



# New Jersey School Boards Association

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## 2018 SPRING SCHOOL LAW FORUM

**New Jersey Principals and Supervisors Association  
Monroe Township, N.J.**

**June 12, 2018**

### **SCHOOL LAW UPDATE**

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#### **I. THIRD CIRCUIT COURT OF APPEALS**

##### **Corporal Punishment**

Third Circuit upheld summary judgment in favor of school district where parents asserted that teacher deprived student of due process when she allegedly engaged in excessive force to ensure that he did not leave the school building. The court determined that while force was used, it was not with the purpose of causing harm, where student initiated the contact by attempting to duck under the teacher. No constitutional violation where the teacher's actions were not malicious and sadistic. State law claims of assault and battery also dismissed. *Betz v. Satteson*, Dkt. No. 17-1950, 2017 U.S. App. Lexis 23056 (3d Cir. Nov. 16, 2017).

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## **1st Amendment**

Third Circuit determined that while board members who barred a citizen from attending public board meetings due to his disruptive conduct and threats of violence made toward sitting board members may be entitled to qualified immunity, the law was unclear as to the school district itself. 3rd Circuit declined to address whether the board had the constitutional right to ban a citizen who physically threatened board members based on the claims of qualified immunity. Board members were entitled to qualified immunity where the citizen's right to continuing attendance at public board meetings was not clearly established in circumstances where citizen was banned due to physical threats made against individual board members. Case law relied upon by citizen pre-dated the conduct in question and could not therefore support the requisite "clearly established" element supporting liability. Third Circuit determined that immunity of the school district remained a viable issue and remanded to district court despite citizen's failure to preserve the issue for appeal. *Barna v. Panther Valley Sch. Dist.*, Dkt. 15-3904, 877 F.3d 136; 2017 U.S. App. LEXIS 24712, (3d Cir. Dec. 7, 2017).

## **Procedural Rules**

Third Circuit, on parental appeal from the District Court, found no need to determine whether parents exhausted administrative remedies where parents entered into a comprehensive settlement agreement resolving all state and federal claims arising from an alleged denial of FAPE. Court found that a plaintiff who seeks relief available under the IDEA must exhaust his administrative remedies before filing a lawsuit, even if he relies on laws other than the IDEA. Moreover, the Court, in dictum, suggested that exhaustion of administrative remedies was not a jurisdictional prerequisite. Matter remanded for an order of dismissal with prejudice. Finally, the Court clarified the methodology to be used in determining whether the "gravamen of the complaint" was based on the denial of FAPE. *Wellman v. Butler Area Sch. Dist.*, Dkt. 15-3394, (3d Cir. Dec. 12, 2017).

## **Special Education – Attorney's Fees**

Parents were not unreasonable in demanding attorney's fees where they opened a new school for autistic twins and unilaterally enrolled them where there was no evidence that parents were unwilling to meet with the district to discuss placement. Founding a school was not substantially different than seeking a private placement. District practice of not holding IEP meetings over the summer months deprived parents of opportunity to participate in in the decision-making process. Parents were not entitled to special education services over and above those contained in an appropriate IEP but were entitled to out-of-pocket expenses necessary to implement appropriate services. Court affirmed principle that pursuant to §504 and the ADA, parents were not entitled to damages for allegedly discriminatory conduct absent a showing of "deliberate indifference" and clarified that deliberate indifference must be a conscious act and not the result of negligence or bureaucratic inaction. Court further clarified that parent request for tuition reimbursement was a claim for compensatory damages instead of a claim for equitable relief and therefore properly analyzed the claim under the ADA's deliberate indifferent standard. *Sch. Dist. of Phila. v. Kirsch*, Dkt. No. 16-3021, 2018 U.S. App. Lexis 2819, (3d Cir. Feb. 5, 2018).

## **Special Education - Exhaustion of Remedies**

Appellate Division determined that parents failed to exhaust administrative remedies when following an incident where the bus driver bruised child's leg in locking him into his seatbelt, parents filed suit alleging negligence, a violation of the due process clause, Section 504 and the IDEA. Court should examine the question as to whether the plaintiff could have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school, and, conversely, whether an adult at the school could have pressed essentially the same grievance. If the answer to both is no, a denial of a FAPE is likely the gravamen of the complaint and exhaustion is required. Court further noted, prayer for money damages does not necessarily absolve a plaintiff from exhausting administrative remedies under the IDEA. *J.L. v. Wyoming Valley West Sch. Dist.*, Dkt. No. 16-3727, 2018 U.S. App. Lexis 3198, (3d Cir. Feb. 9, 2018).

## **Termination**

Building principal asserted that her Fourteenth Amendment due process rights were violated because she was deprived of her "constitutionally-protected interest in her previous position where she was transferred from a position with oversight over the k-12 curriculum to a position with lesser responsibilities, but at the same salary. Principal had no property right to the k-12 position. *Donovan v. Pittston Area Sch. Dist.*, Dkt. No. 16-4221, 2017 U.S. App. Lexis 24549, (3d Cir. Dec. 5, 2017)

## **II. NEW JERSEY DISTRICT COURT DECISIONS**

### **Discrimination**

In matter where student/athlete alleged racial discrimination on the gridiron and in the locker room, District Court dismissed claims against the Commissioner of Education and State of New Jersey because neither had any involvement in the allegations of discrimination. Court specifically explained the standard of review pursuant to a motion to dismiss for failure to state a claim pursuant to F.R. Civ. P. 12(b)(6). Parents lacked standing to assert a claim under Title VI and lacked authority to assert an equal protection claim under the New Jersey Constitution because this matter did not involve employment. Finally, Court allowed student's §1983 and Title VI claims where student alleged football coaches and administration failed to end the racially incendiary conduct of teammates. *Williams v. Lenape Bd. of Educ.*, Dkt. No. 17-7482 (RBK/JS), 2018 U.S. Dist. Lexis 25697, (D.N.J. Feb. 16, 2018).

