

EDUCATIONAL SERVICES COMMISSIONS

- Authority to impose fines due to violation of contract is specifically reserved to the Commission, not to the superintendent (98:June 11, Eagle Rock Bus Co.)
- Educational services commissions are not school districts or quasi school districts (94 N.J.A.R.2d (EDU) 234, Middlesex County Educational Services Commission, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 430)
- Educational services commissions may charge only the actual cost of their services. Essex County Educational Services Comm., 93 N.J.A.R.2d (EDU) 522, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 117, aff'd App. Div. 95 N.J.A.R.2d (EDU) 106.
- Educational services commission must refund to state \$1,056 million in surplus funds received in contracts with local school districts. No authority to retain surplus funds. Essex County Educational Services Comm., 93 N.J.A.R.2d (EDU) 522, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 117, aff'd App. Div. 95 N.J.A.R.2d (EDU) 106.
- ESC did not act improperly when it entered into agreement with board to provide transportation services to regular education students (98:March 12, Delaware Valley Regional Education Association)
- Handicap accessibility costs (95:November 14, Essex County Ed. Services, settlement on remand.)

ELECTIONS

(Note that many of these decisions predate the repeal of N.J.S.A. 18A:14-1 et seq. As of 1996, school elections are governed by Title 19 in N.J.S.A.)

Affidavit votes

Election will not be voided absent evidence that votes cast by affidavit voters who may not have been properly registered would have changed results of election (93 N.J.A.R.2d (EDU) 273, Millstone) (95 N.J.A.R.2d (EDU) 229, Atlantic City)

Ballots

Although candidate's name did not line up with line on punch machine, outcome was not affected; board admonished to exercise better control in printing ballots (95:September 7, Monroe)

Candidate's name need not appear on ballot as it appears on voter registration so long as the name appearing is legitimate, there is no allegation of fraud, and no question as to the identity or voter status of the candidate (95:April 5, Spinelli)

Absentee ballots

Absentee ballot issues were not within the jurisdiction of the Commissioner (96 N.J.A.R.2d (EDU) 123, Toms River)

Absentee ballot mailed prior to close of polls but which lacked postmark to be opened and counted in absence of any evidence of fraud (94 N.J.A.R.2d (EDU) 421, Morris Hills) (94 N.J.A.R.2d (EDU) 529, Morris Hills)

Absentee ballot voided during recount because intent of voter could not be determined (94 N.J.A.R.2d (EDU) 411, Cape May)

Board complied with N.J.S.A. 18A:14-12.1 when, upon withdrawal of candidate who drew first ballot position, it retained the fixed numbering of the slots while advancing the names of candidates (95:March 28, Mangieri)

Commissioner without jurisdiction to review absentee ballots (92 N.J.A.R.2d (EDU) 396, Pennsauken) (95:November 6, Toms River)

Election upheld despite evidence that campaign worker completed absentee ballot applications for individuals who were dead or incompetent: no evidence that ballots actually cast (95 N.J.A.R.2d (EDU) 229, Atlantic City)

ELECTIONS

Drawing for positions

Re-drawing for ballot positions upheld where initially a candidate's name was inappropriately omitted from consideration (90:554, In re: Drawing of Ballot Positions, Newark, aff'd St. Bd. 90:558)

Markings: Ballot with mark other than a "check", "x" or "plus" counted (90:May 31, Hamburg)

Not counted where three members were to be elected and four squares were checked (90:May 31, Hamburg) (90:May 31, Mannington)

Outcome of election not affected by alignment irregularity on ballots when ballots were correctly read by computers processing votes (95 N.J.A.R.2d (EDU) 508, Cooper)

Recount

Recount changed outcome (95:May 12, Point Pleasant)

Recount did not change election results (95 N.J.A.R.2d (EDU) 465, Manalapan-Englishtown Regional) (95 N.J.A.R.2d (EDU) 466, Long Branch) (95 N.J.A.R.2d (EDU) 478, Freehold Township) (95 N.J.A.R.2d (EDU) 228, Toms River) (95 N.J.A.R.2d (EDU) 234, Essex County) (95 N.J.A.R.2d (EDU) 243, Mt. Laurel) (95 N.J.A.R.2d (EDU) 248, Teaneck) (95 N.J.A.R.2d (EDU) 248, Willingboro) (95 N.J.A.R.2d (EDU) 249, Ewing) (95 N.J.A.R.2d (EDU) 250, Middlesex) (95 N.J.A.R.2d (EDU) 252, Saddle Brook) (95 N.J.A.R.2d (EDU) 271, Lyndhurst) (95 N.J.A.R.2d (EDU) 272, Princeton Regional) (95 N.J.A.R.2d (EDU) 273, Stafford) (95 N.J.A.R.2d (EDU) 274, Union Township) (96 N.J.A.R.2d (EDU) 30, Asbury Park)

Recount did not change outcome (95:May 10, Kingwood) (95: May 18, Lower Camden) (95:May 19, High Bridge) (95:May 19, Berkeley) (95:May 22, South Amboy) (95:May 31, Carteret) (95:May 31, Piscataway) (95:June 2, Scotch-Plains Fanwood) (95:June 7, Ramapo-Indian Hills) (95:June 14, Garfield) (95:July 17, Manalapan-Englishtown) (95:July 28, Lakewood) (95:August 14, Spring Lake Heights)

Recount does not change outcome of general fund question, although final tally changed (95 N.J.A.R.2d (EDU) 244, Piscataway)

Recount in machine ballots changes outcome of election (95 N.J.A.R.2d (EDU) Little Ferry)

ELECTIONS

Recount of ballots cast regarding general fund question does not change tally (95 N.J.A.R.2d (EDU) 25, Roselle Park)

Sample ballots

Board's failure to mail 8,000 sample ballots in violation of N.J.S.A. 18A:14-31 insufficient to void election where no connection between failure to mail and election outcome established (93 N.J.A.R.2d (EDU) 645, Newark)

Write-in votes

Confusion by some voters over write-in process does not warrant new election (93 N.J.A.R.2d (EDU) 878, East Amwell)

Erroneous instructions given by election officials (92 N.J.A.R. 2d (EDU) 476, Hamilton)

Last name only; first initial and last name, and minor misspellings counted when no other candidates have same or similar name (94 N.J.A.R.2d (EDU) 435, Pemberton) (94 N.J.A.R.2d (EDU) 516, Oldmans Twp.)

Last name sufficient only as long as intent of voter can be determined (91:May 23, Newfield)

Must be cast on line corresponding to office to be filled; failure to cast vote on correct line will result in vote not being counted (93:May 14, East Amwell)

Not counted where it was cast in favor of candidate who appeared on official ballot (95:May 9, Bellmawr)

Not counted where not written on line corresponding to office voted for (90:May 29, Delran)

Use of yellow pasters with required box and "x" printed to right of candidate's name, while technically in violation of statute, does not invalidate votes so cast (91:1226, Bordentown)

Written in on a line other than the one next to the appropriate office will not be counted (91:770, Bordentown)

Board Secretary

In the absence of allegations of fraud or misrepresentation, a board secretary's ministerial role does not permit him to require that a candidate's name must appear on the ballot in the same manner it appears on the candidate's voter registration; board ordered to print name as appeared on nominating petition (95:April 5, Spinelli)

ELECTIONS

Campaign manager

Election laws do not bar sitting board member from serving as campaign manager for candidates in election (93 N.J.A.R.2d (EDU) 360, Brick)

Candidates

Board secretary acted properly in leaving candidate's name on the ballot, where candidate withdrew his name from the election but shortly thereafter rescinded the withdrawal before any action was taken (97 N.J.A.R.2d (EDU) 471, Monaghan)

Candidate allowed on ballot, 1 of 10 signatures was from non-registered voter removed from roll in 1993 for not voting in four consecutive years. P.L. 1994, c. 182, repealed N.J.S.A. 19:31-5. (Saunders v. Toms River Regional Schools Bd. of Ed., 144 N.J. 371 (1996), rev'g 289 N.J. Super. 225 (App. Div. 1996))

Candidate may not change valid nominating petition after deadline. Dismissed as moot (94:April 6, Barrett)

Candidate who withdrew from election was permitted to rescind withdrawal as Board Secretary had taken no action to remove his name from the ballot (97 N.J.A.R.2d (EDU) 471, Monaghan)

Candidate's conflict of interest did not disqualify him from candidacy; motion for emergent relief requesting a directive that candidate cure conflict or withdraw, is dismissed (95:March 7, Long Branch) (95:March 7, Asbury Park) (95:March 15, Keratt)

Candidate's interest in lease agreement with school district is inconsistent with board membership but does not disqualify candidate from running for board (93 N.J.A.R.2d (EDU) 369, Edwards, aff'd in part, rev'd in part St. Bd. 93:Nov. 3)

Candidate's presence at parent-teacher bake sale immediately outside polling area inappropriate but not sufficiently serious to support voiding election (92 N.J.A.R.2d (EDU) 504, Hainesport)

Complaint dismissed for failure to prove improper signature comparison by workers at polls (90:1214, East Hanover)

Current board member whose term had not expired could not run for a new seat, despite her intent to resign if she won (90:527, Kueken)

Disqualifying conflict of interest when candidate is primary corporate counsel to governing body (93 N.J.A.R.2d (EDU) 367, Gonzalez)

ELECTIONS

Legislative intent required retroactive application of P.L. 1995, c. 278. Saunders v. Toms River Regional Schools Bd. of Ed., 144 N.J. 371 (1996), rev'g 289 N.J. Super. 225 (App. Div. 1996)

Union representative employed by board as custodian and grounds keeper not qualified to run for board; intent to give up conflicting employment if elected does not remove disqualifying conflict of interest (93 N.J.A.R.2d (EDU) 157, Suchcicki) (But see St. Bd. decision in Edwards, 93:Nov. 3)

Write-in candidate not entitled to vacant seat board failed to advertise; special election must be held (92 N.J.A.R.2d (EDU) 432, Mullica Township)

Challengers

Candidate may act as own challenger (91:1472, Lacey Township)
Irregularities in appointment of challengers insufficient to invalidate election (93 N.J.A.R.2d (EDU) 409, Fairview)

Commissioner of Education

Absent a prima facie case that the will of the people has been thwarted and the outcome of the election changed, the election will not be overturned (96 N.J.A.R.2d (EDU) 10, New Providence)

Appropriate standard of review in election challenge is that of demonstrating by preponderance of evidence that irregularities occurred and affected outcome of election (93 N.J.A.R.2d (EDU) 645, Newark)

Board is party of interest in a request for inquiry alleging specific violation of election law influenced outcome of election and board generally takes position, on behalf of newly elected members against whom allegations of election impropriety are made that violations did not occur or the candidates' alleged conduct did not affect the election's outcome (96 N.J.A.R.2d (EDU) 10, New Providence)

Commissioner lacks jurisdiction to determine how civilian absentee ballots should be counted; must accept certification of county board of elections (90:1214, East Hanover) (95:November 6, Toms River)

Commissioner may not tally vote not actually cast even when proven that person who would have cast it was wrongly prevented from voting; sole relief available is new election (93 N.J.A.R.2d (EDU) 574, Keansburg)

ELECTIONS

Connection between the election irregularity and the result of the election required. The irregularity must be the cause of the illegality (96 N.J.A.R.2d (EDU) 10, New Providence)

Gravity of allegations of filing of false voting affidavits require Commissioner to exercise discretion to conduct inquiry even though request untimely (92 N.J.A.R.2d (EDU) 219, Pennsauken)

Lack of prosecution warranted dismissal; election matters warrant prompt closure (96 N.J.A.R.2d (EDU) 123, Toms River)

Moot

Petition properly dismissed as moot where the documents sought by petitioner were no longer in the board's possession, petitioner's request that the name of the candidate be removed from the ballot was mooted by the election, and elections are no longer within the jurisdiction of the Commissioner of Education (97 N.J.A.R.2d (EDU) 471, Monaghan)

No jurisdiction to order recount of absentee ballots (96 N.J.A.R.2d (EDU) 537, Ramapo-Indian Hills, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 741, aff'd App. Div. unpub. op. Dkt. No. A-7617-95T5, Oct. 10, 1997)

Petitioner's failure to provide answers to interrogatories required dismissal of election challenge (95:November 6, Toms River)

Public policy ordains upholding an election unless it appears to be illegal (96 N.J.A.R.2d (EDU) 10, New Providence)

Pursuant to N.J.S.A. 18A:13-9, Commissioner may make one-year adjustment in term of office of any member of regional school board who represents district which has disproportionate number of representatives up for election at same time due to reappointment (91:519, Pascack Valley)

Tie votes following recount; Commissioner may order run-off election (91:768, Liberty)

Literature

Allegations of fraud or libel involving election literature properly resolved in other forums (92 N.J.A.R.2d (EDU) 564, Willingboro)

Board enjoined from future expenditures of public funds to produce and distribute via cable access channel video advocating passage of budget (94 N.J.A.R. 2d (EDU) 230, Old Bridge)

ELECTIONS

- Board enjoined from publishing partisan literature and directed to establish procedure for review of all publications pertaining to school budget or election prior to distribution (93 N.J.A.R.2d (EDU) 224, Schettino)
- Board enjoined from using public money to publish or distribute materials which have appearance of advocating position on upcoming bond resolution (93:Nov. 29, Burghardt)
- Board hiring of consultant to prepare referendum documents not unreasonable (97 N.J.A.R.2d (EDU) 491, Schoen)
- Board may work for passage of its own initiative with public funds circumscribed by promulgation of materials that are balanced (97 N.J.A.R.2d (EDU) 491, Schoen)
- Board self policed election materials (97 N.J.A.R.2d (EDU) 491, Schoen)
- Campaign literature alleged to have been placed in newspaper by board candidates without authorization from publisher, even if deemed a violation of the election law did not thwart the election (96 N.J.A.R.2d (EDU) 10, New Providence)
- Commissioner finds newsletter improperly advocated passage of public question, constituting an impermissible use of public funds. Full board ordered to publicly review publications in advance for period of one year. (96 N.J.A.R.2d (EDU) 114, Enterline)
- Defamation: Punitive damages of \$200,000 were ordered against mayoral candidate for defamatory published campaign materials (libel). Newman v. Delahunty, 293 N.J. Super. 469 (1996).
- Distribution of literature which did not show source of payment and printer did not affect outcome of election (92 N.J.A.R.2d (EDU) 564, Willingboro)
- Editorials in student newspaper supporting board members not improper use of publicly funded media to support political candidates or positions (93 N.J.A.R.2d (EDU) 224, Schettino)
- Election mailer without attributed source violated election statute but did not affect election outcome (92 N.J.A.R.2d (EDU) 446, Toms River Regional)
- Electioneering by distribution of misleading palm cards insufficient to void election (93 N.J.A.R.2d (EDU) 645, Newark)

ELECTIONS

Flyers which extolled virtues of present board and accused opponents of spreading lies amount to campaign literature; expenditure of board funds on publication is violation of election laws (93 N.J.A.R.2d (EDU) 224, Schettino)

Letter from superintendent addressed to parents of school children and sent home with students to ascertain whether parents had difficulty voting in favor of school budget at recent election not violative of N.J.S.A. 18A:42-4 (92 N.J.A.R.2d (EDU) 520, Waldwick)

Newsletter prepared by a paid consultant was not improperly advocative; if the information provided is not deliberately incomplete, inaccurate or selectively based the mere absence of the mention of opposing viewpoints is not sufficient to warrant a finding that the material contravenes Citizens to Protect Public Funds (97 N.J.A.R.2d (EDU) 491, Schoen)

No violation of election law when board member talked store employee into removing campaign posters from window (92 N.J.A.R.2d (EDU) 617, Jackson Township)

Ohio statute banning anonymous political campaign literature violated First Amendment. McIntyre v. Ohio Elections, 115 S.Ct. 1511 (1995) See also Pleasantville, 95 N.J.A.R.2d (EDU) 576.

Outcome of the election not affected. Irregularities not sufficient to require new election. County superintendent directed to review practices and procedures of the board and report necessary corrective action in policy and procedures to the board (94:Sept. 6, Colts Neck)

Portion of school board's referendum newsletter that lent itself to misinterpretation must be corrected (95 N.J.A.R.2d (EDU) 532, Magara)

Publicity; board cannot publish and distribute a newsletter which advocates passage of a budget question on a ballot (91:677, Fenton)

Nominating petitions

Defect cured where one of the ten signatories was not a registered voter at the time the petition was filed; signatory's reregistration was not "adding a signature" but was rather, a technical correction permitted by N.J.S.A. 19:13-13. Saunders v. Toms River, 144 N.J. 371 (1996), rev'g App. Div. for reasons expressed in App. Div. dissent.

