

## CHAPTER 3 SCHOOL DISTRICTS

### Authority

N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:7A-1, 18A:7A-1.1, 18A:10-6, 18A:12-21 et seq., 18A:13-14, 18A:16-1, 18A:17-14 to 14.3, 18A:27-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1 and 18A:49-1 to 49-8.

### Source and Effective Date

R.1999 d.342, effective September 10, 1999.

### Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 3, School Districts, was extended by gubernatorial directive from March 9, 2005 to March 9, 2006. See: 37 N.J.R. 886(a).

### Chapter Historical Note

Chapter 3, School Districts, became effective prior to September 1, 1969.

Subchapter 2, Pupil Records, was adopted as R.1975 d.124, effective May 16, 1975. See: 6 N.J.R. 465(a), 7 N.J.R. 251(b).

Subchapter 3, Withdrawal from Limited Purpose Regional School Districts, was adopted as R.1976 d.286, effective September 8, 1976. See: 8 N.J.R. 458(a).

Subchapter 4, Senior Citizens' Transportation, was adopted as R.1977 d.129, effective April 13, 1977. See: 9 N.J.R. 113(a), 9 N.J.R. 212(b).

Pursuant to Executive Order No. 66(1978), this chapter was readopted as R.1983 d.248, effective June 3, 1983. See: 15 N.J.R. 376(a), 15 N.J.R. 1016(b).

Pursuant to Executive Order No. 66(1978), Subchapter 3, Withdrawal from Limited Purpose Regional School Districts, was readopted as R.1983 d.368, effective August 18, 1983. See: 15 N.J.R. 728(a), 15 N.J.R. 1468(c).

Subchapter 5, Reporting of Allegations of Child Abuse, was adopted as R.1989 d.193, effective April 3, 1989. See: 21 N.J.R. 3(b), 21 N.J.R. 892(a).

Subchapter 6, Enforcement of Drug Free School Zones, was adopted as R.1989 d.354, effective July 3, 1989. See: 21 N.J.R. 817(a), 21 N.J.R. 1824(b).

Subchapter 7, Provisions for the Education of Homeless Children and Youth, was adopted as R.1990 d.615, effective December 17, 1990. See: 22 N.J.R. 2630(a), 22 N.J.R. 3734(b).

Chapter 3, School Districts, was repealed and replaced by new rules pursuant to Executive Order No. 66(1978) as R.1993 d.272, effective June 7, 1993. See: 25 N.J.R. 1095(a), 25 N.J.R. 2249(a).

Subchapter 9, School Ethics Commission, was adopted as R.1993 d.394, effective August 2, 1993. See: 25 N.J.R. 1924(a), 25 N.J.R. 3511(a).

Subchapter 4A, Promotion and High School Graduation Requirements and Procedures, was recodified from N.J.A.C. 6:8-7 by R.1998 d.457, effective September 8, 1998. See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

Subchapter 8, Provisions for the Education of Homeless Children and Youth, was recodified as N.J.A.C. 6:5 by R.1999 d.296, effective September 7, 1999. See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

Pursuant to Executive Order No. 66(1978), Subchapters 1 through 7 and Subchapter 9 were readopted as R.1999 d.342, effective September 10, 1999. Subchapter 9, School Ethics Commission, was recodified as Subchapter 8, School Ethics Commission, by R.1999 d.342, effective October 4, 1999. See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In accordance with N.J.S.A. 52:14B-5.1c, the expiration date of Chapter 3, School Districts, was extended to March 9, 2005. See: 36 N.J.R. 4050(a), 37 N.J.R. 502(c).

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## SUBCHAPTER 1. BOARDS OF EDUCATION

### 6:3-1.1 Board of school estimate

In any district board of education operating under N.J.S.A. 18A:9-2, the mayor of the municipality comprising the school district shall be the presiding officer of the board of school estimate, and in the event of the absence of the mayor at any meeting of the board of school estimate, the members thereof present at such meeting shall proceed to elect a presiding officer pro tem.

#### Case Notes

Rescission of candidate's withdrawal from school board election affirmed. *Monaghan v. Board of Education of Ridgfield Park*, 97 N.J.A.R.2d (EDU) 471.

School board's bylaws providing for agenda meeting before holding regular board meeting not legally enforceable. *Sooy v. Mainland Regional High School District*, 97 N.J.A.R.2d (EDU) 295.

Commissioner of Education could not intervene in school board's decision not to extend minibus service where decision was not proven unreasonable. *Shrewsbury v. Board of Education of Holland Township*, 96 N.J.A.R.2d (EDU) 795.

Failure to rehire recovered disability retiree was within school board's discretion. *Bublin v. Board of Education of the Borough of Point Pleasant*, 96 N.J.A.R.2d (EDU) 768.

School board's policy to ban backpacks in interest of safety constituted valid exercise of discretion. *Board of Education of Bernards Township v. C.M.*, 96 N.J.A.R.2d (EDU) 762.

Post-referendum change from two-story plan to one-story plan for new school was within school board's discretion. *Shuster v. Montgomery Township Board of Education*, 96 N.J.A.R.2d (EDU) 670.

Appointment of school board member by lame-duck mayor with less than one month remaining in his term. *Cordasco v. Board of Education of the Town of West New York*, 96 N.J.A.R.2d (EDU) 661.

Open Public Meeting Act was not violated by socializing after board of education meeting. *Kesselman v. Edison, Township Board of Education*, 96 N.J.A.R.2d (EDU) 436.

School board member not entitled to legal expenses incurred for personal reasons rather than in line of duty. *Quick v. Old Bridge Township Board of Education*, 96 N.J.A.R.2d (EDU) 116.

Employment as deputy fire chief did not place individual in conflict of interest so as to disqualify him from seeking election to school board. *Battiloro v. Westfield Board of Education*, 95 N.J.A.R.2d (EDU) 445.

Functions and duties as school business administrator and as mayor were inherently antagonistic and warranted administrator's suspension for conflict of interest. *Irvington Municipal Council v. Steele*, 95 N.J.A.R.2d (EDU) 123.

Bus driver for transportation company under contract with district board was not automatically ineligible for board membership. *Union Board of Education v. Andrews*, 95 N.J.A.R.2d (EDU) 350.

Submission date for nominating petitions for school board membership; insufficient signatures and subsequent registration of signers. *Jones v. Peddle*, 94 N.J.A.R.2d (EDU) 362.

Local school boards could not aggregate health coverage. *Millstone Township Teachers Association v. Millstone Township Board of Education*, 93 N.J.A.R.2d (EDU) 802.

Police officer assigned as security officer at high school was not disqualified from membership on board of education. *Ubal dini v. Cancel*, 93 N.J.A.R.2d (EDU) 457.

Board employee and union official not qualified to seek election to Board. *Board of Education of Township of Howell v. Suchcicki*, 93 N.J.A.R.2d (EDU) 157.

No disqualifying conflict of interest between police officer's membership on board of education and providing security services. *North Brunswick Township Education Association v. Board of Education of Township of North Brunswick*, 93 N.J.A.R.2d (EDU) 74.

Board of education membership; conflict of interest; law suit. *Board of Education of Township of Jackson, Ocean County v. Acevedo*, 92 N.J.A.R.2d (EDU) 163.

### 6:3-1.2 Special meetings of district boards of education

In every school district of the State, it shall be the duty of the secretary of the board of education to call a special meeting of the board whenever requested by the president of the board to do so or whenever there shall be presented to such secretary a petition signed by a majority of the whole number of members of the district board of education requesting the special meeting. Public notice of such special meeting shall be made pursuant to law and regulation. In accordance with N.J.S.A. 18A:10-6, the public notice shall include the date, time, location, and purpose(s) of the special meeting.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

Updated a reference.

#### Case Notes

School board acted improperly and in violation of open meeting requirements by discussing public business after meeting had officially ended. *Davis v. Willingboro Board of Education*, 95 N.J.A.R.2d (EDU) 352.

Cancellation of public forum; school board policies and Open Public Meetings Act. N.J.S.A. 10:4-12. *Fuhrmann v. Board of Educ. of the Borough of Middlesex*, 93 N.J.A.R.2d (EDU) 416.

### 6:3-1.3 Requirements for the Code of Ethics for school board members and charter school board of trustees members

(a) Each district board of education and charter school board of trustees shall:

1. Discuss the School Ethics Act and the Code of Ethics for School Board Members, pursuant to N.J.S.A. 18A:12-21 et seq., at a regularly scheduled public meeting annually;

2. Adopt policies and procedures regarding the training of district board of education and charter school board of trustees members in understanding the Code of Ethics; and

3. Provide documentation pursuant to (b) below that each member of the district board of education or board of trustees has received and reviewed the Code of Ethics.

(b) Each member of the district board of education or charter school board of trustees shall sign an acknowledgement of receipt of the Code of Ethics for School Board Members contained within N.J.S.A. 18A:12-21 et seq. This acknowledgement of receipt requires each district board of education member and charter schools board of trustees member to read and become familiar with the Code of Ethics.

Repealed by R.2001 d.140, effective May 7, 2001 (operative July 1, 2001).

See: 33 N.J.R. 419(a), 33 N.J.R. 1415(a).

Section was "Minimum bond requirements for treasurer of school moneys".

Administrative correction.

See: 33 N.J.R. 1796(a).

New Rule, R.2002 d.203, effective July 1, 2002.

See: 34 N.J.R. 1245(a), 34 N.J.R. 2331(a).

### 6:3-1.4 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate State certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience.

(b) No teaching staff member shall be employed in the public schools by any board of education unless he or she is the holder of a valid certificate (see N.J.S.A. 18A:26-2). In addition, district boards of education should exercise their right and responsibility to require job candidates to present **other, more** detailed documentation of their competency. Such documentation includes resumes, references, records of past experiences, college transcripts, certification test scores, assessment reports, internship evaluations, and other

documentation of competency relevant to the specific position.

(c) District boards of education shall assign to administrative positions those functions which are consistent with the individual qualifications of the position occupant, and shall support the establishment of structures for making instructional decisions that take administrator qualifications into account.

#### Case Notes

Applicant for position as school custodian failed to demonstrate adequate rehabilitation from narcotics conviction where applicant was still on probation for most recent offense, and applicant had violated probation many times in past. In the Matter of Vincent L. Lindsey, 96 N.J.A.R.2d (EDU) 1020.

School board member was reprimanded for voting on his wife's employment as classroom aide. In the Matter of Wayne Wurtz, 96 N.J.A.R.2d (EDU) 843.

Bus driver who failed to demonstrate rehabilitation after assault conviction was disqualified from school employment. In the Matter of the Disqualification of Srebnick, 96 N.J.A.R.2d (EDU) 833.

Chronic and excessive absenteeism warranted removal of tenured secretary. In the Matter of the Tenure Hearing of Linda Latona, 96 N.J.A.R.2d (EDU) 800.

Excessive absenteeism warranted withholding of employee's salary increment. Webb v. Board of Education of the Town of West Orange, 96 N.J.A.R.2d (EDU) 782.

Tenured employee's excessive absenteeism, neglect of duty, and misbehavior constituted sufficient cause for termination. In the Matter of Deal, 96 N.J.A.R.2d (EDU) 703.

Board of Education employee failed to establish entitlement to 60 days notice that her position would be eliminated. Allen v. Newark Board of Education, 96 N.J.A.R.2d (EDU) 688.

School custodian with criminal record was qualified for employment when proof of rehabilitation was shown. In the Matter of the Disqualification From School Employment of McCullough, 96 N.J.A.R.2d (EDU) 680.

Board of Education must provide analysis of job duties for newly created teaching position to determine reasonableness of dual certification requirement. Kopko v. Board of Education of the Borough of Cateret, 96 N.J.A.R.2d (EDU) 665.

Bus driver was properly dismissed after she was charged with narcotics possession, despite fact that charges were dropped upon driver's completion of pre-trial intervention program. Fagan v. Toms River School District Board of Education, 96 N.J.A.R.2d (EDU) 622.

Hearing disability consultant who demonstrated rehabilitation was not disqualified from school employment despite drug conviction. Kalapos v. New Jersey State Department of Education, 96 N.J.A.R.2d (EDU) 617.

Custodian with drug use record was not disqualified from school employment when rehabilitation was proven. Pruden v. New Jersey State Department of Education, 96 N.J.A.R.2d (EDU) 602.

Custodian's discharge for neglect of duty and unexplained absence from work was upheld. Jimenez v. City of Paterson School District, 96 N.J.A.R.2d (EDU) 600.

Applicant seeking certification as New Jersey school principal must have master's degree or substantial equivalent course work. Fisher v. State Board of Examiners, 96 N.J.A.R.2d (EDU) 561.

Bus driver with three ten-year-old drug convictions not precluded from school employment where evidence demonstrated rehabilitation. *Seifred v. Department of Education*, 96 N.J.A.R.2d (EDU) 558.

School employee was properly disqualified from employment due to past drug charges and convictions. In the Matter of the Disqualification from School Employment of Ali, 96 N.J.A.R.2d (EDU) 551.

Criminal history supported employment disqualification of teacher's aide. In the Matter of the Disqualification from School Employment of Chester, 96 N.J.A.R.2d (EDU) 547.

School custodian provided sufficient evidence of rehabilitation after drug conviction to overcome disqualification from public school employment. In the Matter of the Disqualification from School Employment of Lawrence, 96 N.J.A.R.2d (EDU) 532.

Single prior conviction coupled with rehabilitated lifestyle supported qualification for employment as public school security guard. In the Matter of the Disqualification from School Employment of Henderson, 96 N.J.A.R.2d (EDU) 530.

Insufficient evidence of rehabilitation after drug conviction supported disqualification of applicant for teacher's aide position from public school employment. In the Matter of the Disqualification from School Employment of Gowan, 96 N.J.A.R.2d (EDU) 528.

School employee's refusal to accept responsibility for criminal conduct supports disqualification from employment. *Marshall v. Department of Education*, 96 N.J.A.R.2d (EDU) 521.

Insufficient time of drug-free status after long criminal history precludes finding of rehabilitation and supports school custodian's disqualification from employment. *Butler v. Department of Education*, 96 N.J.A.R.2d (EDU) 517.

Bus driver's criminal history does not bar school employment where rehabilitation shown by clear and convincing evidence. *Marcelle v. Department of Education*, 96 N.J.A.R.2d (EDU) 515.

