

3. Data contained in information regarding specific experiential, educational or medical qualifications required for receipt of a public pension, except for detailed medical or psychological information.

## SUBCHAPTER 5. SENIORITY

### 6A:32-5.1 Standards for determining seniority

(a) The word "employment" for purposes of these standards shall also be held to include "office" and "position."

(b) Seniority, pursuant to N.J.S.A. 18A:29-9 et seq., shall be determined according to the number of academic or calendar years of employment, or fraction thereof, as the case may be, in the school district in specific categories as hereinafter provided. The periods of unpaid absences not exceeding 30 calendar days aggregate in one academic or calendar year, leaves of absence at full or partial pay and unpaid absences granted for study or research shall be credited toward seniority. All other unpaid absences or leaves of absence shall not receive seniority credit.

(c) In computing length of service for seniority purposes, full recognition shall be given to previous years of service within the school district and the time of service in or with the military or naval forces of the United States or this State, pursuant to the provisions of N.J.S.A. 18A:28-12.

(d) Employment in the school district prior to the adoption of these standards shall be counted in determining seniority.

(e) The holder of an emergency certificate shall not be entitled to seniority rights but, when he or she becomes the holder of a standard certificate, the years of employment under the emergency certificate shall count toward seniority under the standard certificate. Upon acquisition of a standard certificate, any periods of service under a provisional certificate shall also be counted toward seniority.

(f) Whenever a person shall hold employment simultaneously under two or more subject area endorsements or in two or more categories, seniority shall be counted in all subject area endorsements and categories in which he or she is or has been employed. For purposes of calculating seniority entitlement, there shall be no distinction between academic years and calendar years.

(g) Where the title of any employment is not properly descriptive of the duties performed, the holder thereof shall be placed in a category in accordance with the duties performed and not by title. Whenever the title of any employment shall not be found in the certification rules or in these rules, the holder of the employment shall be classified as nearly as may be according to the duties performed, pursuant to the provisions of N.J.A.C. 6A:9, Professional Licensure and Standards.

(h) Whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his or her seniority in any or all categories in which he or she previously held employment.

(i) Whenever any person's particular employment shall be abolished in a category, he or she shall be given that employment in the same category to which he or she is entitled by seniority. If he or she shall have insufficient seniority for employment in the same category, he or she shall revert to the category in which he or she held employment prior to his or her employment in the same category and shall be placed and remain upon the preferred eligible list of the category from which he or she reverted until a vacancy shall occur in such category to which his or her seniority entitles him or her.

(j) If he or she shall have insufficient seniority in the category to which he or she shall revert, he or she shall, in like manner, revert to the next category in which he or she held employment immediately prior to his or her employment in the category to which he or she shall have reverted, and shall be placed and remain upon the preferred eligible list of the next preceding category, and so forth, until he or she shall have been employed or placed upon all the preferred eligible lists of the categories in which he or she formerly held employment in the school district.

(k) In the event of his or her employment in some category to which he or she shall revert, he or she shall remain upon all the preferred eligible lists of the categories from which he or she shall have reverted, and shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which his or her seniority entitles him or her.

(l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:

1. Superintendent of schools;
2. Assistant superintendent;
  - i. Each assistant superintendency shall be a separate category; and
  - ii. District boards of education shall adopt a job description for each assistant superintendent position which shall set forth qualifications and endorsements for such position;
3. Director;
  - i. Each director position shall be a separate category; and
  - ii. District boards of education shall adopt job descriptions for each director position which sets forth the qualifications and endorsements for such position;
4. High school principal;
5. Adult high school principal;

6. Alternative school principal;
7. Vocational school principal;
8. Junior high school principal;
9. Elementary principal;
10. Supervisor;
  - i. Each supervisory title shall be a separate category; and
  - ii. District boards of education shall adopt a job description for each supervisory position which sets forth the qualifications and specific endorsements required for such position;
11. High school vice principal or assistant principal;
12. Adult high school vice principal or assistant principal;
13. Alternative school vice principal or assistant principal;
14. Junior high school vice principal or assistant principal;
15. Elementary school vice principal or assistant principal;
16. Vocational school vice principal or assistant principal;
17. Secondary:
  - i. Any person holding an instructional certificate with subject area endorsements shall have seniority within the secondary category only in such subject area endorsement(s) under which he or she has actually served;
  - ii. Whenever a person shall be reassigned from one subject area endorsement to another, all periods of employment in his or her new assignment shall be credited toward his or her seniority in all subject area endorsements in which he or she previously held employment;
  - iii. Any person employed at the secondary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the secondary category and only for the period of actual service under such educational services certificate or special subject field endorsement; and
  - iv. Persons employed and providing services on a district-wide basis under a special subject field endorsement or an educational services certificate shall acquire seniority on a district-wide basis;
18. Elementary:
  - i. District boards of education that make a determination to reorganize instruction at grades seven and eight pursuant to these rules shall do so by adoption of a

formal resolution setting forth the reasons for such reorganization;

- ii. Any person employed at the elementary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the elementary category and only for the period of actual service under such educational services certificate or special subject field endorsement;

- iii. Persons employed and providing services on a district-wide basis under a special field endorsement or an educational services certificate shall acquire seniority on a district-wide basis;

- iv. Persons serving under elementary endorsements in departmentally organized grades seven and eight prior to September 1, 1983 shall continue to accrue seniority in the elementary category for all such service prior to and subsequent to September 1, 1983. In addition, such persons shall accrue seniority in the secondary category but limited to the school district's departmentally organized grades seven and eight and the specific subject area actually taught in such departmentally organized grades, subsequent to September 1, 1983; and

19. Additional categories of specific educational service endorsements issued by the State Board of Examiners and listed in the State Board rules dealing with teacher certification pursuant to N.J.A.C. 6A:9, Professional Licensure and Standards.

