State of New Jersey
Department of Education
Trenton

NEW JERSEY
SCHOOL LAWS

Enacted during the Legislative
Session of 1954

SCHOOL LAW DECISIONS
1953 - 1954

Keep with 1938 Edition of New Jersey School Laws

SCHOOL LAWS, SESSION OF 1954

AMENDMENTS, 1954

SUPPLEMENTS, 1954

ACTS AND RELATED LAWS, 1954

JOINT RESOLUTIONS, 1954

SCHOOL LAWS, SESSION OF 1954

AMENDMENTS OF 1954 *

CHAPTER 13, LAWS OF 1954

AN ACT concerning regional school districts, and amending section 18:8–17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:8–17 of the Revised Statutes is amended to read as follows:

18:8–17. The amounts authorized for annual or special appropriations or the amounts to be raised for interest and the redemption of bonds shall be apportioned among the districts by the regional board as follows:

(1) The amounts to be raised for interest and the redemption of bonds shall be apportioned upon the basis of ratables of the districts.

(2) The amounts to be raised for annual or special appropriations for regional districts created prior to the first day of July, 1953, shall be apportioned upon the basis of ratables of the districts.

(3) The amounts to be raised for annual or special appropriations for regional districts created on or subsequent to the first day of July, 1953, shall be apportioned either upon the basis of ratables or average daily attendance of the district during the preceding school year, *as certified by the Commissioner of Education*, whichever shall have been determined upon by the boards of education of the constituent districts and stated in the question of creating and maintaining a regional board of education submitted pursuant to section 18:8–1 of the Revised Statutes; but in cases where average daily attendance is to be used as a basis for apportionment, *the Commissioner of Education shall certify to the regional board of education from the latest official statistics the average daily attendance of resident public school pupils in the grade levels for which the regional district was organized for all constituent districts comprising the regional district. This certification shall be made and used each year until such time as average daily attendance statistics shall be certified by the Commissioner of Education for the regional district.*

The amount of money thus determined to be raised by the respective districts shall be certified to the county board or county boards of taxation and to the assessors of the several taxing districts so uniting and the amount thus apportioned to each taxing district shall be assessed, levied, and collected in the same manner and at the same time as other school taxes are assessed, levied and collected therein and shall be paid upon requisition as provided for in districts governed by chapter 7 of this Title (§ 18:7–1 et seq.).

2. This act shall take effect immediately.

Approved March 27, 1954.

* Italics show amendments of 1954.

CHAPTER 66, LAWS OF 1954

AN ACT concerning education, and amending section 18:14–4 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:14–4 of the Revised Statutes is amended to read as follows:

18:14–4. Any child may with the consent of the board of education of the district and of the commissioner be admitted to any demonstration school maintained in connection with any State teachers' college. The board of education of the district, and the commissioner with the approval of the State Board, shall determine the amount to be paid for the education of the child, and the board of education of the district shall pay the amount so determined to the treasurer of the *State* teachers' college out of any money available for the current expenses of the district. *Pupils attending said demonstration schools for whom tuition is paid by the sending district shall be counted in the determination of State aid for the school district the same as pupils attending schools in any school district other than the sending district.*

2. This act shall take effect immediately.

Approved June 24, 1954.

CHAPTER 80, LAWS OF 1954

AN ACT concerning education, amending section 18:3–2, 18:5–50.2, 18:6–22, 18:6–34, 18:8–10, 18:13–11, 18:14–98 and 18:16–19 of the Revised Statutes and chapter 86 of the laws of 1947, repealing section 18:3–8 of the Revised Statutes and supplementing Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:3–2 of the Revised Statutes is amended to read as follows:

18:3–2. The commissioner, subject to the approval of the State Board, shall appoint *not to exceed* 6 assistant commissioners of education, *and fix their compensation.*

The commissioner shall from time to time designate 1 of *the assistant commissioners* to act in his place *and stead* during his absence.

Each assistant commissioner shall perform such duties as may from time to time be assigned to him by the commissioner, which duties shall include but need not be limited to any 1 or more of the following duties:

a. *The supervision* of elementary education;

b. *The supervision* of secondary education;

c. *The supervision* of higher education;

d. *The supervision of* vocational education;

e. *The hearing and determination of* controversies and disputes which may arise under the school laws, or the rules and regulations of the State Board, or of the commissioner, *but* subject to the right of appeal *from any such determination* to the State Board; and

f. *The supervision of* business *and financial* matters.

2. Section 18:3–8 of the Revised Statutes is repealed.

3. Section 1 of chapter 86 of the laws of 1947 is amended to read as follows:

1. Whenever the boards of education of 2 or more school districts, governed by the provisions of chapter 7 of Title 18 of the Revised Statutes shall deem it to be advisable to unite in creating a consolidated school district, each of said boards shall call and conduct an election in the manner provided for the conduct of school elections by chapter 7 of Title 18 of the Revised Statutes and shall submit the question of consolidating said school districts into a consolidated school district to the voters of the districts.

4. Section 18:5–50.2 of the Revised Statutes is amended to read as follows:

18:5–50.2. Any *person holding office, position or employment* in any of the public schools of this State, against whom an action in damages is instituted for any act or acts arising out of *the performance of the duties of his office or position or out of*, or in the course of his employment, shall be furnished by his employing board of education with legal counsel to advise and defend him and such board of education shall defray the fees and expenses of counsel in such suit; but should such employee decline the services of the counsel provided, then and in that event the employing board shall be relieved of all further responsibility. The employing board may not be required to provide or to defray the fees and expenses of counsel where the suit for damages is instituted on the grounds of the alleged use of corporal punishment.

5. Section 18:6–22 of the Revised Statutes is amended to read as follows:

18:6–22. The board *may*, as soon as practicable after the close of each school year, cause to be printed and published a report of the condition of the public schools under its charge, of all the property under its control, and an itemized account of the expenditures of the board and of the finances of the district.

6. Section 18:6–34 of the Revised Statutes is amended to read as follows:

18:6–34. The secretary shall be the general accountant of the board and shall preserve in his office all accounts, vouchers, and contracts relating to the public schools. He shall examine and audit all accounts and demands against the board. Every such account or demand, except for salaries, exceeding $5.00 shall be verified by affidavit *or contain or have annexed thereto a signed declaration in writing to the effect that such account or demand is correct in all its particulars, that the articles have been furnished or services rendered as stated therein and that no bonus has been given or received on account thereof.*

7. Section 18:8–10 of the Revised Statutes is amended to read as follows:

18:8–10. The original board of education shall forthwith after its first appointment organize by the election of 1 of its members as president and 1 as vice-president and *shall* appoint a secretary who may be a member of the board. The president and vice-president shall serve until the first Monday in March next succeeding the election of their successors *as members of the board*, and annually *after said date* the board shall organize by the election of such officers. *If any board shall fail to organize within 30 days after the date hereinbefore provided for its organization, the county superintendent of schools shall appoint a president and a vice-president from among the mem-*

bers then in office, who shall serve until the first Monday in March next succeeding. The term of the secretary shall expire annually on June 30.

8. If the office of the president or vice-president of any regional board of education shall become vacant for any reason other than expiration of term, the board shall within 30 days thereafter fill the vacancy for the unexpired term and if it shall fail to do so, the county superintendent of schools of the county shall fill the vacancy accordingly.

9. Section 18:13–11 of the Revised Statutes is amended to read as follows:

18:13–11. When the dismissal of any teacher before the expiration of a contract entered into between the teacher and a board of education shall, upon appeal, be decided to have been without good cause, the teacher shall be entitled to compensation for the full term for which the contract was made; but it shall be optional with the board of education whether *or not* the teacher shall teach for the unexpired term.

10. If the employment of any teacher is terminated on notice pursuant to a contract entered into between the teacher and the board of education, it shall be optional with the board of education whether or not the teacher shall teach during the period between the time of the giving of the notice and the date of termination of employment fixed therein.

11. Section 18:14–98 of the Revised Statutes is amended to read as follows:

18:14–98. The State Board shall adopt regulations fixing the necessary qualifications of teachers in physical training, and shall require all students at the State *teachers' colleges* to receive thorough instruction in such courses.

12. Section 18:16–19 of the Revised Statutes is amended to read as follows:

18:16–19. State teachers' colleges shall be maintained for the purpose of training and educating persons in the science of education and art of teaching. Institutions shall be maintained at such places as may *now or hereafter* be provided by law.

13. This act shall take effect immediately.

Approved June 24, 1954.

CHAPTER 81, LAWS OF 1954

AN ACT concerning education, amending sections 18:2–4, 18:3–17, 18:14–86, 18:14–93, 18:19–3 and 18:19–5 of the Revised Statutes and chapter 113 of the laws of 1939, repealing sections 18:14–83, 18:14–84, 18:14–85, 18:14–94, 18:19–2, 18:19–4 and 18:19–6 of the Revised Statutes and supplementing Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:2–4 of the Revised Statutes is amended to read as follows:

18:2–4. The State Board may:

a. Frame and modify by-laws for its own government, and elect its president and other officers;

b. Prescribe and enforce rules and regulations necessary to carry into effect the school laws of this State;

c. Prescribe rules and regulations for holding teachers' institutes and teachers' meetings called by the commissioner;

d. Decide appeals from the decisions of the commissioner;

e. Make and enforce rules and regulations for the granting of appropriate certificates or licenses to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by boards of education, for each of which certificates a fee of not less than $5.00 shall be charged.

In addition to the other powers conferred by law upon the State Board, it shall:

f. Prescribe a uniform and simple system of bookkeeping for use in all school districts, and compel all school districts to use the same;

g. Appoint, upon application, a superintendent of schools in 2 or more districts whenever in its opinion it is advisable so to do, and apportion the expenses equitably among the districts;

h. *Prescribe and enforce rules and regulations for the approval of secondary schools, including junior high schools, and* withhold or withdraw its approval of any secondary school whenever in its opinion its academic work, location or enrollment and per capita cost of maintenance shall not warrant its establishment or continuance;

i. Except as provided by sections 18:14–5 and 18:14–7 of this Title, fix rates to be paid by a district for the tuition of children sent from it to the schools of other districts, when the districts cannot agree among themselves as to the proper rates, and require any districts having the necessary accommodations to receive pupils from other districts at rates agreed upon or which it may fix in the event of disagreement;

j. Compel the production at such time and place within the State as it may designate of any and all books, papers, and vouchers in any way relating to schools or to the receipt or disbursement of school moneys; compel the attendance before it or before any of its committees or before the commissioner or 1 of his assistants at such time and place as it may designate of any member of a board of education or of any person in the employ of a board of education, and suspend from office any person refusing to attend or to submit such books, papers, vouchers as he may have been directed to produce;

k. Issue subpœnas signed by its president and secretary compelling the attendance of witnesses and the production of books and papers in any part of the State before it or before any of its committees or before the commissioner or 1 of his assistants. Any person who shall neglect or refuse to obey the command of the subpœna or who, after appearing, shall refuse to be sworn and testify, except such refusal be on grounds recognized by law, shall in either event be liable to a penalty of $100.00 for each offense to be recovered by the State Board of Education in a civil action. Such penalty when recovered shall be paid into the treasury of the State;

l. Advance the education of people of all ages;

m. Establish standards of higher education;

n. License institutions of higher education as authorized by sections 18:20–5, 18:20–6, and 18:20–7 of this Title;

o. Approve the basis or conditions for conferring degrees as authorized by sections 18:20–8, 18:20–9, and 18:20–10 of this Title;

p. Require from institutions of higher education such reports as may be necessary to enable the State Board to perform the duties imposed upon it by statute;

q. Survey the needs for higher education and the facilities available therefor and recommend to the Legislature procedures and facilities to meet such needs;

r. Investigate and recommend respecting the needs for facilities and services at the State University of New Jersey as an instrumentality of the State for providing public higher education and thereby to increase the efficiency of the public school system of the State, advise with the State University of New Jersey regarding its annual budget for services, lands, buildings, and equipment and jointly with the State University make recommendations to the Governor and to the Legislature in support of such budget, and make with the State University contracts in behalf of the State in accordance with legislative appropriations;

s. Make to the Governor and the Legislature such recommendations as the State Board deems necessary with regard to appropriations that may be required for services, lands, buildings, and equipment to be furnished by institutions of higher education other than the State University of New Jersey, and make contracts in behalf of the State with such institutions in accordance with legislative appropriations; provided, that no disbursement of moneys so appropriated shall be made to any such institution or institutions utilized by the State for the purpose of public higher education, except on recommendation of the State Board; and the State Board shall see to the application of the money for such purposes;

t. Exercise visitorial general powers of supervision and control over such institutions of higher education as may be utilized by the State. Its visitorial general powers of supervision and control are hereby defined as visiting such institutions of higher education to examine into their manner of conducting their affairs and to enforce an observance of their laws and regulations and the laws of the State;

u. The State Board shall have all other powers requisite to the performance of its duties.

2. Section 18:3–17 of the Revised Statutes is amended to read as follows:

18:3–17. The commissioner, with the advice and consent of the State Board, shall:

a. Prescribe a minimum course of study for the *public* schools, *and require boards of education to submit to him for approval or disapproval courses adopted by them*, if *and when* in his opinion it is *necessary or* advisable so to do;

b. Prescribe such method as seems best for use in ascertaining what children are 3 years or more below normal;

c. From time to time prepare, publish and distribute handbooks, materials or circulars for the guidance of teachers in the public schools.

3. Section 1 of chapter 113 of the laws of 1939 is amended to read as follows:

1. Whenever the boards of education of 2 or more school districts shall deem it advisable to unite to create a regional school district, and maintain a regional board of education, pursuant to the school law, and there shall be 1 or more high school buildings in 1 or more of the districts proposing to

unite, *or 1 or more parcels of land therein owned by 1 or more of said districts and suitable as a site or sites for a high school building or high school buildings*, it shall be lawful to place upon the ballot a notice of intention to acquire by purchase such high school building or buildings *or parcel or parcels;* provided, notice thereof shall also be given in the printed and published notices of election; and if the legal voters of the said several districts proposing to unite, shall agree to the purchase of said high school building or buildings *or parcel or parcels*, then the board of education of such regional school district shall purchase such building or buildings *or parcel or parcels* and shall issue and sell bonds for the amount set forth in the ballot and in the printed and published notices of election. Such bonds shall be issued and sold in all respects in accordance with the existing school law, and shall mature within the limit of time prescribed by law, based upon the character of the construction of the such building or buildings.

4. When the regional board of education of any regional school district shall have purchased any school building or parcel of land from the board of education of 1 of the component school districts of the regional district, the board of education of said component district shall, from the purchase price, invest, according to law a sum equal to the face value of the outstanding bonded indebtedness of the school district and shall use the interest derived therefrom in payment of the interest upon said bonds as it becomes due and payable and the principal thereof shall be applied in payment of the principal due upon said bonds as they severally mature, and any surplus of said purchase price remaining over and above the same so invested shall be placed in the building and repair account of the school district.

