

(b) Respondent(s) may not generally deny all the allegations, but shall make specific denials which meet the substance of designated allegations or paragraphs of the complaint.

(c) The Commissioner shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original and two copies of the answer shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Required the filing of two copies to conform to OAL rules and at (e) provided notice to respondents that failure to answer after a second notice shall result in notification that further failure to respond within 10 days will result in the Commissioner rendering summary decision.

6:24-1.5 Interim relief and/or stay

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include, by way of separate motion, an application for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

(b) Where a motion for a stay or emergent relief is filed, it shall be accompanied by a letter memorandum or brief which shall address the standard to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982).

(c) Any party opposing such an application shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6:24-1.4; however, upon review, the Commissioner may:

1. Act upon such application prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard on that application;
2. Act upon such application upon receipt of the answer; or
3. Transmit the application to OAL for immediate hearing on the motion.

(d) The Commissioner may decide such application prior to any transmittal of the matter to the OAL for hearing. After transmittal to OAL, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-12.6.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Amended to clarify that motions for stays of action or the granting of emergent relief may be directed at parties other than boards of education and that such requested action should be by way of a separate motion; provided that a motion for stay or emergent relief

must be accompanied by a letter memorandum or brief addressing the standard for such relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982) and provided that the Commissioner may decide a motion for a stay prior to receipt of an answer, after the filing of an answer or transmit the matter to OAL for an immediate hearing on the motion.

Case Notes

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. *J.T., a Minor Child v. Barnegat Township*, 93 N.J.A.R.2d (EDS) 89.

Parents were not entitled to emergent relief of having child skip grade; alleged disparate treatment in child repeating grade. In *Matter of T.P. and D.P. on Behalf of Minor Child, T.J.P. v. Board of Education of Borough of Oaklyn*, 92 N.J.A.R.2d (EDU) 625.

Board of Education seeking stay of decision holding that school forfeited two games by playing a transferee student in violation of rule failed to demonstrate irreparable harm, relative hardship, or probability of success on merits. *Board of Educ. of the City of Trenton, Mercer County v. New Jersey State Interscholastic Athletic Ass'n*, 91 N.J.A.R.2d 158 (EDU).

No entitlement to preliminary injunction to prevent distribution of supplemental funds under Quality Education Act. *Board of Educ. of the Bordentown in Regional School Dist. v. Ellis*, 91 N.J.A.R.2d 59 (EDU).

6:24-1.6 Amendment of petition and answer

Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend his or her petition, and any respondent may amend his or her answer, at any time and in any manner which the Commissioner deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-6.2.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic and change of N.J.A.C. cite.

6:24-1.7 Permission to intervene

Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the Commissioner. Upon transmittal, requests should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-16.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Old text deleted and new text inserted.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic and change of N.J.A.C. cite.

Case Notes

Class action certification denied as not provided for in regulations. *Lukas v. Dept. of Human Services*, 5 N.J.A.R. 81 (1982), affirmed in part, reversed in part and remanded per curiam Dkt. No. A-5850-82 (App.Div.1984), appeal decided 103 N.J. 126, 510 A.2d 1123.

Standing of exclusive representative. *Winston v. Bd. of Ed., South Plainfield Boro.*, 125 N.J.Super. 131, 309 A.2d 89 (App.Div.1973), affirmed 64 N.J. 582, 319 A.2d 226 (1974).

Discretionary authority. *Jones v. Bd. of Ed., Leonia Boro., Bergen Cty.*, 1974 S.L.D. 293, 1974 S.L.D. 298.

Criteria explained. *Kolbeck v. State Bd. of Ed.*, 1973 S.L.D. 770.

Party standing, intervention, participation and status. *Kolbeck v. State Bd. of Ed.*, 1973 S.L.D. 770.

6:24-1.8 Appearance pro se

Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State or by such persons as set forth in N.J.A.C. 1:1-5.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added: (See N.J.A.C. 1:1-1.3.)

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic and change of N.J.A.C. cite.

6:24-1.9 Dismissal of petition

At any time after the receipt of the answer and prior to transmittal of the pleadings to the OAL, the Commissioner, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, failure to prosecute or other good reason.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Recodified and amended from 1.10. The original section 1.9 was "Conference of counsel" and was repealed.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

Case Notes

Nontenured employee's appeal from nonrenewal of employment could not result in a favorable finding despite procedural deficiencies and was dismissed. *Gillison v. Newark Board of Education*, 95 N.J.A.R.2d (EDU) 157.

