

IDEA

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

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

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

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

Parents of autistic child entitled to counsel fees - proceedings in OAL essentially vested in IDEA. Roxbury Bd. of Ed. v. Milford Bd. of Ed., 283 N.J. Super. 505 (App. Div. 1995)

Regulation invalidated - Impermissibly narrowed language of and frustrated policy in IDEA w/r provision of assistive technology and services. Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6 and 4.3, 305 N.J. Super. 389 (App. Div. 1997).

IDEA

Rent charged to state by private school for the handicapped that exceeds costs of ownership properly excludable from tuition (96 N.J.A.R.2d (EDU) 406, Coastal Learning Center, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unreported opinion Oct. 23, 1997)

Residency dispute: Although IDEA issues were not the subject of residency dispute involving special education pupil, the IDEA was nonetheless implicated where board of education also sought tuition reimbursement; thus Superior Court had jurisdiction over IDEA's fee shifting provision; were awarded legal fees as prevailing party. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)

IMMUNIZATION

Board may properly deny admission to student for failure to undergo a mantoux test or failure to provide documentation that the student should be exempted from the mantoux test (97 N.J.A.R.2d (EDU) 486, M.F., appeal dismissed St. Bd. 97:July 2)

Department of Education immune from Section 1983 claim involving refusal to allow student to read Beginner's Bible to class and removal of poster of Jesus from school hallway. C.H. v. Oliva, 226 F.3d 1981, 3d Cir. CA 2000), certif. den. 121 S.Ct. 2519 (2000)

Emergent relief denied to board seeking to relieve it of obligation to educate pupil whose parents sought waiver of Mantoux Test on religious grounds under Religious Freedom Restoration Act; board must provide home instruction pending final determination of this novel question (St. Bd. 96:Oct. 2, Middletown)

Immunity: School board was immune from suit brought by pupil whose daughter was born with congenital rubella after she received rubella vaccination at school (Kemp v. State, 286 N.J. Super. 549 (1996))

Mantoux test meets a compelling state interest and regardless of parents religious beliefs, pupil is required to undergo tuberculin testing to attend public school; not violation of constitution or Religious Freedom Restoration Act (97:June 3, Middletown, matter dismissed as moot when father, against mother's wishes, had pupil tested, St. Bd. 97:Dec. 3)

INCREMENTS

Generally

Arbitrator review of disciplinary withholdings

Arbitrator erred in finding no just cause to withhold increment where teacher failed to follow mandatory procedures for reporting suspected student drug abuse (Hunterdon Central, App. Div. unpub. op. (Dkt. No. A-1316-92T2, Apr. 7, 1994))

Arbitrator exceeded authority by reducing withholding penalty to written reprimand (Hunterdon Central, App. Div. unpub. op. (Dkt. No. A-1759-92T2, March 14, 1994))

Arbitrator properly applied just cause standard to review disciplinary increment withholding where labor contract was silent; record supported conclusion that board lacked just cause to withhold based only on number of absences where legitimacy thereof not questioned (Scotch Plains, 139 N.J. 141 (1995), rev'g 270 N.J. Super. 444 (App. Div. 1994))

Increment withholdings for non-teaching staff members may be evaluative or disciplinary. Non-disciplinary withholdings are not subject to mandatory arbitration. PERC has jurisdiction to make the determination. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 328 N.J. Super. 540 (App. Div. 2000), certif. den. 165 N.J. 132 (2000) (Randolph II)

Salary increment for non-teaching employee that is predominantly disciplinary (excessive absenteeism) must be submitted to binding arbitration - may not be replaced by contract through negotiations. PERC has jurisdiction. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 306 N.J. Super. 207 (App. Div. 1997), certif. denied 153 N.J. 214 (1998) (Randolph I)

Board is without the legal authority to recover the three salary increments mistakenly paid to principal suspended with pay during pendency of tenure hearing (98:Jan. 23, Vicari)

Boards may but are not required to return teacher to salary schedule in year following withholding. (Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Super. 222 (1991), rev'g 90:1795, St. Bd. rev'g 89:2651)

Challenge to withholding is dismissed for failure to prosecute (97:Nov. 3, Finch)

