

TAXES

(See "Apportionment" and "Budgets" this index)

TEACHERS

(See also "Tenure" and "Non-Tenured Teaching Staff" this index)

Board may appoint or transfer teaching staff member without CSA recommendation. (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. Note: P.L. 1995, Ch. 125, N.J.S.A. 18A:27-4.1 supersedes Rotondo and requires the CSA recommendation before a board can appoint, transfer or remove any employee.)

Board policy of not assigning uncompensated homeroom duty to Chapter 1 and BSI teachers affirmed (90:1137, Middlesex County Vo-Tech High School Teachers Assoc.)

TEACHERS

Certified teachers employed full-time by Adult Learning Center for more than three years meet statutory requirements of N.J.S.A. 18A:28-5 and are entitled to tenure status with appropriate back pay and benefits (93 N.J.A.R.2d (EDU) 777, Trenton Education Assoc., aff'd St. Bd. 94 N.J.A.R.2d (EDU) 328)

Dress and appearance

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

Personnel records

Expungement ordered of memoranda concerning increment withholding where increments were restored by Commissioner (90:572, McKeon Bass)

Removal of letter of reprimand from personnel file rendered moot challenge to same (90:47, Page, appeal dismissed for failure to perfect, 91:2580)

Retaliation: Allegations of retaliation against staff member were dismissed where appeal of evaluation was untimely filed and challenge to reprimand was rendered moot by board's removal of same from personnel file (90:47, Page, appeal dismissed for failure to perfect, 91:2580)

Summer school; no entitlement to summer school employment by virtue of tenure (92 N.J.A.R.2d (EDU) 389, Doran)

Teachers in correctional facilities, while primarily responsible for teaching, share with custodial employees duty to maintain security of institution and inmates (93 N.J.A.R.2d (EDU) 710, Samano)

Ten month teacher who suffered severe injuries and temporary disability. Outland v. Monmouth-Ocean Education Service Commission, 154 N.J. 531 (1998)

Tenured teacher improperly RIF'd entitled to monetary compensation for lost medical benefits, contributions to pension fund and Social Security and restoration of seniority (93 N.J.A.R.2d (EDU) 184, Takakjian)

Transfers

Board refusal to return teacher to classroom teaching position after her voluntary transfer to non-tenured LDTC position is not violation of her tenure rights (94 N.J.A.R.2d (EDU) 194, DeFrehn, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 326)

TEACHERS

- Discontinuation of school: N.J.S.A. 18A:28-6.1 requires that teachers transferred to a receiving district upon the closure of sending district's school are entitled to have their prior service in sending district considered in establishing level of compensation, including longevity payments. Union could not bargain away the teachers' statutory rights to full credit for such prior service. Bd. of Ed. v. Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)
- Involuntary transfer of middle school reading teacher to elementary teaching position upheld; seniority rights not triggered (92 N.J.A.R.2d (EDU) 585, Moore, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 173)
- Involuntary transfer of tenured employee of Department of Human Services to identical position at another institution incident to RIF may have violated tenure or seniority rights (96 N.J.A.R.2d (EDU) 839, Sheffield, St.Bd. rev'g & remanding 93 N.J.A.R. 2d (EDU) 26) Motion for reconsideration denied St. Bd. 96 N.J.A.R.2d (EDU) 840, matter dismissed as moot 96 N.J.A.R.2d (EDU) 841.
- Involuntary transfer of tenured teacher from position within scope of her instructional certificate to separately tenurable position within scope of her educational services certificate was violative of her statutory tenure rights (94 N.J.A.R.2d (EDU) 167, Mustillo, settlement approved 93:Dec. 14)
- Tenured vice-principal appointed scheduling administrator and subsequently transferred to position without additional duties as scheduling administrator entitled to compensation for services rendered as scheduling administrator from date of appointment until notified of transfer (93 N.J.A.R.2d (EDU) 153, Jones)
- Request for change in effective date of transfer and for appropriate compensation in new position do not constitute acceptance of involuntary transfer (94 N.J.A.R.2d (EDU) 167, Mustillo, settlement approved 93:Dec. 14)
- Transfer of teacher with tenure as both teacher and teacher-coordinator to full-time instructional position absent RIF improper and violative of her tenure rights (92 N.J.A.R.2d (EDU) 168, Gerdes, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 427, aff'd App. Div. unreported opinion (Dkt. No. A-6460-91T2, Nov. 15, 1993))
- Transfer of vocational teacher-coordinator who failed to obtain proper certification to social studies teaching position proper (92 N.J.A.R.2d (EDU) 113, Jacobs)

Transfer to separately tenurable position is ultra vires
without consent, abolition of position or tenure
proceedings (90:340, Guerra, aff'd St. Bd. 90:354)
Voluntary transfer of a tenured teacher who is not subject to
a RIF may not abrogate the entitlement to a position of a
tenured teacher who was RIF'd (90:702, Baruffi)

TENURE

Abandonment

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 (96 N.J.A.R.2d (EDU) 768, Bublin, aff'd St. Bd. 96:Dec. 4)

Although tenured clerk was absent without board approval, no abandonment found because she maintained contact with board regarding her inability to return to work (95 N.J.A.R.2d (EDU) 495, Stanley)

Request to stop working before effective date of resignation is not abandonment (90:639, Lippincott, appeal dismissed St. Bd. 90:Aug. 1)

Resignation from position relinquishes whatever tenure rights may have accrued (97 N.J.A.R.2d (EDU) 213 (Cleffi-Miller))

Tenured supervisor RIF'd when his position was eliminated during reorganization abandoned all tenure rights when he refused to accept assignment as supervisor of physical education for which he was qualified (91:2476, Ralph)

Acquisition of Generally

AV library technician entitled to tenure protection as clerk based on job duties (96 N.J.A.R.2d (EDU) 370, Roach)

Exceptions: no exception in tenure statute for teacher of basic skills or ESL courses or for teacher who received poor evaluations (94 N.J.A.R.2d (EDU) 298, Martin)

Jurisdiction: questions of petitioner's tenure status was dismissed by Commissioner where he had filed separate civil action alleging retaliatory discharge under N.J.S.A. 34:19-1, et seq. (90:318, Picogna, aff'd St. Bd. 90:331, aff'd 249 N.J. Super. 332 (App. Div. 1991))

N.J.S.A. 18A:28-5 requires a valid offer of reemployment as a condition precedent to the granting of tenure (97:July 10, Woods-Brown, aff'd St. Bd. 97:Dec. 3)

Petitioner did not acquire tenure as she was not a citizen of the United States during the period of time in question (97:Dec. 17, Meleance)

TENURE

Petitioner failed to show she acquired tenure as a supervisor by virtue of her service as an IEP Facilitator. Duties did not require supervisor endorsement (96 N.J.A.R.2d (EDU) 423, Webb, rev'd and remanded St. Bd. 96:Dec. 4, decision on remand Commissioner 97:Aug. 21, aff'd St. Bd. 98:Jan. 7, aff'd App. Div. unpub. op. Feb. 4, 1999)

Positions specifically enumerated under N.J.S.A. 18A:28-5, are separately tenurable. Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257)

Settlement agreement cannot confer tenure rights (92 N.J.A.R.2d (EDU) 113, Jacobs)

Summer school considered temporary, part-time employment not within tenure protections; tenured teachers not entitled to summer school employment (92 N.J.A.R.2d (EDU) 389, Doran)

Tenure accrues to position while seniority relates to category (91:252, Paszamant, St. Bd. dismissed appeal for failure to perfect 92 N.J.A.R.2d (EDU) 329, aff'd App. Div. unpub. op. (Dkt. No. A-4812-91, Sept. 28, 1993))

Tenure laws are an important expression of legislative policy and should be given liberal support consistent with demands of governmental economy. Carpenito, 322 N.J. Super. 522 (App. Div. 1999), rev'g St. Bd. 98:Feb. 4, rev'g 96 N.J.A.R.2d (EDU) 959.

The purpose of the tenure laws is to aid in the establishment of a competent and efficient school system by affording teaching staff members a measure of security in the ranks they hold after years of service. Carpenito, 322 N.J. Super. 522 (App. Div. 1999), rev'g St. Bd. 98:Feb. 4, rev'g 96 N.J.A.R.2d (EDU) 959.

Unsatisfactory performance by teacher, even if proven, is irrelevant to acquisition of tenure (94 N.J.A.R.2d (EDU) 298, Martin)

Voluntary teacher preparatory work performed over summer before effective date of appointment does not count toward tenure (96 N.J.A.R.2d (EDU) 449, DeMaio, aff'd St. Bd. 96:Dec. 4, aff'd App. Div. unreported op. Feb. 10, 1998)

TENURE

Accrual of Claim

Claim that board improperly failed to recognize tenure status barred by 90 day rule; period began to run upon notification of non-renewal of contract, not last day of contract, when time requirements for tenure met (Nissman, 272 N.J. Super. 373 (App. Div. 1994), aff'g St. Bd. 92 N.J.A.R.2d (EDU) 621, rev'g 92 N.J.A.R.2d (EDU) 71, 91:2355)

Additional Qualifications, Effect On

Additional requirements imposed by board beyond appropriate certification may not be used to defeat the employment rights of a tenured teaching staff member (90:1, MacMillan, appeal dismissed St. Bd. 90:24)

Employee certified and employed solely as teacher could not and did not acquire tenure as supervisor by performing additional supervisory duties over period of ten years (91:1902, Pirozek)

Certification

After acquired certificate: teacher acquiring permanent instructional certificate subsequent to reduction to part-time status does not acquire tenure or seniority rights (95 N.J.A.R.2d (EDU) 467, Sefcik, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 141)

Athletic trainer is an unrecognized title (89:1085, Jennings, rev'd St. Bd. 89:1097, aff'd App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 4, 1991)

Athletic trainer position did not encompass such duties so as to legally require physical education certification; board's requirement did not elevate position to teaching staff member status (89:1085, Jennings, rev'd St. Bd. 89:1097, aff'd App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 4, 1991)

Coordinator of Recruitment position entailed supervisory duties and therefore there was no factual basis for allegation that board required supervisory certificate solely to thwart petitioner's tenure claim (97 N.J.A.R.2d (EDU) 4, Zachau, aff'd St. Bd. 96:Sept. 4)

County superintendent need not be joined as a party to challenge certification requirement (St. Bd. 96:Sept. 4, Zachau, aff'g on other grounds 97 N.J.A.R.2d (EDU) 14)

Department chairs acquired tenure as supervisors where

chairs were required to possess supervisory certificates, and in fact supervised teachers (90:1, MacMillan, appeal dismissed St. Bd. 90:24)

TENURE

- Educational Media Specialist: Person who performed duties of Educational Media Specialist but did not possess appropriate certification, not entitled to tenure or employment in the district (96 N.J.A.R.2d (EDU) 884, Bjerre, aff'd with clarification St. Bd. 00:July 5)
- Educational Services Certificate: Service under any endorsement except for school nurse - tenure acquired in educational services (89:2244, Ellicott, rev'd St. Bd. 90:1714, aff'd 251 N.J. Super. 342 (App. Div. 1991)
- Educational services: Apprentice Coordinator acquired tenure under educational services certificate and thus could not transfer tenure to Coordinator of Recruitment position, which required supervisory certificate (97 N.J.A.R.2d (EDU) 4, Zachau, aff'd St. Bd. 96:Sept. 4)
- Educational services: staff possessing educational service certificates (other than nurses) achieve tenure in "educational services" and are entitled to tenure protection in all assignments within that tenurable position for which the endorsements on their certificates qualify them (96 N.J.A.R.2d (EDU) 81, Brenner, stayed St. Bd. (January 13, 1994), 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)
- Educational Services: teacher who taught under instructional certificate and educational services certificate acquired tenure in both teaching staff and educational services positions (92 N.J.A.R.2d (EDU) 168, Gerdes, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 427, aff'd App. Div. unreported op. (Dkt. No. A-6460-91T2, Nov. 15, 1993))
- Emergency Certificate: Service under emergency certificate which is not under regular certificate in same area must never be counted toward tenure (93 N.J.A.R.2d (EDU) 641, Breitwieser, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 422, aff'd App. Div. 286 N.J. Super. 633 (App. Div. 1996))
- Estoppel: Board not estopped from denying tenure even though teacher relied on administrator's comments in failing to obtain certification (89:1085, Jennings, rev'd St. Bd. 89:1097, aff'd App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 4, 1991)
- Instructional certificate: tenure protection extends

to all endorsements on the instructional
certificate, regardless of service under the
endorsement (90:453, Lynch)

TENURE

Mere possession of the requisite certificate does not entitle the holder of an N.J.S.A. 18A:28-5 separately tenurable position when the service criteria have not been met (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) 95)

Petitioner failed to show she acquired tenure as a supervisor by virtue of her service as an IEP Facilitator. Duties did not require supervisor endorsement (96 N.J.A.R.2d (EDU) 423, Webb, rev'd and remanded St. Bd. 96:Dec. 4, decision on remand Commissioner 97:Aug. 21, aff'd St. Bd. 98:Jan. 7, aff'd App. Div. unpub. op. Feb. 4, 1999)

Petitioner was not entitled to Coordinator position as he did not have the required special education endorsement (97:Dec. 15, Boyle)

Primary responsibility for applying for and possessing appropriate certification rests with the teacher (91:794, McAneny, aff'd St. Bd. 91:815)

Program Coordinator: No tenure acquired in position as no certificate needed and she voluntarily resigned (97 N.J.A.R.2d (EDU) 213, Cleffi-Miller)

Service under the supervisory endorsement on the administrative certificate would not entitle the holder to claim a position, even State Board created, that requires a principal's endorsement unless the holder has also obtained tenure in a position requiring the principal endorsement (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) 95 See Ellicott, 89:2244, rev'd St. Bd. 90:1714, aff'd 251 N.J. Super. 342 (App. Div. 1991)

Service without appropriate certificate; supplemental teacher who taught in district for 12 years under a home economics certificate did not acquire tenure (91:794, McAneny, aff'd St. Bd. 91:815)

Services of any teaching staff member who does not hold proper certification may be terminated without charge or trial (96 N.J.A.R.2d (EDU) 884, Bjerre, aff'd with clarification St. Bd. 00:July 5)

Teacher eligible for appropriate certificate at the time of RIF who had already passed the requisite General Knowledge exam and was merely waiting receipt of the actual certificate, entitled to vacant elementary

teaching position. (97:Aug. 6, Albert, aff'd St.
Bd. 97:Dec. 3)

TENURE

Tenure does not attach when teacher did not possess proper teaching certificate at any point during her employment by board; offer of re-employment was void ab initio because of lack of proper certification at time of offer (91:1201, Cooker, aff'd St. Bd. 91:1224, aff'd App. Div. unpub. op. Dkt. No. A-2128-91T1, Nov. 24, 1992)

Tenure earned in a position under one certificate cannot be transferred to a position under a different certificate under which teacher never served (96 N.J.A.R.2d (EDU) 81, Brenner stayed St. Bd. (January 13, 1994), 96 N.J.A.R.2d (EDU) 85, appeal dismissed, St. Bd. 96 N.J.A.R.2d (EDU) 95)

Tenured supervisor entitled to supervisor position over non-tenured supervisor regardless of subject matter (96 N.J.A.R.2d (EDU) 396, Galbraith, aff'd St. Bd. 96:June 5, aff'd App. Div. unreported op. July 25, 1997)

Vocational teacher-coordinator who failed to obtain appropriate certification for position did not acquire tenure in position (92 N.J.A.R.2d (EDU) 113, Jacobs)

Contract Extending Beyond Tenure Period, Effect

Even where a contract requires the employee to be retained beyond the tenure date, a timely prior dismissal precludes tenure (96:Dec. 4, Martucci, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 109)

Notice given to principal prior to the completion of the period of two consecutive calendar years in the new position to the effect he would not be offered a new contract for the following year defeats a claim of tenure although he served out the entire term of his contract (96:Dec. 4, Martucci, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 109)

Passage and service of resolution before April 30 not to renew principal's contract, not be offered a new contract and not granting tenure had the effect of preventing the acquisition of tenure (96:Dec. 4, Martucci, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 109)

Tenure not acquired, even though time requirements met on last day of contract, where teacher received prior notice of board's intent not to renew contract and not to grant tenure, and did not challenge action within 90 days (Nissman, 272 N.J. Super. 373 (App. Div. 1994), aff'g St. Bd. 92 N.J.A.R.2d (EDU) 621, rev'g 92 N.J.A.R.2d (EDU) 71; 91:2355)

TENURE

Termination with 60 days pay in lieu of notice precludes tenure acquisition, despite fact that psychologist would have acquired tenure during 60-day notice of termination period required by contract (94 N.J.A.R.2d (EDU) 41, Winston, appeal dismissed for failure to perfect, 94 N.J.A.R.2d (EDU) 320)

Early Tenure

Principals: Where board does not grant early tenure, principal must serve entire two year probationary period (96 N.J.A.R.2d (EDU) 926, Plotkin)

Length of Employment

Assistant Superintendent/Board Secretary did not acquire tenure after serving three consecutive calendar years of employment. Must be reemployed for at least one day. (Picogna v. Bd. of Ed. of Tp. of Cherry Hill, 143 N.J. 391 (1996))

Employment for three consecutive calendar years does not establish tenure. Reemployment for at least one day needed. (Picogna v. Bd. of Ed. of Tp. of Cherry Hill, 143 N.J. 391 (1996))

Voluntary teacher preparatory work performed over summer before effective date of appointment does not count toward tenure (96 N.J.A.R.2d (EDU) 449, DeMaio, aff'd St. Bd. 96:Dec. 4, aff'd App. Div. unreported op. Feb. 10, 1998)

Promotional Tenure

Department of Human Services teacher: promotional tenure statute, N.J.S.A. 18A:28-6 does not apply; employment for one year as teacher, followed by several years service as supervisor, no tenure in teacher position (95 N.J.A.R.2d (EDU) 364, Sparacio)

Principal returned to position of Director, Project CLIMB before the expiration of two year probationary period specified in N.J.S.A. 18A:28-6, and had no tenure rights to the position of principal (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) 95)

Promotional tenure not achieved as principal. Service for two calendar years insufficient - reemployment necessary (96:Dec. 4, St. Bd. Martucci, rev'g 96 N.J.A.R.2d (EDU) 109)

TENURE

Promotional tenure statute, N.J.S.A. 18A:28-6, does not apply to Dept. of Human Services teacher (95 N.J.A.R.2d (EDU) 364, Sparacio)

Separately Tenurable Positions

Amendment (1996) to N.J.S.A. 18A:28-5 served to clarify statute's meaning prior to the amendment; and thus applied retroactively; RIF'd principal not entitled to position of assistant superintendent as these were separately tenurable positions (97 N.J.A.R.2d (EDU) 200, Gittleman, decision on remand from App. Div. Jan. 2, 1996 (see also St. Bd. 96:June 5, remanding), aff'd St. Bd. 97 N.J.A.R.2d (EDU) 420, aff'd App. Div. unpub. op. Dkt. No. A-5167-96T2, Sept. 3, 1998) (See also 94 N.J.A.R.2d (EDU) 258, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 266)

Assistant Superintendent for Curriculum and Instruction is separately tenurable from Assistant Superintendent for Instructional Services (97 N.J.A.R.2d (EDU) 200, Gittleman, decision on remand from App. Div. 96 N.J.A.R.2d (EDU) 160, (see also St. Bd. 96:June 5, remanding), aff'd St. Bd. 97 N.J.A.R.2d (EDU) 420, aff'd App. Div. unpub. op. Dkt. No. A-5167-96T2, Sept. 3, 1998)

Positions specifically enumerated under N.J.S.A. 18A:28-5, are separately tenurable. Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257.

