

## **NATIONAL HONOR SOCIETY**

Character evaluation sheet sent to all faculty with instructions to rate only students with whom you have had sufficient contact to make judgment does not constitute impermissible polling of faculty; decision denying pupil admission to NHS upheld (92 N.J.A.R.2d (EDU) 331, Hook, aff'd St. Bd. 92:Sept. 2)

Commissioner improperly dismissed petition as moot which challenged board's refusal to provide reasons for denying pupil membership in National Honor Society for 1992-93 school year (J.B., St. Bd. 94:Nov. 2, rev'g & remanding 94:March 7, aff'd St. Bd. 98:May 6)

Committee's decision not to invite senior into National Honor Society was not arbitrary, capricious, discriminatory or otherwise illegal; especially where application included puffery and omitted some of pupil's activities (97:Nov. 14, J.B., decision on remand, aff'd St. Bd. 98:May 6)

## **NATIONAL HONOR SOCIETY**

It is not arbitrary, capricious or discriminatory for National Honor Society selection committee members to exercise individual, subjective assessments of candidate's credentials (97:Nov. 14, J.B., decision on remand, aff'd St. Bd. 98:May 6)

Review of disputes over admission to National Honor Society by Commissioner limited to determination of whether decision was arbitrary, capricious or unreasonable (94 N.J.A.R.2d (EDU) 119, J.B., aff'd St. Bd. 94 N.J.A.R.2d (EDU) 126, aff'd App. Div. 96 N.J.A.R.2d (EDU) 159, certif. den. 142 N.J. 452 (1995))

## **NEPOTISM**

(See also "Boards of Education - Membership on - Conflict of interest" and "Ethics Act" this index)

Nepotism policy upheld despite uneven enforcement (96:July 25, Carroll)

Transfer of custodian to another job site and shift pursuant to board's nepotism policy upheld (93 N.J.A.R.2d (EDU) 96, Farrow)

## **NEW JERSEY SCHOOL BOARDS ASSOCIATION**

## **NEWSPAPERS**

**NJSIAA - See "Extracurricular Activities" this Index**

## **NOMINATING PETITIONS**

(See "Elections" this index)

## **NONPUBLIC SCHOOLS**

School district in which nonpublic school is located is responsible for identification, evaluation and classification of handicapped pupils and for providing remedial and auxiliary services to nonpublic students. Chapter 192, 193 obligations limited to state aid received (96 N.J.A.R.2d (EDU) 811, Clifton, aff'd State Board 96 N.J.A.R.2d (EDU) 815, aff'd App. Div. 97 N.J.A.R.2d (EDU) 553)

## **NON-TENURED TEACHING STAFF**

### **Appointments**

Approval by board resolution of reappointment of non-tenured teacher does not create binding contract for employment (93 N.J.A.R.2d (EDU) 744, Delgado)

Board may renew non-tenured teacher's employment despite chief school administrator's recommendation not to do so; State Board rules to the contrary are ultra vires (Rotondo, 276 N.J. Super. 36 (App. Div. 1994), rev'g St. Bd. 92 N.J.A.R.2d (EDU) 622, aff'g 92 N.J.A.R. 2d (EDU) 376) But see P.L. 1995, c. 125 which supersedes Rotondo and requires CSA recommendation for appointment of employees

Contract for employment properly accepted by silence; however, contract was void since teacher was not properly certified as required by statute (93 N.J.A.R.2d (EDU) 744, Delgado)

### **Dismissal or termination**

#### **Termination**

Absent constitutional constraints or legislation affecting the tenure rights of teachers, local boards of education have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

Acceptable termination rationales or reasons may fall well short of the "just cause" standard but impermissible reasons cannot be used in termination decisions (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

Board has virtually unlimited discretion in hiring or renewing non-tenured teachers (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

Board ratification of notice of suspension and notice of termination provided by superintendent one day after such notification upheld and deemed to be notification, suspension and termination by board (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

