

## DAMAGES

(See also "Commissioner - Damages" this index)

Breach of contract damages for emotional distress available where conduct is intentional and outrageous and proximately causes severe, foreseeable emotional distress. Picogna v. Bd. of Ed. of Tp. of Cherry Hill, 143 N.J. 391 (1996) See also 249 N.J. Super. 332 (App. Div. 1991), aff'g St. Bd. 90:331, aff'g Commissioner 90:318)

Party to contract can recover for severe emotional distress caused by pre and post-termination events but may not recover for litigation-induced distress as a separate component of damages. Picogna v. Bd. of Ed. of Tp. of Cherry Hill, 143 N.J. 391 (1996) See also 249 N.J. Super. 332 (App. Div. 1991), aff'g St. Bd. 90:331, aff'g Commissioner 90:318)

Punitive damages are to be awarded when the wrongdoer's conduct is especially egregious but only in the event of actual participation by upper management or willful indifference. Abbamont, 138 N.J. 405 (1994), aff'g 269 N.J. Super. 11 (App. Div. 1993) See 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Punitive damages; in an action under the Conscientious Employee Protection Act, a board of education may be liable for punitive damages for the egregious misconduct of the superintendent of schools and other high-level administrators. Abbamont v. Piscataway Twp. Bd. of Ed., 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Punitive damages may be imposed against board of education under Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. (Abbamont, 138 N.J. 405 (1994), aff'g 269 N.J. Super. 11 (App. Div. 1993))

Punitive damages; Supreme Court's affirmance by an equally divided court constituted the controlling law under the "law of the case" doctrine and was binding on lower courts in this case. Abbamont v. Piscataway Twp. Bd. of Ed., 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Teacher who is entitled to damages for premature cancellation of contract, need not mitigate damages by accepting board's offer of lower paying employment before exhausting reasonable efforts to find similar, comparably paying work (95:March 27, Siegel, dec. on remand, aff'd St. Bd. 95:July 7)

## DANCE

## **DEBT**

## **DECLARATORY JUDGMENTS**

(See "Commissioner of Education - Declaratory judgments" this index)

## **DE FACTO SCHOOL BOARD MEMBER**

## **DEMOTION**

(See "Tenure - Dismissal or reduction in salary" this index)

## **DESEGREGATION**

Desegregation aid denied; N.J.S.A. 18A:6-33.16 does not guarantee such grants simply on basis of past receipt of grants by district (97 N.J.A.R.2d (EDU) 144, St. Bd., Weehawkin)

District Court exceeded its remedial authority to eliminate vestiges of intra-district de jure segregation when it ordered remedies designed to foster inter-district goal of attracting non-minority students from the suburbs. Missouri v. Jenkins, 115 S.Ct. 2038 (1995)

## **DIPLOMA**

Failure to pay class dues cannot be basis for withholding student's diploma (90:1285, Ballato)

## **DISABILITIES, PUPILS WITH**

Board acted reasonably in premising consent to change classroom of distractible child upon CST evaluation (89:1366, K.M., appeal dismissed St. Bd. 89:1393, dismissed App. Div. unpub. op. (Dkt. No. A-1181-89T1, April 11, 1990))

Board obligated to pay for multiply handicapped student's residential placement; family maintained domicile in district following father's transfer. District provided student's brother with T & E education during period in question. (95 N.J.A.R.2d (EDU) 78, M.D., aff'd St. Bd. 95 N.J.A.R.2d (EDU) 154, stay denied Commissioner 95:Jan. 26)

## **DISABILITIES, PUPILS WITH**

Board's failure to hold expulsion hearing for student who assaulted teacher not improper where behavior primarily caused by disability. Regulation in place required evaluation of non-disabled students prior to expulsion (96 N.J.A.R.2d (EDU) 598, Barna, See also 97 N.J.A.R.2d (EDU) 345, dismissed St. Bd. 97:Nov. 5)

Boards of education may in good faith eliminate CSTs for reasons of economy and joint with one or more boards of education or state agencies for basic CST services. Vincenzino 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 1997 S.L.D. (February 5), certif. den. N.J. Supreme Court C-87, 46,322 (Sept. 11, 1998)