### **Fifth Amendment**

Borough adopted a tuition resolution directing that tuition be enforced against border properties unless the majority of the property lay within the boundaries of the borough. Plaintiffs alleged that their property was taken without just compensation, a violation of the 5th Amendment's "takings" clause, where despite the fact that the plaintiffs' properties lie partially within the borough of Glen Ridge, their students were assigned to Brookdale, which designation allegedly reduced plaintiffs' property values amounting to an unconstitutional taking. Three of the matters were dismissed as unripe where plaintiffs had not sought compensation for the allegedly unconstitutional taking. Fourth plaintiff's claim did not rise to the level of a taking because mere diminution in value because of a land-use or zoning regulation does not constitute a taking unless

drastic or it deprives the owner of reasonable use of the property. As to the due process claims, the court determined that plaintiffs had no constitutionally cognizable property or liberty interest in attending the specific school of their choice; generally, residency regulations determine where a student will attend school. However, fourth plaintiff whose children were initially assigned to Glen Ridge and then re-assigned without an opportunity to challenge such re-assignment should have received such notice and opportunity to be heard. *Wojak v. Borough of Glen Ridge*, Civ. No. 2:16-cv-1605-KM-JBC, 2018 U.S. Dist. LEXIS 25255, (D.N.J. Feb. 15, 2018).

### **Sanctions**

Court explained the basis for the imposition of sanctions against a pro se plaintiff although the Court ultimately determined not to impose sanctions. *Skoorka v. Kean University*, Dkt. No. 16-3842 (Km), 2017 U.S. Dist. Lexis 210369, (DNJ December 21, 2017)

### **Special Education – Settlements**

District Court dismissed advocate's complaint objecting to the entry of a settlement of an oral agreement. After reviewing precedent regarding the enforceability of oral agreements, the Court determined that despite the advocates complaints that (1) he did not think his oral agreement was binding, (2) he is not bound by his attorney's statements, (3) he could not hear what was discussed when he agreed to settle on October 19, (4) he was under duress when he agreed to settle, and (5) the parties did not settle because the agreement was subject to the approval of the Pennsauken Board of Education, the Court ruled that the agreement was binding. *Vandergrift v. Pennsauken School District*, Dkt. No. 12-7646, 2017 U.S. Dist. Lexis 211016, (DNJ December 22, 2017).

### **Special Education – Tuition Reimbursement**

District Court determined to remand summary judgement issued in favor of school district where ALJ failed to explain rational supporting a total denial of tuition reimbursement where parent failed to provide sufficient 10-day notice and regulations provide for discretion in such denial. ALJ erroneously determined summary judgement ruling that parent failure to notify constituted a complete bar to recovery. District Court determined that ALJ failed to explain how school district was prejudiced by the lack of notice. A hearing was required to determine the facts of the matter. *H.L. v. Marlboro Twp. Bd. of Educ.*, Dkt. No. 16-9324, 2017 U.S. Dist. LEXIS 187828, (DNJ November 14, 2017).

### **Special Education – Unilateral Placement**

District Court determined that parents removed student from the district when they executed a contract for unilateral placement of their classified child. Parents were unable to show that the district prevented parents from filing timely and were unable to show that delay to provide proper notice would have likely to result in physical or serious emotional harm to the student. Court further determined that parents' failure to provide timely notice was not a categorical bar to recovery of tuition where ALJ failed to provide an equitable analysis barring parents from recovery where law provides for discretion and record did not contain any evidence that parents were unreasonable. *M.C.I. v. North Hunterdon-Voorhees Reg'l High Sch. Bd. of Educ.*, Civ. No. 17-1887, 2018 U.S. Dist. Lexis 24902, (D.N.J. Feb. 15, 2018).

## **Student Discipline**

District Court granted summary judgment in favor of school district and police officers in matter where parents asserted a constitutional violation in student's suspension for alleged theft of a cell phone. Court determined that where a process is available, the parents must resort to that process before filing a federal action. Student was suspended pursuant to a Goss hearing & parent failed to appeal. Four day suspension did not "shock the conscience" so as to rise to the level of a substantive due process violation. Parent also failed to demonstrate a § 1983 claim in the police report of the alleged theft to the school district because probable cause existed to substantiate the report. *Paredes v. Egg Harbor Twp. Bd. of Educ.*, Dkt. No. 15-cv-2929, 2017 U.S. Dist. LEXIS 211519, (DNJ December 26, 2017).

## **III. NEW JERSEY SUPERIOR COURT APPELLATE DIVISION**

### **Attorney's Fees**

In a settled NJLAD and NJ Civil Rights Act complaint, Appellate Division reduced attorneys contingent fee award from 45% to the 25% mandated by R. 1:21—where the contingency fee matter was successfully resolved in favor of a minor. No evidence presented that parent was aware of fee-shifting provisions in the LAD and NJCRA. *A.W. v. Mount Holly Bd. of Educ.*, Dkt. No. A-0165-16-T2, 2018 *N.J. Super.* Lexis 15, (App. Div. Feb 1, 2018).