## NON-TENURED TEACHING STAFF

- Burden on non-tenured teaching staff member to demonstrate no reasonable school district would terminate a non-tenured teacher for conduct serving as basis for his or her termination (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- Contractual issues involving termination of business administrator under 60-days' notice provision was for court, not Commissioner to decide (97 N.J.A.R.2d (EDU) 16, Demikoff, aff'd St. Bd. 95:July 5, aff'd App. Div. unreported opinion Feb. 3, 1997)
- Distinction made between proscribing impermissible rationales and establishing the exclusive conditions under which an employee can be dismissed (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- District's action terminating petitioner, based upon reports of the use of unjustified and inappropriate physical intervention with students, was not improper (97:Oct. 1, State Operated School District of the City of Newark)
- Forceful intervention in threatening manner to question management decision to discipline another employee which did not concern employee and his belief he was entitled to behave this way were conduct related reasons for termination within the sound discretion of the board (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- School board is entitled to summary judgment as a matter of law where non-tenured teacher failed to allege that his termination violated any of his constitutional or legislatively conferred rights (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- Superintendent is agent of board in notifying non-tenured teaching staff member of suspension and notice of termination of contract (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

## **NON-TENURED TEACHING STAFF**

- Teacher RIF'd in October entitled to enforcement of full ten month contract under specific language of contract's cancellation clause (93 N.J.A.R.2d 766, Siegel, aff'd in part, rev'd in part, St. Bd. 94 N.J.A.R.2d (EDU) 319)
- Teacher who is entitled to damages for premature cancellation of contract, need not mitigate damages by accepting board's offer of lower paying employment before exhausting reasonable efforts to find similar, comparably paying work (95:March 27, Siegel, dec. on remand)
- Teacher's challenge to termination dismissed for failure to comply with 90-day rule (95:Dec. 21, Nelson, aff'd St. Bd. 96:April 3)
- Teaching staff member entitled to receive statement of reasons why board elected not to terminate the contract to insure not arbitrary and capricious or done for "impermissible reasons" (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- Termination by either party upon a specified number of days notice, contract may be terminated in accordance with the terms of the contract without the need to demonstrate "good" or "just" cause (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- Termination reflects the intent of at least one of the parties to put an end to an existing contract before it expires by its own terms (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)
- Sixty-day notice termination clause
- Termination with 60 days pay in lieu of notice precludes tenure; fact that school psychologist would have acquired tenure during 60-day notice of termination period under contract is immaterial (94 N.J.A.R.2d (EDU) 41, Winston, appeal dismissed for failure to perfect 94 N.J.A.R.2d (EDU) 320)

## **NON-TENURED TEACHING STAFF**

Termination alleged to be in retaliation for actions on behalf of another teacher even if true did not raise a claim of violation of a legislative or constitutionally conferred right and board entitled to summary judgment as a matter of law (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

Thirty-day notice termination clause

No contractual entitlement to 30 days pay in case where notice of non-renewal not received until May 1 (91:1369, Holmes)

Vice principal properly terminated under 60-day notice clause; no violations of OPMA occurred (94 N.J.A.R.2d (EDU) 520, Jackson)

Where a non-tenured teacher challenges the district board's decision to terminate his employment on the grounds that the reasons provided by the board are not supported by the facts, the question can be litigated only if the facts alleged, if true, would constitute a violation of constitutional or legislatively conferred rights (96 N.J.A.R.2d (EDU) 14, Kufel, mod.o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

### **Evaluations**

A board of education is not required to offer a tenure contract to a teacher whose evaluations have been "good" or "excellent"; there are equally valid reasons other than classroom performance for which a board may conclude not to grant tenure (97 N.J.A.R.2d (EDU) 18, Daly)

Decision not to renew may be based on criticisms outside of formal evaluations (97 N.J.A.R.2d (EDU) 55, Bruder, aff'd St. Bd. 95:Aug. 2)

### **Non-renewal**

Board may reappoint nonrenewed employee without CSA's recommendation after informal appearance before the board. (97:August 6, Velasquez, State Board aff'g w. mod. 96:April 4)

