

RACIAL DISCRIMINATION

(See "Discrimination" this index)

RACIAL IMBALANCE

RATIFICATION

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)

Board's adoption by resolution of accountants' report recommending abolition of position was ratification of Fiscal Monitor's ultra vires action in abolishing position (98:Jan. 7, Wollman, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 20)

Ratification of termination of an employee pursuant to a statute requiring a board vote may differ from the implied ratification of a contract (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7)

Ratification requires full knowledge of material facts on the part of the ratifying entity (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7)

RECORDS

(For Public Records, see "Right to Know Law" this index)

(For Pupil Records, see "Pupils" this index)

REDUCTION IN FORCE

(See "Abolition of Position" this index)

REFERENDA

(See "Elections" this index)

REGIONAL BOARDS

Changes in method of apportionment must be approved by majority in each constituent municipality. Borough of North Haledon v. Bd. of Ed. of Manchester Reg., 305 N.J. Super. 19 (App. Div. 1997), certif. den. 152 N.J. 363 (1998)
Determination by Board of Review under N.J.S.A. 18A:13-56 is a

final determination of an administrative agency appealable directly to the Appellate Division; State Board only has authority to hear appeals from decisions of Commissioner (Winslow, 275 N.J. Super. 206 (App. Div. 1994))

REGIONAL BOARDS

- 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 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)
- Dissolution: When a regional 9-12 board dissolves, resulting K-12 districts do not constitute new district within meaning of N.J.S.A. 18A:6-31.3 et seq. (97 N.J.A.R.2d (EDU) 217, Stagaard, aff'd St. Bd. 97:Oct. 1)
- Dissolution: When dissolving regional district, State is not required to accord each local district with a building that meets prevailing health and safety standards. Rather each local district has that responsibility under N.J.S.A. 18A:33-1 (97:Dec. 18, Union County Regional, aff'd St. Bd. 98:April 1, motion for stay denied St. Bd. 98:May 6)
- Failure of constituent governing bodies to agree on budget cuts - commissioner certifies tax levy (95:Jan. 4, St. Bd. Wanaque)
- Official promulgation of census that triggers reapportionment under N.J.S.A. 18A:1309 refers to transmittal of federal census to governor (State v. Flemington-Raritan, App. Div. unpub. op. (Dkt. No. A-3522-90T5, April 1, 1991))
- Proposal to change method of apportionment from equalized evaluation to pupil enrollment allowed for five year phase in (96 N.J.A.R.2d (EDU) 654, Manchester Regional, aff'd St. Bd. 96:Sept. 4)
- 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 reapportionment (91:519, Pascack Valley)
- Reapportionment; 1990 census figures are final for purposes of triggering reapportionment although it is understood corrections may have to be made (91:479, Springfield, aff'd St. Bd. 91:2596)
- Reapportionment of membership approved (94:Jan. 26, West Windsor-Plainsboro)
- 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, September 23, 1996) (96 N.J.A.R.2d (EDU) 654, Manchester Regional, aff'd St. Bd. 96:Sept. 4)

REGIONAL BOARDS

Statute apportioning regional district's costs on the basis of each constituent district's share of the total equalized value of property in the district, rather than the percentage of students sent by each constituent district, does not violate the equal protection clauses of the federal and state constitutions or the "taxing clause" of the N.J. Constitution (Sea Bright, 242 N.J. Super. 225 (App. Div. 1990), certif. den. 127 N.J. 320 (1990)) NOTE: N.J.S.A. 18A:13-9 now permits alternate methods of cost apportionment

Stay of reapportionment denied because of failure to meet Crowe standards; parties concede this matter presents no hardship (91:479, Springfield, aff'd St. Bd. 91:2596)

Subtracting inhabitants of military installation from population count for purpose of apportioning regional board seats unconstitutional (91:479, Springfield, aff'd St. Bd. 91:2596)

Voting: The parties proposed plan for weighted voting, under which a smaller community is aligned with a larger community in four separate representative districts, creates substantially equal voting percentages with a minimum of deviation, thereby satisfying the one-person, one-vote principal. Township of Marlboro v. Bd. of Ed. of the Freehold Regional High School District, 992 F.Supp. 756 (D.N.J. 1998).

