff'd in part, rev'd in part 95 N.J.A.R.2d (EDU) 451, stay denied St. Bd. 95:Oct. 5, settled App. Div. unpub. op. Dkt. No. A-6443-94T3, May 21, 1996)
- Endorsement; teacher with Industrial Arts endorsement authorized to teach graphic arts as long as classes are not part of vocational program (92 N.J.A.R.2d (EDU) 610, Ackerman, rev'd St. Bd. 95 N.J.A.R.2d (EDU) 149)
- Endorsements tenure protection extends to all on the instructional certificate, regardless of service under the endorsement (90:453, Lynch)
- Endorsement, tenure rights extend to all endorsements possessed under Educational Services Certificate; tenure in "educational services" (89:2244, Ellicott, rev'd St. Bd. 90:1714, aff'd 251 N.J. Super. 342 (App. Div. 1991))
- Endorsement, tenured supervisor, with principal's endorsement who has not served in position requiring principal's endorsement, has not acquired tenure as principal (91:1929, Weinstein, aff'd St. Bd. 92:Apr. 1)
- Full-time to part-time, no entitlement to assignment to in school suspension duty periods (92 N.J.A.R.2d (EDU) 501, Forte)

ABOLITION OF POSITION

- Guidance counselor, who acquired tenure under educational services certificate, not entitled to class supervisor position which also required administrative certificate, counselor possessed but had never served under (Denney, 131 N.J. 626 (1993), rev'g 251 N.J. Super. 144 (App. Div. 1991), rev'g St. Bd. 90:1007, aff'g 90:974)
- Industrial arts supervisor not entitled to supervise beyond industrial arts area due to lack of proper certification (94 N.J.A.R.2d (EDU) 475, Timko, aff'd in part, rev'd in part St. Bd. 94 N.J.A.R.2d (EDU) 481, decision on remand 94 N.J.A.R.2d (EDU) 484, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 12, aff'd App. Div. 96 N.J.A.R.2d (EDU) 166)
- Non-instructional duty period; teacher RIF'd from full-time to part-time had no seniority or tenure claim (92 N.J.A.R. 2d (EDU) 501, Forte)
- Permanent substitute is not a "position" under N.J.S.A. 18A:28-12 to which rified tenured teacher has an entitlement (95 N.J.A.R.2d (EDU) 348, Driscoll, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 761)
- Permanent substitute position, teacher not entitled to, following RIF; employment as permanent substitute is not "position" within meaning of N.J.S.A. 18A:28-9 (94:Aug. 3, St. Bd. rev'g 93 N.J.A.R. 2d (EDU) 761)
- Position of Assistant Principal is a separately tenurable position under N.J.S.A. 18A:28-5, therefore petitioners, who had not served in those positions, had no entitlement over non-tenured individuals (97 N.J.A.R.2d (EDU) 478, Lisa, aff'd St. Bd. 97:Aug. 6)
- Positions specifically enumerated under N.J.S.A. 18A:28-5, are separately tenurable. Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257.
- Purchasing Agent's (Assistant) tenure rights were not violated where decision to abolish position were part of plan by fiscal monitor to restore efficiency within purchasing department (96 N.J.A.R.2d (EDU) 321, Dearden, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 331, aff'd App. Div. 97 N.J.A.R.2d (EDU) 318)
- Remedial and supplemental teachers, even those reimbursed on an hourly basis, are afforded tenure pursuant to N.J.S.A. 18A:28-5 (96 N.J.A.R.2d (EDU) 135, Kish)
- Retroactive application of amendments to N.J.S.A. 18A:28-5 required as amendments were curative of misapplication of the statute. Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257.