Dismissal of petition due to delay and failure to comply with conference requirements. *Mangieri v. Bd. of Ed., Carteret Boro., Middlesex Cty.*, 1974 S.L.D. 644, 1975 S.L.D. 1100.

Written submissions and pre-hearing conference. *Bd. of Ed., Haledon Boro. v. Mayor and Council, Haledon Boro., Passaic Cty.*, 1974 S.L.D. 712.

6:24-1.10 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the case directly and individually or transmit the matter for hearing before the OAL. Should the Commissioner retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-13.1.)

(b) Upon transmittal to the OAL, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the Commissioner or the ALJ, whoever is hearing the case.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Old text deleted and new text substituted.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Permitted the designation of an Assistant Commissioner to hear and decide the case.

Case Notes

Decision of school board to expel student for physically assaulting teacher was neither arbitrary, unreasonable, nor capricious. *K.O.H. v. Edison Board of Education*, 95 N.J.A.R.2d (EDU) 275, affirmed 96 N.J.A.R.2d (EDU) 445.

School band member's threat to kill band director was reasonable grounds for suspension from band activities. *McB. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDU) 298.

Petitioner is entitled to evidentiary hearing on question of whether state of mind was such as to render resignation from position involuntary, warranting relaxation of 90-day time-bar. *Brunnquell v. Bd. of Educ. of Scotch Plains-Fanwood*, 11 N.J.A.R. 499 (1987).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.11. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.19; good and sufficient reasons for adjournment include court appearances, counsel vacationing out of county, unavailability of witnesses and conflicting counsel schedules. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

6:24-1.11 Oaths

The Commissioner or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "or the ALJ, whoever is hearing the case,".

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Upper case titles and deleted N.J.A.C. cite.

6:24-1.12 Subpoenas

Subpoenas requiring the appearance of persons or the production of documents may be issued at the discretion of the Commissioner or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-11.1.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted text "Any witnesses summoned . . . evidence is requested."

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

6:24-1.13 Summary judgment

Case Notes

Application of former regulation to class action. *Rivera v. Bd. of Ed., Perth Amboy, Middlesex Cty.*, 1974 S.L.D. 226.

(a) Should the Commissioner determine to decide a motion for summary judgment prior to transmission to OAL such motion shall be subject to the following process:

1. If a statement of the material facts has been agreed upon by the parties and the Commissioner, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval, or at the direction, of the Commissioner, or if for any other reason there are no issues of fact to be heard, the Commissioner shall require all parties to submit briefs on the matter. Such briefs shall be submitted within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. The Commissioner shall thereupon determine the matter on the basis of the total record before him or her.

2. At any time prior to transmittal to the OAL any party may move for summary judgment, which motion shall be decided by the Commissioner on the basis of conference stipulations, affidavits and briefs. The parties must submit said affidavits and briefs within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. Applications for summary judgment made after transmittal to the OAL shall be subject to the provision of N.J.A.C. 1:1-12.5.

3. Unless otherwise ordered by the Commissioner, there shall be no oral argument in connection with a summary judgment action. If the Commissioner grants oral argument, it shall be limited to 30 minutes for each party and shall not include testimony of witnesses.

As amended, R.1973 d.232, effective August 10, 1973.

See: 5 N.J.R. 332(a).

As amended, R.1973 d.266, effective September 18, 1973.

See: 5 N.J.R. 332(b).

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-1.15 with stylistic changes.

N.J.A.C. 6:24-1.13 was formerly entitled "Evidence" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Old text deleted and new substituted.

Repealed by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Admissibility of documentary evidence under former N.J.A.C. 6:24-1.11. Bd. of Ed., Oakland Boro. v. Mayor and Council, Oakland Boro., Bergen Cty., 1974 S.L.D. 1114.

6:24-1.14 Written decision

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a district board of education employee or employees of the Departments of Human Services, Corrections or Education serving under tenure, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order pursuant to the provisions of N.J.A.C. 1:1-18.6.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education pursuant to N.J.A.C. 6:2-1; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by either the Commissioner or State Board pursuant to N.J.A.C. 6:2-2.2.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted (b)-(e).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-1.16, new (b) added.

N.J.A.C. 6:24-1.14 was formerly rules entitled "Stenographic transcript" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted "either party may . . . such stenographic transcript."

