

CHAPTER 3

SCHOOL DISTRICTS

Authority

N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:6-7A-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

Submission date for nominating petitions for school board membership; insufficient signatures and subsequent registration of signers. *Jones v. Peddle*, 94 N.J.A.R. (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. *Ubalini v. Cancel*, 93 N.J.A.R.2d (EDU) 457.

Board employee and union official not qualified to seek election to 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

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 ½ percent of all over \$2,000,000

Total School Budget	Minimum Bond Required
\$5,000,000.01 to \$10,000,000.00	\$77,000 plus $\frac{1}{4}$ percent of all over \$5,000,000
\$10,000,000.01 and upwards	\$89,500 plus $\frac{1}{8}$ 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

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

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

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

1. Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-9.5 prior to September 1, 1989;

2. Have not previously held full-time employment as principals, vice-principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and

3. Have been offered employment as principals or vice-principals in a New Jersey public school district.

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

1. Entry requirements in N.J.A.C. 6:11-9.5 shall not apply to regularly-certified, inexperienced first-year principals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Review of the performance of the chief school administrator based upon the job description;
2. Review of the chief school administrator's progress in achieving and/or implementing the district's goals, program objectives, policies, instructional priorities, State goals and statutory requirements; and
3. Review of available indicators of pupil progress and growth toward the program objectives.

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

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

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

(i) For purposes of this section:

1. "Chief school administrator" is defined in N.J.A.C. 6:3-2.1;
2. "Available indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1; and

3. "Job description" means a written specification of the functions, duties and responsibilities of the chief school administrator and the relationship of such functions, duties and responsibilities to those of the district board of education.

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

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

Case Notes

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

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

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

SUBCHAPTER 3. CONDITIONS OF EMPLOYMENT FOR TEACHERS

6:3-3.1 Full-time employment of teachers

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

Case Notes

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

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

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

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.

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

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

Law Review and Journal Commentaries

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

Case Notes

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

SUBCHAPTER 4. SUPERVISION, OBSERVATION AND EVALUATION

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

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

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

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

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

(d) Each policy for the supervision of instruction shall include, in addition to those observations and evaluations herein before described, an annual written evaluation of the nontenured teaching staff member's total performance as an

employee of the district board of education, including, but not limited to:

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

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

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

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

Case Notes

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

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.

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

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;

- ii. Whenever a person shall be reassigned from one subject area endorsement to another, all periods of employment in his or her new assignment shall be credited toward his or her seniority in all subject area endorsements in which he or she previously held employment;

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

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

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

- i. District boards of education who make a determination to reorganize instruction at grades seven and eight pursuant to these rules must do so by adoption of a formal resolution setting forth the reasons for such reorganization;

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

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

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

mentally organized grades seven and eight and the specific subject area actually taught in such departmentally organized grades, subsequent to September 1, 1983; and

19. Additional categories of specific educational service endorsements issued by the State Board of Examiners and listed in the State Board rules dealing with teacher certification (N.J.A.C. 6:11).

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

Case Notes

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

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

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

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

Evidence supported State Board of Education determination that school district had legitimate basis for restructuring guidance department so as to eliminate position of guidance counselor, which required education services certification, and to create new position of class supervisor, which required certification in both educational services and administration. *Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626, 622 A.2d 858 (1993).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reduction in force; tenured teacher subsequently acquiring additional endorsement. *Francey v. Board of Education of City of Salem*, 92 N.J.A.R.2d (EDU) 449.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 6. PUPIL RECORDS

6:3-6.1 Definitions

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

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

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

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

"Parent surrogate(s)" means an individual or individuals approved by the district board of education in accordance with N.J.A.C. 6:28-2.2 to act on behalf of a pupil whose parents are not available to assure the pupil's educational rights.

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

"Pupil record" means information related to an individual pupil gathered within or outside the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil

record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party, is excluded from this definition.

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

Case Notes

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

6:3-6.2 General considerations

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

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

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

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

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

(f) The parent or adult pupil shall either have access to or be specifically informed about only that portion of another

er pupil's record that contains information about his or her own child or him or herself.

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

1. Guarantee access to persons authorized under this subchapter within 10 days of the request, but prior to any review or hearing conducted in accordance with the State Board of Education rules;
2. Assure security of the records;
3. Enumerate and describe the pupil records collected and maintained by the district board of education;
4. Provide for the inclusion of educationally relevant information in the pupil record by the parent or adult pupil;
5. Allow for the designation, release and public notice of directory information as defined herein;
6. Provide the parent or adult pupil a 10-day period to submit a written statement to the chief school administrator prohibiting the institution from including any or all types of information about the student in any student information directory before allowing access to such directory and school facilities to educational, occupational and military recruiters pursuant to N.J.S.A. 18A:36-19.1;
7. Assure limited access to pupil records by secretarial and clerical personnel pursuant to N.J.A.C. 6:3-6.5; and
8. Provide for the access and security of pupil records maintained in a computerized system.