Clerical error indicating that teacher would receive increment is without legal significance (98:Feb. 5, Sims)

INCREMENTS

- Computation of salary: Allegation that board paying wrong salary in violation of salary guide dismissed as teacher actually contesting previous increment withholding and lagging behind in salary in future and regulatory time period (90 days) for contesting withholding elapsed (94:Aug. 29, LaMonica)
- Computation of salary - need not be in salary guide. (Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Super. 222 (1991), rev'g 90:1795, St. Bd. rev'g 89:2651)
- Denied increment need not be paid in future years (Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Super. 222 (1991), rev'g 90:1795, St. Bd. rev'g 89:2651)
- Failure to return teacher to regular salary guide following disciplinary withholding within discretion of board (93 N.J.A.R.2d (EDU) 136, Fieseler, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 415)
- Letter by superintendent indicating no further action will be taken against teacher does not bar board from withholding increment (96 N.J.A.R.2d (EDU) 701, Backer, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 441, aff'g App. Div. 96 N.J.A.R.2d (EDU) 349)
- Salary increments are a reward for meritorious service (96 N.J.A.R.2d (EDU) 31, Rago)
- Salary increments are a reward for meritorious service and, as such, need not be awarded to a suspended employee following the certification of tenure charges. Employee possesses no entitlement to retroactive restoration of any salary increments (97 N.J.A.R.2d (EDU) 238, DiPillo, aff'd by clarification St. Bd. 97:Aug. 6, aff'd App. Div. unpublished op. Dkt. No. A-493-97T5, March 4, 1999)
- Teacher's function to identify problems and to remedy perceived deficiencies in the pupils (96 N.J.A.R.2d (EDU) 31, Rago)
- Withholding appropriate since it was not sanction for incident described as "straw that broke the camel's back" which occurred in years prior to the withholding (92 N.J.A.R.2d (EDU) 511, Byorek)
- Withholding must be based on activities taking place within that year (92 N.J.A.R.2d (EDU) 511, Byorek)

Expired Collective Bargaining Agreements

- Salary increments: N.J.S.A. 18A:29-4.1 preempts conflicting labor law precluding a unilateral change of the status quo; a board is prohibited under N.J.S.A. 18A:29-4.1 from paying salary increments to teaching staff after the expiration of a three-year collective bargaining agreement. Neptune v. Neptune, 144 N.J. 16 (1996)

Good cause required - board action upheld

Appeal of withheld salary increments dismissed because petitioner waited four years to file petition; board action upheld (90:1340, Jordan)

INCREMENTS

- Board decision to withhold increment based on teacher's continued problems with classroom management was not arbitrary, capricious or unreasonable (94 N.J.A.R.2d (EDU) 376, Harrity) (97 N.J.A.R.2d (EDU) 398, Miller)
- Board decision to withhold increment was not arbitrary and capricious where it was based upon multiple observations of poor classroom management and poor instructional skills and where board offered a meaningful remediation plan which petitioner did not follow (97 N.J.A.R.2d (EDU) 398, Miller)
- Board decision to withhold salary increments of four staff members was based upon multiple evaluations and not arbitrary or unreasonable (97 N.J.A.R.2d (EDU) 439, Fogerty, appeal dismissed, St. Bd. 97:July 2)
- Board had reasonable basis for withholding increment where petitioner was given directives but failed to show improvement (97:Aug. 15, Tiberio)
- Board properly withheld increment based on teacher's excessive absenteeism (98:June 22, Medeiros)
- Board properly withheld increment based upon evaluations showing teacher's deficient and inconsistent performance (90:1455, Madak)
- Board properly withheld tenured teacher's salary increment for permitting middle school students to watch R-rated movie during school hours without parental permission (95 N.J.A.R.2d (EDU) 479, Capizola, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 440, aff'd App. Div. 97 N.J.A.R.2d (EDU) 308)
- Board's withholding of bus driver's increment for excessive absenteeism upheld. Kopera standard applied. (96 N.J.A.R.2d (EDU) 781, Webb)
- Commissioner has jurisdiction to entertain petition regarding initial placement on salary guide for confidential employees (90:543, Migliaccio)
- Deficiencies in instruction, planning, preparation, grading techniques and classroom control (92 N.J.A.R.2d (EDU) 661, Sturn)
- Deliberate use of inappropriate language not good educational practice; board action upheld (90:1148, McCracken)
- Difficulty in classroom management and controlling student behavior (92 N.J.A.R.2d (EDU) 589, Gnatt) (96 N.J.A.R.2d (EDU) 31, Rago)
- Excessive absenteeism, bus driver (96 N.J.A.R.2d (EDU) 781, Webb)
- Excessive absenteeism constitutes good cause and negatively