Board not obligated to accept CSA's recommendation of renewal of curriculum coordinator. (96 N.J.A.R.2d (EDU) 784, Lally)

## **NON-TENURED TEACHING STAFF**

Director of Personnel's nonrenewal - Nonrenewal not based on political affiliation - board had valid performance concerns (97 N.J.A.R.2d (EDU) 289, Young, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 555, aff'd App. Div. unreported opinion May 28, 1998)

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

No board vote required on nonrenewal after informal appearance before the board. (97:August 6, Velasquez, State Board aff'g w. mod. 96:April 4)

Non-renewal to be upheld unless patently arbitrary, capricious or unreasonable. Violation of constitutional or legislatively conferred rights must be shown. (96 N.J.A.R.2d (EDU) 606, Getz)

### **Definition**

The terms renewal and non-renewal refer to the intent of the parties to enter a future contract (96 N.J.A.R.2d (EDU) 14, Kufel, mod. o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

### **Necessity for**

No obligation to notify non-tenured teaching staff member of intent not to renew since board severed employment relationship before notice of intent not to renew required (96 N.J.A.R.2d (EDU) 14, Kufel, mod. o.g. St. Bd. 96 N.J.A.R.2d (EDU) 446, aff'd App. Div. 97 N.J.A.R.2d (EDU) 317)

### **Procedure**

#### **Generally**

Board excused from following statutory notification procedures where petitioner did not possess proper certification (91:1201, Cooker, aff'd St. Bd. 91:1224, aff'd App. Div. unpub. op. Dkt. No. A-2128-91T1)

Board properly terminated non-tenured teacher on work-related disability leave by giving timely notice of nonrenewal prior to tenure acquisition (97 N.J.A.R.2d (EDU) 55, Bruder, aff'd St. Bd. 95:Aug. 2)

## NON-TENURED TEACHING STAFF

Boards of education cannot be bound solely by an administrator's professional evaluation (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (Jan. 13, 1994), dec. on remand 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)

Broad nature of board's discretion (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (Jan. 13, 1994), dec. on remand 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)

Burden is on teacher to show board's action to non-renew is unlawful or an abuse of discretion (90:506, Fousty)

Commissioner is not to assess whether board's decision was wise or whether the reasons were good or even adequate; only whether the reasons given were advanced in good faith, i.e. that they were not willfully false or a pretext for some unlawful, arbitrary or capricious motivation (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (Jan. 13, 1994), dec. on remand 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)

Determination not to grant tenure need not be grounded on unsatisfactory classroom or professional performance but may be based upon other reasons (96 N.J.A.R.2d(EDU) 81, Brenner stayed St.Bd. (Jan. 13, 1994), 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95) interpreting Donaldson v. Board of Education of North Wildwood, 65 N.J. 236 (1974)

No board vote required on non-renewal after informal appearance before the board (97:Aug. 6, Velasquez, St. Bd. aff'g w. mod. 96:April 4)

## **NON-TENURED TEACHING STAFF**

Reinstatement is not a remedy which may be imposed by the Commissioner even when the board relied upon an unarticulated reason (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (Jan. 13, 1994); dec. on remand 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)

Rejection of two dates for informal appearance constituted waiver of right to informal appearance (96 N.J.A.R.2d (EDU) 606, Getz)  
Appearance not scheduled within 30 days but remedied by proceeding before OAL (97 N.J.A.R.2d (EDU) 55, Bruder, aff'd St. Bd. 95:Aug. 2)

Board in substantial compliance with N.J.S.A. 18A:27-10 when hand delivery of notice of non-renewal attempted on April 30 but not completed until May 1 (91:1369, Holmes)

Neither board's lateness in providing statement of reasons for non-renewal and hearing, nor fact that tie breaking vote was cast by board member not present at hearing, justified invalidating non-renewal (95 N.J.A.R.2d (EDU) 157, Gillison, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 157, aff'd App. Div. unpub. op. Dkt. No. A-1270-93T2, Nov. 2, 1994)