Tenured school board employee's continuous refusal to comply with board employment policy justifies termination. In the Matter of the Tenure Hearing of Powers, 96 N.J.A.R.2d (EDU) 508.

School bus driver demonstrated clear and convincing evidence of rehabilitation sufficient to overcome disqualification from school employment for prior criminal history. *Gambale v. Department of Education*, 96 N.J.A.R.2d (EDU) 505.

School custodian demonstrated rehabilitation by clear and convincing evidence and removed disqualification from employment for conviction for possession of marijuana. *Trisuzzi v. Department of Education*, 96 N.J.A.R.2d (EDU) 493.

Dismissal of teacher aide upheld where aide failed to demonstrate rehabilitation from past drug use. *Chester v. Department of Education*, 96 N.J.A.R.2d (EDU) 456.

Tenured school district employee properly dismissed for using his position to defraud federal government. In the Matter of the Tenure Hearing of Morton, 96 N.J.A.R.2d (EDU) 440.

Past drug convictions render school custodian unfit for school employment. *Campbell v. Department of Education*, 96 N.J.A.R.2d (EDU) 431.

School custodian demonstrated rehabilitation from criminal lifestyle and fitness for school employment. *McCullough v. Department of Education*, 96 N.J.A.R.2d (EDU) 420.

School employee working as audiovisual library technician entitled to tenure protection accorded clerks because job duties were primarily clerical. *Roach v. South Orange-Maplewood School District*, 96 N.J.A.R.2d (EDU) 370.

School custodian properly terminated for poor performance and unbecoming conduct. In the Matter of the Tenure Charges Against Nathan Purcell, 96 N.J.A.R.2d (EDU) 364.

Tenure rights were not violated where decision to abolish school district assistant purchasing agent's position was found to be reasonable. *Dearden v. Board of Education of the City of Trenton*, 96 N.J.A.R.2d (EDU) 321.

Tenured school board employee's rights not affected by school board's recoupment of salary overpayment in non-tenured position. *Sklute v. Board of Education of the City of Trenton*, 96 N.J.A.R.2d (EDU) 264.

Payroll supervisor for school board properly removed from position for unbecoming conduct after arranging for negative withholding on his own paycheck. In the Matter of the Tenure Charges Against Morton, 96 N.J.A.R.2d (EDU) 236.

School information systems control specialist not tenured clerical position. In the Matter of Dempster, 96 N.J.A.R.2d (EDU) 120.

School board may abolish tenured grounds and building director's position and terminate his employment based on appointed fiscal monitor's directive. *Wollman v. Board of Education of the City of Trenton*, 96 N.J.A.R.2d (EDU) 20.

Equally entitled candidates for position of acting assistant principal and recognition was given to local school board's choice. *Chammings v. Rockaway Township Board of Education*, 93 N.J.A.R.2d (EDU) 891.

### 6:3-1.5 Support residencies for regularly-certified, inexperienced first-year principals

(a) Regularly-certified, inexperienced first-year principals are individuals who:

1. Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-9.5 prior to September 1, 1989;
2. Have not previously held full-time employment as principals, vice-principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and
3. Have been offered employment as principals or vice-principals in a New Jersey public school district.

(b) Each district employing a regularly-certified, inexperienced first-year principal shall enter into an agreement to provide a principal residency program pursuant to N.J.A.C. 6:11-9.5, including a pre-residency experience, except that:

1. Entry requirements in N.J.A.C. 6:11-9.5 shall not apply to regularly-certified, inexperienced first-year principals;
2. Special certification evaluations as described in N.J.A.C. 6:119.5(c)5iv shall not be conducted for regularly-certified, inexperienced first-year principals, and no evaluations or recommendations concerning their certification shall be presented to the State Department of Education; and

3. As part of the support residency, the district shall require the new principal to undergo an assessment of performance at a State-approved center during the pre-residency phase. The sole purpose of this assessment shall be to provide a diagnosis of strengths and weaknesses as a basis for designing continuing education and support exercises.

(c) The State Department of Education shall monitor local districts to determine compliance with this section.

#### **6:3-1.6 Reporting and staffing of school districts**

(a) Each district board of education shall, on forms approved by the Commissioner and at specified times, submit:

1. Demographic data relative to each school;
2. Number and reasons for school dropouts;
3. Results of district and school assessment programs of pupil achievement; and
4. All required annual fiscal reports pursuant to law and rule.

(b) Teaching staff members shall be employed by the district board of education based upon the specific instructional needs of pupils of the district and each school within the district. Pursuant to N.J.A.C. 6:11, the district board of education shall provide certified personnel needed to implement a thorough and efficient system of free public schools.

(c) Each school shall be assigned the services of a full-time non-teaching principal to be responsible for administration and supervision of the school.

1. When a full-time non-teaching principal is not assigned to a school, the district board of education, upon advice of the chief school administrator, shall submit to the Commissioner for approval a plan that ensures adequate supervision of pupils and staff.

Recodified from N.J.A.C. 6:8-3.1 and 6:8-3.2 by R.1998 d.457, effective September 8, 1998.

See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

#### **Case Notes**

Commissioner's monitoring function under the Public School Education Act to measure and achieve a thorough and efficient education for all public school children, failed to accomplish that goal and operated largely as a self-improvement system. *Abbott v. Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990).

#### **6:3-1.7 (Reserved)**

#### **6:3-1.8 Approved public elementary and secondary school summer sessions**

(a) The rules for the approval of full-time public schools shall apply to all elementary and secondary summer sessions. No school summer session may be operated or approved unless it is operated by a district board of education without charge to pupils domiciled within the district.

(b) Remedial, advancement and enrichment courses may be offered to meet pupil needs. As used in this subchapter, the words below shall have the following meanings:

1. A "remedial course" is any course or subject which is a review of a course or subject previously taken for which credits or placement may be awarded upon successful completion of the course.

2. An "advanced course" is any course or subject not previously taken in an approved school program for which additional credits or advanced placement may be awarded upon successful completion of the course.

3. An "enrichment course" is any course or subject of avocational nature for which no credits are to be awarded.

(c) For pupils domiciled within the district, the district board of education shall not charge tuition for any remedial or advanced course. Reasonable tuition may be charged for enrichment courses which carry no credit and are determined by the county superintendent of schools to have no direct relationship to the curriculum.

(d) The operation of a summer session requires annual approval by the county superintendent of schools.

(e) In each public school, a member of the administrative, supervisory or teaching staff who is certified as an administrator shall be assigned the responsibilities of administration and supervision of the summer session.

(f) Teachers in summer sessions conducted by district boards of education shall possess valid certificates for subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor or teacher.

(g) The assignment of pupils in summer session for remedial courses shall be based upon the recommendation of the principal of the school which the pupil regularly attends in accordance with policies established by the district board of education. The principal's recommendation must state in writing the name of the subject(s) which the pupil may take and the purpose for which each subject is taken.

(h) An evaluation and a description of work completed shall be included in the pupil's cumulative record and the principal of the sending school will determine the grade placement of the pupil.

(i) To receive advanced credit for a subject not previously taken, the pupil shall receive class instruction in summer session under standards equal to those during the regular term.

(j) Full-year subjects which are given for review, remediation or for other purposes not including advanced credit must be conducted for 3,600 minutes of instruction under standards equal to those during the regular term or through an established number of curricular activities as determined

by the district board of education and approved by the county superintendent of schools.

(k) Credit for work taken in an approved elementary or secondary school summer session shall be transferable in the same manner as work taken in any approved elementary or secondary school.

(l) The amount of the time which a pupil has spent in receiving class instruction shall become part of his or her permanent record and shall be included whenever the record is transferred to another school.

Recodified from N.J.A.C. 6:8-9.1 through 6:8-9.4 by R.1992 d.22, effective January 6, 1992.

See: 23 N.J.R. 2908(b), 24 N.J.R. 90(b).

Amended by R.1992 d.510, effective December 21, 1992.

See: 24 N.J.R. 3039(a), 24 N.J.R. 4508(a).

Recodified from N.J.A.C. 6:8-8.1 through 6:8-8.4 by R.1998 d.457, effective September 8, 1998.

See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

## SUBCHAPTER 2. CHIEF SCHOOL ADMINISTRATOR

### 6:3-2.1 Chief school administrator defined

Whenever the phrase "chief school administrator" is used throughout Title 6, it shall mean the superintendent of schools, or, if there is no superintendent, the administrative principal. The term "administrative principal" means the principal who works directly with the board of education in a district which has no position of superintendent of schools.

#### Case Notes

School board was authorized to rescind initial three-year contract and to renegotiate new five-year contract with superintendent. *Graham v. Kearny Board of Education*, 95 N.J.A.R.2d (EDU) 510.

Authority was vested in school board to extend employment contract with superintendent while existing contract was still in effect. *West Village Civic Club v. Manchester Board of Education*, 95 N.J.A.R.2d (EDU) 115.

Board of education could not delegate to superintendent authority to relocate classes. *Bond v. Board of Education of City of Camden*, 93 N.J.A.R.2d (EDU) 577.

Authority of board of education to hire teacher contrary to recommendation of chief school administrator. *Rotondo v. Board of Education of Carlstadt/East Rutherford Regional High School District*, 92 N.J.A.R.2d (EDU) 376.

Letter pertaining to annual insurance premium payment did not modify employment agreement with superintendent of schools. *Syverson v. Scotch Plains-Fanwood Board of Education*, 92 N.J.A.R.2d (EDU) 251.

### 6:3-2.2 Annual evaluation of tenured and nontenured chief school administrators

(a) Every district board of education shall adopt a policy and implementation procedures requiring the annual evaluation of the chief school administrator by the district board of education.

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of the chief school administrator;
2. Improve the quality of the education received by the pupils served by the public schools; and
3. Provide a basis for the review of the performance of the chief school administrator.

(c) Such policy and procedures shall be developed by each district board of education after consultation with the chief school administrator and shall include, but not be limited to:

1. A determination of roles and responsibilities for the implementation of the policy and procedures;
2. Development of a job description and evaluation criteria, based upon the district's local goals, program objectives, policies, instructional priorities, State goals, statutory requirements, and the functions, duties and responsibilities of the chief school administrator;
3. Specification of methods of data collection and reporting appropriate to the job description;
4. Provision for the preparation of an individual plan for professional growth and development based in part upon any needs identified in the evaluation, which shall be mutually developed by the district board of education and the chief school administrator; and
5. Preparation of an annual written performance report by a majority of the full membership of the district board of education and an annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present.

(d) Nothing shall preclude a district board of education, at its discretion, from hiring a qualified consultant to assist or advise in the evaluation process; however, the evaluation itself is the responsibility of the district board of education.

(e) Such policy shall be distributed to the chief school administrator upon adoption. Amendments to the policy shall be distributed within 10 working days after adoption.

(f) The annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present, shall be held before the written performance report is filed. The conference shall be held in private, unless the chief school administrator requests that it be held in public. The conference shall include, but not be limited to:

1. Review of the performance of the chief school administrator based upon the job description;



2. Review of the chief school administrator's progress in achieving and/or implementing the district's goals, program objectives, policies, instructional priorities, State goals and statutory requirements; and

3. Review of available indicators of pupil progress and growth toward the program objectives.

(g) The annual written performance report shall be prepared by April 30 by a majority of the total membership of the district board of education and shall include, but not be limited to:

1. Performance areas of strength;
2. Performance areas needing improvement based upon the job description and evaluation criteria set forth in (c)2 above;
3. Recommendations for professional growth and development;
4. A summary of available indicators of pupil progress and growth and a statement of how these available indicators relate to the effectiveness of the overall program and the performance of the chief school administrator; and
5. Provision for performance data which have not been included in the report prepared by the board of education to be entered into the record by the chief school administrator within 10 working days after the completion of the report.

(h) These provisions are the minimum requirements for the evaluation of chief school administrators.

(i) For purposes of this section:

1. "Chief school administrator" is defined in N.J.A.C. 6:3-2.1;
2. "Available indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:39; and
3. "Job description" means a written specification of the functions, duties and responsibilities of the chief school administrator and the relationship of such functions, duties and responsibilities to those of the district board of education.

(j) The evaluation procedure for a nontenured chief school administrator shall be completed by April 30 each year.

(k) Each newly appointed or elected board of education member shall complete a New Jersey School Boards Association training program on the evaluation of the chief school administrator within six months of the commencement of his or her term of office pursuant to N.J.S.A. 18A:17-20.3b.

Amended by R.1999 d.342, effective October 4, 1999.  
See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (i)2, updated a reference.

#### Case Notes

Offer not to disclose information about misconduct in return for tenure as "benefit" within meaning of bribery statute. *State v. Scirrotto*, 115 N.J. 38, 556 A.2d 1195 (1989).

Board of education members not legally able to serve; action to terminate superintendent. *Pijaux v. City of Orange Board of Education*, 94 N.J.A.R.2d (EDU) 345.

County superintendent failed to file written assets and liabilities report. *Bd. of Ed., Egg Harbor Twp. v. Bd. of Ed., Greater Egg Harbor Regional High School District, Atlantic Cty.*, 7 N.J.A.R. 57 (1981), affirmed 188 N.J.Super. 92, 456 A.2d 106 (App.Div.1982), certification denied 93 N.J. 245, 460 A.2d 655 (1982).

### SUBCHAPTER 3. CONDITIONS OF EMPLOYMENT FOR TEACHERS

#### 6:3-3.1 Full-time employment of teachers

The period of time in each day required for full-time employment shall be the number of hours prescribed by the district board of education but shall not be less than four clock hours.

#### Case Notes

Statutory physical and mental examination requirements for teachers did not violate due process. *Hoffman v. Jannarone*, 401 F.Supp. 1095 (D.N.J.1975), affirmed in part, reversed in part and remanded 532 F.2d 746 (3rd Cir.1976).

Regulations preempt collective negotiations regarding specifically addressed and established terms and conditions of employment. *Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Education Assn.*, 91 N.J. 38, 449 A.2d 1254 (1982).

Guidance counselor's tenure rights not violated by the addition of teaching duties. *Kartan v. North Arlington Board of Education*, 97 N.J.A.R.2d (EDU) 435.

School board's contract for crisis intervention therapists was valid. *Edison Township Education Association v. Edison Township Board of Education*, 94 N.J.A.R.2d (EDU) 301.