impacts on continuity of instruction; board need not show
affect on student performance (95 N.J.A.R.2d (EDU) 213,
Kochman, App. Div., aff'g St. Bd. 94 N.J.A.R.2d (EDU)
154, rev'g 94 N.J.A.R.2d (EDU) 148; dec. on remand from
94 N.J.A.R. 2d (EDU) 141)

INCREMENTS

- Excessive absenteeism, lateness, inadequate notice to substitute service and "falsifying" grades are reasonable bases for board to withhold increment (90:1169, Bonner, aff'd St. Bd. 91:2520)
- Excessive absenteeism proper basis for withholding; nature of absences considered and employees informed of board concern that number of absences negatively impacting on education of students (93 N.J.A.R.2d (EDU) 502, Ficin, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 499)
- Failure of school psychologist to complete testing and evaluations of students in timely manner (95 N.J.A.R.2d (EDU) 55, Kaska)
- Failure to complete work properly; failure to follow established procedures (97 N.J.A.R.2d (EDU) 143, Kidd)
- Failure to give statement of reasons not fatal flaw when constructive notice has been provided through evaluations (90:1019, Miller)
- Failure to implement required teaching techniques (98:Feb. 5, Sims)
- Failure to maintain instructional pace required by curriculum because of unsatisfactory organization and planning (93 N.J.A.R.2d (EDU) 874, Brown)
- Failure to supervise students or to implement procedures to prevent theft in student store (95:March 6, Urbanski, aff'd St. Bd. 95:August 2)
- Failure to take reasonable and effective action to investigate allegations of student extortion held good cause (90:904, Barron)
- Inappropriate, personal use of "kid mail" by teacher to inform parents of reasons for her transfer (93 N.J.A.R.2d (EDU) 41, Kesheneff, aff'd on remand 93 N.J.A.R.2d (EDU) 312, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 430)
- Inappropriate physical contact with pupils (93 N.J.A.R.2d (EDU) 196, Campbell, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 604, aff'd App. Div. 95 N.J.A.R.2d (EDU) 211, certif. den. 142 N.J. 518 (1995))
- Indifferent attitude and excessive absenteeism are reasonable bases for board to withhold increment (98:March 6, Sakofsky)
- Insensitivity and lack of compassion towards students (92 N.J.A.R.2d (EDU) 511, Byorek)
- Insubordination, failure to properly supervise students, failure to plan educational activities and failure to ensure students wear safety equipment good cause (96 N.J.A.R.2d (EDU) 701, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 441, aff'd App. Div. 96 N.J.A.R.2d (EDU) 349)

Lack of student control and instructional goals (92
N.J.A.R.2d (EDU) 560, Brown)

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- Lack of student control and poor classroom management skills (94 N.J.A.R.2d (EDU) 359, Ibrahim)
- Overall performance for school year did not meet high standards of performance required by the district (96 N.J.A.R.2d (EDU) 31, Rago)
- Participation in scheme to gather and publicly disseminate information pertaining to alleged homosexuality of assistant superintendent (91:1304, 92 N.J.A.R.2d (EDU) 145, Zarro, aff'd St. Bd. 92:Jan 8, aff'd App. Div. unpub. op. Dkt. No. A-3510-91T3, June 15, 1993)
- Poor ratings in areas of staff development, supervision of instruction and curriculum development constitutes good cause for withholding principal's increment; evaluations not tainted by improper motives or animus of evaluators (94 N.J.A.R.2d (EDU) 537, Simon)
- State Operated School District's withholding of increments from nine employees upheld. Decision not unreasonable (96:May 6, Jersey City)
- Teacher's performance history may be reviewed in evaluating whether to withhold increment (92 N.J.A.R.2d (EDU) 589, Gnatt)
- Teacher's unlawful 12 day absence justified board's decision to withhold salary increase and annual increment (90:1083, Tammaru)
- Unsatisfactory performance sufficient basis for withholding increment (97:Dec. 23, Rosberger)