5. Sections 18:14–83, 18:14–84 and 18:14–85 of the Revised Statutes are repealed.

6. Each board of education shall adopt a course of study in community civics, the geography, history and civics of New Jersey, and the privileges and responsibilities of citizenship as they relate to community and national welfare, which course shall be taken by all pupils in the public elementary schools in the grade or grades in which it is given, with the object of producing the highest type of patriotic citizenship.

7. Section 18:14–86 of the Revised Statutes is amended to read as follows:

18:14–86. The nature of alcoholic drinks and narcotics and their effects upon the human system shall be taught in all schools supported wholly or in part by public moneys *in such manner as may be adapted to the age and understanding of the pupils and shall be emphasized in appropriate places of the curriculum sufficiently* for a full and adequate treatment of the subject. The failure or refusal of any district to comply with the provisions of this section shall be sufficient cause for withholding from such district the State appropriation.

8. Section 18:14–93 of the Revised Statutes is amended to read as follows:

18:14–93. *Each board of education shall conduct* as a part of the instruction in the public schools *courses in health, safety and physical education, which courses* shall be adapted to the ages and capabilities of the pupils

in the several grades and departments. To promote the aims of *these courses* any additional requirements or regulations as to medical inspection of school children may be imposed.

9. Sections 18:14–94 and 18:19–2 of the Revised Statutes are repealed.

10. Section 18:19–3 of the Revised Statutes is amended to read as follows:

18:19–3. All boards of education and boards or persons having control of other schools in this State shall provide for instruction in accident prevention *adapted to the understanding of the pupils of the various grades and classes in such schools.*

11. Section 18:19–4 of the Revised Statutes is repealed.

12. Section 18:19–5 of the Revised Statutes is amended to read as follows:

18:19–5. The board of education, school directors, trustees, or other committees or persons having control of a public, private, or parochial school shall arrange for *instruction* in fire prevention *to be given and emphasized in appropriate courses in the curriculum of the* school.

13. Section 18:19–6 of the Revised Statutes is repealed.

14. This act shall take effect immediately.
Approved June 24, 1954.

Chapter 83, Laws of 1954

An Act concerning education, and amending section 18:14–80 of the Revised Statutes.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:14–80 of the Revised Statutes is amended to read as follows:

18:14–80. Every board of education shall:

(a) Procure a United States flag, flagstaff and necessary appliances therefor for each school in the district and display such flag upon or near the public school building during school hours;

(b) Procure a United States flag, flagstaff and necessary appliances or standard therefor for each assembly room and each classroom in each school, and shall display such flag in the assembly room and each classroom during school hours and at such other time as the board of education may deem proper; and

(c) Require the pupils in each school in the district to salute the flag of the United States and repeat on every school day the pledge of allegiance to the flag which shall be as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation, *under God,* indivisible, with liberty and justice for all." The salute and pledge of allegiance shall be rendered with the right hand over the heart; but children who have conscientious scruples against such pledge or salute, or the children

of accredited representatives of foreign governments to whom the United States extends diplomatic immunity, will always show full respect to the flag while the pledge is given by merely standing at attention; the boys removing the headdress.

2. This act shall take effect immediately.

Approved June 24, 1954.

CHAPTER 95, LAWS OF 1954

AN ACT concerning the issuance of bonds and other obligations and the incurring of indebtedness by city, borough, town, township, village or any other municipality for school purposes, and amending section 18:6–61 of the Revised Statutes and supplementing chapter 6 of Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:6–61 of the Revised Statutes is amended to read as follows:

18:6–61. The governing body of the municipality shall, subject to the provisions of section 18:6–62 of this Title; either:

a. Make appropriation of the sum or sums, fixed as provided in section 18:6–60 of this Title, for the purpose or purposes so fixed, in the same manner as other appropriations are made by it pursuant to the local budget law (§ 40:2–1 et seq.), and upon the taking effect of such appropriation pay said sum or sums to the custodian of school moneys of the district to be paid out by him only on the warrants or orders of the board of education for such purpose or purposes; or

b. By ordinance appropriate the sum or sums, fixed as provided in section 18:6–60 of this Title, for the purpose or purposes so fixed and, pursuant to said ordinance, borrow the sum or sums so appropriated and secure the repayment of the sum or sums so borrowed, together with interest thereon at a rate not to exceed 6% per annum, by the authorization and issuance of bonds in the corporate name of such municipality in accordance with the provisions of article 18 of chapter 5 of this Title (§ 18:5–84 et seq.). Bonds so issued shall be designated "school bonds," may be registered or coupon, or both, and of such denomination as the governing body may determine, *and shall mature and be payable in such years and amounts as the governing body may determine in said ordinance or by subsequent resolution.*

2. If the governing body of any municipality comprising a school district to which are applicable the provisions of this chapter of the Revised Statutes, shall believe that the application to bonds of such school district or municipality, proposed to be authorized or theretofore authorized but remaining unissued, of the limits on maturities or amounts of annual installments or both set forth in chapter 6 of Title 18 of the Revised Statutes (§ 18:6–1 et seq.), or in any proposal, ordinance, resolution, certificate, proposition or other proceeding for the authorization of such bonds theretofore adopted, made or taken, would adversely affect the financial position of such school district or municipality, it may make application in writing to

the Local Government Board in the Division of Local Government in the Department of the Treasury setting forth such belief and the grounds therefor and requesting approval of a schedule of maturities and annual installments for such bonds set forth in the application.

3. Within 60 days after the submission to the Local Government Board of an application regarding bonds of a school district or municipality pursuant to section 2 of this act, it shall cause its approval to be endorsed thereon if, after consultation with the Commissioner of Education, it shall be satisfied and shall record by resolution its findings that the belief set forth in such application is well founded and that issuance of the bonds mentioned and described in such application in accordance with the schedule set forth therein would not materially impair the credit of any municipality comprised within such school district or substantially reduce its ability during the ensuing 10 years to pay punctually the principal and interest of its debts and supply essential public improvements and services. If the Local Government Board shall not be so satisfied within said period of 60 days, it shall cause its disapproval to be endorsed on such application.

If any such application submitted to the Local Government Board regarding bonds of a school district or municipality pursuant to section 2 of this act shall be approved as aforesaid, such bonds shall thereafter be issued only if the maturities and annual installments thereof are in accordance with the schedule set forth in such approved application, and may be so issued notwithstanding any limitations on such maturities or annual installments set forth in Title 18 of the Revised Statutes (§ 18:1–1 et seq.), or in any proposal, ordinance, resolution, certificate, proposition or other proceeding for the authorization of such bonds theretofore adopted, made or taken.

4. This act shall take effect immediately.

Approved June 30, 1954.

Chapter 100, Laws of 1954

An Act concerning education, and amending section 18:7–74 of the Revised Statutes.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:7–74 of the Revised Statutes is amended to read as follows:

18:7–74. The board may *from time to time* acquire for school purposes, by purchase, *condemnation,* or otherwise lands or premises not exceeding *12* acres in extent, situated in any municipality or municipalities adjoining the *school* district. All proceedings to acquire such land or premises shall be in accordance with the provisions of this Title.

2. This act shall take effect immediately.

Approved June 30, 1954.

CHAPTER 116, LAWS OF 1954

AN ACT to amend "An act to provide for the registration and regulation of certain private child care centers, providing penalties for violation thereof, and supplementing Title 18 of the Revised Statutes, approved May 6, 1946 (L. 1946, c. 303).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of the act of which this act is amendatory is amended to read as follows:

2. No child care center which is now or hereafter shall be established shall be operated or conducted after July 1, 1947, except by authority of a valid certificate of approval issued by the Commissioner of Education under rules prescribed by him with the approval of the State Board of Education. *Application for issuance or renewal of the certificate should be made upon a form prescribed by the Commissioner of Education and accompanied by a fee of $15.00. In the event any certificate is denied, the fee will be returned.*

2. This act shall take effect July 1, 1954.

Approved July 1, 1954.

CHAPTER 119, LAWS OF 1954

AN ACT concerning education, and amending section 18:7–25 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:7–25 of the Revised Statutes is amended to read as follows:

18:7–25. Nominating petitions shall be filed with the *secretary of the board of education on or before 9 o'clock P. M. of the 20th day* before the date of the election.

2. This act shall take effect immediately.

Approved July 1, 1954.

CHAPTER 120, LAWS OF 1954

AN ACT to amend "An act authorizing the use of voting machines in annual school elections under certain conditions, and supplementing article 3 of chapter 7 of Title 18 of the Revised Statutes," approved May 12, 1947 (P. L. 1947, c. 146).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 11 of the act of which this act is amendatory is amended to read as follows:

11. The board of education shall pay to the board of chosen freeholders of the county a rental fee of $5.00 for the use of each voting machine, plus the cost of any partial or total damage done to any machine or pertinent equipment, from any cause whatever, between the time of leaving the place of storage and its return thereto.

The board of chosen freeholders of any county may waive payment of the fee for the use of voting machines by a board of education of the county, if it shall so determine.

2. This act shall take effect immediately.

Approved July 1, 1954.

CHAPTER 134, LAWS OF 1954

AN ACT concerning education, and amending section 18:5–84 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:5–84 of the Revised Statutes is amended to read as follows:

18:5–84. Except as otherwise provided in section 18:5–85 or section 18:5–86 of this article:

a. No local school district other than a certified local school district shall authorize the issuance of bonds the principal amount of which, added to the net school debt of such school district at the date of such authorization, shall exceed 6% of the average assessed valuation of the property in such school district; and

b. No certified local school district shall authorize the issuance of bonds the principal amount of which, added to the net school debt of such school district at the date of such authorization, shall exceed 8% of the average assessed valuation of property in such school district; and

c. No regional school district shall authorize the issuance of bonds the principal amount of which, added to the net school debt of such school district at the date of such authorization, shall exceed 4% of the average assessed valuation of property in such school district; *except that if the regional district comprises a junior-senior high school consisting of 6 grades the amount allowed shall be 6% of the average assessed valuation of property in such school district.*

Nothing contained in this article shall apply to or affect or limit the issuance of bonds by any board of education or school district or municipality for the purpose of funding or refunding any bonds, notes or other indebtedness heretofore or hereafter issued or incurred by such board of education or school district or municipality.

2. This act shall take effect immediately.

Approved July 12, 1954.

CHAPTER 135, LAWS OF 1954

AN ACT to amend "An act concerning consolidated school districts, supplementing chapter 5 of Title 18 and repealing sections 18:5–14 to 18:5–17, both inclusive, of the Revised Statutes and 'An act relating to the public schools of this State, and supplementing chapter 5 of Title 18 of the Revised Statutes,' approved May 7, 1938" (P. L. 1938, c. 144), approved April 28, 1947 (P. L. 1947, c. 86).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of the act of which this act is amendatory is amended to read as follows:

1. Whenever the boards of education of 2 or more school districts, governed by the provisions of chapter 7 of Title 18 of the Revised Statutes shall deem it to be advisable to unite in creating a consolidated school district, each of said boards shall call and conduct an election, on a day and at a time designated by the county superintendent *or county superintendents* of schools in the manner provided for the conduct of school elections by chapter 7 of Title 18 of the Revised Statutes and shall submit the question of consolidating said school districts into a consolidated school district to the voters of the districts.

2. Section 2 of the act of which this act is amendatory is amended to read as follows:

2. *The secretary of each board shall transmit to the county superintendent of schools of the county a certificate of the result of the election signed by the chairman and secretary of the several polling places of the district. In case the districts uniting are situated in different counties, the secretaries shall transmit a duplicate of the certificate of results of the election to the county superintendent of the county or counties in which the other district or districts are situated.*

If the county superintendent or county superintendents of schools shall ascertain from the certificates that the total number of votes cast in each of the districts in favor of creating a consolidated school district exceeds the total number of votes cast in each district against the same, he or they shall immediately notify each of the boards of education of the result of the vote.

The districts *voting in favor of consolidation* shall be consolidated as provided in this act and the consolidation shall become effective on July 1 next ensuing such election.

3. Section 8 of the act of which this act is amendatory is amended to read as follows:

8. The membership of the board of education of each consolidated school district shall, except as otherwise provided by this act, be apportioned by the county superintendent *or county superintendents* of schools among the several consolidating school districts as nearly as may be according to the number of their inhabitants, as shown by the last published Federal census report, but each district shall have at least 1 member. The apportionment of membership shall continue until changed by reapportionment by the county superintendent *or county superintendents*, which shall be made, when required, immediately succeeding each published Federal census report but the members of the board in office at the time of any reapportionment shall continue in office for their unexpired terms.

4. Section 18 of the act to which this act is amendatory is amended to read as follows:

18. The first board of education of a consolidated district created under this act shall be composed of 9 members who shall be appointed with reasonable promptness following the election at which it is determined to consolidate from among the members of the boards of education of the consolidated districts, according to the apportionment among the districts provided for in section 7 of this act *by the county superintendent of schools of the county in which the respective component districts are situate.*

The schools under each consolidated board of education shall be under the supervision of the county superintendent of schools of the county in which the constituent districts having the greatest amount of ratables are situated.

5. This act shall take effect immediately.

Approved July 12, 1954.

Chapter 136, Laws of 1954

An Act concerning the issuance of bonds and other obligations and the incurring of indebtedness by school districts, and amending section 18:5–86 of the Revised Statutes.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:5–86 of the Revised Statutes is amended to read as follows:

18:5–86. (a) Any school district, upon compliance with the provisions of this section, may authorize the issuance of bonds notwithstanding the provisions of section 18:5–84 of this article. The issuance of any such bonds shall be authorized (1) in the case of a chapter 6 school district, upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least a majority of all the members thereof, of an ordinance of the municipality autohrizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section and upon a copy of which ordinance shall have been endorsed, prior to its adoption by said governing body, the consents of the State Commissioner of Education and of the Local Government Board here-

inafter in this section provided for, and the subsequent adoption by the qualified voters of such municipality, by a majority of the legal ballots cast thereon, of a proposition confirming such ordinance, which proposition shall be in form and substance as stated in this section, (2) in the case of a school district which has a board of school estimate and is not a chapter 6 school district, upon the making of the certificate of said board upon delivery of which the board of education, but for the provisions of section 18:5–84 of this article, would be authorized to issue such bonds and the subsequent adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal shall be in form and substance as stated in this section and upon a copy of which proposal shall have been endorsed, prior to its adoption by said legal voters, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for, or (3) in the case of a school district which has no board of school estimate, upon the adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal, in the case of a local school district, shall be in form and substance as stated in this section and upon a copy of which proposal shall have been endorsed, prior to its adoption by said legal voters, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for.