### **Board of Education**

MRERA language is clear in granting Camden citizens the right to a school district classification vote, and nothing in QSAC restricts that right. Significantly, granting Camden citizens the right to a school district classification vote does not interfere with the State's full intervention because the Board will continue to serve in an advisory role until the conditions of QSAC are satisfied. *Save Camden Pub. Schs v. Camden City Bd. of Educ.*, \_\_\_ *N.J. Super.* \_\_\_ (2018)

Board Member cannot simultaneously serve on two elected boards at the same time. *N.S.J.A.* 19:3-5.2 does not contain an exception for board of education members. *Fischer v. Attorney General of N.J.*, No. A-1736-16T3 (App. Div. May 30, 2018)

OPRA's reference to citizen does not limit the ability of persons outside New Jersey from requesting public records. *Scheeler v. Atlantic County Mun. Joint Ins. Fund*, \_\_\_ *N.J. Super.* \_\_\_ (App. Div. May 16, 2018)

### **Certification Revocation**

Appellate Division affirmed Commissioner's decision revoking certificate of substitute teaching certificate of long-term physical education teacher eight years after allegedly inappropriate contact with fourteen-year-old student. While teacher was terminated subsequent to the incident, the reasons for termination were unclear from the record. Appellate Division reiterated its standard of review over Commissioner decisions was limited by *Barrick v. State Dep't of Treasury*, 218 *N.J.* 247 (2014), and found that telephone contact with the student, meeting the student outside of regular school hours, and unzipping his fly was conduct sufficiently severe to

warrant revocation of his certificate, without imposing progressive discipline. *I.M.O. Certificate of Bell, State Board of Examiners*, A-4135-14T2, (App. Div. Dec. 19, 2017).

### **Educational Services Commission**

Appellate Division approved the Middlesex Regional Education Services Commission's request to change its name to the Educational Services Commission of New Jersey (ESCNJ). The Court found it unreasonable to assume that the legislature authorized the State Board of Education to approve the Educational Services Commission's original name --and approve any change in its purpose-- but not to approve a change of its initial name. The court ruled that by granting the State Board of Education broad oversight over the Educational Services Commissions, the Legislature also impliedly granted the State Board the authority to approve any request for a name change. The court also rejected the idea that a name change would cause confusion and provided the Educational Services Commission of New Jersey with a competitive advantage. The State Board of Education has previously granted the Educational Services Commission of New Jersey the right to expand the services it offers statewide, thus this name change did not imply that there was a competitive advantage or that it was state-sanctioned by virtue of the name change. *In re Middlesex Reg'l Educ. Svs. Comm'n Name Change Request*, Dkt. No. A-3359-15T4, 2018 N.J. Super. LEXIS 20, (App. Div. February 2, 2018).

### **Charitable Immunity Act**

Appellate Division determined that university was immune from suit under the Tort Claims Act where, despite being a non-profit entity, leased its premises to a for-profit entity which held a public performance during which plaintiff was injured. University was permitted to open concerts to the public to advance education as part of its public purpose. The university could rent its facilities to for-profit entities unless non-charitable activities became its dominant motive. *Green v. Monmouth Univ.*, Dkt. No. A-1652-15T2, 2018 N.J. Super. LEXIS 4, (App. Div. January 8, 2018).

### **Charter Schools**

Appellate Division affirmed Commissioner decision approving expansion of charter school. Appellate Division refused to consider allegation that the charter school was operating as a state-wide charter in violation of its charter because the allegation was not raised before the Commissioner of Education. Charter school may accept students outside its district of residence and school districts of resident students are required to pay 90% of budget year equalization aid per pupil and the pre-budget year general fund tax levy per pupil inflated by the Consumer Price Index. *Highland Park Bd. of Educ. v. Hespe*, Dkt. No. A-3890-14T1, 2018 N.J. Super. Unpub. LEXIS 158, (App. Div. January 24, 2018).

### **Discrimination**

Appellate Division denied parents' claim that sectarian school violated the NJ Law Against Discrimination (NJLAD) by refusing to contract with another based on sex, gender identity or expression, affectional or sexual orientation. Students were subjected to verbal abuse of a sexual nature and bullying after which their parents complained to administration. Administration allegedly did not seek to resolve the matter but did agree that it would be best if the family left

the school. Appellate Division agreed that a cause of action did exist under the NJLAD for student-on-student harassment but determined that the school did not refuse to contract based on sex, gender identity or expression, affectional or sexual orientation. *G.A. v. St. Mary of the Lakes School*, Dkt. No. A-0638-15T1, 2017 N.J. Super. Unpub. Lexis 3130, (App. Div. Dec. 20, 2017).

### **Expert Witness**

Appellate Division reversed and remanded trial court decision barring expert witness testimony as a net opinion. Court noted that “[e]xpert opinions must "be grounded in 'facts or data derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." The net opinion rule is a 'corollary of the rule which forbids the admission of an expert's conclusions that are not supported by factual evidence or other data. The Court concluded that simply because an expert opinion may be subject to attack on cross examination does not make that opinion a net opinion. *Mascari v. Bordentown Reg'l High Sch.*, Dkt. No. A-0315-16T1, 2018 N.J. Super. Unpub. LEXIS 175, (App. Div. January 25, 2018).

### **1st Amendment**

Appellate Division reversed and remanded summary judgment granted in favor of mayor and board of education. Terminated secretary alleged she was terminated in retaliation for political affiliation. Question as to the district’s motivation for termination was a disputed issue of material fact where plaintiff's claims about the hit list and political retaliation were corroborated by other independent testimonial evidence. *Demarquet v. Roque*, Dkt. A-1251-15T3, 2017 N.J. Super. Unpub. LEXIS 2881, (App. Div. Nov. 17, 2017).