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

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the education relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational situation to be deleted from the records except that prior notice must be given for classified students in accordance with N.J.A.C. 6:28. Such information shall be destroyed and not be recorded elsewhere. No record of any such deletion shall be made.

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

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

Case Notes

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

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

6:3-6.3 Mandated and permitted pupil records

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

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

i. Personal data which identifies each pupil enrolled in the school district. These data shall include the pupil's name, address, date of birth, name of parent(s), citizenship and sex of the pupil. The district board of education is prohibited from recording the religious or political affiliation of the pupil and/or parent unless requested to do so in writing by the parent or adult pupil. The district is also prohibited from labeling the pupil illegitimate;

ii. Record of daily attendance;

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

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

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

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

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

6:3-6.4 Maintenance and security of pupil records

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

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

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

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

6:3-6.5 Access to pupil records

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

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

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

1. The parent of a pupil under the age of 18 and the pupil who has the written permission of such parent;
2. Pupils at least 16 years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education;
3. The adult pupil and the pupil's parent who has the written permission of such pupil, except that the parent shall have access without consent of the pupil as long as the pupil is financially dependent on the parent and enrolled in the public school system or if the pupil has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult pupil may not disclose information contained in the adult pupil's record to a second or third party without the consent of the adult pupil;

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

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

- i. An approved private school for the handicapped;
- ii. A state facility;
- iii. Accredited nonpublic schools in which pupils with educational disabilities have been placed according to N.J.S.A. 18A:46-14; or
- iv. Clinics and agencies approved by the Department of Education;

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

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

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

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

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

- i. Mandated pupil records shall be forwarded to the receiving district with written notification to the parent or adult pupil;
- ii. Permitted records shall be forwarded to the receiving district only with the written consent of the parent or adult pupil except where a formal sending-receiving relationship exists between the school districts;
- iii. All records to be forwarded shall be sent to the chief school administrator or his or her designee of the school district to which the pupil has transferred within 10 days after the transfer has been verified by the requesting school district;
- iv. The chief school administrator or his or her designee shall request all pupil records in writing from

the school district of last attendance within two weeks from the date that the pupil enrolls in the new district;

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

6:3-6.6 Conditions for access to pupil records

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

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

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

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

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

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

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

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

1. Expunge inaccurate, irrelevant or otherwise improper information from the pupil record;
2. Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or
3. Request an immediate stay of disclosure pending final determination of the challenge procedure as described in this subchapter.

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

(c) Appeals relating to the pupil records of educationally handicapped pupils shall be processed in accordance with the requirements of N.J.A.C. 6:28.

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

6:3-6.8 Retention and destruction of pupil records

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

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

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

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

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

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

Case Notes

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

SUBCHAPTER 7. WITHDRAWAL FROM REGIONAL SCHOOL DISTRICTS

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

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

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

2. Enrollment data, including, but not limited to, the number of pupils enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

6:3-7.3 Special school election

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

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

6:3-7.4 Final determination of board of review

The board of review, which shall consist of the Commissioner, who shall be chairperson, the State Treasurer or his

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

Case Notes

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

6:3-7.5 Effective date of withdrawal

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

SUBCHAPTER 8. PROVISIONS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH

6:3-8.1 Purpose

The purpose of this subchapter is to establish uniform Statewide policies and procedures for ensuring that homeless children and youth have access to a free and appropriate public education. Specific rules have been established to determine the educational placement of these students and to respond to appeals made by parents or other parties. These rules will implement N.J.S.A. 18A:38-1 and 18A:7B-12.

6:3-8.2 Definitions

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

"District liaison for the education of homeless children" means the person identified in each school district who facilitates all of the activities needed to ensure the timely educational placement of homeless children and youth.

"District of residence" for a homeless child whose parent(s) or guardian(s) temporarily move from one school district to another as the result of being homeless pursuant to N.J.S.A. 18A:38-1, N.J.A.C. 6:20-5.3(g) and N.J.S.A. 18A:7B-12 means the district in which the parent(s) or guardian(s) last resided prior to becoming homeless.

"Homeless" child or youth means one who lacks a fixed, regular, and adequate residence.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil's welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

6:3-8.3 Determination of homelessness

(a) A child or youth shall be considered homeless for purposes of this program if he or she resides in any of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including:
 - i. Welfare hotels;
 - ii. Congregate shelters;
 - iii. Transitional housing for families; and
 - iv. Transitional housing for the mentally ill;
2. An institution that provides a temporary residence for individuals intended to be institutionalized; or
3. A public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(b) Additionally, a child or youth shall be considered homeless if he or she is:

1. Living with a parent in a domestic violence shelter;
2. A runaway living in a shelter;
3. A school-aged mother residing in a home for adolescent mothers;
4. Sick or abandoned and residing in a hospital and would otherwise be released if he or she had a permanent residence;
5. Abandoned and therefore has no permanent residence;
6. The child of a homeless family which is out of necessity living with relatives or friends; or
7. The child of a migrant family which lacks adequate housing.