(b) A copy of any proposal for authorizing, or ordinance authorizing, the issuance of bonds of a school district may, before its adoption by the legal voters of such school district or governing body of the municipality comprised within such school district, be submitted for consideration by the State Commissioner of Education under subsection (c), and by the Local Government Board under subsection (d), of this section. As a part of such consideration and before endorsing any approval on such copy, the comissioner or board may require the board of education of such school district or governing body of such municipality to adopt resolutions restricting or limiting any future proceedings therein or other matters or things deemed by the commissioner or board to affect any estimate made or to be made under said subsections, and every such resolution so adopted shall constitute a valid and binding obligation of the school district or municipality, as the case may be, running to and enforceable or releasable by the commissioner or board, as the case may be.

(c) Within 60 days after submission to the State Commissioner of Education of any copy of a proposal or ordinance pursuant to subsection (b) of this section, he shall endorse his consent thereon if he shall be satisfied and shall record in writing his estimates that existing educational facilities in such school district are or within 5 years will be less than 80% adequate, that the new educational facilities to be financed pursuant to such proposal or ordinance will within 10 years be fully utilized, and that under existing statutes there is no alternative method of providing such new educational facilities which would be more economical. If the State Commissioner of Education shall not be so satisfied within said period of 60 days, he shall endorse his disapproval on such copy.

(d) Within 60 days after the submission to the Local Government Board of any copy of a proposal or ordinance pursuant to subsection (b) of this section, it shall cause its consent to be endorsed thereon if it shall be satisfied and shall record by resolution its estimates that the amounts to be ex-

pended for the new educational facilities to be financed pursuant to such proposal or ordinance are not unreasonable or exorbitant, and that issuance of the bonds mentioned and described in such proposal or ordinance will not materially impair the credit of any municipality comprised within such school district or substantially reduce its ability during the ensuing 10 years to pay punctually the principal and interest of its debts and supply essential public improvements and services, and that authorization of such bonds would not be possible under the provisions of either section 18:5–84 or section 18:5–85 of this article, and that, taking into consideration trends in population and in values and uses of property and in needs for educational facilities, the net school debt of such school district will at some date within *20* years be less, in the case of a certified local school district, than 8%, or in the case of a regional school district *not having grades 7 through 12*, than 4%, or in the case of any *regional school district having grades 7 through 12 or any* other school district, than 6% of the average assessed valuation of property in such school district as stated in supplemental debt statements, which might be filed on such date. If the Local Government Board shall not be so satisfied within said period of 60 days, it shall cause its disapproval to be endorsed on such copy.

(e) Except proposals for authorizing the issuance of bonds of a regional school district, every proposal for authorizing, and every ordinance authorizing, and every proposition confirming an ordinance authorizing, the issuance of bonds of a school district pursuant to this section, after stating any other matters or things authorized or required by law, shall disclose the effect of such proposal or ordinance on the borrowing margin of every municipality comprised within such school district. Such disclosures shall include showing the amount, if any, of such borrowing margin before adoption of the proposal or ordinance and showing the amount of such borrowing margin, if any, used up by adoption of the proposal or ordinance and showing the amount, if any, of net debt in excess of the measure of such borrowing margin resulting after adoption of the proposal or ordinance. Such disclosure in any such proposal shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

> Resolved that the board of education is hereby authorized:
> To * * *; and
>
> To issue bonds of the school district for said purpose (or purposes) in the principal amount of $ (insert amount of bonds to be issued), thus using up all of the $ (insert amount of borrowing margin before adoption of proposal), or, in an appropriate case, increasing the existing deficit in the, borrowing margin of the (insert name of municipality) previously available for other improvements and raising its net debt to $ (insert amount, after adoption of proposal, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin, and (if there be other municipality or municipalities comprised within such school district) using up all (or, in an appropriate case, an amount) of the $ (insert amount of borrowing margin before adoption of proposal), or, in an

appropriate case, increasing the existing deficit in the, borrowing margin of the (insert name of municipality) previously available for other improvements and (in every case where all borrowing margin is used) raising its net debt to $ (insert amount, after adoption of proposal, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin, et cetera, et cetera.

Such disclosure in any such ordinance shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

The authorization of the $ (insert amount of bonds to be issued) bonds (or promissory notes or temporary loan bonds) provided for by this ordinance uses up all of the $ (insert amount of borrowing margin before adoption of ordinance), or, in an appropriate case, increases the existing deficit in the, borrowing margin of the (insert name of municipality) previously available for other improvements and raises its net debt to $ (insert amount, after adoption of ordinance, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin.

Such disclosure in any such proposition confirming an ordinance shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

Shall the ordinance of the (insert name of municipality) adopted on (insert date of adoption) authorizing the issuance of $ (insert amount of bonds to be issued) bonds (or promissory notes or temporary loan bonds) for school purposes and using up all of the $ (insert amount of borrowing margin before adoption of proposition), or, in an appropriate case, increasing the existing deficit in the, borrowing margin of the (insert name of municipality) previously available for other improvements and raising its net debt to $ (insert amount, after adoption of proposition, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin, be confirmed.

2. This act shall take effect immediately.

Approved July 12, 1954.

AN ACT concerning education, amending sections 18:3–17, 18:14–14 and 18:14–112 and repealing section 18:14–67 of Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:3–17 of the Revised Statutes is amended to read as follows:

18:3–17. The commissioner, with the advice and consent of the State Board, *may:*

(a) Prescribe a minimum course of study for the elementary schools and for the high schools, if in his opinion it is advisable so to do;

(b) *Prescribe procedure for ascertaining what children, in the public schools, cannot be properly accommodated through the school facilities usually provided because of the extent of their mental retardation and prescribe procedures for the diagnosis and classification of such children for purposes of education and training.*

2. Section 18:14–14 of the Revised Statutes is amended to read as follows:

18:14–14. Every parent, guardian or other person having custody and control of a child between the ages of 7 and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school.

Such regular attendance shall be during all the days and hours that the public schools are in session in the school district, unless it is shown to the satisfaction of the board of education of the school district that the mental condition of the child is such that he cannot benefit from instruction in the school or that the bodily condition of the child is such as to prevent his attendance at school, *but nothing herein shall be construed as permitting the temporary or permanent exclusion from school by the board of education of the district of any child between the ages of 5 and 20, except as explicitly otherwise provided by law.*

3. Section 18:14–112 of the Revised Statutes is amended to read as follows:

18:14–112. When in any county a survey has been made setting forth facts and conditions regarding *physical handicaps and mental retardation* among children of school age, the results of which shall, in the opinion of the commissioner, warrant the establishment of a department of child study, there may be appointed by the commissioner, with the approval of the State Board, a supervisor of such department who shall work under the authority of the county superintendent.

The term of office of the supervisor *and his salary shall be* fixed by the commissioner with the approval of the State Board.

4. Section 18:14–67 of the Revised Statutes is repealed.

5. This act shall take effect on July 1, 1954.

Approved July 20, 1954.

CHAPTER 183, LAWS OF 1954

AN ACT concerning special school elections, and amending section 18:7–32 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:7–32 of the Revised Statutes is amended to read as follows:

18:7–32. All questions to be voted upon at the annual school election or any other proposition or question that may be required shall be placed upon the official ballot immediately following the names of the candidates for election to the board of education *and such questions and all questions to be voted upon at any special election to authorize the issuance of bonds or other evidences of indebtedness shall be arranged in such manner that the voter may indicate his choice in voting for or against the proposition* in *substantially* the following form:

	Yes.	(Question to be voted on.)
	No.	

If the voter makes a cross (×) or plus (+) or check (√) mark in black ink or black pencil in the square to the left of and opposite the word "Yes," it shall be counted as a vote in favor of the proposition.

If the voter makes a cross (×) or plus (+) or check (√) mark in black ink or black pencil in the square to the left of and opposite the word "No," it shall be counted as a vote against the proposition. In case no marks are made in the square to the left of and opposite either the word "Yes,' or "No," it shall not be counted as a vote either for or against the proposition.

2. This act shall take effect immediately.

Approved July 22, 1954.

CHAPTER 20, LAWS OF 1954 *

AN ACT concerning the issuance of bonds and other obligations and the incurring of indebtedness by school districts, and supplementing chapter 7 of Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

*1. If any municipality within or comprising a school district now governed, or hereafter governed by the provisions of chapter 7 of Title 18 of the Revised Statutes, has or shall have, while governed by the provisions of chapter 6 of said Title, by ordinance authorized bonds of said municipality in accordance with section 18:6–61 of said Title which remained unissued at the time of the acceptance in said municipality of the provisions of chapter 7 in accordance with this section or with the act entitled "An act concerning the election of boards of education in certain cities," approved July 13, 1951 (P. L. 1951, c. 308), such ordinance shall after such acceptance be authority for the issuance of bonds of the school district to the amount and for the purpose or purposes set forth therein and, from and after the date of such acceptance, shall for all the purposes of article 7 of chapter 7 of Title 18 of the Revised Statutes, and any other provisions of said chapter, be deemed to constitute a proposal duly adopted at said date by the legal voters of the school district, authorizing the board of education to issue bonds of the district for the purpose or purposes and in the amount or amounts set forth in such ordinance. The bonds so issued shall be dated and sold and be made payable in accordance with the provisions of said chapter, and any provisions of such ordinance with respect to the dates and maturities of such bonds shall not affect the powers of the board of education with respect to such dating and maturities. The school district shall assume and pay any notes and other obligations, other than permanent bonds or school bonds, theretofore duly issued or incurred by the municipality pursuant to said ordinance.

2. If the board of education of any school district to which are applicable the provisions of chapter 7 of Title 18 of the Revised Statutes, shall believe that the application to bonds of such school district, proposed to be authorized or theretofore authorized but remaining unissued, of the limits on maturities or amounts of annual installments or both set forth in chapter 7 of said Title 18, or in any proposal, ordinance, resolution, certificate, proposition or other proceeding for the authorization of such bonds theretofore adopted, made or taken, would adversely affect the financial position of such school district, or of any municipality comprised therein, it may make ap-

* Section 1 amended by Chapter 99, Laws of 1954.

plication in writing to the Local Government Board in the Division of Local Government in the Department of the Treasury setting forth such belief and the grounds therefor and requesting approval of a schedule of maturities and annual installments for such bonds set forth in the application.

3. Within 60 days after the submission to the Local Government Board of an application regarding bonds of a school district or municipality pursuant to section 2 of this act, it shall cause its approval to be endorsed thereon if, after consultation with the Commissioner of Education, it shall be satisfied and shall record by resolution its findings that the belief set forth in such application is well founded and that issuance of the bonds mentioned and described in such application in accordance with the schedule set forth therein would not materially impair the credit of any municipality comprised within such school district or substantially reduce its ability during the ensuing 10 years to pay punctually the principal and interest of its debts and supply essential public improvements and services. If the Local Government Board shall not be so satisfied within said period of 60 days, it shall cause its disapproval to be endorsed on such application.

If any such application submitted to the Local Government Board regarding bonds of a school district or municipality pursuant to section 2 of this act shall be approved as aforesaid, such bonds shall thereafter be issued only if the maturities and annual installments thereof are in accordance with the schedule set forth in such approved application, and may be so issued notwithstanding any limitations on such maturities or annual installments set forth in Title 18 of the Revised Statutes, or in any proposal, ordinance, resolution, certificate, proposition or other proceeding for the authorization of such bonds theretofore adopted, made or taken.

4. This act shall take effect immediately.

Approved April 29, 1954.

CHAPTER 51, LAWS OF 1954

AN ACT relating to the public schools of this State, and supplementing chapter 8 of Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever any board of education of any regional school district shall have purchased any high school building from the board of education of 1 of the constituent districts, the board of education of the regional school district may purchase, and the board of education of the constituent district may sell, any furniture, furnishings and equipment for such high school building and any supplies which may no longer be useful to the board of education of the constituent district and which may be useful to the board of education of the regional school district when funds are provided therefor according to law.

2. This act shall take effect immediately.

Approved June 22, 1954.

CHAPTER 63, LAWS OF 1954

AN ACT to amend "An act concerning public education, supplementing Title 18 of the Revised Statutes, and repealing section 18:16–27 of the Revised Statutes," approved April 14, 1944 (L. 1944, c. 140).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of the act of which this act is amendatory is amended to read as follows:

1. The president of any State teachers college may, under regulations approved by the commissioner, provide work in or about such teachers college for any student or students who demonstrate financial need. The value of such work as determined by the president under the aforementioned regulations shall be credited toward the payment in part or in whole of any 1 or combination of the following charges for such student or students: tuition, room and board; provided, that the number of students aided under the provisions of this act shall not exceed 25% of the number of the full-time students of such college.

2. This act shall take effect July 1, 1954.

Approved June 24, 1954.

CHAPTER 96, LAWS OF 1954

AN ACT to provide for the approval and certification of annual appropriations or items thereof of regional boards of education rejected at annual meetings, and supplementing chapter 8 of Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. If the voters shall reject the entire appropriations or any items of appropriation necessary to meet the annual costs of education in the regional district submitted at the annual election, the regional board shall on the third Tuesday in February submit again, at a special regional district election called for that purpose, the items rejected at the annual regional district election. The items to be submitted at this special regional district meeting may be in the same or less amounts than those submitted at the annual election.

2. Should the voters, at the second election, reject any of the items as submitted, the governing bodies of the municipalities comprising such regional district, after consultation with the board, shall, within 10 days after receipt of the proposed appropriations from the board of education, certify to the county board or county boards of taxation, the amount or amounts which the governing bodies determine to be necessary to provide a thorough and efficient system of schools in the regional district. The amount so certified shall be included in the tax levied for such municipalities for such appropriations.

3. Should the governing bodies of such municipalities fail to certify to the county board or county boards of taxation within such time prescribed in the previous section an amount which in their judgment is necessary for any of the items which the voters had rejected at the second election, or should the governing bodies fail to agree and certify different amounts, then in either such case the commissioner of education shall determine and certify to the county board or county boards of taxation the amount or amounts which in his judgment shall be necessary to provide a thorough and efficient system in the regional district. The amount or amounts so certified shall be included in the tax levied for such municipalities for such appropriations.

4. This act shall take effect immediately.

Approved June 30, 1954.