### **HIB**

Court upholds Commissioner’s determination that wrestling coach who said that he hoped one of his students, who was a special education student, did not have access to any weapons or keys to the gun closet, committed HIB. Court upholds Commissiner determination that coach entitled to a hearing before the board. *S.G. v. Board of Educ. of the Hunterdon Cent. Reg'l Sch. Dist.*, No. A-5199-15T3 (March 1, 2018)

### **Open Public Records Act**

Appellate Division determined that draft minutes of the Government Records Council were advisory, consultative, and deliberative materials not subject to disclosure under the Act. *Libertarians for Transparent Gov't v. Gov't Records Council*, Dkt. No. A-5563-15T4, 2018 N.J. Super. LEXIS 14, (App. Div. January 26, 2018).

### **Procedural Rules**

Grounds for drawing an adverse inference existed in the mayor’s assertion of his 5th Amendment privilege against self-incrimination during his deposition, especially where Office of Fiscal Compliance (OFAC) report concluded improper mayoral involvement in the termination. While the OFAC report may not have been admissible as a public record, plaintiff had the right to use the report to develop the testimony of witnesses named in that report. Court also determined that

courts have a range of actions available where a defendant refuses to comply with discovery including striking defendant's testimony or drawing an adverse inference from defendant's exercise of the 5th Amendment. In addition, mayor failed to sufficiently demonstrate good cause to warrant the entry of a protective order over his deposition in the matter, broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not establish good cause. *Demarquet v. Roque*, Dkt. A-1251-15T3, 2017 N.J. Super. Unpub. LEXIS 2881, (App. Div. Nov. 17, 2017).

### **Professional Responsibility**

A supervisor of special education, though they may testify for the district in special education matters, is not part of the litigation control group; Therefore, no disqualification needed by law firm when tenure charges are brought against supervisor as she is not a former client. *Tobia v. Lakewood BOE*, No. A-5336-15 (March 12, 2018)

### **Public School Contract Law**

Appellate Division determined that board properly withheld payment in excess of \$300,000 to general contractor who provided addition to a district school. The Board asserted that the project was not complete because "closeout documentation" was not provided including, proof of payment of all vendors, proof of insurance, subcontractor waivers, recorded drawings, proof of tests and inspections, and the maintenance package containing manufacturers' warranties. The Court noted that the Board did not submit a "final punch list" until after the building had been occupied for two years and was not submitted with the certificates of substantial completion. Remanded to determine whether vendor fully completed the contract. *Wallace Bros., Inc., v. East Brunswick Bd. of Educ.*, Dkt No. A-1432-15t3, 2017 N.J. Super. Unpub. Lexis 2802 (App. Div. Nov. 9, 2017).

### **Residency**

Appellate Division affirmed that "'Domicile' is defined as 'the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he [or she] is absent, he [or she] has an intention of returning.'" The Court then upheld the Commissioner's residency determination in favor of the school district. *T.L. v. Union Twp. Bd. of Educ.*, Dkt. No. A-5566-15t4, 2017 N.J. Super. Unpub. Lexis 3177, (App. Div. December 27, 2017).

### **Salaries**

Appellate Division determined that school district employees properly retained payment tendered by the school district subsequent to duties requested by the city during Superstorm Sandy to use district properties as emergency shelters. City paid for all service but the Office of Fiscal Accountability and Compliance determined that payments to two employees of over \$16,000 were improper because they were exempt employees. The Court affirmed that the district would be unjustly enriched if the employees, who were working outside of their school contractual obligations, were required to return the money paid for their work at the emergency shelters. *Parker v. Atlantic City Bd. of Educ.*, Docket Nos. A-3472-15t3, A-3610-15t3, 2017 N.J. Super. Unpub. Lexis 2939, (App. Div. November 29, 2017).



## **Tenure Acquisition**

Appellate Division determined that the tenure acquisition statute pertaining to state colleges and universities, in authorizing tenure upon hire for faculty members, was not preemptive so as to preclude negotiations on the topic. In addition, the Appellate Division concluded that the definition of "faculty" was not limited to faculty who serve in a collegial governance and managerial capacity and did not therefore exclude faculty who serve in a union member capacity. The Court concluded that tenure-upon-hire procedures were negotiable. *I.M.O. New Jersey, Council of New Jersey State College Locals, AFT*, Dkt. No. A-4948-15T3, 2017 *N.J. Super. Unpub. LEXIS 2909*, (App. Div. Nov. 21, 2017).

## **Tenure Dismissal - Inefficiency**

Appellate Division dismissed discharged teacher's claims of retaliatory discharge and violations of the Law Against Discrimination. Court affirmed the principle that "without more, an employer's filing of a disciplinary action cannot form the basis of an LAD complaint." In addition the arbitrator's teacher's complaint failed to sets forth facts supporting a claim of a hostile work environment, an action upheld by the arbitrator and confirmed on appeal to the Chancery Division. Moreover, decisions by an arbitrator are "given collateral estoppel effect by reviewing courts." *Mansfield v. Newark Public Schools*, Dkt. No. A-1704-16t1, 2017 *N.J. Super. Unpub. Lexis 3032*, (App. Div. December 8, 2017).

## **Tenure Dismissal – Salary**

Appellate Division determined that the district improperly refused to return a tenured teacher to the payroll where prosecution of the underlying tenure matter exceeded 120 due to motion for summary dismissal of the tenure charges filed by the teacher. The arbitrator referred the teacher's motion back to the Commissioner who returned it to the arbitrator, delegating authority to decide the motion. Arbitrator ordered the teacher to be returned to the payroll and subsequently decided both the motion and tenure charges in the district's favor. Appellate Division supported restoration while tenure charges remained pending and found no bias in the arbitrator's nine minute review of the district's opposition to the teacher's interim application for restoration to the payroll. *Lefkowitz v. Camden City State Op.*, Dkt No. A-5433-15T4, 2017 *N.J. Super. Unpub. Lexis 2941*, (App. Div. Nov. 29, 2017).