Notice to teaching staff members

Pool substitute was not entitled to 60-day notice of non-renewal (92 N.J.A.R.2d (EDU) 116, Schultz)

Right of review before Commissioner: Untimely petition; N.J.A.C. 6:24-1.2(b)'s 90 day statute of limitations for filing appeal not tolled by reliance on previous year's pattern of non-renewal followed by interview and re-employment (91:776, Sorace)

### **Reasons**

#### **Board action upheld**

Absenteeism (93 N.J.A.R.2d (EDU) 654, Costanzo, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 218)

## NON-TENURED TEACHING STAFF

- Board action upheld in not reappointing petitioner for unsatisfactory performance (97:Jan. 10, Willingboro, aff'd St. Bd. 97:June 4)
- Board action upheld; decision represented sound educational judgment based on CSA's professional expertise (96 N.J.A.R.2d (EDU) 606, Getz)
- Claim of discrimination: teacher could not meet her burden of proof to establish that her pregnancy was a "determinative factor" in board's decision so as to sustain a violation of the Law Against Discrimination (97 N.J.A.R.2d (EDU) 18, Daly)
- Claim of retaliation (90:506, Fousty)
- Failure to adequately supervise and keep board informed of activities (96 N.J.A.R.2d (EDU) 1024, Payne)
- Failure to provide statement of reasons for nonrenewal cured by discovery (96 N.J.A.R.2d (EDU) 784, Lally)
- Misstatements or misrepresentations (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (January 13, 1994); dec. on remand 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 94)
- Nonrenewal not based on political affiliation - board had valid performance concerns (97 N.J.A.R.2d (EDU) 289, Young, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 555, aff'd App. Div. unreported opinion May 28, 1998)
- Nonrenewal not motivated by racial or religious reasons, but based on performance and absenteeism (97 N.J.A.R.2d (EDU) 55, Bruder, aff'd St. Bd. 95:Aug. 2)
- Use of school time and property for private business sufficient reason for nonrenewal of principal (96 N.J.A.R.2d (EDU) 926, Plotkin)

## **NON-TENURED TEACHING STAFF**

Board action reversed

Superintendent's recommendation not to renew, which board accepted, based on retaliation for protected conduct under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. (Abbamont, 138 N.J. 405 (1994), aff'g 269 N.J. Super. 11 (App. Div. 1993)) See 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

### **Untimely petition**

Notice of non-renewal based on unsatisfactory evaluations triggered running of 90-day period; not tolled by board failure to respond to teacher's request for additional information (94 N.J.A.R.2d (EDU) 381, Portee)

Petitioner failed to file within 90 days of receipt of notice of non-renewal; petition dismissed (90:663, LeMee)

## **NOTICES**

(See "Open Public Meetings Act" and "Non-tenured teaching staff - Non-renewal" this index)

## **NURSES**

Board's action in creating position of "registered nurse" upheld. Duties designated by statute or regulation as "school nursing services" must still be provided by a certified school nurse; other duties could be provided by the "registered nurse" in accordance with N.J.S.A. 45:11-23 (97:Nov. 26, Old Bridge, aff'd St. Bd. for reasons stated therein, 98:April

District must employ a sufficient number of certified school nurses to ensure adequate provision of the duties specifically reserved for certified school nurses; other duties can be performed and provided by other health professionals who hold the requisite license from the Board of Nursing (97:Dec. 12, Town of Dover, dismissed as moot St. Bd. 00:July 5)

Katzenbach School for the Deaf not required to employ certified school nurses in title "Head Nurse" solely because dispensing medication is duty of position (91:1562, Communication Workers of America, rev'd & rem'd St. Bd. 92:Apr. 1)

**NURSES**

Licensing requirements in N.J.S.A. 45:11-23, not education laws, preclude teaching staff members other than school nurses from being assigned specific duty of dispensing medication (91:1562, Communications Workers of America, rev'd & rem'd St. Bd. 92:Apr. 1)