Principal, assistant principal, vice principal, superintendent, and assistant superintendent, are separately tenurable positions N.J.S.A. 18A:28-5 (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) 95)

Retroactive application of amendments to N.J.S.A. 18A:28-5 required as amendments were curative of misapplication of the statute. Nelson v. Old Bridge, 148 N.J. 358 (1997)), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257.

TENURE

Tenure is achieved within position; protections extend only to assignments within that tenured position (92 N.J.A.R.2d (EDU) 134, Kish, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 367)

Tenure rights under a particular certificate extend to all positions for which teaching staff member holds the appropriate endorsement under the certificate. The only way to obtain tenure in a position specifically enumerated in N.J.S.A. 18A:28-5 is by fulfilling the criteria specified in that statute or in N.J.S.A. 18A:28-5 (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) 95), interpreting Denny v. Board of Education, 131 N.J. 626 (1993) and Ellicott v. Board of Education, 251 N.J. Super. 342 (App. Div. 1991)

Tenure status achieved under supervisor endorsement is not transferable to principal endorsement; tenure obtained under one endorsement to an administrative certificate may not be transferred to another endorsement under that certificate. Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257.

Tenured academic supervisor not entitled to associate principal position because positions are separately tenurable (90:1249, DiSimoni, rem'd to ALJ, aff'd on remand 90:1267, aff'd St. Bd. 91:2540)

Tenured assistant principal not entitled to vice principal position over nontenured vice principals after a reorganization because positions are separately tenurable (98:June 10, Schweber, aff'd St. Bd. 98: Oct. 7) (98:June 22, Leonard)

Tenured principal not entitled to vice principal position after RIF because positions are separately tenurable (98:Feb. 2, Taylor, aff'd St. Bd. 98:June 3)

Specific Positions

Adult basic skills: ten months spent as teacher of adult basic skills under valid teacher's certificate properly counted towards acquisition of tenure (94 N.J.A.R.2d (EDU) 298, Martin)

TENURE

- Adult Learning Center: certified teachers employed full-time by Adult Learning Center for more than three years meet statutory requirements of N.J.S.A. 18A:28-5 and are entitled to tenure status with appropriate back pay and benefits (93 N.J.A.R.2d (EDU) 777, Trenton Education Assoc., aff'd St. Bd. 94 N.J.A.R.2d (EDU) 328)
- Adult Learning Center: Head teacher who functioned as principal of ALC and was given title of administrator by director of ALC did not acquire tenure as principal; only board has authority to appoint administrator (93:Apr. 28, Reynolds)
- Assistant Superintendent for Instructional Services: No entitlement to position as it was a separately tenurable position in accord with N.J.S.A. 18A:28-5 (97 N.J.A.R.2d (EDU) 200, Gittleman, decision on remand from App. Div. Jan. 2, 1996 (see also St. Bd. 96:June 5, remanding), aff'd St. Bd. 97 N.J.A.R.2d (EDU) 420, aff'd App. Div. unpub. op. Dkt. No. A-5167-96T2, Sept. 3, 1998)
- Athletic trainer position did not encompass such duties so as to legally require physical education certification; board's requirement did not elevate position to teaching staff member status (89:1085, Jennings, rev'd St.Bd. 89:1097, aff'd App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 4, 1991)
- Attendance officer acquires tenure after one year of employment in city districts (93:Feb. 5, Harshaw, settlement approved, 94:June 1) (96 N.J.A.R.2d (EDU) 703, Deal, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)
- Board secretary; part-time employment followed by full-time employment for less than three years does not meet statutory criteria for tenure acquisition (92 N.J.A.R.2d (EDU) 381, Walsh, aff'd St. Bd. 92:Sept. 2)
- Bus drivers: collective bargaining agreement which states "[a]fter three (3) months of satisfactory employment, the employee may be approved as a permanent part-time bus driver" does not create tenure rights in bus drivers who successfully complete the three month probationary period (91:568, Inglese)

TENURE

- Clerk: AV library technician entitled to tenure protection as clerk based on job duties (96 N.J.A.R.2d (EDU) 370, Roach)
- Clerk: Duties performed, not title of position, is controlling in determining whether tenure acquired; employee who performed clerical job duties for only one year out of 15 years employment did not acquire tenure as clerk (95 N.J.A.R.2d (EDU) 66, Effenberger, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 203, aff'd App. Div. 96 N.J.A.R.2d (EDU) 690)
- Clerk: Individual did not achieve tenure as a clerk. "Clerk" is not statutorily defined and job responsibilities must be examined. Not all non-secretarial, office related functions are "clerical." (96 N.J.A.R.2d (EDU) 120, Dempster)
- Clerk: No separate tenure category between secretaries and clerks (89:2106, Hansen, aff'd St. Bd. 90:1755, reconsideration denied St. Bd. 90:May 2, aff'd App. Div. unpub. op. (Dkt. No. A-4355-89T5, Jan. 18, 1991))
- Clerk - tenure acquired as switchboard operator not as secretary (89:2106, Hansen, aff'd St. Bd. 90:1755, reconsideration denied St. Bd. 90:May 2, aff'd App. Div. unpub. op. Dkt. No. A-4355-89T5, Jan. 18, 1991)
- Clerical aide acquired tenure under N.J.S.A. 18A:17-2 and was not non-tenurable para-professional aide under N.J.A.C. 6:11-4.9 (95 N.J.A.R.2d (EDU) 239, Berardi)
- Clerical aide has no tenure rights (97 N.J.A.R.2d (EDU) 99, Marbut, dismissed St. Bd. failure to perfect 97 N.J.A.R.2d (EDU) 256)
- CST Secretary: Petitioner proved by a preponderance of credible evidence that her duties as secretary to the CST continued unabated despite the change in job title; therefore board's action in reducing her salary was violative of her tenure rights (97 N.J.A.R.2d (EDU) 523, Bove)
- Custodian employed under series of fixed term contracts acquired tenure under never rescinded 1955 board policy to grant tenure to custodians (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)

TENURE

Director, tenure as, did not equate to tenure as principal. Director is position separately tenurable from principal. (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) 95)

Exempt fireman appointed Director of Buildings and Grounds for series of fixed terms did not acquire tenure; service without executed contract during negotiations does not change nature of appointment (93 N.J.A.R.2d (EDU) 605, Burrows)

Family life; tenure may be acquired in Family Life position; however, seniority accrues in category of endorsement (90:1541, Savarese, rem'd to ALJ, dismissed St. Bd. 91:2593)

Guidance Counselor; petitioner was entitled to tenure in position where he served the requisite number of years, performed the duties of a guidance counselor and held the appropriate certification. This conclusion is not altered by the fact that the board never formally appointed petitioner to this position (97 N.J.A.R.2d (EDU) 531, Dudzinski, aff'd St. Bd. 97:Sept. 3)

Janitor (95 N.J.A.R.2d (EDU) 161, Zielinski, aff'd App. Div. 96 N.J.A.R.2d (EDU) 3)

Janitor: Local boards have broad discretion to determine tenure rights of janitorial employees under N.J.S.A. 18A:17-3: 1) Janitor without fixed term contract will gain tenure immediately upon beginning employment; or 2) board is allowed to deny tenure to all custodians, as an appointment for a fixed term is appointment without tenure or pick or choose between the statutory minimum of no tenure for any custodial employee and statutory maximum of instant tenure for all custodians (95 N.J.A.R.2d (EDU) 161, Zielinski, aff'd App. Div. 96 N.J.A.R.2d (EDU) 3)

Janitor: Tenure acquired by janitors under terms of collectively negotiated agreement is statutorily based and so subject to Tenure Employees Hearing Act and jurisdiction of Commissioner (93:Aug. 4, Old Bridge)

Learning disability teacher-consultant's tenure is achieved by virtue of service in any area under educational services certificate and appropriate LDTC endorsement (Ellicott, 251 N.J. Super. 342)

(1991), aff'g St. Bd. 90:1714, rev'g Commissioner
89:2244)

TENURE

- LDTC is not separately tenurable from speech correctionist (89:2274, Ellicott, rev'd St. Bd. 90:1714, aff'd 251 N.J. Super. 342 (App. Div. 1991))
- Principal; no tenure following four months service as acting principal pursuant to job duties as instructional supervisor (92 N.J.A.R.2d (EDU) 134, Kish, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 367)
- Principals: Where board does not grant early tenure, principal must serve entire two year probationary period (96 N.J.A.R.2d (EDU) 926, Plotkin)
- Program Coordinator: No tenure acquired in position as no certificate needed and she voluntarily resigned from position (97 N.J.A.R.2d (EDU) 213, Cleffi-Miller)
- Secretary - no tenure acquired when service was only for two academic years. Five years service as switchboard operator did not count toward secretarial tenure (89:2106, Hansen, aff'd St. Bd. 90:1755, aff'd App. Div. unpub. op. Dkt. No. A-4355-89T5, Jan. 18, 1991)
- Secretary - tenure acquired in the position of secretary (96 N.J.A.R.2d (EDU) 727, Sherrill, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 731)
- Supervisor: Department chairpersons were tenured as supervisors and held entitlement over non-tenured individuals in any positions, other than those listed as separately tenurable under N.J.S.A. 18A:28-5, requiring supervisory endorsement regardless of specific duties or other qualifications (90:1, MacMillan, appeal dismissed St. Bd. 90:24)
- Supervisor: IEP Facilitator failed to show that she achieved tenure as a supervisor (97:Aug. 21, Webb, aff'd St. Bd. Jan. 7, 1998, aff'd App. Div. unpub. op. Dkt. No. A-3531-97T2, Feb. 4, 1999) (for reasons stated by St. Bd. on Dec. 5, 1996 and Jan. 7, 1998)
- Supervisor (industrial arts chairperson) did not acquire tenure as school principal (Nelson, 148 N.J. 358 (1997) rev'g 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257)
- Supervisor of Curriculum: Tenured supervisor entitled to supervisor position over non-tenured supervisor regardless of subject matter of supervisory position (96 N.J.A.R.2d (EDU) 396, Galbraith, aff'd St. Bd.

96:June 5; aff'd App. Div. unpub. op. Dkt. No. A-6747-95T5, July 25, 1997)

TENURE

Supervisor of extracurricular activities: tenured petitioner entitled to position as board denied him position in retaliation for appealing adverse employment action (97 N.J.A.R.2d (EDU) 186, Reinhardt)

Supervisor of instruction in 7-12 acquired tenure entitlement to district-wide position of general supervisor (90:268, Brusky)

Substitute Teachers/Staff Members

Service as permanent substitute in position which subsequently became vacant does not count towards tenure; board did not have notice that incumbent teacher would not return (92 N.J.A.R.2d (EDU) 372, Mills, aff'd w/modif. 95 N.J.A.R.2d (EDU) 133, aff'd App. Div. 96 N.J.A.R.2d (EDU) 588)

Service for full year plus one month, while serving in place of teacher on maternity leave, counts toward tenure where "substitute" given same contract as other teachers (Panettieri, App. Div. unpub. op. (Dkt. No. A-373-89T1, May 16, 1990), rev'g St. Bd. 89:1433, aff'g 89:1419, decision on remand St. Bd. 90:Dec. 5)

Teacher who was paid as substitute prior to formal appointment but functioned at all time as regular teacher entitled to accrue tenure and seniority rights from beginning of employment (92 N.J.A.R.2d (EDU) 606, Valentino, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 173)

Summer Work

Voluntary teacher preparatory work performed over summer before effective date of appointment does not count toward tenure (96 N.J.A.R.2d (EDU) 449, DeMaio, aff'd St. Bd. 96:Dec. 4, aff'd App. Div. unreported op. Feb. 10, 1998)

Tenure Charges Pending

Equitable estoppel principles do not act to confer tenure status on non-tenured employee against whom certified tenure charges for unbecoming conduct were filed (91:1059, Kai Foo Chin)

Time Counted Toward Acquisition

Leave of absence; involuntary leave of absence because of work-related disability is employment creditable towards acquisition of tenure (92 N.J.A.R.2d (EDU) 367, Kletzkin, St. Bd. aff'g w/mod. 90:1126, aff'd 261 N.J. Super. 549 (App. Div. 1993), aff'd 136 N.J. 275 (1994))

TENURE

Principal did not acquire tenure as a principal because, although he served the entire term of his contract, he was not reemployed by the board as a principal after being employed in that capacity for two years (96:Dec. 4, Martucci, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 109)

Summer employment prior to start date of contract does not count towards tenure or seniority (92 N.J.A.R.2d (EDU) 230, Polo I, aff'd w/modif. St. Bd. 92 N.J.A.R.2d (EDU) 459, aff'd App. Div. unpub. op. Dkt. No. A-256-92T2, May 12, 1994)

Summer teacher preparatory work voluntarily performed by teacher did not count toward acquisition of tenure as supervisor (96 N.J.A.R.2d (EDU) 449, DeMaio (Michelle), aff'd St. Bd. 96:Dec. 4; aff'd App. Div. unpub. op. Dkt. No. A-2783-96T5, Feb. 10, 1998)

Tenure and contract are two different concepts; tenure is statutory and arises only by passage of the time fixed by the statute, and the discharge of an employee before the passage of the retired time bars tenure, even if the discharge is in breach of an employment contract, which if not breached, would have extended to a date which would have given tenure (96 N.J.A.R.2d (EDU) 109, Martucci, rev'd on other grounds St. Bd. 96:Dec. 4)

Two months sick leave is not break in employment; teacher employed for more than three academic years within period of four consecutive academic years met precise requirements of tenure statute (93 N.J.A.R.2d (EDU) 707, Apollony)

Voluntary teacher preparatory work performed over summer before effective date of appointment does not count toward tenure (96 N.J.A.R.2d (EDU) 449, DeMaio, aff'd St. Bd. 96:Dec. 4, aff'd App. Div. unreported op. Feb. 10, 1998)

Unrecognized Titles

Athletic trainer is an unrecognized title (89:1085, Jennings, rev'd St. Bd. 89:1097, aff'd App. Div. unpub. op. Dkt. No. A-2416-89T5, Feb. 4, 1991)

Change in job title from "principal-special services" an unrecognized title, to "director of social services" will not result in the loss of any tenure or seniority rights (91:736, Kornberg, St. Bd. 91:748)

TENURE

County superintendent need not be joined as a party to challenge certification requirement (St. Bd. 96:Sept. 4, Zachau, aff'g on other grounds 97 N.J.A.R.2d (EDU) 14)

Director: tenure in the unrecognized position of Director does not create tenure rights to position of principal even though endorsement of either principal or school administrator required for position of Director (93:Nov. 18, Brenner)

Employment as Director of Elementary Education, unrecognized position with legal title of and requiring certification as principal, entitled petitioner to tenure protection as principal and assistant superintendent for curriculum and instruction (94 N.J.A.R.2d (EDU) 258, Gittleman, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 266, aff'd and remanded for modification and further proceedings App. Div. 96 N.J.A.R.2d (EDU) 160, certif. den. 144 N.J. 585 (May 7, 1996). NOTE: The holding in Gittleman on the entitlement to superintendent for curriculum is no longer good law in light of amendments to N.J.S.A. 18A:28-5 and Nelson v. Old Bridge, 148 N.J. 358 (1997), rev'g App. Div. 96 N.J.A.R.2d (EDU) 589, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 262, aff'g Commissioner 95 N.J.A.R.2d (EDU) 257) See also Gittleman decision on remand, decided in light of Nelson, 97 N.J.A.R.2d (EDU) 200, Gittleman decision on remand (see St. Bd. 96:June 5, remanding), aff'd St. Bd. 97 N.J.A.R.2d (EDU) 420, aff'd App. Div. unpub. op. Dkt. No. A-5167-96T2, Sept. 3, 1998)

Learning disability teacher-consultant's (LDTTC) prior service in unrecognized position of learning specialist counted towards tenure as LDTTC (92 N.J.A.R.2d (EDU) 497, Levy, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134)

Program Coordinator: No tenure acquired in position as no certificate needed and she voluntarily resigned from position. (97 N.J.A.R.2d (EDU) 213, Cleffi-Miller)

TENURE

Dismissal or reduction in salary

Generally

Burden of proof: district bears burden of proof of proving the charges of unbecoming conduct by a preponderance of the credible evidence. Credibility contemplates an overall assessment of a witness's story in light of its rationality, internal consistency and manner in which it hangs together with the other evidence (97 N.J.A.R.2d (EDU) 145, Shuart, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 320)

Claim that reduction in per diem salary violated tenure laws without merit (97 N.J.A.R.2d (EDU) 33, Breese)

Commissioner has repeatedly affirmed the importance of holding school district personnel to a high standard of honesty (96 N.J.A.R.2d (EDU) 441, Morton, St. Bd. aff'g w/modif. 96 N.J.A.R.2d (EDU) 236)

Commissioner has repeatedly affirmed the importance of holding school district personnel to an enhanced standard of behavior and must continually realize that they serve as role models to the community (97 N.J.A.R.2d (EDU) 145, Shuart, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 320)

Constructive discharge: may be present where there is discrimination, harassment or peculiar circumstances. Program Coordinator (97 N.J.A.R.2d (EDU) 213, Cleffi-Miller)

Doctrine of laches did not prevent board from successfully bringing tenure charges where unbecoming conduct occurred in 1990-91 and board did not file charges until December 1992, in absence of prejudice to respondent (St. Bd. 96 N.J.A.R.2d (EDU) 441, Morton, aff'g and modifying 96 N.J.A.R.2d (EDU) 236)

Guidance counselor's tenure rights violated by addition of teaching duties (97 N.J.A.R.2d (EDU) 435, Kartan, rev'd St. Bd. 98:May 6, Kartan)

No requirement that school authorities serially reprimand, warn, deny salary increment or provide counseling prior to filing tenure charges (95 N.J.A.R.2d (EDU) 211, Campbell, App. Div. aff'g St. Bd. 93 N.J.A.R.2d (EDU) 604, aff'g 93 N.J.A.R.2d (EDU) 196)