(c) When a dispute occurs regarding the determination of homelessness, the involved districts shall immediately notify the county superintendent of schools, who shall decide the status of the child within 48 hours.

Case Notes

Student who resided with mother and family friends and who received temporary rental assistance was not homeless. *Maurice River Township Board of Education v. Wildwood Board of Education*, 93 N.J.A.R.2d (EDU) 895.

6:3-8.4 Responsibilities of the district of residence

(a) The district of residence for a homeless child shall be responsible for the education of the child, shall determine the educational placement after consulting with the parent(s) or guardian(s), shall pay the costs of tuition and transportation when the child attends school in another district, and shall provide transportation when a child attends school in the district of residence while residing in another district.

(b) The determination of a homeless child's district of residence shall be made by the school districts involved as described in N.J.A.C. 6:3-8.5 based upon information received from the Department of Human Services, shelter providers, school districts, involved agencies, case managers or parents.

(c) The school district which has been determined to be the district of residence for a homeless child shall be the district of residence for as long as the parent(s) or guardian(s) remains homeless.

(d) When a dispute occurs regarding the determination of the district of residence, the involved districts shall immediately notify the county superintendent of schools, who will resolve the dispute. When the dispute involves districts in different counties, the county superintendents will work collectively to resolve the dispute. If the county superintendent(s) is unable to resolve the dispute, an appeal may be made to the Assistant Commissioner, Division of Finance, pursuant to N.J.A.C. 6:20-5.3(d), (e), and (f).

(e) When the district of residence cannot be determined for a homeless child or if the district of residence is outside of the State, the State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12(d). The Department of Education shall pay the amount to the school district in which the child is currently enrolled for as long as the parent(s) or guardian(s) remains homeless.

6:3-8.5 Responsibilities of the district liaison

(a) The superintendent of each school district shall identify a district liaison for the education of homeless children.

1. The liaison shall facilitate communication and co-operation between the district of residence and the district where the homeless child is temporarily residing.

2. The liaison shall develop a system to ensure that any homeless child residing in the district is enrolled and attending school according to the placement options described in N.J.A.C. 6:3-7.6(a).

(b) When a child becomes homeless and is living temporarily in a school district, the liaison of that district, upon receiving notification from the Department of Human Services, shelter directors, involved agencies, case managers, or parent(s) or guardian(s), shall notify the liaison of the district of residence within 24 hours. This procedure shall also apply to those children identified as homeless pursuant to N.J.A.C. 6:3-8.3 and who may not be receiving services through a social service agency.

(c) When the liaison in the district of residence of a homeless child receives notification of the need for educational placement, that person shall coordinate placement procedures immediately based on the best interest of the child and criteria set forth in N.J.A.C. 6:3-8.6(c).

6:3-8.6 Educational placement

(a) The district of residence shall decide the educational placement of the homeless child according to criteria described in this section. The options for placement are:

1. To continue the child's education in the school district of last attendance;
2. To enroll the child in the district of residence if the district of residence is not the district of last attendance; or
3. To enroll the child in the school district where the child is temporarily living.

(b) When the district of residence for a homeless child cannot be determined, the district in which the child is temporarily residing or the district of last attendance shall enroll the child immediately.

(c) The decision regarding educational placement of a homeless child shall be based on what is in the best interest of the child. The district of residence shall consider the following in the placement decision process:

1. The preference of the parent(s) or guardian(s) as to where the child should attend school;
2. The continuity of the child's educational program with consideration given to the child continuing in the same school, the length of time the child attended a particular school, the time remaining in the school year, graduation requirements and district policies regarding the number of credits needed for graduation, and geographical location where the family plans to seek permanent housing;
3. The eligibility of the child for special instructional programs, such as bilingual, compensatory, gifted and talented, special education and vocational programs; and
4. The distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.

(d) When a decision is made to enroll an educationally handicapped homeless child in a district other than the district of residence and an immediate review of the placement options available to implement the pupil's current individualized educational program cannot be conducted, the child shall be placed in a program consistent with the goals and objectives of the current individualized educational program for a period not to exceed 30 calendar days. Within this 30 day period, the district of residence must assure that the individualized educational program is reviewed and revised pursuant to N.J.A.C. 6:28.