Good cause required - board action reversed

- Board absenteeism policy which sets forth blanket denial of increments based upon number of days missed regardless of reason for absence is arbitrary and contrary to law (Pollard, Guskind & Sims, App. Div. unpub. op. (Dkt. No. A-4109-91, Feb. 22, 1994), aff'g St. Bd. 92 N.J.A.R.2d (EDU) 286, stay denied 92:July 1, rev'g 92 N.J.A.R.2d (EDU) 279)
- Board action in withholding increment arbitrary; no corporal punishment where teacher applied amount of physical force necessary to quell disturbance (90:1484, Bundy)
- Board reversed; form letters regarding absenteeism did not indicate board considered reasons for absence, absences were within entitlement limits and no discontinuity of education or performance problems were shown to result (90:572, McKeon Bass)
- Board reversed; unilateral determination by board that contractual conditions for award of salary credit for completion of college credits was not met is not good cause for withholding of increment (93 N.J.A.R.2d (EDU)

784, Canal, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU
327)

INCREMENTS

Board reversed; withholding flawed because board failed to follow progressive discipline procedure in newly adopted policy and never conveyed concern for continuity of instruction to employee (91:860, Mainland Regional)

Excessive absenteeism; even legitimate absences may form the basis for disciplinary action, provided board takes into consideration the nature of the illness, impact on continuity of instruction and that the concern for continuity was conveyed to the staff member during the period of absence (90:572, McKeon Bass)

Language of a 1988 tenure charge settlement does not provide a basis for withholding teacher's 1990-91 salary increment when there is no evidence of inefficiency or other good cause for withholding increment (91:725, Khoury)

Increment mistakenly paid to teacher although board acted to withhold it may be recouped by freezing salary in subsequent year (94 N.J.A.R.2d (EDU) 248, Cerato, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 422)

Permanent withholding

AMF Computation of salary: Allegation that board paying wrong salary in violation of salary guide dismissed as teacher actually contesting previous increment withholding and lagging behind in salary in future and regulatory time period (90 days) for contesting withholding elapsed (94:Aug. 29, LaMonica)

Teacher whose salary increments were withheld by school board for unsatisfactory performance was not entitled to restoration of previously denied increments and return to board's salary schedule when she subsequently performed satisfactorily (Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Super. 222 (App. Div. 1991), rev'g St. Bd. 90:1795, rev'g 89:2651)

Withholding an increment does not constitute a continuing violation, the fact that petitioner will always lag one step behind is attributable to the effect of an earlier employment decision and is not due to a new violation each year (89:1779, Lulewicz, aff'd St. Bd. 89:1790, aff'd App. Div. unpub. op. Dkt. No. A-2002-89T5, Nov. 19, 1990) (Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Super. 222 (App. Div. 1991), rev'g St. Bd. 90:1795, rev'g 89:2651)

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Procedures

Board's action not inconsistent with its stated policies; decision to deny increment not procedurally defective (92 N.J.A.R.2d (EDU) 661, Sturn)

Board's decision to withhold increment must be based on sufficient information (93 N.J.A.R.2d (EDU) 41, Kesheneff, aff'd on remand 93 N.J.A.R.2d (EDU) 312, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 430)

District's evaluation procedures were reasonable (96:May 6, Jersey City)

Failure to warn that increment adjustment may be withheld for unsatisfactory performance prior to decision to withhold is not fatal; better practice would be to provide as much notice as possible (Yorke, App. Div. unpub. op. Dkt. No. A-6803-89T5, Oct. 18, 1991, aff'g St. Bd. 90:1818, rev'g 89:2538)

Increment withholdings for non-teaching staff members may be evaluative or disciplinary. Non-disciplinary withholdings are not subject to mandatory arbitration. PERC has jurisdiction to make the determination. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 328 N.J. Super. 540 (App. Div. 2000), certif. den. 165 N.J. 132 (2000) (Randolph II)