Repealed by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

6:24-1.15 Relaxing of rules

The rules herein contained shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of, the Commissioner in connection with the determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the Commissioner, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "or her".

Recodified from N.J.A.C. 6:24-1.17, R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Discretionary waiver of limitations periods was not appropriate where petition was not filed in timely manner. Kaprow v. Board of Educ. of Berkeley Tp., 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Grant of extended sick leave within school board's discretion; no vested rights arise from such discretionary action. Adell v. Bd. of Ed., Fair Lawn Boro., Bergen Cty., 2 N.J.A.R. 327 (1980).

6:24-1.16 Awarding of interest

(a) The Commissioner pursuant to the criteria herein may award both pre-judgment and/or post-judgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

(b) "Interest" is defined as follows:

1. Pre-judgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

2. Post-judgment interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. Pre-judgment interest shall be awarded by the Commissioner when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. Post-judgment interest shall be awarded when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) Rate of interest shall be awarded as follows:

1. Pre-judgment interest shall be awarded based upon the average rate of interest earned on investments by the party responsible for such payment during the period of time in which the monies awarded were illegally detained.

2. Post-judgment interest shall be awarded based upon the prevailing rate of interest established by court rules at the time that the right to the monetary claim was determined. (See New Jersey Court Rules, R. 4:42-11(a).)

New Rule, R.1986 d.157, effective May 5, 1986.
 See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
 Amended by R.1991 d.57, effective February 4, 1991.
 See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
 Recodified from N.J.A.C. 6:24-1.18, stylistic changes.

Case Notes

Sufficiency of notice of required teacher's physical and mental examination (citing former regulation). *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).

Prejudgment interest was not required absent deliberate violation of compensation statute, bad faith or other improper motive. *Bassett v. Board of Educ. of Borough of Oakland, Bergen County*, 223 N.J.Super. 136, 538 A.2d 395 (A.D.1988).

Exception to decision filed under former N.J.A.C. 6:24-1.17 to correct inadvertent omission of teacher's certification from record. *Blue v. Bd. of Ed., Jersey City*, 2 N.J.A.R. 206 (1980).

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "upon receipt and review of the answer."

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes only.

Case Notes

Student's First Amendment rights; restrictions on publication in school newspaper of R-rated movie reviews review and resolution by Commissioner of Education. *Desilets on Behalf of Desilets v. Clearview Regional Bd. of Educ.*, 137 N.J. 585, 647 A.2d 150 (1994).

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Existing regional district; change in established method of cost apportionment; approval by voters in each constituent municipality. In the Matter of the Special Election in Northern Burlington County Regional School District, 94 N.J.A.R.2d (EDU) 385.

Declaratory ruling on school board policy to limit employment of supplemental teachers; teachers and taxpayers; standing to challenge. *Ridgewood Education Association v. Ridgewood Village Board of Education*, 94 N.J.A.R.2d (EDU) 137.

Petition for declaratory judgment seeking a ruling that payroll deduction crediting method violated constitutional prohibition would be transmitted to Office of Administrative Law. *Board of Educ. of the Tp. of Neptune v. Neptune Tp. Educ. Ass'n*, 91 N.J.A.R.2d 29 (EDU).

Failure to raise affirmative defense of non-compliance with petition filing deadline; tolling of filing period. *Fischbach v. Bd. of Ed., North Bergen*, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1984).

Declaratory judgment denied regarding seniority standards. *Howley v. Ewing Twp. Bd. of Ed.*, 6 N.J.A.R. 509 (1982).

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit and possible justification for relaxation of time limit. *Bergenfield Education Assn. v. Bd. of Ed., Bergenfield Boro., Bergen Cty.*, 6 N.J.A.R. 150 (1980), remanded per curiam Docket No. A-2615-81 (App.Div.1983).

Teachers associations have standing to contest awarding of service contract as their organizational rights and relationships will be affected by outcome of proceedings. *New Jersey Education Assn. v. Essex Cty. Educational Services Commissions*, 5 N.J.A.R. 29 (1981).

Administrators association has standing to seek declaratory ruling on evaluation deadline issue even though not a party to contract negotiations. *Willingboro Administrators Assn. v. Willingboro Education Assn.*, 1 N.J.A.R. 327 (1980).