(m) In the event of a restructure of grade levels which results in the elimination of all junior high schools in the school district and the creation of schools with a grade level organization which includes grades seven and eight, the seniority rights of the junior high principals, vice principals and assistant principals displaced by such restructuring shall be transferable to the newly reorganized schools in the category as defined by (l)9 above.

#### Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 625) adopted, which concluded that a laid-off former tenured teacher failed to show that the Board violated her tenure rights by its appointment of a non-tenured individual to the position of Isolated Classroom Experience (ICE) Monitor. Contrary to the teacher's argument, the position of ICE Monitor did not require an instructional certificate because no instruction took place in the ICE program and the position was, therefore, an "unrecognized title." *Macchia v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 5776-09, 2009 N.J. AGEN LEXIS 1014, Final Decision (October 8, 2009).

N.J.A.C. 6A:32-5.1, which provides that seniority credit does not accrue for unpaid absences exceeding 30 calendar days aggregate in one academic or calendar year, is part of the regulatory framework adopted under authority of N.J.S.A. 18A:28-10 to address the very different purpose of establishing the order of dismissals among a district's tenured staff in the event of a reduction in force, and, as such, has no bearing on — and cannot act to alter or limit — the conditions for acquisition of tenure established by N.J.S.A. 18A:28-5; therefore, an ALJ's determination that a teacher achieved tenured status notwithstanding a 43-day approved unpaid medical leave of absence, was not at odds with the seniority statute. *Jarmond v. Bd. of Educ. of Elizabeth*, OAL Dkt. No. EDU 9107-08, 2009 N.J. AGEN LEXIS 746, Final Decision (September 8, 2009).

Tenured teacher holding an instructional certificate with an endorsement as a physical education teacher failed to show that her tenure and seniority rights were violated when the Board abolished the position of physical education teacher in favor of the position of teacher of physical education and health, which required certification in both physical education and health; the teacher did not hold an endorsement to teach health and failed to take the necessary steps to obtain the required certification despite numerous communications that she needed to do so. *Francin v. Bd. of Educ. of Maywood*, OAL Dkt. No. EDU 9131-08, 2009 N.J. AGEN LEXIS 648, Final Decision (August 20, 2009).

Adopting Initial Decision's conclusion that a tenured school social worker under an educational services certification, who also possessed certification as an elementary teacher but had never served as a teacher in the school district, and whose social worker position was eliminated through a reduction in force, did not have rights over a nontenured applicant to a teaching position; neither tenure nor seniority applied across certificates, and therefore petitioner only had rights with regard to positions within the educational services certification (adopting 2008 N.J. AGEN LEXIS 70, as supplemented). *Aiello v. Bd. of Educ. of Westwood Reg'l School Dist.*, OAL Dkt. No. EDU 7986-07, 2008 N.J. AGEN LEXIS 263, Commissioner's Decision (March 20, 2008).

Where Nursing Assistant instructor, due to new regulations, lacked sufficient experience in geriatrics to meet the requirements for her position, and the district allowed her to serve as a temporary teacher in the Practical Nursing (PN) program to gain experience in geriatrics, the instructor was not eligible for tenure credit during the two months she taught PN without an appointment and under a substitute credential and could not tack those two months onto her seniority; consequently, the

reduction in force termination of the instructor was not improper under N.J.S.A. 18A:28-10. *Kelly v. Bd. of Educ. of Middlesex County Vocations Technical School Dist.*, OAL Dkt. No. EDU 4588-01, Commissioner's Decision (November 9, 2006), *aff'd*, SB No. 45-06, 2007 N.J. AGEN LEXIS 548 (N.J. State Bd. of Educ. May 2, 2007).

Nursing assistant emergency certification held by a teacher during the time she taught Practical Nursing (PN) classes with only a substitute certificate did not allow her to tack that time onto her seniority as a PN teacher; N.J.A.C. 6A:32-5.1(e) only applies to employees who later achieve standard certification in the same field as the emergency certificate under which they were serving. *Kelly v. Bd. of Educ. of Middlesex County Vocations Technical School Dist.*, OAL Dkt. No. EDU 4588-01, Commissioner's Decision (November 9, 2006), *aff'd*, SB No. 45-06, 2007 N.J. AGEN LEXIS 548 (N.J. State Bd. of Educ. May 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 344) adopted, which concluded that a former athletic director failed to show that the Board violated his tenure, seniority and/or preferred eligibility rights by its appointment of a non-tenured individual to the position of Assistant Principal for Athletics and Student Activities; contrary to petitioner's contention, the position of Assistant Principal for Athletics and Student Activities was not an unrecognized position under N.J.A.C. 6A:9-5.5. A vacant assistant principal position existed when the Board created the new position, and petitioner failed to show that the duties of the position lacked the character necessary to require a principal endorsement. *McGriff v. Bd. of Educ. of Montclair*, OAL Dkt. No. EDU 10927-04, 2006 N.J. AGEN LEXIS 647, Commissioner's Decision (July 13, 2006).