#### 6:3-3.2 Duty-free lunch periods for teachers

Any teacher employed in both a morning and an afternoon session shall be entitled to a duty-free lunch period during the hours normally used for lunch periods in the school. The duty-free lunch period shall not be less than 30 minutes except in a school where the lunch period for pupils is less than 30 minutes in which case the duty-free lunch period shall not be less than the lunch period time allowed pupils.

#### Law Review and Journal Commentaries

Education. Judith Nallin, 138 N.J.L.J. Nos. 2, 62 (1994).

## Case Notes

Local offices of Board Affairs and General Counsel property under Executive Superintendent's authority. *Gibson v. Newark Bd. of Ed.*, 6 N.J.A.R. 304 (1984).

## SUBCHAPTER 4. SUPERVISION, OBSERVATION AND EVALUATION

### 6:3-4.1 Supervision of instruction: observation and evaluation of nontenured teaching staff members

(a) For the purpose of this section, the term "observation" shall be construed to mean a visitation to an assigned work station by a certified supervisor of the local school district for the purposes of formally collecting data on the performance of a nontenured teaching staff member's assigned duties and responsibilities and of a duration appropriate to those duties and responsibilities.

1. Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative or supervisory staff member who visits the work station for the purpose of observing a teaching staff member's performance of the instructional process.

(c) Each district board of education shall adopt a policy for the supervision of instruction, setting forth procedures for the observation and evaluation of all nontenured teaching staff members. Such policy shall be distributed to each teaching staff member at the beginning of his or her employment.

(d) Each policy for the supervision of instruction shall include, in addition to those observations and evaluations herein before described, an annual written evaluation of the nontenured teaching staff member's total performance as an employee of the district board of education, including, but not limited to:

1. Performance areas of strength;
2. Performance areas needing improvement based upon the job description;
3. An individual professional improvement plan developed by the supervisor and the teaching staff member; and
4. A summary of available indicators of pupil progress and growth, and a statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member.

(e) Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be followed within a reasonable period of time, but in no instance more than 10 days, by a conference between the administrative or supervisory staff member who has made the observation and written evaluation, and the nontenured teaching staff member. Both parties to such a conference will sign the written evaluation report and retain a copy for his or her records. The nontenured teaching staff member shall have the right to submit his or her written disclaimer of such evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the evaluation report.

(f) The purposes of this procedure for the **observation** and evaluation of nontenured teaching staff members shall be to identify deficiencies, extend assistance for the correction of such deficiencies, improve professional competence, provide a basis for recommendations regarding reemployment, and improve the quality of instruction received by the pupils served by the public schools.

(g) "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, or any educational services commission, holding office, position or employment of such character that the qualifications for such office, position or employment require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this subchapter but shall instead be evaluated pursuant to N.J.A.C. 6:3-2.2.

## Case Notes

Offer not to disclose information about misconduct in return for tenure as "benefit" within meaning of bribery statute. *State v. Scirrotto*, 115 N.J. 38, 556 A.2d 1195 (1989).

Teacher who struck aggressive student whom she believed was about to harm another student was not guilty of corporal punishment. In the Matter of the Tenure Hearing of Kulp, 96 N.J.A.R.2d (EDU) 636.

Tenure status was properly denied where teacher failed to meet district teaching standards. *Getz v. North Hunterdon-Voorhees Regional District Board of Education*, 96 N.J.A.R.2d (EDU) 606.

Decision to abolish interior design program was based on declining enrollment, poor retention rate, and lack of job placement, and thus did not constitute unlawful age discrimination against teacher whose position was thereby eliminated. *Guarini v. Ocean County Vocational-Technical School District*, 96 N.J.A.R.2d (EDU) 331.

School district's complete failure to comply with constitutional mandate underlying public education compels State takeover and creation of a State-operated school district. *Contini v. Board of Education of Newark*, 96 N.J.A.R.2d (EDU) 196.

School board's termination of nontenured teacher valid if board complies with contractual termination provision and is not arbitrary or capricious. *Kufel v. Union County Vocational-Technical School District Board of Education*, 96 N.J.A.R.2d (EDU) 14.



There was enforceable contract for employment of non-tenured teacher, but it was violated by teacher's lack of proper certification. *Delgado v. Union City Board of Education*, 93 N.J.A.R.2d (EDU) 744.

Refusal to rehire nontenured teacher was within discretion of board of education and not discriminatory. *Costanzo v. Board of Education of City of Rahway*, 93 N.J.A.R.2d (EDU) 654.

Nontenured teacher not renewed despite chief school administrator's recommendation; authority of school board. *Stevens v. Board of Education of Township of Spotswood*, 93 N.J.A.R.2d (EDU) 453.

Evidence supported findings that certified Title I teachers were improperly compensated, assigned titles as a subterfuge to avoid pay parity and terminated under false rationale to avoid tenure acquisition. *Blue v. Bd. of Ed., Jersey City*, 2 N.J.A.R. 206 (1980).

**6:3-4.2 Procedure for appearance of nontenured teaching staff members before a district board of education upon receipt of a notice of nonreemployment**

(a) Whenever a nontenured teaching staff member has requested in writing and has received a written statement of reasons for nonreemployment pursuant to N.J.S.A. 18A:27-3.2, he or she may request in writing an informal appearance before the district board of education. Such written request must be submitted to the board within 10 calendar days of receipt of the board's statement of reasons.

(b) Such an informal appearance shall be scheduled within 30 calendar days from receipt of the board's statement of reasons.

(c) Under the circumstances described in this section, a nontenured teaching staff member's appearance before the board shall not be an adversary proceeding. The purpose of such an appearance shall be to permit the staff member to convince the members of the board to offer reemployment.

(d) Each district board shall exercise discretion in determining a reasonable length of time of the proceeding, depending upon the specific circumstances in each instance.

(e) Each district board shall provide adequate written notice to the employee regarding the date and time of the informal appearance.

(f) The nontenured teaching staff member may be represented by counsel or one individual of his or her own choosing.

(g) The staff member may present witnesses on his or her behalf. Such witnesses need not present testimony under oath and shall not be cross-examined by the board. Witnesses shall be called into the meeting to address the board one at a time and shall be excused from the meeting after making their statements.

(h) The proceeding of an informal appearance before the district board as described herein may be conducted pursuant to N.J.S.A. 10:4-12(b)(8).

(i) Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of its final determination. Such notification may be delegated by the board to its superintendent or board secretary.

**Case Notes**

Nontenured teacher's failure to allege that termination violated constitutional or legislatively-conferred rights justifies summary decision for school board. *Kufel v. Union County Vocational-Technical School District*, 96 N.J.A.R.2d (EDU) 446.

**6:3-4.3 Evaluation of tenured teaching staff members**

(a) Every district board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel (see N.J.S.A. 18A:1-1; N.J.A.C. 6:11-9.3).

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of teaching staff members;
2. Improve pupil learning and growth; and
3. Provide a basis for the review of performance of tenured teaching staff members.

(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with tenured teaching staff members and shall include, but not be limited to:

1. Roles and responsibilities for implementation of the policies and procedures;
2. Development of job descriptions and evaluation criteria based upon district goals, program objectives and instructional priorities;
3. Methods of data collection and reporting appropriate to the job description including, but not limited to, observation of classroom instruction;
4. Observation conference(s) between the supervisor and the teaching staff member;
5. Provision for the use of additional appropriately certified personnel where it is deemed advisable;
6. Preparation of individual professional improvement plans; and
7. Preparation of an annual written performance report by the supervisor and an annual summary conference between the supervisor and the teaching staff member.

(d) These policies shall be distributed to reach tenured teaching staff members no later than October 1. Amendments to the policy shall be distributed within 10 working days after adoption.

(e) The annual summary conference between supervisors and teaching staff members shall be held before the written performance report is filed. The conference shall include, but not be limited to:

1. Review of the performance of the teaching staff member based upon the job description;
2. Review of the teaching staff member's progress toward the objectives of the individual professional improvement plan developed at the previous annual conference;
3. Review of available indicators of pupil progress and growth toward the program objectives; and
4. Review of the annual written performance report and the signing of said report within five working days of the review.

(f) The annual written performance report shall be prepared by a certified supervisor who has participated in the evaluation of the teaching staff member and shall include, but not be limited to:

1. Performance areas of strength;
2. Performance areas needing improvement based upon the job description;
3. An individual professional improvement plan developed by the supervisor and the teaching staff member;
4. A summary of available indicators of pupil progress and growth, and in statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member; and
5. Provisions for performance data which have not been included in the report prepared by the supervisor to be entered into the record by the evaluatee within 10 working days after the signing of the report.

(g) These provisions are the minimum requirements for the evaluation of tenured teaching staff members.

(h) For the purposes of this section:

1. "Appropriately certified personnel" means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction;
2. "Indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:39.
3. "Individual professional improvement plan" is a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan;

4. "Job description" means a written specification of the function of the position, duties and responsibilities, the extent and limits of authority, and work relationships within and outside the school and district;

5. "Observation conference" means a discussion between supervisor and teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member's annual evaluation;

6. "Observation" means a visitation to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member's assigned duties and responsibilities and of a duration appropriate to same;

7. "Performance report" means a written appraisal of the teaching staff member's performance prepared by an appropriately certified supervisor;

8. "Supervisor" means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members; and

9. "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this section, but shall instead be evaluated pursuant to N.J.A.C. 6:3-2.2.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (h)2, updated a reference.

#### Case Notes

Board of education's decision to withhold principal's salary increment due to his excessive absenteeism was not related predominately to evaluation of principal's performance, and thus principal's appeal should be through arbitration, and not to Commissioner of Department of Education. *Edison Tp. Bd. of Educ., Middlesex County v. Edison Tp. Principals and Sup'rs Ass'n*, 304 N.J.Super. 459, 701 A.2d 459 (A.D. 1997).

Tenure entitlement to guidance counselor position due to assignment of guidance functions affirmed. *Dudzinski v. Board of Education of the Borough of Franklin, Sussex County*, 97 N.J.A.R.2d (EDU) 531.

School board unable to unilaterally reduce tenured teaching employee's salary. *Adams v. Board of Education of the Ocean Gate School District, Ocean County*, 97 N.J.A.R.2d (EDU) 528.

Secretary's tenure rights violated due to reduction in salary while functions remained unabated. *Bove v. Board of Education of the Township of Frankford, Sussex County*, 97 N.J.A.R.2d (EDU) 523.

School board's mistaken salary increase not remediable by reducing tenured staff's compensation during next school term. *DeLyon v. Board of Education of the Borough of Old Tappan*, 97 N.J.A.R.2d (EDU) 499.

District's authority to withhold salary increments due to below standard performance affirmed. *Fogarty, et al. v. State Operated School District of the City of Jersey City, Hudson County*, 97 N.J.A.R.2d (EDU) 439.

Teacher's arrest for possession of marijuana constituted conduct unbecoming a teacher and was sufficient to warrant dismissal. In the *Matter of the Tenure Hearing McIntyre*, 96 N.J.A.R.2d (EDU) 719.

Testimony of three students was insufficient to prove corporal punishment charges against physical education teacher, given teacher's previously unblemished record. In the *Matter of the Tenure Hearing of Quinones*, 96 N.J.A.R.2d (EDU) 649.

Tenured teacher who broke up fight between students by physically placing one student in chair violated ban against corporal punishment, and thus would have increment and salary withheld. In the *Matter of the Tenure Hearing of MacDowell*, 96 N.J.A.R.2d (EDU) 644.

Tenured teacher properly suspended for sexually harassing co-worker. In the *Matter of the Tenure Hearing of Paul Ash*, 96 N.J.A.R.2d (EDU) 442.

Teacher's consistent failure to effectively discipline and teach students justifies removal. In the *Matter of the Tenure Hearing of Loria*, 96 N.J.A.R.2d (EDU) 379.

Denial of salary increment upheld when teacher failed to properly supervise students. *Backer v. Roxbury Township Board of Education*, 96 N.J.A.R.2d (EDU) 349.

Withholding of employment and adjustment increments justified for teacher with less than satisfactory evaluations. *Rago v. State-Operated School District of the City of Jersey City*, 96 N.J.A.R.2d (EDU) 31.

Commissioner of Education lacks jurisdiction to hear teacher's re-employment and salary dispute with school board. *Picot v. Warren County Vocational-Technical School District*, 96 N.J.A.R.2d (EDU) 27.

Commissioner has jurisdiction to decide scope of negotiability issue pertaining to annual evaluation deadline. *Willingboro Administrators Assn. v. Willingboro Education Assn.*, 1 N.J.A.R. 327 (1980).

Subchapter 4A, School Employee Physical Examinations, was adopted as R.2001 d.138, effective May 7, 2001. See: Source and Effective Date.

### 6:3-4A.1 Scope and purpose

This subchapter designates the minimum assessments to be used by district boards of education in establishing physical examinations for candidates for employment and district employees.

### 6:3-4A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Employee" means the holder of any full-or part-time position of employment.

"Employee assurance statement" means a statement signed by the employee, certifying that information supplied by the employee is true to the best of his or her knowledge.

"Health history" means the record of a person's past health events obtained in writing, completed by the individual or their physician.

"Health screening" means the testing of people, using one or more diagnostic tools, to determine the presence or precursors of a particular disease.

"Medical evaluation" means the examination of the body by the school medical inspector or by any physician licensed to practice medicine.

"Physical examination" means the assessment of an individual's health.

"Psychiatric examination" means an examination for the purpose of diagnosis and treatment of mental disorders.

### 6:3-4A.3 Policies and procedures for employee physical examinations

District boards of education shall adopt written policies and procedures for the physical examination of employees, and may adopt written policies and procedures for candidates for employment. Such policies shall be based on the advice and recommendation of the district medical inspector, provide for notification to school employees regarding the requirements for physical examinations, and establish procedures to assure confidentiality during the collection, transmission and storage of employee medical records pursuant to N.J.A.C. 6:3-4A.4.

