

6:3-1.3 Minimum bond requirements for treasurer of school moneys

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

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

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

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

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

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

(b) No teaching staff member shall be employed in the public schools by any board of education unless he or she is the holder of a valid certificate (see N.J.S.A. 18A:26-2). In addition, district boards of education should exercise their right and responsibility to require job candidates to present other, more detailed documentation of their competency.

Such documentation includes resumes, references, records of past experiences, college transcripts, certification test scores, assessment reports, internship evaluations, and other documentation of competency relevant to the specific position.

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. CHIEF SCHOOL ADMINISTRATOR

6:3-2.1 Chief school administrator defined

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

Case Notes

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

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

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

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

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

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.

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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

6:3-4.3 Evaluation of tenured teaching staff members

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

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

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

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

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

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

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

1. Review of the performance of the teaching staff member based upon the job description;

2. Review of the teaching staff member's progress toward the objectives of the individual professional improvement plan developed at the previous annual conference;

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

4. Review of the annual written performance report and the signing of said report within five working days of the review.

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

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description;

3. An individual professional improvement plan developed by the supervisor and the teaching staff member;

4. A summary of available indicators of pupil progress and growth, and in statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member; and

5. Provisions for performance data which have not been included in the report prepared by the supervisor to be entered into the record by the evaluatee within 10 working days after the signing of the report.

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

(h) For the purposes of this section:

1. "Appropriately certified personnel" means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction;

2. "Indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1;

3. "Individual professional improvement plan" is a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan;

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

(g) Where the title of any employment is not properly descriptive of the duties performed, the holder thereof shall be placed in a category in accordance with the duties performed and not by title. Whenever the title of any employment shall not be found in the certification rules or in these rules, the holder of the employment shall be classified as nearly as may be according to the duties performed, pursuant to the provisions of N.J.A.C. 6:11-3.3.

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

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

vacancy shall occur in such category to which his or her seniority entitles him or her.

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

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

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

1. Superintendent of schools;
2. Assistant superintendent;

i. Each assistant superintendency shall be a separate category; and

ii. District boards of education shall adopt a job description for each assistant superintendent position which shall set forth qualifications and endorsements for such position;

3. Director;

i. Each director position shall be a separate category; and

ii. District boards of education shall adopt job descriptions for each director position which sets forth the qualifications and endorsements for such position;

4. High school principal;

5. Adult high school principal;

6. Alternative school principal;

7. Vocational school principal;

8. Junior high school principal;

9. Elementary principal;

10. Supervisor;

i. Each supervisory title shall be a separate category; and

ii. District boards of education shall adopt a job description for each supervisory position which sets

forth the qualifications and specific endorsements required for such position;

11. High school vice-principal or assistant principal;
12. Adult high school vice-principal or assistant principal;
13. Alternative school vice-principal or assistant principal;
14. **Junior high school** vice-principal or assistant principal;
15. Elementary school vice-principal or assistant principal;
16. Vocational school vice-principal or assistant principal;
17. Secondary. The word "secondary" shall include grades nine through 12 in all high schools, grades seven and eight in junior high schools and grades seven and eight in elementary schools having departmental instruction;

i. Any person holding an instructional certificate with subject area endorsements shall have seniority within the secondary category only in such subject area endorsement(s) under which he or she has actually served;

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

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

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

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

"Seniority" provisions of teacher tenure statute concerned only rights inter sese of tenured teachers and did not authorize dilution of teacher's tenure rights by reduction in work hours and retention of nontenured teacher full-time in secondary school position solely on basis of nontenured teacher's "seniority" in the secondary setting.

Bednar v. Westwood Bd. of Educ., 221 N.J.Super. 239, 534 A.2d 93 (A.D.1987), certification denied 110 N.J. 512, 541 A.2d 1371.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 6. PUPIL RECORDS

6:3-6.1 Definitions

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

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

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

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

“Parent surrogate(s)” means an individual or individuals approved by the district board of education in accordance with N.J.A.C. 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 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.