ABOLITION OF POSITION

- RIF'd Supervisor of Physical Education may be entitled to Supervisor of Elementary Education position. Matter remanded to determine whether elementary education endorsement required by the board was legally required to perform the functions of the Supervisor of Elementary Education position. No entitlement to principal position. (96 N.J.A.R.2d (EDU) 846, White, remanded St. Bd. 97 N.J.A.R.2d (EDU) 552) (See also 97 N.J.A.R.2d (EDU) 312, 95 N.J.A.R.2d (EDU) 52)
- RIF'd tenured teachers were entitled to positions they could have been assigned to by virtue of their superior tenure and seniority rights; district required to calculate sums due petitioners minus mitigated compensation and further district is directed to establish job descriptions that include certification requirements (97:March 24, Lewis; rev'd and remanded for determination of whether in-school suspension was a teaching staff position and whether petitioner has entitlement thereto after November 1994 St. Bd. 98: Aug. 5)
- Science supervisor has tenure entitlement to supervisor of special services position (89:2148, Herbert, aff'd St. Bd. 90:1759, aff'd App. Div. unpub. op. (Dkt. No. A-318-90T1, May 22, 1991))
- Secretaries had accrued tenure in secretarial positions and were qualified to perform the duties assigned to non-tenured individuals. Board ordered to reinstate (97:Dec. 29, Hibo & Arillo, aff'd St. Bd. 98:June 3)
- Settlement, tenure rights of RIF'd supervisor not violated by board's settlement agreement with another RIF'd supervisor who had superior seniority rights to disputed position (95 N.J.A.R.2d (EDU) 52, White) (See 97 N.J.A.R.2d (EDU) 551, aff'd in part, remanding in part 96:July 12, See also 97 N.J.A.R.2d (EDU) 312, 95 N.J.A.R.2d (EDU) 52)
- Social Studies teacher reduced from full-time to part-time entitled to part-time assignment as kindergarten teacher over non-tenured teacher; expecting board to redraft schedules for small school to accommodate tenure rights is not unreasonable (93 N.J.A.R.2d (EDU) 438, McGlynn)
- Speech correctionist with LDT/C endorsement RIF'd from full-time to part-time entitled to full-time employment under combined speech correctionist and LDT/C position (94 N.J.A.R.2d (EDU) 295, Kojak)
- Supervisor acquires tenure in the separately tenurable position of "supervisor" and in a RIF is entitled to any supervisory position for which he is qualified as against individuals with no tenure as supervisors (90:685, Rogers, aff'd St. Bd. 90:691)

ABOLITION OF POSITION

- Supervisor and principal are separately tenurable positions (93 N.J.A.R.2d (EDU) 741, Schaefer, aff'd St. Bd. 95:Aug. 2)
- Supervisor had no entitlement to assistant principal position; positions separately tenurable (94 N.J.A.R.2d (EDU) 208, Skowronski, aff'd in part, rev'd in part St. Bd. 95 N.J.A.R.2d (EDU) 451, stay denied St. Bd. 95:Oct. 5, settled App. Div. unpub. op. Dkt. No. A-6443-94T3, May 21, 1996)
- Supervisor had no entitlement to newly created position of Director which required endorsement as principal (93 N.J.A.R.2d (EDU) 741, Schaefer, aff'd St. Bd. 95:Aug. 2)
- Supervisor of Extra-Curricular Activities: Petitioner entitled to position as he had tenure and all necessary certificates and endorsements when position created to replace abolished building athletic supervisor (97 N.J.A.R.2d (EDU) 186, Reinhardt)
- Supervisor of instruction in 7-12 was entitled in RIF to district-wide position of general supervisor (90:268, Brusky)
- Supervisor of math and science entitled to either supervisor of educational and business technology or instruction held by non-tenured supervisor (94 N.J.A.R.2d (EDU) 208, Skowronski, aff'd in part, rev'd in part St. Bd. 95 N.J.A.R.2d (EDU) 451, stay denied St. Bd. 95:Oct. 5, settled App. Div. unpub. op. Dkt. No. A-6443-94T3, May 21, 1996)
- Supervisor whose position was eliminated during district reorganization has superior claim over non-tenure supervisor to newly created supervisory position (91:2476, Ralph)
- Supplemental teacher with seniority in English entitled to fill full-time vacancy in English department over non-tenured teacher (94:Jan. 5, St. Bd. Gainer, rev'g 91:1347)
- Tenure charges, Science Department Chairperson entitled after a RIF to Department Chairperson of Science and Math even while on suspension with pay pursuant to tenure charges (95 N.J.A.R.2d (EDU) 482, Sheridan, appeal dismissed St. Bd. failure to timely file 96 N.J.A.R.2d (EDU) 142. See also 92 N.J.A.R.2d (EDU) 257, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393, rem'd St. Bd. 94:Sept. 7)
- Tenure charges, tenured teacher entitled to newly created position over non-tenured teacher even though tenure charges were pending (95 N.J.A.R.2d (EDU) 482, Sheridan, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 142)