SUBCHAPTER 2. DECLARATORY RULINGS

6:24-2.1 Petition for declaratory rulings

Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the Commissioner. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the Commissioner. If upon receipt and review of the answer such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

6:24-2.2 Format of petition for declaratory rulings

(a) The format of the petition for declaratory rulings follows:

: BEFORE THE COMMISSIONER OF
 : EDUCATION OF NEW JERSEY
 :
 : PETITION FOR DECLARATORY
 : JUDGMENT

Petitioner, _____, residing at _____, hereby requests the Commissioner to render a declaratory judgment concerning the application of (N.J.S.A. 18A:____, N.J.A.C. 6:____) to the controversy which has arisen between petitioner and respondent who resides at _____ by reason of: _____

1. (Here set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of _____ and determine and declare _____

Signature of petitioner or
his or her attorney

Date: _____

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

(Signature)

Sworn and subscribed to before me this
_____ day of _____, 19____

(Signature)

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Deleted slash and substituted or.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Reformatting.

6:24-2.3 Dissemination

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory judgment through the county superintendents of schools.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Denial of declaratory relief was proper. River Dell Board of Education v. Canal, 94 N.J.A.R.2d (EDU) 327.

SUBCHAPTER 3. ORDER TO SHOW CAUSE

6:24-3.1 Commissioner's order to show cause

(a) If in the course of supervising the schools, and following investigation, the Commissioner should become aware of violation(s) of the school laws in school districts which if true would entitle him or her to impose a sanction on his or her own initiative, he or she may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing and, where authorized by law, the right to a contested case hearing is independent of and in addition to this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);

2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2);

3. Withholding salaries of:

- i. A county superintendent (N.J.S.A. 18A:7-4); and
- ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon him or her until such time as he or she complies;

4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);

5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13).

(b) Submission by parties of orders to show cause seeking enforcement of litigants' rights shall not be deemed appropriate. Such actions are to be initiated by way of petition accompanied by motion for emergent relief pursuant to N.J.A.C. 6:24-1.2 and 6:24-1.5.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added new (b); provision prohibiting orders to show cause except by petition accompanied by motion.

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

6:24-4.1 Withholding salary increment

Where a district board of education acts to withhold a teacher's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14 as modified by N.J.S.A. 34:13A-1, the teacher may file a formal petition of appeal for a hearing according to the procedures outlined in this chapter.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted old text and inserted new.

Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added "based upon teaching performance" . . . ; added cite to modified statute.

Case Notes

Showing R-rated film to 12 and 13-year-old students was poor judgment warranting denial of tenured teacher's salary increment for year. Capizola v. South Plainfield Board of Education, 95 N.J.A.R.2d (EDU) 479, supplemented 96 N.J.A.R.2d (EDU) 440.

Negative impact of teacher's absenteeism on continuity of instruction to students warranted withholding salary increments for an academic

year. *Kochman v. Keansburg Board of Education*, 95 N.J.A.R.2d (EDU) 212.

Withholding of employment and adjustment increments for school psychologist was for good cause and was not beyond managerial prerogative of school board. *Kaska v. Trenton Board of Education*, 95 N.J.A.R.2d (EDU) 55.

Withholding of salary increment for unsatisfactory performance was not arbitrary, capricious or unreasonable. *Simon v. State-Operated School District of Paterson City*, 94 N.J.A.R.2d (EDU) 537.

Withholding increments due to weakness in classroom management was not unreasonable. *Harrity v. Keansburg Board of Education*, 94 N.J.A.R.2d (EDU) 376.

Recoupment of salary and/or adjustment increments; disciplined tenured teacher; subsequent salary freeze. *Cerato v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 248.

Chronic absenteeism of teacher; basis to withhold salary increments. *Kochman v. Keansburg Borough Board of Education*, 94 N.J.A.R.2d (EDU) 141.

Withholding salary increments for unsatisfactory performance was not arbitrary, capricious, or unreasonable. *Brown v. Jersey City School District*, 93 N.J.A.R.2d (EDU) 875.

Payment of salary increments neither mandated nor prohibited upon expiration of collective negotiations agreement. *Neptune Township Board of Education v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 791.

Increments withheld; unsatisfactory ratings and excessive absenteeism. *Facone v. Board of Education of City of Jersey City*, 93 N.J.A.R.2d (EDU) 502.

Withholding teacher's employment and adjustment increment; not arbitrary or capricious. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 312.

Payment of increments following expiration of collectively negotiated salary schedule was governed by Employer-Employee Relations Act. *Board of Education of Township of Neptune v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 178.