Jurisdiction: Commissioner had jurisdiction to determine whether increment withholding could be based on failure to meet contractual obligation (92:July 1, River Dell, St. Bd. rev'g & remanding 92:Feb. 18)

Jurisdiction: Court upheld PERC determination that local board of education properly withheld increments of principal who was excessively absent, for reasons that were predominantly disciplinary and not based on evaluation of performance. Edison Twp. Bd. of Ed. v. Edison Principals and Supervisors Assn., 304 N.J. Super. 459 (App. Div. 1997)

Jurisdiction: Where teacher elected to have increment dispute handled as school law matter rather than through grievance procedure, teacher's request that matter be remanded for arbitration is rendered moot (Backer, App. Div. 96 N.J.A.R.2d (EDU) 701, aff'g St. Bd. 96 N.J.A.R.2d (EDU) 349, rev'g 92 N.J.A.R.2d (EDU) 441)

Notice

Communication of decision to deny increment approximately three weeks after deadline not fatal (96 N.J.A.R.2d (EDU) 31, Rago)

Notice to staff member not a prerequisite to withhold
increment (97 N.J.A.R.2d (EDU) 439, Fogerty, appeal
dismissed, St. Bd. 97:July 2)

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Notice to staff member not prerequisite to withhold increment; board not required to communicate concern regarding impact of absences on continuity of education (95 N.J.A.R.2d (EDU) 212, Kochman, App. Div., aff'g St. Bd. 94 N.J.A.R.2d (EDU) 154, rev'g 94 N.J.A.R.2d (EDU) 148; dec. on remand from 94 N.J.A.R.2d (EDU) 141) (but App. Div. does not address this point)

Teacher had specific and timely notice of deficiencies from observations and evaluations; less notice required in increment withholding case than tenure dismissal case (92 N.J.A.R.2d (EDU) 661, Sturn)

Observations for less than a full class period, provided sufficient opportunity to adequately describe the lesson, student-teacher interaction and the teaching staff member's performance (96 N.J.A.R.2d (EDU) 13, Rago)

Post-observation conference not held due to refusal of petitioner (96 N.J.A.R.2d (EDU) 31, Rago)

Salary increment for non-teaching employee that is predominantly disciplinary (excessive absenteeism) must be submitted to binding arbitration - may not be replaced by contract through negotiations. PERC has jurisdiction. Randolph Twp. Bd. of Ed. v. Randolph Ed. Assn., 306 N.J. Super. 207 (App. Div. 1997), certif. denied 153 N.J. 214 (1998) (Randolph I)

Technical defects will not void a board's decision to withhold an increment if the record supports conclusion that petitioner knew or should have known the reasons for withholding the increment (96 N.J.A.R.2d (EDU) 31, Rago)

Timing of withholding; effect on validity

Twelve month employees: Board must act to withhold increments prior to July 1 of the school year involved; withholding after beginning of contractual year on July 1 is untimely and ultra vires and must be set aside (93:Oct. 25, Pruitt, stay denied 93:Dec. 16, aff'd St. Bd. 95:Aug. 2)

Salary guide placement

Computation of salary after Commissioner orders as penalty in tenure matter the withholding of salary increments (90:375, Wagner, aff'd St. Bd. 90:383)

Computation of salary: Allegation that board paying wrong salary in violation of salary guide dismissed as teacher actually contesting previous increment withholding and lagging behind in salary in future and regulatory time period (90 days) for contesting withholding elapsed (94:Aug. 29, LaMonica)

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Computation of salary: Staff member will always lag behind the step he/she would have been absent the withholding, unless a board acts specifically to restore the increment(s) (90:375, Wagner, aff'd St. Bd. 90:383)

Teacher whose salary increments were withheld by school board for unsatisfactory performance was not entitled to restoration of previously denied increments and return to board's salary schedule when she subsequently performed satisfactorily (Probst, 127 N.J. 518 (1992), rev'g 249 N.J. Super. 222 (App. Div. 1991), rev'g St. Bd. 90:1795, rev'g 89:2651)