TENURE

Reduction in salary: Board's action in reducing superintendent's salary by \$1,000 and eliminating his function as asbestos manager was violative of his tenure rights as his contract specifically provided for a specific salary without any provision that certain portions of the salary would be paid for performing certain duties (97 N.J.A.R.2d (EDU) 528, Adams)

Reduction in Salary: Failure to appoint tenured teacher to summer school position does not constitute reduction in salary (92 N.J.A.R.2d (EDU) 389, Doran)

Secretaries tenure rights not affected by school board's recoupment of salary overpayment. Salaries were from part-time non-tenured positions in adult evening school (96 N.J.A.R.2d (EDU) 264, Skalute)

Teacher suspended for 60 days without pay for conduct unbecoming - sexually harassing co-worker (96 N.J.A.R.2d (EDU) 442)

Tenured supervisor entitled to supervisor position over non-tenured supervisor regardless of subject matter (96 N.J.A.R.2d (EDU) 396, Galbraith, aff'd St. Bd. 96:June 5, aff'd App. Div. unreported opinion July 25, 1997)

Tenured teacher's inappropriate physical contact with students warrants reduction in pay, not termination; inappropriate action provoked by students, no intended to harm them (96 N.J.A.R.2d (EDU) 903, Smith)

Unfitness to remain a teacher is best demonstrated by a series of incidents but may be shown by a single incident sufficiently flagrant (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192) (St. Bd. 96 N.J.A.R.2d (EDU) 441, Morton, aff'g and modifying 96 N.J.A.R.2d (EDU) 236) (See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)

TENURE

Corporal Punishment

Charges proven; conduct serious and unprofessional but dismissal not appropriate. Increments withheld and 120 days salary forfeited (96 N.J.A.R.2d (EDU) 644, Mac Dowell)

Striking student with pointer and use of inappropriate language constituted unbecoming conduct but did not warrant dismissal. Increments withheld and 120 days of salary forfeited (96 N.J.A.R.2d (EDU) 756, Trawick)

Criminal conduct

Acquittal of criminal charges; acquitted employee entitled to back pay computed without denied increment and contractual benefits for accumulated sick and personal days (93 N.J.A.R.2d (EDU) 158, Driggins, aff'd on remand, 93 N.J.A.R.2d (EDU) 319)

Acquittal of criminal charges; acquitted employee entitled to back pay for period of lawful suspension without pay following indictment (91:1001, Beatty, settlement and withdrawal approved, St. Bd. 93:May 5)

Acquittal of criminal charges, dismissal warranted on tenure charges; teacher is not entitled to back pay during period of suspension pending disposition of indictment (98:March 30, Hovington) (See 97:Aug. 5, Commissioner decision on remand - high school teacher's sexual relationship with student constitutes unbecoming conduct - St. Bd. 97 N.J.A.R.2d (EDU) 419, remanded for consideration of exception Commissioner 97 N.J.A.R.2d (EDU) 168)

Arrest for offenses involving moral turpitude and official misconduct does not justify suspension without pay before indictment and in the absence of certified tenure charges (91:494, Bracigliano)

Board secretary/business administrator diverted public funds for personal use, participated in PTI, resigned from district. Entitled to compensation from 121st day after certification of tenure charges to date of indictment. Matter referred to State Board of Examiners for possible certificate revocation (96 N.J.A.R.2d (EDU) 793, Colucci)

Conduct giving rise to superintendent's federal conviction for tax evasion amply established charges of unbecoming conduct without the need for an additional plenary hearing; removal from tenured

position warranted (97 N.J.A.R.2d (EDU) 449,
Vitacco, aff'd St. Bd. 00:April 5)

TENURE

- Criminal coercion; board demonstrated by a preponderance of the evidence that respondent's actions in sending threatening memos to superintendent was so egregious as to prohibit excuse particularly in light of standard to which teachers are held. Dismissal warranted (97 N.J.A.R.2d (EDU) 537, Lucarelli)
- Forfeiture: Conviction of endangering the welfare of a child warrants forfeiture of position as a teacher in accordance with N.J.S.A. 2C:51-1(a) (97:Dec. 4, Puca)
- Forfeiture: Conviction of possession of anabolic steroids in home does not warrant forfeiture: No nexus between position and disorderly persons offense (92 N.J.A.R.2d (EDU) 323, Olek, St. Bd. rev'g 92 N.J.A.R.2d (EDU) 319, decision on remand 94:March 2, St. Bd. rev'g 93:June 28); salary to resume while charges are being heard, 94:Dec. 23, decision on motion; matter dismissed - failure to perfect appeal St. Bd. 95:Mar. 1, reconsideration and stay denied St. Bd. 95:July 5)
- Forfeiture: high school teacher who submitted resignation and later plead guilty to one count of aggravated sexual assault, thereby forfeiting his position by operation of law, was not entitled to early retirement plan (94:Dec. 27, Thomassen)
- Forfeiture not automatic for current employee convicted of 4th degree sexual offense which would disqualify applicant: hearing ordered to determine whether offense touched office (95 N.J.A.R.2d (EDU) 304, Bergenfield; dec. on remand, 95 N.J.A.R.2d (EDU) 457)
- 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)
- Forfeiture pursuant to N.J.S.A. 2C:51-2, as amended in 1995, not within the jurisdiction of Commissioner of Education (97 N.J.A.R.2d (EDU) 449, Vitacco, aff'd St. Bd. 00:April 5)
- Forfeiture pursuant to N.J.S.A. 2C:51-2 inapplicable to guilty plea to fourth degree crimes; such conduct must be analyzed to determine whether it amounts to unbecoming conduct 94 N.J.A.R.2d (EDU) 268, Henderek, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 276)

TENURE

- Forfeiture: Sentencing judge's ruling that teacher's conduct in possessing marijuana did not touch upon her employment forecloses administrative determination on issue of forfeiture (93 N.J.A.R.2d (EDU) 516, Lott, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 35)
- Forfeiture: Tenure charges dismissed without prejudice based on automatic forfeiture of position due to criminal conviction (93:Dec. 23, Campbell)
- Forfeiture: Tenure charges dismissed without prejudice following principal's automatic forfeiture of position due to criminal conviction and subsequent resignation (93:June 28, Bracigliano)
- Increments: Teacher has no automatic entitlement to increment award during suspension or while the tenure charge litigation is in progress (96:May 1, Barshatky, St. Bd. rev'g and remanding 95 N.J.A.R.2d (EDU) 71)
- Moot issue; tenure charges alleging unbecoming conduct not rendered moot by superintendent's resignation, in that he retained his certificate qualifying him for employment in the state (97:March 24, Lincoln Park)
- Official misconduct: Teacher convicted of official misconduct for exhibited sexually explicit magazines to students, having students make collages from those magazines and discuss sex with students (Parker, 124 N.J. 628 (1991), cert. denied, 112 S. Ct. 1483)
- Plea to misdemeanor of Disturbing Results of an Election: dismissal unwarranted given employee's long unblemished record and unique circumstances (98:April 22, Engel, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Raimondo, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Maraviglia, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Capriglione, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4)

TENURE

- Possession of a controlled dangerous substance by an educator, regardless of the quantity, is sufficiently flagrant conduct to warrant dismissal absent mitigating circumstances (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)
- Possession of marijuana, a disorderly persons offense, resulting in a conditional discharge, did not warrant dismissal in view of 20 year exemplary record of "teacher of the year" (90:410, Valenti)
- PTI: Board ordered to compensate teacher from the 121st day of her suspension attributable to N.J.S.A. 18A:6-14 until the date of the ALJ's decision to dismiss, since teacher had completed PTI and thus had resumed her status as a suspended employee (97 N.J.A.R.2d (EDU) 537, Lucarelli)
- PTI: Charges dismissed where employee resigns and surrenders certificates as condition of entry into Pre-Trial Intervention Program (90:May 1, Jirak)
- PTI: Consideration of criminal charges which were not basis for tenure charges and which were dismissed following completion of PTI improper (94 N.J.A.R.2d (EDU) 163, Caravello, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 304, aff'd App. Div. 95 N.J.A.R.2d (EDU) 160)
- PTI: Does not clear accused of criminal charges; offers opportunity to avoid prosecution by receiving early rehabilitation services (93 N.J.A.R.2d (EDU) 526, Smith)
- PTI: Enrollment in Pre-Trial Intervention Program does not entitle tenured employee, suspended without pay following indictment for drug possession and distribution charges, to reinstatement and back pay (91:787, Caravello)
- PTI: Tenured teacher not entitled to reinstatement or back pay upon dismissal of indictment following completion of PTI; completion of PTI is not determination that teacher was not guilty of conduct which formed basis for indictment (93 N.J.A.R.2d (EDU) 94, Siciliano)
- Suspension/back pay: Successful completion of PTI or conditional discharge program does not constitute a favorable disposition of criminal charges to warrant back pay for periods of unpaid suspension by reason of indictment (90:823, Magliozzi)

TENURE

- Suspension/back pay: Tenured custodian acquitted of sexual offenses entitled to back pay for period of suspension but not counsel fees incurred in defense (93 N.J.A.R.2d (EDU) 882, Griffin)
- Suspension/back pay: Tenured custodian who pled guilty to criminal sexual conduct and was dismissed for unbecoming conduct entitled to back pay for period between 121st day after suspension and the date of the Commissioner's decision on the tenure dismissal (95 N.J.A.R.2d (EDU) 457, Efferen, aff'g 95 N.J.A.R.2d (EDU) 304, see 96 N.J.A.R.2d (EDU) for 90-day rule opinion, aff'd St. Bd. 12/4/96; award of back pay aff'd App. Div. unpub. op. Dkt. No. A-2680-96T5, Oct. 6, 1997)
- Suspension: may be suspended without pay after indictment; no right to payment under N.J.S.A. 18A:30-2.1 for work-related injury (90:Nov. 9, Innocenzi)
- Tenure charges certified after criminal complaints alleging sexual improprieties with female students "no-billed" dismissed; student testimony cannot be credited because of staleness of allegations, flawed investigation, inconsistency and lack of detail in statements, possible improper motivation in charges and absence of corroborating evidence (94 N.J.A.R.2d (EDU) 424, Borrelli II, rev'g 91 N.J.A.R.2d (EDU) 77, 91:1834, aff'd App. Div. 96 N.J.A.R.2d (EDU) 163) See also (90:332, Borrelli I) See State Board 95:Jan. 4. Board permitted to assign teacher to only teach health and to be constantly supervised. No bad faith shown.
- Tenure charges rendered moot by resolution of criminal matter and forfeiture of position (97 N.J.A.R.2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded Docket No. A-6218-99T1 (App. Div. March 28, 2002), dec. on remand St. Bd. 02:May 1, Comm. Dec. on remand 02:May 13)

Diversion of Public Funds

- Board secretary/business administrator diverted public funds for personal use, participated in PTI, resigned from district. Entitled to compensation from 121st day after certification of tenure charges to date of indictment. Matter referred to State Board of Examiners for possible certificate revocation (96 N.J.A.R.2d (EDU) 792, Colucci)

TENURE

Drug testing

Dismissal of tenured school custodian who tested positive for cocaine use appropriate; protocols used to collect and test urine sample in accord with reasonable medical office and laboratory practice (94 N.J.A.R.2d (EDU) 163, Caravello, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 304, aff'd App. Div. 95 N.J.A.R.2d (EDU) 160)

Dismissal of tenured custodian warranted where custodian tested positive for cocaine after having returned to work from a leave of absence to enter rehabilitation; strict adherence to federal drug testing regulations not required (97:Sept. 19, Benjamin)

Fiscal Monitor

Fiscal Monitor, like a board, cannot disregard the tenure laws if he or she wishes to terminate a [tenured employee] (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7, aff'd App. Div. unpub. op. Dkt. No. A-3406-97T1, April 7, 1999)

Free speech

Inappropriate and demeaning racial comments by teacher to student not protected by First Amendment (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))

Procedure under tenure hearing act

Acquittal of tenure charges: employee must be made whole, including retroactive restoration of salary increments and accumulation of sick leave (96:May 1, Barshatky, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71)

ALJ erred in dismissing charges after employee abandoned defense and accepted position in second district: Commissioner ordered teacher dismissed from first position and transferred matter to State Board of Examiners to consider certificate revocation (91:523, Solomon)

Arrest for offenses involving moral turpitude and official misconduct does not justify suspension without pay before indictment and in the absence of certified tenure charges (91:494, Bracigliano)

TENURE

Boards of education

- Board abused its discretion when it did not file tenure charges against teacher who used racial epithets against a fellow teacher in front of students (98:March 30, Astacio-Borja)
- Board did not abuse its discretion in deciding not to bring charges, given trifling nature of offense and extenuating circumstances (90:309, Gringeri)
- Board error: Dismissal following employee's failure to respond to tenure charges reversed because of board error (92:March 31, Gould, St. Bd. rev'g 92:Feb. 24)
- Board may not change principal's suspension status to without pay prior to rendering of Commissioner's determination where Board initially suspended principal with pay (98:Jan. 23, Vicari)
- Board member's personal interest; voting violated Oath of Office and Code of Ethics but did not warrant dismissal of tenure charges (88:221, Napoli, aff'd St. Bd. 88:284, stay denied St. Bd. 89:Feb. 1, aff'd App. Div. unpub. op. (Dkt. No. A-2301-88T3, March 2, 1990)
- Board's consideration of costs of litigation in light of sparseness of evidence in support of charges is valid (93 N.J.A.R.2d (EDU) 288, Bey)
- Board's refusal to certify tenure charges against teachers accused of misappropriating student funds was not arbitrary, capricious or unreasonable given lack of conclusive evidence (93 N.J.A.R.2d (EDU) 288, Bey)
- Charges must be certified at properly announced closed session meeting (90:332, Borrelli I)
See also (94 N.J.A.R.2d (EDU) 424, Borrelli II, St. Bd. rev'g 91:1834, 91 N.J.A.R.2d (EDU) 77, aff'd App. Div. 96 N.J.A.R.2d (EDU) 163)
- Failure to provide the 15-day period for a response to tenure charges before determination of probable cause is a fatal procedural defect requiring dismissal without prejudice (98:Jan. 15, Wenisch, aff'd St. Bd. 98: July 1)

TENURE

In the absence of statutorily required written charges, board did not act arbitrarily in failing to certify tenure charges (91:1050, Purcell)

Parents' affidavit detailing complaints against teacher did not constitute filing of tenure charges (90:Jan. 23, L.G.)

Prior to instituting tenure charges against a teaching staff member, a board, which must maintain the public trust and is accountable for the judicious use of public funds in the conduct of its activities, must be cognizant of, and pragmatic with respect to, the cost and consequences of advancing such charges in the face of insufficient evidence available to support them (97 N.J.A.R.2d (EDU) 145, Shuart, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 320)

Service: charges properly served where board presented proof of mailing; employee refused to claim mail (95 N.J.A.R.2d (EDU) 285, Jones)

Statement of evidence deficient; superintendent did not hear evidence from those with personal knowledge, and children's statements to police were not signed or sworn to (90:332, Borrelli I) See also (94 N.J.A.R.2d (EDU) 424, Borrelli II, St. Bd. rev'g 91:1834, 91 N.J.A.R.2d (EDU) 77, aff'd App. Div. 96 N.J.A.R.2d (EDU) 163)

Burden of proof is preponderance of credible evidence even where charges involve moral turpitude (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

Certification by attorney satisfies N.J.A.C. 6:24-5.1(b)1 requirement that charges be executed under oath (91:1286, Andrews)

Certification of tenure charges prior to expiration of 15 day response period is not a fatal defect when there is no evidence in the record that employee intended to or attempted to respond (97:Dec. 22, Wilson, aff'd St. Bd. 98:April 1)

Commissioner of Education

Dismissal of charges not warranted where prior Commissioner had written letter criticizing teacher for conduct which formed basis of tenure charges (95 N.J.A.R.2d (EDU) 164, Clark, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 190)

TENURE

Settlement of increment withholding dispute which required automatic dismissal of tenured custodian for any additional absences invalid; only Commissioner is empowered to make determination on termination of tenured employee (94 N.J.A.R.2d (EDU) 388, Exum)

Consolidation of tenure charges filed against two individuals, for purpose of plenary hearing (95:January 11, Holcroft)

Default; dismissal appropriate where employee failed to respond to charges; each count deemed admitted (97:April 15, State Operated School District of the City of Newark, aff'd w/clarification St. Bd. 97:Oct. 1)

Default; employee dismissed for failure to respond to charges (90:Apr. 24, Miller) (90:March 28, Johnson) (90:May 3, Chambers) (90:Sept. 14, Birchett) (97:Sept. 9, Clemons) (97:Aug. 14, Page)

Dismissal of charges not required for procedural defect of failure to execute charges under oath when teacher's rights were not prejudiced (91:1286, Andrews)

Excessive absence charges

Increment withholding or formal warning unnecessary when it is undisputed that absences were medically necessary and sanction or warning could not have been expected to produce improvement in attendance (94 N.J.A.R.2d (EDU) 190, Rucker, aff'd St. Bd. 94:Aug. 3)

Testimony by administrator that teacher's absences adversely impacted students unnecessary where absences exceed one third of instructional time over several year period; principle of res ipsa loquitur applies (94 N.J.A.R.2d (EDU) 190, Rucker, aff'd St. Bd. 94:Aug. 3)

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)

Failure of employee to respond (91:410, Hurtade) (91:477, Diakides) (91:1971, Kubica) (92:Jan. 9, Senhouse) (92:Oct. 2, Castro) (95:January 24, Moore) (95:September 21, Pryor)

Failure to certify charges within 45 days or to allow

teacher opportunity to respond to charges are fatal procedural defects requiring dismissal without prejudice (93 N.J.A.R.2d (EDU) 320, Beam)

TENURE

- Failure to respond to charges results in charges being deemed admitted (97:March 14, Hooper)
- Failure to respond to charges will result in each count being deemed to be admitted (97:April 15, Stewart, aff'd with clarification, St. Bd. 97:Oct. 1)
- 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)
- Hearings: Time frame for hearings in N.J.S.A. 18A:6-11 is directory, not mandatory (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)
- Imposing an education program as a punishment for unbecoming conduct deemed inappropriate (96 N.J.A.R.2d (EDU) 644, Mac Dowell)
- Inefficiency charges
- Defense that tenure charges improperly pleaded as charges of unbecoming conduct when alleged conduct, if proven, would constitute inefficiency rejected (92 N.J.A.R.2d (EDU) 257, Sheridan I, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393) See also St. Bd. 94:Sept. 7, dec. on remand 95 N.J.A.R.2d (EDU) 482, appeal dismissed failure to timely file 96 N.J.A.R.2d (EDU) 142
- Even inefficiency charges standing alone may warrant revocation of a teaching certificate, depending on the particular circumstances (96:May 1, Barshatky, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71)
- Inefficiency charges dismissed without prejudice because of board's procedural failure to modify PIP to address teacher's inefficiencies (92:Oct. 21, Loria)
- Laches: Matter remanded to determine whether 19 month delay in filing charges was unreasonable (90:Jan. 23, L.G.)
- Mootness: Tenure charges of inefficiency may not be dismissed as moot; Commissioner must approve settlements or withdrawals (96:May 1, Barshatky, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71)
- Mootness: Tenure issue not moot despite teacher's resignation; resolution of pending grievance regarding accumulated sick leave, was dependent on outcome of tenure issue (96:May 1, Barshatky, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71)

TENURE

No conflict for Commissioner to rule on tenure matter in state operated district (96 N.J.A.R.2d (EDU) 644, Mac Dowell)

Res judicata does not apply to consideration of tenure charges by a board of education (90:Jan. 23, L.G.)