### 6:3-4A.4 Requirements of physical examinations

(a) Any candidate for employment may be required to undergo a physical examination that may include, but not be limited to, health history, health screenings and medical evaluation and drug testing. The preemployment physical

## SUBCHAPTER 4A. SCHOOL EMPLOYEE PHYSICAL EXAMINATIONS

### Authority

N.J.S.A. 2A:4A-60, 2A:170-25.9, 2C:5, 2C:12-1, 2C:33-19, 2C:39, 9:6-1, 10:4-6, 18A:40-12.5 to 12.6, 18A:17-46, 18A:35-4.8; 18A:37-2.1 to 2.5, 18A:37-7 to 12, 18A:38-1, 18A:38-25, 18A:38-31, 18A:40-1, 18A:40-3 to 4, 18A:40-7 to 18, 18A:40-23 to 31, 18A:40A-1 to 17, 18A:46-18.1, 24:21-2, 26:3d-17, 26:5C, 34:2-21.8(3), 34 CFR Part 98, 34 CFR Part 99, 42 CFR Part 2, 18 U.S.C. § 921 and 20 U.S.C. § 1400.

### Source and Effective Date

R.2001 d.138, effective May 7, 2001.  
See: 33 N.J.R. 399(a), 33 N.J.R. 1443(a).

### Subchapter Historical Note

Subchapter 4A, Promotion and High School Graduation Requirements and Procedures, was repealed by R.2000 d.190, effective May 1, 2000. See: 32 N.J.R. 395(a); 32 N.J.R. 1528(a).

examination shall not be used to determine a candidate's disabilities. Such examination shall be used only to determine whether the applicant is able to perform with reasonable accommodation job-related functions pursuant to P.L. 101-336, Americans with Disabilities Act of 1990.

(b) Newly employed staff shall be required to undergo a physical examination which shall include, but not be limited to:

1. A health history completed by the individual or their physician which shall include:

- i. Past serious illnesses and injuries;
- ii. Current health problems;
- iii. Allergies; and
- iv. Record of immunizations.

2. Health screenings including:

- i. Height and weight;
- ii. Blood pressure;
- iii. Pulse and respiratory rate; and
- iv. Vision screening, hearing screening and Mantoux test for tuberculosis.

3. A medical evaluation which shall include, but not be limited to, a record of immunizations. Guidance regarding immunizations for adults may be found in the document Adult Immunization: Recommendations of the Immunization Practices Advisory Committee (ACIP). Copies are available from the Immunization Program, Centers for Disease Control, Public Health, United States Department of Health and Human Services, Atlanta, Georgia 30333.

(c) Individual employees may provide health status information, including medications, which may be of value to medical personnel in the event of an emergency requiring treatment. In such instances, an employee may also choose to share with the building principal and, if desired, with the certified school nurse, information regarding current health status to assure ready access in a medical emergency.

(d) Any examinations or assurances required or permitted by N.J.S.A. 18A:16-2 or this subchapter shall be limited to those assessments or information necessary to determine the individual's physical and mental fitness to perform with reasonable accommodation in the position which he or she seeks or currently holds, and to detect any health risks to students and other employees.

(e) Additional individual psychiatric or physical examinations of any employee may be required by the district board of education whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health. When a board requires an employee to undergo such an individual examination:

1. The board must provide the employee with a written statement of reasons for the required additional examination. The board, if requested, shall provide the employee with a hearing.

2. The determination of such a hearing shall be appealable to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3.

(f) All employee medical records for the district, including computerized records, shall be secured, and shall be stored and maintained separately from other personnel files. Only the employee, the chief school administrator and the school medical inspector, shall have access to the medical information in that individual's file. The section of the medical record which contains the health history may be shared with the building principal and the school nurse with the consent of the employee as provided for in (c) above.

(g) Cost for examinations made by a physician or institution designated by the district board of education shall be borne by the district board of education. If, however, the examination is performed by a physician or institution designated by the employee, with approval of the district board of education, the cost shall be borne by the employee.

## SUBCHAPTER 5. SENIORITY

### 6:3-5.1 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 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 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. 6:11-3.3.

(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. The word "secondary" shall include grades nine through 12 in all high schools, grades seven and eight in junior high schools and grades seven and eight in elementary schools having departmental instruction;

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. The word "elementary" shall include kindergarten, grades one through six and grades seven and eight without departmental instruction;

i. District boards of education who make a determination to reorganize instruction at grades seven and eight pursuant to these rules must 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 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 (N.J.A.C. 6:11).

(m) In the event of a restructure of grade levels which results in the elimination of all junior high schools in the 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.

#### Law Review and Journal Commentaries

Recovering from Taxman. Sean R. Kelly and Deanna M. Beecham, 148 N.J.L.J. 128 (1997).

#### Case Notes

School board's affirmative action plan of preferring minority teachers over nonminority teachers in layoff decisions where teachers were equally qualified violated Title VII. *Taxman v. Board of Educ. of Township of Piscataway*, C.A.3 (N.J.) 1996, 91 F.3d 1547.

The use of the word 'abolish' in rule must be read within the context of the authority of implementing authority, thus the triggering event for preference based on seniority was either a dismissal or transfer coupled with a loss of a tangible employment benefit. *Carpenito v. Board of Education of Borough of Rumson, Manmouth County*, 322 N.J.Super. 522, 731 A.2d 538 (N.J.Super.A.D. 1999).

School board could terminate tenured speech correction teacher and have services provided by educational services commission. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

Evidence supported State Board of Education determination that school district had legitimate basis for restructuring guidance department so as to eliminate position of guidance counselor, which required education services certification, and to create new position of class

supervisor, which required certification in both educational services and administration. *Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626, 622 A.2d 858 (1993).

If newly created position is similar to tenure holder's abolished position but also requires additional or different responsibilities, newly created position is not considered substantially similar to former position for purposes of determining whether local board must extend tenure holder's tenure rights to new position. *Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626, 622 A.2d 858 (1993).

Local school board may not sidestep educator's tenure rights by simply renaming position or tacking on additional meaningless requirements; local board must extend teaching-staff member's tenure rights to newly created position. *Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626, 622 A.2d 858 (1993).

Service as guidance counselor under educational services certification did not automatically entitle tenured guidance counselor to tenure in position which fell under both educational services and administrative certificates; requirement of dual certification and service in position under particular certificate for tenure under that certificate was not unreasonable, arbitrary or capricious. *Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626, 622 A.2d 858 (1993).

Where newly created position of class supervisor required performance of additional duties apart from those performed by tenured guidance counselor, guidance counselor, who had acquired tenure in her position under educational services certificate, was not entitled to tenure rights to newly created position which required certification under both educational services and administration. *Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626, 622 A.2d 858 (1993).

Teacher on leave has no contract for that year and position would be filled, after one year leave is over, on basis of appropriate seniority rules; tenured teacher filling temporary vacancy continued to accrue seniority credits. *Lammers v. Board of Educ. of Borough of Point Pleasant*, 260 N.J.Super. 390, 616 A.2d 1293 (A.D.1992), certification granted 133 N.J. 438, 627 A.2d 1143, reversed 134 N.J. 264, 633 A.2d 526.

Tenured high school teacher could not be turned down for temporary vacancy in middle school, since departmentalized middle school is classified as secondary school for employee entitlement purposes. *Lammers v. Board of Educ. of Borough of Point Pleasant*, 260 N.J.Super. 390, 616 A.2d 1293 (A.D.1992), certification granted 133 N.J. 438, 627 A.2d 1143, reversed 134 N.J. 264, 633 A.2d 526.

School teacher was entitled to have 30 days of unpaid absences credited toward seniority, though teacher took more than 30 days maternity leave. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

Teacher did not accrue secondary seniority credits by providing statutorily mandated services in public school to sixth, seventh and eighth parochial students who were added to students from public school where public school clearly was in elementary category, though parochial school was departmentalized in same way as equivalent departmentalized public schools. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

Teacher was entitled to seniority credits for nine unused sick days applied to her maternity leave where teacher had been employed in preceding school year and indicated she intended to return after maternity leave. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

Teacher's seniority could be recalculated according to new regulations after their operative date as reasonable exercise of education commissioner's administrative rulemaking power. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

"Seniority" provisions of teacher tenure statute concerned only rights inter sese of tenured teachers and did not authorize dilution of teacher's tenure rights by reduction in work hours and retention of nontenured teacher full-time in secondary school position solely on basis of nontenured teacher's "seniority" in the secondary setting. *Bednar v. Westwood Bd. of Educ.*, 221 N.J.Super. 239, 534 A.2d 93 (A.D.1987), certification denied 110 N.J. 512, 541 A.2d 1371.

Tenured secondary school physical education teacher entitled to reinstatement to elementary school teaching position held by nontenured teachers upon reduction in force of teaching staff. *Capodilupo v. Bd. of Educ. of West Orange*, 11 N.J.A.R. 129 (1985) affirmed 218 N.J.Super. 510, 528 A.2d 73, certification denied 109 N.J. 514, 537 A.2d 1300.

District's reduction in force is nonnegotiable and nongrievable. *Jamison v. Morris School District Bd. of Ed.*, 198 N.J.Super. 411, 487 A.2d 739 (App.Div.1985).

Years spent by teachers in federal program can be tacked on, for tenure purposes, to time spent in local district programs. *Shelko v. Bd. of Ed., Mercer Cty. Special Services School District, Mercer Cty.*, 97 N.J. 414, 478 A.2d 1187 (1984).

School board not required to give salary credit for teaching time in another district upon rehiring of tenured teacher. *Whalen v. Bd. of Ed., Sayreville Boro., Middlesex Cty.*, 192 N.J.Super. 453, 471 A.2d 49 (App.Div.1983), certification denied 96 N.J. 312, 475 A.2d 601 (1984).

Determination of seniority allows pro rata calculation based upon total accumulated service in a specific category. *Lichtman v. Bd. of Ed., Ridgewood Village, Bergen Cty.*, 93 N.J. 362, 461 A.2d 158 (1983).

Duty under Code of Professional Responsibility to withdraw from employment upon discharge took precedence over any veteran's tenure right. He could assert for position with school board. *Taylor v. Bd. of Ed., Hoboken School District, Hudson Cty.*, 187 N.J.Super. 546, 455 A.2d 552 (App.Div.1983), certification denied 95 N.J. 228, 470 A.2d 441 (1983).

Tenured supervisors not entitled to supervisor/teacher positions due to lack of certificates and endorsements. *Lisa et al. v. Board of Education of the Township of Washington, Gloucester County*, 97 N.J.A.R.2d (EDU) 478.

Denial of supervisor's tenure entitlement due to lack of certificates affirmed. *Alves v. Board of Education of the Township of Mahwah, Bergen County*, 97 N.J.A.R.2d (EDU) 468.

Business teachers entitled to positions due to superior tenure and seniority rights. *Lewis and Skawinski v. State Operated School District of Paterson, Passaic County*, 97 N.J.A.R.2d (EDU) 459.

School district violates terminated teachers' seniority and tenure rights by not rehiring when qualified openings arise. *Brueck and Fredrick v. Fairview Board of Education*, 97 N.J.A.R.2d (EDU) 283.

Asbestos safety monitor's economic interest in contractor doing asbestos abatement violates law prohibiting economic conflict of interest. *Karl & Associates, Inc. v. Division of Codes and Standards*, 97 N.J.A.R.2d (CAF) 25.

Tenured teacher whose position as reading specialist was abolished was entitled to learning disabilities teacher-consultant position, which was covered under her educational services certificate, even though she had no seniority in that position, and thus school district violated teacher's tenure rights when it hired new teacher as learning disabilities teacher-consultant. *Arnold v. Bridgewater Raritan Regional School District*, 96 N.J.A.R.2d (EDU) 1015.

Board of education need not transfer tenured teacher to former social studies position where teacher's tenure and seniority rights were not affected by hiring of nontenured social studies teacher. *Carpenito v. Rumson Borough Board of Education*, 96 N.J.A.R.2d (EDU) 958.

Supervisor of health and physical education whose position was abolished as result of reduction in force was not entitled to supervisor of elementary education position for which he possessed no credentials. *White v. Bloomfield Board of Education and Rosamilia*, 96 N.J.A.R.2d (EDU) 846.

Tenured teacher's actions, including striking student with pointer and using inappropriate language, constituted unbecoming conduct but did not warrant discharge. In the Matter of the Tenure Hearing of Joseph Trawick, 96 N.J.A.R.2d (EDU) 756.

Educator who obtained tenure under one certificate was entitled to vacant administrative position requiring same certificate when he was discharged to reduction in force. *Jefferson v. Board of Education of the City of East Orange, Essex County*, 96 N.J.A.R.2d (EDU) 751.

Teacher's tenure rights were violated when school board terminated her employment and assigned math and science instruction to **teachers** with only vocational certification. *Smith v. Morris County Vocational School District, Board of Education*, 96 N.J.A.R.2d (EDU) 731.

Secretary's tenure rights were violated when, upon elimination of her 12-month half-time position, she was not assigned to vacant 12-month secretarial position. *Sherrill v. Board of Education*, 96 N.J.A.R.2d (EDU) 727.

Automobile mechanics teacher with least seniority in department was properly reduced from full-time position to half-time position. *Clapp v. South Brunswick Township Board of Education*, 96 N.J.A.R.2d (EDU) 657.

Laid off physical education teacher entitled to back pay where school district failed to recognize greater seniority than two other teachers. *Ressler v. Saddle Brook Township Board of Education*, 96 N.J.A.R.2d (EDU) 581.

Administrator may claim entitlement to position four years after position filled without violating 90-day rule if demoted due to reduction in force demotion and school district refused to honor her claim. *Figurelli v. Board of Education of the School District of Jersey City*, 96 N.J.A.R.2d (EDU) 576.

Voluntary teacher preparatory work performed over summer before effective date of appointment does not count toward tenure. *De Maio v. New Providence Board of Education*, 96 N.J.A.R.2d (EDU) 449.

Number of years in specific category as acting appointee justifies seniority claim to full appointment. *Webb v. Willingboro Board of Education*, 96 N.J.A.R.2d (EDU) 424.

Tenured supervisor entitled to supervisor position over nontenured supervisor regardless of subject matter of supervisory position. *Galbraith v. Lenape Regional High School District*, 96 N.J.A.R.2d (EDU) 396.

School psychologist's seniority properly based on years of service, regardless of number of days worked per week. *Reid v. Mahwah Township Board of Education*, 96 N.J.A.R.2d (EDU) 360.

One-year leave of absence does not create vacancy providing tenured teacher with statutory entitlement to assignment of teacher on leave. *Murray v. Northern Highlands Regional High School District*, 96 N.J.A.R.2d (EDU) 351.