CHAPTER 99, LAWS OF 1954

AN ACT to amend "An act concerning the issuance of bonds and other obligations and the incurring of indebtedness by school districts, and supplementing chapter 7 of Title 18 of the Revised Statutes," approved April 29, 1954 (P. L. 1954, c. 20).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of the act of which this act is amendatory is amended to read as follows:

1. If any municipality within or comprising a school district now governed, or hereafter governed by the provisions of chapter 7 of Title 18 of the Revised Statutes, has or shall have, while governed by the provisions of chapter 6 of said Title, by ordinance authorized bonds of said municipality in accordance with section 18:6–61 of said Title which remained unissued at the time of the acceptance in said municipality of the provisions of chapter 7, such ordinance shall after such acceptance be authority for the issuance of bonds of the school district to the amount and for the purpose or purposes set forth therein and, from and after the date of such acceptance, shall for all the purposes of article 7 of chapter 7 of Title 18 of the Revised Statutes, and any other provisions of said chapter, be deemed to constitute a proposal duly adopted at said date by the legal voters of the school district, authorizing the board of education to issue bonds of the district for the purpose or purposes and in the amount or amounts set forth in such ordinance. The bonds so issued shall be dated and sold and be made payable in accordance with the provisions of said chapter, and any provisions of such ordinance with respect to the dates and maturities of such bonds shall not affect the powers of the board of education with respect to such dating and maturities. The school district shall assume and pay any notes and other obligations, other than permanent bonds or school bonds, theretofore duly issued or incurred by the municipality pursuant to said ordinance.

2. This act shall take effect immediately.

Approved June 30, 1954.

CHAPTER 103, LAWS OF 1954

AN ACT concerning education, and supplementing chapter 5 of Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. In each school district the board of education may designate some person to act in place of any officer or employee during the temporary absence, disability or disqualification of any such officer or employee.

The act of any person so designated shall in all cases be legal and binding as if done and performed by the officer or employee for whom such designated person is acting.

2. This act shall take effect immediately.

Approved June 30, 1954.

CHAPTER 164, LAWS OF 1954

AN ACT to amend "An act relating to the Teachers' Pension and Annuity Fund, and supplementing chapter 13 of Title 18 of the Revised Statutes," approved August 11, 1953 (P. L. 1953, c. 360).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of the act of which this act is amendatory is amended to read as follows:

1. The total retirement allowance to be paid to a member retired *prior to July 1, 1953, and to a member retired on or after said date* for disability, or on or after attaining age 62 with 20 or more years of service, consisting of service to his credit in the New Jersey Teachers' Pension and Annuity Fund and service in New Jersey prior to *September 1, 1919*, shall be not less than $800.00 per annum. Eligible members must apply to the Board of Trustees of the Teachers' Pension and Annuity Fund, and provide satisfactory evidence as to service to the board of trustees.

2. This act shall take effect immediately.

Approved July 15, 1954.

CHAPTER 178, LAWS OF 1954

AN ACT concerning the education and training of mentally retarded children in the public school systems of the State, and supplementing Title 18 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Commissioner of Education, with the approval of the State Board, shall promulgate rules and regulations for the classification of mentally retarded children, based upon approved and accepted psychological standards, under 3 groups:

a. Educable mentally retarded children, who are those who may be expected to succeed with a minimum of supervision in homes and schools and community life and are characterized particularly by reasonable expectation that at maturity they will be capable of vocational and social independence in competitive environment;

b. Trainable mentally retarded children, who are so severely retarded or socially immature that they cannot be classified as educable but are, notwithstanding, potentially capable of self-help, of communicating satisfactorily, of participating in groups, of directing their behavior so as not to be dangerous to themselves or others and of achieving with training some degree of personal independence and social and economic usefulness within sheltered environments;

c. Children who are so mentally retarded as to be neither educable or trainable.

2. Each board of education shall ascertain what children between the ages of 5 and 20 in the public schools of the district cannot be properly accommodated through the school facilities usually provided because of the extent of their mental retardation and shall classify such of them as are educable or trainable in accordance with rules and regulations, prescribed by the Commissioner of Education, with the approval of the State Board of Education, in accordance with the provisions of this act.

3. Each board of education shall separately or jointly with 1 or more boards of education employ a psychological examiner and, if it deems it advisable, may employ a psychiatric examiner to administer the procedures for diagnosis and classification required in this act.

4. In lieu of employing a psychological or psychiatric examiner, a board of education may separately or jointly with 1 or more boards of education contract to use, with or without financial reimbursement, the psychological or psychiatric services of any clinic or agency approved by the Commissioner of Education. The Commissioner of Education with the approval of the State Board of Education and of the State Board of Control of the Department of Institutions and Agencies, shall prescribe suitable standards for the approval by him of any examiner, who is engaged in diagnosing and classifying children, pursuant to this act and for the approval of any clinic or agency furnishing services pursuant to section 4 of this act.

5. It shall be the duty of each board of education to provide suitable facilities and programs of education or training for all the children who are classified as educable or trainable under this act. The absence or unavailability of a special class facility in any district shall not be construed as relieving the board of education of the responsibility for providing education or training for any child who qualified under this act. The facilities and programs of education or training required under this act may be provided as follows:

(a) By establishing a special class or classes in the district; or

(b) By sending pupils to a special class in the public schools of another district; or

(c) By agreement with 1 or more school districts to provide joint facilities; or

(d) By individual instruction or training at home or in school whenever, in the judgment of the board of education with the consent of the commissioner, there are too few mentally retarded pupils to form a class in the district, or whenever it is impracticable to transport a child because of distance or other good reason to a class referred to in subsections (a), (b) and (c).

6. Every special class maintained under this act shall be approved by the commissioner according to the rules and regulations prescribed by him and approved by the State Board. No such class conducted for educable mentally retarded children shall contain more than 15 pupils, and no such class conducted for trainable retarded children shall contain more than 10 pupils.

7. Any board of education which receives pupils from a sending district under this act shall determine a tuition rate to be paid by the sending board of education, but in no case shall the tuition rate exceed the cost per pupil as determined according to a formula prescribed by the commissioner with the approval of the State Board.

8. The commissioner may, in his discretion, with the approval of the State Board, require any board of education having the necessary accommodations to receive pupils from other districts.

9. Any board of education which has entered or hereafter shall enter its pupils in the schools of a receiving district may not withdraw such pupils for the purpose of entering them in the schools of another district unless good and sufficient reason exists for such change and unless an application therefor is made and approved by the commissioner. Either the receiving or sending board of education, if dissatisfied with the determination of the commissioner on any such application, may appeal to the State Board, and, in its discretion, that body may affirm, reverse or modify his determination.

10. Any joint provision for facilities, examinations or transportation under this act shall be provided under the terms of an agreement adopted by resolutions of each of the boards of education concerned wherein shall be set forth the essential information concerning the facilities, examinations, or transportation to be provided, and the method of computing the proportion of the cost each party to the agreement shall assume, the proportion of the State aid to which each district shall be entitled, and any other matters

deemed necessary to carry out the purpose of the agreement. Any such agreement shall not become effective until approved by the commissioner.

11. The commissioner with the consent of the State Board shall approve all special facilities and programs provided under this act. He shall from time to time by the use of available members of his staff, by the publication of bulletins, and by any other means available to him assist boards of education in formulating programs required under this act.

12. The superintendent of schools, or the principal of the school in a district where there is no superintendent, may, upon the advice of the examiner making the diagnosis and classification required in this act, refuse to admit, or having admitted, exclude any child whose mental retardation is so severe that he has been diagnosed and classified as not trainable under section 2 of this act.

Any child so refused admission or excluded shall be re-examined, upon the request of the parent or other person having custody and control of the child, after a period of 1 year shall have elapsed from the date of the last previous examination. A pupil may be refused admission or excluded temporarily for a reasonable time pending examination and classification.

13. The superintendent of schools or the principal of the school, as the case may be, shall forthwith report to the secretary of the board of education the names of all children and the names and addresses of their parents or persons having custody and control of them who have been refused admission or excluded under section 12 of this act. Their refusal of admission or exclusion shall continue unless and until set aside by action of the board of education or lifted as a result of a re-examination. It shall also be the duty of the superintendent or principal, as the case may be, to report the names of any other mentally retarded children in the district known to him who are not in a private school or in a residential institution and who are considered to be uneducable or untrainable.

It shall be the duty of the secretary of the board of education, after the meeting of the board of education next following the meeting at which the names are reported, to report the names and addresses to the county superintendent of schools of the county in which the district is situated. The county superintendent shall furnish a list of such names and addresses to the commissioner, who shall, in turn, transmit all lists received by him to the Commissioner of Institutions and Agencies. Such lists shall not be made public, but shall be open to the inspection only of such public and private agencies as have a legitimate interest in it and then only to the extent so necessary; nor shall the presence of any such name on such list necessarily constitute eligibility for admission to any of the institutions under the control of the Department of Institutions and Agencies.

14. The board of education shall furnish transportation to all children found to be mentally retarded under this act who qualify for such transportation under R. S. 18:14–8 and may furnish transportation for any child for a lesser distance if, in its judgment the mental retardation of the child is so severe as to make such transportation necessary and advisable.

The school district shall be entitled to State aid for such transportation in the amount of 75% of the cost to the district of furnishing such transportation to a public school when the necessity for such transportation and the

cost and method thereof have been approved by the county superintendent of schools of the county in which the district paying the cost of such transportation is situated.

15. The commissioner may require at such times, and in the manner and on forms prescribed by him, such educational, financial and statistical reports as he may deem necessary to carry out the purpose of this act.

16. This act shall take effect on July 1, 1954.

Approved July 20, 1954.

CHAPTER 179, LAWS OF 1954

AN ACT concerning the education of physically handicapped children, supplementing Title 18 of the Revised Statutes and repealing sections 18:14–9, 18:14–68 to 18:14–71, inclusive, of the Revised Statutes and "An act concerning education, amending section 18:14–70, and supplementing chapter 14 of Title 18 of the Revised Statutes," approved June 30, 1948 (P. L. 1948, c. 191).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Each board of education shall ascertain, according to rules and regulations prescribed by the commissioner with the approval of the State board, what children, if any, in the public schools between the ages of 5 and 20 cannot be properly accommodated through the school facilities usually provided because of the extent of their physical handicaps.

2. Each physically handicapped child shall be classified according to categories, and by procedures prescribed by the commissioner and approved by the State board. Such categories shall be the following: cerebral palsy, general orthopaedic, cardiopathic, blind, partially seeing, deaf, hard of hearing, chronic defects and diseases, and speech defects connected with some physical defect.

3. Any medical inspector of the school district may administer the procedures for classification required in this act or, whenever in the judgment of the board of education it is necessary or advisable, an orthopaedic surgeon or other specialist of recognized standing may be employed for the purpose.

4. In lieu of employing an examiner required in section 3 of this act, a board of education may separately or jointly with 1 or more boards of education contract to use, with or without financial reimbursement, the services of any clinic or agency approved by the commissioner.

5. The commissioner with the approval of the State board shall prescribe suitable standards for the approval by him of any examiner who is engaged in classifying children pursuant to this act and for the approval of any clinic or agency furnishing services pursuant to section 4 of this act.

6. It shall be the duty of each board of education to provide suitable facilities and programs of education for all the children who are classified as

physically handicapped under this act. The absence or unavailability of a special class facility in any district shall not be construed as relieving a board of education of the responsibility for providing education for any child who qualifies under this act.

7. The facilities and programs of education required under this act may be provided as follows:

(a) By establishing a special class or classes in the district, including a class or classes in hospitals, convalescent homes, or other institutions; or

(b) By sending pupils to a special class in the public schools of another district; or

(c) By agreement with 1 or more school districts to provide joint facilities, including a class or classes in hospitals, convalescent homes, or other institutions; or

(d) By instruction supplementary to the regular program of the school not to exceed 5 hours weekly, whenever, in the judgment of the board of education with the consent of the commissioner, the physically handicapped pupil will be best served thereby; or

(e) By individual instruction at home or in school whenever in the judgment of the board of education with the consent of the commissioner, there are too few physically handicapped pupils to form a class in the district or whenever it is impracticable to transport a child because of distance or other good reason to a class referred to in subsections a, b, c, or d.

Whenever any child shall be confined to a hospital, convalescent home, or other institution in which a special class shall be established pursuant to subsection (a) of this section, it shall be the duty of the board of education of the district in which the child is domiciled to pay the tuition of said child in the special class if it is satisfied, after an examnation has been made in the manner provided in this act, that it is necessary or advisable for the child to be confined to said hospital, convalescent home, or other institution.

The board of education may, in its discretion, also furnish the facilities or programs provided in this act to any person over the age of 20 who does not hold a diploma of a high school approved in this State or in any other State in the United States.

8. Every special class maintained under this act shall be approved by the commissioner according to rules and regulations prescribed by him and approved by the State board. The maximum number of pupils in any class in the categories listed in this section shall be as follows: cerebral palsy, 10; general orthopaedic, 15; cardiopathic, 15; blind, 8; combination blind and partially seeing, 8; partially seeing, 15; deaf, 8; hard of hearing, 10; chronic defects and diseases, 15. The maximum of pupils in any class of a category not listed in this section shall be prescribed by the commissioner with the approval of the State board.

9. Any board of education which receives pupils from a sending district under this act shall determine a tuition rate to be paid by the sending board of education, but in no case shall the tuition rate exceed the cost per pupil as determined according to a formula prescribed by the commissioner with the approval of the State board.

10. The commissioner may, in his discretion, with the approval of the State board, require any board of education having the necessary accommodation to receive pupils from other districts.

11. Any board of education which has entered or hereafter shall enter its pupils in the schools of a receiving district may not withdraw such pupils for the purpose of entering them in the schools of another district unless good and sufficient reason exists for such a change and unless an application therefor is made and approved by the commissioner. Either the receiving or sending board of education, if dissatisfied with the determination of the commissioner on any such application, may appeal to the State board, and, in its discretion that body may affirm, reverse, or modify his determination.

12. Any joint provision for facilities, examinations or transportation under this act shall be provided under the terms of an agreement adopted by resolutions of each of the boards of education concerned wherein shall be set forth the esential information concerning the facilities, examinations, or transportation to be provided, the method of computing the proportion of the State aid to which each district shall be entitled, and any other matters deemed necessary to carry out the purpose of the agreement. Any such agreement shall not become effective until approved by the commissioner.

13. The commissioner with the consent of the State board shall approve all special facilities and programs which meet the requirements of this act. He shall from time to time by the use of available members of his staff, by the publication of bulletins, and by any other means available to him assist boards of education in formulating programs required under this act.

14. Each board of education shall report to the county superintendent of schools of the county in which the school district is situate who shall report to the commissioner the names of all children classified under this act and the names and addresses of their parents or persons having control or custody of them together with the category into which they have been classified. Included in this report shall be the names and addresses of any known physically handicapped children who are not attending school. The commissioner shall make the information in the reports available to any State agency charged with the care and restoration of any particular category of physically handicapped children.