## **Tenure Rights**

Appellate Division reversed and remanded Commissioner decision concluding that tenure and seniority rights of part time teachers under the Tenure Act did not protect them from that reduction because the collective bargaining agreement and their individual employment contracts omitted a guaranteed minimum number of work hours. Appellate Division held that "[t]he failure to guarantee a minimum number of hours in the contract documents cannot strip petitioners of their tenure rights, specifically the protection against reduction in compensation." Remanded for a factual determination as to whether the reduction in hours reduced petitioners' compensation under N.J.S.A. 18A:28-5 and whether the reduction in hours triggered petitioners' seniority rights. *Zimmerman v. Sussex Cty. Educ. Svs. Comm'n*, Dkt. No. A-1003-16T4, 2018, *N.J. Super. LEXIS 24*, (App. Div. Feb. 13, 2018).

Tenure Dismissal upheld where school nurse had a series of incidents that imperiled student and staff safety as well as failed to maintain records and adequate supplies in office. Nurse's claim that arbitrator's reliance on psychologist report rather than a psychiatrist's without merit. No law has been proffered by nurse whereby the use of a psychologist examination report as evidence in the arbitration hearing is prohibited. Psychologists are specifically authorized by law to perform assessments of job suitability and assessments in connection with legal proceedings and in the action of governmental agencies including but not limited to cases involving education. Argument that progressive discipline should have been used without merit. progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons. *Costello v. Northfield Bd. of Educ.*, No. A-3688-15T3 (April 5, 2018)

### **Tort Claims Act**

Appellate Division dismissed motion to file late notice of tort claim against the district where former student alleged that French teacher sexually abused him when he was a student between 1991 and 1993. Plaintiff/former student argued that his claim did not accrue until May 2015, when he finally recognized he was a victim of sexual abuse by former teacher, asserting that began experiencing symptoms of PTSD and other psychological disorders, which constituted "extraordinary circumstances" justifying the late filing. *J.C. v. D'Annunzio*, Dkt. No. A-1984-16T3, 2017 *N.J. Super.* Unpub. LEXIS 3151, (App. Div. December 21, 2017).

Appellate Division dismissed complaint asserting injury on school property where notice was sent to the wrong address. Complaint was timely served on the city and board at a city address. Handwritten note timely provided to the district did not comply with the notice requirements of the Act. District was not responsible for inaccurate yellow page listing. Doctrine of substantial compliance inapplicable because board was not put on notice of an intent to sue and therefore could not undertake a prompt investigation. *Hernandez v. Snyder High Sch.*, Dkt. No. A-1311-16T1, 2018 *N.J. Super.* Unpub. LEXIS 155, (App. Div. January 24, 2018).

## **IV. SUPERIOR COURT, CHANCERY/LAW DIVISION**

### **Collective Negotiations**

Plaintiffs in this matter objected to the "release time" provisions of the collective negotiation agreement under which the union president had the right to carry out union business and affairs while the District paid them a teacher's salary, alleging that such a clause was an unconstitutional gift of public funds. Court held that the plaintiffs were required to show that the release-time provisions in the aforementioned contract are repugnant to the constitution beyond a reasonable doubt. The Court found that the release time provisions of the CNA served valid public purpose and were implementations of a statutory right. *N.J.S.A.* 18A:30-7, established the grounds for such payments by permitting boards of education "to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave. *Rozenblit v. Marcia V. Lyles*, Dkt No. Hud-C-2-17, 2017 *N.J. Super.* Unpub. Lexis 3202, (Ch. Div. October 31, 2017).

## V. TENURE ARBITRATION

Board brings tenure charges after teacher is accused of submitting false timesheets/vouchers. Arbitrator finds that teacher calculated timesheets in same manner over several years. Board possessed no policy saying how they must be submitted. No willful or deliberate attempt by teacher to submit false timesheets. Arbitrator dismisses charges and orders board to reinstate teacher and make him whole. [Matter of Cole, Arb 2017: Nov 10.](#)

Speech-language therapist not subject to *N.J.S.A.* 18A:6-17.3. Therefore, inefficiency charges subject to just cause standard. [Matter of Kulik, Arb 2017: Nov 13](#)

Locking pre-school students in bathroom as form of punishment multiple times warrants dismissal of tenured teacher Improper confinement of special education students to a bathroom is serious misconduct. Foremost in a teacher's responsibility is the need to protect and safeguard their students. This is especially true of special education students who are particularly vulnerable. Respondent on more than one occasion placed the students in potentially harmful situation. The students were unsupervised, while emotionally distraught, in a tiny room with the potential to bump their head and become more distraught. [Matter of DeMarco, Arb 2017: Nov. 20](#)

Allegations that union president engaged in unbecoming conduct when he had confrontation about a grievance with vice-principal who had him ejected from school building following encounter where union president met with vice-principal who felt threatened and called security to escort union president from building sustained. However, requested unpaid suspension rejected for written warning. Such action is to be viewed as corrective and progressive in nature and to provide positive direction to Respondent that while he has a right to engage in the vigorous pursuit of complaints and/or grievances his lawful activities must be conducted without disruption or challenge to the ongoing order of school business. [Matter of McEntee, Arb 2017: Dec 26](#)

Tenure Charges dismissed where board failed to follow proper evaluation procedures led to material effect on evaluation. Charges for inefficiency dismissed. [Matter of Lopes-Anastasi, Arb 2018: Jan 10](#)

Two month suspension without pay for Italian teacher who sped away from a traffic stop because her mother-in-law who had hallucinations was home alone. Teacher led police on chase lasting 2-3 minutes before she was stopped in front of her own house. Teacher had gone out to grocery store. On vehicle search, police found marijuana pipe in teacher's purse. Teacher convicted of eluding and entered PTI. Incident was a single incident and there were no prior incidents on teacher's record. Tenure Dismissal too harsh a penalty. [Matter of Bruni, Arb 2018: Feb 9](#)