Endorsements earned after date of reduction in force did not enlarge teacher's tenure rights. *Francey v. Salem Board of Education*, 96 N.J.A.R.2d (EDU) 347.

Teacher's dismissal from tenured position because of marijuana conviction was upheld. In the Matter of the Tenure Hearing of Kozic, 96 N.J.A.R.2d (EDU) 335.

Tenured teacher not entitled to positions held by nontenured or less senior teachers when her credentials and endorsements did not apply to such positions. *Ulrich v. Board of Education of the Monmouth County Vocational School District*, 96 N.J.A.R.2d (EDU) 290.

School board may not demote contracted superintendent to assistant superintendent position in order to relieve him of his duties. *Dunn v. Elizabeth Board of Education*, 96 N.J.A.R.2d (EDU) 279.

Termination of tenured teacher was warranted based on evidence that he was incapable and incompetent in position of teacher and that he engaged in sexually offensive conduct. *Board of Education of the Township of Parsippany-Troy Hills v. Molinaro*, 96 N.J.A.R.2d (EDU) 268.

Tenured teacher loses teaching position for using corporal punishment and profanity in classroom. In the Matter of the Tenure Hearing of Norma Pollard, 96 N.J.A.R.2d (EDU) 170.

Tenured teacher with greater entitlement to position than non-tenured individual was entitled to appointment despite pending tenure charges. *Sheridan v. Orange Board of Education*, 95 N.J.A.R.2d (EDU) 482, supplemented 96 N.J.A.R.2d (EDU) 142.

Teacher not tenured at time full-time position reduced to half-time was not entitled to newly created full-time position after achieving tenure in half-time position. *Sefcik v. Red Bank Board of Education*, 95 N.J.A.R.2d (EDU) 467, supplemented 96 N.J.A.R.2d (EDU) 141.

Teacher acquiring permanent instructional certificate subsequent to reduction to part-time status does not acquire tenure and seniority rights. *Sefcik v. Red Bank Regional High School District Board of Education*, 96 N.J.A.R.2d (EDU) 141.

Supervisor's tenure rights violated when facilitator/subject supervisor position given to nontenured individual. *Kish v. Elmwood Park Board of Education*, 96 N.J.A.R.2d (EDU) 135.

Principal acquired tenure by working in position for two years even though notified that contract would not be renewed before end of two-year period. *Martucci v. Linden City Board of Education*, 96 N.J.A.R.2d (EDU) 110.

Guidance director accrues seniority credit as guidance counselor by maintaining partial caseload. *Lightdale v. Union County Regional High School*, 96 N.J.A.R.2d (EDU) 106.

Skills program director separately tenurable position from school principal. *Brenner v. Middlesex Township Board of Education*, 96 N.J.A.R.2d (EDU) 81.

Tenured supervisor was entitled to position of assistant principal over non-tenured supervisors on reduction in force. *Skowronski v. Jackson Board of Education*, 95 N.J.A.R.2d (EDU) 451.

Demotion back to teacher from an assistant supervisor position, when done without application of military service credit, was violative of individual's seniority rights. *Sparacio v. Department of Corrections*, 95 N.J.A.R.2d (EDU) 364.

Employment as permanent substitute was not as teaching staff member and, hence, was not position to which tenured teacher was entitled once her position was eliminated pursuant to reduction in force. *Driscoll v. West Essex Board of Education*, 95 N.J.A.R.2d (EDU) 348.

Reducing position in mathematics department to part-time was not violative of tenure and seniority rights when business education teacher was not otherwise certified in mathematics. *Dombloski v. Belvidere Board of Education*, 95 N.J.A.R.2d (EDU) 347.

School board could require tenured teacher to undergo psychiatric examination upon evidence of deviation from normal, physical or mental health. *Pleasantville Board of Education v. Chambers*, 95 N.J.A.R.2d (EDU) 291, supplemented 96 N.J.A.R.2d (EDU) 447.

Individual who achieved tenure as supervisor, not principal, did not hold claim to position of principal that was superior to that of nontenured person selected. *Nelson v. Old Bridge Board of Education*, 95 N.J.A.R.2d (EDU) 257.

Layoff which resulted from closure of art department in which individual was only certified teacher was not pretextual in violation of collective bargaining agreement. *Grievance Hearing of Marin*, 95 N.J.A.R.2d (EDU) 255.

Free speech clause of First Amendment protected teacher against tenure charges arising from remarks on radio talk show with respect to teaching Black studies. *Matter of Tenure Hearing of Clark*, 95 N.J.A.R.2d (EDU) 164.

Individual who had never taught printing or graphic arts was entitled by virtue of seniority to assert a claim to a teaching schedule with printing. *Ackerman v. Hackensack Board of Education*, 95 N.J.A.R.2d (EDU) 149.

Members of central administrative and supervisory staff were subject to layoffs mandated by reorganization of state-operated school district. *Cirasa v. Patterson State-Operated School District*, 95 N.J.A.R.2d (EDU) 141.

Abolishment of teaching positions as a result of a reduction in force was not a violation of seniority rights when teacher was without tenure. *Mills v. Piscataway Board of Education*, 95 N.J.A.R.2d (EDU) 133.

Teacher's tenure rights were not violated by refusal to assign him to one of two teaching positions for which he was endorsed. *Polo v. Bergen County Board of Education*, 95 N.J.A.R.2d (EDU) 105.

Employee's position as negotiator was not sufficiently clerical to gain tenure against school district's reduction in force. *Effenberger v. Toms River Board of Education*, 95 N.J.A.R.2d (EDU) 66.

Tenure and seniority rights were not violated by appointment of person with greater seniority and tenure rights. *White v. Bloomfield Board of Education*, 95 N.J.A.R.2d (EDU) 52.

District board required to recognize tenure rights as they existed at time of staff reduction. *Timko and Mikush v. Bridgewater-Raritan School District*, 95 N.J.A.R.2d (EDU) 12.

Oral settlement agreement regarding tenure charges enforceable. *Montville Board of Education v. Pinto*, 94 N.J.A.R.2d (EDU) 507.

Reorganization of the grade assignments given to supervisory positions did not violate tenure or seniority rights. *Timko v. Bridgewater Raritan Regional School District*, 94 N.J.A.R.2d (EDU) 475.

Teacher was entitled to salary due him in his position of department head for physical education. *Wickenheisser v. North Arlington Board of Education*, 94 N.J.A.R.2d (EDU) 391.

No violation of tenure and seniority rights by reducing teacher to part time status. *Dombloski v. Belvidere Board of Education*, 94 N.J.A.R.2d (EDU) 348.

Unsatisfactory performance was not a relevant factor related to the acquisition of tenure. *Martin v. Plainfield Board of Education*, 94 N.J.A.R.2d (EDU) 298.

Failure of Board to reinstate teacher violated her tenure rights. *Kojak v. Mount Arlington Board of Education*, 94 N.J.A.R.2d (EDU) 295.

Statutorily unenumerated position attained tenure based on principal's position. *Gittelman v. Hamilton Township Board of Education*, 94 N.J.A.R.2d (EDU) 258.

Failure to offer tenured English teacher vacancy violated her rights. *Gainer v. Wayne Township Board of Education*, 94 N.J.A.R.2d (EDU) 218.

Failure to reassign supervisor did not violate tenure rights; remand. *Skowronski v. Jackson Township Board of Education*, 94 N.J.A.R.2d (EDU) 208.

Reassignment from voluntarily accepted untenured position to former tenured teaching position; refusal; rights. *DeFrehn v. Wildwood Crest Board of Education*, 94 N.J.A.R.2d (EDU) 194.

Teacher transferred without consent was "dismissed" in violation of tenure rights. *North Bergen Federation of Teachers v. North Bergen Township Board of Education*, 94 N.J.A.R.2d (EDU) 167.

Claimed military service; claim of violation of tenure and seniority. *Jabour v. Delaware Valley Regional High School District Board of Education*, 94 N.J.A.R.2d (EDU) 45.

Timely documentation of military service; tenure and seniority rights. *Jabour v. Delaware Valley Regional High School District Board of Education*, 94 N.J.A.R.2d (EDU) 45.

School psychologist could not achieve tenure by tacking 60-day period for notice of termination to employment time. *Winston v. Jersey City School District*, 94 N.J.A.R.2d (EDU) 41.

Failure to show threshold qualification for service as teacher of plumbing; no entitlement by virtue of tenure to such employment. *Polo v. Bergen county Board of Education*, 94 N.J.A.R.2d (EDU) 36.

Following abolishment of his position due to reduction in force, school supervisor was not able to claim position as director. *Halpern v. Delran Township Board of Education*, 94 N.J.A.R.2d (EDU) 22.

Remedial and supplemental teachers met requirements of the tenure statute and were entitled to retroactive pay, but with negotiated sick leave benefits modified. *Trenton Education Association v. Trenton Board of Education*, 93 N.J.A.R.2d (EDU) 777.

Teacher was entitled to enforcement of ten-month contract as termination period. *Siegel v. Garfield Board of Education*, 93 N.J.A.R.2d (EDU) 766.

Tenured teacher was entitled to a permanent substitute position. *Driscoll v. West Essex Regional Board of Education*, 93 N.J.A.R.2d (EDU) 761.

Failure to hire former staff to fill new education titles did not violate tenure rights. *Schaefer v. Lakewood Township Board of Education*, 93 N.J.A.R.2d (EDU) 741.

A music teacher was not entitled to another teaching position based on mistake in maintaining preferred eligibility list. *McAloon v. Old Bridge Township Board of Education*, 93 N.J.A.R.2d (EDU) 714.

Teacher who took two months of sick leave met tenure requirements. *Apollony v. Bernards Township Board of Education*, 93 N.J.A.R.2d (EDU) 707.

Termination of apprenticeship program coordinator was not shown to have been improper or to have violated his tenure rights. *Guerra v. Board of Education of Hudson County Area Vocational Technical Schools*, 93 N.J.A.R.2d (EDU) 690.

Requiring tenured teacher to teach three math classes in addition to supervisory responsibilities at two junior high schools did not violate seniority rights. *Gargano v. Board of Education of Township of Union*, 93 N.J.A.R.2d (EDU) 670.

Teacher's service under emergency certification could not be "tacked" to subsequent service under regular certificate as elementary schoolteacher; no right to tenure. *Breitwieser v. State-Operated School District of Jersey City*, 93 N.J.A.R.2d (EDU) 641.

Director of Buildings and Grounds at all times appointed for fixed periods of time; no tenure. *Burrows v. Ramapo Indian Hills Regional High School District Board of Education*, 93 N.J.A.R.2d (EDU) 605.

Allowing students to take carpentry class at another vocational school did not constitute transfer of students or program within contemplation of statute; seniority and tenure rights of teacher whose position had been eliminated were not violated. *Bausmith v. Board of Education of Hunterdon Central Regional High School District*, 93 N.J.A.R.2d (EDU) 600.

Teacher's assignment and certificate made him appropriately classified in category of secondary teacher, and he lacked seniority within elementary category to have seniority rights as opposed to other teacher. *McGlynn v. Board of Education of Borough of Sea Girt*, 93 N.J.A.R.2d (EDU) 438.

Tenure rights of teacher were violated when a non-tenured person was hired for a full-time Spanish teaching position. *Mueller v. Board of Educ. of the Hunterdon Central Regional High School Dist.*, 93 N.J.A.R.2d (EDU) 419.

Proper certificate for unrecognized title of learning specialist was learning disabilities teacher/consultant endorsement; tenure and seniority rights. *Rubin v. Board of Education of Township of Middletown*, 93 N.J.A.R.2d (EDU) 301.

Tenured teacher had right to have part-time positions consolidated into full-time position following reduction in force. *Taxman v. Piscataway Township Board of Education*, 93 N.J.A.R.2d (EDU) 189.

Business education teacher was entitled to teach academic support classes and general business and business management classes; seniority rights violated following reduction in force. *Fox v. Board of Education of Morris School District*, 93 N.J.A.R.2d (EDU) 139.

Assignment of teaching duties to supervisor of English; seniority and tenure rights not violated. *Dallmeyer v. Board of Education of Union*, 93 N.J.A.R.2d (EDU) 125.

Instruction shown to be under secondary category for seniority purposes; teacher having only elementary category seniority could not be assigned to specific position over second teacher having secondary category seniority. *Unterberger v. Metuchen Borough Board of Education*, 93 N.J.A.R.2d (EDU) 59.

No violation of tenure or seniority rights in transfer from position as supervisor of educational programs at one psychiatric hospital to same position at another hospital. *Sheffield v. New Jersey State Department of Human Services*, 93 N.J.A.R.2d (EDU) 26.

Media specialist achieved tenure within position of "educational services" but not in separate position of "teacher". *Wallen v. Board of Education of Rancocas Valley Regional High School District*, 92 N.J.A.R.2d (EDU) 670.

Instructional Industrial Arts certificate did not qualify teacher to teach printing classes; no violation of seniority rights in reduction in force. *Ackerman v. Board of Education of City of Hackensack*, 92 N.J.A.R.2d (EDU) 610.

Record established that teacher was regular staff member and not per diem substitute during contested period; seniority rights following reduction in force. *Valentino v. Board of Education of City of Hoboken*, 92 N.J.A.R.2d (EDU) 606.

Reduction in force with resulting transfer did not entitle teacher to be returned to position as reading specialist. *Moore v. Cherry Hill Township Board of Education*, 92 N.J.A.R.2d (EDU) 585.

Supervisory titles were separate categories; seniority rights. *Notaro v. Board of Education of Township of Old Bridge*, 92 N.J.A.R.2d (EDU) 568.

Disparity between number of male and female administrators; appointment of supervisor violated tenure rights. *Bourhis v. Board of Education of Borough of Fort Lee*, 92 N.J.A.R.2d (EDU) 540.

Appointment of nontenured teaching staff member to position of department chairperson violated tenure rights of applicant having tenure as supervisor. *Snack v. Board of Education of City of Orange*, 92 N.J.A.R.2d (EDU) 509.

Reduction in force; tenure rights not expanded by subsequently acquired endorsement. *Johnstone v. Board of Education of Township of Cinnaminson*, 92 N.J.A.R.2d (EDU) 506.

In-school suspension room program duty periods not instructional periods; tenured teacher had no claim to such employment following reduction in force. *Forte v. Red Bank Regional District Board of Education*, 92 N.J.A.R.2d (EDU) 501.