(e) The district of residence shall determine the educational placement in a timely manner and only after consultation with the parent(s) or guardian(s) as described below:

1. Placement decisions shall be made by the superintendent of the district of residence or his or her designee within three school days of notification of the need for educational placement. Once the decision is made, the child shall be placed immediately.
2. Consultation with the parent(s) or guardian(s) regarding the placement decision and their right to appeal that decision shall be documented by the superintendent or his or her designee in writing.
3. When there is a dispute regarding the placement decision, the child will be enrolled when the county superintendent determines the educational placement pursuant to N.J.A.C. 6:3-8.7.

(f) When a decision is made to enroll the child in a district other than the district of residence, the district where the child last attended school shall forward to the new district all relevant school and health records. When the parent(s) or guardian(s) is homeless due to conditions of domestic violence, the transfer of pupil records shall be subject to the provisions of N.J.A.C. 6:3-6.

6:3-8.7 Disputes and appeals

(a) If the parent(s) or guardian(s), involved school district officials, involved agencies, case managers, or shelter providers object to the educational placement decision made by the district of residence, the superintendent or designee of the district of residence shall immediately notify the county superintendent of schools. The county superintendent shall determine the placement of the child within 48 hours based on the child's best interest and the criteria set forth in N.J.A.C. 6:3-8.6(c).

(b) If the parent(s) or guardian(s) or any of the above parties object to the decision of the county superintendent, mediation shall be available through the Department of Education's Office of Education for Homeless Children and Youth. Mediation shall be provided as follows:

1. A request for mediation shall be made to the Office of Education for Homeless Children and Youth either verbally or in written form. The mediation request shall cite the issues in dispute and the relief sought;
2. A mediation conference with all parties present, including representation from the county superintendent's office, shall be conducted within five school days after the request is made at which time:
 - i. Issues shall be determined; and
 - ii. Options explored.
3. The role of the mediator is not judgmental;

4. The mediation conference shall be:

- i. Informal; and
- ii. Held at a time and place reasonably convenient to the parties in the dispute.

5. If the mediation results in agreement, conclusions shall be incorporated into a written agreement, signed by each party, and forwarded to the county superintendent for appropriate action. If the mediation does not result in agreement, the Office of Education for Homeless Children and Youth shall assist the parent(s) or guardian(s) in filing an appeal to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(c) Any dispute or appeal from any party at any stage of the process shall not delay the homeless child's immediate entrance into school. The homeless child shall be placed in the district designated by the county superintendent pending resolution of the dispute or appeal.

(d) Any disputes and appeals involving an educationally handicapped homeless child shall be pursuant to N.J.A.C. 6:28.

6:3-8.8 Tuition

(a) When the homeless child is enrolled in a district other than the district of residence, the district of residence shall pay the costs of tuition for the child to that district pursuant to N.J.S.A. 18A:38-19 and N.J.A.C. 6:20-3.1.

(b) The district of residence shall also include the child on its annual Application for State School Aid (ASSA) for as long as the parent(s) or guardian(s) remains homeless and the child is enrolled in another school district.

(c) When the State assumes fiscal responsibility for the tuition of a homeless child, the State shall pay the district in which the child is enrolled the State foundation amount plus the appropriate special education aid, if any.

6:3-8.9 Transportation

(a) When the homeless child is enrolled in a district other than the district of residence, the district in which the child is enrolled shall provide transportation services and the district of residence shall pay for any transportation costs incurred by that district pursuant to N.J.S.A. 18A:39-1 et seq. and N.J.A.C. 6:21.

(b) When the homeless child attends school in the district of residence while temporarily residing in another district, the district of residence shall provide for transportation to and from school pursuant to the provisions of N.J.A.C. 6:21.

(c) When a district of residence cannot be determined and the State has assumed fiscal responsibility for the payment of tuition, the district where the homeless child is enrolled shall provide transportation pursuant to N.J.A.C. 6:21.

(d) In implementing the transportation services required for a homeless child, school districts shall explore alternatives and provide the most economical and safest mode of transportation pursuant to N.J.A.C. 6:21.

6:3-8.10 Evaluation procedures for compliance

(a) The Department of Education shall monitor school districts responsible for implementing the requirements set forth in this subchapter, including:

1. Placement decisions made according to rules and within specified timelines; and
2. Provision of appropriate educational services and transportation.

SUBCHAPTER 9. SCHOOL ETHICS COMMISSION

6:3-9.1 Scope and purpose

(a) The rules set forth in this subchapter have been adopted for the purpose of effectuating the legislative intent of N.J.S.A. 18A:12-21 et seq., the School Ethics Act (P.L. 1991, c.393), which seeks to "... ensure and preserve public confidence ..." in the integrity of elected and appointed school board members and school administrators.