ABOLITION OF POSITION

- Tenure status achieved under supervisor endorsement is not transferable to principal endorsement; tenure obtained under one endorsement to an administrative certificate may not be transferred to another endorsement under that certificate. Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257.
- Tenured department chair of Industrial Arts not entitled to positions of Director of Student Personnel Services, Director of Special Education and Educational Media Specialist as he did not possess certification required for those positions; County Superintendent directed to inquire as to whether individual serving in position as Director of Special Education is appropriately certified and to take such action as he deems necessary (97 N.J.A.R.2d (EDU) 468, Alves, aff'd St. Bd. 97:Aug. 6)
- Tenured Special Education teacher entitled to position after being RIF'd where position filled with non-tenured staff and board did not give adequate notice of opening to those on eligibility list (96 N.J.A.R.2d (EDU) 1015, Arnold)
- Tenured supervisor entitled to supervisor position over non-tenured supervisor regardless of subject matter (96 N.J.A.R.2d (EDU) 396, Galbraith, aff'd St. Bd. 96:June 5, aff'd App. Div. unreported op. July 25, 1997)
- There is no tenure entitlement to social studies position where social studies position abolished and teacher transferred to another position for which he was qualified and then board creates new social studies position with non-tenured teacher. Carpenito, 322 N.J. Super. 522 (App. Div. 1999), rev'g St. Bd. 98:Feb. 4, rev'g 96 N.J.A.R.2d (EDU) 947.
- Transfer, no violation of tenure laws if reduction in salary is based upon demotion or transfer resulting from good faith abolition of a position or a transfer from a 12-month to 10-month position (95 N.J.A.R.2d (EDU) 522, Gerity)
- Transfer of tenured clerk to position with lower monthly pay is impermissible reduction in salary. N.J.S.A. 18A:7-2 (95 N.J.A.R.2d (EDU) 585, Casey, rev'g 94 N.J.A.R.2d (EDU) 187)
- Transfer within scope of certification; no seniority rights to former position (92 N.J.A.R.2d (EDU) 585, Moore, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 173)

ABOLITION OF POSITION

- Untimely claim, tenure rights not lost by filing untimely claim; any future action by board to fill position of attendance officer with untenured person would constitute new cause of action for which tenured officer may file claim (93:Feb. 5, Harshaw, settlement approved, 94:June 1)
- Unrecognized title, Director does not acquire tenure rights to position of principal even though endorsement of either principal or school administrator required for position of Director (93:Nov. 18, Brenner)
- Unrecognized title, learning disability teacher-consultant's (LDT/C) prior service in unrecognized position of learning specialist counted towards tenure as LDT/C (92 N.J.A.R.2d (EDU) 497, Levy, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134)
- Vacancy, opening resulting from maternity leave of tenured teacher who intended to return was not vacancy for purposes of tenure entitlement (92 N.J.A.R.2d (EDU) 335, Murray, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 351)
- Violation of tenure rights is not a continuing violation, petition must be filed within 90 days of board action (89:2522, Cade, aff'd St. Bd. 90:1693, aff'd App. Div. unpub. op. (Dkt. No. A-2881-89T5, Nov. 30, 1990))
- Vocational education - teacher's tenure violated when math and science instruction assigned to teachers with vocational certification only (96 N.J.A.R.2d (EDU) 731, Smith, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740)
- Vocational "outreach" position; holder of handicapped, industrial arts and teacher of production personal and service occupations endorsements had tenure rights to vocational outreach position (90:355, Keller)
- Vocational - technical-related subject endorsement - holder may only teach vo-tech subjects in the area of her state-approved occupational experience, pursuant to interpretation of administrative code provisions (96 N.J.A.R.2d (EDU) 290, Ulrich, aff'd St. Bd. 96:May 1, aff'd App. Div. unpub. op. Dkt. No. A-5846-95T5, Dec. 5, 1997)
- Voluntary transfer of a tenured teacher may not abrogate the entitlement of RIF'd tenured teacher (90:702, Baruffi)

Veteran's Tenure Act

- Notice and hearing are not required under Veteran's Tenure Act before abolishment of position (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7, aff'd App. Div. unpub. op. Dkt. No. A-3406-97T1, April 7, 1999) (96 N.J.A.R.2d (EDU) 321, Dearden, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 331, aff'd App. Div. 97 N.J.A.R.2d (EDU) 318)

ABOLITION OF POSITION

Veteran's Tenure Act does not protect veterans from good faith abolition of position (96 N.J.A.R.2d (EDU) 321, Dearden, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 331, aff'd App. Div. 97 N.J.A.R.2d (EDU) 318)

ABSENTEEISM

(See "Increments" and "Tenure" this index)