ELECTIONS

Defective; candidate who signed own nominating petition as qualified voter unable to cure defect because of lateness of submission of petition (93 N.J.A.R.2d (EDU) 358, Darrow)

Defective; current board member whose term had not expired could not run for a new seat, despite her attempt to resign in current seat if she won (90:527, Kueken)

Defective; three of twelve signatures submitted (91:672, Buono)

Insufficient signatures cannot be remedied by subsequent registration of signers once submission date for nominating petitions has passed (94 N.J.A.R.2d (EDU) 362, Jones)

Late challenge to defective nominating petitions rejected; no basis to relax statutory time line (91:648, Brodsky)

Nominating petition which was not challenged prior to 48th day before election is conclusively valid (94 N.J.A.R.2d (EDU) 357, Rollins, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 104, aff'd App. Div. 96 N.J.A.R.2d (EDU) 464)

Officials

Appointment of board employees as election officials and failure by board to train officials violation of election law but insufficient to void election (93 N.J.A.R.2d (EDU) 645, Newark)

Confusion regarding polling locations and how to cast write-in ballots not due to negligence of election officials; no evidence of fraud, negligence, knowing misconduct or will of electorate was thwarted (90:1360, Little Egg Harbor)

Failure by officials to place paper rolls in sealed packages and to identify which machines the paper rolls came from will not invalidate the election in the absence of any evidence of fraud (91:538, Bridgewater-Raritan)

Failure of officials to compare voters' signatures with signatures on poll list insufficient to void election (93 N.J.A.R.2d (EDU) 645, Newark)

Method of appointing election officials did not comply with N.J.S.A. 18A:14-6, but election not voided where no bad faith was found and election outcome not affected (94:Nov. 30, Dennis)

ELECTIONS

Reappointment of election worker following worker's involvement in single isolated altercation with candidate was within board's discretion and not arbitrary, capricious or unreasonable (94 N.J.A.R.2d (EDU) 486, Coviello)

Partisan politics

Endorsement of candidates by Republican Municipal Committee chairman is not improper partisan political interference in school board election (93 N.J.A.R.2d (EDU) 360, Brick)

Procedures at polling place

Absent evidence of fraud or misconduct that thwarted the will of the voters, confusions as to the casting of write-in votes will not void election (91:1226, Bordentown)

Board required to establish additional temporary polling place upon receipt of properly filed petition; board maintains discretion as to location of additional polling place (93 N.J.A.R.2d (EDU) 327, Schwieger)

Complaint dismissed for failure to prove improper signature comparison by workers at polls (90:1214, East Hanover)

Compliance with election laws concerning polling times and notice requires dismissal of petition challenging election (95 N.J.A.R.2d (EDU) 567, Middle Township)

Confusion caused by insufficient number of election workers did not rise to level of irregularity; board directed to provide sufficient workers in future elections (92 N.J.A.R.2d (EDU) 504, Hainesport)

Electioneering within 100 feet of polling place not prevented by election workers did not affect outcome of election (92 N.J.A.R.2d (EDU) 564, Willingboro)

Failure to compare signatures against those in signature copy register book was a violation, but not reason to void the election where no bad faith was found and outcome of election unaffected (94:Nov. 30, Dennis)

Late poll opening did not thwart will of electorate (90:1387, Newark)

Machines

Discrepancy between vote count and names on poll list held not to materially affect outcome of election (92: May 14, Hainesport)

Inadvertent clearing of machines prior to recount (91:June 5, Westwood)

ELECTIONS

Machine malfunction held not to sufficiently affect outcome of election so as to thwart will of voters based on statistical analysis of impact of malfunction (94 N.J.A.R.2d (EDU) 530, Ridgefield Park)

Release following recheck (91:689, Middlesex) (91:692, Somerset) (91:694, Passaic) (91:697, Ocean) (91:700, Monmouth)

No statutory prohibition against holding "Back to School" night at same time as school election, however, care must be taken to ensure no suspicion is created so as to undermine public confidence in integrity of electoral process (95 N.J.A.R.2d (EDU) 532, Magara)

Pupils

Teacher's telephone calls to parents did not improperly influence school board election. Pupil records issue (96 N.J.A.R.2d (EDU) 296, Carteret)

Referenda and special elections

Although irregularities occurred, none would change the outcome of the election. Petition dismissed. (96 N.J.A.R.2d (EDU) 624, Hillsborough)

Board need not advise voters that alternative methods exist to finance proposed improvement (95:Oct. 23, Kennedy)

Board not preliminarily enjoined from moving forward with construction of one-story middle school; although referendum had been approved based on plans for the construction of a two-story school, the cost and use of the school would remain the same (95:Oct. 23, Shuster; See also 95:Dec. 6, summary judgment denied as issues of fact are present regarding relative operating costs of one and two story buildings)

Board's decision to hold bond referenda in inclement weather held not to thwart the free will of the electorate, constitute an irregularity of procedures or change the outcome of the election where plaintiff has not met his burden of proof (96 N.J.A.R.2d (EDU) 947, McVeigh, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 318)

Board's post referendum change from two story to one story school plan was within its discretion and was not unlawful, arbitrary, capricious or unreasonable. No evidence that a majority of the voters intended to approve a two story plan (96 N.J.A.R.2d (EDU) 670, Shuster)

ELECTIONS

Dissolution: 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)

In absence of final ruling that board's construction is beyond scope of referendum, Commissioner would not require parties to engage in settlement efforts, as such order would constitute surrender of board's statutory authority (95:Dec. 6, Shuster, order on motion for summary judgment)

Regional board may not nullify referendum mandate which established will of the voters absent showing of unexpected or exceptional supervening events (Colts Neck v. Freehold High School, 270 N.J. Super. 497 (App. Div. 1994), certif. denied 137 N.J. (1994))

Results must stand when improprieties were not shown to be sufficient to alter outcome (95 N.J.A.R.2d (EDU) 576, Pleasantville)

Special elections

Apportionment: Change in method of apportionment in regional district must be approved by majority in each constituent municipality. Borough of North Haledon v. Bd. of Ed. of Manchester Regional, 305 N.J. Super. 19 (App. Div. 1997)

Board acted within the scope of its authority when it determined that it was in the best interest of the district that the membership of the Board should be reduced, analysis of this issue was not altered by the fact that the district was a consolidated Type II district (97:Oct. 2, Wrightstown Borough Council)

Outcome of the election not affected. Irregularities not sufficient to require new election. County superintendent directed to review practices and procedures of the board and report necessary corrective action in policy and procedure to the board (94:Sept. 6, Colts Neck)

ELECTIONS

Recall elections: recall election could not be held within last six months of school board member's term - petition untimely. Committee to Recall v. Casagrande, 304 N.J. Super. 496 (Law Div. 1997), aff'd 304 N.J. Super. 421 (App. Div. 1997)

Referendum allowing change in method of cost apportionment in regional district must be approved by majority of each constituent municipality pursuant to N.J.S.A. 18A:13-23 (94 N.J.A.R.2d (EDU) 385, Northern Burlington County Regional, appeal dismissed untimely St. Bd. 95:Oct. 5, aff'd App. Div. unpub. ops. Dkt. Nos. A-1743-95T5 and A-1787-95T5, Sept. 23, 1996)

Required to fill vacancy caused by board's failure to give proper notice of vacancy prior to annual election (92 N.J.A.R.2d (EDU) 432, Mullica Township)

Required to fill vacancy when voiding of absentee ballot created tie between candidates (94 N.J.A.R.2d (EDU) 411, Cape May)

Special election to fill new seats on board created by change of classification from Type I to Type II deemed valid although mistakenly held after statutory time frame for such election (93 N.J.A.R.2d (EDU) 171, Edison)

Settlements

Rejected and remanded; specific terms of the settlement must be spread on the record (94:Sept. 2, Haddon Heights) (94:Sept. 16, Longo Associates) (94:Sept. 16, Wilson)

Voiding

Allegation that two votes illegally cast in close election insufficient to void election absent conclusive evidence that votes were illegally cast and affected election outcome (92 N.J.A.R.2d (EDU) 658, Laurel Springs)

An election will not be set aside on the basis of mere speculation that the result would have been different (97 N.J.A.R.2d (EDU) 90, Lacey School District, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 313)

Aside from untimely submissions, even if irregularities occurred, would not have affected election outcome (96 N.J.A.R.2d (EDU) 123, Toms River)

ELECTIONS

- Board ordered to review election statutes and procedures with county superintendent because of election irregularities (95 N.J.A.R.2d (EDU) 229, Atlantic City)
- Board's decision to hold bond referenda in inclement weather held not to thwart the free will of the electorate, constitute an irregularity of procedures or change the outcome of the election where plaintiff has not met his burden of proof (96 N.J.A.R.2d (EDU) 947, McVeigh, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 318)
- Confusion by some voters over write-in process does not warrant new election (93 N.J.A.R.2d (EDU) 878, East Amwell)
- Criminal and civil courts are forums to hear grievances of the wrongful conduct of the winning candidate or others (96 N.J.A.R.2d (EDU) 123, Toms River)
- Delayed opening of one polling place because of improper insertion of key into voting machine and later mechanical failure and repair of voting machine insufficient to invalidate election (91:1363, Eatontown)
- Election results upheld. No showing that will of the electorate thwarted. (96 N.J.A.R.2d (EDU) 537, Ramapo-Indian Hills, aff'd 96 N.J.A.R.2d (EDU) 741, aff'd App. Div. unpublished op. Dkt. No. A-7617-95T5, Oct. 10, 1997) (96 N.J.A.R.2d (EDU) 743, Teaneck)
- Election results upheld; statistical analysis showed that machine malfunction unlikely to have effected outcome (94 N.J.A.R.2d (EDU) 530, Ridgefield Park)
- Election set aside; given combined effect of erroneous instructions on casting write-in ballots, significant number of rejected ballots, long lines and mass confusion at polls, Commissioner concluded will of electorate unable to be fairly expressed (92 N.J.A.R.2d (EDU) 476, Hamilton)
- Election upheld despite lack of poll lists, irregularities in affidavit votes, and campaign worker's completion of absentee ballot applications on behalf of dead or incompetent individuals: no evidence that unregistered individuals voted or that will of electorate was thwarted (95 N.J.A.R.2d (EDU) 229, Atlantic City)
- Election upheld; no evidence that ADA was violated or that malfunction of voting machine curtain affected results (93 N.J.A.R.2d (EDU) 273, Millstone)

ELECTIONS

- Election will not be voided absent evidence that votes cast by affidavit voters who may not have been properly registered would have changed results of election (93 N.J.A.R.2d (EDU) 273, Millstone)
- Evidence that mechanical difficulties prevented 23 voters from voting in favor of defeated budget insufficient to prove election results affected when margin of defeat was 32 votes (92 N.J.A.R.2d (EDU) 520, Waldwick)
- Failure by officials to place paper rolls in sealed packages and to identify which machines the paper rolls came from will not invalidate the election in the absence of any evidence of fraud (91:538, Bridgewater-Raritan)
- Failure to give notice of time and place voting machines could be inspected not sufficient error as to influence election outcome, but board admonished to ensure strict compliance with school election laws (90:1235, Berlin Township)
- Gross irregularities including electioneering, failure of board to mail sample ballots, failure of officials to compare voters' signatures with signatures on poll list, failure of board to train election officials, and appointment of board employees as election officials insufficient to void election in absence of proof that will of electorate was thwarted; irregularities referred to Prosecutor's office (93 N.J.A.R.2d (EDU) 645, Newark)
- Gross irregularities including orally instructing voters who to vote for, accompanying voters into booth and failure by election officials to determine whether voters required assistance sufficient to void close election (92 N.J.A.R.2d (EDU) 213, Chesilhurst, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 427)
- Illegal votes; election held valid absent any proof as to how votes were cast or if votes affected outcome of election (92 N.J.A.R.2d (EDU) 396, Pennsauken)
- In order for a school election to be invalidated it must be shown that the irregularity influenced the election so as to repress a full and free expression of the popular will (97 N.J.A.R.2d (EDU) 90, Lacey School District, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 313)

ELECTIONS

- Inquiry into violations pursuant to N.J.S.A. 18A:14-63.12:
The "announcement" of election results that triggers the five day inquiry for a defeated candidate must be a public communication presenting combined results from all polling districts, including absentee ballots; the announcement of such results following the close of each polling place on the night of the elections constituted the "announcement" (90:104, Old Bridge, dec. on remand, aff'd St. Bd. 90:Apr. 4)
- Irregularities alleged, if true, not sufficient to affect outcome of election (97 N.J.A.R.2d (EDU) 90, Lacey, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 313)
- Irregularities in appointment of challengers insufficient to invalidate election (93 N.J.A.R.2d (EDU) 409, Fairview)
- Malfunction of machine and late arrival of poll worker insufficient to void election in absence of proof that will of electorate thwarted (93 N.J.A.R.2d (EDU) 635, Egg Harbor)
- Mechanical difficulties resulting in voters leaving not grounds for setting aside election (92 N.J.A.R.2d (EDU) 520, Waldwick)
- New election not warranted when losing candidate fails to show any statutory election violation based on the successful candidate's use of student directory labels but board directed to develop and adopt policy regarding release of student directory information and sale of labels (95 N.J.A.R.2d (EDU) 568, Point Pleasant)
- New election ordered based on proof that legal vote which would have changed result of tied election was defeated (93 N.J.A.R.2d (EDU) 574, Keansburg)
- No cause of action stated. No citation of any statutory election violation. (96 N.J.A.R.2d (EDU) 537, Ramapo-Indian Hills, aff'd 96 N.J.A.R.2d (EDU) 741, aff'd App. Div. unpublished op. Dkt. No. A-7617-95T5, Oct. 10, 1997) (96 N.J.A.R.2d (EDU) 743, Teaneck)
- No evidence of fraud, misconduct or interference with election; election results upheld (93 N.J.A.R.2d (EDU) 341, Sickler)
- Petitioner who fails to submit the required signatures with petition challenging outcome of election will have appeal dismissed (96 N.J.A.R.2d (EDU) 947, McVeigh, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 318)

ELECTIONS

- Petitioner's proofs failed to establish any violation of election laws through electioneering, improper behavior of challengers or closing polls early (90:1229, City of Long Branch)
- Presence of general public after close of polls and discrepancy between total number of votes cast for winning candidate and budget insufficient to invalidate election (91:1472, Lacey Township)
- Presence of one candidate at bake sale immediately outside of polling area and another candidate as a poll worker for regional election did not thwart will of electorate (92 N.J.A.R.2d (EDU) 504, Hainesport)
- Proven irregularities of electioneering, improper distribution of literature, and negligence and omission by busy election workers insufficient to void election in absence of any evidence that election results do not express will of people (92 N.J.A.R.2d (EDU) 564, Willingboro)
- Proven violations insufficient to require new election absent proof that outcome affected; violations referred to prosecutor (92 N.J.A.R.2d (EDU) 514, Mainland Regional)
- Public relations person obtained advertising discount for board candidates. No school election law violation shown. (96 N.J.A.R.2d (EDU) 743, Teaneck)
- Purpose of ordering a new election is not to punish successful wrongdoers; only ordered where plaintiff demonstrates that it is reasonably certain that the election results do not express people's will (96 N.J.A.R.2d (EDU) 123, Toms River)
- Purpose of ordering a new election is not to punish the successful wrongdoers; only where it is reasonably certain that the election results do not express the will of the people that a new election be ordered (96 N.J.A.R.2d (EDU) 120, Dempster)
- Seven minute delay in opening of polls, understaffing and long lines insufficient to invalidate election (91:1570, Wanaque)
- Single citizen does not have standing to request inquiry into alleged election irregularities; N.J.S.A. 18A:14-63.12 requires petition of ten qualified voters (91:1472, Lacey Township)
- Standing to compel inquiry limited to candidates and voters (97 N.J.A.R.2d (EDU) 90, Lacey, dismissed St. Bd. 97 N.J.A.R.2d (EDU) 313)

ELECTIONS

Teacher's telephone calls to parents did not improperly influence school board election. Pupil records issue (96 N.J.A.R.2d (EDU) 296, Carteret)

Unintentional dissemination of incorrect tax impact information by board not violation of election procedures; cannot form basis for voiding election (92 N.J.A.R.2d (EDU) 516, Morris)

EMERGENCY SCHOOL FACILITIES

EMPLOYEES (NON-TEACHERS)

(See also particular job titles)

Agent's correction of erroneous past practice of scheduling maintenance worker for more hours than allowed by board policy was not reduction in workload (91:1486, Windham)

Board resolution awarded tenure to "efficient janitors...after three years of service" if janitors not efficient, they can be terminated upon two weeks notice at any time before they have completed three years of service and acquired tenure (95 N.J.A.R.2d (EDU) 161, Zielinski, aff'd App. Div. 96 N.J.A.R.2d (EDU) 3)

Boards of education may dismiss a tenured janitor due to reduction in force, misconduct, inefficiency or other just cause (95 N.J.A.R.2d (EDU) 161, Zielinski, aff'd App. Div. 96 N.J.A.R.2d (EDU) 3)

Custodian employed under series of fixed term contracts acquired tenure under never rescinded 1955 board policy to grant tenure to custodians after three years (94 N.J.A.R.2d (EDU) 527, Strincoski, App. Div. aff'g St. Bd. 94 N.J.A.R.2d (EDU) 37, rev'g 93 N.J.A.R.2d (EDU) 333) In accord: (95 N.J.A.R.2d (EDU) 161, Zielinski, aff'd App. Div. 96 N.J.A.R.2d (EDU) 3)

Local boards have broad discretion to determine tenure rights of janitorial employees under N.J.S.A. 18A:17-3 (95 N.J.A.R.2d (EDU) 161, Zielinski, aff'd App. Div. 96 N.J.A.R.2d (EDU) 3)

Janitor appointed for fixed term specified in contract did not acquire tenure (93 N.J.A.R.2d (EDU) 331, Sharpe)

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)

EMPLOYEES (NON-TEACHERS)

Non-tenured aides who were suspended upon their arrest were entitled to back pay, minus earnings received elsewhere, for the period of time from the arrest to their subsequent indictment (97:July 25, Walker, Williams)

Termination of non-tenured janitor for making sexually harassing remark to student prior to his conviction of harassment in municipal court appropriate (94 N.J.A.R.2d (EDU) 279, Hugg)

Termination of school grounds worker who exhibits continued pattern of insubordination and admits charges against him justified (94 N.J.A.R.2d (EDU) 524, McCargo)

EMPLOYMENT DISQUALIFICATION

Generally (See N.J.S.A. 18A:6-7.1, et seq., requiring criminal background checks for school employees)

Appeal dismissed for failure to file brief (St. Bd. 96:Feb. 7, Lazorko)

Appeal dismissed for failure to timely file (St. Bd. 95:October 5, Campbell, Jr.) (St. Bd. 95:October 5, Risco) (St. Bd. 96:Sept. 4, Fiore) (St. Bd. 96:Nov. 6, Hanks)

Bus Driver disqualified from employment; prior arrest and conviction history, no evidence of rehabilitation. N.J.S.A. 18A:39-19 (89:May 4, Wilson, appeal dismissed St. Bd. 89:Aug. 2, rev'd App. Div. 90:Aug. 10, unreported opinion (Dkt. No. A-536-89T5), aff'd State Board 90:Dec. 5), aff'd App. Div. unpub. op. (Dkt. No. A-2024-90T3, Dec. 13, 1991))

Bus Driver disqualified from school employment because of drug conviction (97 N.J.A.R.2d (EDU) 456, Kovalak)

Bus Driver failed to show clear and convincing evidence of rehabilitation (96:Sept. 6, Faughan)

Bus Driver's disqualification upheld where driver failed to show rehabilitation after assault conviction (96 N.J.A.R.2d (EDU) 833, Srebnick, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 844)

Clear and convincing evidence of rehabilitation must be shown (89:May 4, Wilson, appeal dismissed St. Bd. 89:Aug. 2, rev'd App. Div. 90:Aug. 10, unreported opinion (Dkt. No. A-536-89T5), aff'd St. Bd. 90:Dec. 5), aff'd App. Div. unpub. op. Dkt. No. A-2024-90T3, Dec. 13, 1991)

EMPLOYMENT DISQUALIFICATION

- Conviction did not involve the use of force - not a disqualifying offense (97 N.J.A.R.2d (EDU) 345, Taylor)
- Conviction for possession of drug paraphernalia was not a disqualifying offense under N.J.S.A. 18A:39-19.1; bus driver's disqualification is reversed (St. Bd. 97:Sept. 3, J.W.) (See also St. Bd. 97:Sept. 4, R.J.B., disqualification upheld not because of possession of drug paraphernalia but resultant suspension if license)
- Conviction for simple assault is disqualifying only if it involves "the use of force which results in bodily injury" (95:Dec. 6, Sims)
- Custodian demonstrates rehabilitation by clear and convincing evidence; previously convicted of possession of CDS, assault, resisting arrest, petit larceny (97 N.J.A.R.2d (EDU) 254, R.S.)
- Dismissed; failure to appear at hearing (St. Bd. 97:Nov. 5, Cox)
- Dismissed for failure to file appeal (St. Bd. 95: Sept. 6, Taylor (Jerome), motion for reconsideration denied St. Bd. 95:December 6)
- Disqualification of bus driver following criminal history record review under N.J.S.A. 18A:39-19.1 (96:Oct. 18, J.J.G., aff'd and augmented St. Bd. 97:Jan. 10, aff'd App. Div. unpublished op. Dkt. No. A-3910-96T3, Oct. 3, 1997)
- Matter moot where county certificate expired (St. Bd. 96:Nov. 6, Hines. See also St. Bd. 96:June 5; St. Bd. 95:Nov. 6)
- Motion for remand granted for determination of whether out of state conviction for resisting arrest and assault was a disqualifying offense resulting from statutory distinction between simple and aggravated assault (St. Bd. 95:Nov. 1, Taylor)
- N.J.S.A. 18A:6-7.1 (disqualification statute) applies to private schools for the educationally disabled that accept public school students (97:July 10, J.H., Jr.)
- Petitioner has shown clear and convincing evidence of his rehabilitation where the disqualifying offense took place over 10 years ago and petitioner has supplied evidence of his life style change (97:July 10, B.D.W.)
- Petitioner has shown clear and convincing evidence of rehabilitation in having remained drug free for over 10 years and having supplied substantial evidence of his life style change (97:July 10, J.H., Jr.)