Seniority; service as learning specialist counted towards tenure as learning disability teacher/consultant. *Levy v. Middletown Township Board of Education*, 92 N.J.A.R.2d (EDU) 497.

Reduction in force; tenured teacher subsequently acquiring additional endorsement. *Francey v. Board of Education of City of Salem*, 92 N.J.A.R.2d (EDU) 449, error dismissed 96 N.J.A.R.2d (EDU) 347, affirmed 286 N.J.Super. 354, 669 A.2d 282.

Tenure rights; employment of summer schoolteachers. *Doran v. East Brunswick Board of Education*, 92 N.J.A.R.2d (EDU) 389.

Board secretary for board of education failed to establish service entitling her to tenure. *Walsh v. Borough of Laurel Springs Board of Education*, 92 N.J.A.R.2d (EDU) 381.



Service as substitute teacher could not provide day need to attain tenure. *Mills v. Piscataway Township Board of Education*, 92 N.J.A.R.2d (EDU) 372.

Leave of absence following disability counted for purposes of tenure. *Kletzkin v. Board of Education of Borough of Spotswood*, 92 N.J.A.R.2d (EDU) 367.

School district did not have obligation to notify teacher who resigned of possible positions to which he might return following reduction in force. *Murray v. Northern Highlands Regional High School Board of Education*, 92 N.J.A.R.2d (EDU) 335, supplemented 96 N.J.A.R.2d (EDU) 351.

Back pay award to teachers whose positions were eliminated during reduction in force; mitigation. *West Orange Supplemental Instructors Association, et al., v. Board of Education of Township of West Orange*, 92 N.J.A.R.2d (EDU) 287.

Tenure rights violated in reduction in force. *Brown v. Board of Education of Township of Edison*, 92 N.J.A.R.2d (EDU) 271.

Employment reduced from full to part-time; no violation of teacher's seniority rights. *Polo v. Board of Education of Vocational Schools of County of Bergen*, 92 N.J.A.R.2d (EDU) 230.

Seniority of academic year teacher; services rendered prior to start of academic year. *Polo v. Board of Education of Vocational Schools of County of Bergen*, 92 N.J.A.R.2d (EDU) 230.

Tenure rights; teaching for 12 years under inappropriate certificate. *McAneny v. Board of Education of School District of Chatham*, 92 N.J.A.R.2d (EDU) 208.

Contracting for speech correctionist services; tenured position abolished. *Impey v. Board of Education of Borough of Shrewsbury*, 92 N.J.A.R.2d (EDU) 197.

Cooperative education coordinator; acquisition of tenure. *Gerdes v. Spotswood Boro Board of Education*, 92 N.J.A.R.2d (EDU) 168.

Instructional supervisor position abolished; seniority rights to other administrative positions. *Kish v. Board of Education of Borough of Elmwood Park, Bergen County*, 92 N.J.A.R.2d (EDU) 134.

Suspension of tenured teacher; involuntary sick leave placement without medical justification. *Robert v. Clinton Township Board of Education*, 92 N.J.A.R.2d (EDU) 123.

Title change did not violate tenure or seniority rights. *Kornberg v. Board of Education of Township of North Bergen*, 92 N.J.A.R.2d (EDU) 120.

Tenured guidance counselor; right to program coordinator position. *Paszamant, Evans and Ralph v. Highland Park Borough Board of Education*, 92 N.J.A.R.2d (EDU) 103.

Supervisor's tenure rights; local determination of job duties; abandonment of rights. *Ralph v. Highland Park Borough of Education*, 92 N.J.A.R.2d (EDU) 93.

Tenure; three-years' employment. *Blossom S. Nissman v. Board of Education of the Township of Long Beach Island*, 92 N.J.A.R.2d (EDU) 71.

Seniority rights; teacher did not accrue credit under nursery school endorsement despite teaching home economics to pre-kindergarten children. *Miller v. Hoboken Board of Education*, 92 N.J.A.R.2d (EDU) 21.

Teacher's entitlement to full-time vacancy after having been subject to reduction enforced. *Benson v. Board of Education of Borough of Rockaway, Morris County*, 92 N.J.A.R.2d (EDU) 15.

Petition of tenured teacher alleging improper assignment was improperly dismissed for failure to state a cause of action. *Morgan v. Board of Educ. of the Tp. of Wayne, Passaic County*, 91 N.J.A.R.2d (EDU) 122.

Supervisory titles were separate categories under the seniority regulations. *Weinstein v. Township of Old Bridge, Middlesex County*, 91 N.J.A.R.2d (EDU) 102.

Tenured supplemental teacher did not acquire tenure as supervisor by performing supervisory duties. *Pirozek v. Board of Educ. of the Tp. of Montville, Morris County*, 91 N.J.A.R.2d (EDU) 95.

Supervisors whose positions were abolished; only "bumping" rights were to nonsupervisory positions. *Van Tyke v. State-Operated School Dist. of the City of Jersey City*, 91 N.J.A.R.2d (EDU) 43.

Running of time for tenure consideration commences only upon attainment of necessary certificate for position held. *Fischbach v. Bd. of Ed., North Bergen*, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1983).

Tenured teacher with seniority entitled to full-time position when school board chooses to create during reduction in force two part-time positions more than equivalent to one full-time position. *Klinger v. Bd. of Ed., Cranbury Twp., Middlesex Cty.*, 7 N.J.A.R. 111 (1981), affirmed 190 N.J.Super. 354, 463 A.2d 948, certification denied 93 N.J. 277, 460 A.2d 678 (App.Div.1982).

Transfer of middle school principal to high school vice principal position proper. *Howley v. Ewing Twp. Bd. of Ed.*, 6 N.J.A.R. 509 (1982).

Speech correctionist's claim of tenure rights violation in transfer to teacher of the handicapped. *Reeves v. Bd. of Ed., Westwood Regional School District, Bergen Cty.*, 4 N.J.A.R. 445 (1981).

Reduction of tenured child study team members to part-time employees and transfer of some of their functions to specially contracted team violates members' tenure rights. *Cochran v. Watchung Hills Regional High School Bd. of Ed.*, 4 N.J.A.R. 163 (1983).

Issue of withholding of chairmanship stipend from department chairman without position tenure, one year prior to his retirement, is outside of Commissioner's jurisdiction. *Taylor v. Bd. of Ed., Westfield, Union Cty.*, 2 N.J.A.R. 350 (1980).

Supplemental instruction required under New Jersey law if needed due to demonstrated educational handicaps. *Hamilton Twp. Supplemental Teachers Assn. v. Bd. of Ed., Hamilton Twp., Mercer Cty.*, 2 N.J.A.R. 294 (1979), affirmed 180 N.J.Super. 321 (App.Div.1981), affirmed 90 N.J. 63 (1982).

Seniority rules irrelevant to subjects of rank or comparable positions in determination of legality of involuntary transfers. *Stranzl v. Bd. of Ed., Paterson, Passaic Cty.*, 2 N.J.A.R. 16 (1980).

Guidance counselor, upon reduction to half-time positions, possessed no absolute legal right to transfer out-of-category to any social studies teaching position in which she had no tenure. *Perry v. Bd. of Ed., Glen Rock Boro., Bergen Cty.*, 1 N.J.A.R. 300 (1981).

## SUBCHAPTER 6. PUPIL RECORDS

### 6:3-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Access" means the right to view, to make notes, and/or to have a reproduction of the pupil record made.

"Adult pupil" means a person who is at least 18 years of age, or is attending an institution of postsecondary education, or is an emancipated minor.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s) or parent surrogate(s) of a pupil. Where parents are separated or divorced, "parent" means the person or agency who has legal custody of the pupil, as well as the natural or adoptive parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

"Parent surrogate(s)" means an individual or individuals approved by the district board of education in accordance with N.J.A.C. 6A:14-2.2 to act on behalf of a pupil whose parents are not available to assure the pupil's educational rights.

"Pupil" means a person who is or was enrolled in a public school.

"Pupil record" means information related to an individual pupil gathered within or outside the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party, is excluded from this definition.

"Student information directory" means a publication of a district board of education which includes the following information relating to a pupil: the student's name, address, telephone number, grade level, date and place of birth, dates of attendance, major field of study, participation in officially recognized activities, weight and height relating to athletic team membership, degrees, awards, the most recent educational agency attended by the pupil and other similar information.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In the definition of "parent surrogate(s)", updated a reference.

#### Case Notes

Allowing pupil to use stepfather's surname; reasonable. *Phillips v. Board of Education of Township of River Vale, Bergen County*, and *Stayback*, 92 N.J.A.R.2d (EDU) 131.

### 6:3-6.2 General considerations

(a) This subchapter applies to all district boards of education or private agencies which provide educational services by means of public funds. District boards of education shall include, but not be limited to, all county boards of special services school districts, county vocational boards of education, jointure commissions, educational services commissions, education programs operated by county residential facilities and State-operated special education programs.

(b) Each district board of education shall have the responsibility to compile and maintain pupil records and to regulate access, disclosure or communication of information from educational records in a manner that assures the security of such records in accordance with this subchapter.

(c) Pupil records shall contain only such information as is relevant to the education of the pupil and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.

(d) The district board of education shall notify parents and adult pupils annually in writing of their rights in regard to pupil records and pupil participation in educational, occupational and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. District boards of education shall make every effort to notify parents and adult pupils in their dominant language.

(e) A nonadult pupil may assert rights of access only through his or her parents. However, nothing in these rules shall be construed to prohibit certified school personnel, in their discretion, from disclosing pupil records to nonadult pupils or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the pupil or other persons.

(f) The parent or adult pupil shall either have access to or be specifically informed about only that portion of another pupil's record that contains information about his or her own child or him or herself.

(g) Each district board of education shall establish written policies and procedures for pupil records which:

1. Guarantee access to persons authorized under this subchapter within 10 days of the request, but prior to any review or hearing conducted in accordance with the State Board of Education rules;
2. Assure security of the records;
3. Enumerate and describe the pupil records collected and maintained by the district board of education;
4. Provide for the inclusion of educationally relevant information in the pupil record by the parent or adult pupil;
5. Allow for the designation, release and public notice of directory information as defined herein;
6. Provide the parent or adult pupil a 10-day period to submit a written statement to the chief school administrator prohibiting the institution from including any or all types of information about the student in any student information directory before allowing access to such directory and school facilities to educational, occupational and military recruiters pursuant to N.J.S.A. 18A:36-19.1;



7. Assure limited access to pupil records by secretarial and clerical personnel pursuant to N.J.A.C. 6:3-6.5; and

8. Provide for the access and security of pupil records maintained in a computerized system.

(h) All anecdotal information and assessment reports collected on a pupil shall be dated and signed by the individual who originated the data.

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the education relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational to be deleted from the records except that prior notice must be given for classified students in accordance with N.J.A.C. 6A:14. Such information shall be destroyed and not be recorded elsewhere. No record of any such deletion shall be made.

(j) No liability shall be attached to any member, officer or employee of any district board of education permitting access or furnishing pupil records in accordance with these rules.

(k) When the parent's or adult pupil's dominant language is not English or the parent or adult pupil is deaf, the district board of education shall provide interpretation of the pupil record in the dominant language of the parents or adult pupil.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (i), updated a reference.

#### Case Notes

Contract to show during homeroom 12-minute television broadcast having two minutes of commercials was not abuse of managerial authority. *New Jersey Education Association v. Trenton Board of Education*. 92 N.J.A.R.2d (EDU) 481.

Student was not improperly denied admission to honor society. *Hook v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 331.

### 6:3-6.3 Mandated and permitted pupil records

(a) The district board of education shall not compile any other pupil records except mandated and permitted records as herein defined.

1. Mandated pupil records are those pupil records which the schools have been directed to compile by New Jersey statute, regulation or authorized administrative directive. Mandated pupil records shall include the following:

i. Personal data which identifies each pupil enrolled in the school district. These data shall include the pupil's name, address, date of birth, name of parent(s), citizenship and sex of the pupil. The district board of

education is prohibited from recording the religious or political affiliation of the pupil and/or parent unless requested to do so in writing by the parent or adult pupil. The district is also prohibited from labeling the pupil illegitimate;

ii. Record of daily attendance;

iii. Descriptions of pupil progress according to the system of pupil evaluation used in the district. Grade level or other program assignments shall also be recorded;

iv. History and status of physical health compiled in accordance with State regulations, including results of any physical examinations given by qualified district employees;

v. Records pursuant to rules and regulations regarding the education of educationally handicapped pupils; and

vi. All other records required by the State Board of Education.

2. Permitted pupil records are those which a district board of education has authorized by resolution adopted at a regular public meeting to be collected in order to promote the educational welfare of the pupil. The district board of education shall report annually at a public board meeting a description of the types of pupil records it has authorized certified school personnel to collect and maintain. The pupil records so authorized must also comply with this subchapter as to relevance and objectivity.

### 6:3-6.4 Maintenance and security of pupil records

(a) The chief school administrator or his or her designee shall be responsible for the security of pupil records maintained in the school district and shall devise procedures for assuring that access to such records is limited to authorized persons.

(b) Records for each individual pupil shall be maintained in a central file at the school attended by the pupil. When records are maintained in different locations, a notation in the central file as to where such other records may be found is required.

(c) When records are stored in a computerized system, computer programmed security blocks are required to protect against any security violations of the records stored therein. To guard against the loss of pupil records, school districts must maintain an updated duplicate copy of pupil records.

(d) Mandated or permitted records required as part of programs established through state administered entitlement or discretionary funds from the U.S. Department of Education must be maintained for a period of five years after completion of the program activities.

## Case Notes

Trial judge properly balanced alleged sexual abuse victims' right to privacy with defendant's right of confrontation by examining in camera confidential school records of victims sought by defendant in connection with issue of victims' competency to testify. *State of New Jersey v. Krivacka*, 775 A.2d 6 (2001).

Trial judge's denial of defendant's pretrial motion to examine confidential school records of alleged sexual abuse victims, in connection with the issue of victims' competency to testify, did not violate the right of confrontation. *State of New Jersey v. Krivacka*, 775 A.2d 6 (2001).

**6:3-6.5 Access to pupil records**

(a) Only authorized organizations, agencies or persons as defined herein shall have access to pupil records.