Resignation: Certificate revocation; Commissioner refers matter to State Board of Examiners after teacher resigns and surrenders certificate as condition of entry into Pre-Trial Intervention Program (90:May 21, Jirak)

Resignation: Certificate revocation proceeding; board directed to initiate where teacher resigns after tenure charges certified (90:March 8, Walker)

Resignation renders tenure charges moot; however, board has moral and ethical responsibility to petition State Board of Examiners if it continues to believe teacher unfit to teach (91:Feb. 22, Kenner) But re: mootness see Barshatky, 96:May 1, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71.

Salary and benefits must be resumed after 120 days (97 N.J.A.R.2d (EDU) 446, Phillips, matter settled on remand 97:Sept. 29)

Salary - Teacher not entitled to payment of salary while awaiting acceptance of retirement application; pension payments were made retroactively for same time period (95 N.J.A.R.2d (EDU) 97, Scherr, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 154)

Service: Dismissal based on charges of unbecoming conduct and abandonment of position appropriate, despite lack of service, when employee has not gone to work in months and attempted service at employee's home address returned for lack of forwarding address (91:1101, Golden)

Service of notice of certification of tenure charges by regular mail rather than by statutorily required personal service or service by certified mail insufficient to warrant automatic dismissal of charges when it is undisputed notice was received (91:1143, Major)

Service: Rights of teacher were not prejudiced by District's service of substituted charges to teacher's attorney of record rather than on teacher personally (98:April 22, Palumbo)

State-operated school district is not obligated to

demote or rehire dismissed principal despite her
long record of service in the district (98:April 16,
Brownlee, aff'd St. Bd. 99:Feb. 3)

TENURE

Summary decision holding that respondent was guilty of unbecoming conduct is appropriate where respondent fails to show there is a genuine issue which can only be determined in an evidentiary proceeding; remand required to determine appropriate penalty under the circumstances of this case (97:March 20, Phillips)

Sunshine Law: Tenure charges may not be considered at an open meeting (90:Jan. 23, L.G.)

Suspension

By board

Back pay should be calculated from the Department's receipt of teacher's notice that his criminal indictment had been dismissed (97:July 7, Morales)

Board may not change principal's suspension status to without pay prior to rendering of Commissioner's determination where Board initially suspended principal with pay (98:Jan. 23, Vicari)

Board may not initiate a second 120-day suspension of pay after filing additional related tenure charges during tenure dismissal hearing (98:March 30, Hovington) (See 97:Aug. 5, Commissioner decision on remand - high school teacher's sexual relationship with student constitutes unbecoming conduct - St. Bd. 97 N.J.A.R.2d (EDU) 419, remanded for consideration of exception Commissioner 97 N.J.A.R.2d (EDU) 168)

Board ordered to pay salary on 121st day after certification of tenure charges (88:221, Napoli, aff'd St. Bd. 88:284, stay denied St. Bd. 89:Feb. 1, aff'd App. Div. unpub. op. Dkt. No. A-2301-88T3, March 2, 1990)

Employee acquitted of criminal charges entitled to back pay for time suspended without pay (91:1001, Beatty, settlement and withdrawal approved, St. Bd. 93:May 5)

TENURE

One hundred twenty day suspension without pay under N.J.S.A. 18A:6-14 excludes all delays granted at the request of the employee who is the subject of tenure charges; staff member not entitled to salary from the date upon which the matter was rescheduled for hearing until the matter was again adjourned at staff member's request (97 N.J.A.R.2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded, Docket No. A-6218-99T1 (App. Div. March 28, 2002), dec. on remand, St. Bd. 02:May 1, Comm. Dec. on remand, 02:May 13)

Placement of tenured teacher who refuses to submit to psychiatric exam on involuntary sick leave is effectively a suspension without pay unwarranted in the absence of tenure charges (91:751, Roberts, aff'd St. Bd. 9411:767)

Salary after 120 days

No entitlement to payment of salary during time of suspension - delays all attributed to SBA (97 N.J.A.R.2d (EDU) 361, Marano, aff'd with clarification St. Bd. 00:June 7, rev'd and remanded Docket No. A-6218-99T1 (App. Div. March 28, 2002), dec. on remand St. Bd. 02:May 1, Comm. Dec. on remand 02:May 13)

Request by employee for extension of time for response occasions concomitant deferral of time for resumption of salary (98:April 22, Engel, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Raimondo, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Maraviglia, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov.

4) (98:April 22, Capriglione, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4)

TENURE

- Teacher entitled to salary for period of 679 calendar days; delay due to settlement negotiations cannot be attributed solely to teacher (93 N.J.A.R.2d (EDU) 143, Wagner, decision on remand, 93:June 30)
- Salary: "full salary" after 120 days, raises question of inclusion of the accrual of sick time if charges are sustained (96:May 1, Barshatky, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 71)
- Salary - Teacher not entitled to payment of salary while awaiting acceptance of retirement application; pension payments were made retroactively for same time period (95 N.J.A.R.2d (EDU) 97, Scherr, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 154)
- Suspension is valid only upon the vote of a majority of the full board (98:Feb. 27, Davis)
- Suspension/salary: Erroneous payment of salary to teacher facing tenure charges during first 120 days of suspension creates claim of unjust enrichment which lies in civil action (91:523, Solomon)
- Suspension: Tenured employee may be suspended either under N.J.S.A. 18A:6-10 or N.J.S.A. 18A:6-8.3 (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)
- Suspension without pay under N.J.S.A. 18A:16-4; Board need not pay employee during period of suspension where employee deviated from normal mental health and refused to submit to reexamination on the matter (98:June 18, Chambers; aff'd St. Bd. 98:Nov. 4)
- Suspension without pay under N.J.S.A. 18A:6-14; 120-day period includes summer months where 10-month employee does not work (90:June 15, Jamrogowicz)
- Suspension with pay, under N.J.S.A. 18A:6-8.3, may not be continued indefinitely (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)

TENURE

Testimony by children

Motivation of complaining children need not be pure so long as conduct complained of actually occurred (94 N.J.A.R.2d (EDU) 284, Roberts, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 349, aff'd App. Div. 96 N.J.A.R.2d (EDU) 549)

Pupil testimony cannot be credited because of staleness of allegations, flawed investigation, inconsistency and lack of detail in statements, possible improper motivation in charges and absence of independent corroborating evidence (94 N.J.A.R.2d (EDU) 424, Borrelli II, rev'g 91:1834, 91 N.J.A.R.2d (EDU) 77, aff'd App. Div. 96 N.J.A.R.2d (EDU) 163) See also (90:332, Borrelli I)

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

Pupil's testimony, although suspect, should not be dismissed unless good reason to believe it is biased (91:1381, Cooke, aff'd St. Bd. 92:Jan. 8)

Withdrawal of charges approved: Indictment dismissed; DYFS investigation terminated, no supporting evidence and complaining witness reluctant to testify (90:July 5, Ward)

Written statement of evidence under oath: Superintendent's statement was defective where he had not spoken to those with personal knowledge (90:332, Borrelli I) See also (94 N.J.A.R.2d (EDU) 424, Borrelli II, St. Bd. rev'g 91:1834, 91 N.J.A.R.2d (EDU) 77, aff'd App. Div. 96 N.J.A.R.2d (EDU) 163)

Written statement of evidence under oath: Unsigned student statements to prosecutor and videotaped statement defective (90:332, Borrelli I) See also (94 N.J.A.R.2d (EDU) 424, Borrelli II, St. Bd. rev'g 91:1834, 91 N.J.A.R.2d (EDU) 77, aff'd App. Div. 96 N.J.A.R.2d (EDU) 163)

Respondent failed to follow proper procedures for imposing discipline upon tenured staff member which would result in reduction in salary; however as Respondent then reconsidered and imposed only a reprimand, its action no longer implicates N.J.S.A. 18A:60-2 (97:Nov. 13, Ancora Psychiatric Hospital)

TENURE

Settlement of tenure charges (See also, "COMMISSIONER OF EDUCATION, Jurisdiction of Commissioner")

Approved but matter referred to State Board of Examiners due to serious nature of charges (92:Dec. 21, Penn) (92:Dec. 28, Jackson) (95:March 5, Robinson)

Approved but monetary payment not properly characterized as damages (90:Apr. 3, Wilson)

Approved; maintenance employees will resign; board will pay full salary for three and one-half months (95:January 11, Cubas)

Approved; meets Cardonick standard (94:March 31, Benson) (95:February 24, Morris) (95:March 15, Percy) (95:April 12, Felice) (95:June 1, Patter) (95:June 21, DeLane) (95:June 30, Jones) (95:July 17, Houston) (95:July 17, Johnson) (95:July 18, Jiminez) (95:July 26, Gross) (95:July 26, Trapp) (95:July 27, DiRupo) (95:July 28, Dickson) (95:July 28, Nixon) (95:September 7, Desmond) (95:September 7, Smith) (95:October 17, Jackson) (95:October 24, Olek) (95:October 30, Apgar) (95:November 2, Huguenin) (96:May 8, Barabow) (96:May 28, Moraney) (96:June 17, Bauer) (96:June 17, Cooke) (96:July 1, Terranova) (96:Sept. 5, Collins) (96:Sept. 6, LaMonica) (96:Sept. 18, Lillo) (96:Oct. 3, Saunders) (96:Oct. 18, Montgomery) (96:Dec. 12, Rivera) (96:Dec. 16, Belcher) (96:Dec. 30, Fretz) (97:July 24, Tierney) (97:Aug. 14, Guzman) (97:Nov. 24, George) (98:Jan. 14, Barshatky) (98:Jan. 15, Kardas)

Commissioner approves the settlement as comporting with the standard enunciated in Cardonick (97:March 14, Petrone) (97:July 24, Franklin) (97:Nov. 24, City of Asbury Park)

Commissioner approves the settlement as it complies with the Cardonick standard (97:Dec. 16, N.J. State Dept. of Human Services)

Commissioner approves the terms of settlement as they comport with the standard enunciated in Cardonick (97:March 14, State Operated School)

District of the City of Newark) (97:Nov.
21, N.J. Dept. of Corrections)

TENURE

- Settlement terms approved as comporting with the Cardonick standard (97:Feb. 19, Albert G. Wagner Correctional Facility)
- Approved; record on remand clarified reason for granting extended sick leave (90:Jan. 24, Schurr)
- Approved: Settlement of sexual harassment charges against superintendent and principal were approved as the evidence did not support the charges and the prosecution of charges would divert time and money from district's true mission (95:January 11, Holcroft) (95:February 22, Granaldi)
- Approved: Teacher resigned from tenured teaching position for consideration prior to certification of tenure charges (96:April 22, Rush)
- Approved: Where called for resignation, with understanding that Executive Order 11 requires that public is entitled to request and receive reason for separation from service (95:February 8, Strincoski)
- Approved: where custodian neglected duties but board eliminated all custodial positions in favor of a subcontractor (96:Aug. 9, Dennis) (96:Aug. 9, Lapadura)
- Approved where teacher's statements on record belied his subsequent claims of duress (93:Oct. 6, Woodside, St. Bd. rev'g 93:Apr. 19)
- Certificate: Settlement may not provide for voluntary surrender of certificate and must indicate teacher's recognition that matter will be transmitted to State Board of Examiners; teacher may agree not to oppose revocation (90:Feb. 14, Lewis, decision on remand 90:March 15) (90:March 1, Shuhula, decision on remand 90:May 17) (90:July 19, Tomassone)
- Commissioner approves and adopts the settlement as the final decision (97:Nov. 26, Twp. of Old Bridge, aff'd St. Bd. 98:April 1)
- Commissioner rejects the settlement as it expressly requires the district to falsely represent that the resignation was in good standing (97:Nov. 21, City of Union)
- Commissioner rejects the settlement as it fails to comply with the standard enunciated in Cardonick (97:Dec. 23, Hollingsworth)
- General: All terms of a settlement must be submitted to

the Commissioner and are confidential upon his approval; additional terms are ultra vires (90:769, Wilburn)

TENURE

- General: Settlement terms in disputed matter cannot be executed without Commissioner's specific review and approval pursuant to N.J.A.C. 1:1-19.1 (91:Dec. 16, Leonia)
- Oral settlement agreement enforced; teacher's attorney authorized to settle and parties intended oral argument to be binding (94 N.J.A.R.2d (EDU) 507, Pinto)
- Rejected absent agreement that teacher charged with sexual harassment will not seek employment in any educational setting in future (92:Nov. 18, Robinson)
- Rejected and remanded for failure to comport with the Cardonick standard: (1) no reference to possible revocation of certificate; (2) no acknowledgement of Board's duty to cooperate with Board of Examiners (98:March 11, Lederer)
- Rejected and remanded for failure to comport with the Cardonick standard where settlement of tenure charges based on allegations of corporal punishment of students limited the information that board could release to prospective employer to dates of employment and position contrary to Executive Order No. 11 which includes reasons for separation from service as public record (94:July 22, Lawrence)
- Rejected and remanded for failure to explain why it is in the public interest not to pursue charges (97:Nov. 13, Scott)
- Rejected and remanded for further settlement negotiations where settlement required false representation that resignation was in good standing (98:March 26, Dreyer)
- Rejected and remanded; making overt and offensive racial, sexist, ethnic and sexual comments to numerous students repeatedly over significant period of time is behavior Commissioner cannot tolerate (92:May 7, Lydon)
- Rejected and remanded; resignation in good standing with promise not to apply for any position with any institution operated by Dept. of Human Services inadequate to carry out Commissioner's responsibility of safeguarding all children (91:Nov. 13, Wagner, aff'd St. Bd. 94:Oct. 5)
- Rejected, as agreement cannot bind Commissioner to keep the agreement confidential, as the Commissioner's decision is a public record

(95:January 17, Hynes, settlement aff'd on remand,
95:May 8)

TENURE

- Rejected, as agreement may not require the board to withhold information concerning the reason for separation, which information is a public record pursuant to Executive Order No. 11 (94:July 22, Lawrence) (95:January 17, Hynes, settlement aff'd on remand, 95:May 8)
- Rejected, as Commissioner will not sanction settlement infringing on right of board to be forthcoming about inquiries about teacher's employment with the board (95:January 17, Hynes, settlement aff'd on remand 95:May 8)
- Rejected, as Commissioner will not sanction settlement infringing on right of board to be forthcoming about inquiries about teaching staff member's employment with the board (98:June 29, Albert)
- Rejected: Commissioner cannot condone language in settlement that would imply that students who do not speak English have lesser protection against molestation (90:832, Passaic)
- Rejected. Does not meet Cardonick standard. Nature of charges not sufficiently set forth. Circumstances which justify settlement not set forth. No finding that settlement is in the public's interest (96:June 10, Reed, settlement approved on remand 97:April 28)
- Rejected. Does not meet Cardonick standard. No explanation of why charges can no longer be pursued or why it is no longer in the public interest to pursue them (96:June 19, Lillo)
- Rejected. Does not meet Cardonick standard. Settlement agreement provides no indication that teaching staff member was advised of Commissioner's duty to refer tenure determinations to the State Board of Examiners for possible revocation of certificate (96:June 17, Sabo)
- Rejected: failed to meet Cardonick standard (94:Feb. 8, Schulman) (94:May 4, Stein)
- Rejected for failure to place on the record reasons why it is in the public interest not to pursue them and also for failure to notify teacher that tenure determinations are forwarded to the Board of Examiners for review and possible revocation of certificate (96:Aug. 14, Catlin, settlement approved on remand 97:Feb. 24)
- Rejected for failure to place terms on record as required by N.J.A.C. 1:1-19.1 (91:Sept. 18, Chow)

TENURE

- Rejected; parties admonished that settlement agreements "are of no force and effect and may not be implemented" absent the Commissioner's approval (98:Feb. 20, Katsanos)
- Rejected; tenure charges alleging drug-related offenses must be adjudicated (90:Sept. 5, Olek, rev'd St. Bd. on other grounds 92 N.J.A.R.2d (EDU) 323, decision on remand 93:June 28, salary to resume while charges are being heard, 94:Dec. 23, decision on motion; matter dismissed, rev'd St. Bd. 94:March 2; Dismissed, failure to perfect appeal St. Bd. 95:Mar. 1, recommendation and stay denied St. Bd. 95:July 5)
- Rejected where board failed to "spread forth on the record" a reasonably specific explanation of why it is in public's interest not to pursue the tenure charges (95:September 12, Lombardi) (98:March 26, Dreyer)
- Rejected where board failed to "spread forth" on the record" a reasonably specific explanation of why it is in the public's interest not to pursue the tenure charges; and for lack of reference to possible revocation of certificate (98:March 26, Stuart)
- Rejected where charges of sexual misconduct toward students and harassment of a teacher are of so serious a nature as to require a full hearing (90:832, Passaic)
- Rejected, where despite serious allegations concerning corporal punishment, teacher is to return to classroom for several months before resignation is effective (95:January 17, Hynes, settlement aff'd on remand, 95:May 8)
- Rejected where there was no indication that teacher was advised of possible revocation of certificate and where board failed to "spread forth on the record" a reasonably specific explanation of why it is in public's interest not to pursue the tenure charges (98:Jan. 23, Jean) (98:Feb. 20, Katsanos)
- Remanded for failure to explain why it is not in the public interest to pursue charges and for failure to explain that matter may be referred to Board of Examiners (96:Dec. 12, Rivera)

TENURE

Remanded for further explanation of circumstances under which teacher might return to classroom given serious nature of charges of corporal punishment, berating handicapped pupil and insensitivity to child's religious beliefs (91:July 30, DiPillo) See also (95 N.J.A.R.2d (EDU) 206, St. Bd. aff'g w/modif. 93 N.J.A.R.2d (EDU) 13)

Remanded to ALJ to place upon record the reasons for settlement, racial remarks by teacher may warrant revocation of certification (96:Feb. 1, Montgomery)

Settlement accepted as comporting with the Cardonick standard (97:Feb. 24, Catlin)

Settlement agreement called for transfer of teacher, not separation of employment; term limiting response to inquiries regarding personnel history does not violate Executive Order No. 11 (1974) (93:June 2, Heil, St. Bd. rev'g 92:May 18)

Settlement agreements of controverted matters are of no force and effect and may not be implemented absent Commissioner approval (96:June 10, Reed) (96:June 19, Lillo)

Settlement approved as comporting with the Cardonick standard (97:Jan. 10, Red Bank Regional) (97:Feb. 3, Parsippany-Troy Hills) (97:July 7, State Operated School District of City of Jersey City) (97:July 10, State Operated School District of the City of Newark)

Settlement approved with admonishment from Commissioner that settlement may not be implemented prior to Commissioner's approval (97:Jan. 13, East Windsor Regional)

Tenure dismissal cases - disposition of charges

Dismissal unwarranted; no penalty imposed

Charges dismissed: board failed to provide transcript of tenure hearing (97 N.J.A.R.2d (EDU) 345, Barnes)

Charges dismissed: Bringing construction materials supplied by inmates' families into prison and providing inmate "shop foreman" with keys to desk does not constitute unbecoming conduct by tenured teacher in correctional facility (93 N.J.A.R.2d (EDU) 710, Samano)

TENURE

Corporal punishment not proven. Teacher reactively struck aggressive pupil's hand who was approaching a frail delicate undefended pupil. Restored to former position with all back pay and emoluments restored (96 N.J.A.R.2d (EDU) 636, Kulp)

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

Evidence: Board failed to prove charges of several improprieties with female students by a preponderance of the credible evidence (94 N.J.A.R.2d (EDU) 424, Borrelli II, rev'g 91:1834) (See also 90:332, Borrelli I) See also State Board 95:Jan. 4.) (Board permitted to assign teacher to only teach health and be constantly supervised. No bad faith shown.)