EMPLOYMENT DISQUALIFICATION

- Rehabilitation must be established by clear and convincing evidence (92 N.J.A.R.2d (EDU) 80, Smith)
- Remanded for hearing and determination on expedited basis (St. Bd. 95:June 7, Jackson (Bruce)(St. Bd. 95:June 7, Miller, disqualification upheld 95:December 6)(St. Bd. 95:July 5, Sampson)(St. Bd. 95:August 2, Robinson)(stressing that simple assault is a disqualifying offense for bus drivers)(St. Bd. 95:Sept. 6, Cox)
- Serious nature of drug offense together with recognition that petitioner was 35 years old at the time of the offense precludes a finding that petitioner has clearly and convincingly demonstrated her rehabilitation (97:March 24, Kovalak)
- Sexual offense which would disqualify applicant does not trigger forfeiture of office for current employee: hearing required to determine whether offense "touched office" (95 N.J.A.R.2d (EDU) Bergenfield; dec. on remand 95 N.J.A.R.2d (EDU) 457)
- Standard of Review, bus drivers N.J.S.A. 18A:39-19 (89:May 4, Wilson, appeal dismissed St. Bd. 89:Aug. 2, rev'd App. Div. 90:Aug. 10, unreported opinion (Dkt. No. A-536-89T5), aff'd St. Bd. 90:Dec. 5, aff'd App. Div. unpub. op. (Dkt. No. A-2024-90T3, Dec. 13, 1991))
- Statute requires consideration of the date of the offense, not the date of conviction (St. Bd. 95:June 7, Jackson(Laymon), employee's appeal dismissed, St. Bd. 95:Dec. 6)(95:Dec. 6, Sims)(96:July 15, A.F.J.)
- Teacher's disqualification for resisting arrest without force reversed (97 N.J.A.R.2d (EDU) 345, 2d (EDU) 345, Taylor)
- Under the unique circumstances of this case, a 20-year old conviction of assaulting an officer was not a disqualifying act under N.J.S.A. 18A:6-7.1 (97:Jan. 30, New Jersey State Department of Education)
- Unexpired parole does not preclude finding of rehabilitation (92 N.J.A.R.2d (EDU) 458, Wolffbrandt, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 457)
- Vehicular homicide caused by negligence not a disqualifying crime (97:Jan. 17, New Jersey State Department of Education)
- Where petitioner shows significant evidence of rehabilitation case will be remanded for determination of whether petitioner has affirmatively demonstrated her rehabilitation by clear and convincing evidence (97:Aug. 8, L.A.W., St. Bd. remand 98:Jan. 7)

EMPLOYMENT DISQUALIFICATION

Insufficient demonstration of rehabilitation

- Aggravated Assault: Failure to demonstrate rehabilitation by clear and convincing standard (97:May 5, A.T., appeal dismissed for failure to perfect, St. Bd. 98:March 4)
- Bus driver failed to show clear and convincing evidence of rehabilitation as conviction for child endangerment (96:Dec. 6, P.K.)
- Bus driver failed to show clear and convincing evidence of rehabilitation as conviction for child endangerment was still recent and petitioner had not shown that she could handle stresses of the job (96:Sept. 6, Faughan)
- Bus driver failed to timely file brief in appeal of disqualification determination; appeal dismissed (St. Bd. 97:Aug. 6, J.M.C.)
- Bus driver with numerous convictions failed to demonstrate clear and convincing evidence of rehabilitation. Assault conviction occurred in 20s, cannot be attributed merely to youthful exuberance or inexperience (96:April 8, Robinson, appeal dismissed St. Bd. 96:July 10)
- Bus driver's disqualification upheld where driver failed to show rehabilitation after assault conviction (96 N.J.A.R.2d (EDU) 833, Srebnick, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 844)
- Cafeteria worker whose criminal background check evidenced past drug convictions disqualified where claim of drug-free status for 20 years conflicted with letter submitted which indicated his recent enrollment in a drug treatment program (98:March 9, W.L.)
- Clear and convincing evidence not demonstrated (96:May 3, Boston, St. Bd. aff'g 95:Oct. 13)
- "Clear and convincing" not met as repeated offenses occurred when custodian was a man, not a youth; after incarceration custodian violated terms of probation; and in light of fact that custodial position afforded unsupervised access to children (96 N.J.A.R.2d (EDU) 431, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, Campbell)
- Coach: conviction for drug possession; insufficient demonstration of rehabilitation (97:Oct. 3, E.F.T., aff'd St. Bd. 98:April 1)
- Custodian: convictions for possession with intent to distribute cocaine and heroine near school (St. Bd. 97:Jan. 8, W.W.)

EMPLOYMENT DISQUALIFICATION

- Custodian: distribution of drugs within 1,000 feet of school. Insufficient demonstration of rehabilitation (98:March 20, D.L., appeal dismissed St. Bd. 98:June 3)
- Custodian with convictions for armed robbery, terroristic threats, and drugs did not seem to accept responsibility or admit guilt for any convictions and failed to submit documents requested by ALJ (96 N.J.A.R.2d (EDU) 521, Marshall, appeal dismissed St. Bd. 96:June 5)
- Custodian with past drug, robbery and other convictions, did not demonstrate that sufficient time had passed without incident (97 N.J.A.R.2d (EDU) 125, Wiggs, matter dismissed St. Bd. 97:Oct. 1)
- Dealer of drugs: motion to reconsider disqualification denied although she has made strides toward rehabilitation (St. Bd. June 4, D.W., motion to reconsider denied 97:June 4)
- Disqualification upheld for drug convictions despite pro se's allegations that he misunderstood appeal process (96 N.J.A.R.2d (EDU) 551, Ali, request for reconsideration denied St. Bd. 96 N.J.A.R.2d (EDU) 552)
- Drug use and conviction; counselor/teacher aid for disabled boys was not rehabilitated (96 N.J.A.R.2d (EDU) 456, Chester, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 547, aff'd App. Div. unpublished op. Dkt. No. A-6272-95T2, Jan. 27, 1998)
- Gravity of federal offense to distribute large amounts of marijuana outweighed evidence presented by petitioner of rehabilitation, despite passage of ten years (St. Bd. 96 N.J.A.R.2d (EDU) 534, Palumbo, aff'd App. Div. unpublished op. Dkt. No. A-4065-95T3, Dec. 26, 1996)
- Instructional assistant; failure to timely appeal disqualification, appeal dismissed (St. Bd. 96:Dec. 4, Williams)
- Insufficient time elapsed since criminal conduct (91 N.J.A.R.2d (EDU) 1, Armand) (92 N.J.A.R.2d (EDU) 80, Smith) 91 N.J.A.R.2d (EDU) 15, Miller) (96 N.J.A.R.2d (EDU) 1020, Lindsey) (96:Oct. 21, E.W.) (97 N.J.A.R.2d (EDU) 125, Wiggs)
- Knowing misrepresentation as to past convictions (92 N.J.A.R.2d (EDU) 13, Brown)
- Letters of recommendation insufficient; substitute teacher disqualified after South Carolina conviction for possession of marijuana (95:December 6, Newman)

EMPLOYMENT DISQUALIFICATION

- Maintenance employee convicted of two drug possession charges failed to demonstrate rehabilitation; offenses not isolated and were not committed due to immaturity given age at time of offenses was between 36 - 41 years; while progressing toward rehabilitation, too little time passed since last incident to be qualified for full-time custodian position (97:June 13, P.R., aff'd St. Bd. , aff'd App. Div. unpublished op. Dkt. No. A-1166-97T2, July 22, 1998)
- Pattern of drug offenses escalating in seriousness (91 N.J.A.R.2d (EDU) 46, Hall)
- School Bus Aide: convictions for aggravated assault and drug possession. Insufficient demonstration of rehabilitation (98:March 3, B.L.S., aff'd St. Bd. 98:June 3)
- School Bus Driver: conviction for possession of drug paraphenalia; remanded to Commissioner for determination of whether drug paraphenalia was intended to be disqualifying offense (97:June 13, J.W., reversed St. Bd. 97:Sept. 3, motion to participate granted and case remanded St. Bd. 98:Feb. 4)
- School Bus Driver: conviction for possession of drug paraphenalia; remanded to Commissioner for determination of whether drug paraphenalia was intended to be disqualifying offense (97:June 13, R.J.B., rev'd St. Bd. 97:Sept. 3, not to participate granted and case remanded St. Bd. 98:Feb. 4)
- School Bus Driver: criminal sexual contact, insufficient demonstration of rehabilitation (98:March 13, T.J.H., appeal dismissed St. Bd. 98:June 3)
- School Bus Driver: insufficient demonstration of rehabilitation (98:Feb. 6, J.S.B., appeal dismissed 98:June 3)
- School Bus Mechanic: conviction for drug possession; failure to demonstrate rehabilitation met the "clear and convincing" standard (97:Sept. 19, O.J.R., aff'd St. Bd. 98:Jan. 7)
- School Health Aide: conviction for endangering welfare of children; remanded for clarification and determination as to whether petitioner's rehabilitation met "clear and convincing" standard (97:Aug. 8, L.A.W., remanded St. Bd. 98:Jan. 7)

EMPLOYMENT DISQUALIFICATION

- Serious nature of drug offense together with recognition that petitioner was 35 years old at the time of the offense precludes a finding that petitioner has clearly and convincingly demonstrated her rehabilitation (97:March 24, Kovalak)
- Seriousness of offense (91 N.J.A.R.2d (EDU) 15, Miller)
- Substitute teacher's failure to timely appeal disqualification determination, appeal dismissed (St. Bd. 96:July 10, Morgan) (St. Bd. 96:July 12, Seigel)
- Teacher's aid, conviction of simple assault warranted disqualification (St. Bd. 96:July 10, Bryant)
- Teacher's aid whose job required contact with pupils, who had been convicted of conspiracy to possess drugs, did not demonstrate rehabilitation with personal statement, three supportive letters, documentation of early release from probation, and honorable discharge from military service (96 N.J.A.R.2d (EDU) 528, Govan, appeal dismissed after remand 96 N.J.A.R.2d (EDU) 529)
- Two years of remaining drug free after long history of drug use not sufficient in light of testimony of relatives, which was not clear and convincing but rather cautiously optimistic (96 N.J.A.R.2d (EDU) 517, Butler, appeal dismissed 96:June 5)

Sufficient demonstration of rehabilitation

- Bus aide with convictions for cocaine possession is rehabilitated where drug dependency followed eye disease and transplant (St. Bd. 97:June 4, T.R.B.)
- Bus driver with cocaine conviction demonstrated evidence of rehabilitation. - Not disqualified from school employment (96 N.J.A.R.2d (EDU) 515, Marcelle)
- Bus driver with three 10-year old drug convictions demonstrated rehabilitation through testimony that she is excellent mother and responsible worker (96 N.J.A.R.2d (EDU) 558, Seifred, appeal dismissed 96 N.J.A.R.2d (EDU) 560)
- Circumstances surrounding convictions, length of time passed since offenses, and stellar record during intervening time period reflect sufficient demonstration of rehabilitation (96:July 15, A.F.J.)

EMPLOYMENT DISQUALIFICATION

- Conviction for possession of one "roach" and for simple assault on arresting officer; custodian since obtained "black seal" license, has tested drug-free, is obtaining high school equivalency diploma, and otherwise has broken prior pattern of alienation (96 N.J.A.R.2d (EDU) 493, Trisuzzi, St. Bd. remanding; Commissioner decision on remand 96 N.J.A.R.2d (EDU) 496, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 496)
- Custodian demonstrates rehabilitation by clear and convincing evidence; previously convicted of possession of CDS, assault, resisting arrest, petit larceny (97 N.J.A.R.2d (EDU) 254, R.S.)
- Custodian, marijuana (97:Sept. 29, R.N.W.)
- Custodian with prior drug conviction demonstrated evidence of rehabilitation; no longer disqualified from school employment as a custodian (96 N.J.A.R.2d (EDU) 602, Pruden)
- Custodian with prior drug convictions demonstrates successful rehabilitation (97 N.J.A.R.2d (EDU) 131, E.D., St. Bd. reversing Commissioner 95:Feb. 7)
- Custodian with two drug convictions, which occurred 10 and 12 years ago respectively, has shown clear and convincing evidence of rehabilitation (97:Sept. 29, In the Matter of Disqualification of RNW)
- Custodian's remarkable transition from drug abuser to responsible, spiritual, religious, family man (96 N.J.A.R.2d (EDU) 420, McCullough, appeal dismissed St. Bd. 96 N.J.A.R.2d (EDU) 680)
- Despite serious offenses including weapons and drug convictions, rehabilitation established where charges stemmed from civil rights activities on college campus, and where teacher has been drug free for 14 years and has become a role model for black youth by serving in many social and other programs (97 N.J.A.R.2d (EDU) 111, James, appeal dismissed St. Bd. 97 N.J.A.R.2d (EDU) 115)
- Disqualification from teaching for vehicular homicide and drug conviction reversed (97 N.J.A.R.2d (EDU) 320, Rixford)
- Hearing disability consultant with prior drug conviction (CDS possession) not disqualified from school employment; demonstrated evidence of rehabilitation. Isolated incident, good work record (96 N.J.A.R.2d (EDU) 617, Kalapos)

EMPLOYMENT DISQUALIFICATION

Isolated conviction of simple assault by bus driver
(96 N.J.A.R.2d (EDU) 505, Gambale, appeal dismissed St.
Bd. 96:May 1)

Letters from character witnesses, membership in Narcotics
Anonymous and successful employment for maintenance
worker charged with drug possession (St. Bd. 96
N.J.A.R.2d (EDU) 532, Lawrence)

Letters of support from city officials, employers, and
church elders demonstrated rehabilitation from
convictions for constructive possession of controlled
substances; consideration given fact that maintenance
worker position did not include regular contact with
pupils (98:March 9, R.D.H.)

Letters of support from former employees and school
officials demonstrated rehabilitation from drug
conviction 10 years ago; consideration given fact that
position did not include supervision of pupils (St. Bd.
95:June 7, Davis)

Marital discord and alcohol abuse which led to isolated
incident of assault resolved (91 N.J.A.R.2d (EDU) 36,
Golinski)

Motion for reconsideration and reinstatement of appeal
granted without need for hearing, given clear indication
in record of rehabilitation established by random
urinalysis over two year period subsequent to drug
conviction (St. Bd. 95:June 7, Ransdell, See also, St.
Bd. 95:April 5 (appeal dismissed for failure to
perfect))

No arrests since 1988, and demonstration of honesty in
returning lost computer, as well as letter from
principal of school where employed, completion of course
in office technology, and completion of prison pre-
release, intensive peer counseling training, and life
skills programs (95:December 6, Sims)

No need to reach the issue of rehabilitation. Conviction did
not involve the use of force - not a disqualifying
offense (97 N.J.A.R.2d (EDU) 345, Taylor)

Petitioner has established by clear and convincing evidence
that he has been rehabilitated despite a prior
disqualifying drug offense (97:Jan. 17, New Jersey State
Department of Education)

EMPLOYMENT DISQUALIFICATION

- Positive recommendations of members of community, former parole officers and the nature and date of offense (96:Nov. 18, M.S.)
- Positive recommendations of parole officer and employers, successful completion of drug rehab program and pursuit of academic and vocational training (92 N.J.A.R.2d (EDU) 458, Wolffbrandt, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 457)
- Rehabilitation demonstrated where possession of marijuana by teacher occurred 10 years ago after two years of active duty in Army (St. Bd. 97:June 4, C.W.R., decision on motion granted St. Bd. 97:April 2)
- Rehabilitation of security guard established without need for hearing following conviction for cocaine distribution, after undergoing court supervision program, therapy, and completion of evening courses in nursing and security (St. Bd. 95:October 5, Benjamin)
- Rehabilitation shown from drug conviction (97 N.J.A.R.2d (EDU) 320, Bixler)
- Remorse for past acts, resolution of drug and alcohol abuse and documented lifestyle change (92 N.J.A.R.2d (EDU) 1, Skwarek)
- Single offense over ten years ago combined with evidence of lifestyle change (91 N.J.A.R.2d (EDU) 12, Saunders)
- Successful rehabilitation from drug convictions, early release from probation, lifestyle change, positive recommendations (96:Feb. 16, Seifred)
- 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)
- Teacher's aide completed outpatient alcohol and drug treatment program and residential rehab program; cocaine arrest occurred prior to marriage, college, job, child (97:July 2, J.C.)
- Two years probation with random urine sampling successfully completed after conviction for cocaine distribution (96 N.J.A.R.2d (EDU) 530, Henderson, appeal dismissed after remand 96 N.J.A.R.2d (EDU) 532)
- Vehicular homicide not a disqualifying offense (97 N.J.A.R.2d (EDU) 320, Bixler)

ENTRANCE REQUIREMENTS

(See "Kindergarten" and "Pupils - Admission" this index)

EQUIVALENT INSTRUCTION

(See "Pupils - Compulsory attendance laws" this index)

ESTOPPEL

Board estopped from arguing that 1955 policy no longer viable in light of policy manual issued in '60s & '70s; issue adjudicated in previous litigation (94 N.J.A.R.2d (EDU) 527, Strincoski, App. Div. unpub. op. Dkt. No. A-1443-93T5, Oct. 3, 1994, aff'g St. Bd. 94 N.J.A.R.2d (EDU) 37, rev'g 93 N.J.A.R.2d (EDU) 333)

Due to apparent misrepresentations by the Superintendent in a residency dispute, the Commissioner is unwilling to ascribe bad faith to the parent and thus the Commissioner declined to apply the doctrine of unclean hands in order to bar the application of equitable estoppel (97:Dec. 8, Whasun Lee)

Equitable estoppel did not bar corporation from challenging exemption from public bidding requirement, even where corporation had previously sought contracts using procedures it now attacks, because resolution of the question was a matter of public interest (95:March 23, Environmental)

Equitable estoppel did not operate to prevent board from collecting tuition for pupils illegally attending district, absent a showing that the Board was aware of the violation and did not act, or that petitioners reasonably relied on Board's affirmative representation that attendance was proper, given pupil's residency status (96 N.J.A.R.2d (EDU) 854, H.M., rev'd as to 91-92 through 95-96 school years 97 N.J.A.R.2d (EDU) 418)

Equitable estoppel did not operate to prevent board from collecting tuition for pupils illegally attending district where testimony did not establish that board knew, or should have known, that the pupils were attending under false affidavits (97 N.J.A.R.2d (EDU) 11, Greater Egg Harbor, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 307, aff'd App. Div. unpublished op. Dkt. No. A-0102-95T3, Feb. 3, 1997)

ESTOPPEL

- Equitable estoppel may prevent school board from collecting tuition for non-resident attendance if parents in good faith were misled by school officials (97 N.J.A.R.2d (EDU) 78, Lee, App. Div. aff'g and remanding on issue of equitable estoppel St. Bd. 97 N.J.A.R.2d (EDU) 77, aff'g 95 N.J.A.R.2d (EDU) 214. (See also 96:Dec. 4, St. Bd. remanding to Commissioner in light of Appellate decision.)
- Failure of Division of Compliance to disallow payment for non-instructional days in previous year does not estop Division from seeking partial refund of tuition aid (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)
- Issuance of letter of reprimand to Superintendent during early stages of investigation into circumstances concerning public referendum does not estop board from pursuing tenure charges (93 N.J.A.R.2d (EDU) 232, Horowitz)
- Neither estoppel or laches is applied against the State to the same extent as against private parties (92 N.J.A.R.2d (EDU) 96, Bd. of Ed. of Boro of Fort Lee v. Kintos, dec. on remand 93 N.J.A.R.2d (EDU) 837, stay denied 93:Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316 mod. o.g. App. Div. 96 N.J.A.R.2d (EDU) 1)
- Tenured department head not estopped from asserting tenure claim to position by agreement not to contest transfer to teaching position and abolition of department head position when 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)

ETHICS ACT

(NOTE: This topic heading lists decisions and advisory opinions of the School Ethics Commission as well as Commissioner and State Board decisions under the School Ethics Act)

Acceptance of Gifts

Board member's acceptance of political contributions from board attorneys but later returned the contributions did not violate the Act. No influence shown. Board member cautioned as to future acceptance of campaign contributions. Lester, C17-97, complaint dismissed, 98:March 30.