Board sought tenure dismissal of custodian who had inappropriate contact with 15 year old student, including that he bought her lunch almost every day, spoke to her about matters of a sexual nature and discussed using a controlled dangerous substance with her. They had lunch together in boiler room. Custodian also gave her money to have nails done and talked to her about his violent past. Custodian and student also exchanged inappropriate text messages. Despite previously unblemished record, tenure dismissal upheld. [Matter of Webber, 2018: March 6](#)

Tenure charges for inefficiency upheld where teacher received two partially effective ratings. Complaints that district failed to hold required meetings unpersuasive. Teacher bears some responsibility to make sure that required meetings occur. [Matter of Mackenzie, 2018: April 10](#)

Tenure charges for conduct unbecoming rendered moot where district sustained dismissal for inefficiency where teacher performance was clearly documented and teacher had been given multiple opportunities to improve. No anti-union animus was demonstrated has had been claimed by teacher. [Matter of Rudinsky 2018:April 12](#)

Tenure charges upheld where teacher received unsatisfactory ratings. Teacher failed to cooperate with coorrective action plan by not attending required meetings. Teacher made no effort to modify his pedagogy in accordance with dictates. Dismissal upheld. [Matter of Youseff, 2018, April 23](#)

## **VI. COMMISSIONER OF EDUCATION**

### **Certificate Revocation**

Special Education teacher's revocation of certificates upheld where ample evidence presented that throughout the school year teacher engaged in corporal punishment of students. The egregious behavior included, among other things: twisting the wrists of several students; bending back students' fingers to punish or control behavior; smacking a student's knuckles with a wooden clipboard; and yelling at students and mimicking their autistic behaviors. [Certificates of Filo, 2018 Comm: May 4](#)

### **Ethics**

High School Principal admonished by Commissioner for failure to file disclosure form in timely manner. Recommended penalty of thirty day suspension not upheld where Commissioner deems that a suspension of a high school principal would be detrimental to the school. [Matter of James, 2018 Comm: May 17](#)

Commissioner issues reprimand to board member who was found to have when he "engaged in a brief conversation with a candidate for the position of interim superintendent, and also discussed with [the candidate] the general nature of the community and school system." [Matter of Hamilton 2018 Comm: Jan 16](#)

Commissioner remands to SEC matter concerning what punishment is appropriate for member who did not attend training in timely matter but had mitigating circumstances. [Matter of Gonzalez, 2018 Comm: March 28](#)

### **Residency**

In residency dispute, grandparents appeal determination that grandson is not domiciled with them. Commissioner remands. The issue of domicile cannot be decided on the factual determinations and conclusions set forth in the Initial Decision; specifically, the contradictory nature of several facts that are material to the adjudication of this matter render it impossible for

the Commissioner to ascertain S.S.'s domicile, and affirm the ALJ's conclusion. [T.S. and C.S. v. Totowa Boro Board of Education, 2018 Comm: May 4.](#)

When there exists a court order or written agreement between separately domiciled parents as to where the children will attend school, domicile – for the purposes of schooling – is dictated by said order or agreement. [A.T. v. Ramsey BOE, 2018 Comm Mar 19](#)

### **Sending-Receiving**

Commissioner rejects settlement of limited severance of send-receive relationship. Parties had agreed to a proposed a two-year phase out program, beginning with the seventh grade class in the 2017-2018 school year, followed by the eighth grade class in the 2018-2019 school year. The petitioning Board did not seek any change to the sending-receiving relationship for students in the ninth through twelfth grades. Commissioner rejects severance at this time to make sure agreement meets standards prescribed by law. [Mine Hill BOE v. Dover BOE, 2018 Comm: Feb 9.](#)

### **Student Discipline**

Commissioner upholds board imposition of a one day in-school suspension where one student hit another student. Board's actions were not arbitrary, capricious or unreasonable. [D.H. v. East Brunswick BOE, 2018 Comm: Feb 18.](#)

Board's determination that special education student was not the victim of HIB upheld. Board found that there was no distinguishing characteristic, the fact that the student was a special education student, involved in incident with two staff members. Board's actions were not arbitrary, capricious or unreasonable. [C.P. v. Warren BOE, 2018 Comm Feb 16](#)

In HIB dispute, student alleges that she was victim of HIB when coach retaliated against her for filing HIB complaint against team captain and she received poor placement in fencing tournament and did not make her team captain. Coach's sworn affidavit in this matter makes clear that strip assignments are based on a multitude of factors, including, among other things, the skill and experience of individual fencers, the team as a whole, and consideration of the skills of the opposing team; the coach has the discretion to change strip assignments and no specific criteria for strip selection exist; rather, the coach makes strip selections based on each individual competition; imputing a retaliatory motive to any strip assignment that did not place L.P. on the "A Strip" is conjecture; and this case reflects petitioners' displeasure that L.P. was not assigned to "A Strip" and made captain of the team at the beginning of the season. The ALJ concluded that coach did not retaliate against L.P. in violation of the Act. Commissioner affirms dismissal. [L.P. v. West Morris Regional BOE, 2018 Comm: March 29.](#)

Commissioner upholds Board's findings of HIB. Board found that female student was a victim of HIB when classmate made gestures and comments based on student's gender. Board's actions were not arbitrary, capricious or unreasonable. [R.P. v. Hamilton Twp BOE, 2018 Comm: March 29](#)

Board's decision to expel due to seriousness of an off-campus incident depicted on video and J.C.'s possession of weapons and drugs on school property, and cannot be considered to be

arbitrary, capricious or unreasonable; however, J.C. is entitled to a free public education from Ocean City School District in accordance with the parameters set forth in *N.J.S.A. 18A:38-1*. Although it may not be appropriate to ever return J.C. to the general education program, the Board must continue to provide him with educational services. [N.C. v. Ocean City BOE, 2018 Comm: April 5](#)

### **Tenure Dismissal**

Tenure dismissal of teacher for conduct unbecoming, excessive absenteeism, insubordination and other just cause upheld where teacher was excessively absent over a number of years, culminating in absences of 129 days in one year; was arrested and convicted for DWI and failed to report same as required; and fabricated reading assessment scores for her students. [Matter of Conrad, 2018 Comm: May 15](#).