Evidence: Board failed to prove charges of unbecoming conduct with three male students (97 N.J.A.R.2d (EDU) 145, Shuart, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 320)

Free Speech Protected: Charges dismissed; derogatory remarks about African history, made to radio call-in show, are protected by First Amendment (95 N.J.A.R.2d (EDU) 164, Clark, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 190)

Dismissal unwarranted but penalty imposed

Corporal punishment not proven (96 N.J.A.R.2d (EDU) 649, Quinones)

Corporal punishment, use of profane and inappropriate language proven. Conduct serious and unprofessional but dismissal unwarranted. Increments withheld and 120 days salary forfeited (96 N.J.A.R.2d (EDU) 644, Mac Dowell)

Denial of two annual employment plus 120 days pay adjustments and increments appropriate penalty for secretary who refused to do an assignment and used foul language in addressing an administrator (97 N.J.A.R.2d (EDU) 390, Bohannon)

Failure to answer charges despite three attempts to contact teacher for charges of unbecoming conduct (94:April 8, Ponder)

TENURE

Loss of 120 days pay plus any increments which may have been due since teacher's suspension is an appropriate remedy for a teacher who lost control of her class and threw objects (97:July 28, Mantua)

Loss of 120 days pay, withholding of increment, and monitoring by employee assistance program ordered for conduct unbecoming when drinking on campus (97 N.J.A.R.2d (EDU) 157, Koller)

Loss of 120 days pay, withholding of salary and adjustment increments and required participation in certified course on crisis management and classroom control appropriate penalty for use of excessive force after attack by student (98:June 15, Starling, aff'd St. Bd. 98: Nov. 4)

Loss of 120 days pay, withholding of salary and adjustment increments and required participation in professional development program to improve sensitivity to students appropriate penalty for gross insensitivity to pupil which did not amount to corporal punishment (93 N.J.A.R.2d (EDU) 590, Feinsod)

Loss of 120 days salary and adjustment increments for pattern of verbal abuse and improper physical contact occurring after 13-year unblemished record (96 N.J.A.R.2d (EDU) 903, Smith)

Loss of 120 days salary and loss of increment for two incidents of corporal punishment in 26 year career (92 N.J.A.R.2d (EDU) 527, Murphy, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134)

Loss of 120 days salary for unbecoming conduct by superintendent - foul language (88:221, Napoli, aff'd St. Bd. 88:284, stay denied St. Bd. 89:Feb. 1), aff'd App. Div. unpub. op. Dkt. No. A2301-88T3, March 2, 1990)

Loss of 180 days salary and loss of increment for possession of marijuana (90:410, Valenti)

Loss of salary and adjustment increments and 120 days pay already withheld for single rash and unpremeditated instance of inappropriate touching of student (93 N.J.A.R.2d (EDU) 445, Boyd)

Loss of six month salary and increment an
appropriate penalty for teacher who made
inappropriate sexual remarks to students
(97:July 7, Morales)

TENURE

- Loss of six months salary as well as loss of salary increments was warranted for incident of physical force and incident of insensitive behavior that humiliated student (95 N.J.A.R.2d (EDU) 206, DiPillo, St. Bd. aff'g w/modif. 93 N.J.A.R.2d (EDU) 13)
- One step reduction on salary guide, loss of six months salary and freezing on guide for following year for teacher at correctional institution (90:34, Vaughn, aff'd St. Bd. 90:46)
- One year suspension without pay of teacher at custodial care mental facility for inattentiveness which resulted in injury to one student and escape by another (91:2028, Pescatore)
- Petitioner's use of a racially derogatory epithet to students warranted addition of two months suspension without pay and loss of 120 days salary (97:Dec. 18, Burg, aff'd St. Bd. 98:June 3)
- Physical Education Teacher left student unattended in a park and left class unattended. Conduct improper but dismissal not warranted. Forfeiture of 120 days salary (96 N.J.A.R.2d (EDU) 649, Quinones)
- Special education teacher's refusal to comply with directive to include her students with regular education classes constitutes insubordination and conduct unbecoming; however, her honest belief that she was doing what was best for her students and her good disciplinary record indicates that a suspension for ten days without pay is fair and appropriate. (97:Aug. 20, N.J. Dept. of Human Services)
- Striking student with pointer and use of inappropriate language constituted unbecoming conduct but did not warrant dismissal. Increments withheld and 120 days salary forfeited (96 N.J.A.R.2d (EDU) 756, Trawick)

TENURE

Suspension without pay for seven months and forfeiture of increments for two years for disturbing results of school election (98:April 22, Engel, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Raimondo, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Maraviglia, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Capriglione, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4) (98:April 22, Palumbo, See also, decision of St. Bd. of Examiners to suspend certificate for one year due to convictions aff'd St. Bd. 98: Nov. 4)

Suspension without pay until end of school year, no raise upon return, and loss of 120 days salary for gambling activity (90:648, Schnitzer, appeal dismissed St. Bd. 91:2594)

Teacher suspended for 60 days without pay for conduct unbecoming - sexually harassing co-worker (96 N.J.A.R.2d (EDU) 442)

Tenured teacher's inappropriate physical contact with students warrants reduction in pay, not termination; inappropriate action provoked by students, not intended to harm them (96 N.J.A.R.2d (EDU) 903, Smith)

Dismissal warranted

Abandonment of position - custodian (96:May 20, Mc Intyre)

Absences

Abandonment of position and conduct unbecoming (91:1101, Golden) (94:Sept. 19, Selleroli) (98:March 6, Poffenberger)

Absences caused by superintendent's medical condition, and his failure to clarify severity of condition and ability to return to work, constitute grounds for removal (93 N.J.A.R.2d (EDU) 82, Romanoli, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 87,

aff'd App. Div. unpub. op. Dkt. No. A-
2346-92T3, April 13, 1994)

TENURE

- Attendance officer: excessive absences
(96 N.J.A.R.2d (EDU) 703, Deal, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)
- Chronic and excessive absenteeism constitutes unbecoming conduct, incapacity and just cause for discipline warranting dismissal (97 N.J.A.R.2d (EDU) 330, Pearson)
- Custodian: Dismissal warranted in light of custodian's excessive absenteeism, leaving work early and insubordination (93 N.J.A.R.2d (EDU) 345, Riddick, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 619, aff'd App. Div. unpub. op. Dkt. No. A-0252-93T5, May 13, 1994)
- Custodian: Dismissal warranted when custodian neglected duties and was excessively absent over three-year period and had had increments withheld twice; insubordination, however, was not established (97 N.J.A.R.2d (EDU) 27, Issac)
- Custodian: Excessive absences and poor job performance by tenured custodian endangered health and welfare of students and warnings that absences unacceptable given (94 N.J.A.R.2d (EDU) 580, Ingram)
- Custodian: Excessive absences had negative impact on cleanliness, maintenance and condition of school buildings (94 N.J.A.R.2d (EDU) 388, Exum)
- Custodian: Pattern of excessive absences uncontested by tenured custodian who failed to appear for hearing (94 N.J.A.R.2d (EDU) 49, Crockett)
- Custodian: Safety of students and staff jeopardized by custodian's excessive absences and failure to notify school of intended absences (93 N.J.A.R.2d (EDU) 362, Watson)
- Dismissal of tenured janitor appropriate where janitor failed to file a response to charges (97:Jan. 10, Johnson)

TENURE

- Excessive absences and chronic tardiness which negatively impacted on student education constituted unbecoming conduct (92 N.J.A.R.2d (EDU) 550, Meade-Stephens, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134, aff'd App. Div. unreported op. Dkt. No. A-3076-92T2, Jan. 10, 1994)
- Excessive absences and insubordinate and unbecoming conduct in refusing direct order to submit to drug testing based on reasonable suspicion justified dismissal (93 N.J.A.R.2d (EDU) 121, Pellagatti, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 125)
- Excessive absences in face of consistent prior warning good cause for dismissal (91:1103, Green)
- Excessive absences - 234 days over 4 years - just cause for dismissal (96:April 12, Moore)
- Excessive absenteeism (94:Sept. 19, Selleroli)
- Excessive absenteeism continued after two years of increment withholding, justified dismissal (91:940, White, St. Bd. dismissed appeal 91:964)
- Excessive absenteeism, even though related to legitimate health problems, warrants dismissal when absences have negative impact on students and teacher advised attendance needed improvement (92 N.J.A.R.2d (EDU) 267, Pellecchio, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 30)
- Excessive absenteeism over period of nine years (93 N.J.A.R.2d (EDU) 147, Kacprowicz, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 604, aff'd App. Div. 95 N.J.A.R.2d (EDU) 105)
- Excessive absenteeism warrants removal when absences have negative impact on special education students (98:March 6, Jones)
- Failure to report to work (89:1667, Hershkowitz, aff'd St. Bd. 89:1681, aff'd App. Div. unpub. op. Dkt. No. A-1391-89T5, Dec. 3, 1990)
- Insubordination (94:Sept. 19, Selleroli)

TENURE

Chronic and excessive absenteeism - secretary (96 N.J.A.R.2d (EDU) 800, Latona)

Termination of teacher warranted - incapable, chronically absent, incompetent, engaged in sexually offensive behavior (96 N.J.A.R.2d (EDU) 268, Molinaro)

Corporal Punishment

Dismissal of tenured teacher who physically, mentally and emotionally abused pupils by withholding lunches, pushing, shoving and striking students, and yelling at students warranted (93 N.J.A.R.2d (EDU) 729, Smith, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 317)

Dismissal warranted for corporal punishment, unjustified physical contact, use of profane language, insubordination and falling asleep on duty (93 N.J.A.R.2d (EDU) 387, Harrell, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. 95 N.J.A.R.2d (EDU) 137)

Dismissal warranted for excessive force against student, inappropriate and crude language toward another student and insubordinate behavior toward principal (95 N.J.A.R.2d (EDU) 439, Johnston, aff'd St. Bd. 96 S.L.D. (March 6))

Dismissal warranted where teacher engaged in irrational behavior and used offensive and abusive language over a period of years (97:Oct. 14, Suitt-Green, aff'd St. Bd. 98:Feb. 4)

Improper corporal punishment of students, failure to properly supervise pupils and making improper sexual comments to female students (94 N.J.A.R.2d (EDU) 395, Talley)

TENURE

Resort to physical force and violence to maintain discipline and failure to exhibit self restraint violated the prohibition against corporal punishment; single incident of placing a student in a closet was sufficiently flagrant in and of itself to constitute a single incident which warrants the disciplinary action of removal (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192); See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)

Taken together, several proven instances of corporal punishment and verbal abuse proved unfitness for teaching (92 N.J.A.R.2d (EDU) 399, Courtney)

Use of excessive force to restrain profoundly retarded client (93 N.J.A.R.2d (EDU) 143, Wagner, decision on remand, 93:June 30)

Custodian properly terminated for poor performance, sexual harassment and unbecoming conduct (96 N.J.A.R.2d (EDU) 364, Purnell)

Dismissal warranted for knowingly participating in a breach of test security (EWT) by possessing and distributing copies of the secure test (97:Dec. 18, Martone, aff'd St. Bd. 98:May 6) (98:Mar. 2, McNutt, aff'd St. Bd. 98:Oct.7)

Dismissal warranted for four threatening notes written to superintendent as such actions are so egregious as to prohibit excuse; petitioner however entitled to compensation from the 121st day of suspension until the date of the Commissioner's decision (97:April 28, Lucarelli)

Dismissal warranted where teaching staff member failed to respond to charges of unbecoming conduct despite three attempts to contact him (97:March 14, Hooper)

TENURE

Drugs/Alcohol/Criminal Conduct

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

Alcohol: custodian warranted dismissal for pattern of unbecoming conduct including having passed out due to effects of alcohol, carrying a gun knife at school, unexcused absences and yelling at supervisors (93 N.J.A.R.2d (EDU) 563, Gwinnett)

Assault; plea to aggravated assault on police officer and resisting arrest was conduct unbecoming (94 N.J.A.R.2d (EDU) 268, Henderek, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 276)

Cocaine: school custodian who tested positive for cocaine use dismissed; protocols used to collect and test urine sample in accord with reasonable medical office and laboratory practice (94 N.J.A.R.2d (EDU) 163, Caravello, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 304, aff'd App. Div. 95 N.J.A.R.2d (EDU) 160)

Dismissal warranted for excessive absences and insubordinate and unbecoming conduct in refusing direct order to submit to drug testing based on reasonable suspicion (93 N.J.A.R.2d (EDU) 121, Pellagatti, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 125)

Drug use: dismissal ordered for second incident of illegal drug use; district's obligation to reasonably accommodate employee satisfied by prior efforts (95 N.J.A.R.2d (EDU) 262, Yanniello, aff'd w/modif. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. unpub. op. Dkt. No. A-3482-96T1, April 2, 1998)

TENURE

- Fraud: Dismissal warranted for intentional acquisition, possession and use of stolen cars, forgery of false bill of sale, obtaining fraudulent registrations for stolen vehicles and failure to inform board of arrest and prosecution status (93 N.J.A.R.2d (EDU) 526, Smith)
- Illegal drug and drug paraphernalia possession constitutes conduct unbecoming a tenured teacher sufficient to warrant dismissal; no entitlement to back pay and emoluments (97:Aug. 20, Reed)
- Marijuana: Arrest for possession of less than 50 grams, absent mitigating circumstances, warranted dismissal despite teacher's good evaluations and contributions; distinguished from Valenti on basis of shorter term of employment, lack of testimonial evidence of exemplary career, and board's position supporting removal (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)
- Marijuana: Guilty plea to 4th degree offense of possession of 64 marijuana plants grown in back yard (93 N.J.A.R.2d (EDU) 516, Lott, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 35)
- Marijuana use and cultivation justified dismissal although teacher had been subsequently rehabilitated (96 N.J.A.R.2d (EDU) 334, Kozic, aff'd St. Bd. w/mod. 96 N.J.A.R.2d (EDU) 345)
- Unbecoming conduct established where payroll supervisor arranged to have no taxes taken from his payroll check (St. Bd. 96 N.J.A.R.2d (EDU) 441, Morton, aff'g and modifying 96 N.J.A.R.2d (EDU) 236)
- Unlawful taking of chair and lying (92 N.J.A.R.2d (EDU) 537, Depasquale, aff'd St. Bd. 93:March 3, aff'd App. Div. unpub. op. (Dkt. No. A-4236-92, March 31, 1994))

TENURE

Withholding of information from board and public disregard of administrative registrative regulations and board policy, and conduct of questionable legality and possible criminality by Superintendent (93 N.J.A.R.2d (EDU) 232, Horowitz)

Excessive absenteeism - custodian (96:May 20, Mc Intyre)

Falsification of grades by teacher deemed unbecoming conduct (97 N.J.A.R.2d (EDU) 446, Phillips)

Forcing student to engage in inappropriate touching and open mouth kissing warrant dismissal (96 N.J.A.R.2d (EDU) 980, Ciufi, aff'd St. Bd. 98:July 1, aff'd App. Div. unpub. op. Dkt. No. A-0412-98T3, Jan. 21, 2000)

Insubordination

Tenured custodian dismissed. Insubordination, neglect of duty (96 N.J.A.R.2d (EDU) 600, Jimenez, aff'd St. Bd. 96:Sept. 4)

Tenured custodian dismissed. Summary judgment. Unsatisfactory conduct, unbecoming conduct, insubordinate conduct (96:April 19, Ratycz)

Tenured janitor/volunteer fireman violated board policy and regulation regarding employee response to fire calls -- insubordination (96 N.J.A.R.2d (EDU) 508, Powers)

Neglect of Duty

Tenured custodian dismissed. Insubordination, neglect of duty (96 N.J.A.R.2d (EDU) 600, Jimenez, aff'd St. Bd. 96:Sept. 4)

Tenured custodian dismissed; neglect of duty (96:April 15, Melendez)

Tenured custodian removed for neglect of duty and excessive absenteeism (97 N.J.A.R.2d (EDU) 27, Issac)

Performance

Continued failure by teacher to maintain discipline in classroom resulted in an unsafe environment in which learning did not occur (95 N.J.A.R.2d (EDU) 13, Rubin, aff'd St. Bd. w/mod. 96:March 6)

TENURE

- Continued failure to prepare and submit lesson plans, disorganization, lack of focus, lack of knowledge of subject area and complete refusal to accept help and support offered by supervisors (91 N.J.A.R.2d (EDU) 48, Wilburn, aff'd St. Bd. 92 N.J.A.R.2d 328, aff'd App. Div. unpub. op. (Dkt. No. A-4663-91T2, April 12, 1993), certif. den. 134 N.J. 480 (1993))
- Custodian's neglect of duties, failure to clean school, insubordination and abuse of sick leave (93 N.J.A.R.2d (EDU) 748, Cox, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 277)
- Custodian properly terminated for poor performance, sexual harassment and unbecoming conduct (96 N.J.A.R.2d (EDU) 364, Purnell)
- Dismissal warranted for failure to stimulate and maintain interest in instrumental music and band programs (89:1749, Gordon, aff'd St. Bd. 89:1766, aff'd App. Div. unpub. op. (Dkt. No. A-2150-89T3, June 7, 1991))
- Dismissal warranted in case of mental incapacity of teacher to perform duties (93 N.J.A.R.2d (EDU) 297, McCoy)
- Failure to answer tenure charges is deemed as an admission as to each of the counts, therefore, dismissal is warranted (97:March 14, Hooper)
- Failure to discipline and control students combined with failure to effectively teach students is unbecoming conduct and warrants dismissal (98:Jan. 26, Loria; aff'd St. Bd. 98: Aug. 5) (See 96 N.J.A.R.2d (EDU) 370, rev'd and remanded St. Bd. 96:June 5)
- Falsification of grades by teacher deemed unbecoming conduct (97 N.J.A.R.2d (EDU) 446, Phillips)
- Incapacity - physical injury preventing fulfillment of job responsibilities (89:1667, Hershkowitz, aff'd St. Bd. 89:1681, aff'd App. Div. unpub. op. Dkt. No. A-1391-89T5, Dec. 3, 1990)