Board member's acceptance of tickets for boat outing not intended to influence his decision-making. Board member did not solicit tickets, board architect already appointed. Huber, complaint dismissed C-25-96, 97:May 27.

Board members who accepted free tickets for Chamber of Commerce dinner to honor the CSA did not violate the Act. Tickets, valued at \$55.00, were received directly from the Chamber of Commerce without knowledge that any specific vendor had purchased the free tickets. No understanding that tickets given with the intent to influence. Barcroft-Piatkowski, complaint dismissed C08-97, 97:Oct. 28.

CSA's acceptance of dinner not done with the purpose of influencing him in the discharge of his duties. Ferrone, complaint dismissed C-20-96, 97:April 22.

No showing that board member accepted anything of value that would have impaired her objectivity as a board member. Carter, C24-97, complaint dismissed 98:March 30.

Advisory Opinions - Public

All board members may serve on negotiations team and vote on collective bargaining agreement when 4 of 5 sitting voting members have a disqualifying conflict of interest. One board member does not constitute a committee. Doctrine of necessity invoked. SEC Advisory Opinion, A03-98, April 1, 1998.

Assistant Superintendent who was 1/3 partner in private day care center, may not bid on contract with board to provide pre-school services to district children. SEC Advisory Opinion, A30-97, February 26, 1998.

ETHICS

- Board member (PSA) and spouse (NJEA) employees in neighboring school district. Board member permitted to participate in individual personnel actions relating to staff in same statewide unions. SEC Advisory Opinion A09-96, July 24, 1996.
- Board member could not simultaneously serve as a trustee of a charter school in the same district. SEC Advisory Opinion A22-96, Feb. 26, 1997.
- Board member/county college professor member of NJEA's college faculty association may fully participate in local school board negotiations and vote. Nexus of influence too remote. SEC Advisory Opinion A-59-95, March 26, 1996.
- Board member/day care center owner. May accept children of teachers, may not advertise/solicit clients in district. Should avoid accepting children of employees who have matters pending before the board. May not knowingly vote on issues involving employees with children in her facility. SEC Advisory Opinion A-54-95, Jan. 23, 1996.
- Board member may not participate on collective negotiations team or vote on the agreement when a member of his immediate family (spouse or dependent child living with him) is a member of the bargaining unit. SEC Advisory Opinion A01-93, October 26, 1993.
- Board member may not vote on collective bargaining agreement when board member/immediate family member is member of same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included. Doctrine of necessity may apply. SEC Advisory Opinion A10-93(b) and A07-94, June 23, 1994.
- Board member whose emancipated child is Instructional Aide in neighboring school district could participate in negotiations and vote. SEC Advisory Opinion A53-95, March 28, 1996.

ETHICS

- Board member whose mother was substitute cafeteria worker not included in bargaining unit could negotiate and vote on collective bargaining agreement; no linkage. Board member with sister-in-law (spouse's sister) in local bargaining unit may negotiate and vote. Board members with relatives in teachers', secretaries' and administrators' associations may negotiate and vote so long as relative not in unit and no parity clause. Did not address same statewide union issue. SEC Advisory Opinion, A08-98, June 2, 1998.
- Board member with non-immediate family member (emancipated child or son-in-law) with out of district statewide union affiliation may fully participate in collective negotiations process. Holding limited to circumstances in case; in local bargaining unit, may not participate. SEC Advisory Opinion A23-94, January 23, 1996.
- Board member with spouse in local Administrators Association which has contract provisions linked to Education Association (teachers) contract could neither vote, nor participate in negotiations, preliminary closed session framework discussions, closed session discussions regarding areas not linked to the administrators association contract, post settlement preratification discussions or post ratification and execution discussions. SEC Advisory Opinion, A16-96, January 29, 1997.
- Board members/immediate family members - out of district union affiliation - attendance at closed session discussion and strategy sessions prohibited - recusal required. SEC Advisory Opinion A33-95, March 29, 1995.
- Board members in non-operating school districts must comply with training and filing requirements of the Act. SEC Advisory Opinion A10-96, July 24, 1996.
- Board members may participate in discussion and vote on proposal to give greater weight for class ranking to certain courses in which their children are enrolled. N.J.S.A. 18A:12-24(h) applies. May not participate and vote on whether weighted grading system should apply retroactively. Overall public interest lacking. SEC Advisory Opinion A01-98, February 27, 1998.

ETHICS

- Board president who was seeking position as an adjunct professor at several local colleges would not violate the Act by asking the superintendent of schools for a letter of recommendation. SEC does not encourage board members to ask personal favors of the superintendent or any other employee. SEC Advisory Opinion A04-98, April 2, 1998.
- Business Administrator/Board Secretary whose salary agreement is tied to settlement offered to teachers association may not be directly involved in negotiations. May serve as resource person providing objective facts concerning the budget, past contract settlements and the like. SEC Advisory Opinion A26-97, November 25, 1997.
- Charter school trustee could not simultaneously serve on board of education from which charter school receives students. Former board members may serve as trustees and provide expertise. See A22-96, February, 1997. SEC Advisory Opinion A13-98, July 30, 1998.
- CSA whose daughter-in-law is employed by the board may not serve as chief negotiations spokesperson for the board. CSA may continue to provide "critical information" to the board. SEC Advisory Opinion A17-96, November 26, 1996.
- CSA may not request advisory opinion as to whether someone else's conduct violated the Act. SEC Advisory Opinion A18-96, November 26, 1996.
- CSA not precluded from recommending sending district board member for position in school district - no personal involvement. SEC Advisory Opinion A18-96, November 26, 1996.
- Five board members or spouses - out of district NJEA affiliation, one spouse employed as teacher's aide, three non-affiliated members on negotiations team - teams to run out - negotiations may not be completed. Only three non-affiliated members may participate in negotiations. SEC Advisory Opinion A-55-95, January 23, 1996.
- Five of nine board members in conflict - doctrine of necessity may be invoked - all may fully participate in negotiations. All in conflict must publicly state, record in minutes. SEC Advisory Opinion A-38-95, February 22, 1996.

ETHICS

- Husband and wife may serve simultaneously on school board and municipal council. Board member may vote on budget issues when spouse recuses himself at council level. SEC Advisory Opinion A012-93, October 27, 1993.
- Mayor in Type I district cannot serve as school business administrator since he would effectively be the employer of his employees (the board). Jobs of mayor and school business administrator in Type I district inherently in conflict. SEC Advisory Opinion A06-93, June 28, 1993.
- No formal resolution necessary to invoke doctrine of necessity. Conflicted board members should receive contract information through the written agenda. May not participate in executive session or offer opinions prior to public meeting where vote is taken. SEC Advisory Opinion A08-96, July 24, 1996.
- No inherent conflict between board membership and consultant business for college bound students. Recusal required on matters concerning students who are clients. May not use board member position to get clients or otherwise further business. SEC Advisory Opinion A23-97, October 28, 1997.
- Non-voting members of charter school board of trustees may neither be employee of no vendors to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except training. SEC Advisory Opinion A14-98, July 13, 1998.
- Positions of township business administrator and board member deemed incompatible. Development of municipal budget key. SEC recommends removal unless resignation from one of the positions within 13 days. Commissioner removes. (98:Jan. 21, Fuller)
- School administrators may not participate in collective negotiations when a member of their immediate family is a member of the bargaining unit. Should all administrators be in conflict, participation is permitted to the extent necessary to provide technical assistance as requested - Doctrine of Necessity. SEC Advisory Opinion A021-93, March 24, 1994.
- School Ethics Commission Advisory Opinions are not final administrative agency actions capable of appellate review. DeSimone et al. v. SEC, unpublished opinion App. Div. Dkt. No. A-6647-93T2, February 29, 1996.

ETHICS

School officials (board members and administrators) may not participate on negotiations teams when the school official or member of his immediate family is a member of the same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included - Doctrine of Necessity. SEC Advisory Opinion A10-93, May 26, 1994.

Superintendent whose contract is tied to teachers' or other union's contract may not participate in negotiations process. Doctrine of necessity may apply - closed session disclosure of conflict necessary. SEC Advisory Opinion A37-95, March 26, 1996.

Attorneys

Attorneys are not subject to the Act (Carr, complaint dismissed CO1(A)-92, January 27, 1993)(Huber/Bendokas, complaint dismissed C19-96, 97:May 27)

Attorneys Advice

Attorney advice that is contrary to SEC conclusion may mitigate the penalty but will not serve as a defense to a violation of the Act. Dickinson, complaint dismissed C09-96, 97:January 28) See also In re Harrison, 96 N.J.A.R.2d (EDU) 553, Dilzer v. Sweet, 96 N.J.A.R.2d (EDU) 132, Kilmurray, 98:February 24, Bond, 97:Aug. 20, aff'd St. Bd. 98:May 6, Russo/Scarano, 98:April 16, Santangelo, 98:August 26

Board member sought advice from School Ethics Commission and NJSBA prior to acting (Berezow, C19-97, complaint dismissed 98:January 27)

Commission cautions attorney's advice will not act as shield in every case. Only if reliance on attorney's advice is reasonable, and taking into consideration all the facts in a specific case could advice of counsel act as a factor in determining whether a violation of the act occurred (96 N.J.A.R.2d (EDU) 143, McIvor)

Budgets

CSA, SBA submitted tentative budget which included \$285,000 for courtesy busing not approved by the board. No violation of N.J.S.A. 18A:12-24 alleged or found (Howell, complaint dismissed C10-97, 98:Feb. 24)

Husband and wife may serve simultaneously on school board and municipal council. Board member may vote on budget issues when spouse recuses himself at council level. SEC Advisory Opinion A012-93, October 27, 1993.

ETHICS

Business relationship

- All school boards wishing to do business with a company in which one of its board members has a direct or indirect personal or financial involvement should seek quotes in order to avoid impropriety or its appearance (Ridgefield Park, complaint dismissed, C06-93, 93:June 23)
- Assistant Superintendent who was 1/3 partner in private day care center, may not bid on contract with board to provide pre-school services to district children. SEC Advisory Opinion, A30-97, February 26, 1998.
- Board member assisted PTA and school to purchase computers through his company. Activity was not engaging in a business or transaction which was in substantial conflict with the discharge of his duties as a board member. Lack of adequate policies and procedures found. Matter referred to Office of Compliance (Martin, complaint dismissed C18-97, 98:April 28)
- Board member cast deciding vote to appoint employer to board vacancy - SEC - violation. Commissioner dismisses - board member not reelected (94:August 5, Eppolite)
- Board member/day care center owner. May accept children of teachers, may not advertise/solicit clients in district. Should avoid accepting children of employees who have matters pending before the board. May not knowingly vote on issues involving employees with children in her facility. SEC Advisory Opinion A54-95, January 23, 1996.
- Board member voted for penalty free extension for school construction while his firm subcontracted with architects as consulting structural engineer on the same project. Violation found. Commission recommends censure, Commissioner modifies to reprimand (96 N.J.A.R.2d (EDU) 553, Harrison)
- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)

ETHICS

- No inherent conflict between board membership and consultant business for college bound students. Recusal required on matters concerning students who are clients. May not use board member position to get clients or otherwise further business. SEC Advisory Opinion A23-97, October 28, 1997.
- Non-voting members of charter school board of trustees may neither be employee of nor vendors to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except training. SEC Advisory Opinion A14-98, July 13, 1998.
- No probable cause found where business relationship between school board and tire company preceded board member's election, and board member abstained from voting on any vouchers submitted for payment (Wall Township, complaint dismissed, C03-92, 93:Feb. 24)
- No showing that board member had an interest in the organization (Carter, complaint dismissed, C24-97, 98:March 30)
- One month suspension imposed for board member who voted on business partner's employment contract renewal and retirement proposal as well as emancipated daughter's employment (96:April 19, Buono)
- Reprimand for board member who voted on bill from bakery in which he was a partner, Commissioner accepted Consent Order (96:July 1, Seppett)

Campaign contributions

- Board member, school administrators, secretary running beefsteak roast for board president - no violation found no unwarranted privileges - future policy recommendations made (Capuana, complaint dismissed, C17-94, C18-94, C19-94, C20-94, 96:March 26)
- Board member violated the Act when he participated in public and executive session discussions and voted for principal appointment of town councilperson for whom he had been campaign treasurer. ALJ recommends reprimand. SEC recommends censure. Commissioner agrees. (98:March 16, Famularo)
- Board member's acceptance of political contributions from board attorneys but later returned the contributions did not violate the Act. No influence shown. Board member cautioned as to future acceptance of campaign contribution. (Lester, complaint dismissed C17-97, 98:March 30)

ETHICS

Soliciting contributions from the board attorney was not a violation in the absence of evidence that the solicitation was made with the intent to influence; here, persons swearing out complaint did not have first-hand knowledge of alleged solicitation (Barnegat, complaint dismissed, C01-94, 94:May 27)

Campaign Literature

Censure appropriate where respondent secured the addresses of district employees in order to send campaign literature threatening the employees with loss of jobs (97:Jan. 30, Hamilton Twp.)

Children

Board members may participate in discussion and vote on proposal to give greater weight for class ranking to certain courses in which their children are enrolled. N.J.S.A. 18A:12-24(h) applies. May not participate and vote on whether weighted grading system should apply retroactively. Overall public interest lacking. SEC Advisory Opinion A01-98, February 27, 1998.

Conflict of Interest

Board member did not violate the Act when she voted to approve the use of school facilities for a company with which she previously had personal and familial connections. Company's use of father as subcontractor did not preclude voting (Byrd, complaint dismissed C23-97, 98:July 30)

Board members who participated in bond referendum challenge - no substantial and material benefit under N.J.S.A. 18A:12-2. Matter transferred to SEC. No violation of the Act found. No material or monetary gain greater than any other member of the public (Riley/Beatty/Chester, complaint dismissed C12-98, 98:June 23, aff'd App. Div. unpub. op. Dkt. No. A-7091-97T2, Dec. 15, 1999) (See also, denial of request for indemnification of legal expenses, 98:April 27, aff'd St. Bd. 98: Aug. 5)

School Ethics Act, N.J.S.A. 18A:12-21 to 34, did not amend or supersede Conflict of Interest statute, N.J.S.A. 18A:12-2 (96 N.J.A.R.2d (EDU) 5, Mercer)

ETHICS

Disclosure Forms

Board member did not violate the Act when, as a chiropractor, she failed to disclose insurance carrier monies received from the board's insurance carriers. Monies from insurance carriers not compensation. Board member should avoid discussing or voting on employees whom she treats as patients (Hayes, complaint dismissed C02-98, 98:May 26)

Board member fails to list value of housing received as building superintendent. Public letter of reprimand part of settlement (95:Feb. 7, DeBartolo)

Board members in non-operating school districts must comply with training and filing requirements of the Act. SEC Advisory Opinion A10-96, July 24, 1996.

Commissioner accepts settlement involving public letter of reprimand for inadvertently omitting rental property on financial disclosure statement (95:Feb. 7, DeBartolo)

Failure to File - Removal

Board Members (93 N.J.A.R.2d (EDU) 498, Stockton)
(93:March 3, St. Bd. Nardino)(96:Nov. 22,
Martin)(96:Nov. 22, Hooper)(97:Nov. 5, Klein)
Charter School Trustees (98:Oct. 15, Serrano)(98:
Oct. 15, Wright)

Late Filing - Suspension

Board Members

One month (96:Nov. 22, Bridge)

School Administrators

One day without pay (96:Nov. 22, Foster)

Two days without pay (96:Nov. 22, Taylor)

Three days without pay (96:Nov. 22, Williams)
(96:Nov. 22, Bush)(98:Oct. 15, Dunham)

Member to lose seat for failure to file statement of her husband's income as required by N.J.S.A. 18A:12-25 (93 N.J.A.R.2d (EDU) 498, School Ethics Commission v. Stockton)

No probable cause where board secretary explained he had misunderstood the directions and immediately corrected and resubmitted the form (Waldwick, complaint dismissed, C03-93, 93:March 24)

ETHICS

Positions of township business administrator and board member deemed incompatible. Development of municipal budget key. SEC recommends removal unless resignation from one of the positions within 13 days. Commissioner removes. (98:Jan. 21, Fuller)

SEC recommends removal for failure to file. Board member files. Removed by Superior Court Judge as per N.J.S.A. 2A:81-17.2a3. Matter moot - dismissed. (98:Oct. 15, Neal)

Doctrine of Necessity

Advisory Opinions - A021-93, March 24, 1994, A010-93, May 26, 1994, A010-93(b) and A07-94, June 23, 1994, A55-95, January 23, 1996, A38-95, February 22, 1996, A03-98, April 1, 1998

All board members may serve on negotiations team and vote on collective bargaining agreement when 4 of 5 sitting voting members have a disqualifying conflict of interest. One board member does not constitute a committee. Doctrine of necessity invoked. SEC Advisory Opinion, A03-98, April 1, 1998.

May not be invoked - SEC Advisory Opinion A55-95, January 23, 1996

No formal resolution necessary to invoke doctrine of necessity. Conflicted board members should receive contract information through the written agenda. May not participate in executive session or offer opinions prior to public meeting where vote is taken. SEC Advisory Opinion A08-96, July 24, 1996.