ACADEMIC YEAR

Teacher orientation and team treatment days do not constitute instructional days towards required 180 instructional days per academic year (94 N.J.A.R.2d (EDU) 501, Somerset Hills School, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 1, aff'd App. Div. 95 N.J.A.R.2d (EDU) 487)

ACTING ADMINISTRATORS

Extension of time to serve as acting superintendent (three months) granted (96:June 12, Salley, See also 97 N.J.A.R.2d (EDU) 257)

ADMINISTRATIVE LAW JUDGE

Adverse inference from respondent's failure to testify on his own behalf (95 N.J.A.R.2d (EDU) 302, Davis)

Public record, no power to order the release of a (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

Recusal of: Jurisdiction to review ALJ's decision rests not with the Commissioner, but with the Director of OAL (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

Recusal of: Request for must be made before initial decision is rendered (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

Special education case, Judgment and Order, Administrative Law Judge does not have jurisdiction to enforce, a summary proceeding must be instituted in the courts (96 N.J.A.R. 2d (EDU) 35, Bellesfield)

ADULT EDUCATION

ADVERTISEMENTS

AGE DISCRIMINATION

Forty-eight year old teacher established a *prima facie* case of age discrimination under the New Jersey Law Against Discrimination when she was not re-hired in her third year of employment. Material issue of fact regarding defendant's claim of legitimate nondiscriminatory rationale precluded summary judgment. Reversed and remanded. Evelyne Greenberg v. Camden County Vocational and Technical Schools, 310 N.J. Super. 189 (App. Div. 1998)

AGENCY SHOP

AIDES

No right to a hearing relative to termination (90:366, Pierre)
Non-renewal of lunch aide's employment contract because of her exercise of permissible free speech under First Amendment was null and void (94 N.J.A.R.2d (EDU) 352, Parente, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 500)
Non-tenured aide has no tenure rights (97 N.J.A.R.2d (EDU) 99, dismissed St. Bd. - failure to perfect 97 N.J.A.R.2d (EDU) 256)
Teacher aide showed evidence of rehabilitation from cocaine, larceny and shoplifting convictions (97 N.J.A.R.2d (EDU) 154, W.M.M.B., St. Bd. rev'g Commissioner 97 N.J.A.R.2d (EDU) 153)

AIDS AND AIDS RELATED COMPLEX

ALTERNATIVE SCHOOLS

Board is not required to honor mother's request to place pupil in its Alternative High School (98:May 15, P.S.)

AMICUS CURIAE

Budget Appeal; Education association denied permission to participate as amicus; association would not add constructively to the case without causing delay (95 N.J.A.R.2d (EDU) 317, Lakewood, dec. on motion, aff'd St. Bd. 95:Jan. 4; dismissed as moot App. Div. unpub. op. Dkt. No. A-2959-94T1, Jan. 25, 1998)

ANCESTRY

ANNEXATION

APPEAL

(See also "State Board of Education" and "Commissioner of Education - Period of Limitations" this index)

Late; appeal filed 25 days late without explanation; does not present matter of public importance (91:2557, St. Bd., Jones)

Settlement negotiations; State Board lacks authority to extend statutory 30 days for appeal of Commissioner's decision (90:1, MacMillan, appeal dismissed St. Bd. 90:24, see St. Bd. decision)

Time for appeal to State Board is statutory, N.J.S.A. 18A:6-28, and may not be relaxed (90:Apr. 4, St. Bd. Rooney) (90:Sept. 5, St. Bd., Robinson)

Untimely appeal

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

APPOINTMENTS

(See "Boards of Education - Duties and powers of" this index)

(Also see particular job titles in this index)

APPORTIONMENT

(See "Regional Boards" this index)

APPROPRIATIONS

ARBITRATION

(See "Collective Negotiations" this index)

ARCHITECTS

ASSISTANT SUPERINTENDENT

Appointment invalid without nomination by superintendent
(88:221, Napoli, aff'd w. mod. St. Bd. 88:284, stay denied
St. Bd. 89:Feb. 1, aff'd App. Div. unpub. op. Dkt. No. A-
2301-88T3, March 2, 1990)

RIF'd Assistant Superintendent for Curriculum recall rights
limited to other Assistant Superintendent positions. No
tenure entitlement to other position for which certification
was held but no service rendered (89:2885, Kaprow, aff'd
w/mod. St. Bd. 91:2561, aff'd 255 N.J. Super. 76 (App. Div.
1992) aff'd 131 N.J. 572 (1993)