Constituent elementary school district where 15-year old pupil resides must pay the cost of pupil's out-of-district placement; regional high school not responsible for cost as the classified pupil was not yet ready to attend high school (98:May 11, Watchung Hills)

If a board of education establishes a CST, each CST should be an employee of the board of education. Single positions may not be abolished. Vincenzino 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 1997 S.L.D. (February 5), certif. den. N.J. Supreme Court C-87, 46,322 (Sept. 11, 1998)

Joint custody - District to which mother had moved was responsible for child's education. Child of divorced couple is domiciled where parent with whom child lives is domiciled as long as divorced parents have a united intent to establish a district as their child's district. Roxbury Bd. of Ed. v. Milford Bd. of Ed., 283 N.J. Super. 505 (App. Div. 1995)

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.)

OAL, then Law Division had jurisdiction over IDEA residency dispute. Sole jurisdiction not transferred to state commissioner of education. Roxbury Bd. of Ed. v. Milford Bd. of Ed., 283 N.J. Super. 505 (App. Div. 1995)

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)

## DISABILITIES, PUPILS WITH

- Parents of autistic child entitled to counsel fees - proceedings in OAL essentially vested in IDEA. Roxbury Bd. of Ed. v. Milford Bd. of Ed., 283 N.J. Super. 505 (App. Div. 1995)
- Private schools - funds received by private not-for-profit school for early intervention services to disabled children properly expended for 1988-89 school year. Remanded for determination as to 1985-86 through 1987-88. (95 N.J.A.R.2d (EDU) 152, Early Intervention Programs, St. Bd. aff'g in part, remanding in part 92 N.J.A.R.2d (EDU) 68)
- Private schools - State Board regulation limiting rental reimbursement upheld; constitutional on its face and as applied (89:1682, Penta Associates, aff'd w/mod. St. Bd. 90:1784, aff'd App. Div. unpub. op. (Dkt. No. A-3631-89T1, July 8, 1991, certif. den. 127 N.J. 546 (1991), see also 91:226, Coastal Learning Center, aff'd St. Bd. 92:Oct. 8; 96 N.J.A.R.2d (EDU) 406, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unpub. op. Dkt. No. A-7571-95T2, Oct. 23, 1997)
- Regulation invalidated - Impermissibly narrowed language of and frustrated policy in IDEA w/r provision of assistive technology and services. Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6 and 4.3, 305 N.J. Super. 389 (App. Div. 1997)
- Regulations regarding inclusion in IEP of description of "specialized equipment and materials" invalid as different from and more narrow than federal mandate. (Note: special education regulations recodified at N.J.A.C. 6A:14 et seq.) In re: N.J.A.C. 6:28-3.6.
- Regulations regarding minimum space requirements for private schools for the handicapped valid facially and as applied. (Association of Schools and Aganue, App. Div. unpub. op. (Dkt. No. A-2887-89T5, March 12, 1991.))
- Rent charged to state by private school for the handicapped that exceeds costs of ownership properly excludable from tuition (96 N.J.A.R.2d (EDU) 406, Coastal Learning Center, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unreported opinion Oct. 23, 1997)
- School district in which nonpublic school is located is responsible for the identification, evaluation and classification of handicapped pupils and for providing remedial and auxiliary services to those nonpublic students. Chapter 192,193 obligations limited to state aid received. (96 N.J.A.R.2d (EDU) 811, Clifton, aff'd State Board 96 N.J.A.R.2d (EDU) 815, aff'd App.Div. 97 N.J.A.R.2d (EDU) 553)

## **DISABILITIES, PUPILS WITH**

School district responsible for FAPE for child who lives with grandparents who are not legal guardians and who do not provide 100% support (96 N.J.A.R.2d (EDU) 285, J.R.) (See also J.H.R. v. East Brunswick, 308 N.J. Super. 100 (App. Div. 1998))

Student not granted waiver to play football where he was 19 years of age and much larger than the other students and there were health and safety concerns (96 N.J.A.R.2d (EDU) 835, Salvatori)

## **DISABILITY**

(See "Retirement and Pensions" and "Workers Compensation" this index)