No violation of the Act found when five conflicted board members invoked the doctrine of necessity to vote on a collective bargaining agreement. Some procedural errors occurred but no violation of the Act. (DeYoung, et al., complaint dismissed C07-96, 96:July 23)

Properly Invoked - SEC Advisory Opinion A38-95, February 22, 1996

Dual office holding

Board member violated the Act when he participated in public and executive session discussions and voted for principal appointment of town councilperson for whom he had been campaign treasurer. ALJ recommends reprimand. SEC recommends censure. Commissioner agrees. (98:March 16, Famularo)

ETHICS

- Charter school trustee could not simultaneously serve on board of education from which charter school receives students. Former board members may serve as trustees and provide expertise. See A22-96, February, 1997. SEC Advisory Opinion A13-98, July 30, 1998.
- Mayor in Type I district may not serve as the school business administrator in that district (School Ethics Advisory Opinion AO6-93, June 28, 1993)
- No probable cause established by board member's presidency of PTO (Daniel, complaint dismissed, C13-93, 94:April 29)
- No probable cause to credit allegation that serving as board member and appointee to sewerage authority create impermissible conflict, provided that in each office board member recuses self from matters affecting the other office (Middletown, complaint dismissed, C09-94, 94:September 22)
- No unwarranted privileges found - building principal was also state senator, township commissioner and Mayor (Sacco, complaint dismissed C24-95, 96:February 20)
- No violation of the Act where assistant superintendent on Type I board serves as member of municipal council; may not serve as member of board of school estimate or vote on matters involving shared services between district and municipality (Harrison, complaint dismissed C08-94, 94:Oct. 27)
- No violation of the Act where board member voted on appointment of sending representative to receiving board where she was employed as an elementary teacher. Sending representative votes only on secondary issues and collective bargaining agreement in place for next three years (Ciallella, complaint dismissed C01-98, 98:May 26)
- No violation of the Act where board secretary/administrator on Type I board serves as member of municipal council; may not serve as member of board of school estimate or vote on matters involving shared services between district and municipality (Harrison, complaint dismissed C06-94, 94:Oct. 27)
- No violation of the Act where superintendent on Type I board serves as member of municipal council; may not serve as member of board of school estimate or vote on matters involving shared services between district and municipality (Harrison, complaint dismissed C07-94, 94:Oct. 27)

ETHICS

- Positions of township business administrator and board member deemed incompatible. Development of municipal budget key. SEC recommends removal unless resignation from one of position within 13 days. Commissioner removes. (98:Jan. 21, Fuller)
- Regional board member served on local planning board during school construction project. Abstained from discussions and voting at planning board (Hart, complaint dismissed C23-94, 96:March 26)
- School business administrator who continued employment in district after election to office of mayor violated School Ethics Act because of impermissible conflict of interest between positions; appropriate penalty for violation is minimum one year suspension for SOA, public censure for board (95 N.J.A.R.2d (EDU) 123, Steele, aff'd Commissioner 95:March 9, Stay Denied St. Bd. 95:June 7, aff'd St. Bd. 95:Sept. 6)

Employment

- Board member cast deciding vote to appoint employer to board vacancy - SEC - violation. Commissioner dismisses - board member not reelected (94:August 5, Eppolite)
- Board member did not violate the Act when, as a chiropractor, she failed to disclose insurance carrier monies received from the board's insurance carriers. Monies from insurance carriers not compensation. Board member should avoid discussing or voting on employees whom she treats as patients (Hayes, complaint dismissed C02-98, 98:May 26)
- Board member did not violate the Act when he voted to hire attorney who had represented him eleven years earlier. (Huber/Bendokias, complaint dismissed C19-96, 97:May 27) See also (Huber, complaint dismissed C25-96, 97:May 27)(Lentine, complaint dismissed C17-96, 97:Feb. 25)
- Board member did not violate the Act when she voted to approve the use of school facilities for a company with which she previously had personal and familial connections. Company's use of father as subcontractor did not preclude voting (Byrd, complaint dismissed C23-97, 98:July 30)

ETHICS

- Board member (PSA) and spouse (NJEA) employees in neighboring school district. Board member permitted to participate in individual personnel actions relating to staff in same statewide union. (SEC Advisory Opinion A09-96, July 24, 1996.)
- Board member properly abstained from daughter's appointment to substitute list (Paramus, complaint dismissed C05-93, 93:April 28)
- Board member violated the Act when he attended and participated in closed sessions where sister-in-law's appointment was discussed. Personal involvement, influenced vote. ALJ recommends reprimand. SEC recommends censure. Commissioner agrees with SEC. (98:April 15, Kilmurray)
- Board member violated the Act when he participated in public and executive session discussions and voted for principal appointment of town councilperson for whom he had been campaign treasurer. ALJ recommends reprimand. SEC recommends censure. Commissioner agrees. (98:March 16, Famularo)
- Board member violated the Act when she cast the deciding vote for her son in law's appointment to CSA and sold gloves to district employees. (State Board rev'd, remands on procedural grounds 95 N.J.A.R.2d (EDU) 190, Scudillo, rev'd St. Bd. 95 N.J.A.R.2d (EDU) 195, on remand 97:June 10.) Board member censured.
- Board member violated the Act when she twice voted on substitute lists which included her daughter. Board members have a duty to scrutinize items in packet sent in advance of meeting. Statute of limitations issue. SEC recommends reprimand. Commissioner agrees. (98:Jan. 21, Scozzaro)
- Board member violated the Act when she voted on her daughter's appointment to a short term substitute position. Had abstained on vote to hire as full-time teacher, unaware daughter's name on substitute list. SEC recommends reprimand. Commissioner agrees. (98:Jan. 21, Maugeri)
- Board member who was city employee voted on purchase of athletic complex from the city. No financial involvement shown. (Tayari, complaint dismissed C06-97, 97:Nov. 25)

ETHICS

- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)
- Board member whose spouse was city employee voted on purchase of athletic complex from the city. No financial involvement shown. (Tayari, complaint dismissed C06-97, 97:Nov. 25)
- Board member's employment with food service corporation as part-time cashier in high school cafeteria did not constitute probable cause where board member's employment predated board membership; board properly solicited bids for corporation and board member abstained from discussion and vote on all matters pertaining to corporation (Ridgefield Park, complaint dismissed, C06-93, 93:June 28)
- Board members who were city employees (personnel officer, youth group worker) voted on crossing guard appropriation - no financial or personal involvement found (Rodriguez, complaint dismissed C21-94, 96:March 26)
- CSA acting in his official capacity did not violate the Act when he recommended the transfer of principals and other administrators as part of a district-wide reorganization. No violation of N.J.S.A. 18A:12-24(d). (Dawson, complaint dismissed C22-97, C25-97, 98:March 30)
- CSA not precluded from recommending sending district board member for position in school district - no personal involvement. (SEC Advisory Opinion A18-96, November 26, 1996.)
- CSA whose daughter-in-law is employed by the board may not serve as chief spokesperson for the board. CSA may continue to provide "critical information" to the board. (SEC Advisory Opinion A17-96, November 26, 1996.)

ETHICS

- Mayor in Type I district cannot serve as school business administrator since he would effectively be the employer of his employers (the board) (SEC Advisory Opinion A06-93, June 28, 1993) (95 N.J.A.R.2d (EDU) 123, Steele, aff'd Commissioner 95:March 9, Stay Denied St. Bd. 95:June 7, aff'd St. Bd. 95:September 6)
- No personal involvement found in board members/board secretary hiring of plumber (Fairview, complaint dismissed C17-93, 94:July 28)
- No personal or financial involvement found when two board members and CSA met for dinner, CSA changed mind about non-renewal or principal, allowed 5/15 notification date to pass without notice to principal - tenure acquired (Ferrone, complaint dismissed, C20-96, 97:April 22)
- No probable cause found to support that board member created unwarranted privileges for family members employed in district (Lodi, complaint dismissed, C08-93, 93:October 26)
- No violation of the Act where board member voted on appointment of sending representative to receiving board where she was employed as an elementary teacher. Sending representative votes only on secondary issues and collective bargaining agreement in place for next three years (Ciallella, complaint dismissed C01-98, 98:May 26)
- One month suspension imposed for board member who voted on business partner's employment contract renewal and retirement proposal as well as emancipated daughter's employment (96:April 9, Buono)
- Positions of township business administrator and board member deemed incompatible. Development of municipal budget key. SEC recommends removal unless resignation from one of position within 13 days. Commissioner removes. (98:Jan. 21, Fuller)
- Summer employment for board members' children: No probable cause found where board followed reasonable practices for posting the vacancy, children met reasonable job criteria, and board members abstained on vote; however, all boards should develop posting guidelines to ensure public confidence (Williamstown, complaint dismissed, C10-93, 93:October 26) See also (Kinnelon, complaint dismissed, C03-94, 94:June 23)

ETHICS

Ethics Commission

- Commission failed to provide due process to board member when it failed to provide her with a hearing. St. Bd. remands for hearing. (95 N.J.A.R.2d (EDU) 195, Scudillo, rev'g and rem'd 95 N.J.A.R.2d (EDU) 190, dec. on remand 97:June 10)
- Commission will not be used for publicity or as a political mechanism to cast unfavorable light on unpopular school officials (Daniel, complaint dismissed, C13-93, 94:April 28) See also (Barnegat, complaint dismissed, C01-94, 94:May 27)(Huber, complaint dismissed, C25-96, 97:May 27)
- SEC has authority to prosecute complaints before the OAL (Kilmurray, complaint dismissed C12-94, 96:November 26, appeal denied St. Bd. 97:Feb. 5)
- SEC need not refer matter to OAL for a hearing after finding probable cause if no facts in dispute (97:Aug. 20, Bond, aff'd St. Bd. 98:May 6)(98:April 16, Russo/Scarano)

Financial involvement

- Assistant Superintendent who was 1/3 partner in private day care center, may not bid on contract with board to provide pre-school services to district children. SEC Advisory Opinion, A30-97, February 26, 1998.
- Board member assisted PTA and school to purchase computers through his company. No financial gain to board member. No violation of the Act. Lack of adequate procedures and policies found. Matter referred to Office of Compliance. (Martin, complaint dismissed C18-97, 98:April 28)
- Board member could properly negotiate contract when father was a member of the bargaining unit but father would retire prior to contract taking effect. No financial or personal involvement. (Dickinson, complaint dismissed C09-96, 97:Jan. 28)
- Board member did not violate the Act when, as a chiropractor, she failed to disclose insurance carrier monies received from the board's insurance carriers. Monies from insurance carriers not compensation. Board member should avoid discussing or voting on employees whom she treats as patients (Hayes, complaint dismissed C02-98, 98:May 26)

ETHICS

- Board member did not violate the Act when she voted to approve the use of school facilities for a company with which she previously had personal and familial connections. Company's use of father as subcontractor did not preclude voting (Byrd, complaint dismissed C23-97, 98:July 30)
- Board member violated the Act by participating in negotiations when spouse was teacher in the district and a member of the local association. Attorney advice and limited participation mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Santangelo)
- Board member violated the Act when he voted on a bill list which included his spouse's expense reimbursement. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Levine)
- Board member violated the Act when he voted to approve a use of facilities application which he had submitted prior to his election to the board. Board member later removed name from application. Concert promoter and board member lived at same address. SEC recommends reprimand. Commissioner agrees. (97:Aug. 20, Bond, aff'd St. Bd. 98:May 6)
- Board member who was city employee voted on purchase of athletic complex from the city. No financial involvement shown. (Tayari, complaint dismissed C06-97, 97:Nov. 25)
- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)
- Board member whose spouse was city employee voted on purchase of athletic complex from the city. No financial involvement shown. (Tayari, complaint dismissed C06-97, 97:Nov. 25)

ETHICS

- Board members who participated in referendum challenge did not violate the Act by participating in discussions and voting on bond referendum issues. No material or monetary gain greater than any other member of the public. N.J.S.A. 18A:12-24(h). (Riley/Beatty, complaint dismissed C12-98, 98:June 23, aff'd App. Div. unpublished op. Dkt. No. A-7091-97T2, Dec. 15, 1999)
- Board members with sister, fiance and brother in district bargaining unit violated the Act when they served on the negotiations team and voted on the collective bargaining agreement. Reliance on attorney's advice, SEC recommends censure. Commissioner agrees. (98:April 16, Russo/Scarano)
- Business Administrator/Board Secretary whose salary agreement is tied to settlement offered to teachers association may not be directly involved in negotiations, has financial involvement. May serve as resource person providing objector facts concerning the budget, past contract settlements and the like. SEC Advisory Opinion A26-97, November 25, 1997.
- No financial involvement found when board member/parent negatively characterized a teacher in a newspaper interview. (Kolata, complaint dismissed C34-96, 97:June 24)
- No financial involvement when board member voted on appointment of school board attorney who had previously done personal work for him (Huber/Bendokas, complaint dismissed C19-96, 97:May 27. See also Huber, complaint dismissed C25-96, 97:May 27, Lentine, 97:Feb. 25)
- No personal or financial involvement found when two board members and CSA met for dinner, CSA changed mind about non-renewal or principal, allowed 5/15 notification date to pass without notice to principal - tenure acquired (Ferrone, complaint dismissed, C20-96, 97:April 22)
- No violation of the Act where board member voted on appointment of sending representative to receiving board where she was employed as an elementary teacher. Sending representative votes only on secondary issues and collective bargaining agreement in place for next three years (Ciallella, complaint dismissed C01-98, 98:May 26)

Frivolous complaint

Found (Persi, C29-96, 97:April 8, - \$500 fine)

ETHICS

No jurisdiction over violations of the Open Public

Meetings Act (Kolata, complaint dismissed C34-96, 97:June 24)(Nielsen, complaint dismissed C32-96, 97:June 24)

None found (Paramus, complaint dismissed C05-93, 93:April 28)(Kinnelon, complaint dismissed, C03-94, 94:June 24) (Daniel, complaint dismissed, C13-93, 94:April 29) (Ringwood, complaint dismissed, C04-94, 94:June 24)(Wyckoff, complaint dismissed, C11-94, 94:Oct. 27)(Gunning, complaint dismissed 94:July 29)(Dickinson, complaint dismissed 97:Jan. 28)(Huber/Bendokas, complaint dismissed C19-96, 97:May 27)(Ferrone, complaint dismissed C20-96, 97:April 22)(Hanover Park, complaint dismissed C12-96, 96:Sept. 24)(Nielsen, complaint dismissed C32-96, 97:June 24)(Kolata, complaint dismissed C34-96, 97:June 24)(Bancroft-Piatkowski, complaint dismissed C08-97, 97:Oct. 28)(Hayes, complaint dismissed C02-98, 98:May 26)(Farmularo, complaint dismissed 98:June 23)

Indemnification for Violations

Board members will not be statutorily indemnified for ethics violation (96:Oct. 10, Passaic)

Intent

Although failure to report board member's attendance at party where underage drinking occurred could have been motivated by intent on the part of the Superintendent to protect the board member in order to protect his employment, and for the board president to protect the board member because they were friends and colleagues, the testimony at the hearing failed to establish this intent by a preponderance of the evidence as required by administrative hearings (96 N.J.A.R.2d (EDU) 143, McIvor)

Jurisdiction

Act is not designed to prohibit all conduct which might be considered inappropriate or unprofessional. Board member who met with semi-pro football team regarding use of school facilities and attended reception for the team did not violate the Act (Carter, complaint dismissed C24-97, 98:March 30)

Board member's wife had civil rights complaint filed against the board - no jurisdiction over alleged inconsistent interest. (Graham, complaint dismissed C39-95, 96:February 20. See Commissioner decision 96:Oct. 3)

ETHICS

- Complaints about general behavior of board member is not violation of the Act (Smith, complaint dismissed C28-97, 98:April 28)
- No jurisdiction over conduct outside of N.J.S.A. 18A:12-24. All conduct of which the public may disapprove does not fall under SEC jurisdiction (Howell, complaint dismissed C10-97, 98:Feb. 24)
- No jurisdiction over dispute where consulting firm provided professional services to board but was not paid. (Hanover Park, complaint dismissed C12-96, 96:Sept. 24)
- No jurisdiction over non-board related activities (Ringwood, complaint dismissed C04-94, 94:June 23)
- No jurisdiction over school election matters (Secaucus, complaint dismissed C09-93, 93:September 22)
- No jurisdiction over violations of the Open Public Meetings Act (Kolata, complaint dismissed C34-96, 97:June 24)
- No jurisdiction - person was not a member of the board when alleged activity took place (Giger, complaint dismissed C04(e)-92, 93:Feb. 24)
- No jurisdiction to monitor school attorney's advice (Carr, complaint dismissed C01(A)-92, 93:Jan. 27)

Members of the immediate family

(See also Children, Nepotism, Spouses)

- All board members may serve on negotiations team and vote on collective bargaining agreement when 4 of 5 sitting voting members have a disqualifying conflict of interest. One board member does not constitute a committee. Doctrine of necessity invoked. (SEC Advisory Opinion, A03-98, April 1, 1998.)
- Board member may not participate on collective negotiations team or vote on the agreement when a member of his immediate family (spouse or dependent child living with him) is a member of the bargaining unit. (SEC Advisory Opinion A01-93, October 26, 1993.)
- Board member may not vote on collective bargaining agreement when board member/immediate family member is member of same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included. Doctrine of necessity may apply. (SEC Advisory Opinion A10-93(b) and A07-94, June 23, 1994.)

ETHICS

- Board member violated the Act by participating in negotiations when spouse was teacher in the district and a member of the local association. Attorney advice and limited participation mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Santangelo)
- Board member violated the Act when he voted on a bill list which included his spouse's expense reimbursement. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Levine)
- Board member who recused herself from closed session discussions and who abstained from voting on the selection of school psychologist when her daughter was a candidate did not violate the Act. No participation - No unwarranted privileges sought (Berezow, complaint dismissed C19-97, 98:Jan. 27)
- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)
- Board members/immediate family members - out of district union affiliation - attendance at closed session discussion and strategy sessions prohibited - recusal required. SEC Advisory Opinion A33-95, March 29, 1995.
- Board members may participate in discussion and vote on proposal to give greater weight for class ranking to certain courses in which their children are enrolled. N.J.S.A. 18A:12-24(h) applies. May not participate and vote on whether weighted grading system should apply retroactively. Overall public interest lacking. SEC Advisory Opinion A01-98, February 27, 1998.
- Brother is not a member of the immediate family as defined by Ethics Act; no probable cause found (Trenton, complaint dismissed, C05-92, 93:Jan. 27) (but see 95 N.J.A.R.2d (EDU) 190)
- Censure for board member with spousal NJEA affiliation who attended closed session where negotiations and parameters for mediator discussed. Commissioner had recommended reprimand. Board member had previously been given Advisory Opinion A33-95. (96 N.J.A.R.2d (EDU) 1041, Wilgus)

ETHICS

Five board members or spouses - out of district NJEA affiliation, one spouse employed as teacher's aide, three non-affiliated members on negotiations team - terms to run out - negotiations may not be completed. Only three non-affiliated members may participate in negotiations. (SEC Advisory Opinion A55-95, January 23, 1996.)

Five of nine board members in conflict - doctrine of necessity may be invoked - all may fully participate in negotiations. All in conflict must so publicly state, record in minutes. (SEC Advisory Opinion A38-95, February 22, 1996.)

Reprimand for board member who voted on a list of game personnel which included his spouse (96 N.J.A.R.2d (EDU) 1038, Montagna)

Reprimand for board member who voted to approve list of teacher aides which included his spouse (96 N.J.A.R.2d (EDU) 843, Wurtz)

Reprimand for board member with spousal NJEA affiliation who participated in public meeting discussion concerning collective bargaining agreement prior to vote (96 N.J.A.R.2d (EDU) 1035, Vanderbeck)

School administrators may not participate in collective negotiations when a member of their immediate family is a member of the bargaining unit. Should all administrators be in conflict, participation is permitted to the extent necessary to provide technical assistance as requested - Doctrine of Necessity. (SEC Advisory Opinion A021-93, March 24, 1994.)