Board of education under no obligation to return teacher whose increment was withheld to regular salary guide; *New Jersey Employer-Employee Relations Act. Fieseler v. South River Board of Education*, 93 N.J.A.R.2d (EDU) 136.

Increment withholding proceedings; inadequate record; remand. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 41.

Withholding adjustment increment not arbitrary; alleged procedural deficiencies in evaluation process. *Sturn v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 661.

Classroom management; withholding increment and salary adjustment reasonable. *Gnatt v. Board of Education of Manalapan-English-town Regional School District*, 92 N.J.A.R.2d (EDU) 589.

Withholding of teacher's increment; no abuse of discretion. *Brown v. Township of South Brunswick Board of Education*, 92 N.J.A.R.2d (EDU) 560.

Withholding of salary increment sustained; insensitivity and lack of compassion towards students. *Byorek v. Board of Education, Scotch Plains-Fanwood School District*, 92 N.J.A.R.2d (EDU) 511.

Withholding increment and salary increase; performance of teaching duties and alleged insubordination. *Backer v. Township of Roxbury Board of Education*, 92 N.J.A.R.2d (EDU) 441, reversed 96 N.J.A.R.2d (EDU) 349.

Withholding adjustment and employment increments; application of absenteeism policy. *Pollard v. Board of Education of Township of Teaneck*, 92 N.J.A.R.2d (EDU) 279.

Failure to show that decision to withhold increments and to place reprimand in file was unreasonable. *Zarro v. Board of Education of Paramus, Bergen County*, 92 N.J.A.R.2d (EDU) 145.

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

6:24-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred against an employee of a district board of education pursuant to the Tenure Employees' Hearing Act which are to be brought before the Commissioner, N.J.A.C. 6:24-1.2 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education shall file the written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be filed in writing with the secretary of the district board of education, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee within three working days of the date they were filed with the secretary of the district board. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of respondent's written statement of evidence under oath, or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary. (See N.J.S.A. 18A:6-11.)

5. The district board of education shall forthwith notify in writing the affected employee against whom the charge has been made of its determination, in person or by certified mail to the last known address of the employee.

6. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charge and the required certificate of determination with the Commissioner together with proof of service upon the employee.

7. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency must be filed with the secretary of the district board of education along with a statement of evidence in support thereof executed under oath.

2. The district board of education, through its board secretary, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90 day period, or any longer period provided by the board, it intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6:3-4.3(f) to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90 day period for improvement, or such longer period as may be provided by the district board of education, the administrator or administrators responsible for bringing such charges to the attention of the board shall notify the board in writing of what charges, if any, have not been corrected.

6. The district board of education upon receipt of the written notification shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90 day period, or such longer period as may be provided by the board, to the notification of the employee by the board shall not exceed 30 calendar days.

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of

said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary. (See N.J.S.A. 18A:6-11.)

9. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

10. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added (b)-(c).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

Case Notes

Tolling of time to determine probable cause for dismissing tenured teacher during response time and for day of service. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Adequate certification of charges against tenured employee where document containing jurat was signed four days before secretary signed certification. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Notice from school board; termination proceedings. *Jackson v. Englewood Board of Election*, 94 N.J.A.R.2d (EDU) 520.

Evidence established that it was reasonable for board of education to refuse to certify tenure charges. *Bey v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 288.

6:24-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary:

1. That the district board of education has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education;

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

Issue of form over substance in remedying procedural defect. In re: *Tenure Hearing of Kizer*, 1974 S.L.D. 505.

6:24-5.3 Filing and service of answer to written charges

The filing and service of an answer to written charges pursuant to the Tenure Employees' Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

6:24-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6:24-5.1(b) except as herein noted. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections or by an individual within the Department of Education designated by the Commissioner of Education. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b).

(b) The Director of Employee Relations, the Director of the Office of Educational Services or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of his/her determination in writing in the manner prescribed by N.J.A.C. 6:24-5.1(b)5.

(c) In the event that the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then he or she shall file such charges and the required certification with the Commissioner of Education together with proof of service upon the employee.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6:24-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising in the Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;
2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and
3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) The filing and service of an answer to written charges pursuant to the Tenure Employees Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

New Rule, R.1989 d.553, effective November 6, 1989.

See: 21 N.J.R. 1939(b), 21 N.J.R. 3461(a).