Withdrawing district has no authority to issue bonds to make compensating payments to remaining constituent districts for school buildings withdrawing district would acquire (Winslow, 275 N.J. Super. 206 (App. Div. 1994))

RELIGION

Board violated Equal Access Act by refusing to certify student-initiated Bible Club as a student organization and accord it equal treatment with other student groups at high school (Pope v. East Brunswick Bd. of Ed., 12 F.3d 1244 (3rd Cir. 1993))

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. Oct. 2, Middletown)

Establishment of Religion: Determination of whether landlord-tenant relationship between charter school and local church would have the unconstitutional effect of advancing religion because parents would be forced to send children to school in a church whose beliefs they may not share would be premature. No per se prohibition against granting of charter to charter school operating in church. In the Matter of the Grant of

Charter School Application of Red Bank, unpub. App. Div. op.
Dkt. No. A-4725-97T1 (May 7, 1999)

RELIGION

- Freedom of Religion: Agreement between charter school and local church to lease church facilities and to make certain renovations to the church do not violate New Jersey Construction clause regarding payments of "titles, taxes or other rates for building or repairing any church." Church benefits from agreement to the same extent as any other lessor. In the Matter of the Grant of Charter School Application of Red Bank, unpub. App. Div. op. Dkt. No. A-4725-97T1 (May 7, 1999)
- Lawsuit against board dismissed; reading of Bible story by first grader could be prohibited as created danger of state endorsement. C.H. v. Oliva, 226 F.3d 198 (3d Cir. CA 2000), certif. den. 121 S.Ct. 2519 (2000)
- 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)
- Policy allowing high school seniors to vote on whether to include student led prayer at graduation coerces student participation in religious exercise, lacks secular purpose and endorses religion in violation of establishment clause. (ACLU v. Black Horse Pike Regional, 84 F.3d 1471 (3rd Cir. 1996))

REPRESENTATIVES

RES JUDICATA

- Board policy barring student from attending graduation because of alcohol consumption on the way to the prom was already considered and upheld in a prior litigation; therefore this issue is res judicata and the petition must be dismissed (97:Sept. 12, R.F. & L.F., aff'd St. Bd. 98:Jan. 7)
- Inquiry into alleged violations of election procedures not barred by res judicata; recount and inquiry into election violations are separate and distinct causes of action (93 N.J.A.R.2d (EDU) 341, Sickler)
- Res judicata cannot be raised to preclude claim that student domiciled in NJ district where parents sought determination, in another proceeding, of PA district's obligation to provide residential placement for multiply handicapped child prior to moving to PA while maintaining domicile in NJ (95 N.J.A.R.2d (EDU) 78, M.D., stay denied - Commissioner 95:Jan. 26, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 154)

RES JUDICATA

- 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)
- Res judicata was not a proper basis for dismissing students' due process claims in disciplinary matter where petition raised issues not addressed in prior emergent applications (92 N.J.A.R.2d (EDU) 364, M.G., St. Bd. rev'g in relevant part 91 N.J.A.R.2d (EDU) 38)
- Tenure charges not barred by res judicata when board's prior consideration of conduct underlying charges was not undertaken in accordance with Tenure Hearing Act; remand ordered to determine whether tenure charges barred by laches (90:Jan. 23, L.G.)
- Tenure charges not res judicata where board never rendered a decision on the merits (97:Oct. 14, Suitt-Green, aff'd St. Bd. 98:Feb. 4, aff'd App. Div. unpub. op. Dkt. No. A-3918-97T1, Feb. 17, 1999)