TENURE

Insubordinate conduct is established by the willful and intentional disregard of the lawful and reasonable directives of the duly authorized supervisor (98:Jan. 26, Loria) (See 96 N.J.A.R.2d (EDU) 370, rev'd and remanded St. Bd. 96:June 5)

Neglect of duty - Attendance Officer (96 N.J.A.R.2d (EDU) 703, Deal, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)

Teacher dismissed for contempt and disregard of supervisors (90:790, Bradley, aff'd St. Bd. 91:2521)

Termination of teacher warranted - incapable, chronically absent, incompetent, engaged in sexually offensive behavior (96 N.J.A.R.2d (EDU) 268, Molinaro)

Sexually inappropriate behavior/profanity

Continued, unrepentant pattern of racist and sexist remarks, inappropriate physical contact with students and use of intimidation tactics (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. 512 (1995))

Corporal punishment of students, failure to properly supervise pupils and making improper sexual comments to female students (94 N.J.A.R.2d (EDU) 395, Talley)

Custodian properly terminated for poor performance, sexual harassment and unbecoming conduct (96 N.J.A.R.2d (EDU) 364, Purnell)

Derogatory remarks made to classified student, sexist remarks and inappropriate comments about his personal life made on regular basis warrant dismissal (93 N.J.A.R.2d (EDU) 378, VanGilson, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 630)

Dismissal warranted for charges of sexual misconduct despite lengthy, excellent teaching record (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

TENURE

- Dismissal warranted for unbecoming conduct of improper interaction and sexual contact over several years with student (96 N.J.A.R.2d (EDU) 934, Galla, aff'd St. Bd. 98:March 4)
- Dismissal warranted for using profanity, making sexual, sexist and racist remarks and sleeping regularly in class (92 N.J.A.R.2d (EDU) Sheridan I, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 393) See also St. Bd. 94:Sept. 7, dec. on remand 95 N.J.A.R.2d (EDU) 482, appeal dismissed failure to timely file (96 N.J.A.R.2d (EDU) 142)
- Dismissal warranted given seriousness of engaging in open, blatant sexual conversations with female students (94 N.J.A.R.2d (EDU) 284, Roberts, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 349, aff'd App. Div. 96 N.J.A.R.2d (EDU) 549)
- High school teacher's sexual relationship with student constituted unbecoming conduct - dismissed (97:Aug. 5, Hovington, decision on remand from St. Bd. 97 N.J.A.R.2d (EDU) 419 - rev'g Commissioner decision 97 N.J.A.R.2d (EDU) 168) (See also 98:March 30 as to indemnification)
- Improper sexual contact (91:1381, Cooke, aff'd St. Bd. 92:Jan. 8)
- Inappropriate sexual and romantic comments to female students by guidance counselor warranted dismissal although he was unlikely to engage in such behavior in future (97 N.J.A.R.2d (EDU) 34, Hess)
- Involvement in improper relationship with inmate by teacher at correctional institute subverted discipline and warranted dismissal; teacher failed to prove decision to bring tenure charges motivated by anti-union animus (94 N.J.A.R.2d (EDU) 447, Holmes-Williams)
- Love notes: Dismissal upheld for sending love notes to students (93 N.J.A.R.2d (EDU) 322, Mantone, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 789)

TENURE

Profanity (96 N.J.A.R.2d (EDU) 703, Deal,
aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)
Profanity and threats directed at supervisor
on six occasions constituted
"misbehavior or other offense" under the
statute and warranted dismissal (98:June
3, DeMaio)

Profanity in the classroom directed at
students and staff, spoken in the presence
of students, constituted conduct
unbecoming a teacher, and in combination
with allegations of corporal punishment
and insubordination, were just cause for
removal (96 N.J.A.R.2d (EDU) 170, Pollard,
aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192)

Respondent's
inappropriate sexual relationship or
touching of minor students sufficient to
constitute conduct unbecoming and warrant
dismissal. Matter remanded to OAL for
further proceedings to determine
additional issues raised by Respondent in
his Lieu of Prerogative Writ; further,
matter is transmitted to State Board of
Examiners for appropriate action (97:Aug.
5, Hovington, decision on remand from St.
Bd. 97 N.J.A.R.2d (EDU) 419, remanding
Commissioner 97 N.J.A.R.2d (EDU) 153) (See
also 98:March 30 re: indemnification)

School psychologist who asks special education
student if he can call her and who
expresses attraction to her guilty of
unbecoming conduct - dismissed (97
N.J.A.R.2d (EDU) 104, Marrero, aff'd St.
Bd. 97 N.J.A.R.2d (EDU) 319, aff'd App.
Div. unpublished op. Dkt. No. A-4913-96T3,
March 27, 1998)

Sexual harassment of a
teacher and a student was conduct
unbecoming of a school administrator
warranting dismissal (96 N.J.A.R.2d (EDU)
888, Vicari)

TENURE

Tenured custodian's guilty plea to criminal sexual conduct with his mentally retarded stepdaughter did not result in automatic forfeiture, but constituted unbecoming conduct requiring termination (95 N.J.A.R.2d (EDU) 457, Efferen, aff'g 95 N.J.A.R.2d (EDU) 304, see 96 N.J.A.R.2d (EDU) 842, for 90 day rule opinion, aff'd St. Bd. 12/4/96, award of back pay aff'd App. Div. unpub. op. Dkt. No. A-2680-96T5, Oct. 6, 1997)

Termination of teacher warranted - incapable, chronically absent, incompetent, engaged in sexually offensive behavior (96 N.J.A.R.2d (EDU) 268, Molinaro)

Unbecoming conduct

Chronic and excessive absenteeism constitutes unbecoming conduct (97 N.J.A.R.2d (EDU) 330, Pearson)

Custodian (96:May 20, Mc Intyre)

Dismissal warranted for knowingly participating in a breach of test security (EWT) by possessing and distributing copies of the secure test (97:Dec. 18, Martone, aff'd St. Bd. 98:May 6)

Dismissal warranted for four threatening notes written to superintendent as such actions are so egregious as to prohibit excuse; petitioner however entitled to compensation from the 121st day of suspension until the date of the Commissioner's decision (97:April 28, Lucarelli)

School psychologist who asks special education student if he can call her and who expresses attraction to her guilty of unbecoming conduct - dismissed (97 N.J.A.R.2d (EDU) 104, Marrero, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 319, aff'd App. Div. unpublished op. Dkt. No. A-4913-96T3, March 27, 1998)

TENURE

Tenured custodian. Summary judgment.
Unsatisfactory conduct, unbecoming
conduct, insubordinate conduct (96:April
19, Ratycz)

Tenured janitor/volunteer fireman served as
volunteer fireman while on workers comp
leave - unbecoming conduct (96 N.J.A.R.2d
(EDU) 508, Powers)

Tenure dismissal cases (listed by position)

Attendance Officer (96 N.J.A.R.2d (EDU) 703, Deal,
aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)

Board secretary/business administrator (96 N.J.A.R.2d
(EDU) 793, Colucci)

Clerk (90:March 28, Johnson) (94 N.J.A.R.2d (EDU) 250,
Carson, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 499) (95
N.J.A.R.2d (EDU) 495, Stanley)

Clerk: Tenure charges dismissed, as individual
did not in fact hold the tenurable position of
"clerk"; job responsibilities, which included
analyzing systems operations and diagnosing computer
system problems, were not clerical in nature (96
N.J.A.R.2d (EDU) 120, Dempster)

Correctional institution: Vocational teacher at
Yardville allowed prisoner to escape (90:34, Vaughn,
aff'd St. Bd. 90:46)

Custodian (91:647, Harris) (93 N.J.A.R.2d (EDU) 345,
Riddick, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 619,
aff'd App. Div. unpub. op. Dkt. No. A-0252-93T5, May
13, 1994) (94 N.J.A.R.2d (EDU) 49, Crockett) (94
N.J.A.R.2d (EDU) 163, Caravello, aff'd St. Bd. 94
N.J.A.R.2d (EDU) 304, aff'd App. Div. 95 N.J.A.R.2d
(EDU) 160) (94 N.J.A.R.2d (EDU) 388, Exum) (94:Sept.
19, Selleroli) (95:March 8, Isaac) (95 N.J.A.R.2d
(EDU) 595, Davis) (97 N.J.A.R.2d (EDU) 330, Pearson)

Profanity and threats directed at supervisor
on six occasions

constituted "misbehavior or other offense"
under the statute and warranted dismissal
(98:June 3, DeMaio, aff'd St. Bd. 98: Nov. 4)

Tenure charges against custodian
dismissed where videotape showing custodian
engaged in physical activity was insufficient
to warrant the conclusion that he was
committing fraud against the system (97:Dec.
15, Granato)

Custodian; abandonment of position,
excessive absenteeism, unbecoming conduct (96:May
20, Mc Intyre) (97 N.J.A.R.2d (EDU) 330, Pearson)

TENURE

Custodian; neglect of duty (96:April 12, Melendez)
Custodian; summary judgment; unsatisfactory conduct, unbecoming conduct, insubordinate conduct (96:April 19, Ratycz)
Custodian: Tenure charges dismissed according to settlement agreement where all custodial positions eliminated in favor of private contractor (96:Aug. 9, Dennis) (96:Aug. 9, Lapadura)
Custodian: Tenured custodian removed for neglect of duty and excessive absenteeism (97 N.J.A.R.2d (EDU) 27, Issac)
Guidance counselor (97 N.J.A.R.2d (EDU) 34, Hess)
Industrial Arts Teacher (96 N.J.A.R.2d (EDU) 334, Kozic, aff'd St. Bd. w/mod. 96 N.J.A.R.2d (EDU) 345)
Janitor; dismissed for drinking on job, failure to renew required license and poor work (90:Feb. 28, Talbert)
Janitor; violated board policy and regulations regarding employee response to fire calls - insubordination (96 N.J.A.R.2d (EDU) 508, Powers)
Janitors (91:2386, Viani) (91:1971, Kubica) (92 N.J.A.R.2d (EDU) 537, Depasquale, aff'd St. Bd. 93:March 3, aff'd App. Div. unpub. op. (Dkt. No. A-4236-92, March 31, 1994)) (93 N.J.A.R.2d (EDU) 362, Watson) (93 N.J.A.R.2d (EDU) 345, Riddick, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 619, aff'd App. Div. unpub. op. Dkt. No. A-0252-93T5, May 13, 1994) (93 N.J.A.R.2d (EDU) 748, Cox, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 277) (93 N.J.A.R.2d (EDU) 563, Gwinnett) (94 N.J.A.R.2d (EDU) 580, Ingram) (95 N.J.A.R.2d (EDU) 457, Efferen) (96 N.J.A.R.2d (EDU) 508, Powers) (96 N.J.A.R.2d (EDU) 600, Jimenez, aff'd St. Bd. 96:Sept. 4)
Matron; see settlement agreement for discussion of janitor excessive absence (95:July 17, Johnson) (95:July 18, Jimenez)
Nurse (89:1667, Hershkowitz, aff'd St. Bd. 89:1681, aff'd App. Div. unpub. op. Dkt. No. A-1391-89T5, Dec. 3, 1990)
Payroll supervisor (St. Bd. 96 N.J.A.R.2d (EDU) 441, Morton, aff'g and modifying 96 N.J.A.R.2d (EDU) 236)
Principal (90:648, Schnitzer, appeal dismissed 91:2594) (94 N.J.A.R.2d (EDU) 190, Rucker, aff'd St. Bd. 94:Aug. 3)

TENURE

Sexual harassment of a teacher and a student; Board failed to satisfy burden of proving charges by preponderance of credible evidence; reinstatement with back pay, less mitigation, ordered. (98:July 1, Vicari St. Bd rev'g 96 N.J.A.R.2d (EDU) 888; aff'd App. Div. unpublished opinion Dkt. No. A-7394-97T1 (Nov. 17, 1999)

State-operated school district is not obligated to demote or rehire dismissed principal despite her long record of service in the district (98:April 16, Brownlee, aff'd St. Bd. 99:Feb. 3)

Psychologist - school psychologist who asks special education student if he can call her and who expresses attraction to her guilty of unbecoming conduct - dismissed (97 N.J.A.R.2d (EDU) 104, Marrero, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 319, aff'd App. Div. unpublished op. Dkt. No. A-4913-96T3, March 27, 1998)

Secretary (95 N.J.A.R.2d (EDU) 285, Jones)

Secretary - chronic and excessive absenteeism (96 N.J.A.R.2d (EDU) 800, Latona)

Secretary's tenure charges of insubordination and unbecoming conduct (refusal to complete a work assignment and use of foul language to assistant superintendent) did not warrant dismissal. 120 day suspension and loss of two increments penalty (97 N.J.A.R.2d (EDU) 390, Bohannon)

Special Education teacher (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

Special Education teacher; excessive absenteeism and tardiness due to undisclosed drug addiction (98:March 6, Jones)

Substance abuse counselor (95 N.J.A.R.2d (EDU) 262, Yanniello, aff'd w/modif. St. Bd. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. unpub. op. Dkt. No. A-3482-96T1, April 2, 1998)

Superintendents

Generally (88:221, Napoli, aff'd St. Bd. 88:284, stay den. St. Bd. 89:Feb. 1, aff'd App. Div. unpub. op. Dkt. No. A-2301-88T3, March 2, 1990) (93 N.J.A.R.2d (EDU) 232, Horowitz)

Excessive absences and unbecoming conduct (93 N.J.A.R.2d (EDU) 82, Romanoli, aff'd St. Bd. 93

N.J.A.R.2d (EDU) 87, aff'd App. Div. unpub. op.
Dkt. No. A-2346-92T3, April 13, 1994)

TENURE

Tenure charges did not constitute unbecoming conduct or insubordination, but rather inefficiency (97:Sept. 19, Adams)

Unbecoming conduct (88:221, Napoli, aff'd St. Bd. 88:284, stay den. St. Bd. 89:Feb. 1, aff'd App. Div. unpub. op. Dkt. No. A-2301-88T3, March 2, 1990)

Teachers

Corporal punishment (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192; See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)

Corporal punishment - not proven (96 N.J.A.R.2d (EDU) 636, Kulp)

Corporal punishment; striking a student and use of inappropriate language constituted unbecoming conduct but did not warrant dismissal (96 N.J.A.R.2d (EDU) 756, Trawick)

Corporal punishment, use of profane and inappropriate language proven; dismissal inappropriate (96 N.J.A.R.2d (EDU) 644, Mac Dowell)

Excessive absences (92 N.J.A.R.2d (EDU) 267, Pellecchio, aff'd St. Bd. 92:Nov. 4) (92 N.J.A.R.2d (EDU) 550, Meade-Stephens, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134, aff'd App. Div. unpub. op. Dkt. No. A-3076-92T2) (93 N.J.A.R.2d (EDU) 147, Kacprowicz, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 604, aff'd App. Div. 95 N.J.A.R.2d (EDU) 105) (93 N.J.A.R.2d (EDU) 121, Pellagatti, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 125) (93 N.J.A.R.2d (EDU) 729, Smith, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 317) (94 N.J.A.R.2d (EDU) 190, Rucker, aff'd St. Bd. 94:Aug. 3) (96:Oct. 21, Poulos, remanded back to ALJ for further determinations)

TENURE

- Excessive absences - 234 days over 4 years - just cause for dismissal (96:April 12, Moore)
- Failure to discipline and control students combined with failure to effectively teach students is unbecoming conduct and warrants dismissal (98:Jan. 26, Loria; aff'd St. Bd. 98: Aug. 5) (See 96 N.J.A.R.2d (EDU) 370, rev'd and remanded St. Bd. 96:June 5)
- Falsification of grades by teacher deemed unbecoming conduct (97 N.J.A.R.2d (EDU) 446, Phillips)
- Inappropriate language and striking student constituted unbecoming conduct but did not warrant dismissal (96 N.J.A.R.2d (EDU) 756, Trawick)
- Inappropriate physical intervention, insubordination and excessive absenteeism constitute conduct unbecoming sufficient to warrant dismissal (97:Sept. 17, Lemon, aff'd St. Bd. 98:Feb. 4, aff'd App. Div. unpub. op. Dkt. No. A-4018-97T3, Nov. 4, 1999)
- Incapacity (90:436, Middletown v. Leo, on remand) (93 N.J.A.R.2d (EDU) 297, McCoy) (93 N.J.A.R.2d (EDU) 556, Howard, rev'd St. Bd. 93 N.J.A.R.2d (EDU) 788) (95 N.J.A.R.2d (EDU) 13, Rubin, aff'd w/modif. St. Bd. 96:March 6)
- Incompetency (90:790, Bradley, aff'd St. Bd. 91:2521) (93 N.J.A.R.2d (EDU) 729, Smith, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 317) (95 N.J.A.R.2d (EDU) 13, Rubin, aff'd w/modif. St. Bd. 96:March 6)
- Inefficiency (89:1749, Gordon, aff'd St. Bd. 89:1766, aff'd App. Div. Dkt. No. A-2150-89T3, June 7, 1991) (90:790, Bradley, aff'd St. Bd. 91:2521) (91:1177, Bethea) (91 N.J.A.R.2d (EDU) 48, Wilburn, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 328, aff'd App. Div. unpub. op. (Dkt. No. A-4663-91, April 12, 1993), certif. den. 134 N.J. 480 (1993))
- Insubordinate conduct is established by the willful and intentional disregard of the lawful and reasonable directives of the duly authorized supervisor (98:Jan. 26, Loria; aff'd St. Bd. 98: Aug. 5) (See 96 N.J.A.R.2d (EDU) 370, rev'd and remanded St. Bd. 96:June 5)

TENURE

Insubordination (91 N.J.A.R.2d (EDU) 48, Wilburn, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 328, aff'd App. Div. unpub. op. (Dkt. No. A-4663-91 April 12, 1993), certif. den. 134 N.J. 480 (1993)) (93 N.J.A.R.2d (EDU) 121, Pellagatti, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 125)