School officials (board members and administrators) may not participate on negotiations teams when the school official or member of his immediate family is a member of the same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included. (SEC Advisory Opinion A10-93, May 26, 1994)

Moot Issue

Matter dismissed as moot where board member resigned (97:July 3, Mennen)

ETHICS

Negotiations

- All board members may serve on negotiations team and vote on collective bargaining agreement when 4 of 5 sitting voting members have a disqualifying conflict of interest. One board member does not constitute a committee. Doctrine of necessity invoked. (SEC Advisory Opinion, A03-98, April 1, 1998.)
- Board member could properly negotiate contract when father was a member of the bargaining unit but father would retire prior to contract taking effect. No financial or personal involvement. (Dickinson, complaint dismissed C09-96, 97:Jan. 28)
- Board member/county college professor member of NJEA's college faculty association may fully participate in local school board negotiations and vote. Nexus of influence too remote. (SEC Advisory Opinion A59-95, March 26, 1996.)
- Board member may not participate in the negotiation of a collective bargaining agreement or vote on its adoption when a spouse or member of the immediate family is a member of the bargaining unit (opinion applied prospectively as it results in fundamental changes to long-standing law) (SEC Advisory Opinion A01-93, October 26, 1993)
- Board member may not vote on a collective bargaining agreement when board member or member of his immediate family is a member of the same statewide union, but not a member of the particular unit with which the district has negotiated a contract; however, where more than a quorum are in conflict, the "doctrine of necessity" may be invoked to allow all to vote, retirees, out of state excepted, agency shop included (SEC Advisory Opinions A10-93(b) and A07-94, June 23, 1994)
- Board member violated the Act by participating in negotiations when spouse was teacher in the district and a member of the local association. Attorney advice and limited participation mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Santangelo)

ETHICS

- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)
- Board member whose emancipated child was Instructional Aide in neighboring school district could participate in negotiations and vote. (SEC Advisory Opinion A53-95, March 28, 1996.)
- Board member whose mother was substitute cafeteria worker not included in bargaining unit could negotiate and vote on collective bargaining agreement; no linkage. Board member with sister-in-law (spouse's sister) in local bargaining unit may negotiate and vote. Board members with relatives in teachers', secretaries' and administrators' associations may negotiate and vote so long as relative not in unit and no parity clause. Did not address same statewide union issue. SEC Advisory Opinion, A08-98, June 2, 1998.
- Board member with non-immediate family member (emancipated child or son-in-law) with out of district statewide union affiliation only may fully participate in collective negotiations process. Holding limited to circumstances in case; in local bargaining unit, may not participate. (SEC Advisory Opinion A23-94, January 23, 1996.)
- Board members with sister, finance and brother in district bargaining unit violated the Act when they served on the negotiations team and voted on the collective bargaining agreement. Reliance on attorney's advice, SEC recommends censure. Commissioner agrees. (98:April 16, Russo/Scarano)
- Board member with spouse in local Administrators Association which has contract provisions linked to Education Association (Teachers) contract could not vote, participate in negotiations, participated in preliminary closed session framework discussions, participate in closed session discussion regarding areas not linked to the administrators association contract, participate in post settlement preratification discussions or post ratification and executive discussions. (SEC Advisory Opinion A16-96, January 29, 1997.)

ETHICS

- Board members and administrators may not directly participate in negotiations with respect to a collective bargaining unit when the board member or administrator or member of his/her immediate family is a member of the same statewide union retirees, out of state excepted, agency shop included (opinion applied prospectively as it results in fundamental changes to long-standing law) (SEC Advisory Opinion A10-93, May 26, 1994)
- Board members/immediate family members - out of district union affiliation - attendance at closed session discussion and strategy sessions prohibited, recusal required. (SEC Advisory Opinion A33-95, March 29, 1995.)
- Board member with NJEA affiliation voted on collective bargaining agreement with AFT Local. Settlement SEC. (97:Jan. 4, Benanti)
- Business Administrator/Board Secretary whose salary agreement is tied to settlement offered to teachers association may not be directly involved in negotiations. May serve as resource person providing objector facts concerning the budget, past contract settlements and the like. SEC Advisory Opinion A26-97, November 25, 1997.
- Censure for board member with spousal NJEA affiliation who attended closed session where negotiations and parameters for mediator discussed. Commissioner had recommended reprimand. Board member had previously been given Advisory Opinion A33-95. (96 N.J.A.R.2d (EDU) 1041, Wilgus)
- Censure reversed for board member who voted on a collective bargaining agreement negotiated with the same statewide union (NJEA) to which he belonged. (St. Bd. 00:March 1, Pannucci, rev'g 97 N.J.A.R.2d (EDU) 339)
- Complaint dismissed - board members vote on collective bargaining agreement predated Advisory Opinion (Wilgus, complaint dismissed C04-93, 93:Oct. 26)

ETHICS

- CSA whose daughter-in-law is employed by the board may not serve as chief spokesperson for the board. CSA may continue to provide "critical information" to the board. (SEC Advisory Opinion A17-96, November 26, 1996.)
- Five board members or spouses out of district NJEA affiliation, one spouse employed as teacher's aide, three non-affiliated member on negotiations team - terms to run out - negotiations may not be completed. Only three non-affiliated members may participate in negotiations. (SEC Advisory Opinion A55-95, January 23, 1996.)
- No formal resolution necessary to invoke doctrine of necessity. Conflicted board members should receive contract information through the written agenda. May not participate in executive session or offer opinions prior to public meeting where vote is taken. (SEC Advisory Opinion A08-96, July 24, 1996.)
- No per se violation of N.J.S.A. 18A:12-24(c) where board member is a member of another local union within same statewide union and votes on collective bargaining agreement in the district. Connection between vote and salary structure of whole class of employees on statewide basis is far too attenuated. (St. Bd. 00:March 1, Pannucci, rev'g 97:Jan. 28)(See also decision on motion St. Bd. 97:June 4)
- Recusal: Board members who must recuse themselves from participating in and voting on collective bargaining agreements may not attend closed sessions where negotiations strategy is discussed (School Ethics Advisory Opinion A33-95, March 29, 1995)
- Reprimand for board member with spousal NJEA affiliation who participated in public meeting discussion concerning collective bargaining agreement prior to vote. (96 N.J.A.R.2d (EDU) 1035, Vanderbeck)
- School administrators may not participate in the negotiation of collective bargaining agreements when a spouse or member of the immediate family is a member of the bargaining unit, but in a district where all administrators with technical knowledge are in conflict, the administrators may participate in the bargaining process to the extent necessary to provide technical assistance to the bargaining team as requested (SEC Advisory Opinion A021-93, March 24, 1994)
- Superintendent whose contract is tied to teachers' or other union contract may not participate in negotiations process. Doctrine of necessity may apply - closed session disclosure of conflict necessary. (SEC Advisory Opinion A37-95, March 26, 1996.)

ETHICS

Personal involvement

- All board members may serve on negotiations team and vote on collective bargaining agreement when 4 of 5 sitting voting members have a disqualifying conflict of interest. One board member does not constitute a committee. Doctrine of necessity invoked. (SEC Advisory Opinion, A03-98, April 1, 1998.)
- Board member cast deciding vote to appoint employer to board vacancy - SEC - violation. Commissioner dismisses - board member not reelected (94:Aug. 5, Eppolite)
- Board member/day care center owner. May accept children of teachers, may not advertise/solicit clients in district. Should avoid accepting children of employees who have matters pending before the board. May not knowingly vote on issues involving employees with children in her facility. (SEC Advisory Opinion A54-95, January 23, 1996.)
- Board member did not violate the Act when, as a chiropractor, she failed to disclose insurance carrier monies received from the board's insurance carriers. Monies from insurance carriers not compensation. Board member should avoid discussing or voting on employees whom she treats as patients (Hayes, complaint dismissed C02-98, 98:May 26)
- Board member did not violate the Act when she voted to approve the use of school facilities for a company with which she previously had personal and familial connections. Company's use of father as subcontractor did not preclude voting (Byrd, complaint dismissed C23-97, 98:July 30)
- Board members may participate in discussion and vote on proposal to give greater weight for class ranking to certain courses in which their children are enrolled. N.J.S.A. 18A:12-24(h) applies. May not participate and vote on whether weighted grading system should apply retroactively. Overall public interest lacking. (SEC Advisory Opinion A01-98, February 27, 1998.)
- Board member violated the Act by participating in negotiations when spouse was teacher in the district and a member of the local association. Attorney advice and limited participation mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Santangelo)

ETHICS

- Board member violated the Act when he attended and participated in closed sessions where sister-in-law's appointment was discussed. Personal involvement, influenced vote. ALJ recommends reprimand. SEC recommends censure. Commissioner agrees with SEC. (98:April 15, Kilmurray)
- Board member violated the Act when he participated in public and executive session discussions and voted for principal appointment of town councilperson for whom he had been campaign treasurer. ALJ recommends reprimand. SEC recommends censure. Commissioner agrees. (98:March 16, Famularo)
- Board member violated the Act when he sat in on personnel committee discussion of wife's appointment and called another board member to seek a revote. Penalty of censure (97:June 23, Connolly)
- Board member violated the Act when he voted on a bill list which included his spouse's expense reimbursement. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Levine)
- Board member violated the Act when he voted to approve a use of facilities application which he had submitted prior to his election to the board. Board member later removed name from application. Concert promoter and board member lived at same address. SEC recommends reprimand. Commissioner agrees. (97:Aug. 20, Bond, aff'd St. Bd. 98:May 6)
- Board member violated the Act when she twice voted on substitute lists which included her daughter. Board members have a duty to scrutinize items in packet sent in advance of meeting. Statute of limitations issue. SEC recommends reprimand. Commissioner agrees. (98:Jan. 21, Scozzaro)
- Board member violated the Act when she voted on a resolution to hire special counsel to investigate the CSA. Board member had previously filed criminal harassment complaint against CSA. SEC recommends censure. Commissioner agrees. (98:Jan. 21, Rone)
- Board member violated the Act when she voted on her daughter's appointment to a short term substitute position. Had abstained on vote to hire as full-time teacher, unaware daughter's name on substitute list. SEC recommends reprimand. Commissioner agrees. (98:Jan. 21, Maugeri)

ETHICS

- Board member voted for penalty free extension for school construction contract while his firm subcontracted with architect as consulting structural engineer on the same project. Violation found. Commission recommended censure, Commissioner modifies to reprimand (96 N.J.A.R.2d (EDU) 553, Harrison)
- Board member voted on RIF which affected her husband.
Board member resigned - matter moot (95:May 30, Martucci)
- Board member voted to approve payments to contractor with whom he had negative business dealings. No personal/financial gain or involvement (Miserendino, complaint dismissed C31-95, 96:April 23)
- Board member who ran for city council on the mayor's ticket voted on purchase of athletic complex from the city. No personal involvement shown (Tayari, complaint dismissed C06-97, 97:Nov. 25)
- Board member whose child was a member of district's teaching staff. Service on Meet and Discuss Committee may violate Act. SEC Advisory Opinion A60-95, March 28, 1996.
- Board member whose mother was substitute cafeteria worker not included in bargaining unit could negotiate and vote on collective bargaining agreement; no linkage. Board member with sister-in-law (spouse's sister) in local bargaining unit may negotiate and vote. Board members with relatives in teachers', secretaries' and administrators' associations may negotiate and vote so long as relative not in unit and no parity clause. Did not address same statewide union issue. SEC Advisory Opinion, A08-98, June 2, 1998.
- Board member with allegedly "close relationship" with CSA did not violate the Act when she voted on the CSA contract and revision. No relationship other than marital, familial or business creates a "personal involvement" under the Act. (Nielsen, complaint dismissed C32-96, 97:June 24)
- Board member with non-immediate family member (emancipated child or son-in-law) with out of district statewide union affiliation may fully participate in collective negotiations process. Holding limited to circumstances in case; in local bargaining unit, may not participate. (SEC Advisory Opinion A23-94, January 23, 1996)

ETHICS

- Board member violated the Act when he voted to approve the use of school facilities for a group he had previously sponsored and who was currently sponsored by his good friend and housemate; such an action creates a justifiable impression that the board member's independence of judgment is impaired; reprimand is an appropriate sanction (97:Aug. 20, Bond)
- Board members' vote against time clock system while their spouses were employed by the board did not violate the Act. N.J.S.A. 18A:12-24(h) applies. (Fernandez, complaint dismissed C02-94, 97:Dec. 16)
- Board members who participated in referendum challenge did not violate the Act by participating in discussions and voting on bond referendum issues. No material or monetary gain greater than any other member of the public. N.J.S.A. 18A:12-24(h). (Riley/Beatty, complaint dismissed C12-98, 98:June 23, aff'd App. Div. unpublished op. Dkt. No. A-7091-97T2, Dec. 15, 1999)
- Board members who were city employees (personnel officer, youth group worker) voted on crossing guard appropriation - no financial or personal involvement found (Rodriguez, complaint dismissed C21-94, 96:March 26)
- Board members with sister, finance and brother in district bargaining unit violated the Act when they served on the negotiations team and voted on the collective bargaining agreement. Reliance on attorney's advice, SEC recommends censure. Commissioner agrees. (98:April 16, Russo/Scarano)
- Board president who was seeking position as an adjunct professor at several local colleges would not violate the Act by asking the superintendent of schools for a letter of recommendation. SEC does not encourage board members to ask personal favors of the superintendent or any other employee. SEC Advisory Opinion A04-98, April 2, 1998.
- Censure for board member with an out of district union affiliation (NJEA): Violated the Act when he voted on a collective bargaining agreement negotiated by the local NJEA affiliate. (97 N.J.A.R.2d (EDU) 339, Pannucci)

ETHICS

- Censure for board member with spousal NJEA affiliation who attended closed session where negotiations and parameters for mediator discussed. Commission had recommended reprimand. Board member had previously been given Advisory Opinion A33-95. (96 N.J.A.R.2d (EDU) 1041, Wilgus)
- Censure imposed on board member who voted for salary increases for superintendent, where board member's wife was confidential secretary to superintendent (94:July 29, Gunning)
- CSA did not violate the Act when he recommended transfers of principals and other administrators in connection with a district-wide reorganization. Shared fraternity membership would not impair CSA's objectivity or independence of judgment. (Dawson, complaint dismissed C25-97, 98:March 30)
- CSA not precluded from recommending sending district board member for position in school district - no personal involvement. (SEC Advisory Opinion A18-96, November 26, 1996.)
- Elected board member whose spouse is a board member of the municipal council may vote on the defeated school budget; no personal or financial involvement existed that could impair judgment where the spouse had recused himself in all related matters at the council level (SEC Advisory Opinion A012-93, October 27, 1993)
- No influence shown where board member abstained on daughter's appointment to peer tutor (Hazard, complaint dismissed C02(D)-92, C04(D)-92, 93:Jan. 27)
- No personal interest where board member opposed awarding of budget flyer contract because owner of printing company had been critical of the board (Seppelt, complaint dismissed C28-95, 96:April 23)

ETHICS

- No personal involvement for board member/parent who negatively characterized a teacher in a newspaper interview (Kolata, complaint dismissed C34-96, 97:June 24)
- No personal involvement found in board members/board secretary hiring of plumber (Fairview, complaint dismissed C17-93, 94:July 28)
- No personal involvement when board member voted on appointment of school board attorney who had previously done personal work for him (Huber/Bendokas, complaint dismissed C19-96, 97:May 27. See also Huber, complaint dismissed C25-96, 97:May 27, Lentine, 97:Feb. 25)
- No personal involvement where board member abstained on subject of daughter's appointment to substitute list; no probable cause (Paramus, complaint dismissed, C05-93, 93:April 28)
- No personal involvement where board member with computer business recommended that board purchase brand computers sold by his business: business also sold other brands; board member was offering his expertise (Wyckoff, complaint dismissed C11-94, 94:October 27)
- No violation when board member negotiated contract with local association in which his father was a member where father would retire prior to contract taking effect (Dickinson, complaint dismissed, C09-96, 97:January 28)
- No violation of the Act where board member voted on appointment of sending representative to receiving board where she was employed as an elementary teacher. Sending representative votes only on secondary issues and collective bargaining agreement in place for next three years (Ciallella, complaint dismissed C01-98, 98:May 26)
- One month suspension imposed for board member who voted on business partner's employment contract renewal and retirement proposal as well as emancipated daughter's employment (96:April 9, Buono)
- Recusal/abstention on all matters concerning spouse's employment proper - no violation (Pinelands, complaint dismissed C02(B)-92, C04(B)-92, 93:Feb. 24)
- Recusal necessary on matters before the board which involve students who use board member's consultant services. (SEC Advisory Opinion A23-97, October 28, 1997)

ETHICS

- Removal of board member ordered because, in addition to another Ethics Act violation, she voted to appoint son-in-law as superintendent, a matter in which she had a personal involvement (95 N.J.A.R.2d (EDU) 190, Scudillo, rev'd, rem'd by St. Bd. for failure to hold hearing in accordance with Administrative Procedure Act, 95 N.J.A.R.2d (EDU) 195, dec. on remand 97:June 10. Board member censured no longer on board.)
- Reprimand appropriate where a board member voted on emancipated son's reappointment because the member's vote was not critical to son's reappointment since the resolution passed unanimously and was one of 25 items considered simultaneously (97:Jan. 29, West Milford)
- Reprimand for board member who voted on a list of game personnel which included his spouse (96 N.J.A.R.2d (EDU) 1038, Montagna)
- Reprimand for board member who voted on bill from bakery in which he was a partner, Commissioner accepted Consent Order (96:July 1, Seppett)
- Reprimand for board member who voted on son's reappointment as Assistant Head Custodian. Vote not a critical vote, son originally employed prior to board member taking office (97 N.J.A.R.2d (EDU) 343, Touw)
- Reprimand for board member who voted to approve list of teacher aides which included his spouse (96 N.J.A.R.2d (EDU) 843, Wurtz)

ETHICS

Reprimand for board member with spousal NJEA affiliation who participated in public meeting discussion concerning collective bargaining agreement prior to vote (96 N.J.A.R.2d (EDU) 1035, Vanderbeck)

School business administrator in Type I district who became mayor-continued employment constituted impermissible conflict of interest. One year suspension without pay for School Business Administrator, board publicly censured (95 N.J.A.R.2d (EDU) 123, Steele, aff'd Commissioner 95:March 9, aff'd State Board 95:Sept. 6)

Superintendent's contract renewal does not constitute a personal or financial involvement which would preclude acting in his professional capacity (Ferrone, complaint dismissed C20-96, 97:April 22)

Policy Guidelines

"Recusal" is the abstention from discussion or voting on a matter. School official not required to leave room but may not participate in any manner. Policy Guideline #2 [But see A33-95 and 3/30/98 letter rescinding guideline]

School officials, if attending a conference, convention or workshop may attend hospitality suites or receptions provided such hospitality suites or receptions are open to all persons attending the conference, convention or workshop. Policy Guideline #1

School officials may not accept offers of meals, entertainment or hospitality which is limited to clients and/or customers of the individual providing such hospitality. Policy Guideline #1

When one recuses himself, he is not required to leave the room because he is still an elected official to a public body. Policy Guideline #2 [But see A33-95 and 3/30/98 letter rescinding guideline]

Removal

Removal appropriate for failure to attend training session (97:July 8, Asbury Park)(97:July 8, Elsinboro)

Report off school conduct to police

Neither board members nor administration had ethical duty to report to police that board member attended party where underage drinking occurred (96 N.J.A.R.2d (EDU) 143, McIvor)

ETHICS

School Administrators

Assistant Superintendent who was 1/3 partner in private day care center, may not bid on contract with board to provide pre-school services to district children. (SEC Advisory Opinion, A30-97, February 26, 1998.)

Board member violated the Act when she voted on a resolution to hire special counsel to investigate the CSA. Board member had previously filed criminal harassment complaint against CSA. SEC recommends censure. Commissioner agrees. (98:Jan. 21, Rone)

Board president who was seeking position as an adjunct professor at several local colleges would not violate the Act by asking the superintendent of schools for a letter of recommendation. SEC does not encourage board members to ask personal favors of the superintendent or any other employee. SEC Advisory Opinion A04-98, April 2, 1998.

Business Administrator/Board Secretary whose salary agreement is tied to settlement offered to teachers association may not be directly involved in negotiations. May serve as resource person providing objector facts concerning the budget, past contract settlements and the like. SEC Advisory Opinion A26-97, November 25, 1997.