(b) The district board of education may charge a reasonable fee for reproduction, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-2, provided that the cost does not effectively prevent the parents or adult pupils from exercising their rights under this subchapter or under rules and regulations regarding educationally handicapped pupils.

(c) Authorized organizations, agencies and persons shall include only:

1. The parent of a pupil under the age of 18 and the pupil who has the written permission of such parent;

2. Pupils at least 16 years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education;

3. The adult pupil and the pupil's parent who has the written permission of such pupil, except that the parent shall have access without consent of the pupil as long as the pupil is financially dependent on the parent and enrolled in the public school system or if the pupil has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult pupil may not disclose information contained in the adult pupil's record to a second or third party without the consent of the adult pupil;

4. Certified school district personnel who have assigned educational responsibility for the pupil;

5. Certified educational personnel who have assigned educational responsibility for the pupil and who are employed by:

- i. An approved private school for the handicapped;

- ii. A state facility;

- iii. Accredited nonpublic schools in which pupils with educational disabilities have been placed according to N.J.S.A. 18A:46-14; or

- iv. Clinics and agencies approved by the Department of Education;

6. A district board of education, in order to fulfill its legal responsibility as a board, has access through the chief school administrator or his or her designee to information contained in a pupil's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult pupil;

7. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to those portions of the record to the extent that is necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to those pupil files which such staff are directed to enter or record information and shall cease when the specific assigned task is completed;

8. Accrediting organizations in order to carry out their accrediting functions;

9. The Commissioner of Education and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records;

10. Officials of other district boards of education within the State of New Jersey in which the pupil is placed, registered or intends to enroll subject to the following conditions:

- i. Mandated pupil records shall be forwarded to the receiving district with written notification to the parent or adult pupil;

- ii. Permitted records shall be forwarded to the receiving district only with the written consent of the parent or adult pupil except where a formal sending-receiving relationship exists between the school districts;

- iii. All records to be forwarded shall be sent to the chief school administrator or his or her designee of the school district to which the pupil has transferred within 10 days after the transfer has been verified by the requesting school district;

- iv. The chief school administrator or his or her designee shall request all pupil records in writing from the school district of last attendance within two weeks from the date that the pupil enrolls in the new district;

- v. The chief school administrator or his or her designee of the school district of last attendance shall upon request, provide a parent(s) or an adult pupil with a copy of the records disclosed to other educational agencies or institutions; and

- vi. Proper identification, such as a certified copy of the pupil's birth certificate, shall be requested at the time of enrollment in a new school district;

11. Officials of the United States Department of Education who have assigned responsibilities which necessitate review of such records;

12. Officers and employees of a State agency who are responsible for protective and investigative services for pupils referred to that agency, pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, district boards of education shall ask such State agency for its cooperation in sharing the findings of the investigation;

13. Organizations, agencies and persons from outside the school if they have the written consent of the parent or adult pupil, except that these organizations, agencies and persons shall not transfer pupil record information to a third party without the written consent of the parent or adult pupil;

14. Organizations, agencies and individuals outside the school, other than those specified in this section, upon the presentation of a court order; and

15. Bona fide researchers who explain in writing the nature of the research project and the relevance of the records sought and who satisfy the chief school administrator or his or her designee that the records will be used under strict conditions of anonymity and confidentiality. Such assurance must be received in writing by the chief school administrator prior to the release of information to the researcher.

#### Law Review and Journal Commentaries

Education—Conscientious Employees. Judith Nallin, 138 N.J.L.J. No. 15, 54 (1994).

#### Case Notes

Defendant was entitled to have access to juvenile victim's school records in sexual assault prosecution; records raised serious questions concerning credibility of victim's mother, who testified that prior to incidents that supported charged offense, victim was a pleasant helpful child, as records depicted victim as an angry young boy who engaged in oppositional and assaultive behavior toward adults. *State v. Van Dyke*, 825 A.2d 1163 (2003).

Trial judge properly balanced alleged sexual abuse victims' right to privacy with defendant's right of confrontation by examining in camera confidential school records of victims sought by defendant in connection with issue of victims' competency to testify. *State of New Jersey v. Krivacska*, 775 A.2d 6 (2001).

Trial judge's denial of defendant's pretrial motion to examine confidential school records of alleged sexual abuse victims, in connection with the issue of victims' competency to testify, did not violate the right of confrontation. *State of New Jersey v. Krivacska*, 775 A.2d 6 (2001).

Access to pupil records; regulation caused teacher to reasonably believe that superintendent's order involved violation of law for purposes of Conscientious Employee Protection Act. *Delran Educ. Ass'n v. Delran Bd. of Educ.*, 277 N.J.Super. 538, 650 A.2d 7 (A.D.1994).

Commissioner of Education lacked jurisdiction to determine parent's request for release of test papers. *Cheung v. Freehold Tp. Board of Education*, 94 N.J.A.R.2d (EDU) 576.

No due process violation in suspending student without hearing; no right to expungement of student records. *F.H. and S.H., Parents of G.H. v. North Warren Regional High School District*, 93 N.J.A.R.2d (EDU) 580.

Parents were not entitled to access to teacher's notes concerning student's school work. *D.B. and K.B. v. Board of Education of City of Vineland*, 93 N.J.A.R.2d (EDU) 546.

Pupil's administration files determined to be pupil records; parents entitled to copies of all records. *GVD v. Ramapo-Indian Hills Regional High School Bd. of Ed.*, 6 N.J.A.R. 480 (1983).

#### 6:3-6.6 Conditions for access to pupil records

(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a pupil, subject to the following conditions:

1. No pupil record shall be altered or destroyed during the time period between a request to review the record and the actual review of the record.

2. Authorized organizations, agencies and persons from outside the school whose access requires the consent of parents or adult pupils must submit their request in writing together with any required authorization, to the chief school administrator or his or her designee.

3. The chief school administrator or his or her designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage or loss. In every instance of inspection of pupil records by persons other than parents, pupils or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the pupil record of the names of persons granted access, the reason access was granted, the time and circumstances of inspection, the records studied and the purposes for which the data will be used.

4. Unless otherwise judicially instructed, the district board of education shall, prior to the disclosure of any pupil records to organizations, agencies or persons outside the school district pursuant to a court order, give the parent or adult pupil at least three days' notice of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing if practicable. Only those records related to the specific purpose of the court order shall be disclosed.

5. A record may be withheld from a parent of a pupil under 18 or from an adult pupil only when the local education agency obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court may be withheld. When the local education agency has or obtains evidence of such court order the parent or adult pupil shall be notified in writing within five days of his or her request that access to the record has been denied and that the person has the right to appeal this decision to the court issuing the order.

#### 6:3-6.7 Rights of appeal for parents and adult pupils

(a) Pupil records are subject to challenge by parents and adult pupils on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information or denial of access to organizations, agencies and persons. The parent or adult pupil may seek to:

1. Expunge inaccurate, irrelevant or otherwise improper information from the pupil record;

2. Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or

3. Request an immediate stay of disclosure pending final determination of the challenge procedure as described in this subchapter.

(b) To appeal, a parent or adult pupil must notify the chief school administrator in writing of the specific issues relating to the pupil record. Within 10 days of notification, the chief school administrator or his or her designee shall meet with the parent or adult pupil to revise the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult pupil may appeal this decision either to the district board of education or the Commissioner of Education within 10 days. If appeal is made to the district board of education, a decision shall be rendered within 20 days. The decision of the district board of education may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and rules adopted in accordance with such statute. At all stages of the appeal process, the parent or adult pupil shall be afforded in a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the pupil record with copies made available to the parent or adult pupil.

(c) Appeals relating to the pupil records of educationally handicapped pupils shall be processed in accordance with the requirements of N.J.A.C. 6A:14.

(d) Regardless of the outcome of any appeal, a parent or adult pupil shall be permitted to place a statement in the pupil record commenting upon the information in the pupil record or setting forth any reasons for disagreement with the decision of the agency. Such statements shall be maintained as part of the pupil record as long as the contested portion of the record is maintained. If the contested portion of the record is disclosed to any party, the statement commenting upon the information must also be disclosed to that party.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (c), updated a reference.

#### Case Notes

Parents could not expunge psychological evaluations from child's reports absent showing of inaccuracy. B.M. v. Union County Regional, 95 N.J.A.R.2d (EDS) 149.

### 6:3-6.8 Retention and destruction of pupil records

(a) A pupil record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., while the student is enrolled in the school district.

(b) Mandated pupil records of currently enrolled pupils, other than that described in (e) below, may be destroyed after the information is no longer necessary to provide educational services to a pupil. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted or after reasonable attempts of such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(c) Upon graduation or permanent departure of a pupil from the school system:

1. The parent or adult pupil shall be notified in writing that a copy of the entire pupil record will be provided to them upon request.

2. Information in pupil records, other than that described in (e) below, may be destroyed but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(d) No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult pupil.

(e) The New Jersey public school district of last enrollment graduation or permanent departure of the pupil from the school district and shall keep in perpetuity a permanent record of a pupil's name, date of birth, sex, address, telephone number, grades, attendance record, classes attended, grade level completed, year completed, name of parent(s) and citizenship status.

#### Case Notes

Parents were not entitled to expungement of school psychologist's report from handicapped student's records. B.C. v. Flemington-Raritan Board, 95 N.J.A.R.2d (EDS) 255.

Psychologist's report on student could not be expunged from public school records absent inaccuracy. B.M. v. Union County, 93 N.J.A.R.2d (EDS) 265.

## SUBCHAPTER 7. WITHDRAWAL FROM REGIONAL SCHOOL DISTRICTS

### 6:3-7.1 Application and data for investigation of advisability of withdrawal

(a) Any district board of education constituting part of a limited purpose regional school district or the governing body of such local school district, or the governing body of any municipality constituting part of an all purpose regional school district may apply to the county superintendent of schools to make an investigation as to the feasibility of withdrawal of such constituent district or municipality from the regional district. Such body shall adopt a resolution by a recorded roll call vote of the majority of the full membership requesting that the county superintendent make such investigation. The resolution request submitted to the county superintendent shall include the following information:

1. A general description of the regional district and of the withdrawing constituent district, including but not limited to, the type of educational system, number of schools and grade levels served, community population, and geographical characteristics;

2. Enrollment data, including, but not limited to, the number of pupils enrolled as reported by grade on the

Annual Application for State School Aid and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;

3. The racial composition of the pupil population enrolled in the regional district from the withdrawing district or municipality, and the effect of such withdrawal upon the racial composition of the remaining pupil population of the regional district;

4. Two appraisals of each school site which is part of the regional district prepared by qualified appraisers. If two or more constituent districts or municipalities request such a study, the selection of the appraisers and the cost of the required appraisals shall be made and shared jointly; and

5. The proposed educational plan for the pupils from the withdrawing district or municipality presently enrolled in the school or schools of the regional district.

(b) Within 21 days following adoption of such resolution, such body shall confer with the remaining constituent districts and/or the governing bodies of the constituent municipalities, and the regional board of education and the county superintendent to review the procedure required for withdrawal from a regional school district. Such conference may be called by the county superintendent at the request of a constituent district or municipality prior to its adoption of such resolution.

#### Case Notes

Request for severance of sending-receiving relationship between districts denied. *Bloomington Borough Board of Education v. Butler Borough Board of Education*, 94 N.J.A.R.2d (EDU) 553.

Negative racial impact of terminating sending-receiving agreement precluded termination, even though no financial or educational negative impact was shown. *Board of Education of Borough of Merchantville v. Board of Education of Township of Pennsauken*, 93 N.J.A.R.2d (EDU) 464.

#### 6:3-7.2 Investigation and report by county superintendent of schools

(a) Upon receipt of the resolution and accompanying data pursuant to N.J.A.C. 6:3-7.1, the county superintendent shall make an investigation and shall within 60 days after receipt of such request issue a report, in accordance with N.J.S.A. 18A:13-52 or 18A:13-67, to governing bodies of the municipalities constituting the regional district and the board of education of the regional district. If the county superintendent's report addresses the withdrawal of a constituent district or districts from a limited purpose regional district, the report shall also be issued to the boards of education of the constituent district. When the county superintendent has begun such investigation, no action shall be taken upon a subsequent request from another constituent district or municipality of the same regional district until the investigation, report and action thereon have been completed. This report shall be based on data supplied by the petitioning district(s) or municipality(ies) including, but not limited to, the following:

1. A general description of the regional district, including the number of constituent districts, schoolhouses, area of the total district, and area of the withdrawing district or municipality;

2. Enrollment data, including the number of pupils enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollment, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;

3. Enrollment data, by grade level, showing the racial composition of the present regional pupil population and the resulting racial composition for both the withdrawing district or municipality and the remaining regional district if withdrawal is approved;

4. The operating expenses of the regional district for the present school year including the distribution of such current operating expenses among the constituent districts or municipalities;

5. The equalized valuation of each constituent district or municipality of the regional district as set forth in N.J.S.A. 18A:7F-1 et seq.;

6. The average equalized valuations of the real property of each constituent district or municipality of the regional district as set forth in N.J.S.A. 18A:24-1 et seq.;

7. The borrowing margin of each constituent district or municipality of the regional district as determined by N.J.S.A. 18A:24-1 et seq., and the revised borrowing margin of each constituent district or municipality and the withdrawing district or municipality, if approval is granted;

8. The apportionment of debt service for the current school year among all the constituent districts or municipalities of the regional district by dollar amounts and percentages;

9. The replacement costs of schoolhouses and additions, grounds, furnishings and equipment of the regional district, and the replacement cost of any schoolhouse, and additions of the regional district including grounds, furnishings, and equipment, situated in the withdrawing district or municipality. School building replacement costs will be calculated by the Bureau of Facility Planning Services as follows:

i. The current overall cost per square foot for school construction in New Jersey, updated annually in the fall of each year, will be multiplied by the gross area of the building;

ii. This figure will include construction costs, moveable and built-in furniture and equipment, and fees; and

iii. Site costs will be excluded since they are already included under N.J.A.C. 6:3-7.1(a)4;

10. The amount of indebtedness, if any, to be assumed by the withdrawing constituent district or municipality;

11. The distribution of assets and liabilities of the existing regional district and remaining regional district following withdrawal in the manner as provided by N.J.S.A. 18A:8-24;



12. A proposed educational plan for the withdrawing constituent district or municipality, if withdrawal is approved, including the effects of such withdrawal upon the educational program of the remaining regional district;

13. A summary of the advantages of withdrawal to both the withdrawing constituent district or municipality and the remaining regional district and the disadvantages to the withdrawing constituent district or municipality and the remaining regional district; and

14. A recommendation regarding the request for withdrawal from the regional school district by the county superintendent.