Physical education teacher left student unattended in park, left class unattended. Conduct improper but did not warrant dismissal. Forfeiture of 120 days salary (96 N.J.A.R.2d (EDU) 649, Quinones)
Profane and inappropriate language (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192; See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)

Tenured teacher's inappropriate physical contact with students warrants reduction in pay, not termination; inappropriate action provoked by students, not intended to harm them (96 N.J.A.R.2d (EDU) 903, Smith)

Unbecoming conduct

Generally (90:790, Bradley, aff'd St. Bd. 91:2521) (91:1381, Cooke, aff'd St. Bd. 92:Jan. 8) (92 N.J.A.R.2d (EDU) 550, Meade-Stephens, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134, aff'd App. Div. unpub. op. Dkt. No. A-3076-92T2, Jan. 10, 1994) (92 N.J.A.R.2d (EDU) 410, Brady) (92 N.J.A.R.2d (EDU) 399, Courtney) (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)) (93 N.J.A.R.2d (EDU) 387, Harrell, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. 95 N.J.A.R.2d (EDU) 137) (94 N.J.A.R.2d (EDU) 268, Henderek, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 276) (92 N.J.A.R.2d (EDU) 257, Sheridan I, aff'd St. Bd. 92

TENURE

N.J.A.R.2d (EDU) 393) see also St. Bd. 94:Sept. 7, dec. on remand 95 N.J.A.R.2d (EDU) 482, appeal dismissed failure to timely file (96 N.J.A.R.2d (EDU) 142) (93 N.J.A.R.2d (EDU) 378, VanGilson, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 630) (93 N.J.A.R.2d (EDU) 143, Wagner, decision on remand, 93:June 30) (93 N.J.A.R.2d (EDU) 322, Mantone, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 789) (93 N.J.A.R.2d (EDU) 121, Pellagatti, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 125) (93 N.J.A.R.2d (EDU) 516, Lott, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 35) (93 N.J.A.R.2d (EDU) 526, Smith) (93 N.J.A.R.2d (EDU) 729, Smith, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 317) (94 N.J.A.R.2d (EDU) 284, Roberts, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 349, aff'd App. Div. 96 N.J.A.R.2d (EDU) 549) (94 N.J.A.R.2d (EDU) 395, Talley) (94 N.J.A.R.2d (EDU) 447, Holmes-Williams) (95 N.J.A.R.2d (EDU) 164, Clark, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 190) (95 N.J.A.R.2d (EDU) 206, DiPillo, St. Bd. aff'g w/modif. 93 N.J.A.R.2d (EDU) 13) (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192; See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7) (96 N.J.A.R.2d (EDU) 644, MacDowell) (96 N.J.A.R.2d (EDU) 756, Trawick) (96 N.J.A.R.2d (EDU) 934, Galla, aff'd St. Bd. 98:March 4) (96 N.J.A.R.2d (EDU) 980, Ciufi, aff'd St. Bd. 98:July 1; aff'd App. Div. unpub. op. Dkt. No. A-0412-98T3, Jan. 21, 2000)

Inappropriate sexual and romantic comments to female students by guidance counselor warranted dismissal although he was unlikely to engage in such behavior in future (97 N.J.A.R.2d (EDU) 34, Hess)

Teacher suspended for 60 days without pay for
conduct unbecoming - sexually harassing
co-worker (96 N.J.A.R.2d (EDU) 442)
Verbal abuse and improper physical contact
constituted unbecoming conduct, but did
not warrant dismissal due to mitigating
circumstances (96 N.J.A.R.2d (EDU) 903,
Smith)

TENURE

Tenure dismissal cases (listed by specific charges)

- Abandonment of position (96:May 20, McIntyre)
- Alcoholism: dismissal of recovering alcoholic violates LAD (93 N.J.A.R.2d (EDU) 788, Howard, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 556)
- Chronic and excessive absenteeism coupled with alleged permanent, total disability on psychiatric basis, warrants dismissal (94 N.J.A.R.2d (EDU) 190, Rucker)
- Chronic and excessive absenteeism; secretary (96 N.J.A.R.2d (EDU) 800, Latona)
- Chronic tardiness and excessive absences warrants dismissal (92 N.J.A.R.2d (EDU) 550, Meade-Stephens, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 134, aff'd App. Div. unpub. op. (Dkt. No. A-3076-92T2, Jan. 10, 1994))
- Corporal punishment and humiliation of student; forfeiture of six months salary and salary increment for one year (95 N.J.A.R.2d (EDU) 206, DiPillo, St. Bd. aff'g w/modif. 93 N.J.A.R.2d (EDU) 13)
- Corporal punishment and verbal abuse of students; dismissal ordered (92 N.J.A.R.2d (EDU) 399, Courtney)
- Corporal punishment; grabbing and pushing a student constitutes corporal punishment and warrants loss of salary for 120 days (90:1092, Tenney, aff'd w/modif. St. Bd. 91:2597)
- Corporal punishment - not proven (96 N.J.A.R.2d (EDU) 636, Kulp)
- Corporal punishment; placing pupil in closest sufficiently flagrant to constitute "single incident warranting dismissal even though other allegations substantiated (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192; See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)

TENURE

- Corporal punishment; profane and inappropriate language and insubordination in combination sufficient for dismissal (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192; See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)
- Corporal punishment, profane and inappropriate language proven; conduct serious and unprofessional but dismissal not appropriate (96 N.J.A.R.2d (EDU) 644, Mac Dowell)
- Corporal punishment; striking student and use of inappropriate language constituted unbecoming conduct but did not warrant dismissal. Increments withheld and 120 days salary forfeited (96 N.J.A.R.2d (EDU) 756, Trawick)
- Corporal punishment, unjustified physical contact, use of profane language, insubordination and falling asleep on duty warrant dismissal (93 N.J.A.R.2d (EDU) 387, Harrell, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 694, aff'd App. Div. 95 N.J.A.R.2d (EDU) 137)
- Diversion of public money for personal use (96 N.J.A.R.2d (EDU) 793, Colucci)
- Drug use: dismissal ordered for second incident of illegal drug use; district's obligation to reasonably accommodate employee satisfied by prior efforts (95 N.J.A.R.2d (EDU) 262, Yanniello, aff'd St. Bd. w/modif. 97 N.J.A.R.2d (EDU) 250, aff'd App. Div. unpub. op. Dkt. No. A-3482-96T1, April 2, 1998)
- Excessive absence; dismissal ordered (91:940, White, St. Bd. dismissed appeal 91:964) (91:1103, Green) (91:2386, Viani) (92 N.J.A.R.2d (EDU) 267, Pellecchio, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 30) (93 N.J.A.R.2d (EDU) 362, Watson) (93 N.J.A.R.2d (EDU) 147, Kacprowicz, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 604, aff'd App. Div. 95 N.J.A.R.2d (EDU) 105) (93 N.J.A.R.2d (EDU) 121, Pellagatti, 93 N.J.A.R.2d (EDU) 125) (94 N.J.A.R.2d (EDU) 49, Crockett) (94 N.J.A.R.2d (EDU) 388, Exum) (96 N.J.A.R.2d (EDU) 703, Deal, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708) (96:April 12, Moore) (96:May 20, McIntyre)
- Excessive absence: dismissal reversed and remanded back to ALJ (96:Oct. 21, Poulos)

TENURE

- Excessive absence, lateness and poor job performance
warrant dismissal (94 N.J.A.R.2d (EDU) 580, Ingram)
- Excessive absenteeism (93 N.J.A.R.2d (EDU) 82, Romanoli,
aff'd St. Bd. 93 N.J.A.R.2d (EDU) 87, aff'd App.
Div. unpub. op. Dkt. No. A-2346-92T3, Apr. 13, 1994)
- Excessive absenteeism and excessive tardiness
warrant dismissal despite employee's drug
addiction; LAD obligation does not come into play
where (1) employee did not disclose drug addiction,
and (2) disability could not be reasonably
accommodated (98:March 6, Jones)
- Excessive absenteeism and incapacity due to alcoholism;
dismissal prohibited (93 N.J.A.R.2d (EDU) 788,
Howard, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 556)
- Excessive absenteeism, leaving work early and
insubordination warrant dismissal (93 N.J.A.R.2d
(EDU) 345, Riddick, aff'd St. Bd. 93 N.J.A.R.2d
(EDU) 619, aff'd App. Div. unpub. op. (Dkt. No. A-
0252-93T5, May 13, 1994))
- Excessive absenteeism over period of several years
warrants dismissal despite employee's drug problem;
LAD obligation satisfied by prior leave of absence
(95 N.J.A.R.2d (EDU) 285, Jones)
- Excessive absenteeism - tenured custodian removed for
neglect of duty and excessive absenteeism (97
N.J.A.R.2d (EDU) 27, Issac)
- Failure to discipline and control students
combined with failure to effectively teach students
is unbecoming conduct and warrants dismissal
(98:Jan. 26, Loria, aff'd St. Bd. 98: Aug. 5) (See 96
N.J.A.R.2d (EDU) 370, rev'd and remanded St. Bd.
96:June 5)
- Failure to report to work (89:1667, Hershkowitz,
aff'd St. Bd. 89:1681, aff'd App. Div. unpub. op.
(Dkt. No. A-1391-89T5, Dec. 3, 1990))
- Failure to stimulate and maintain interest in
instrumental music and band programs (89:1749,
Gordon, aff'd St. Bd. 89:1766, aff'd App. Div. (Dkt.
No. A-2150-89T3, June 7, 1991))
- Falsification of grades by teacher deemed unbecoming
conduct (97 N.J.A.R.2d (EDU) 446, Phillips)
- Falsified daily reports (96 N.J.A.R.2d (EDU) 703, Deal,
aff'd St. Bd. 96 N.J.A.R.2d (EDU) 708)

TENURE

- Forgery; single act of forgery of supervisor's signature on school stationery sufficiently flagrant to warrant dismissal (90:926, Christ, rev'd St. Bd. 91:2531)
- Foul and offensive language (88:221, Napoli, aff'd St. Bd. 88:284, stay denied St. Bd. 89:Feb. 1, aff'd App. Div. unpub. op. (Dkt. No. A-2301-88T3, March 2, 1990))
- Gambling; mandatory penalty imposed (90:648, Schnitzer, appeal dismissed 91:2594)
- Giving love poem and kiss to student constituted unbecoming conduct (97 N.J.A.R.2d (EDU) 34, Hess)
Inappropriate language and striking student constituted unbecoming conduct but did not warrant dismissal. Increments withheld and 120 days salary forfeited (96 N.J.A.R.2d (EDU) 756, Trawick)
- Inappropriate sexual and romantic comments to female students by guidance counselor warranted dismissal although he was unlikely to engage in such behavior in future (97 N.J.A.R.2d (EDU) 34, Hess)
- Incapacity: Delusional disorder with poor prognosis for recovery; dismissal ordered (90:436, Middletown v. Leo, on remand)
- Incapacity due to mental illness; dismissal ordered (93 N.J.A.R.2d (EDU) 297, McCoy)
- Incompetency not proven where teacher's ineffectiveness was demonstrated only over a limited period of total service and, in light of previous favorable evaluations, it could not be concluded that providing 90-day improvement period would be futile (90:790, Bradley, aff'd St. Bd. 91:2521)
- Incompetency requires a finding that the teacher is so lacking in ability that providing a 90-day improvement period would be a useless exercise (90:790, Bradley, aff'd St. Bd. 91:2521) (96 N.J.A.R.2d (EDU) 441, Morton, St. Bd. aff'g w/modif. 96 N.J.A.R.2d (EDU) 236)
Insubordination (96 N.J.A.R.2d (EDU) 600, Jimenez, aff'd St. Bd. 96:Sept. 4)
- Insubordination; continued violation of board policy and regulation regarding response to fire calls (96 N.J.A.R.2d (EDU) 508, Powers)

TENURE

Insubordination; secretary's tenure charges of insubordination and unbecoming conduct (refusal to complete a work assignment and use of foul language to assistant superintendent) did not warrant dismissal. 120 day suspension loss of two increments penalty (97 N.J.A.R.2d (EDU) 390, Bohannon)

Leaving student unattended in park and leaving class unattended; improper conduct but did not warrant dismissal (96 N.J.A.R.2d (EDU) 649, Quinones)

Neglect of duty (96 N.J.A.R.2d (EDU) 600, Jimenez, aff'd St. Bd. 96:Sept. 4) (96:April 12, Melendez) (97 N.J.A.R.2d (EDU) 27, Issac)

Physical contact with students - tenured teacher's inappropriate physical contact with student warrants reduction in pay, not termination; inappropriate action provoked by students, not intended to harm them (96 N.J.A.R.2d (EDU) 903, Smith)

Profane and inappropriate language, corporal punishment proven; conduct serious and unprofessional but dismissal not appropriate (96 N.J.A.R.2d (EDU) 644, Mac Dowell)

Reduction invalid where high school principal is transferred as principal to elementary school; contravention of tenure rights (97 N.J.A.R.2d (EDU) 96, Fedor)

School psychologist who asks special education student if he can call her and who expresses attraction to her guilty of unbecoming conduct - dismissed (97 N.J.A.R.2d (EDU) 104, Marrero, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 319, aff'd App. Div. unpublished op. Dkt. No. A-4913-96T3, March 27, 1998)

Sexual harassment of a teacher and a student; Board failed to satisfy burden of proving charges by preponderance of credible evidence; reinstatement with back pay, less mitigation, ordered (98:July 1, Vicari St. Bd rev'g 96 N.J.A.R.2d (EDU) 888, aff'd App. Div. unpublished opinion Dkt. No. A-7394-97T1 (Nov. 17, 1999)

Sexual harassment - teacher suspended for 60 days without pay for conduct unbecoming - sexually harassing co-worker (96 N.J.A.R.2d (EDU) 442, Ash)

Unbecoming conduct (96:May 20, McIntyre)

Unbecoming conduct - giving love poem and kiss to student
constituted unbecoming conduct (97 N.J.A.R.2d (EDU)
34, Hess)

TENURE

Unbecoming conduct: improper interaction and sexual contact warrant dismissal (96 N.J.A.R.2d (EDU) 934, Galla, aff'd St. Bd. 98:March 4)

Unbecoming conduct; serving as volunteer fireman while on workers comp leave (96 N.J.A.R.2d (EDU) 508, Powers)

Use of profane language, unjustified physical contact with pupils, dereliction of duties and insubordination warrant dismissal however, incompetency not established (St. Bd. 96:March 6, aff'g w/mod. 95 N.J.A.R.2d (EDU) 13, Rubin)

Inefficiency and incompetency, distinguished (90:790, Bradley, aff'd St. Bd. 91:2521) (St. Bd. 96:March 6, aff'g w/mod. 95 N.J.A.R.2d (EDU) 13, Rubin)

State-operated school district is not obligated to demote or rehire dismissed principal despite her long record of service in the district (98:April 16, Brownlee, aff'd St. Bd. 99:Feb. 3)

Inefficiency and insubordination in continued failure to prepare and submit lesson plans as directed by principal, disorganization, lack of focus and lack of knowledge of subject area; dismissal ordered (91 N.J.A.R.2d (EDU) 48, Wilburn, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 328, aff'd App. Div. unpub. op. (Dkt. No. A-4663-91, April 12, 1993))

Inefficiency charges properly dismissed because board failed to provide assistance and guidance to correct deficiencies as required by 18A:6-11 (90:1092, Tenney, aff'd w/modif. St. Bd. 91:2597)

Inefficiency: Dismissal warranted in light of continued poor performance and refusal to accept all support and assistance offered (91:1177, Bethea)

Inefficiency: Dismissal warranted when clerk showed no improvement in 15 of 19 noted deficiencies after 90 day improvement period (94 N.J.A.R.2d (EDU) 250, Carson, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 499)

Inefficiency: Failure to stimulate and maintain interest in instrumental music and band programs (89:1749, Gordon, aff'd St. Bd. 89:1766, aff'd App. Div. unpub. op. Dkt. No. A-2150-89T3, June 7, 1991)

Inefficiency: While record could support a finding of inefficiency, such charge could not be sustained where notice and 90-day improvement period were not provided (90:790, Bradley, aff'd St. Bd. 2521) (96 N.J.A.R.2d (EDU) 441, Morton, St. Bd. aff'g w/modif. 96 N.J.A.R.2d (EDU) 236)

TENURE

- Insubordinate conduct is established by the willful and intentional disregard of the lawful and reasonable directives of the duly authorized supervisor (98:Jan. 26, Loria, aff'd St. Bd. 98: Aug. 5) (See 96 N.J.A.R.2d (EDU) 370, rev'd and remanded St. Bd. 96:June 5)
- Insubordination; dismissal warranted (93 N.J.A.R.2d (EDU) 121, Pellagatti, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 125)
- Insubordination, in combination with corporal punishment and profane and inappropriate language charges; dismissal warranted (96 N.J.A.R.2d (EDU) 170, Pollard, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 192; See also, request by pro se litigant for extension to file brief in support of appeal of revocation of certificate due to inability to obtain attorney and to extenuating circumstances denied, appeal dismissed for failure to perfect St. Bd. 98: Oct. 7)
- Invasion of privacy: Dismissal warranted where teacher disseminated sensitive information about private life of assistant superintendent (90:1599, Charlton, motion to supplement record denied St. Bd. 91:2527, aff'd St. Bd. 91:2528)
- Neglect, insubordination and abuse of sick leave (93 N.J.A.R.2d (EDU) 748, Cox, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 277)
- Other just cause: Teacher at correctional institution allowed prisoner to escape (90:34, Vaughn, aff'd St. Bd. 90:46)
- Racial slurs (90:Jan. 23, L.G.)
- Severe depression (95 N.J.A.R.2d (EDU) 495, Stanley)
- Sexual harassment and covering up similar behavior of subordinate (95:January 11, Holcroft)
- Sexually abusive behavior with male students warrants dismissal (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)
- Sexually inappropriate behavior - giving love poem and kiss to student constituted unbecoming conduct (97 N.J.A.R.2d (EDU) 34, Hess)
- Teacher suspended for 60 days without pay for conduct unbecoming - sexually harassing co-worker (96 N.J.A.R.2d (EDU) 442, Ash)
- Tenured teacher's inappropriate physical contact with student warrants reduction in pay, not termination; inappropriate action provoked by students, not

intended to harm them (96 N.J.A.R.2d (EDU) 903,
Smith)

TENURE

Unbecoming conduct in forcing student to inappropriately touch and kiss teacher (96 N.J.A.R.2d (EDU) 980, Ciufi, aff'd St. Bd. 98:July 1; aff'd App. Div. unpub. op. Dkt. No. A-0412-98T3, Jan. 21, 2000)

Unbecoming conduct - secretary's tenure charges of insubordination and unbecoming conduct (refusal to complete a work assignment and use of foul language to assistant superintendent) did not warrant dismissal. 120 day suspension and loss of 2 increments penalty (97 N.J.A.R.2d (EDU) 390, Bohannon)

Verbal abuse and improper physical contact constituted unbecoming conduct, but did not warrant dismissal due to mitigating circumstances (96 N.J.A.R.2d (EDU) 903, Smith)

Transfer

Board violated the tenure and seniority rights of petitioners, tenured principals, when it transferred and reassigned them to the positions of vice principal and department chairpersons without their consent (94:Sept. 4, Bush)

Veteran's Tenure Act

Notice and hearing are not required under Veteran's Tenure Act before abolishment of position (96 N.J.A.R.2d (EDU) 20, Wollman, rev'd on other grounds St. Bd. 98:Jan. 7)

TESTING FEES

TESTS

THOROUGH AND EFFICIENT

Board did not seek its obligation to provide T & E to "distractible" students placed in open classroom setting where parents refused to have CST evaluate student (89:1366, K.M., dismissed St. Bd. 89:1393, dismissed App. Div. unpub. op. Dkt. No. A-1181-89T1, April 16, 1990)

CEIFA unconstitutional as applied to special needs districts; Demonstrably Effective Program Aid and Early Childhood Program Aid insufficient to permit special needs districts to implement programs consistent with education clause; CEIFA violates education clause for failure to address problem of dilapidated, unsafe and overcrowded facilities, funding parity for special needs districts ordered as interim relief pending legislative solution. Abbott v. Burke (IV), 149 N.J. 145 (1997).