Scope of Review on Appeal

Board's exercise of discretionary powers may not be upset unless it is patently arbitrary, capricious and unreasonable or induced by improper motives reasonable basis to withhold funds (96 N.J.A.R.2d (EDU) 31, Rago)

Kopera standard applied to bus driver withholding for excessive absenteeism (96 N.J.A.R.2d (EDU) 781, Webb)

Scope of Commissioner's review is "not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions." ALJ reversed for utilizing a heightened standard of review (98:April 30, Bauer)

Scope of review of whether there existed reasonable basis for the district's decision to withhold (96:May 6, Jersey City) (96 N.J.A.R.2d (EDU) 781, Webb)

Standard of review

Board's action is discretionary and will not be overturned unless arbitrary and without rational basis or induced by improper motives (Yorke, App. Div. unpub. op. Dkt. No. A-6803-89T5, Oct. 18, 1991, aff'g St. Bd. 90:1818, rev'g 89:2538)

Standard of review in absenteeism case (90:572, McKeon Bass)

Standard of review in disciplinary withholding. Scotch Plains, 139 N.J. 141 (1995), rev'g 270 N.J. Super. 444 (App. Div. 1994)

State Operated School Districts

State Superintendent is empowered to engage in all necessary activities to allow district to be fully functional and expressly authorized to make all personnel determinations including withholding of increments (97 N.J.A.R.2d (EDU) 439, Fogerty, appeal dismissed, St. Bd. 97:July 2)

Superintendent in state-operated school district has power to act on a recommendation to withhold an increment (96 N.J.A.R.2d (EDU) 31, Rago)

INDEMNIFICATION

Administrative matters are not "civil" actions for which indemnification can be granted (98:June 26, Lacey Twp., dismissed for failure to perfect St. Bd. 98: Nov. 4)

Administrative proceedings: no legal authority for indemnification in administrative proceedings (98:April 27, Chester/, aff'd St. Bd. 98: Aug. 5)

Bus drivers acquitted of speeding not entitled to reimbursement of legal fees incurred in defense of charges (93 N.J.A.R.2d (EDU) 799, Apgar)

Civil actions

Board member was entitled to indemnification for costs she incurred litigating issue of her presence at executive session, during which the board discussed the possibility of bringing frivolous lawsuit action against persons including said board member who, prior to her election, had participated in a legal challenge to the board's plan to reconfigure its schools (Quick v. Old Bridge Twp. Bd. of Ed., 308 N.J. Super. 338 (App. Div. 1998), aff'g St. Bd. (Dec. 4, 1996)

Board was authorized to indemnify board president for legal expenses incurred in defending defamation suit based on comments he made on cablevision show, within scope of duties (97 N.J.A.R.2d (EDU) 46, Montagna)

Indemnification covers costs associated with cross claims and counterclaim (97 N.J.A.R.2d (EDU) 46, Montagna)

Successful completion of Pre-Trial Intervention Program was not "favorable termination of criminal proceeding"; employee not entitled to reimbursement of counsel fees (Cressinger, 256 N.J. Super. 155, (App. Div. 1992), certif. denied, 130 N.J. 394)

Criminal actions

Burden of Proof: Teacher met his burden and was entitled to indemnification where sexual abuse charges were dismissed before trial; teacher not required to refute allegations where there was no proof of any act other than the teacher's presence in the school and performance of his duties. Bower v. East Orange, 149 N.J. 416 (1997). (See prior history, 90:1203, rev'd St. Bd. 90:1212, aff'd on remand 91:2048, aff'd w/modif. St. Bd. 94:Aug. 3, rev'd App. Div. 287 N.J. Super. 15 (1996))

Grand Jury "no bill" is considered a favorable final disposition for purposes of N.J.S.A. 18A:16-6.1 (90:474, Pierson, aff'd St. Bd. 90:490)