15. The board of education shall furnish transportation to all children found to be physically handicapped under this act who qualify for such transportation under R. S. 18:14–8 and shall also furnish transportation to any physically handicapped child for a lesser distance, if, in the judgment of the board of education, upon the advice of the examiner, the physical handicap is such as to make such transportation necessary or advisable.

The school district shall be entitled to State aid for such transportation in the amount of 75% of the cost to the district of furnishing such transportation to a public school when the necessity for such transportation and the cost and method thereof have been approved by the county superintendent of schools of the county in which the district paying the cost of such transportation is situated.

16. The commissioner may require at such times, and in the manner and on forms prescribed by him, such educational, financial, statistical, and other reports as he may deem necesary to carry out the purpose of this act.

17. A pupil may be refused admission or excluded temporarily for a reasonable time pending examination and classification.

18. Sections 18:14–9 and 18:14–68 to 18:14–71, inclusive (L. 1948, c. 191, L. 1951, c. 38) are hereby repealed.

19. This act shall take effect on July 1, 1954.

Approved July 20, 1954.

Chapter 188, Laws of 1954

An Act to provide for and regulate the granting of sick leave to certain persons in the public schools of this State, and supplementing Title 18 of the Revised Statutes, and to repeal "An act to provide for and regulate the granting of sick leave to certain teachers, principals, assistant superintendents and superintendents in the public schools of this State, and supplementing chapter 13 of Title 18 of the Revised Statutes," approved May 6, 1942 (P. L. 1942, c. 142), as the title of said act was amended by chapter 237 of the laws of 1952.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. All persons holding any office, position or employment in all school districts, regional school districts or county vocational schools of the State who are steadily employed by the board of education or who are protected in their office, position or employment under the provisions of sections 18:13–16 to 18:13–19 of the Revised Statutes or under any other law shall be allowed sick leave with full pay for a minimum of 10 school days in any school year. If any such person requires in any school year less than this specified number of days of sick leave with pay allowed, all days of such leave not utilized that year shall be accumulative to be used for additional sick leave as needed in subsequent years.

2. In case of sick leave claimed, a board of education may require a physician's certificate to be filed with the secretary of the board of education.

3. Sick leave is hereby defined to mean the absence from his or her post of duty, of any such person because of personal disability due to illness or injury, or because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

4. When absence, under the circumstances described in section 3 of this act, exceeds the annual leave and the accumulated leave, the board of education may pay any teacher, principal, assistant superintendent or superintendent each day's salary less the pay of a substitute for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary.

5. Nothing in this act shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave.

6. The Commissioner of Education shall enforce this regulation to the extent of withholding State school moneys from school districts violating any of the provisions of this act.

7. "An act to provide for and regulate the granting of sick leave to teachers, principals and supervising principals in the public schools of this State, and supplementing chapter 13 of Title 18 of the Revised Statutes," approved May 6, 1942 (P. L. 1942, c. 142), as the title to said act was amended by chapter 237 of the laws of 1952, is repealed.

8. This act shall not be applicable to any person holding any office, position or employment which is in the classified service of the civil service pursuant to Title 11, Civil Service, of the Revised Statutes.

9. This act shall take effect July 1, 1954.

Approved July 22, 1954.

CHAPTER 198, LAWS OF 1954

A SUPPLEMENT to the "Law Against Discrimination," approved April 16, 1945 (P. L. 1945, c. 169).

WHEREAS, By chapters 105, 106, 107, 108, 109, 110, 111 and 112 of the laws of 1950, it was provided that no person shall, because of race, religious principles, color, national origin or ancestry, be subject to any discrimination in housing built with public funds or public assistance pursuant to chapter 300 of the laws of 1949, chapter 213 of the laws of 1941, chapter 169 of the laws of 1944, chapter 303 of the laws of 1949, chapter 19 of the laws of 1938, chapter 20 of the laws of 1938, chapter 52 of the laws of 1946 and chapter 184 of the laws of 1949; therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Division Against Discrimination in the State Department of Education shall enforce the laws of this State against discrimination in housing built with public funds or public assistance, pursuant to any law, because of race, religious principles, color, national origin or ancestry. The said laws shall be so enforced in the manner prescribed in the act to which this act is a supplement.

2. This act shall take effect immediately.

Approved July 28, 1954.

CHAPTER 70, LAWS OF 1954

AN ACT authorizing the Commissioner of Education to conduct extension courses in the State teachers colleges of this State, and appropriating the fees collected for payment of the expenses incurred.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Commissioner of Education is hereby authorized and empowered to conduct extension courses through the 6 State teachers colleges for the purpose of giving further training to the teachers in the public schools of this State. The commissioner is authorized to fix fees to be charged therefor and to be collected by the treasurers of the several State teachers colleges. All fees collected for such courses through June 30, 1955, are hereby appropriated to the Department of Education for the purpose of defraying the expense of conducting these extension courses. The expenditure of the funds herein appropriated shall be subject to the same regulations as all other appropriations.

2. This act shall take effect immediately.

Approved June 24, 1954.

CHAPTER 85, LAWS OF 1954

AN ACT concerning State aid for schools, making an appropriation therefor, and repealing P. L. 1946, c. 63, P. L. 1948, c. 66, P. L. 1951, c. 227, sections 18:10–49, 18:12–4 through 18:12–9, and 18:15–6 through 18:15–16 of the Revised Statutes and amendments and supplements thereto.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Short title. This act shall be known as the State School Aid Act of 1954.

2. Definitions. For the purposes of this act, unless the context clearly requires a different meaning:

"Average daily enrollment" shall mean the average daily number of full-time pupils enrolled in a public school during a school year.

"Approved special class" shall mean a class for physically handicapped or mentally retarded children, and all other classes for atypical pupils approved by the Commissioner of Education.

"Atypical pupils" shall mean pupils who are physically handicapped or mentally retarded and who are not accommodated through the school facilities usually provided for normal pupils.

"Evening school pupils" shall mean pupils enrolled in evening schools, except in classes for foreign-born residents, or in vocational schools, or in schools known as adult schools.

"School district" shall mean a district organized or operating under chapters 6, 7, or 8 of Title 18 of the Revised Statutes.

"State aid" shall mean the sum of equalization aid, minimum aid, transportation reimbursement, and supplementary aid for special classes and atypical pupils, county aid and county vocational school aid, as determined pursuant to this act.

3. Foundation program. The foundation program for each school district in each school year shall be $200 per pupil in average daily enrollment. For this purpose:

(a) Pupils shall be counted as in enrollment who are residents of the district and are regularly attending the public schools of the district or of a school district or State teachers college demonstration school to which the district of residence pays tuition;

(b) All atypical pupils shall be counted in the same manner as normal pupils;

(c) The enrollment of pupils in evening schools and part-time day schools shall be equated to a full-time day school enrollment pursuant to rules promulgated by the Commissioner of Education with the approval of the State Board of Education;

(d) Pupils in regional school districts and their respective component districts shall be counted according to the rule prescribed in subsection (a) hereof.

(e) Notwithstanding the foregoing, no district shall count in its enrollment any pupil regularly attending on a full-time basis a county vocational school in the same county, regardless of whether or not tuition is paid for such pupil, but such pupils shall be counted in the determination of State aid to the county vocational schools.

4. Local fair share.

(a) The local fair share of the foundation school program shall be determined for each school district as a sum equal to 5 mills per dollar upon the equalized valuation of the taxing district or districts within the school district, as certified by the Director of the State Division of Taxation for the year in which the calculation is made plus 25% of the amount of shared taxes payable to each municipality within the district as certified by such director. For the purposes of this section, shared taxes shall include the public utility franchise (R. S. 54:31–1 et seq.) and gross receipts (R. S. 54:32–1 et seq.) taxes, the financial business tax (P. L. 1946, c. 174), the domestic life insurance (P. L. 1950, c. 101) and domestic casualty insurance tax (P. L. 1952, c. 227) and the bank stock tax (R. S. 54:9–1 et seq.).

(b) With respect to regional school districts and their component districts, however, the equalized valuations as certified by the director of taxation and 25% of the amount of shared taxes as described above shall be allocated among the regional district and its component districts in proportion to the number of pupils in each of them as determined for the foundation

program. That part of the local fair share of the regional district measured by property valuations shall be determined at the rate of 3 mills per dollar of such allocated valuation during the first 5 years under this act that the regional school is in operation and at the rate of 4 mills per dollar during the second 5 years under this act that the regional school is in operation, and thereafter at the full 5 mills, with respect to any regional school district heretofore or hereafter established.

(c) In the event that the equalization table certified by the Director of the Division of Taxation shall be revised by the Division of Tax Appeals on or before January 15, the local fair share of any district affected thereby shall be recomputed accordingly and any determination or certification of State aid previously made pursuant to this act shall be amended to conform therewith.

(d) The Director of the Division of Taxation shall upon request certify to the Commissioner of Education the amount of shared taxes, as herein defined, of each taxing district.

5. Equalization and minimum aids. Equalization aid shall be paid to each district in the amount of the excess of the foundation program over the local fair share; provided that each district shall be paid not less than $50.00 per pupil.

6. Atypical pupils.

(a) In addition to all other aid, each school district operating an approved special class or classes shall be paid $2,000.00 per class for such classes, and each school district sending atypical children to special classes outside the district of residence shall be paid ½ the amount by which the tuition charged for such pupils exceeds $200.00.

(b) For every mentally retarded or physically handicapped pupil furnished individual instruction or training at home or in school, by reason of the fact that there are too few mentally retarded or physically handicapped pupils in the district to form a class or by reason of the impracticability of transporting such a pupil to a class maintained in another district, the school district shall be paid ½ the cost of such education as determined by the Commissioner of Education.

7. Transportation. Each district shall also be paid 75% of the cost to the district of transportation of pupils to a public school when the necessity for such transportation and the cost and method thereof have been approved by the county superintendent of schools of the county in which the district paying the cost of such transportation is situated.

8. County vocational schools. Each county vocational school board operating a full-time day school program shall be paid the sum of $50.00 per pupil. The Commissioner of Education, with the approval of the State Board of Education, shall promulgate rules for the counting of pupils in average daily enrollment on a full-time day school basis in the county vocational schools. Aid hereunder shall be in lieu of any matching aid under any other statute with respect to the same pupils, program or school.

9. County aid. Each county shall be entitled to receive in each school year the amount requisite to pay the salaries and expenses of its

(a) Helping teachers;

(b) County supervisors of child study; and

(c) County attendance officers, in such school year as certified by the commissioner.

Such amounts shall be payable September 1 and February 1 in each school year.

10. Limitations.

(a) Wherever the amount to be raised by taxation as shown by the budget adopted by any school district exclusive of taxes required for debt service and capital outlay, is less than the local fair share, and the amount provided by such budget for current expense is less than $200.00 per pupil in average daily enrollment during the next preceding school year, such district shall not be paid the equalization or minimum aid otherwise payable pursuant to this act, provided that any district may submit proof to the commissioner that such average daily enrollment of the next preceding school year does not fairly reflect the anticipated enrollment for which such budget was made, or the commissioner may upon his own motion so determine. The commissioner, upon being satisfied of such proof, or upon making such determination, may recompute the per pupil expenditure provided by such budget, for the purposes of this section.

11. Emergency aid. There shall be appropriated annually the sum of $350,000.00 to be distributed by the commissioner, upon the approval of the State Board of Education, to meet unforeseeable conditions in any school district, and to make up any deficit in the amount of State aid lawfully anticipated in the budget of any school district for the school year beginning July 1, 1954, where the State aid payable to the district under this act shall be less than the sum of the amount so anticipated pursuant to the statutes repealed by this act. The amount of such emergency aid shall be payable by the State Treasurer upon the certificate of the commissioner and the warrant of the Director of Budget and Accounting.

12. Reports to commissioner. On or before a date to be set by the Commissioner of Education, but not earlier than the first day in July in each year, the secretary of each school district and the superintendent or, when there is no superintendent, such officer or employee delegated by the board of education to maintain enrollment records as prescribed by the Commissioner of Education, shall make and transmit a report of such information, based upon the statistics of the preceding school year, as the commissioner may require. Such report shall be certified, under the penalties of perjury, as true to the best of the knowledge and belief of the persons making it.

13. Determination of appropriation. On or before November 1 in each year the commissioner shall calculate the amount necessary to be appropriated to carry out the provisions of this act for the succeeding school year and shall determine the amounts to be paid to each of the counties and districts under this act, for such succeeding school year.

Except as to the sums to be ascertained and paid as county aid, the commissioner shall make such calculation and determination upon the basis of pupils and school operating statistics for the preceding school year and the local fair share determined for the current calendar year. The payments to be made pursuant to this act for the succeeding year, except those to be made as county aid, shall be made upon the same basis.

14. Payment of State aid. The sums payable as State aid to the school districts and county vocational schools shall be payable in each school year, ⅓ on October 1, ⅓ on January 1, and ⅓ on April 1. Payments shall be made by the State Treasurer to each board of education upon certificate of the Commissioner of Education and warrant of the Director of the Division of Budget and Accounting.

15. Regulations. In order to participate in any apportionment made according to the provisions of this act, a school district shall comply with the regulations and standards for the equalization of opportunity which have been or which may hereafter be prescribed by law, or formulated by the Commissioner of Education or the State Board of Education pursuant to law. The Commissioner of Education is hereby authorized to withhold all or part of such apportionment for failure to comply with any regulation or standard. No apportionment under this act shall be paid to any district which has not provided public school facilities for at least 180 days during the preceding school year, but the commissioner, for good cause shown, may remit the penalty.

16. New school districts. When the apportionment shall have been made for any year and a part of any district becomes a new school district or a part of another school district, or comes partly under the authority of a regional board of education, the commissioner shall adjust such apportionment or apportionments among the districts affected, or between the district and the regional board, as the case may be, on an equitable basis in accordance with the intent of the act.

17. Transition provisions. Each school district shall be paid State or other aid under this act for the school year 1954-1955 in such sum as will equal the amount of the State or other aid lawfully anticipated in the budget of the district heretofore adopted for such school year plus ¼ of the amount by which State aid otherwise payable under this act would exceed the sum of the amount so anticipated pursuant to the statutes repealed by this act. In the distribution of State aid for the school year 1954-1955 pursuant to this act, the several provisions as to time for reports, certifications and determinations shall be deemed to be directory only. The commissioner may determine the amount of State aid due each district within a reasonable time after the passage of this act, and may require any or all school districts to furnish such special reports and information as he may deem necessary to that end. For the purposes of such first distribution hereunder, the commissioner shall use the assessment ratios reported in Compendium Table II of the Sixth Report of the Commission on State Tax Policy, in lieu of any certification of equalized valuations by the Director of the Division of Taxation; provided that for any taxing district for which such report does not report an assessment ratio, the Director of the Division of Taxation shall, within 60 days of the passage of this act, compute and certify the equalized valuation to be used by the Commissioner of Education in the computation of State aid, as in the manner provided by this act for distributions for subsequent years.