(b) To achieve this goal the Legislature has adopted N.J.S.A. 18A:12-24 which prescribes a code of ethics by which school officials are to be guided in the conduct of their offices and positions and created a School Ethics Commission specifically for the purpose of enforcing those ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints and ultimately rendering recommendations to the Commissioner as to the imposition of sanctions when violations are demonstrated.

Case Notes

Employment for company under contract with board of education; board membership. *Andrews v. Union Township Board of Education*, 94 N.J.A.R.2d (EDU) 315.

Employment as bus driver for transportation company under contract with Board was conflict of interest. *Andrews v. Union Township Board of Education*, 94 N.J.A.R.2d (EDU) 315.

Indirect interest in litigation disqualified newly elected member. *Hawthorne Borough Board of Education v. Taliaferro*, 94 N.J.A.R.2d (EDU) 197.

Lessee of space from Board of Education disqualified from seeking election to Board. *Thomas v. Edwards*, 93 N.J.A.R.2d (EDU) 369.

Municipal counsel precluded from seeking election to Board of Education. *Rodecker v. Gonzalez*, 93 N.J.A.R.2d (EDU) 367.

6:3-9.2 Definitions

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

"Administrator" means any officer, other than a board member, or employee of a local school district who:

1. Holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or
2. Holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or
3. Holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district.

"ALJ" means an administrative law judge from the Office of Administrative Law.

"Board member" means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education.

"Censure" means a formal public action read into the record of the School Ethics Commission to rebuke a school official who has been determined by the Commission to have been in violation of N.J.S.A. 18A:12-21 et seq.

"Commission" means the School Ethics Commission and its staff as created pursuant to N.J.S.A. 18A:12-21 et seq.

"Commissioner" means the Commissioner of Education or his or her designee.

"Complainant" means the person bringing a complaint of alleged violation of N.J.S.A. 18A:12-21 et seq.

"Financial Disclosure Statement" means the statement of personal finances which school officials are required to annually file pursuant to N.J.S.A. 18A:12-21 et seq.

"Income" for purposes of these rules shall be as defined by the Internal Revenue Service except as otherwise provided in N.J.S.A. 18A:12-26a(1).

"Local School District" for purposes of these rules means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes and shall include jointure commissions, county vocational schools, county special services districts, educational service commissions, educational research and demonstration centers, environmental education centers, and educational information and resource centers.

"Member of the immediate family" means the spouse or dependent child of a school official residing in the same household. Dependent child shall be defined as any child claimed as a dependent on the school official's Federal and state tax returns.

"Newly elected or appointed board member" means any board member who has never served as a member of either an elected or appointed school board.

"OAL" means the Office of Administrative Law.

"Personal/Relative Disclosure Statement" means the statement required by N.J.S.A. 18A:12-21 et seq. of a school official setting forth whether said official has a relative or any other person related to the school official by marriage, employed by the district in which he or she serves; whether said official or a relative is a party to a contract with the school district in which the school official holds office or position; or whether the school official or a relative is employed by, receives compensation from, or has an interest in, any business which is a party to a contract with the school district in which the school official holds office or position.

"Related to the school official by marriage" as used in the statute shall be limited to mother-in-law, father-in-law, brother-in-law and sister-in-law.

"Relative" means the spouse, natural or adopted child, parent or sibling of a school district.

"Reprimand" as a sanction imposed by the Commissioner upon recommendation of the School Ethics Commission shall consist of a letter from the Commission rebuking a school official for having been found to have breached the standards of conduct prescribed by N.J.S.A. 18A:12-21 et seq.

"Respondent" means the board member or administrator against whom a complaint is made pursuant to N.J.S.A. 18A:12-21 et seq.

"School official" means a board member or an administrator.

"Spouse" means the person to whom the school official is legally married under New Jersey law.

Case Notes

Conflict of interest; board member's spouse employed as teacher and belonged to teachers' association. *Hahn v. North Brunswick Township Board of Education*, 92 N.J.A.R.2d (EDU) 428.

6:3-9.3 Filing of disclosure statements and procedures in the event of incomplete filing or failure to file disclosure statements

(a) Annually, on or before April 30th of each year or as otherwise provided in these rules all school officials shall file, on forms provided through the county superintendent both a Financial Disclosure Statement and a Personal/Relative Disclosure Statement with the Commission. Additional copies of the aforesaid statements shall be prepared by the school official and maintained on file at the local district and the office of the county superintendent in order to facilitate public access to the documents. All disclosure statements filed in accordance with N.J.S.A. 18A:12-21 et seq. and these rules shall be public records.

(b) In order to comply with the requirement in (a) above, each local district board secretary shall annually, on or before February 1, cause to be developed and transmitted to the county superintendent a list of names of those school officials, by office and position, whose responsibilities would require the filing of the Financial and Personal/Relative Disclosure Statements pursuant to the criteria contained in N.J.S.A. 18A:12-21 et seq. and these rules. Offices and positions vacant or to become vacant by virtue of expiration of terms or personnel leaving the district are to be listed.