Case Notes

Minimal evidence of rehabilitation offered by teacher was insufficient to offset seriousness of drug importation conspiracy conviction, and thus disqualification from teaching was warranted. In the Matter of the Disqualification from School Employment of Palumbo, 96 N.J.A.R.2d (EDU) 534.

Teacher was detoured and dismissed on grounds that her behavior was unprofessional toward students, hostile toward co-workers, insubordinate toward superiors, and in violation of professional ethics. In the Matter of the Tenure of Sheth, 96 N.J.A.R.2d (HED) 9.

Corrective action requiring reduction of tenured janitor's salary could not take effect until end of school year. *Gerity v. Woodbridge Board of Education*, 95 N.J.A.R.2d (EDU) 522.

Inability to work due to severe depression warranted tenured clerk's dismissal for incapacity. Matter of Tenure Hearing of Stanley, 95 N.J.A.R.2d (EDU) 495.

Plea of guilty to criminal sexual conduct was not act of employment warranting forfeiture, but was unbecoming conduct warranting termination. Bergenfield Board of Education v. Efferen, 95 N.J.A.R.2d (EDU) 457.

Choking and shaking of student was unbecoming a teaching staff member and warranted tenured teacher's dismissal under circumstances. Matter of Tenure Hearing of Johnston, 95 N.J.A.R.2d (EDU) 439.

Addressing female staff members in such a matter as to deprive them of their dignity was conduct unbecoming a teaching staff member. Freehold Regional v. Kotkin, 95 N.J.A.R.2d (EDU) 431.

Absenteeism was unbecoming conduct warranting tenured teacher's removal. Matter of Tenure Hearing of Rucker, 95 N.J.A.R.2d (EDU) 350.

Inappropriate discussions with students regarding sexual matters warranted tenured teacher's dismissal. Matter of Tenure Hearing of Roberts, 95 N.J.A.R.2d (EDU) 349.

Costs incurred by tenured teacher in defending against criminal charges not shown to have arisen from performance of his duties were not indemnifiable. Bower v. East Orange Board of Education, 95 N.J.A.R.2d (EDU) 345, reversed 287 N.J. Super. 15, 670 A.2d 106.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. Bergenfield Board of Education v. Efferen, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. Jersey City School District v. Howard, 95 N.J.A.R.2d (EDU) 301.

Inappropriate sexual behavior warranted long-term suspension with homebound instruction until end of school. R.L. and K.L. v. Kingsway Board of Education, 95 N.J.A.R.2d (EDU) 296.

Excessive absenteeism provided sufficient cause for school board to terminate employee from her position as a tenured secretary. Matter of Tenure Hearing of Jones, 95 N.J.A.R.2d (EDU) 285.

Use of illegal amphetamines in breach of drug rehabilitation contract with school board was unbecoming and warranted tenured teacher's dismissal. Matter of Yanniello Tenure Hearing, 95 N.J.A.R.2d (EDU) 262.

Comments in class implying eugenic disability of children for superior performance were not protected by free speech and warranted tenured teacher's termination. Campbell v. Princeton Board of Education, 95 N.J.A.R.2d (EDU) 211, certification denied 665 A.2d 1111, 142 N.J. 518.

Employment of corporal punishment through use of physical force to lift chin of one student, thereby causing head to strike wall, was unacceptable and warranted forfeiture of six months' salary for tenured teacher. Matter of Tenure Hearing of Di Pillo, 95 N.J.A.R.2d (EDU) 206.

Custodians were tenured under resolution of school board and were not required to prove their efficiency to avoid termination. Zielinski v. East Brunswick Board of Education, 95 N.J.A.R.2d (EDU) 161, affirmed 96 N.J.A.R.2d (EDU) 3.

Positive cocaine test was sufficiently trustworthy to support tenured custodian's dismissal by school district. Matter of Tenure Hearing of Caravello, 95 N.J.A.R.2d (EDU) 160.

Employee terminated from tenured position with school board was entitled to be paid value of vacation time accrued by her at that time. Lowe v. Orange Board of Education, 95 N.J.A.R.2d (EDU) 139.

Repetitive conduct that put students at risk justified dismissal of tenured teacher. Matter of Tenure Hearing of Harrell, 95 N.J.A.R.2d (EDU) 137.

Charges of inefficiency brought against tenured teacher were dismissed as moot when teacher thereafter retired. Barshatky v. Freehold Board of Education, 95 N.J.A.R.2d (EDU) 71.