RESIDENCE

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

RESIGNATION

- Acceptance of disability pension is not resignation and forfeiture of tenure rights; recovered disability retiree is entitled to reinstatement to position she held at time of retirement, when that position becomes vacant (94:Jan. 26, decision on remand 96 N.J.A.R.2d (EDU) 768, Bublin, aff'd St. Bd. 96:Dec. 4)
- Back pay for period of improper termination is lost salary and emoluments minus any unemployment compensation received as board failed to establish that petitioner did not put forth reasonable efforts to mitigate her damages (97:Aug. 7, Pratico, aff'd St. Bd. 98:Jan. 7)
- Board of education's refusal to rescind resignation not arbitrary, capricious or unreasonable (97 N.J.A.R.2d (EDU) 53, Walsh)
Employees
- Board cannot apply performance-based standard and deny request to change retirement date given past practice of allowing changes, ambiguous contract provision and lack of reliance by board (Hall, 125 N.J. 299 (1991), rev'g and remanding App. Div. (Dkt. No. A-5454-88T3, May 25, 1990), aff'g St. Bd. 89:3009, rev'g 88:633)

Board's refusal to rescind deemed arbitrary and capricious (Hall, 125 N.J. 299 (1991), rev'g and remanding App.Div. (Dkt. No.A-5454-88T3, May 25, 1990), aff'g St.Bd. 89:3009, rev'g 88:633)

RESIGNATION

- Resignation by way of notice of intent to retire in light of impending RIF effective; failure of board to notify German teacher of opening created by maternity leave in English department did not negate resignation (92 N.J.A.R.2d (EDU) 335, Murray, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 351)
- Resignation letter accepted by board as part of settlement agreement enforceable against employee (92 N.J.A.R.2d (EDU) 628, Sirotnak)
- Resignation and retirement distinguished (90:725, Cutler, aff'd St. Bd. 90:751, rev'd and remanded App. Div. unpub. op. Dkt. No. A-1464-90T3, Jan. 27, 1992)
- Petition to rescind resignation fourteen months after acceptance by Board was out of time (96 N.J.A.R.2d (EDU) 872, Willson)
- Petitioner's acceptance into the Early Retirement Incentive Program was a condition precedent to her resignation/retirement and because she failed to qualify for the program no resignation/retirement occurred (97:Aug. 7, Summers, aff'd St. Bd. 98:Jan. 7, motion for stay denied St. Bd. 98:May 6, aff'd App. Div. unpub. op. Dkt. No. A-3383-97T5, Oct. 14, 1998)
- Resignation relinquishes whatever tenure rights a teacher may have accrued (97 N.J.A.R.2d (EDU) 213, Cleffi-Miller)
- Secretary's resignation was not binding, despite her receipt of severance pay, where the board never formally accepted it (90:639, Lippincott, appeal dismissed St. Bd. 90:Aug. 1)
- Settlement upheld. Teacher resigned from tenured teaching position for consideration prior to certification of tenure charges (96:April 22, Rush)
- Submission of retirement papers to pension fund by secretary may impact in propriety of board's refusal to extend secretary's resignation; matter remanded (Hall, 125 N.J. 299 (1991), rev'g and remanding App.Div. (Dkt. No.A-5454-88T3, May 25, 1990), aff'g St.Bd. 89:3009, rev'g 88:633)
- Teacher not entitled to rescind his resignation in order to take advantage of change in retirement incentive program (94 N.J.A.R.2d (EDU) 402, Cutro, aff'd w/modif. St. Bd. 97:July 2)
- Teacher not entitled to rescind resignation in absence of extraordinary circumstances such as duress (97 N.J.A.R.2d (EDU) 53, Walsh)
- Teachers could rescind resignations given 18 months in advance and accepted by board. No claim that delayed rescission came after the board employed replacement teachers on otherwise changed its position in reliance. (NOTE: Case relied on St. Bd. decision in Hall, subsequently reversed by Supreme Court, 125 N.J. 299 (1991)) (90:725, Cutler, aff'd St.