(c) Board members in Type II school districts elected to their positions in the annual April school election shall file within 30 days of taking office. The board secretary shall, upon election of new board members, inform the county superintendent of the names of the newly elected members and the county superintendent shall provide the forms necessary for compliance.

(d) Board members in Type II districts who are appointed to fill vacancies will file the requisite disclosure forms within 30 days of taking office. The board secretary will upon such appointment inform the county superintendent of the appointment. The county superintendent shall provide the member with the required disclosure statements.

(e) Board members in Type I school districts who are initially appointed to take office on May 16 or June 1 as the case may be, shall file the required disclosure statements within 30 days of taking office. Board members in Type I districts appointed to fill vacancies shall likewise file within 30 days of taking office. The board secretary shall inform the county superintendent of the appointment of new board members and the county superintendent shall provide the required forms.

(f) Administrators as defined in this subchapter, appointed to fill vacancies after the April 30 filing date shall file the required disclosure forms within 30 days of the appointment. The board secretary shall inform the county superintendent of the appointment of any new administrators or supervisors subject to the requirement to file disclosure statements under the School Ethics Act.

(g) On or before April 30, May 16 or June 1 as the case may be, the board secretary of each local school district shall, before transmitting the completed disclosure forms to the county superintendent, check that he or she has reviewed each disclosure form to assure that both required forms have been filed; that all questions have been answered or indicated as not being applicable; and that each copy is signed by an original signature. Further, the board secretary shall provide to the county superintendent the names of all persons on the February 1 list of school officials compiled in accordance with (b) above and all newly elected or appointed persons who have failed to file as required by N.J.S.A. 18A:12-21 et seq.

(h) Failure to file as prescribed by N.J.S.A. 18A:12-21 et seq. shall constitute a violation of the School Ethics Act and shall result in the suspension and/or removal of a school official upon recommendation of the Commission and affirmation of the Commissioner.

(i) Prior to any action taken by the Commission for failure to file, the Commission shall direct that the school official show cause in writing under oath within 20 days why the penalty of suspension and/or removal should not be imposed. The Order to Show Cause shall be considered the equivalent of the complaint required by N.J.S.A. 18A:12-29.

(j) Upon receipt of the response to the Order to Show Cause or upon expiration of the time period for so filing the Commission shall proceed to a determination. The school official shall be advised of his or her right to appear before the Commission, be represented by counsel and present witnesses on his or her behalf prior to the Commission's making its probable cause determination.

(k) If the Commission determines that a filing is incomplete, it shall first return the filing to the school official for completion within 20 days of receipt of the returned filing. At the expiration of such time period or upon further receipt of a filing which fails to provide such information as required by statute, the Commission shall issue an order directing the school official in writing under oath to show cause within 20 days why the Commission should not impose such sanctions as permitted pursuant to N.J.S.A. 18A:12-29. If such order is not returned within the 20-day period, or if the response is returned with the school official's refusal to properly file, the Commission may assume that the school official's incomplete filing is in effect a failure to file and the Commission shall proceed to a determination. The school official shall be advised of his/her right to appear before the Commission, be represented by counsel and present witnesses on his/her behalf.

(l) If the school official responds to the Order to Show Cause by asserting either that the filing is complete or other appropriate factors, the matter shall be included as a contested case under N.J.S.A. 18A:12-29(b) and transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 6:3-9.18 and 9.19.

6:3-9.4 Board member training

(a) Each newly elected or appointed board member shall during the first year of his or her first full term on any board complete a training program prepared and offered by the New Jersey School Boards Association which shall include in its content instruction relative to the board members responsibilities under the School Ethics Act.

(b) The New Jersey School Boards Association shall notify the board secretary in writing, when newly elected or appointed board members have attended a training program that satisfies the training mandate. The board secretary shall transmit the names to the county superintendent of the board member(s) who have completed the requirement.

(c) By March 31 of each year the New Jersey School Boards Association shall present to the School Ethics Commission a list of those board members who have not fulfilled the training mandate for the previous filing period.

(d) Board members failing to comply with the training mandate shall be considered in violation of N.J.S.A. 18A:12-33. The Commission shall proceed thereafter in conformance with the procedures set forth in N.J.A.C. 6:3-9.3(i).

Case Notes

Employee of company providing school bus services was required to cure the conflict of interest. *Oehlke v. Tewksbury Township School Board of Education*, 93 N.J.A.R.2d (EDU) 792.