Tenure Dismissal for excessive absenteeism upheld where teacher missed 40% of days annually since she began work in the district. No answer was ever filed to the charges. [Matter of Ansuini, 2018 Comm: Jan 18](#).

Tenured secretary dismissed after finding that secretary and deteriorating performance and mental health. Secretary ordered to undergo fitness for duty examination which she never provided any record of results to board. [Matter of Johnston, 2018 Comm: March 5](#)

### **Transportation**

District is not required to provide a non-public school student with transportation unless that student first meets the District's entrance age requirements; further, petitioners' allegations of discrimination based on their faith are without merit. [M.L. v. Teaneck BOE 2018 Comm March 23](#)

## **VII. SCHOOL ETHICS COMMISSION**

Complaint dismissed where board made decision to place CSA on leave and non-renew his contract to adopt the legal conclusion that none of the named Respondents violated any subsection of *N.J.S.A. 18A:12-24.1* in creating, passing, discussing, and/or voting on a petition of public interest during the Board's executive session; to adopt the legal conclusion that another board member did not violate *N.J.S.A. 18A:1224.1(e), (f), (g), (i), or (j)* when he voted to place the former Superintendent on leave and then voted to approve the legal bills relating to the action/proceeding that the former Superintendent filed against him; to adopt the legal conclusion that one board member violated *N.J.S.A. 18A:12-24.1(j)* when he, in his capacity as a Board member, questioned, reprimanded, and coerced action by a District employee relative to personnel matters; to adopt the legal conclusion that another board member violated *N.J.S.A. 18A:12-24.1(e), (g), (i), and (j)* when he (1) approached and questioned a building principal about a personal matter which, ultimately, led the building principal to visit her doctor and contact law enforcement, (2) had an encounter with a District employee and, in the course thereof, made an inappropriate gesture and used a racial epithet, and (3) blatantly disregarded the Board's policies regarding the use of facilities; to recommend a penalty of censure for one board member; and to revise the recommended penalty for the other to a suspension of sixty (60) days. *Hyman v. Davenport, Moore v. Page, and Baily v. Davenport*, SEC: 2018 Feb 27.

Commission finds that board member violated financial disclosure requirements when board member failed to disclose spouse's company on disclosure form. SEC finds that omission was an inadvertent mistake and declines to issue a penalty. In addition, the Commission reminds all board secretaries and charter school designees that they are required to review school official's filings for accuracy and completeness. *Drulis v. Fallon*, SEC 2018: Feb 27.

Complaint timely filed twelve days before deadline. However, complaint dismissed where insufficient evidence presented that member violated 18A:12-21(a). Further, insufficient evidence that board violated confidentiality when an instructional aide was permitted to go into closed session. Nor was there any evidence that board failed to support school personnel in proper performance of duty when grievance was denied. [Halter and Rizzo v. Kennedy, SEC 2018: Feb 27](#)

Board member alleged to have violated School Ethics Act 18A:12-24.1(f) when he accepted a campaign contribution from a law firm, and later voted to appoint this same law firm to serve as the Board's general co-counsel, and voted to approve the law firm's form of contract. SEC dismisses complaint for lack of evidence supporting violation. Suggests that had petitioner alleged a violation of other sections of the law result may have been different [Lorenz v. Rodriguez, SEC 2018: March 27](#)

SEC dismisses complaint where board member was accused of lying about situation concerning ballot. Even if the statements made by Respondent, and her continued representation of a "clerical mistake," are not completely accurate, a fact which is not clear from the record, Complainant has not offered any evidence to substantiate that the information was inaccurate and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion, or was not attributable to developing circumstances. The record, as provided by Complainant, demonstrates that Respondent has consistently represented the situation to be, in her opinion, a "clerical error." In addition, none of Respondent's statements related to Board business, and none of the statements constituted Board action; instead, all of the statements made by, and attributed to, Respondent related to her candidacy for membership on the Board, and her location on the election ballot. Therefore, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Request for sanctions denied. [Imhoff v. Sostorecz, SEC 2018: April 24](#)

In dispute concerning non-renewal of CSA, information was presented to the Board before it took any public/formal action with regard to the superintendent's employment status. Additionally, it was only after all of this information from the community was presented to the Board that the Board did, in fact, take public action to non-renew the superintendent's employment contract. The Commission also agrees, as Respondents argue, that the Board's decision to take action which appears inconsistent with that of the community does not, in and of itself, constitute a violation of the Act, or otherwise mean that the Board failed to consider the opinion of the public. Nor was there any evidence that board member was surrendering her independence of judgment to any special interest group. No violation of *N.J.S.A. 18A:12-24.1(c)* or *N.J.S.A. 18A:12-24.1(f)* found. [Harlan, Robertson and Maloney, Jr., v. Bond-Nelson, Butler, Dodd, Mullen and Allen, SEC 2018: May 22](#)