Allowing classroom situation that was a risk to students' safety warranted dismissal of teacher from tenured position. City of Paterson v. Rubin, 95 N.J.A.R.2d (EDU) 13.

Participation in activity violative of public trust warranted two-year suspension of teaching certificates. Matter of Pedrick Teaching Certificates, 95 N.J.A.R.2d (EDE) 1.

Termination; insubordination. In the Matter of the Disciplinary Hearing of McCargo, 94 N.J.A.R.2d (EDU) 524.

Tenured prison teacher's unauthorized correspondence with prison inmate; termination. In the Matter of the Tenure Hearing of Jacqueline Holmes-Williams, 94 N.J.A.R.2d (EDU) 447.

Board failed to prove that teacher engaged in conduct unbecoming a teacher. In the Matter of the Tenure Hearing of David C. Borrelli, 94 N.J.A.R.2d (EDU) 424.

Hitting students and making personal remarks to student; dismissal. In the Matter of the Tenure Hearing of Charles Talley, 94 N.J.A.R.2d (EDU) 395.

Award of benefits to tenure eligible teaching staff members retroactively applied. Trenton Education Association v. Trenton Board of Education, 94 N.J.A.R.2d (EDU) 328.

Termination of tenured teacher; cocaine. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 304.

Dismissal; sexually explicit discussions with students. In the Matter of the Tenure Hearing of Frank Roberts, 94 N.J.A.R.2d (EDU) 284.

Termination of nontenured custodian; harassing a female student. Hugg v. Pinelands Regional School District Board of Education, 94 N.J.A.R.2d (EDU) 279.

Resisting arrest and attempt to injure police officers; dismissal of teaching staff member. In the Matter of the Tenure Hearing of Henderck, 94 N.J.A.R.2d (EDU) 268.

Dismissal of tenured clerk; inadequacies which remained uncorrected despite 90 day remediation period. In the Matter of the Tenure Hearing of Carson, 94 N.J.A.R.2d (EDU) 250.

Tenured school principal's chronic and excessive absenteeism warranted termination. Camden School District v. Rucker, 94 N.J.A.R.2d (EDU) 190.

School counselor failed to establish by a preponderance of evidence that she was terminated on the basis of religion. Miller v. Holmdel Township Board of Education, 94 N.J.A.R.2d (CRT) 185.

Dismissal of custodian; drug testing protocols. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 163.

Abolition of position and demotion was not shown as arbitrary, capricious, unreasonable or otherwise unfair decision. Nuber v. Jersey City School District, 94 N.J.A.R.2d (EDU) 25.

Terminated employee was entitled to payment for accrued vacation. Lowe v. Orange City Board of Education, 93 N.J.A.R.2d (EDU) 789.

Dismissal of teacher as alcoholic not warranted. In the Matter of the Tenure Hearing of Howard, 93 N.J.A.R.2d (EDU) 788.

Dismissal of teacher was warranted for unbecoming conduct. In the Matter of the Tenure Hearing of Smith, 93 N.J.A.R.2d (EDU) 729.

Prison vocational teacher did not breach duty by bringing construction materials obtained from inmate's relatives into prison or by supplying keys to another inmate. In the Matter of the Tenure Hearing of Samano, 93 N.J.A.R.2d (EDU) 710.

Chronic and excessive absences warranted dismissal of tenured teacher from school district. *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 604, 95 N.J.A.R.2d (EDU) 105.

Gross insensitivity and humiliation of students warranted loss of pay. In *Matter of Tenure Hearing of Feinsod*, 93 N.J.A.R.2d (EDU) 590.

Board of education reasonably accommodated alcoholic teacher; dismissal. *State Operated School District of Jersey City v. Howard*, 93 N.J.A.R.2d (EDU) 556.

Teacher's acquiring, possessing, and using stolen cars, as well as other misconduct, warranted dismissal. *School District of Township of Irvington v. Smith*, 93 N.J.A.R.2d (EDU) 526.

Teacher dismissed; marijuana grown at home. Board of Education of Willingboro v. Lott, 93 N.J.A.R.2d (EDU) 516.

Teacher's striking and pushing student warranted loss of pay. In *Matter of Tenure Hearing of Boyd*, 93 N.J.A.R.2d (EDU) 445.

Record established corporal punishment and other charges warranting termination of teacher. In *Matter of Tenure Hearing of Harrell*, 93 N.J.A.R.2d (EDU) 387.