## **DISCOVERY**

Dismissal appropriate where petitioner has failed to comply with discovery requests over a period of one year (97:March 19, State Operated School District of City of Paterson, aff'd St. Bd. 97:Sept. 3)

## **DISCRIMINATION**

Age discrimination alleged in non-renewal of non-tenured teacher; petition dismissed for untimeliness (90:663, LeMee)

Age discrimination charge made no sense to Commissioner because he noted that, in New Jersey, older employees do not necessarily earn more money and may actually be preferred because of impending retirement (90:663, LeMee)

Age discrimination/free speech violation not found; board was within its rights to abolish position (96 N.J.A.R.2d (EDU) 331, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 335)

Alcoholism is handicap under Law Against Discrimination (93 N.J.A.R.2d (EDU) 788, Howard, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 556)

Allegations of discrimination by failing minority student who did not graduate unsupported by facts (93 N.J.A.R.2d (EDU) 4, G.M.)

## **DISCRIMINATION**

Board contract with single photographer to take high school yearbook photos was not improper, discriminatory or abuse of discretion (95 N.J.A.R.2d (EDU) 42, Santomenna)

Board violated tenure rights when they failed to appoint petitioner to position because they did not wish to pay him the higher salary (97 N.J.A.R.2d (EDU) 186, Reinhardt)

Board violated Title VII when it used race as a seniority tie breaker between equally qualified business education teachers. Taxman v. Bd. of Ed. of Twp. of Piscataway, 91 F.3d 1547 (3rd Cir. 1996)

Charges of discrimination dismissed for failure to answer interrogatories as ordered (90:1663, Watson)

Commissioner modifies ALJ decision recommending that he investigate allegations of discriminatory employment practices: matter referred to Division of Civil Rights (95 N.J.A.R.2d (EDU) 352, Davis)

Discrimination not factor in decision to re-appoint tenured school administrators to supervisory positions following State takeover and reorganization of district (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)

Dismissal of recovering alcoholic inappropriate, based on archaic stereotypes and in violation of LAD (93 N.J.A.R.2d (EDU) 788, Howard, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 556)

## **Drug Use**

Addiction; alcohol addiction is protected handicap under LAD but cross-addiction to marijuana is not protected as involved illegal cultivation and possession of large quantities (96 N.J.A.R.2d (EDU) 334, Kozic, aff'd St. Bd. w/mod. 96 N.J.A.R.2d (EDU) 345)

Dismissal for excessive absenteeism upheld despite claim of drug addiction: prior leave of absence satisfied board's obligation to accommodate employee (95 N.J.A.R.2d (EDU) 285, Jones)

Drug use: dismissal warranted where employer reasonably believes that the employee, disabled by drug addiction, is unable to perform adequately the essential duties of employment (98:March 6, Jones)

Drug use is handicap under LAD but dismissal of tenured employee ordered after second incident of illegal drug use (95 N.J.A.R.2d (EDU) 262, Yanniello, aff'd w/mod. St. Bd. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. unpub. op. Dkt. No. A-3482-96T1, April 2, 1998)

## DISCRIMINATION

Reasonable accommodation under LAD: board not required to grant second opportunity for recovery to tenured employee suffering from drug addiction (95 N.J.A.R.2d (EDU) 262, Yanniello, aff'd w/mod. St. Bd. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. unpub. op. Dkt. No. A-3482-96T1, April 2, 1998)

Exchange students: board's policy permitting only graduating to pupils to march in graduation processional did not discriminate against foreign exchange students (96 N.J.A.R.2d (EDU) 193, Barcalow)

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)

No evidence that board decision to bar parent who assaulted visiting coach from all future athletic events improperly motivated by racial considerations (95 N.J.A.R.2d (EDU) 85, Griffin, appeal dismissed as moot, 95:Apr. 5)

Private non-resident tuition program run by public school subject to review under state policy against discrimination and segregation in public schools (93 N.J.A.R.2d (EDU) 464, Merchantville II, parties directed to supplement record on appeal St. Bd. 97 N.J.A.R.2d (EDU) 249) (See also, 98: Jan. 7, St. Bd. denying Merchantville's petition to sever sending-receiving relationship with Haddonfield and denying Pennsauken's cross-petition to enjoin Haddonfield's tuition policy.)

