

**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:17-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:17-42 to 17-45, 18A:18A-4, 18A:18A-6, 18A:22-1, 18A:22-2, 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.1993 d.272, effective June 7, 1993.
See: 25 N.J.R. 1095(a), 25 N.J.R. 2249(a).

Chapter Expiration Date

Pursuant to Executive Order No. 22(1994), Chapter 3, School Districts, expires on December 7, 1999. See: 26 N.J.R. 3783(a) and 3942(a).

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1975 Revisions: Amendments became effective April 9, 1975 as R.1975 d.98. See: 7 N.J.R. 97(a), 7 N.J.R. 203(a). Subchapter 2 became effective May 16, 1975 as R.1975 d.124. See: 6 N.J.R. 465(a), 7 N.J.R. 251(b).

1976 Revisions: Amendments became effective January 16, 1976 as R.1976 d.13. See: 7 N.J.R. 541(a), 8 N.J.R. 62(a). Subchapter 3, became effective September 8, 1976 as R.1976 d.286. See: 8 N.J.R. 458(a).

1977 Revisions: Amendments became effective March 7, 1977 as R.1977 d.68. See: 9 N.J.R. 11(a), 9 N.J.R. 167(a). Subchapter 4 became effective April 13, 1977 as R.1977 d.129. See: 9 N.J.R. 113(a), 9 N.J.R. 121(b). Further amendments became effective November 10, 1977 as R.1977 d.421. See: 9 N.J.R. 458(b), 9 N.J.R. 559(b).

1978 Revisions: Amendments became effective January 11, 1978 as R.1978 d.7. See: 9 N.J.R. 558(c), 10 N.J.R. 59(a). Amendments to Subchapter 2 became effective March 7, 1978 as R.1978 d.87. See: 10 N.J.R. 56(b), 10 N.J.R. 142(c). Further amendments became effective October 4, 1978 as R.1978 d.355. See: 10 N.J.R. 378(c), 10 N.J.R. 473(b).

1979 Revisions: Amendments became effective May 3, 1979 as R.1979 d.170. See: 11 N.J.R. 168(a), 11 N.J.R. 274(b). Further amendments became effective September 1, 1979 as R.1979 d.227. See: 10 N.J.R. 226(a), 10 N.J.R. 319(d). Further amendments became effective December 7, 1979 (operative September 1, 1980) as R.1979 d.480. See: 11 N.J.R. 536(b), 12 N.J.R. 7(a).

1983 Revisions: This chapter was readopted pursuant to Executive Order 66(1978) effective June 3, 1983 with amendments to the chapter effective June 20, 1983 as R.1983 d.248. See: 15 N.J.R. 376(a), 15 N.J.R. 1016(b). Subchapter 3 was readopted in compliance with Executive Order 66(1978) effective August 18, 1983 with amendments to the subchapter effective September 6, 1983 as R.1983 d.368. See: 15 N.J.R. 728(a), 15 N.J.R. 1468(c). Amendments to section 1.10 became effective June 20, 1983 (operative September 1, 1983) as R.1983 d.255. See: 15 N.J.R. 464(a), 15 N.J.R. 1017(a). Further amendments became effective December 5, 1983 as R.1983 d.563. See: 15 N.J.R. 1409(a), 15 N.J.R. 2034(a).

1984 Revisions: Amendments became effective July 2, 1984 as R.1984 d.265. See: 16 N.J.R. 785(a), 16 N.J.R. 1718(a). New rule

promulgated at N.J.A.C. 6:3-1.23 as R.1984 d.504, effective November 5, 1984 (operative July 1, 1985). See: 16 N.J.R. 1850(a), 16 N.J.R. 3008(a).

1985 Revisions: Amendments became effective April 1, 1985 as R.1985 d.151. See: 17 N.J.R. 143(a), 17 N.J.R. 811(a). Further amendments became effective August 5, 1985 as R.1985 d.397. See: 17 N.J.R. 1033(b), 17 N.J.R. 1874(a). Further amendments became effective October 21, 1985 as R.1985 d.527. See: 17 N.J.R. 650(a), 17 N.J.R. 2540(a).

1987 Revisions: Amendments to Subchapter 2 became effective May 4, 1987 as R.1987 d.209. See: 19 N.J.R. 333(a), 19 N.J.R. 749(a).

1988 Revisions: Amendments to Subchapter 2 became effective May 2, 1988 as R.1988 d.199. See: 20 N.J.R. 133(b), 20 N.J.R. 978(b). Amended by R.1988 d.367, effective August 1, 1988. See: 20 N.J.R. 1027(b), 20 N.J.R. 1879(b). New Rule promulgated at N.J.A.C. 6:3-1.23 as R.1988 d.491, effective October 17, 1988. See: 20 N.J.R. 1320(c), 20 N.J.R. 2567(a).

1989 Revisions: Subchapter 5 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 was adopted as R.1988 d.354, effective July 3, 1989. See: 21 N.J.R. 817(a), 21 N.J.R. 1824(b).

1990 Revisions: N.J.A.C. 6:3-1.18 repealed by R.1990 d.47, effective January 16, 1990. See: 21 N.J.R. 2915(a), 22 N.J.R. 174(a). Amendments by R.1990 d.380, effective August 1990. See: 22 N.J.R. 1302(a), 22 N.J.R. 2344(a). N.J.A.C. 6:3-1.11 and 1.12 repealed by R.1990 d.510, effective October 15, 1990. See: 22 N.J.R. 1873(a), 22 N.J.R. 3240(a). Subchapter 7 was adopted as R.1990 d.615, effective December 17, 1990. See: 22 N.J.R. 2630(a), 22 N.J.R. 3734(b).

1992 Revisions: Amended by R.1992 d.490, effective December 7, 1992. See: 24 N.J.R. 3038(a), 24 N.J.R. 4362(a).

1993 Revisions: 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: Source and Effective Date. 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).

See section annotations for specific rulemaking.

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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

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 and N.J.S.A. 10:4-6 et seq., the public notice shall include the date, time, location, and purpose(s) of the special meeting.

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 Minimum bond requirements for treasurer of school moneys

(a) The minimum requirements for the surety bond for the treasurer of school moneys shall be such percentage of the current year's school budget as is required in the schedule set forth below:

Total School Budget	Minimum Bond Required
Up to \$100,000.00	10 percent of budget (Minimum \$5,000)
\$100,000.01 to \$250,000.00	\$10,000 plus eight percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$22,000 plus six percent of all over \$250,000
\$500,000.01 to \$750,000.00	\$37,000 plus four percent of all over \$500,000
\$750,000.01 to \$1,000,000.00	\$47,000 plus two percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00	\$52,000 plus one percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00	\$62,000 plus 1/2 percent of all over \$2,000,000
\$5,000,000.01 to \$10,000,000.00	\$77,000 plus 1/4 percent of all over \$5,000,000
\$10,000,000.01 and upwards	\$89,500 plus 1/8 percent of all over \$10,000,000

(b) In fixing such minimum bond, the nearest even \$1,000 shall be used.

(c) The independent school auditor shall verify the adequacy of the treasurer's surety bond which is required by N.J.S.A. 18A:17-32 and shall include appropriate comment, and a recommendation, if needed, in the annual school audit report.

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. Ka-

lajos 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. Chamnings 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.

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.

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. 6:8-6.1;

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.

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).

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 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;