CSA, SBA submitted tentative budget which included \$285,000 for courtesy busing not approved by the board. No violation of N.J.S.A. 18A:12-24 alleged or found (Howell, complaint dismissed C10-97, 98:Feb. 24)

Non-voting members of charter school board of trustees may neither be employee of nor vendors to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except training. SEC Advisory Opinion A14-98, July 13, 1998.

School administrators may not participate in collective negotiations when a member of their immediate family is a member of the bargaining unit. Should all administrators be in conflict, participation is permitted to the extent necessary to provide technical assistance as requested - Doctrine of Necessity. (SEC Advisory Opinion A021-93, March 24, 1994.)

ETHICS

- School officials (board members and administrators) may not participate on negotiations teams when the school official or member of their immediate family is a member of the same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included. Doctrine of Necessity. (SEC Advisory Opinion A10-93, May 26, 1994.)
- Superintendent did not violate the Act when he asked for police sergeant/board member to come to scene of auto accident in which he was involved (Persi, complaint dismissed C29-96, 97:April 8)
- Superintendent whose contract is tied to teachers' or other union contract may not participate in negotiations process. Doctrine of necessity may apply - closed session disclosure of conflict necessary. (SEC Advisory Opinion A37-95, March 26, 1996.)
- Superintendent's contract renewal does not constitute a personal or financial involvement which would preclude acting in his professional capacity (Ferrone, complaint dismissed C20-96, 97:April 22)

Spouses

(See Members of the Immediate Family, Negotiations, this index)

- A husband and wife may serve simultaneously on the school board and municipal council, and the board member may vote on budget issues if the spouse recuses himself from all matters concerning the defeated budget (SEC Advisory Opinion A012-93, October 27, 1993)
- All board members may serve on negotiations team and vote on collective bargaining agreement when 4 of 5 sitting voting members have a disqualifying conflict of interest. One board member does not constitute a committee. Doctrine of necessity invoked. (SEC Advisory Opinion, A03-98, April 1, 1998.)
- Board member may not participate on collective negotiations team or vote on the agreement when a member of his immediate family (spouse or dependent child living with him) is a member of the bargaining unit. (SEC Advisory Opinion A01-93, October 26, 1993.)

ETHICS

- Board member may not vote on collective bargaining agreement when board member/immediate family member is member of same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included. Doctrine of necessity may apply. (SEC Advisory Opinion A10-93(b) and A07-94, June 23, 1994.)
- Board member violated the Act by participating in negotiations when spouse was teacher in the district and a member of the local association. Attorney advice and limited participation mitigating factors. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Santangelo)
- Board member violated the Act when he voted on a bill list which included his spouse's expense reimbursement. SEC recommends reprimand. Commissioner agrees. (98:Aug. 26, Levine)
- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)
- Board members with sister, fiance and brother in district bargaining unit violated the Act when they served on the negotiations team and voted on the collective bargaining agreement. Reliance on attorney's advice, SEC recommends censure. Commissioner agrees. (98:April 16, Russo/Scarano)
- Board members' vote against time clock system while their spouses were employed by the board did not violate the Act. N.J.S.A. 18A:12-24(h) applies. (Fernandez, complaint dismissed C02-94, 97:Dec. 16)
- Censure for board member with spousal NJEA affiliation who attended closed session where negotiations and parameters for mediator discussed. Commissioner had recommended reprimand. Board member had previously been given Advisory Opinion A33-95. (96 N.J.A.R.2d (EDU) 1041, Wilgus)
- Recusal/Abstention on all matters concerning spouse's employment proper - no violation (Pinelands, complaint dismissed C02(B)-92, C04(B)-92, Feb. 24, 1993)

ETHICS

Reprimand for board member who voted on a list of game personnel which included his spouse (96 N.J.A.R.2d (EDU) 1038, Montagna)

Reprimand for board member who voted to approve list of teacher aides which included his spouse (96 N.J.A.R.2d (EDU) 843, Wurtz)

Reprimand for board member with spousal NJEA affiliation who participated in public meeting discussion concerning collective bargaining agreement prior to vote. (96 N.J.A.R.2d (EDU) 1035, Vanderbeck)

School administrators may not participate in collective negotiations when a member of their immediate family is a member of the bargaining unit. Should all administrators be in conflict, participation is permitted to the extent necessary to provide technical assistance as requested - Doctrine of Necessity. SEC Advisory Opinion A021-93, March 24, 1994.

School officials (board members and administrators) may not participate on negotiations teams when the school official or member of their immediate family is a member of the same statewide union with which the board is negotiating but not a member of the local bargaining unit. Retirees, out of state excepted, agency shop included. Doctrine of Necessity. (SEC Advisory Opinion A10-93, May 26, 1994.)

Statute of Limitations

No statute of limitations for filing of School Ethics Act complaint. 90-day rule does not apply. (98:Jan. 21, Scozzaro)

Stay

Stay denied; Crowe standards not met (95:June 21, Brick v. Mueller and Pannucci)

ETHICS

Training

- Failure to attend - Removal (95:May 9, Fisher)(95:Aug. 28, Lore)(95:Aug. 28, Williams)(96:March 26, Khalifch)(96:April 2, Pitre, Stay denied Commissioner 96:May 31)(96:Sept. 16, Rice)(96:Sept. 16, Allen)(96:Sept. 16, Hargrove)(96:Sept. 16, Prout)(96:Sept. 16, Rice)(96:Sept. 26, Matlosz)(97:July 3, DeLuca)(97:July 8, Phillips)(98:Sept. 21, Reed)(98:Oct. 1, Severns)(98:Oct. 1, Burling)(98:Oct. 1, Trout)
- Failure to attend – valid reasons presented; suspension for two months (96:Sept. 26, Bedell)(96:Sept. 26, Burton)

Late attendance

- Case dismissed - No penalty (95:May 9, Apicelli) (96:Sept. 30, Freay)
- Suspension - Two months (96:Sept. 26, Matlosz) (96:April 18, Speziali, remanded to Commissioner, St. Bd. 96:Aug. 7, remanded to SEC 96:Sept. 16 for consideration of additional facts)
- Suspension - Two months or until training occurs (96:Sept. 26, Bedell)(96:Sept. 26, Burton)(96:Sept. 30, Weinstein)(96:Oct. 8, Cauley)(96:Oct. 8, Panconi)(96:Oct. 10, Scala)
- Suspension for one meeting for late attendance (97:June 27, Heard)(97:July 3, Bryant)(97:July 3, Kelly) (97:July 3, Lynch)(97:July 8, Young)(98:Sept. 4, Anuario)(98:Sept. 4, Gross-Quatrone)(98:Sept. 4, McMahon)(98:Sept. 9, Beers)(98:Sept. 9, Calhoun)(98:Sept. 9, Van Gieson)(98:Sept. 9, Winka)(98:Sept. 21, Long)(98:Sept. 21, Johnston)(98:Oct. 1, Meier)(98:Oct. 1, Osborne)
- Suspension for one meeting with removal if failure to attend October session (98:Sept. 21, Improta)(98:Sept. 21, Werther)
- Suspension for three months with removal if failure to attend October 1997 training (97:May 19, Ziemer, State Board dismisses for failure to perfect, 97:Sept. 3)
- Suspension until attendance at October session with removal if failure to attend (98:Sept. 21, Smith)
- Suspension until June 6-8 training - removal if failure to attend (97:May 19, Marvin)(97:May 19, McIlvane)

ETHICS ACT

Matter Moot - Resignation (96:March 26, DePascale)
(96:April 9, Vitecka)(96:Sept. 16, Hargrove)(96:Sept. 16,
Prout)(97:July 3, Mennen)

Non-voting members of charter school board of trustees may neither be employee of nor vendors to the charter school. Charter school trustees are "school officials" for all purposes of the School Ethics Act except training. SEC Advisory Opinion A14-98, July 13, 1998.

Remanded to SEC for ADA reasonable accommodation question
(96:April 2, Radford)

Remanded to SEC for consideration of explanation
(96:April 2, Matlosz)

Unwarranted privileges

Board members allegedly suppressed information concerning criminal activity of a board member for more than six months in order to secure unwarranted privileges for board members and school board - no violation found (96 N.J.A.R.2d (EDU) 143, McIvor)

Board member assisted PTA and school to purchase computers through his company. No unwarranted privileges or advantages shown. Due to lack of adequate procedures and policies, matter referred to Office of Compliance (Martin, complaint dismissed C18-97, 98:April 28)

Board member could not have used his position to secure advantages for wife who served as teacher, majorette coach and food services instructor; no probable cause found since her employment pre-dated spouse's office, he abstained on all votes and recused himself on all discussions related to her employment, and since he had not participated in contract negotiation discussions since the School Ethics Act has been in place (Pinelands Regional, complaint dismissed, C02(B), C04(B), 93:February 24)

Board member/day care owner. May accept children of teachers, may not advertise/solicit clients in district. Should avoid accepting children of employees who have matters pending before the board. May not knowingly vote on issues involving employees with children in her facility. SEC Advisory Opinion A-54-95, January 23, 1996.

ETHICS

- Board member did not attempt to use his official position in connection with an arrest for disorderly conduct and harassment. Municipal Court judge found no use of board member position occurred. (Palmisano, complaint dismissed C31-96, 97:June 24)
- Board member did not violate the Act by calling student at home in response to students' letter to the editor criticizing the board. No unwarranted privileges or advantages sought. Right to voice disagreement not lost upon becoming a board member. (Smith, complaint dismissed C28-97, 98:April 28)
- Board member did not violate the Act when she voted to approve the use of school facilities for a company with which she previously had personal and familial connections. Company's use of father as subcontractor did not preclude voting (Byrd, complaint dismissed C23-97, 98:July 30)
- Board member gave resume to Account Manager at Blue Cross/Blue Shield after serving on board's Finance Committee which recommended new health insurance provider - Blue Cross/Blue Shield. Board member hired by Blue Cross/Blue Shield. No findings that board member used his position for unwarranted privileges or advantages. Poor judgment shown. (Mercer, complaint dismissed C33-96, 97:Oct. 28, appeal dismissed St. Bd. 00:Feb. 2)
- Board members in non-operating school districts must comply with training and filing requirements of the Act. SEC Advisory Opinion A10-96, July 24, 1996.
- Board member's release, through personal campaign literature, of e-mail addresses of employees, prior to the board's determination to officially release by resolution, was unwarranted privilege and advantage. SEC recommends censure. Commissioner agrees. (98:May 22, Bonker)
- Board member/parent did not violate the Act when she negatively characterized a teacher in a newspaper interview. (Kolata, complaint dismissed C34-96, 97:June 24)
- Board member used school computer for non-school purposes - disputed as to whether permission given, board policy unclear, no unwarranted privileges found (Gahrs, complaint dismissed, C29-95, 96:April 23)

ETHICS ACT

- Board member who met with semi-pro football team regarding use of school facilities and attended team reception did not violate the Act. No showing that board member received an unwarranted privilege. (Carter, complaint dismissed C24-97, 98:March 30)
- Board member who recused herself from closed session discussions and who abstained from voting on the selection of school psychologist when her daughter was a candidate did not violate the Act. No participation - no unwarranted privileges sought (Berezow, complaint dismissed C19-97, 98:Jan. 27)
- Board member who was sworn in by friend/attorney at board's law firm, voted for a raise for poll workers while his wife was a poll worker but later changed vote to an abstention did not violate the Act. No unwarranted privileges. Commissioner cautions board member to be more cautious in the future. (Lester, complaint dismissed C17-97, 98:March 30)
- Board member whose deli provided catering services to local education association and whose wife was an elementary teacher in the district did not violate the Act. No conflict with duties shown - abstained on all negotiations matters and all matters involving elementary teachers (Crilley, complaint dismissed C30-97, 98:April 28)
- Board members did not violate the Act when they approved a public relations piece outlining the accomplishments of the board. No showing that promotional piece was for the purposes of assisting board president's city council campaign. No unwarranted privilege or advantages. (Famularo, complaint dismissed C29-97, 98:June 23)
- Board members, school administrators, secretary running beefsteak roast for board president - no violation found - no unwarranted privileges - future policy recommendations made (Capuana, complaint dismissed, C17-94, C18-94, C19-94, C20-94, 96:March 26)

ETHICS

Board President and Superintendent not found to have utilized their positions to secure unwarranted advantage for themselves or another board member when both failed to bring to attention of law enforcement authorities information they had received that the board member had attended a party where alcohol was served to students since neither were present to observe the incident and had received advice of counsel that they had no responsibility to act in such a situation (96 N.J.A.R.2d (EDU) 143, McIvor)

Board president who was seeking position as an adjunct professor at several local colleges would not violate the Act by asking the superintendent of schools for a letter of recommendation. SEC does not encourage board members to ask personal favors of the superintendent or any other employee. SEC Advisory Opinion A04-98, April 2, 1998.

Censure for board member who secured home addresses of district employees for targeted campaign mailing - unwarranted privileges obtained (97 N.J.A.R.2d (EDU) 347, Gore)

CSA did not violate the Act when he recommended transfers of principals and other administrators as part of a district-wide reorganization. No unwarranted privileges, special favors or treatment shown. (Dawson, complaint dismissed C22-97, C25-97, 98:March 30)

Ethics Commission's censure of Board member for soliciting signatures for nominating petition of other board member from teachers and other registered voters employed by a school reduced to reprimand by Commissioner based upon uncontested assertions of her lack of intent and lack of evidence of coercion notwithstanding the Commission's finding that respondent's mere request for the signatures would necessarily create the perception she was using her official position to achieve an unwarranted privilege (96 N.J.A.R.2d (EDU) 132, Dilzer)

Failure to report to police

Evidence does not support assertion Superintendent and board president acted to prevent other persons from reporting to police another board member's supplying alcohol to a minor (96 N.J.A.R.2d (EDU) 143, McIvor)

ETHICS

- Insufficient proof that board member distorted votes on various resolutions and placed them on official letterhead for political advantage (Fuscaldo, complaint dismissed, C41-95, 96:May 28)
- No inherent conflict between board membership and consultant business for college bound students. No unwarranted privileges or advantages - board member will not promote business by stating that he is a board member or otherwise use board membership to obtain elements. (SEC Advisory Opinion, A23-97, October 28, 1997)
- No probable cause - board member had relatives employed in district (Lodi, complaint dismissed C08-93, 93:October 26)
- No probable cause that board member used her position to gain unwarranted privileges by intimidating or threatening employees; rather, board member merely expressed her opinion and exercised her free speech rights in manner that offended individuals; while not an ethics violation, board may address such behavior through a disciplinary hearing (Daniel, complaint dismissed, C13-93, 94:April 28)
- No probable cause to believe that school board member, who is also citizen representative on municipality's ad hoc TV access committee, used school board position to promote candidacy for borough council by refusing to telecast particular videotape of council debates (Ringwood, complaint dismissed, C05-94, 94:June 23)
- No probable cause to find Ethics Act violation by board member who released a flyer concerning a disciplinary problem with a student whose father had a history of litigation against the board, where the board member neither used school resources in circulating the petition, gained monetary or personal benefit from the flyer, obtained information about the boy from the school, nor identified himself as the author of the flyer (Barnegat, complaint dismissed, C10-94, 94:September 22)
- No unwarranted privileges for attorney when board member voted for attorney who had previously represented him (Huber, complaint dismissed, C25-96, 97:May 27)(See also Huber/Bendokas, complaint dismissed C19-96, 97:May 27, and Lentine, complaint dismissed C17-96, 97:February 25)

ETHICS

- No unwarranted privileges for board member who voted on daughter's hiring - No showing that daughter was unqualified. Personal involvement, however. (98:Jan. 21, Scozzaro)
- No unwarranted privileges for two board members or CSA found when two board members and CSA met for dinner, CSA changed mind about non-renewal of principal, allowed 5/15 notification date to pass without notice to principal - tenure acquired (Ferrone, complaint dismissed, C20-96, 97:April 22)
- No unwarranted privileges found - Building principal was also state senator, township commissioner and Mayor (Sacco, complaint dismissed C24-95, 96:February 20)
- No unwarranted privileges found when board member negotiated contract with bargaining unit to which his father belonged. Father would retire prior to contract taking effect (Dickinson, complaint dismissed C09-96, 97:Jan. 28)
- No unwarranted privileges when board member hired uniformed police officer for meeting and tried to have certain teaching materials removed from the curriculum. (Huber, complaint dismissed, C19-96, 97:May 22)
- Obtaining a delay in police investigation is not the type of unwarranted privilege prohibited by the Act (96 N.J.A.R.2d (EDU) 143, McIvor)
- Probable cause found that board members violated the Act when they attended the AASA Conference in Orlando, Florida at accommodations which cost in excess of board policy. Additional information provided - complaint dismissed no unwarranted privileges shown. Board should modify travel policy. When attending conference, board members should publicly discuss how many board members are going and at what cost. (Esgro, complaint dismissed C07-97, 98:March 30)
- Reading of accomplishments as a board member to support election bid at public meeting was not an unlawful misuse of position. (Lowry, complaint dismissed C05-96, 96:Sept. 24)

ETHICS

- Removal of board member ordered because, in addition to another Ethics Act violation, she attempted to sell gloves manufactured by her employer to school district employees, in violation of the prohibition against using her official position to secure unwarranted privileges (95 N.J.A.R.2d (EDU) 190, Scudillo, rev'd by St. Bd. for failure to hold hearing in accordance with Administrative Procedure Act, 95 N.J.A.R.2d (EDU) 195, dec. on remand 97:June 10) Board member censured, no longer on board.
- Superintendent did not violate the Act when he asked for police sergeant/board member to come to scene of auto accident in which he was involved (Persi, complaint dismissed C29-96, 97:April 8)
- Violation found where board member used her access to school to solicit the signatures of district employees for the petition of another school board candidate; Commission recommends penalty of censure to Commissioner modifies penalty - issues reprimand (96 N.J.A.R.2d (EDU) 132, Dilzer)

Violations Found - Penalties

(See also "Filing, Training")

Censure

- Board (95 N.J.A.R.2d (EDU) 123, Steele, aff'd
Commissioner 95:March 9, aff'd St. Bd. 95:Sept. 6)
- Board Member (94:July 29, Gunning)(95 N.J.A.R.2d (EDU) 190, Scudillo, rev'd and remanded State Board 95 N.J.A.R.2d (EDU) 195, on remand 97:June 10)(96 N.J.A.R.2d (EDU) 132, Sweet)(96 N.J.A.R.2d (EDU) 1041, Wilgus)(97 N.J.A.R.2d (EDU) 339, Pannucci)(97 N.J.A.R.2d (EDU) 347, Gore)(97:June 23, Connolly)

Removal

- Board Member
Filing (96:Nov. 22, Hooper)(96:Nov. 22, Martin)
Training (95:May 9, Fisher)(95:Aug. 28, Williams)
(95:Aug. 28, Lore)(96:March 26, Khalifeh)(96:April 2, Pitre)(96:Sept. 16, Allen)(96:Sept. 16, Rice)(97:July 8, Phillips)
(97:July 2, Audubon Park)

ETHICS

Reprimand

Board Member (95:Feb. 7, DeBartolo)(96 N.J.A.R.2d (EDU) 132, Dilzer)(96 N.J.A.R.2d (EDU) 553, Harrison)(96:July 1, Seppett)(96 N.J.A.R.2d (EDU) 844, Wurtz)(96 N.J.A.R.2d (EDU) 1039, Montagna)(96 N.J.A.R.2d (EDU) 1035, Vanderbeck)(97 N.J.A.R.2d (EDU) 343, Touw)