All balances on hand in the possession of any school district heretofore required to be held in a special fund repealed by this act, shall be credited to current expense funds.

Any sum heretofore certified as payable pursuant to section 13 of chapter 63 of the laws of 1946, as amended, shall be and remain payable notwithstanding the repeal of said chapter.

State aid for vocational schools or pupils in vocational classes shall be in lieu of any other matching aid heretofore provided by law with respect to such classes or pupils for which provision is made hereunder.

18. Repealers. The following acts and parts of acts and all amendments and supplements thereto are hereby repealed:
P. L. 1946, c. 63; P. L. 1948, c. 66; P. L. 1951, c. 227.

Sections 18:10–49, 18:12–4 through 18:12–9, and 18:15–6 through 18:15–16 of the Revised Statutes.

19. Appropriation. There is hereby appropriated for the purposes of this act for the fiscal year ending June 30, 1955, the sum of $7,125,000.00 which shall be in addition to the sum of $30,747,151.55 heretofor appropriated for State aid to school districts for the school year 1954-1955 by chapter 46 of the laws of 1954.

20. Effective date. This act shall take effect immediately.
Approved June 30, 1954.

Chapter 86, Laws of 1954

An Act relating to the powers and duties of the Director of the Division of Taxation in the Department of the Treasury with respect to State aid for schools, and making an appropriation therefor.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. On or before the first day of October in each year the Director of the Division of Taxation, in the State Department of the Treasury shall promulgate a table of equalized valuations to be used in the calculation and apportionment of distributions pursuant to the State School Aid Act of 1954. Such table shall be deemed to have been promulgated on the day when the director shall have completed the delivery of a certified copy thereof to the Commissioner of Education and the mailing of a certified copy thereof to the municipal clerk of each municipality, and to the secretary of each county board of taxation. The table for each year and any revision thereof shall be kept as a public record in each office to which it is sent and in the office of the Director of Taxation.

2. The table of equalized valuations shall be in columnar form and shall list each taxing district in the State, together with (1) its aggregate assessed valuation of real property (exclusive of Class II railroad property); (2) the average ratio of assessed to true value of such real estate in the taxing district, determined as hereinafter provided; (3) the aggregate true value of real estate in each taxing district determined on the basis of such ratios; (4) the assessed valuation of Class II railroad property in the district; (5) assessed valuation of all personal property in the district; and (6) the sum of the foregoing items numbered (3), (4) and (5) for each taxing district, which shall be known as the "equalized valuation."

3. True value for the purposes of this act shall be deemed to be valuation at current market prices or values, determined in such manner as the direc-

tor may, in his discretion, select. The director shall determine the ratio of aggregate assessed to aggregate true valuation of real estate of each taxing district. He may make such determination by reference to the county equalization table whenever he is satisfied that the table has been prepared according to accepted methods and practices and that it properly reflects true value or a known percentage thereof for the several taxing districts in the county. The director, with respect to any and all taxing districts, may use the assessment ratios reported in the Sixth Report of the Commission on State Tax Policy (Trenton, 1953) and may consider such other assessment ratio studies as may be available. He may make such further and different investigations of assessment practices as he may deem necessary or desirable for the establishment of the assessment ratios required by this act.

4. An equalization table promulgated hereunder may be reviewed by the Division of Tax Appeals on complaint of any taxing district made within 10 days after its promulgation, or on its own motion, but such review shall not suspend the apportionment of school aid moneys. No change shall be made in the table except after a hearing, of which 5 days' notice shall be given by mail to the governing body of the taxing district. If, after the hearing, the division shall determine that the equalized valuation of any district or districts as fixed by the director was erroneous, it shall revise and correct the equalization table. Such hearings, review and revision shall be completed by January 10 next following the promulgation of the table. A certified copy of the revised and corrected table shall be transmitted to each official or board to whom the original table was required to be transmitted and also to the State Director of Taxation. In any such proceeding, the director shall be entitled to be heard, and the assessment ratios as promulgated shall be presumed to be correct, and shall not be revised or modified by the Division of Tax Appeals unless the complainant district shall present proof that upon all the evidence available such ratio or ratios could not reasonably be justified.

5. There is hereby appropriated for the purposes of this act for the fiscal year ending June 30, 1955, the sum of $50,000.00.

6. This act shall take effect immediately, provided that it shall be inoperative unless and until the "State School Aid Act of 1954" as introduced in the current session of the Legislature, shall be enacted.

Approved June 30, 1954.

CHAPTER 125, LAWS OF 1954

AN ACT authorizing the sale of buildings now located on the site of the New Jersey State Teachers College, at Newark, in Union township, Union county, and making an appropriation of the proceeds of such sale.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The State Board of Education, subject to the approval of the State House Commission, is hereby authorized to sell, or otherwise dispose of, in its discretion, any of the buildings now located on the new site for the New

Jersey State Teachers College, at Newark, in Union township, county of Union. If the State Board of Education determines upon a sale, it shall first invite, by public advertisement sealed proposals or bids for said buildings. Such advertisement shall be published in at least 3 newspapers in this State for at least 3 weeks, once each week, and shall fix a time and place for the reception of said bids. Upon the receipt of 1 or more bids satisfactory to the State Board of Education and the State House Commission, the State Board of Education shall, by deed in the name of the State of New Jersey, upon receipt of the purchase price, convey said buildings to the highest bidder. Should the highest bid or bids be deemed unsatisfactory in amount by the State Board of Education, the said board, subject to the approval of the State House Commission, may thereafter offer and sell the aforesaid buildings at private sale; provided, however, that such private sale and transfer of the property shall not be made for an amount that is less than the amount of the highest bid or bids that may have been received by virtue of public advertisement, as hereinbefore provided for; and in the event of such private sale, the State Board of Education shall, by deed in the name of the State of New Jersey, convey said buildings to the purchaser upon receipt of the purchase price.

2. The proceeds from the sale of said buildings shall be paid into the State treasury, and said proceeds are hereby appropriated, in addition to the amount of $3,700,000.00 appropriated or to be appropriated for such purpose from the State Teachers College Building Construction Fund referred to in chapter 340 of the laws of 1951, to the State Board of Education for the construction of a teachers college to replace the present New Jersey State Teachers College at Newark on the new site in Union township, county of Union. Such funds shall be subject to the same limitations, restrictions, and control as are applicable by law to funds appropriated or to be appropriated to the State Board of Education from the State Teachers College Building Construction Fund aforesaid for the same purposes.

3. This act shall take effect immediately.

Approved July 1, 1954.

CHAPTER 147, LAWS OF 1954

AN ACT concerning disorderly persons, and supplementing chapter 170 of Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Any person who drinks, or has in his possession, any intoxicating beverage while in attendance as a spectator or otherwise, at any place where an interscholastic athletic contest is taking place, is a disorderly person, and shall be punished by a fine of not more than $50, or by imprisonment for not more than 30 days, or both.

2. This act shall take effect immediately.

Approved July 15, 1954.

CHAPTER 150, LAWS OF 1954

AN ACT to amend "An act to provide for temporary bonus for certain persons holding public office, position, or employment, whose compensation is paid by any county, municipality, school district, or other political subdivision of this State, or by any board, body, agency, or commission of any county, municipality, or school district of this State," approved February 15, 1951 (P. L. 1951, c. 3).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 7 of the act of which this act is amendatory is amended to read as follows:

7. The provisions of this act shall be held and construed to permit such body, board or officer to grant or pay any such bonus to any person after the effective date of this act.

2. This act shall take effect immediately.

Approved July 15, 1954.

CHAPTER 169, LAWS OF 1954

AN ACT concerning veterans pensions, and supplementing chapter 4 of Title 43 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Any person who has been or shall be retired pursuant to chapter 4 of Title 43 may, upon written request, waive payment of a portion of the pension to which he is entitled.

2. Upon receipt of such a waiver, and until the same is withdrawn or altered by a subsequent request, the department of the public service paying such pension shall make periodic payments in such reduced amount.

3. This act shall take effect immediately.

Approved July 15, 1954.

RESOLUTIONS OF 1954

CHAPTER J. R. 4, LAWS OF 1954

A JOINT RESOLUTION creating a Juvenile Delinquency Study Commission and prescribing its powers and duties.

WHEREAS, Our youth are among the State's greatest assets; and

WHEREAS, The State desires to provide every means and opportunity within its power to insure the development of our youth into resourceful, upright and useful adult citizens; therefore,

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. There is hereby created a Juvenile Delinquency Study Commission to be composed of 2 members of the Senate, 2 members of the General Assembly, 8 citizens of the State and the Commissioner of Education ex officio. The Governor shall appoint 4 citizen members. The President of the Senate shall appoint the Senate members and 2 citizen members, and the Speaker of the General Assembly shall appoint the 2 General Assembly members and 2 citizen members. As far as practicable, the citizen members shall represent groups, organizations or clubs interested in the problems and development of youth as well as religious and educational groups or organizations.

2. Each of the citizen members shall serve for a term of 2 years and until his successor is appointed and qualified. Each legislative member shall serve for 2 years but only so long as he remains a member of the General Assembly of the Legislature from which he was appointed. Vacancies caused otherwise than by expiration of term shall be filled for the unexpired term only. Members shall serve without salary but shall be reimbursed for traveling and other expenses actually and necessarily incurred in the performance of their duties.

3. The commission shall engage in a continuous investigation and study of the causes of juvenile delinquency generally, including, as it may be related thereto, a study of juvenile health, recreational and educational needs, and the commission is directed to do everything necessary and proper to formulate and prepare such legislation as it shall determine necessary to aid and assist in the prevention of juvenile delinquency.

4. The commission may hold hearings in any part of the State and by its subpœna may compel the attendance of witnesses and the production of books, papers and records. It may draft necessary legal and clerical assistants from any State department as may be required.

5. The commission shall report annually on the second Tuesday in January to the Governor and the Legislature, setting forth the result of its studies of the preceding year and shall make such recommendations as it shall deem fit.

6. The commission shall have such funds for the purposes of this resolution as shall be appropriated to it in any general or supplemental appropriation act or otherwise made available to it.

7. This joint resolution shall take effect immediately.

Approved April 1, 1954.

CHAPTER J. R. 11, LAWS OF 1954

A JOINT RESOLUTION directing the Department of Education to make a study of various suggested State songs and providing for a report and recommendation thereon to the Governor and the Legislature.

WHEREAS, The citizens of New Jersey, particularly musicians and educators, are acutely aware of the need for a State song which will be used and accepted throughout our State; and

WHEREAS, No song previously submitted has received wide acceptance in the State; and

WHEREAS, The adoption of an official State song is a matter of proper concern for the Legislature and any such adoption should be made only after careful and qualified consideration; therefore,

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. The Department of Education is directed to make a study of the various songs that have been submitted to the Legislature, from time to time, for consideration and selection as a State song and, also, of the various songs that may be hereafter submitted to the said department for consideration as a State song pursuant to the provisions of this resolution.

2. The Department of Education is authorized and directed to publicize its study of prospective State songs, to encourage the submission to it of additional songs, to provide for the presentation of various songs as shall be submitted, in the schools, at public assemblies and through the media of radio and television, and to assess public acceptance of such songs as are given public presentation.

3. The Department of Education shall report the result of its study and its recommendations to the Governor and the 1956 Legislature.

4. This joint resolution shall take effect immediately.

Approved July 1, 1954.

SCHOOL LAW DECISIONS

1953-1954

DECISIONS OF CONTROVERSIES AND DISPUTES DECIDED PURSUANT TO R. S. 18:3-14 AND 18:3-15

DECISION OF SUPERIOR COURT AND SUPREME COURT RENDERED ON DECISION OF THE COMMISSIONER AND STATE BOARD OF EDUCATION PRINTED IN 1952-1953 BULLETIN

SCHOOL LAW DECISIONS

1953 - 1954

I

IF CHARGES ARE SUFFICIENT AND THERE IS NOTHING IN THE RECORD TO INDICATE THAT MEMBERS OF BOARD OF EDUCATION WERE IMPROPERLY MOTIVATED OR THAT THEY ACTED IN BAD FAITH, COMMISSIONER WILL NOT SET ASIDE DISMISSAL OF BUSINESS MANAGER UNDER TENURE

BENJAMIN MACKLER,

Appellant,

vs.

BOARD OF EDUCATION OF THE CITY OF CAMDEN,

Respondent.

For the Appellant, Samuel P. Orlando.

For the Respondent, Carroll, Taylor & Bischoff.
(William G. Bischoff, of Counsel)

DECISION OF THE COMMISSIONER OF EDUCATION

Appellant who was under tenure as Business Manager of the School System of the City of Camden has appealed from his dismissal by the Board of Education, effective September 25, 1952. His dismissal followed a hearing commencing on May 15, 1952, and continuing from time to time on charges preferred on April 16, 1952, by two members of the Board of Education. He was charged with inefficiency and negligence of office and failure to perform the duties prescribed by law, and with failure to devote his full time to the duties of his office and to attend meetings of the Board of Education, and with insubordination for failing to attend the meetings after being specifically directed by the Board of Education to attend.

Appellant asks the Commissioner of Education to set aside the resolution of dismissal and to reinstate him to his office for the following reasons:

(a) There was insufficient evidence produced at the hearing to substantiate the charges of the complainants.

(b) The Appellant did not receive a fair and impartial trial because two of the members of the Board acted as complainants, prosecutors and judges and, therefore, were biased against this Appellant.

(c) This Appellant was not accorded a fair and impartial hearing because at the conclusion of the hearing only two members of the nine-member Board had heard all of the testimony produced and the other members were therefore disqualified from passing judgment.

(d) The Resolution of the Board is fatally defective because it does not set forth a finding of facts upon which the dismissal was predicated.

The respondent Board in its answer states:

(a) The unexplained uncontradicted testimony produced at the hearing fully substantiated the charges of the complaint.

(b) The record fully reflects that the Appellant did receive a fair and impartial trial. The two members of the Board of Education who preferred the charges against Benjamin Mackler were members of a Committee appointed by the President of the Board of Education to investigate into the conduct of the office of the Business Manager. Said two members stated on the record during the course of the hearing, that during the conduct of the Committee hearings into the office of Business Manager, they had sought explanation of certain matters from Benjamin Mackler; that such explanation was never afforded by him; that though they had preferred the charges, they were awaiting an explanation from Benjamin Mackler and their minds were open and not prejudiced against him; that in their opinion they were able to act in an impartial manner in reaching a conclusion on the evidence presented. It is specifically denied that said two members acted as complainants or prosecutors except in the respects above mentioned, and it is specifically denied that they were biased against Benjamin Mackler.