(b) Upon adoption of a resolution, in accordance with N.J.S.A. 18A:13-51 or 13-66, the board of education of the regional school district shall not incur any additional indebtedness for capital projects, pending either the rejection of the proposal at a special school election or an effective date of withdrawal as determined by the Commissioner of Education.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In the introductory text of (a) and in (a)5, updated references.

#### Case Notes

Local school district lacked authority to issue bonds to finance proposed payment to regional district upon favorable vote. Winslow Tp. Bd. of Educ. v. Board of Review, 275 N.J.Super. 206, 645 A.2d 1230 (A.D.1994).

#### 6:3-7.3 Special school election

(a) If the application is granted upon completion of the procedures contained in N.J.S.A. 18A:13-54 to 56 or 18A:13-69 to 71, the county superintendent shall confer with the regional board and the boards of education of the constituent districts of a limited purpose regional district or the constituent municipal governing bodies of an all purpose regional district and fix a day and time for holding a special school election, in accordance with the provisions of N.J.S.A. 18A:13-57 or 18A:13-72.

(b) To be effective the proposal must be adopted by a majority of the legal votes cast within the withdrawing constituent district or municipality, and, in addition, a majority of the combined legal votes cast within the remainder of the regional district.

#### 6:3-7.4 Final determination of board of review

The board of review, which shall consist of the Commissioner, who shall be chairperson, the State Treasurer or his or her designee, and the Director of the Division of Local Government of Community Affairs, shall include in its final determinations required by N.J.S.A. 18A:13-56 or 18A:13-71, any specific conditions under which its consent is granted in order to insure that a thorough and efficient system of public schools will be maintained in the withdrawing district(s) or municipality(ies) and the remaining regional district.

#### Case Notes

Municipality's action challenging the distribution of assets of dissolved regional high school district was an appeal from decision of county superintendent of schools approving the proposed distribution, and determination of Board of Review was entitled to no weight, nor were determinations of county superintendent, Commissioner of Education, or State Board of Education to extent that those determinations were based on Board of Review order. In the Matter of the Distribution of Liquid Assets, School District No. 1, Union County, 773 A.2d 6 (2001).

Section of statute allowing state Board of Education to deny petition for authorization to conduct referendum on dissolution of regional school district for "Any other reason which it may deem to be sufficient..." requires reason that implicates constitutional obligation for maintenance of thorough and efficient system of free public schools. In re Petition for Authorization to Conduct a Referendum on the Dissolution of Union County Regional High School Dist. No. 1, 298 N.J.Super. 1, 688 A.2d 1082 (A.D.1997).

School districts cannot agree to a two-year moratorium on opposition to severance of a sending/receiving relationship. Lincoln Park Board of Education v. Boonton Board of Education, 95 N.J.A.R.2d (EDU) 493.

Negative fiscal and educational consequences precluded severance of sending-receiving relationship between school districts. Bloomingdale Board of Education v. Butler Board of Education, 95 N.J.A.R.2d (EDU) 151.

Termination of sending-receiving relationship authorized. Board of Education of Township of Boonton v. Board of Education of Town of Boonton, 92 N.J.A.R.2d (EDU) 235.

#### 6:3-7.5 Effective date of withdrawal

If approved at said election, the withdrawal of the district or municipality shall become effective upon a date to be determined by the Commissioner of Education, pursuant to the provisions of N.J.S.A. 18A:13-59 or 18A:13-74.

## SUBCHAPTER 8. ATHLETICS PROCEDURES

#### Authority

N.J.S.A. 2A:4A-60, 2A:170-25.9, 2C:5, 2C:12-1, 2C:33-19, 2C:39, 9:6-1, 10:4-6, 18A:40-12.5 to 12.6, 18A:17-46, 18A:35-4.8, 18A:37-2.1 to 2.5, 18A:37-7 to 12, 18A:38-1, 18A:38-25, 18A:38-31, 18A:40-1, 18A:40-3 to 4, 18A:40-7 to 18, 18A:40-23 to 31, 18A:40A-1 to 17, 18A:46-18.1, 24:21-2, 26:3d-17, 26:5C, 34:2-21.8(3), 34 CFR Part 98, 34 CFR Part 99, 42 CFR Part 2, 18 U.S.C. § 921 and 20 U.S.C. § 1400.

#### Source and Effective Date

R.2001 d.138, effective May 7, 2001.

See: 33 N.J.R. 399(a), 33 N.J.R. 1443(a).

#### Subchapter Historical Note

Subchapter 8, School Ethics Commission, was recodified as N.J.A.C. 6A:28 by R.2000 d.139, effective April 3, 2000. See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Subchapter 8, Athletics Procedures, was adopted as R.2001 d.138, effective May 7, 2001. See: Source and Effective Date.

**6:3-8.1 General requirements**

(a) The program of activities or sports to be employed by any public school in competitive contests, games or events or in exhibitions with individual pupils or teams of one or more schools of the same district, or of other districts, shall be recommended annually by the chief school administrator to the district board of education for approval.

(b) In cases in which the athletic facilities are not owned by the municipality or the district board of education, the district board of education shall require that adequate safeguards to players and spectators be provided by the owner. The field, room, court, track, stands and surrounding premises shall be kept in good condition and free from hazards.

(c) Upon the recommendation of the chief school administrator, the district board of education shall adopt, and thereafter, annually review a policy of emergency medical procedures for all practice sessions, and competitive contests, games, events or exhibitions with individual pupils or teams of one or more schools of the same district or of other districts. Said policy should be disseminated to appropriate personnel.

(d) Each candidate for a place on a school athletic squad or team shall be given a medical examination by the medical inspector or designated team doctor within 365 days prior to the first practice session with examinations being made available throughout the school year consistent with the district's athletic schedule. In lieu thereof, the medical inspector may accept the report of such an examination by a physician licensed to practice medicine.

1. To participate on an athletic squad or team, each candidate whose medical examination was completed more than 60 days prior to the first practice session shall provide a health history update of medical problems experienced since the last medical examination, which shall be completed by the parent or legal guardian. The health history update shall include, but not be limited to, the following information:

- i. Hospitalizations/operations;
- ii. Illness;
- iii. Injuries;
- iv. Care administered by a physician; and
- v. Medications.

2. The parent or legal guardian shall receive written notification signed by the medical inspector or team doctor approving the pupil's participation in athletics based upon the medical examination or the reasons for the medical inspector's or team doctor's disapproval of the pupil's participation shall be included in such notification. The health findings of the medical examination for participation shall be made a part of the pupil's health record.

(e) A medical examination to determine the fitness of a pupil to participate in athletics shall include, as a minimum, no less than the following:

1. A medical history questionnaire, completed by the parent or legal guardian of the pupil, to determine if the pupil:
  - i. Has been medically advised not to participate in any sport, and the reason for such advice;
  - ii. Is under physician's care and the reasons for such care;
  - iii. Has experienced loss of consciousness after an injury;
  - iv. Has experienced a fracture or dislocation;
  - v. Has undergone any surgery;
  - vi. Takes any medication on a regular basis, the names of such medication and the reasons for such medication;
  - vii. Has allergies including hives, asthma or reaction to bee stings;
  - viii. Has experienced frequent chest pains or palpitations;
  - ix. Has a recent history of fatigue and undue tiredness;
  - x. Has a history of fainting with exercise; and
  - xi. Has a history of a family member having sudden death; and

2. A physical examination pursuant to N.J.A.C. 6A:16-2.2.

(f) The district board of education shall adopt a policy regarding the content and procedures for the administration of the medical examination required in (e) above. Nothing in this section shall be interpreted as precluding the district board of education from adopting content and procedures in excess of the minimum requirements set forth herein.

(g) Any examination conducted by a physician other than the medical inspector or designated team doctor must be reported to the medical inspector or designated team doctor on a form furnished by the district board of education and, as a minimum, include that content adopted by the board. If, at the request of the parent or legal guardian, the medical examination is conducted by a physician other than the medical inspector or designated team doctor, such examination shall not be at the expense of the district board of education.

(h) A pupil representing his or her school in interscholastic athletic competition shall sign a form furnished by the district board of education, the wording of which shall embody a request to be enrolled as a candidate for a place on a school team in a specified sport. The parent or legal

guardian must execute an acknowledgement that physical hazards may be encountered.

(i) Every candidate for a place on the school athletic squad or team shall submit a form furnished by the district board of education conveying the consent of his or her parent or legal guardian to participate.

## SUBCHAPTER 9. ATTENDANCE AND PUPIL ACCOUNTING

### Authority

N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-15, 18A:6-27, 18A:17B-12, 18A:7F, 18A:7G, 18A:17-9, 18A:17-10, 18A:17-32, 18A:17-45, 18A:18A-3.1, 18A:18A-4, 18A:18A-5, 18A:18A-7, 18A:18A-13, 18A:18A-40, 18A:19-13, 18A:20-4.2, 18A:21-1, 18A:22-8, 18A:23, 18A:24-10, 18A:29-3, 18A:33-3, 18A:36A-1, 18A:39-19, 18A:46, 18A:54-20.1, 18A:54-29.2, 18A:58-11 and 18A:58-37.1.

### Source and Effective Date

R.2001 d.140, effective May 7, 2001 (operative July 1, 2001).  
See: 33 N.J.R. 419(a), 33 N.J.R. 1415(a), 33 N.J.R. 1796(a).

### 6:3-9.1 School register

(a) The Commissioner shall prepare and distribute a school register which shall be known as the New Jersey School Register, for recording pupil attendance in all public schools of the State operated by district boards of education, except adult high schools.

(b) Pupil attendance shall be recorded in the school register during school hours on each day the school is in session.

(c) Separate school registers shall be kept for pupils attending A.M. kindergarten, P.M. kindergarten, full-day kindergarten, grades one through six, grades seven and eight, grades nine through 12, each pre-school handicapped class, each handicapped class, shared-time classes for regular pupils, shared-time classes for handicapped pupils, full-time bilingual education programs and vocational day programs, and summer schools operated by district boards of education.

(d) The attendance record of all pupils furnished individual instruction or training shall be recorded in a separate official record of home instruction provided by the district board of education. Pupils on roll in home instruction shall not be regarded as enrolled for purposes of average daily enrollment and average daily attendance.

Administrative correction.  
See: 33 N.J.R. 3955(a).

### 6:3-9.2 School enrollment

(a) The enrollment in a class, a school or a school district shall be the total number of original entries plus the number of re-entries, less the number of transfers, withdrawals or dropouts in any such unit during a school year. The total number of original entries and re-entries, less the number of transfers, withdrawals or dropouts, in all the classes and schools of a school district shall constitute the school enrollment for that district board of education during any school year.

(b) No pupil attending a school operated by a district board of education shall be enrolled in more than one school register in any school district during a school year. All pupils shall be enrolled as of the first day of attendance for that year.

(c) No pupil shall be enrolled in a school register until the pupil has reached the following legal school age:

1. Kindergarten—over four years and less than six years;
2. Day school—over five years;
3. Pre-school handicapped—over three years and less than five years.

(d) Within 10 days of the start of the school year, a school district shall determine whether any re-entering student who has not attended school that year has an excused absence or has transferred, withdrawn or dropped out of the school district.

(e) Any pupil enrolled in a school register in a school district who moves to another school district in the same school year shall be enrolled in one register in the new school district upon entering school in that district.

(f) The average daily enrollment in a school district for a school year shall be the sum of the days present and absent of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily enrollment for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily enrollments obtained for the individual classes or schools.

(g) The average daily attendance in a school district for a school year shall be the sum of the days present of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily attendance for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily attendance obtained for the individual classes or schools.

Administrative correction.  
See: 33 N.J.R. 3955(a).

**6:3-9.3 School attendance**

(a) For purposes of school attendance, a day in session shall be a day on which the school is open and pupils are under the guidance and direction of a teacher or teachers engaged in the teaching process. Days on which school is closed for such reasons as holidays, teachers' institutes and inclement weather shall not be considered as days in session.

(b) A school day shall consist of not less than four hours of actual school work, except that in an approved kindergarten one continuous session of 2 ½ hours may be considered as a full day.

(c) An approved kindergarten shall meet the following requirements:

1. Every kindergarten teacher shall be properly certified;

2. A balanced program in an approved facility with adequate equipment, materials and supplies shall be provided each child. This program is to be designed to meet the individual needs of every child and may include instruction in reading and other subjects when it has been determined that a child is ready for such instruction by the teacher of the class; and

3. The maximum enrollment for any kindergarten class shall be 25 pupils per teacher. The county superintendent of schools may give permission to increase the number in a room to any number he chooses provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.

(d) A day of attendance shall be one in which a pupil is present for the full day under the guidance and direction of a teacher while school is in session. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of pupils in each session a pupil attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.

(e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods.

(f) A record of the attendance of all pupils on roll in a school register shall be kept each day that school is in session by a teacher or other authorized person. It shall be the duty of this person to keep the attendance records according to these rules and the specific instructions printed in the school register, and if necessary, according to supplementary instructions issued from time to time by the Commissioner.

(g) No pupil shall be recorded as present unless the school is in session and the pupil or pupils so recorded are under the guidance and direction of a teacher in the teaching process.

(h) A pupil shall be recorded as absent in the school register when not in attendance at a session of the school while a member of the school, except pupils excused due to religious holidays who shall be recorded as excused.

(i) A pupil shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after the pupil enters until the date the pupil is transferred to another school, transferred to an individual home instruction record, or officially leaves the school system.

(j) The Commissioner shall annually prescribe a list of religious holidays on which it shall be mandatory to excuse pupils for religious observance upon the written request signed by the parent or person standing in loco parentis.

(k) The mere presence of a pupil at roll call shall not be regarded as sufficient attendance for compliance with these rules. In a school which is in session during both the forenoon and the afternoon, a pupil shall be present at least one hour during both the forenoon and the afternoon in order to be recorded as present for the full day. In a school which is in session during either the forenoon or the afternoon, a pupil shall be present at least two hours in the session in order to be recorded as present for the full day.

Administrative correction.  
See: 33 N.J.R. 3955(a).