Bd. 90:751, rev'd and remanded App. Div. unpub. op. Dkt. No. A-1464-90T3, Jan. 27, 1992)

RESIGNATION

Teacher's dissatisfaction over salary and subsequent resignation did not support claim of constructive discharge (97 N.J.A.R.2d (EDU) 213, Cleffi-Miller)

Teacher's resignation could be rescinded although accepted by the board where it was part of a tenure settlement agreement rejected by the Commissioner (90:769, Wilburn)

Tenured superintendent who resigned in a timely manner entitled to reimbursement for unused vacation time (96 N.J.A.R.2d (EDU) 801, Gilson)

RETIREMENT AND PENSIONS

Accidental disability

Tenured English teacher, a recovered disabled retirant, was not entitled to reinstatement to position other than that which she held at time of retirement, because (in accord with Appellate Division cases of DiMuzio and Allen) board's refusal had a reasonable basis; however, she is entitled to English teacher position when it becomes available as she held this position at time of retirement (96 N.J.A.R.2d (EDU) 768, Bublin, aff'd St. Bd. 96:Dec. 4)

Continued health insurance

Employee entitled to continued health coverage as retired employee under N.J.S.A. 18A:16-8 even though she was not tenured in district and retirement date was one day after effective date of RIF (95 N.J.A.R.2d (EDU) 253, Miller, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 633)

Disability pension

Teacher not entitled to payment of salary during period between effective date of retirement and date on which disability retirement pension application approved (95 N.J.A.R.2d (EDU) 97, Scherr, aff'd St. Bd. N.J.A.R.2d (EDU) 154)

Early retirement

Cap on payment for unused sick leave was an illegal inducement to early retirement and was non-negotiable. In the Matter of Morris School District Bd. of Ed. and the Education Association of Morris, 310 N.J. Super. 332, (App. Div. 1998), certif. den. 156 N.J. 407.

Change in retirement incentive program to conform with applicable law does not entitle teacher to rescind resignation submitted under earlier program (94 N.J.A.R.2d (EDU) 402, Cutro, aff'd w/modif. St. Bd. 97:July 3)

RETIREMENT AND PENSIONS

Teacher who had applied for early retirement but who died prior to TPAF's approval, was considered active member of TPAF on date of death. Wagner v. Bd. of Trustees, 290 N.J. Super. 146 (App. Div. 1996))

Terminal leave pay provisions did not violate public policy against inducing early retirement (90:725, Cutler, aff'd St. Bd. 90:751)

Forfeiture of position by operation of law precludes tenure charges - teaching staff member pled guilty to 1st degree sexual assault (97 N.J.A.R.2d (EDU) 7, Thomassen)

Notice of

Board cannot apply performance-based standard and deny request to change retirement date given past practice of allowing changes, ambiguous contract provision and lack of reliance by board (Hall, 125 N.J. 299 (1991), rev'g and rem'g App. Div. (Dkt. No. A-5454-88T3, May 25, 1990), aff'g St. Bd. 89:3009, rev'g 88:633)

Pension

Commissioner of Education is without jurisdiction to determine whether the "differential adjustment" payments constituted "creditable salary" pursuant to Teacher's Pension and Annuity Fund (TPAF) (97 N.J.A.R.2d (EDU) 337, Del Grosso & N.T.V.)

Compensation received by department chairpersons and by school psychologist were creditable for pension purposes; supervisory and administrative duties performed by chairpersons and additional half-day of working time by psychologist were not temporary or extracurricular duties (Siri, 262 N.J. Super. 147 (App. Div. 1993))

Income received for duties as clerk of works/construction consultant in addition to duties as supervisor of buildings and grounds were pension creditable (Chapel, 258 N.J. Super. 389, (App. Div. 1992))

Petitioner cannot unilaterally rescind his retirement after it had been duly accepted by the board (97:Oct. 2, Manfria)

Reimbursement for unused sick leave

Retiring tenured teachers entitled to reimbursement for unused sick leave from prior district when one district decided to close its schools and enter into sending-receiving relationship. Rights guaranteed by N.J.S.A. 18A:28-6.1. Alford v. Bd. of Ed. of the Buena Regional School District, 310 N.J. Super. 147 (App. Div. 1998), certif. den. 155 N.J. 589 (1998).