(c) All of the members of the Board of Education who participated in the Conclusion of the Board and voted on the Resolution to dismiss Benjamin Mackler had heard all of the testimony which was considered by the Board of Education in arriving at its conclusion and which formed the basis of the Resolution of Dismissal.

(d) There is no statute or rule governing the procedure of the Board of Education of the City of Camden which requires that a Resolution of dismissal of an employee, after full hearing thereon, should contain a finding of facts upon which it is based. The record of the hearing, including the transcript and the exhibits fully sets forth the facts upon which the action of the Board of Education of the City of Camden was based.

At a conference held in Trenton on November 14, 1952, by the Assistant Commissioner in Charge of Controversies and Disputes with counsel for the parties, it was agreed that a stipulation be prepared and briefs submitted on the legal issues involved in the procedural steps taken. It was thought that, if the stipulation should disclose such fatal legal or procedural deficiencies as to invalidate appellant's dismissal, the Commissioner would be saved the time of reviewing the entire record.

It appears from the stipulation that a special committee which had been appointed to study the operations of the Business Manager's office made its

report to the Board and that two members of the Board, Alfred R. Pierce and Joseph T. Sherman, preferred charges against Appellant, under oath.

It further appears from the stipulation that at the hearing started on May 15, 1952, at 8:02 P. M., counsel for the Appellant objected to members Pierce and Sherman sitting on the Board and participating in the hearing on the grounds that they were disqualified by virtue of having preferred the charges. He did not object, however, to participation in the hearing in the absence of two members of the Board of Education. It also appears that only two members were present at all the hearings and heard all of the testimony.

The following is quoted verbatim from the stipulation:

"At the conclusion of the meeting of July 1st, counsel for the Board of Education stated that the presentation of testimony on behalf of the Board had been concluded.

"Mr. Orlando announced that he wanted to make certain motions and the hearing was thereafter adjourned.

"On July 18, 1952, the Board of Education convened for the purpose of hearing motions and argument of counsel. One member was absent and the meeting adjourned without taking any action.

"On August 5, 1952, the Board of Education reconvened, at which time there were present Maiatico, Sherman, Janice, Flournoy, Pierce and Jones, and absent French, Snyder and Przedpelski. Mr. Orlando made a motion to dismiss the charges against Benjamin Mackler on two separate grounds, as follows:

"First: Only two members of the Board of Education had heard all of the testimony; that the Board of Education was accordingly unable to render a decision on the matter and had lost jurisdiction to further consider the charges.

"Second: The evidence adduced at the hearing failed to establish a prima facie case.

"Special counsel for the Board of Education, in answer to defendant's motion, moved for leave to withdraw from the consideration of the Board of Education certain testimony not heard by all of the members of the Board of Education, reserving to the defendant the right to use any or all of the testimony so withdrawn as part of his defense, or to recall any or all of the witnesses who had appeared on behalf of the Board of Education. The motion of the special counsel for the Board of Education in that respect was granted.

"Special counsel for the Board of Education then argued that there was sufficient evidence remaining in the case, heard by sufficient members of the Board of Education, to establish a prima facie case.

"The defendant's motion for dismissal on both grounds was denied.

"The counsel for defense then announced that he did not know whether or not he was going to rest or whether he was going to produce testimony, and announced that he would inform the Board of Education of his decision in that respect in the near future. The Board of Education was in due course advised by letter from Samuel P. Orlando that they felt their legal position was so strong that they were going to rest on it and not produce any testimony.

"The Board of Education reconvened on September 4, 1952, to proceed with the hearing of the charges against Benjamin Mackler, at which time there was adopted a resolution reading as follows:

> 'Be it resolved that the hearing shall re-open for the recalling of those witnesses who were not heard by the entire board.'

"Such action was taken in view of the objection raised by the defense that all of the testimony had not been heard by all of the members of the Board of Education.

"The Board of Education accordingly reconvened on September 25, 1952, at 1:35 P. M. All members were present except Samuel T. French. The Board proceeded to rehear the testimony of the witnesses who had previously testified and whose testimony had not been heard by the entire Board of Education.

"The defendant, Benjamin Mackler, was present, together with his counsel, Samuel P. Orlando. The defendant entered an objection to the Board rehearing the testimony of the witnesses not heard by the entire Board, arguing that the case had been concluded and the Board was acting improperly in re-opening its case to rehear testimony of witnesses. The defendant restated his objection to two members of the Board of Education sitting inasmuch as they had preferred the charges against the defendant. The objections of the defendant were overruled.

"Thereupon, Benjamin Mackler and his counsel, Samuel P. Orlando, voluntarily left the hearing. The Board thereafter proceeded to rehear all of the witnesses who had not testified in the presence of all of the members of the Board of Education.

"At the conclusion of the testimony the Board of Education considered the evidence presented at the hearing on September 25, 1952, together with the testimony previously given of Harold Jones and Frank Seeds on July 1, 1952, at a time when all of the members of the Board of Education were present. After considering the testimony above-mentioned, a resolution of dismissal of Benjamin Mackler was adopted. A copy of such resolution is annexed to appellant's petition of appeal as Schedule 'B'."

After studying the briefs and the authorities cited therein on the procedural questions, the Commissioner reached the conclusion that this case should not be decided without reviewing the entire record and that the decision should be made after considering both procedural questions and the sufficiency of the evidence to support the charges. Supplemental briefs were then submitted on the question as to whether there was sufficient evidence produced to substantiate the charges..

The pertinent statute is N. J. S. A. 18:5–51 which reads as follows:

"18:5–51. No secretary, district clerk, assistant secretary, business manager of any board of education in any municipality devoting his full time to the duties of his office, after three years' service, shall be discharged, dismissed or suspended from office, nor shall his compensation be decreased, except upon a sworn complaint for cause and upon a hearing had before the board.

"Upon the filing of the complaint, a copy thereof, certified by the clerk as a true copy, shall be served upon such respondent at least five days before the hearing and he shall have the right to be represented by counsel at such hearing.

"If upon the hearing it shall appear that the person charged is guilty of neglect, misbehavior, or other offense set forth in the complaint, then the board may discharge, dismiss, or suspend him or reduce his compensation, but not otherwise."

The first question to be decided is whether the Appellant received a fair and impartial trial because two of the members of the Board acted as complainants, prosecutors and judges, and therefore, were biased against him.

Appellant contends that the participation in the trial of board members, Alfred R. Pierce and Joseph T. Sherman, who brought the charges against him, deprived him of a fair trial. These members conducted a cross-examination of some of the witnesses and at the conclusion of the hearing voted for dismissal. This, he contends, makes them complainants, prosecutors, and judges. He contends that these members should have disqualified themselves because it was not necessary for them to participate for the reason that a majority of the members could have heard the case without them.

Respondent argues that the participation of these board members did not deprive Appellant of a fair and impartial trial. In support of his contention, he points out that the two members were on a committee appointed by the President of the Board of Education to study the workings of the Business Manager's Office. He argues as follows in his brief: "After concluding many weeks of study, a report was made by this committee to the Board of Education, which report included certain recommendations. As a result of these recommendations, the charges against Benjamin Mackler were preferred by two members of the Board. Prior to the taking of any testimony in the matter, Mr. Sherman stated quite clearly that he had no preconceived notions in the matter, and that he was fully able to listen to the evidence and form an impartial judgment on the charges. Prior to the taking of any testimony in the matter, Mr. Pierce also clearly stated his position. He stated at that time that the charges were based upon information given to a committee; that the committee had sought an explanation from Benjamin Mackler but had been unable to obtain any explanation from him, and that had an explanation been forthcoming, it is conceivable the charges might never have been preferred; that he felt that he could be impartial, that he could weigh the evidence, hear Mr. Mackler's explanation, and reach a decision based on the evidence presented at the hearing."

Inasmuch as N. J. S. A. 18:5–51 requires a sworn complaint, such a complaint, he contends, must of necessity be based upon some knowledge in the possession of the person who files the complaint. He further argues that: "Members of the Board of Education must of necessity have some general knowledge of what is going on throughout the school system. If they did not have some prior knowledge of the facts, they would clearly not be performing the duties of their office. Despite that fact, they are constituted, by statute, the tribunal for the hearing of charges preferred against a business manager. Their prior general knowledge does not invalidate their action so long as their conclusions are based upon evidence adduced at the hearing. The mere

fact that a member of the Board of Education prefers the charges does not indicate that he is incapable of sitting as a member of the Board. Beyond the fact that Messrs. Pierce and Sherman signed the charges under oath, the only fact pointed to by Appellant in his brief in criticism of their action is that Pierce conducted a cross-examination of some of the witnesses. As a member of the Board of Education he was sitting to ascertain facts. It is also important to point out that for a short period of time the hearings were conducted without counsel. It is also significant to point out that Mr. Pierce knew of instances where the witnesses' testimony had been changed. Obviously, he was not only acting within his rights in conducting the cross-examination, but he was required to do so. Examination of the record will disclose that all members of the Board of Education participated in the examination of the witnesses. In fact, with respect to every witness who was called there was an open invitation by the President of the Board to ask such questions of the witnesses as they desired."

Respondent calls attention to the fact that in cases cited in Appellant's brief where the courts have held that certain members who participated in hearings of this type were disqualified to so participate and the Board's action was invalidated by their participation, such cases dealt with situations where some element of self-interest was involved. Finally, he asserts that the entire record contains no evidence of bias, prejudice, self-interest or oppressive conduct on the part of the two board members who made the complaint.

It is the opinion of the Commissioner, based upon previous decisions in tenure cases, that the mere fact that the two members who brought the charges participated in the hearing and voted for dismissal does not constitute grounds for reversal. In the case of *Hamilton* vs. *Board of Education of the Town of Irvington*, 1938 School Law Decisions, at p. 352, the Commissioner said:

> "The Commissioner cannot, moreover, conclude that appellant was in any way denied a fair trial. Some indications of hostility to the appellant on the part of individual Board members do appear in the record, but the Commissioner is unable to conclude that appellant's rights were impaired or that he was thereby deprived of an opportunity to fully present his defense. The Teachers' Tenure Law even permits Boards of Education to make the charges as well as to hear them and according to 35 Cyc. 1093:
>
> > 'Where a school board constitutes the only tribunal authorized to try charges against a teacher, it is no ground of objection to a trial before them that they were accusers rather than judges, and because of their prejudice;'

and 84 N. W. 1026, *White* vs. *Wohlenberg:*

> "Some question is made as to the propriety of the members of the board acting as judges. It is said that they are accusers rather than judges and the plaintiff could not secure a fair and impartial hearing before them. Nevertheless these defendants constitute the only tribunal before which such hearings could be originally had."

In the case of *Reimer* vs. *Board of Chosen Freeholders of the County of Essex*, 96 N. J. L. 371, it was said:

> "The opinion expressed in their report was based on facts ascertained by them which might be changed by the evidence to be taken on a formal hearing, and, as they had no interest but the public welfare, we must assume that such considerations would influence them on final hearing. Most, if not all, of our cases holding voidable any action by a public body because not impartially constituted rests upon the fact that the participating judge had an interest in the result. It is not an uncommon proceeding for a public body to refer charges of this character to a committee to ascertain the facts and report, on the coming in of which the whole body may take action, but such a report is not a judicial finding and has no finality. To disqualify every member of a committee serving to ascertain facts for the board which appoints it would seriously interfere with the administration of its public duties. That a superior officer who has expressed dissatisfaction with the conduct of an inferior may sit as his judge on the trial of charges against him, there being no statutory prohibition, was held in *Crane* vs. *Jersey City*, 90 N. J. L. 109; affirmed by the Court of Errors and Appeals, 92 Id. 248, and the reasons there given are applicable to this case."

In *Crane* vs. *Jersey City*, 90 N. J. L. 109, it was said:

> "The fact that a superior officer, in whom the law has vested authority to try his subordinates, upon charges preferred against them, has on previous occasions reprimanded or disciplined them for delinquencies in performance of duties, does not, per se, in the absence of statutory mandate forbidding it, disqualify such superior officer from trying them on charges duly preferred against them."

In *Freudenreich* vs. *Mayor, etc., Fairview*, 114 N. J. L. 290, it was said:

> "The fundamental reason that supports disqualifications of a judge is personal interest in the case, or manifestation of ill-will toward the accused; and the interest may be pecuniary or one which arises because of relationship, within the degrees of kindred set out by statute, to a party in the cause. Where no such interest appears, nor malice or ill-will charged or proved, no disqualification exists."

Thus, it appears that only in cases where a board member has some personal interest in the outcome of the case, holds some personal animus against the accused, manifests hostility, or displays passion and prejudice is he disqualified from sitting in judgment. Evidence of this passion and prejudice must be discovered in the record and the findings. In this case, the record contains no such evidence.

It would appear from the record that the two members acted in the performance of their duties as board members. It seems to the Commissioner that, if the School Law contemplated the disqualification of school board members in a tenure trial, it would have provided some other tribunal to hear tenure cases. In some cases under the existing tenure statute, there would be no other way to bring charges except by board members individually or

collectively. The board is charged with the proper conduct of the schools. When evidence of inefficiency is found, there is a duty to bring charges.

It seems that the tenure laws contemplate that the protection afforded to the accused is the right to be heard and to offer evidence to contradict charges against him. A basis is then laid for an appeal to higher tribunals to review the dismissal. Under existing law, if board members are to be disqualified for bringing charges within the line of their duties, then the efficiency of the schools will be seriously impaired. The tenure laws are designed to protect efficient employees. By the same token, tenure laws should not prevent the dismissal of inefficient employees.

Appellant in his brief calls the Commissioner's attention to the recent decision of the Appellate Division of the Superior Court in the case of *New Jersey State Board of Optometrists* vs. *Nemitz*, 90 Atl. 2d. 740 (A.D. 1952). The Court in the case said:

> "Under all of the disclosed circumstances, Dr. Nurock should have disqualified himself. It may well be that his entire participation was motivated by zeal in the discharge of a highly important public duty, which zeal does not disqualify (citation omitted) but where the investigation, prosecution and judicial functions repose in the same board, its members must be zealous in the recognition and preservation of the right to hearing by impartial triers of the facts and the courts must impose a most careful supervision of that element of the hearing."

The Commissioner does not consider this holding of the Court in regard to Dr. Nurock on all fours with the present case. It should be noted that the Court used the words "under all the disclosed circumstances" Dr. Nurock should have disqualified himself. This indicates to the Commissioner that the Court did not hold that in every case a board member who brings charges should disqualify himself, but that it must be determined from all the circumstances whether a board member is disqualified. The Commissioner does not find that the circumstances in the instant case called for disqualification.