Teacher's conduct and comments to students constituted unbecoming conduct; termination. *School District of Flemington-Raritan Regional v. Gilson*, 93 N.J.A.R.2d (EDU) 378.

Custodian's insubordination, neglect of duty and excessive absenteeism warranted termination. In *Matter of Tenure Hearing of Riddick*, 93 N.J.A.R.2d (EDU) 345.

Love letters sent to students; dismissal of teacher. In *Matter of Tenure Hearing of Mantone*, 93 N.J.A.R.2d (EDU) 322.

Procedural defects warranted dismissal of tenure proceedings. In *Matter of Tenure Hearing of Beam*, 93 N.J.A.R.2d (EDU) 320.

Incapacitating psychological difficulties; dismissal of teacher. In *Matter of Tenure Hearing of McCoy*, 93 N.J.A.R.2d (EDU) 297.

Record established conduct unbecoming superintendent of schools; termination. In *Matter of Tenure Hearing of Horowitz*, 93 N.J.A.R.2d (EDU) 232.

Insensitive utterances, inappropriate physical gestures and intimidation tactics of teacher in dealing with students; dismissal. Board of Education of Princeton Regional School District v. Campbell, 93 N.J.A.R.2d (EDU) 196.

Teacher's chronic and excessive absenteeism; removal. In *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 147.

Developmental center teacher's striking of client; dismissal. In *Matter of Tenure Hearing of Wagner*, 93 N.J.A.R.2d (EDU) 143.

Absenteeism, abuse of prescription drugs, and drug test refusal; dismissal of teacher. In *Matter of Tenure Hearing of Pellagatti*, 93 N.J.A.R.2d (EDU) 121.

Record established that superintendent engaged in conduct unbecoming teaching staff member; dismissal. In *Matter of Tenure Hearing of Romanoli*, 93 N.J.A.R.2d (EDU) 82.

Teacher's substantiated screaming, verbal abuse and inappropriate discipline warranted monetary penalty and teacher training; no termination. *Randolph Township Board of Education v. Dipillo*, 93 N.J.A.R.2d (EDU) 13.

Chronic tardiness and excessive absenteeism constituted conduct unbecoming teacher; ongoing nature of conduct warranted dismissal. In *Matter of Tenure Hearing of Meade-Stephens*, 92 N.J.A.R.2d (EDU) 550.

School custodian's dishonesty; termination. In *Matter of Tenure Hearing of Depasquale*, 92 N.J.A.R.2d (EDU) 537.

Corporal punishment; loss of pay. Board of Education of City of New Brunswick v. Murphy, 92 N.J.A.R.2d (EDU) 527.

Teacher's erratic behavior and tolerance of sexual talk in class; dismissal. *Morris School District Board of Education v. Brady*, 92 N.J.A.R.2d (EDU) 410.

Punishment and abuse of students; dismissal of teacher. In *Matter of Tenure Hearing of Courtney*, 92 N.J.A.R.2d (EDU) 399.

Discretion to conduct inquiry into board of education election; inquiry warranted. In *Matter Election Inquiry in School District of Township of Pennsauken, Camden County*, 92 N.J.A.R.2d (EDU) 219.

Board of education election void; irregularities. In *Matter of Annual School Election Held in Chesilhurst School District*, 92 N.J.A.R.2d (EDU) 213.

Tenured school custodian; excessive absenteeism. Passaic Board of Education v. Viani, 92 N.J.A.R.2d (EDU) 76.

Patient elopement; suspension of psychiatric hospital teacher. *New Jersey Department of Human Services, Greystone Park Psychiatric Hospital v. Pescatore*, 92 N.J.A.R.2d (EDU) 8.

No entitlement to indemnification of costs of criminal defense. *Bower v. Board of Education of City of East Orange, Essex County*, 92 N.J.A.R.2d (EDU) 5.

SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

6:24-6.1 Request for recount or investigation

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the Commissioner and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the Commissioner.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the Commissioner or an ALJ.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Old (b)-(d) repealed and new (b)-(c) substituted.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes only.

Case Notes

Failure to demonstrate irregularities that thwarted will of electorate warranted dismissal of petition challenging school district election. *Inquiry Into the Matter of the Annual School Election Held in the Ramapo Indian Hills Regional School District*, 96 N.J.A.R.2d (EDU) 537.

School board election results were unchanged after recount. In *Matter of the Asbury Park City School District Election*, 96 N.J.A.R.2d (EDU) 30.