## Advisory Opinions

Board member who is PTA president as well as involved in a variety of other volunteer roles in the district. SEC says that Board member may continue in the volunteer roles. A17-15, A10-15, A32-14, and A07-00, generally turned on the degree of involvement a Board member had with staff and students, as well as the degree to which the Board member had authority to give and receive directions and orders to staff during the involved volunteer activity. In these previously issued public advisory opinions, the Commission advised that where the Board member was in a supervisory position and generally oversaw staff or students, such interaction would be inconsistent with the Act. The type of volunteering that you described in your request does not appear to violate the Act. Further, mere fact that union supported candidacy and member expressed support for union not enough to keep member off negotiations committee. [Advisory Opinion A15-18 4/25/18](#)

Fact that board member is 18 years old and student in the district he oversees as a board member not an automatic bar to participation in various board matters. Board member does have conflicts related to the fact that both his mother and father work in the district, such as not be able to evaluate the CSA. However, board member can be involved in employment matters related to his own teachers and those of his siblings who go to school in the district. As a student he is eligible for prizes and awards in the school. SEC reaffirms the earlier A36-17 also concerning student-board members. [Advisory Opinion A06-18 3/28/18](#)

Board member's wife's cousin is considered an "other" under the Act. Board member can participate in negotiations so long as he does not extend an unwarranted privilege, advantage or employment for yourself, members of your immediate family or others. [Advisory Opinion A07-18 3/28/18](#)

No presumption of conflict under the Act for a cousin who would be considered an "other." [Advisory Opinion A35-17 12/19/17](#)

Board member who is a member of the CWA may still participate in negotiations as there is no linkage between the board member's union and the teachers union with whom the board member may negotiate. [Advisory Opinion A32-17 11/28/17](#)

Two (2) non-conflicted Board members can serve in this case as the negotiations committee for the Superintendent's contract negotiations. To the extent the non-conflicted Board members may require assistance, the committee can consult with Board counsel and/or seek the assistance from a technical resource, such as the Business Administrator or other administrator as appropriate. [Advisory Opinion A28-17 10/31/17](#)

## VIII. NEW CHAPTER LAWS

*P.L.*2018, c.28. Expands summer meal program to all school districts with 50 percent or more of students eligible for free or reduced price meals. 05/30/2018

*P.L.*2018, c.27. Requires school district to report at least biannually to Department of Agriculture number of students who are denied school breakfast or school lunch. 05/30/2018



*P.L.2018, c.26.* Requires certain school districts to submit report on nonparticipation in "Community Eligibility Provision" of National School Lunch and School Breakfast Programs. 05/30/2018

*P.L.2018, c.25.* Requires "breakfast after the bell" program in all schools with 70% or more of students eligible for free or reduced price meals. 05/30/2018

*P.L.2018, c.23* Requires Commissioner of Education to include data on chronic absenteeism and disciplinary suspensions on School Report Card and requires public schools to make certain efforts to combat chronic absenteeism. 05/30/2018

*P.L.2018, c.20.* Permits candidates for school board to circulate petitions jointly and be bracketed together on ballot; permits short nonpolitical designation of principles on petitions and ballots. 05/30/2018

*P.L.2018, c.15.*"Workplace Democracy Enhancement Act." 05/18/2018

*P.L.2018, c.13* Requires pupils who reside on certain federal property to enroll in resident school district in accordance with schedule determined by executive county superintendent of schools. 05/16/2018

*P.L.2018, c.11.*Authorizes municipality, county or school district to establish charitable funds for specific purposes; permits property tax credit for certain donations. 05/04/2018

*P.L.2018, c.10.* Concerns earned sick leave to employees. 05/02/2018

*P.L.2018, c.9.* Concerns equal pay and employment discrimination. 04/24/2018

*P.L.2018, c.5.*Requires school districts, charter schools, nonpublic schools, and contracted service providers to review employment history of prospective employees who will have regular contact with students to ascertain allegations of child abuse or sexual misconduct. 04/11/2018

*P.L.2017, c.387.*Requires public and nonpublic schools to notify students and parents of availability of summer meals programs and locations where meals are served. 01/16/2018

*P.L.2017, c.349.*Requires school bus transporting students using wheelchairs to be equipped with four-point securement system; requires school bus operator to secure students using wheelchairs. 01/16/2018

*P.L.2017, c.347.*Establishes crimes of operating school bus with suspended or revoked driving privileges and being involved in accident causing bodily injury; permanently prohibits passenger and school bus CDL endorsements for persons convicted of those crimes. 01/16/2018

*P.L.2017, c.346.* Protects employee rights to ownership and usage of employee inventions developed entirely on employee's own time and without using employer's resources. 01/16/2018

*P.L.2017, c.310.* Permits local units and school districts to invest in local government investment pools managed in accordance with applicable Governmental Accounting Standards Board guidelines. 01/16/2018

*P.L.2017, c.303.* Requires school districts to offer course in computer science and DOE to adopt changes to NJ Student Learning Standards in computer science. 01/16/2018

*P.L.2017, c.291.* Establishes certain requirements for use of restraint and seclusion on students with disabilities in school districts, educational services commissions, and approved private schools for students with disabilities. 01/16/2018

*P.L.2017, c.284* Prohibits use of smokeless tobacco in public schools.01/16/2018

*P.L.2017, c. 274* Provides certain immunity to board of director members and employees of private schools for students with disabilities if they report incidents of bullying in compliance with school policy. 01/08/2018

*P.L.2017, c.272.* Requires public employers to implement certain policies for handling and responding to reports of domestic violence. 01/08/2018

*P.L.2017, c.263.* Expands civil rights protections to include breastfeeding; requires employers to provide reasonable accommodations for breastfeeding mothers. 01/08/2018

*P.L.2017, c.262.* Requires OAL to maintain Internet database summarizing all State rule-making actions. 01/08/2018