6:3-9.5 Functions and authority of School Ethics Commission

(a) Pursuant to the provisions of N.J.S.A. 18A:12-21 et seq. the School Ethics Commission shall:

1. Prescribe a Financial Disclosure Statement and a Personal/Relative Disclosure Statement in accordance with N.J.S.A. 18A:12-26 and 25 respectively, to be filed by all school officials as defined herein on or before April 30 of each year or at such other times as these rules may require;
2. Appoint such professional and clerical staff and incur such expenses as may be necessary to carry out the provisions of N.J.S.A. 18A:12-21 et seq. within the limits of funds appropriated or otherwise made available to it. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes;
3. Issue advisory opinions, receive and investigate complaints raised pursuant to section 9 of the School Ethics Act (N.J.S.A. 18A:12-29) and conduct such hearing as may be necessary to determine whether probable cause exists to credit the allegation raised in any complaint brought before it;
4. Receive and retain disclosure statements required by the Act. Requests for copies of disclosure statements will be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq.;
5. Have the authority to compel the attendance of such witnesses and the production of such documents as it may deem necessary and relevant to carrying out its duties under the Act;
6. Be empowered, along with the persons appointed by it, to administer oaths and examine witnesses under oath; and
7. Recommend to the Commissioner the reprimand, censure, suspension or removal of school officials found to have violated the School Ethics Act.

6:3-9.6 Membership of School Ethics Commission

The School Ethics Commission shall consist of nine members appointed for three year terms in the configuration and manner prescribed by N.J.S.A. 18A:12-21 et seq.

6:3-9.7 Officers of School Ethics Commission

(a) In accord with the provisions of N.J.S.A. 18A:12-21 et seq. the Commission, by majority vote, shall elect one member to serve as chairperson for a term not to exceed one year.

(b) Should the chairperson resign or otherwise be unable to serve out his or her term, the remaining Commission members shall, by majority vote, elect a chairperson from among their membership to fill out the remainder of the unexpired term.

(c) Should the chairperson be unable to attend any regular or special meeting of the Commission, the Commission, by majority vote of the quorum present, shall select a temporary chairperson to preside over the meeting.

6:3-9.8 Duties of chairperson

The chairperson shall preside over the meetings of the Commission and shall perform all duties incidental to that office.

6:3-9.9 Term of office of chairperson

The chairperson shall serve a one-year term which shall commence on July 1 of each year.

6:3-9.10 Regular meetings

Regular monthly meetings shall be held at such time, place and on such dates as established by the Commission and notice of such regular meetings shall be made in accordance with N.J.S.A. 10:4-6 et seq., Open Public Meetings Act.

6:3-9.11 Special meetings

Special meetings may be called by the Commission chairperson at any time or at the request of any three members. Three days notice of any special meeting shall be given to each member. Public notice of such special meeting shall be made pursuant to N.J.S.A. 10:4-8.

6:3-9.12 Quorum

A quorum shall consist of a majority of the number of voting members of the Commission.

6:3-9.13 Committee structure

(a) The Commission shall act as a committee of the whole.

(b) The Commission chairperson shall select a nominating committee of three persons whose function it shall be to

select a nominee for chairperson to present to the committee as a whole for approval at its May meeting.

(c) Special committees may be appointed by the chairperson to consider and make recommendations to the Commission on any matter.

6:3-9.14 Advisory opinions

(a) Any school official may request an advisory opinion from the Commission as to whether any proposed conduct or activity would constitute a violation of the provisions of the School Ethics Act.

(b) Request for advisory opinions must clearly set forth in detail the specific conduct or activity the school official seeks to undertake and the exact role he or she will play in that activity or conduct.

(c) Upon receipt of a request for an advisory opinion, the Commission shall assign a file number to the request.

1. During the course of any staff work and/or Commission deliberation with regard to the request for an advisory opinion, the request shall be identified for purposes of public access only by file number and not by the name(s) of school official(s) involved.

2. No information regarding any request for an advisory opinion shall be made public unless the information is incorporated into the advisory opinion and made public in accordance with (e) and (f) below.

(d) The Commission and/or its staff reserves the right to require additional information from the person seeking an advisory or to require the person's appearance before it or its staff.

(e) Advisory opinions issued by the Commission shall not be made public unless six members shall vote to direct the opinion be made public.

(f) Advisory opinions made public by the Commission shall delete the name and district of the school official requesting the advisory.

(g) The Commission shall render a response to the request for an advisory opinion at its next monthly meeting following its receipt of all relevant information and documentation needed to make a determination on the request.

(h) Notwithstanding the foregoing, the Commission may respond to a request for an advisory opinion by referring the issue raised to the Office of the Attorney General.

6:3-9.15 Filing and service of a complaint

(a) To file a complaint with the School Ethics Commission alleging a violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., a complainant must file an original and two copies of such complaint using the form set forth in N.J.A.C. 6:3-9.16. Any member of the Commission may also file a complaint.