THOROUGH AND EFFICIENT

Commissioner grants order to show cause, and orders removal of all fifth grade students from Atlantic City Albany Avenue Middle School, as health, safety, security, supervision and other concerns prevent district from providing T&E to such pupils in that facility (97:Nov. 19, Sherry, stay pending appeal denied 97:Nov. 25, appeal dismissed as moot St. Bd. 98:June 3)

DOE justified reduction of state aid (\$274,273) where board had received \$925,000 donation from municipality (96 N.J.A.R.2d (EDU) 867, Lacey, aff'd St. Bd. 96:Dec. 4)

Educational success cannot be expected to be realized unless DOE and Commissioner identify and implement the special supplemental program and services needed by children in the special needs districts. (Abbott v. Burke (III), 136 N.J. 444 (1994), aff'g Chancery Div. unpub. op. Dkt. No. 91-C-00150, Aug. 31, 1993)

Elementary school reform and full-day kindergarten plans comported with constitutional guarantee of thorough and efficient education; special needs districts' implementation of half-day preschool programs for three and four year olds met funding statute requirements and was within authority of Commissioner to order; individual school districts authorized to request and obtain necessary resources to provide on-site health and social services and adequate security based on demonstrated need; Commissioner authorized to implement supplemental technology programs; Commissioner to provide for summer school, after-school and school nutrition programs based on demonstrated need; Commissioner to approve requested art, music and special education programs based on demonstrated need; school districts required to complete enrollment projections and long-range facilities plans by January 1999 Abbott v. Burke (V), 153 N.J. 480 (1998).

Monies for newly vacant teaching positions and increased special education needs necessary for T & E (96 N.J.A.R.2d (EDU) 95, Long Branch)

Public School Education Act of 1975, (Ch. 212) held unconstitutional as applied to poorer urban districts; State must ensure that educational funding in these districts is substantially equal to that of property-rich districts (Abbott v. Burke, (II), 119 N.J. 287 (1990), rev'g St. Bd. 89:1008, aff'g 89:234) holding reaffirmed Abbott v. Burke III, 136 N.J. 444 (1994) aff'g Chancery Div. unpub. op. Dkt. No. 91-C-00150, Aug. 31, 1993)

THOROUGH AND EFFICIENT

- QEA fails to assure the parity of expenditures between special needs and affluent districts mandated by Abbott II; "substantial equivalence" must be achieved by 1997-98, along with provision for the special educational needs of students in special needs districts (Abbott v. Burke (III)), 136 N.J. 444 (1994), aff'g Chancery Division unpub. op. Dkt. No. 91-C-00150, Aug. 31, 1993)
- QEA's design for achieving parity depends fundamentally on discretionary action of the executive and legislative branches; statute fails to guarantee adequate funding for special needs districts. (Abbott v. Burke (III)), 136 N.J. 444 (1994), aff'g Chancery Div. unpub. op. Dkt. No. 91-C-00150, Aug. 31, 1993)
- The Constitution of the State of New Jersey requires the Legislature to provide for T & E (96 N.J.A.R.2d (EDU) 111, Lakeland Regional)
- The Legislature, by way of statutory scheme, has delegated the responsibility for providing a thorough and efficient system of education to local boards of education (96 N.J.A.R.2d (EDU) 95, Long Branch) (96 N.J.A.R.2d (EDU) 101, Lakeland Regional)

TORTS

- (See also "Indemnification" and "Workers Compensation" this index)
- Claims against board, except those which accrued within 90 days prior to filing notice of claim, were barred. Russo Farms v. Vineland Bd. of Ed., 280 N.J. Super. 320 (App. Div. 1995) aff'd in part, rev'd and remanded in part, 144 N.J. 84 (1996)
- Defamation action
- Punitive damage award of \$200,000 was ordered against mayoral candidate for defamatory published campaign materials (libel). Newman v. Delahunty, 293 N.J. Super. 469 (1996).
- School officials not negligent in failing to supervise publication of photos alleged to be defamatory; publication was not defamatory and could not have been prevented because of First Amendment constraints (Salek, 255 N.J. Super. 355 (App. Div. 1992))
- Fact that architect and contractor never corrected problem in construction of school did not render their alleged negligence a continuing tort to toll statute of limitation. Russo Farms v. Vineland Bd. of Ed., 280 N.J. Super. 320 (App. Div. 1995) aff'd in part, rev'd and remanded in part, 144 N.J. 84 (1996)

TORTS

New Jersey Tort Claims Act

Immunity - CST not liable when using discretion to place child in day school rather than more restrictive residential facility. Ludlow v. City of Clifton, 305 N.J. Super. 308 (App. Div. 1997), certif. den. 153 N.J. 51 (1998)

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)

Minor who was sexually molested in swimming pool by volunteer instructor in board-sponsored swim program, failed to establish Tort Claims Act claim against board. C.P. v. Piscataway Bd. of Ed., 293 N.J. Super. 421 (1996).

Student has no cause of action against board under Tort Claims Act for attorney's fees he might incur in defending criminal or civil suit by another student whom he allegedly injured, even if incident would not have occurred but for board's inadequate supervision (Tryanowski, 274 N.J. Super. 265 (Law Div. 1994))

Trial judge may first analyze viability of claim under Tort Claims Act in deciding whether to grant leave to file a late notice of claim (Tryanowski, 274 N.J. Super. 265 (Law Div. 1994))

Substantial completion of construction of school occurred when certificate of occupancy was issued and architect certified to owner that building was substantially completed. Russo Farms v. Vineland Bd. of Ed., 280 N.J. Super. 320 (App. Div. 1995) aff'd in part, rev'd and remanded in part, 144 N.J. 84 (1996)

Sufficient foundation for State Board's discretionary determination that removal of local board and creation of state operated district was necessary for T & E. Contini v. Bd. of Ed. of Newark, 286 N.J. Super. 108 (App. Div. 1995), certif. den. 145 N.J. 372, aff'g St. Bd. 96 N.J.A.R.2d (EDU) 220, aff'g Commissioner 96 N.J.A.R.2d (EDU) 196.

Ten year statute of response for bringing action to recover damages for deficiency in design, planning, supervision or construction of improvement to real property commences with substantial completion. Russo Farms v. Vineland Bd. of Ed., 280 N.J. Super. 320 (App. Div. 1995) aff'd in part, rev'd and remanded in part, 144 N.J. 84 (1996)

TRANSFERS

(See also "Principals", "Pupils - Admissions" and "Teachers" this index)

Athletic Director position was not abolished where newly-created position of Director of Athletics and Activities encompassed the same duties as the Athletic Director position (96 N.J.A.R.2d (EDU) 861, Connor, settlement approved St. Bd. 97 N.J.A.R.2d (EDU) 255)

Board inappropriately transferred tenured social studies teacher with superior business experience into new position of Teacher Specialist for Business and Industry Liaison; violated tenure and seniority rights of three RIF'd teachers (90:1580, Lewis)

Board refusal to return teacher to classroom teaching position after her voluntary transfer to non-tenured LDT/C position is not violation of her tenure rights (94 N.J.A.R.2d (EDU) 194, DeFrehn, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 326)

Board violated the tenure and seniority rights of petitioners, tenured principals, when it transferred and reassigned them to the positions of vice principal and department chairpersons without their consent (94:Sept. 4, Bush)

Involuntary transfer of tenured teacher from position within scope of her instructional certificate to separately tenurable position within scope of her educational services certificate was violative of her statutory tenure rights (94 N.J.A.R.2d (EDU) 167, Mustillo, settlement approved 93:Dec. 14)

Notice - Curriculum specialist not entitled to 60 days notice of abolition of position and transfer to teaching position (96 N.J.A.R.2d (EDU) 688, Allen)

Petitioner's assignment to teach one algebra class per day (under his instructional certificate), while still maintaining his position as guidance counsel (under his educational services certificate) does not constitute a "transfer" from one position to another; particularly where petitioner remains in a full-time counseling position and has suffered no loss in status or pay (97 N.J.A.R.2d (EDU) 435, Kartan, rev'd St. Bd. 98:May 6, aff'd App. Div. unpub. op. Dkt. No. A-5978-97T1, June 16, 1999)

Sending-receiving districts

N.J.S.A. 18A:28-6.1 requires that teachers transferred to a receiving district upon the closure of sending district's school are entitled to have their prior service in sending district considered in establishing level of compensation, including longevity payments. Union could not bargain away the teachers' statutory rights to full credit for such prior service. Bd. of Ed. v. Buena Regional, 300 N.J. Super. 415 (App. Div. 1997)

TRANSFERS

Transfer of tenured clerk resulting from good faith abolition of former position to position with lower monthly pay does not constitute impermissible reduction in salary under N.J.S.A. 18A:7-2 (95 N.J.A.R.2d (EDU) 585, Casey, rev'g 94 N.J.A.R.2d (EDU) 187)

TRANSPORTATION

Board decision not to move bus stop was not arbitrary, capricious or an abuse of its discretion where bus stop met state safety requirements (95 N.J.A.R.2d (EDU) 526, Handel)

Board did not act improperly when it entered into agreement with ESC to provide transportation services to regular education students (98:March 12, Delaware Valley Regional Education Association)

Board policy precluding large school buses from traversing dead-end roads not arbitrary, capricious, unreasonable nor applied in discriminatory manner (90:1380, Mandaglio)

Board properly exercised its discretionary authority to deny courtesy busing to student who did not face hazardous walking route (90:1562, Soobrian)

Board refusal to reestablish former bus stop was arbitrary and capricious (93 N.J.A.R.2d (EDU) 798, Peary, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 167)

Board's decision not to extend minibus service to petitioners was arbitrary and capricious (97 N.J.A.R.2d (EDU) 416, Shrewsbury, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 795)

Contracts

Bidding; award of transportation contract to company that could not conform to specifications was ultra vires act; no need to rescind contracts board never legally entitled to award (92 N.J.A.R.2d (EDU) 635, Hudson County Transport)

No relaxation of 90-day rule warranted (96:March 8, J.R. Transportation)

Courtesy busing for students who live more than one mile from school within discretion of board (92 N.J.A.R.2d (EDU) 655, Buonocore)

Decision as to how mandated or discretionary pupil transportation is provided is within board's discretion (92:Sept. 23, Ewing)
Emergent relief granted. Board required to provide round trip transportation to MAST program for newly resident student. MAST legislation so provides. Commissioner agrees after full hearing (96 N.J.A.R.2d (EDU) 775, K.F.)

TRANSPORTATION

Failure to seek county superintendent's approval of the necessity, cost and method of proposed transportation prior to purchasing new buses as required by N.J.S.A. 18A:58-7 rendered board ineligible for State aid for transportation (91:656, Hillsborough, aff'd St. Bd. 91:669)

Private school pupils

Board directed to establish bus stop for non-public student or pay aid in lieu of if cost exceeds statutory amount 18A:39-1(a) (97 N.J.A.R.2d (EDU) 414, R.D., rev'g Commissioner 96 N.J.A.R.2d (EDU) 481)

Denial was proper; calculation included school driveway although technically on private property (90:532, Nelson, aff'd St. Bd. 90:542, aff'd 246 N.J. Super. 467 (App. Div. 1991))

Public school board is obligated to provide transportation or payment in lieu of transportation to students who attend non-profit private schools if the public school board is statutorily obligated to provide transportation or payment in lieu of for public school students (1996 S.L.D. (Aug. 7) T.J.F., rev'g 95 N.J.A.R.2d (EDU) 501, aff'd St. Bd. 97:Dec. 3, aff'd App. Div. unpub. op. Dkt. No. A-3032-97T5, Feb. 17, 1999)

Safe travel to and from stops is municipal function. Commissioner found that the board did not act in bad faith where public school students were not forced to walk on unsafe county highways, as the nonpublic pupils were (96 N.J.A.R.2d (EDU) 481, R.D., rev'd St. Bd. 97 N.J.A.R.2d (EDU) 414))

Provision of safe conditions to and from bus stops was municipal function (97 N.J.A.R.2d (EDU) 416, Shrewsbury, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 795)

Public school pupils

Although board has no obligation to seek out safest route for for students, distance via route selected must be measured along existing sidewalks and marked crosswalks (93 N.J.A.R.2d (EDU) 701, Nichols, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 277, aff'd App. Div. 95 N.J.A.R.2d (EDU) 158)

Distances are to be measured door-to-door, along a regular route, by road, not radial miles (90:532, Nelson, aff'd St. Bd. 90:542, aff'd 246 N.J. Super. 467 (App. Div. 1991))

Pedestrian crosswalk over railroad tracks where a crossing guard is provided before and after school and access is limited when school is not in session constitutes a route

along "public roadways or public walkways" (91:58,
Mangieri)

TRANSPORTATION

Pedestrian extension walkway maintained by Township constitutes public walkway and may be used to measure remoteness (Wayne v. Kraft, 139 N.J. 597 (1995), rev'g 274 N.J. Super. 211 (App. Div. 1994), rev'g 92 N.J.A.R.2d (EDU) 393, aff'g 92 N.J.A.R.2d (EDU) 111)

Pupils who live within two miles of school not entitled to busing under N.J.S.A. 18A:39-1, even if route is dangerous; safety conditions of roadways are responsibility of municipality, not board (93 N.J.A.R.2d (EDU) 162, Potter)

Use of the word "public" in N.J.A.C. 6:21-1.3(b) describes commonality and habitualness of usage for purposes of pupil safety and not strictly ownership (90:532, Nelson, aff'd St. Bd. 90:542, aff'd 246 N.J. Super. 467 (App. Div. 1991))

Rear entrance of school is public entrance properly utilized in measuring distance to determine eligibility for courtesy busing (92 N.J.A.R.2d (EDU) 655, Buonocore)

Special education pupil: Emergent relief granted and board ordered to transport special education student, who received no transportation services or home instruction, from residence to regional day school at district's expense (94:Aug. 9, C.M.)
Transportation "to and from school" includes transportation to and from extracurricular and athletic activities (97:Sept. 22, Lakeland Regional, aff'd St. Bd. 98:March 4)

TREASURER OF SCHOOL MONIES

TUITION

(See also "Pupils", "Sending-Receiving Relationships" and "Special Education" this index)

Appeal of settlement dismissed for failure to file within statutory time limit; settlement terms to pay tuition remain valid (93:Dec. 23, Rutherford, aff'd St. Bd. 94:Aug. 3)

Board may not charge tuition for four-year olds enrolled in two-year kindergarten program supported by state aid (St. Bd. 96:December 4, Herron, aff'g on other grounds 96 N.J.A.R.2d (EDU) 167) (See 94:Oct. 24, Herron)

Board not responsible for educational expenses of 21-year-old pupil in a correctional facility because he had "aged out" of entitlement to free public education (98:May 22, Morris Hills)

TUITION

- Despite the wording of N.J.S.A. 18A:38-1(b)(1), the court may use its equitable powers to limit tuition to exclude the period of time the district permitted the students to attend school despite having notice of the students non-domiciliary status (97:Jan. 23, Belleville, motion granted, St. Bd. 97:May 7 and reversed St. Bd. 98:April 1)
- District entitled to reimbursement of tuition for entire period of ineligible attendance despite district's initial two-year acceptance of pupils into the system (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)
- District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited (98:May 26, Livingston)
- Even cost of life insurance policy allowed (90:276, Pinelands, rev'd St. Bd. 90:286)
- Neither the severance of a de facto sending-receiving relationship nor past practice of previous boards entitled parent who sent child to other than the designated high school to reimbursement of tuition. Parent did not demonstrate the child's legal entitlement to such attendance nor the district's abuse of discretion in refusing to pay tuition to the other high school (98:April 27, E.F.)
- New York private school for handicapped (receiving school) barred by 90 day rule from challenging New Jersey's tuition rate (89:2572, Mt. Pleasant, dismissed for failure to exhaust administrative remedies App. Div. unpub. op. (Dkt. No. A-2180-89T1, Nov. 9, 1990))
- Parent assessed back tuition for children's attendance at schools outside her district of residence (90:July 9, Pennsauken)
- Parent who contracted to pay private school tuition for entire school year was liable for payment even though child withdrew from program after one month (Princeton Montessori Soc., 248 N.J. Super. 474 (App. Div. 1991), certif. denied, 127 N.J. 545 (1991))
- Parents must reimburse district for children's tuition for time period when family was not domiciled in district due to construction problems with their new home (95 N.J.A.R.2d (EDU) 582, Livingston, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 585)
- Private school for disabled children had to refund portion of state tuition received for failure to comply with 180 instructional day mandate (95 N.J.A.R.2d (EDU) 487, Somerset Hills School, Inc.)

TUITION

Sending-receiving district tuition dispute settled on remand, after rejection of prior settlement that violated statute prohibiting tuition rate in excess of actual cost per pupil (97:Dec. 12, Ho-Ho-Kus)

Settlement for tuition reimbursement (95:February 6, J.S.)

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

State Facilities Planning Act, N.J.S.A. 18A:17B-1, et seq., where pupil with educational disability, whose parent was homeless, was residing in institution, private-school tuition to be paid by district of residence, i.e., present district of residence of parent with whom pupil last lived. N.J.S.A. 18A:7B-12. Remanded by Commissioner to determine whether DYFS's placement outside district, without district input, was due to emergent circumstances, justifying nonconformance with N.J.A.C. 6:28-7.4(b)5(ii) (97 N.J.A.R.2d (EDU) 134, Prospect Park)