Remand ordered: in determining whether promotion was denied because of retaliatory motive, evidence should be introduced as to qualifications of two other candidates, not just candidate selected (Jamison, 242 N.J. Super. 436 (App. Div. 1990))

Retaliation: after employee establishes *prima facie* case that promotion was denied because of previous discrimination complaint, burden shifts to employer to demonstrate that, because of qualifications of other candidates, promotion would have been denied absent retaliatory motives (Jamison, 242 N.J. Super. 436 (App. Div. 1990))

## **DISCRIMINATION**

### Sexual Harassment

If a school district has actual knowledge of a teacher's sexual harassment of a student and the district is deliberately indifferent, an implied private right of action against a school district for monetary damages under Title IX will exist. Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998).

Materials relating to employer's internal investigation of alleged sexual harassment were relevant to employee's claim and were generally discoverable. Payton v. Turnpike Authority, 148 N.J. 524 (1997)

Statistical evidence of disparity in male-female administrator ratio which may or may not be related to enforcement of NJ Teacher Tenure Law may not be used as basis for ignoring provisions of tenure law (92 N.J.A.R.2d (EDU) 540, Bourhis)

## **DISMISSAL**

(See "Tenure - Dismissal" and "Non-tenured Teaching Staff - termination or dismissal" this index)

## **DISSOLUTION OF DISTRICT**

Department of Education's determination to grant petition for authorization to conduct dissolution referendum was not arbitrary or capricious. In re Petition for Authorization to Conduct a Referendum on the Dissolution of Union County Regional High School, 298 N.J. Super. 1 (App. Div. 1997), certif. den. 149 N.J. 37 (1997)

When a regional 9-12 board dissolves, resulting K-12 districts do not constitute "new district" within meaning of N.J.S.A. 18A:6-31.3 et seq. (97 N.J.A.R.2d (EDU) 217, Stagaard, aff'd St. Bd. 97:Oct. 1)

## **DISTRICT**

## **DOMICILE**

(See "Boards of Education - Membership on" and "Pupils - Residence for school purposes" this index)

## DOUBLE JEOPARDY

## DRESS

(See "Pupils - Dress and appearance" and "Teachers - Dress and appearance" this index)

## DRUG TESTING

Drug Testing policy for student athletes (mandatory and random) upheld. Veronia School District v. Acton, 115 S.Ct. 2386 (1995)

School District enjoined from screening its athletes for drug use, at least until it provides a strong factual basis for determining that tests are needed. Upheld 8/26 TRO. Wilson v. Ridgefield Park Bd. of Ed., Dkt. No. L-7984-97, Oct. 28, 1997

## DUE PROCESS

Due process claims under Goss v. Lopez are inapplicable as Goss involved a student's legitimate claim to a free and appropriate public education; whereas this case involves whether an affidavit student has as legitimate claim to a free and appropriate public education (97:Feb. 19, J.A., aff'd as modified, St. Bd. 97:Aug. 6)

Due process satisfied by public hearing conducted by Board of Review with respect to Department of Education's grant of petition for authorization to conduct dissolution referendum. In re Petition for Authorization to Conduct a Referendum on the Dissolution of Union County Regional High School, 298 N.J. Super. 1 (App. Div. 1997), certif. den. 149 N.J. 37 (1997)

If the Division of Youth and Family Services (DYFS) concludes that allegations of child sexual abuse against a teacher are substantiated and has placed her name in its Central Registry, the teacher is entitled to a due process hearing under the 14<sup>th</sup> Amendment to the U.S. Constitution and Article 1, paragraph 1 of the New Jersey Constitution. In the Matter of Allegations of Sexual Abuse at East Park High School, 314 N.J. Super. 339 (App. Div. 1998)

## **DURESS**

## **DYFS**

If the Division of Youth and Family Services (DYFS) concludes that allegations of child sexual abuse against a teacher are substantiated and has placed her name in its Central Registry, the teacher is entitled to a due process hearing under the 14<sup>th</sup> Amendment to the U.S. Constitution and Article 1, paragraph 1 of the New Jersey Constitution. In the Matter of Allegations of Sexual Abuse at East Park High School, 314 N.J. Super. 149 (App. Div. 1998)