(b) No complaint shall be accepted by the Commission unless it is signed under oath by the complainant.

(c) Upon receipt of the complaint the Commission shall serve a copy of the complaint on the school official or officials named.

(d) Upon receipt of a complaint the Commission shall assign a file number to the complaint.

1. During the course of any staff work and/or Commission deliberation with regard to the complaint, the complaint shall be identified only by file number for purposes of public access and not by the name(s) of the school official(s) involved.

2. No information regarding any complaint shall be made public until the Commission takes action in accordance with N.J.A.C. 6:3-9.18(d).

3. Pursuant to N.J.S.A. 18A:12-29(e) the Commission may impose a fine not to exceed \$500.00 for the filing of a frivolous complaint.

6:3-9.16 Complaint form

(a) The form used to file a complaint is as follows:

NAME OF	:	
COMPLAINANT(S),	:	BEFORE THE SCHOOL
v.	:	ETHICS COMMISSION
NAME OF RESPONDENT(S) :	:	OF NEW JERSEY
	:	COMPLAINT FORM

I, (Name of Complainant), residing at (Address and Phone Number of Complainant), request the School Ethics Commission to consider a complaint against the above-named Respondent whose address is (address of respondent), in accordance with the authority of the School Ethics Commission to entertain such complaints under N.J.S.A. 18A:12-21 et seq.

The facts upon which this complaint is based are as follows: (Set down below in individually numbered paragraphs the specific facts which cause you to believe that a violation of the School Ethics Act has occurred. Cite, if known to you, the section(s) of the Act which you believe to have been violated.)

1. _____
2. _____
3. _____
4. _____

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent has violated the School Ethics Act and that he/she be subject to such penalty as the Commission and the Commissioner of Education deem appropriate.

Date _____

Signature of Complainant
or his or her Attorney**CERTIFICATION UNDER OATH**

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

1. I am the complainant in this matter.

2. I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the statute which created the School Ethics Commission authorizes the Commission to impose penalties for filing a frivolous complaint. N.J.S.A. 18A:12-29e.

Date _____

Signature of Complainant

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

Signature

(b) No complaint will be processed by the Commission nor will the Commission issue a final ruling or advisory opinion on any matter pending in any court of law or administrative agency of this State.

6:3-9.17 Answer to complaint

(a) Upon receipt of the complaint from the Commission, the respondent shall have 20 days within which to file an original and two copies of a written statement under oath with the Commission. Upon written application by the respondent, the Commission or its designee may extend the time for filing such statement.

(b) The respondent's statement shall respond directly to each allegation set forth in the complaint.

(c) The respondent shall not generally deny the allegations but shall set forth substantive reasons why the allegations are false or unfounded.

(d) Failure to respond to the complaint within the 20 day period from receipt of the complaint shall result in a notice to the respondent directing a response within 10 days of receipt.

(e) 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 receipt of the second notice, each allegation in the complaint shall be deemed admitted and the Commission shall make a determination as to whether probable cause exists or the complaint should be dismissed.

6:3-9.18 Commission review

(a) Upon receipt of respondent's statement or the expiration of the time for filing such response, the Commission shall determine whether probable cause exists to credit the allegation in the complaint.

(b) In order to carry out the Commission's responsibilities under the Act to determine whether probable cause exists the Commission and/or its staff shall conduct investigations, hold hearings, compel the attendance of witnesses, and the production of documents and to examine such witnesses under oath.

(c) Prior to the Commission's determination of probable cause the respondent will be notified of his or her right to address the Commission, be represented by counsel and present witnesses on his/her behalf.

(d) Should the Commission find that probable cause does not exist, the Commission shall dismiss the complaint and so notify the complainant and the school official named in the complaint.

(e) Dismissal by the Commission shall constitute final agency action.

(f) Should the Commission determine that probable cause does exist, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and shall so notify the complainant and the school official(s) named in the complaint.

6:3-9.19 Written decision

(a) Upon completion of the hearing before the OAL, the Commission shall determine by majority vote whether the conduct complained of constitutes a violation of the Act or whether the complaint should be dismissed. In rendering its decision the Commission shall be governed by the procedures and time constraints of the Administrative Procedure Act.

(b) The Commission's decision shall be in writing and it shall set forth its findings of fact and conclusions of law.

(c) If a violation is found, the Commission shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The imposition of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission.

1. The Commissioner's Resolution of Censure shall be adopted at the Commission's meeting next following the affirmance of the sanction by the Commissioner and shall be read at the next public meeting of the district board of education following its adoption by the Commission and posted in such places as the board posts its public notices.

(d) The Commissioner shall act upon the Commission's recommendation regarding the sanction.

(e) Any appeal of the Commission's determination regarding a violation of the Act or the Commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes and the procedures set forth in N.J.A.C. 6:2.