Suspension

Generally

Filing

One month (96:Nov. 22, Bridge)

Board Member - one month (96:April 9, Buono)

One meeting suspension appropriate for board member who initially failed to attend training session but subsequently did attend (97:July 3, Lynch) (97:July 3, Kelly)(97:July 3, Bryant)

School Administrator

Filing

One day without pay (96:Nov. 22, Foster)

Two days without pay (96:Nov. 22, Taylor)

Three days without pay (96:Nov. 22, Bush)
(96:Nov. 22, Williams)

One year to School Business Administrator

(95 N.J.A.R.2d (EDU) 123, Steele, aff'd

Commissioner 95:March 9, aff'd St. Bd. 95:Sept. 6)

Training

One board meeting - late training (97:June 27, Heard)(97:July 3, Bryant)(97:July 3, Kelly)(97:July 3, Lynch)(97:July 8, Young)

Two months (96:April 2, Matlosz, decision on reconsideration 96:Sept. 26)

Two months or until training is completed

(96:Sept. 26, Bedell)(96:Sept. 26, Burton)(96:Sept. 30, Weinstein)(96:Oct. 8, Cauley)(96:Oct. 8, Panconi)(96:Oct. 10, Scala)

Three months with removal if failure to attend training (97:May 19, Ziemer)

Until June 6-8 training session with removal if failure to attend (97:May 19, McIlvaire)(97:May 19, Marvin)

EVALUATION OF TEACHING STAFF MEMBERS

Notice to staff member not a prerequisite to classroom evaluation; evaluation may take place on any day at any time (97 N.J.A.R.2d (EDU) 439, Fogerty, appeal dismissed, St. Bd. 97:July 2)

Petitioner's claim that school evaluation was arbitrary, capricious or unreasonable dismissed for failure to file within 90 day period (97 N.J.A.R.2d (EDU) 265, Byron)

Requirements of administrative code are not met where evaluations and PIP's are cursory (90:572, McKeon Bass)

EVIDENCE

Exclusionary rule against illegal search and seizure did not apply in tenure proceeding (96 N.J.A.R.2d (EDU) 718, McIntyre, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 726, aff'd App. Div. 96 N.J.A.R.2d (EDU) 726)

Hearsay evidence admissible (92 N.J.A.R.2d (EDU) 545, Atlantic City)

Petitioner has established by clear and convincing evidence that he has been rehabilitated despite a prior disqualifying drug offense (97:Jan. 17, New Jersey State Department of Education)

Pupil testimony; weight to be given (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

EXPULSION OF PUPILS

(See "Pupils" this index)

EXTRACURRICULAR ACTIVITIES

NJSIAA

Academic credit rule, which was omitted from the Handbook, where pupil was unable to demonstrate circumstances beyond his control, was properly applied by Eligibility Appeals Committee, and absent a showing that application was arbitrary, capricious or unreasonable, the Commissioner would not substitute his judgment. Due process was found to have been afforded the pupil. (96:Jan. 26, G.M.)

Commissioner may determine matter on appeal from final decision of NJSIAA without additional testimony where the record is "wholly adequate" (91:2239, Newark)

Commissioner upheld \$500 fine and two year probation of wrestling coach for unsportsmanlike behavior in forfeiting match two hours before scheduled match (94 N.J.A.R.2d (EDU) 80, Bower)

EXTRACURRICULAR ACTIVITIES

- Commissioner upheld NJSIAA decision holding three transfer students are ineligible to participate in interscholastic athletic events when they transferred to new schools for athletic advantage to avoid punitive action by their former school (95 N.J.A.R.2d (EDU) 592, F.T., aff'd App. Div. 96 N.J.A.R.2d (EDU) 257)
- Commissioner upheld NJSIAA decision of ineligibility where student transferred for athletic advantage and misrepresented residency, to avoid application of 30-day waiting period (95:April 12, Burkley)
- Commissioner upheld NJSIAA decision of one game suspension of coach for verbal misconduct - failed to state cause of action (Cilento, aff'd App. Div. unpub. op. Dkt. No. A-1894-89T2, Nov. 30, 1990)
- Commissioner upheld penalty barring school participation in basketball tournament for following year as befitting offense of failing to control fans due to inadequate security force (92 N.J.A.R.2d (EDU) 182, Camden)
- Commissioner upheld two year probation of coaches for violation of red card rule; due process provided and penalty imposed within NJSIAA's lawful discretionary authority (92:Dec. 24, White)
- Commissioner will not disturb NJSIAA ruling prohibiting officials, disciplined by an affiliate organization, to fail to exhaust procedural remedies articulated in affiliation agreement before seeking to be recognized as a separate entity (95 N.J.A.R.2d (EDU) 499, N.J. Basketball Officials Assn.)
- Commissioner will not overturn decision of NJSIAA unless it is arbitrary, capricious or an abuse of discretion (95 N.J.A.R.2d (EDU) 499, N.J. Basketball Officials Assn.)
- Commissioner will not substitute his judgment for that of NJSIAA even if he were to decide differently in a de novo hearing, where due process has been provided and there is an adequate basis for the decision (95:Feb. 10, Haddonfield) (98:Feb. 6, Bralts)
- Commissioner will not substitute his/her judgment for that of NJSIAA in absence of compelling circumstances (90:287, Verona)
- Commissioner's review of NJSIAA determination is appellate one; he will not substitute his judgment if due process has been granted and there is adequate basis for decision (92 N.J.A.R.2d (EDU) 182, Camden)
- Decision of the NJSIAA will not be reversed absent finding that rules were applied in patently arbitrary,

capricious or unreasonable manner (96 N.J.A.R.2d (EDU)
835, Salvatori)

EXTRACURRICULAR ACTIVITIES

Denial of eligibility of wheelchair athlete to participate on school track team upheld; no violations of Section 504 of Rehabilitation Act of 1973 or equal protection under constitution (94 N.J.A.R.2d (EDU) 563, Carlstadt-East Rutherford)

Determination that student who transferred schools in May upon learning of academic ineligibility did so for athletic advantage was not arbitrary, capricious or unreasonable (91:1683, B.C.)

Disqualification of pupil by referee for unsportsmanlike conduct not reviewable by Commissioner under NJSIAA bylaws (90:Nov. 30, G.K.)

EAC determination upheld; due process granted and adequate basis for decision that eligibility standards could not be waived for student who failed to earn requisite academic credits (98:April 24, J.M.G.) (98:April 30, A.L.M.)

EAC determination upheld; due process granted and adequate basis for decision that student who transferred from Netherlands to New Jersey then signed letter of intent with local college transferred for athletic advantage (92 N.J.A.R.2d (EDU) 264, VanVelsen) See also (92:Feb. 3, VanVelsen, stay denied)

Eight semester eligibility rule

No exceptional circumstances warranted a waiver of eight semester rule or academic credit rule where student spent year abroad in unrecognized program (90:303, B.P.)

Waiver denied; classified student exception not intended to provide eight semesters from first point of actual play regardless of when student becomes otherwise eligible (94 N.J.A.R.2d (EDU) 349, J.C., Jr.)

Waiver denied; decision by student to spend year abroad in order to maintain Belgian citizenship was voluntary (93 N.J.A.R.2d (EDU) 165, Bradford)

Waiver denied; neurologically impaired student failed to prove participation was prevented because of circumstances beyond his control (92:Oct. 19, J.F.)

Waiver denied; NJSIAA's conclusion that petitioner's repetition of the tenth grade was voluntary rather than due to circumstances beyond his control was not arbitrary or unreasonable (98:Feb. 6, Bralts)

Waiver denied; pupil missing school due to "separation anxiety" did not warrant waiver (94:Dec. 5, Peveler)

Waiver granted to classified student who had repeated

two grades because of perceptual impairment (90:66,
C.G.)

EXTRACURRICULAR ACTIVITIES

- Waiver of eight semester rule denied. Student's retention in 9th grade and early departure from sports program were results of voluntary action (96 N.J.A.R.2d (EDU) 977, Brady)
- Waivers generally; each individual request must be considered on its facts (90:66, C.G.)
- Flagrant unsportsmanlike conduct, disqualification not reviewable by Commissioner. (Superior Court stayed disqualification prior to referring to Commissioner, and pupil was allowed to play in Championship game.) (96 N.J.A.R.2d (EDU) 591, J.C.)
- Forfeiture of game for playing ineligible student in violation of 30-day rule upheld (93 N.J.A.R.2d (EDU) 70, Gloucester)
- NJSIAA is subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794 (94 N.J.A.R.2d (EDU) 563, Carlstadt-East Rutherford)
- Out-of-season play rule violated; coaching son/team member resulted in disqualification of team from competition (90:287, Verona)
- Out-of-season play rule violated where coach had contact with student-athletes at pre-season event; team placed on probation for one year (95:Feb. 10, Haddonfield)
- Participation in high school athletics is a privilege, not a right (92 N.J.A.R.2d (EDU) 264, VanVelsen)
- Penalties of \$1,000 fine, placing athletic program on probation for two years, and directing submission of specific plan to upgrade athletic program were reasonable in light of determination of school's responsibility for altercation between football players and spectators following league scheduled game (91:2239, Newark)
- Pupil's participation in a spring football scrimmage after short transfer to Florida constituted involvement in a sport for four years, thereby using up his football eligibility for that year; emergent relief denied (94:Nov. 4, W.S.)
- Recalculation of championship standings which affected school's eligibility was not arbitrary, capricious or unreasonable; member bound by association's rules (94 N.J.A.R.2d (EDU) 106, Elmwood Park)
- Six day academic credit rule; no grounds for waiver for student who did not make up failed class in mistaken reliance on guidance counselor's advice (91:2061, R.D.)
- Stay denied for failure to meet Crowe standards; to stay NJSIAA rule prohibiting 19-year olds from participating in interscholastic sports would result in weakening of

rule that was adopted for safety reasons and to prevent "red-shirting," and could expose the school to game forfeiture if pupil is ultimately found to be ineligible (95:Feb. 9, Mars)

EXTRACURRICULAR ACTIVITIES

Stay denied of NJSIAA ruling declaring 19-year olds ineligible to play basketball; NJSIAA had found that disadvantaged background and being left back due to difficult childhood was not "truly extraordinary circumstance" to justify waiver of age limitation (95:Feb. 9, Mars)

Stay denied; student barred from playing basketball failed to demonstrate irreparable harm or likelihood of success on merits (92 N.J.A.R.2d (EDU) 264, VanVelsen)

Thirty day ineligibility rule not discriminatory on basis of wealth; failure to waive in case of student who transferred from parochial to public school for financial reasons not arbitrary, capricious or unreasonable (91:2217, Trenton)

Transfer for athletic advantage

Emergent relief denied; pupil failed to demonstrate that he will suffer irreparable harm if not allowed to participate in track; no entitlement to play interscholastic sports (94 N.J.A.R.2d (EDU) 437, T.D.)

Students transferred to new high school for athletic advantage to avoid disciplinary proceedings - ineligible to participate in athletics. (96 N.J.A.R.2d (EDU) 257, V.T., App. Div. aff'g 95 N.J.A.R.2d (EDU) 592)

Parent attendance at events

Board decision to bar parent who struck visiting coach during baseball game from attending all future athletic events upheld as within board's discretion (95 N.J.A.R.2d (EDU) 85, Griffin, appeal dismissed as moot, 95 N.J.A.R.2d (EDU) 204)

No statutory requirement that board provide parent with due process hearing before barring parent from attendance at all athletic events (95 N.J.A.R.2d (EDU) 85, Griffin, appeal dismissed as moot, 95 N.J.A.R.2d (EDU) 204)

Pupil participation

Academic credit rule, which was omitted from the Handbook, where pupil was unable to demonstrate circumstances beyond his control, was properly applied by Eligibility Appeals Committee, and absent a showing that application was arbitrary, capricious or unreasonable, the Commissioner would not substitute his judgment. Due process was found to have been afforded the pupil. (96:Jan. 26, G.M.)

Application of athletic rule is not rendered unfair because some violators were not caught (90:877, C.R.R.)

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

EXTRACURRICULAR ACTIVITIES

Failure to achieve 27.5 credit prerequisite renders basketball player ineligible (96 N.J.A.R.2d (EDU) 527, D.M.)

Participation in interscholastic sports is not constitutional right (92 N.J.A.R.2d (EDU) 182, Camden) (95:February 9, Mars)

Participation is a privilege, not a right (90:877, C.R.R.)

Petition seeking return of goalie pads dismissed - no proof pads were property of board (96 N.J.A.R.2d (EDU) 586, Vickner)

Sports

Academic qualification; adoption of stricter academic policy than that of NJSIAA within discretion of board (93 N.J.A.R.2d (EDU) 35, C.R.P.)

Forfeiture of game for playing ineligible student in violation of 30-day rule upheld (93 N.J.A.R.2d (EDU) 70, Gloucester)

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)

Students ineligible to participate when transfers were for athletic advantage to avoid disciplinary proceedings (96 N.J.A.R.2d (EDU) 257, V.T., App. Div. aff'g 95 N.J.A.R.2d (EDU) 592)

Suspension from extracurricular activities and athletics for an assault on another student was not arbitrary and capricious (97:July 28, S.N. and J.N.)

Waiver of eight semester rule denied. Student's retention in 9th grade and early departure from sports program were results of voluntary action (96 N.J.A.R.2d (EDU) 977, Brady)

Wheelchair athlete ineligible to participate on school track team; essential nature of wheelchair racing and running are different and no reasonable accommodation could be made (94 N.J.A.R.2d (EDU) 563, Carlstadt-East Rutherford)
Staffing

Coaches

Board cannot circumvent provisions of N.J.A.C. 6:29-3.3 by appointing only qualified and certified applicant for track coaching position to concurrent extracurricular assignment as class play advisor (Union City, App. Div. 95 N.J.A.R.2d (EDU) 214, aff'g St. Bd. 94 N.J.A.R.2d (EDU) 431, rev'g 94 N.J.A.R.2d 30)

EXTRACURRICULAR ACTIVITIES

Board may establish written policy regarding candidate qualifications for coaching position; in absence of policy, failure to hire certified teacher employed within district instead of substitute teacher for coaching position violated N.J.A.C. 6:29-3.3 (91:1154, Norcross, aff'd St. Bd. 92:Feb. 5) (But see Krupp, 278 N.J. Super. 31 (App. Div. 1994); certif. den. 140 N.J. 277 (1995) rem'd St. Bd. 95 N.J.A.R.2d (EDU) 451, dec. on remand 96 N.J.A.R.2d (EDU) 923 - board's decision not to appoint did not constitute an abuse of discretion - not arbitrary, capricious or in bad faith)

Board may not refuse to hire head football coach because of political party affiliation (Caputo, App. Div. unpub. op. Dkt. No. A-6753-89T3, Jan. 7, 1992, aff'g St. Bd. 90:1694, rev'g 88:1815, Motion for Stay denied 88:Sept. 27)

Board need not, under N.J.A.C. 6:29-3.3, give preference to in-district coaching applicants; remand ordered to determine whether board exercised sound educational judgment in denying appointment to in-district applicant (Krupp, 278 N.J. Super. 31 (App. Div. 1994); certif. den. 140 N.J. 277 (1995) St. Bd. 95 N.J.A.R.2d (EDU) 451, aff'g 95 N.J.A.R.2d (EDU) 446, rem'd St. Bd. 95 N.J.A.R.2d (EDU) 451, dec. on remand 96 N.J.A.R.2d (EDU) 923 - board's decision not to appoint did not constitute an abuse of discretion - not arbitrary, capricious or in bad faith) (96 N.J.A.R.2d (EDU) 466, McLoughlin, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. 97 N.J.A.R.2d (EDU) 551)

Commissioner upheld \$500 fine and two year probation of wrestling coach for unsportsmanlike behavior in forfeiting match two hours before scheduled match imposed by NJSIAA (94 N.J.A.R.2d (EDU) 80, Bower)

Commissioner upheld NJSIAA decision to suspend coach for one game for verbal misconduct (Cilento, aff'd App. Div. unpub. op. Dkt. No. A-1894-89T2, Nov. 30, 1990)

Employment of four assistant football coaches certified only as substitutes prior to obtaining county superintendent's approval is violation of N.J.A.C. 6:29-3.3 (c) (93 N.J.A.R.2d (EDU) 613, Daniel)

Even if in-district teacher had submitted a written

application for coaching position, board would have been free to appoint an out-of-district candidate as per Krupp (95:April 10, Perez)

Head wrestling coach holding county substitute certificate not properly appointed (96 N.J.A.R.2d (EDU) 312, Harris)

EXTRACURRICULAR ACTIVITIES

- In-district posting of assistant football coach positions insufficient to meet legal requirement of advertising openings (93 N.J.A.R.2d (EDU) 613, Daniel)
- In-district qualified applicant for assistant football coach entitled to position over applicants with only county substitute certification (93 N.J.A.R.2d (EDU) 613, Daniel)
- In-district teachers applying for coaching positions not entitled to automatic first review (96 N.J.A.R.2d (EDU) 466, McLoughlin, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. 97 N.J.A.R.2d (EDU) 551)
- Not eligible for tenure (89:1419, Panettieri, aff'd St. Bd. 89:1433, rev'd and remanded App. Div. unpub. op. Dkt. No. A-373-89T1, May 16, 1990, dec. on remand St. Bd. 90:Dec. 5)
- Petitioner failed to prove by preponderance of evidence that board made arbitrary, capricious, or unreasonable decision when petitioner was rejected for a coaching position at one high school after applicant left coaching position at school he was assigned to as a teacher (96:Aug. 1, Krupp, on remand from St. Bd.)
- Rejection of application for head football coach by certified, in-district candidate determined not to be qualified for position under duly promulgated written job description was not arbitrary, capricious or unreasonable (94 N.J.A.R.2d (EDU) 369, Taylor, aff'd w/modif. St. Bd. 94:Oct. 5)
- Res judicata required dismissal of challenge to board's appointment of head coach, where previous litigation involved same set of facts and parties, just different years (95:April 12, Taylor)
- Sick leave: Tenured teacher/assistant coach not entitled to sick leave for coaching assignment; neither tenured nor steadily employed as a coach nor was assignment an extension of regular teaching position (89:16, DeGroot, aff'd St. Bd. 89:31, aff'd App. Div. unpub. op. Dkt. No. A-381-89T2, Dec. 3, 1990)
- Teacher in district had no legally enforceable right to appointment (90:506, Fousty)
- Teacher who missed two interviews no longer a viable applicant for assistant football coach position (93 N.J.A.R.2d (EDU) 613, Daniel)
- Tenure does not attach to coaching position (91:1154,

Norcross, aff'd St. Bd. 92:Feb. 5)

EXTRACURRICULAR ACTIVITIES

When hiring coaches, board must first look to in-district staff, then to fully certified staff from without district, and only then to holders of substitute certificates as approved by county superintendent (93 N.J.A.R.2d (EDU) 613, Daniel) (But see Krupp, 278 N.J. Super. 31, App. Div. 1994), certif. den. 140 N.J. 273 (1995) rem'd St. Bd. 95 N.J.A.R.2d (EDU) 451, dec. on remand 96 N.J.A.R.2d (EDU) 923 - board's decision not to appoint did not constitute an abuse of discretion - not arbitrary, capricious or in bad faith)

Commissioner upheld two year probation of coaches for violation of red card rule; due process provided and penalty imposed within NJSIAA's lawful discretionary authority (92:Dec. 24, White)