ATHLETICS

(See "Extracurricular Activities", "Physical Education" and
"Pupils" this index)

ATHLETIC TRAINERS

Not a recognized title (89:1097, Jennings, St. Bd. rev'g 89:1085,
aff'd App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 4,
1991)

ATTENDANCE AREAS

(See "Boards of Education - Duties and powers of" this index)

ATTENDANCE OFFICER

Did not acquire tenure as South Plainfield is not a city district
(89:1640, South Plainfield, aff'd St. Bd. 89:1657, aff'd App.
Div. unpub. op. (Dkt. No. A-1529-89T3, April 1, 1991))

Elimination of position (88:995, Harris, aff'd St. Bd. 88:1006,
aff'd App. Div. unpub. op. (Dkt. No. A-2038-88T2, March 18,
1990))

Instructional certification; board's requirement of instructional
certification in job description did not elevate position to
a teaching staff member (89:1640, South Plainfield, aff'd St.
Bd. 89:1657, aff'd App. Div. unpub. op. (Dkt. No. A-1529-
89T3, April 1, 1991))

Tenure acquisition; after one year of employment in city district
(93:Feb. 5, Harshaw, settlement approved 94:June 1)

Tenure dismissal, attendance officer's excessive absenteeism,
neglect of duty, use of profanity and insubordination
sufficient cause for tenure dismissal (96 N.J.A.R.2d (EDU)
703, Deal, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)

ATTORNEYS

Attorney who is discharged is entitled only to quantum meruit for value of his services. Cohen v. ROU, 275 N.J. Super. 241 (App. Div. 1994), aff'd as modified 146 N.J. 140 (1996)

Attorneys terminated as in-house counsel upon state takeover of district not entitled to 60 days notice or pay in lieu of notice under N.J.S.A. 18A:7A-44c (91:2295, Massa)

District is not entitled to counsel or court reporter during Comprehensive Compliance Investigation interview of district employees (94 N.J.A.R.2d (EDU) 9, In the Matter of the Comprehensive Compliance Investigation of the School District of Newark, aff'd App. Div. 276 N.J. Super. 354 (1994))

Fees

Commissioner of Education has no authority to award counsel fees without express authorization by statute, rule, or contract (98:May 26, Livingston)

Fee agreement which prohibited termination except for notice given within a restrictive 30 day period void as against public policy. Cohen v. ROU, 275 N.J. Super. 241 (App. Div. 1994), aff'd as modified 146 N.J. 140 (1996)

IDEA: Prevailing party in special education matter may maintain independent action in state court to enforce a right to attorneys fees occurred in the successful defense of administrative proceedings. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)

IDEA: State Courts have concurrent jurisdiction over IDEA claims for counsel fees. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)

Members of a school board were not individually liable for another member's allegedly improper opposition to a housing project. Active knowing assistance or participation in the wrongdoing might serve as a basis for a charge of individual or board responsibility. However, members failure to prevent the allegedly improper conduct was not enough to establish liability. Lake Lenore Estates, Associates v. Twp. of Parsippany-Troy Hills Bd. of Ed., 312 N.J. Super. 409 (App. Div. 1998)

Parents' delay of less than two years in seeking attorneys fees, expert fees and other costs under the IDEA was not unreasonable. B.K. v. Toms River Bd. of Ed., 998 F.Supp. 462 (D.N.J. 1998)

Parents with autistic child were entitled to counsel fees as proceedings before ALJ are statutory. IDEA fundamentally implicated as school district refused to fund child's education costs. Roxbury Bd. of Ed. v. Milford Bd. of Ed., 283 N.J. Super. 505 (App. Div. 1995)

ATTORNEYS

Health benefits: Attorney: board could not offer participation in its health care plan to its independent contractor attorney; would violate N.J.S.A. 18A:16-12 et seq. (94:Dec. 12, Van Wagner)

Retainer agreement requiring six month notice to lawyer before client could terminate agreement, otherwise renewing automatically, excessively burdened client's right to discharge lawyer. Cohen v. ROU, 146 N.J. 140 (1996), aff'g w/mod. 275 N.J. Super. 241 (App. Div. 1996)

Three days notice of termination from client to lawyer was unfair and unreasonable. Cohen v. ROU, 146 N.J. 140 (1996), aff'g w/mod. 275 N.J. Super. 241 (App. Div. 1996)

AUDIO-VISUAL COORDINATOR

AUDITOR