INDEMNIFICATION

- "Reasonable" counsel fees; absence of billing or itemization by attorney precluded finding of reasonableness (90:474, Pierson, aff'd St. Bd. 90:490)
- Teacher charged with sexually assaulting female students during gym class entitled to indemnification for defense against criminal charges which were "no-billed" by grand jury (94 N.J.A.R.2d (EDU) 424, St. Bd. rev'g 91:1834) See also (90:332, Borrelli I)
- Teacher's statements to administrator, which were designed to induce favorable decision on contract renewal and which formed basis of bribery charges of which teacher was acquitted, did not "arise out of" teaching duties for purposes of N.J.S.A. 18A:16-6.1 (Scirroto, 272 N.J. Super. 391 (App. Div. 1994))
- Tenured kindergarten teacher eligible for indemnification for costs of defending against dismissed criminal charges. Bower v. East Orange Bd. of Ed., 149 N.J. 416 (1997)
- Tenured kindergarten teacher is not eligible for indemnification for costs of defending against dismissed criminal charges when he fails to demonstrate nexus between alleged conduct and performance of teaching duties (Bower, 149 N.J. 416 (1997))
- Tenured vice principal dismissed on tenure charges not entitled to indemnification for defense against criminal charges which were "no-billed" by grand jury; tenure charges resulting in dismissal were the same as criminal charges, so petitioner could not claim that charges "arose out of and in the course of performance of the duties" of the position (98:May 15, Ciufi, aff'd St. Bd. 98: Sept. 2)

INSURANCE

- L.1995, c.74 authorizes boards to provide group health insurance through joint insurance funds; challenge to pre-1995 trust agreement dismissed (95 N.J.A.R.2d (EDU) 255, Millstone Twp. Teacher's Ass'n., rev'g 93 N.J.A.R.2d (EDU) 802, clarification St. Bd. 95:Sept. 6)
- Attorney: board could not offer participation in its health care plan to its independent contractor attorney; would violate N.J.S.A. 18A:16-12 et seq. (94:Dec. 12, Van Wagner)
- Board's health benefits plan violated statute prohibiting self-insurance where board contracted with agency to administer plan and purchased excess insurance from another company. Atlantic City Ed. Assn. v. Bd. of Ed., aff'd App. Div. 299 N.J. Super. 649 (App. Div. 1997) (See also unfair labor practice - App. Div. 96 N.J.A.R.2d (EDU) 550)
- Child's vandalism of school property giving rise to vicarious

liability of parent was "accident" and therefore "occurrence" under homeowner's insurance policy. Property Casualty Co. of MCA v. Conway, 284 N.J. Super. 622 (App. Div. 1995)

INSURANCE

Continued health insurance

Employee who elected effective date of retirement after expiration of employment by board due to RIF not entitled to continued health care benefits as retired employee under N.J.S.A. 18A:16-18 (93 N.J.A.R.2d (EDU) 633, Miller)

Health benefits: question of whether contract between board and CIGNA is fixed-insurance policy as authorized by N.J.S.A. 18A:16-13, or form of self-insurance prohibited under Irvington, remanded; Department of Insurance should be asked to participate as *amicus* on issue of whether policy is fully insured (94:Nov. 3, Middletown)

Permanent building based substitutes eligible for sick leave and participation in State Health Benefits Plan (94 N.J.A.R. 2d (EDU) 364, East Orange Education Association)

Self-funded insurance plan

Board's health benefits plan in which board contracted with insurance agency to administer its health program and purchased excess insurance from another company was self-insurance plan and violated statute requiring boards to contract with insurance company for health benefits plan. Atlantic City Ed. Assn. V. Atlantic City Bd. of Ed., aff'd App. Div. 299 N.J. Super. 649 (1997) (See also unfair labor practice - App. Div. 96 N.J.A.R.2d (EDU) 550)

Self-funding of health insurance by board impermissible (95 N.J.A.R. 2d (EDU) 61, Keyport Teachers Association, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 208, stay denied 95:January 25, aff'd St. Bd. 95:April 5)

Tenured teacher improperly RIF'd entitled to monetary compensation for lost medical benefits (93 N.J.A.R.2d (EDU) 184, Takakjian)

INTEGRATION

(See "Racial Balance" this index)

INTEREST

(See "Commissioner of Education - Interest" this index)

INTERIM RELIEF

(See "Commissioner of Education - Emergent relief" and "Commissioner of Education - Injunctive relief" this index)