RIGHT TO KNOW LAW

Aggregate amount of claims dollars paid to a board of education's employees by State Health Benefits plan is a public record under both common law and the Right to Know Law; state is required to retrieve data from computerized database and may charge board for costs of retrieval (Bd. of Ed. v. Dept. of Treasury, 145 N.J. 269 (1996), aff'g 279 N.J. Super. 489 (App. Div. 1995))

Assuming arguendo that employee addresses are public records under the common law doctrine, the right to inspection is not absolute (97:Jan. 30, Gore)

Attorney bills: Because the law does not explicitly require that they be made or maintained, attorney bills and billing documents were not "public records under Right to Know Law; but they were common law public records. Keddie v. Rutgers, 148 N.J. 36 (1997))

Attorney bills: Bills from attorneys, arbitrators and other professionals hired by the municipality in connection with policy matters were public records under Right to Know Law, unprotected by attorney client privilege or other concerns of confidentiality. Hunterdon County PBA v. Franklin Twp., 286 N.J. Super. 389 (App. Div. 1996)

Audio tapes of closed sessions, which were kept in addition to official minutes, were public records under common law but not the Right to Know Law; remand ordered to determine what portions may be redacted because of privacy concerns or intrusion on deliberative process (Atlantic City Convention Center, 135 N.J. 53 (1994))

Board member's budget notebooks were neither Right to Know nor common law public records. Even if they had been common law public records, the public's interest in maintaining the confidentiality of the budget planning process was superior to the public's right to know. Home News v. Spotswood Bd. of Ed., 286 N.J. Super. 380 (App. Div. 1996)

Common law records are any records made by public officers in exercise of public functions (Higg-A-Rella, 141 N.J. 35 (1995), aff'g 276 N.J. Super. 183 (App. Div. 1994), rev'g 265 N.J. Super. 616 (Law Div. 1993), certif. gr. 139 N.J. 440 (1995))

Computer tapes containing tax assessment data, which duplicate information contained in non-computer files, are not available under Right to Know Law but are common law public records; real estate firms demonstrated their right to copies of tapes under common law balancing test (Higg-A-Rella, 141 N.J. 35 (1995), aff'g 276 N.J. Super. 183 (App. Div. 1994), rev'g 265

N.J. Super. 616 (Law Div. 1993), certif. gr. 139 N.J. 440
(1995))

RIGHT TO KNOW LAW

Information on medical claims paid by State Health Benefits Program on behalf of board's employees not required to be made by law - not Right to Know Law public record. Board had sufficiently strong interest in obtaining information to permit access under common law right to inspect public records. No confidential information to be disclosed and board would pay for expense of document creation. Bd. of Ed. of Newark v. Dept. of Treasury, 145 N.J. 269 (1996), aff'g 279 N.J. Super. 489 (App. Div. 1995)

Professor's interest in disclosure of attorney bills and billing documents outweighed university's interest in refusing disclosure, subject to determination of confidentiality concerns. Keddie v. Rutgers, 148 N.J. 36 (1997)

Right to Know Law public record is one that is required by law to be made, maintained or kept on file by any agency or body of state or any of its subdivisions (Higg-A-Rella, 141 N.J. 35 (1995), aff'g 276 N.J. Super. 183 (App. Div. 1994), rev'g 265 N.J. Super. 616 (Law Div. 1993), certif. gr. 139 N.J. 440 (1995))

School district employee's home addresses are not public records under N.J.S.A. 47:1A-2 (97:Jan. 30, Hamilton Twp.)

Settlement calling for resignation approved, with understanding that Executive Order 11 requires that public is entitled to request and receive reason for separation from service (95:February 8, Strincoski)