It is further stated that the courts must impose a careful supervision in situations where the investigation, prosecution and judicial functions repose in the same board. The Commissioner does not take this statement to mean that board members are automatically disqualified but that he should examine carefully whether the record indicates that the participation of such members denied a fair trial to the appellant.

The next question to be decided is whether it was proper for the Board of Education to reopen the hearing for the recalling of those witnesses who were not heard by the entire Board after the Board had concluded its case and counsel for appellant had moved for dismissal for the reason that only two members of the Board had heard all the testimony.

Appellant argues that reopening the hearing for the purpose of repeating testimony did not cure the defect that not all the members heard the original testimony. He contends that the element of fair play requires a finality to all types of litigation. It is obviously unfair, he maintains, to require him to sit through nine or ten days of hearing and then, because of a fatally defective procedural element, to require him to sit through the same testimony again. He urges that, if this matter were in a court of law "the court at the conclusion of the presentation of all of the evidence could not in due conscience

and with a consideration of impartiality and fair play reopen the hearing to the extent of permitting all of the testimony to be heard once again. Since this is true in a court of law and since the element of fair play is too deeply embedded in our law of administrative agencies it is quite obvious that the reopening of the hearing did not cure the fatal defect heretofore discussed."

On the other hand, Respondent argues that "it is well settled that the procedure adopted by an administrative board or agency is not held to strict conformity with judicial procedure. The only requirement enforced is that the one against whom the charges have been preferred be accorded a full, fair and impartial hearing. There is ample precedence for the action of the Board in reopening its case. In the formal judicial procedure of a civil or criminal trial, courts have in the exercise of discretion permitted a case which has once been closed to be reopened for the admission of additional testimony. If such procedure does not violate due process in a formal trial, it certainly does not transcend the requirements of a fair hearing before a school board."

Respondent further considers the practical aspects of the case. Assume, he says, that "the Board of Education had prepared a Resolution of Dismissal while taking into consideration testimony which had not been heard by all members who participated in the decision. Upon appeal the case undoubtedly would have been returned to the Board of Education for a retrial in accordance with proper procedure. In our present circumstances the Board recognized that its procedure was subject to question and sought to avoid legal technicalities and the necessity of an appeal. They proceeded to rehear the testimony without such a direction from an appeal tribunal. Certainly, he maintains, what can be done after an appeal can be done prior to an appeal. Counsel contends further that the appellant cannot complain that he was not present at the reopened hearing because he was present with his attorney at the hearing when the witnesses were recalled. Therefore, his absence when the witnesses actually testified was both voluntary and deliberate.

The Commissioner will not set aside the action of the Board in dismissing appellant because of the reopening of the case to rehear certain testimony. In the case of *Clara L. Smith* vs. *Board of Education of the City of Paterson*, 1938 S. L. D. 485, the Commissioner held that when a decision in a former case is dismissed because of technical defects in the procedure and the decision is not based upon its merits, a retrial is legal. This decision was upheld by the State Board of Education and the Court of Errors and Appeals, 120 N. J. L. 335.

In the original *Smith* case, the Commissioner had held that her removal was illegal for the reason that she did not have a fair trial because one of the members, who was absent on certain evenings during the trial, participated in adjudicating her case. The Commissioner holds that the appellant was not put at a greater disadvantage or inconvenience by the Board's rehearing of certain testimony than would have been the case if an entire new trial had been held which, according to the holding in *Smith* vs. *Paterson*, would have been entirely proper. Support of this view is found in *Ford Motor Company* vs. *National Labor Relations Board*, United States Reports, Vol. 305, at page 375:

> "There is nothing in the statute, or in the principles governing judicial review of administrative action, which precludes the court from giving an administrative body an opportunity to meet objections to its order by

correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings where these are necessary, or supplying findings validly made in the place of those attacked as invalid. The application for remand in this instance was not on frivolous grounds or for any purpose that might be considered dilatory or vexatious. Petitioner had raised a serious question as to the validity of the findings and order. The Board properly recognized the gravity of the contention and sought to meet it by voluntarily doing what the court would have compelled. That was in the interest of a prompt disposition and whatever delay has resulted is due to petitioner's resistance to that course.

Next it must be decided whether the Resolution of Dismissal is fatally defective in that it did not contain finding of facts and a statement of the evidence upon which the Resolution was based.

Respondent contends that failure to make a specific finding of facts is not fatally defective unless there is a clear statutory requirement for such a finding. Appellant counters with the argument that the requirement of a finding of facts is based upon the common law as well as a specific statutory mandate.

There is no statutory requirement of a finding of facts in the tenure statutes of the School Law. The rules to be followed by the Commissioner of Education in reviewing dismissals under the school tenure act have been laid down by the State Board of Education and the higher courts in a series of decisions. In the decisions there has never been any mention of a requirement of a written finding of fact. The Commissioner in determining appeals under the tenure statutes has been guided by the following excerpts from previous decisions:

In *Conrow* vs. *Lumberton Township*, 1928 S. L. D. 186, cited in *Wallace* vs. *Greenwich Township Board of Education*, 1938 School Law Decisions, 495, the State Board said:

> "As the procedure prescribed by the statute was followed, but two questions arise: First, was the charge such as, if found true in fact, would justify dismissal; and second, was the finding that the charge was true in fact so clearly against the weight of evidence as to lead to the conclusion that it was the result, not of honest judgment, but of passion or prejudice."

In *Wallace* vs. *Board of Education of Greenwich Township*, 1938 S. L. D 491, at 495, the State Board said:

> "In the present case, the county superintendent of education and the county helping teacher who had observed Mrs. Wallace's work, both appeared before the Board of Education and testified in support of the charges. It is true that, as pointed out in the Commissioner's opinion, their testimony does not establish an absolute failure on the part of the teacher, but we cannot say that it is not sufficient in connection with the other testimony which was before the Board, to warrant it in holding that there was sufficient evidence to justify them in sustaining the charges of inefficiency and dismissing the teacher. Nor, judging of their conduct by the record made before the Commissioner, can we say that they did not act in good faith, or that they were swayed by bias or prejudice. It might

be that if the case were presented to us for our opinion on the evidence alone, we might disagree with their conclusions, but the power and duty of passing upon the charges was theirs under the law and we cannot say that there was no justification for the finding which they made."

The Supreme Court in the case of *Redcay* vs. *State Board of Education*, 130 N. J. L. at 371, cited in *Palmer* vs. *Board of Education of the Borough of Audubon*, 1939-1949 S. L. D. 183, at 186, said:

"An inefficient and incapable principal may do great injury to both pupils and teachers. When the charges of such conduct have been clearly proved, the removal should be easy and prompt. *Devault* vs. *Mayor of Camden*, 48 N. J. L. 433. Nor are we concerned in searching for more than to find that there was a rational basis for such determination, if the proceedings were regular. *Alcutt* vs. *Police Commissioners*, 66 Id. 173. . . . Unfitness for a task is best shown by numerous incidents. Unfitness for a position under the school system is best shown by a series of incidents. Unfitness to hold a post might be shown by one incident, if sufficiently flagrant, but it might also be shown by many incidents. Fitness may be shown either way."

The Supreme Court in *Martin* vs. *Smith*, 100 N. J. L. 50, held:

"If the court were not circumscribed and limited in its duty in this instance by the well-settled rule of law applicable to cases of this character, it might properly be urged to weigh the testimony, and, if possible, reach a conclusion different from that which has been reached by the trial tribunals. But the settled rule of law is that if there be evidence upon which the trial tribunal may reasonably found its conclusion of guilt or innocence, this court will not reverse the judgment by weighing the testimony for the purpose of forming an independent judgment. If the judgment of the trial court can be fairly supported by the record, the duty of this court is at an end so far as further investigation is concerned."

To the same effect are *Fitch* vs. *Board of Education of South Amboy*, 1928 Compilation of School Law Decisions, 173, cited in *W. Clifford Cook* vs. *Board of Education of the City of Plainfield*, 1939-1949 S. L. D. 177 at 179, *Reilly* vs. *Jersey City*, 64 N. J. L. 508, cited in the *Cook* case, *supra*, and *Cheesman* vs. *Gloucester City*, 1928 S. L. D. 159.

Nowhere in these decisions is there found any requirement for finding of fact of the kind, the absence of which, according to appellant's contention, makes the proceedings in this case fatally defective. The Commissioner's attention has been called to the case of *N. J. Bell Telephone Company* vs. *Communication Workers, etc.*, 5 N. J. 354, wherein the Supreme Court of this State held that a requirement of findings is far from a technicality and is a matter of substance and that it is a fundamental of fair play that an administrative judgment express a reasoned conclusion. It should be pointed out, however, that there was a specific statutory requirement for a finding of facts in this case. The Commissioner feels constrained, accordingly, to follow the principles laid down for him in previous decisions in tenure cases arising under the School Law until the Legislature by amendment of the school tenure

statutes or some higher tribunal requires specific written findings of fact in reviewing tenure cases. He will not, therefore, find the failure to make a written finding of facts a ground for setting aside the dismissal of the appellant.

Following the conference of counsel for the parties with the Assistant Commissioner of Education, at which time there was an informal discussion as to whether findings of fact were required, the Board of Education made such Findings. Appellant objects to the use of the Findings for the reason that they were made after the appeal. These Findings are among the papers in the case. The Commissioner could remand the case to the Board of Education for a Finding of Facts. See *N. J. Bell Telephone Company vs. Communication Workers, etc.*, 5 N. J. 354. It may well be that, in view of the excerpt from the case of *Ford Motor Company* vs. *National Labor Relations Board, supra*, the Board's voluntary anticipation of such a remanding by the Commissioner is as valid as waiting for the Commissioner to remand. It is not necessary for this decision to decide this question for the reason that the Commissioner has decided on other grounds not to reverse the Board of Education for failure to make written Findings of Fact.

Next it must be determined whether this case may be considered as a *de novo* hearing by the Commissioner, or whether it is to be considered as a review of the action of the local Board of Education below.

Respondent takes the view that an appeal taken by virtue of the provisions of N. J. S. A. 18:3–15 is a case *de novo*. He cites *Schwarzrock* vs. *Board of Education of Bayonne*, 90 N. J. L. 370, Supreme Court 1917, as his authority. R. S. 18:3–14 and 18:3–15 read as follows:

> "18:3–14. The Commissioner shall decide without cost to the parties all controversies and disputes arising under the school laws, or under the rules and regulations of the state board or of the commissioner.
>
> "The facts involved in any controversy or dispute shall, if required by the commissioner, be made known to him by the parties by written statements verified by oath and accompanied by certified copies of all documents necessary to a full understanding of the question.
>
> "The decision shall be binding until a decision thereon is given by the state board on appeal.
>
> "18:3–15. Decisions under section 18:3–14 of this Title are subject to appeal to the State Board. . . ."

He argues as follows: "In a de novo proceeding the reviewing court makes independent findings based upon the evidence before it. Under such circumstances the consideration of any error committed by the tribunal below is unimportant. This is not an appeal proceeding where the matter may be reversed for error committed by the original tribunal but an entirely new hearing where the errors of the court below, if any, have no basis on the action of the reviewing tribunal. It is accordingly submitted that in a consideration of this matter now before the Commissioner the sole question before the Commissioner is to make a determination on the basis of testimony before him. It is submitted that whether or not the action of the respondent in the conduct in the hearing was proper or improper has no bearing in the ultimate determination to be made by the Commissioner in a de novo proceeding."

It is the opinion of the Commissioner that he cannot make independent findings in the instant case upon the basis of the testimony heard by the Board. The Commissioner did not hear the testimony and had no opportunity to observe the demeanor of the witnesses. It is fundamental that one cannot make independent findings upon the basis of testimony which he did not personally hear and where he did not have the opportunity to observe the demeanor of the witnesses.

The *Schwarzrock* case, *supra*, may be distinguished from the case now under consideration. In that case the Commissioner took testimony. Furthermore, the *Schwarzrock* case is a rather early one. The question whether the Commissioner may reach an independent conclusion and substitute his judgment for the original judgment of the Board of Education has been considerably clarified since that time. In the case of *Georgia B. Wallace* vs. *Board of Education of Greenwich*, 1938 S. L. D. 491, it was agreed by counsel that the case should be presented de novo to the Commissioner of Education because of the fact that the stenographic record taken by the Board of Education was incomplete. The Commissioner decided that the teacher should be reinstated.

The State Board on appeal reversed the Commissioner and held that the Commissioner in hearing the case de novo should not have determined by his own judgment whether the teacher should have been dismissed, but should have confined himself to determining whether her dismissal by the Board was without justification and unlawful. The State Board said at page 494:

> "The circumstances that the record of the proceeding before the Board was incomplete and inadequate, and that it was necessary to make a new record before the Commissioner could pass on the question before him, did not change the nature of the issue presented to him for determination, which was whether the action of the Board was justified, it appearing that the statute in all procedural respects had been complied with."

It seems clear that the original discretionary power to dismiss a school official is vested in the Board of Education. The Commissioner can only review the lawfulness of the action. The review of a local board's action by the Commissioner was greatly clarified by the Court of Errors and Appeals in the case of *Boult and Harris* vs. *Board of Education of the City of Passaic*, 1939-1949 S. L. D. 15; 136 N. J. L. 521. In commenting on R. S. 18:3–14 and 15 supra, the Court said:

> "Neither of the quoted statutory provisions was intended to vest in the appellate officer or body the authority to exercise originally discretionary power vested in the local board. The review authorized of the local board's action here involved is judicial in nature. *Thompson* vs. *Board of Education*, 57 N. J. L. 628 (Sup. Ct., 1895). In exercising that reviewing power the Commissioner was properly guided by the principles governing the scope of judicial review of municipal action. The reviewing officer was not empowered to substitute his discretion for that of the local board."

The Commissioner will review the dismissal of the appellant upon the principles set forth on pages 11 and 12.* It is not his duty to examine the record to determine whether he agrees with the action of the respondent

* Refers to typewritten pages of Commissioner's decision.

Board. His search is to discover whether there is a rational basis for the action of the Board and whether the proofs support the action taken. He must consider whether the charges, if proved, are sufficient to warrant dismissal, whether the record indicates that the Board members were swayed by bias, prejudice or personal interest in dismissing appellant, and whether the evidence justifies the dismissal.

The Commissioner is of the opinion that the charges are sufficient and he can find nothing in the record to indicate that the members of the Board of Education were improperly motivated or that they acted in bad faith.

The duties of the Business Manager are set forth in R. S. 18:6–46 and 47 and in Article XI of the "Administrative Code" adopted by the Board of Education on November 25, 1946. This code is marked Exhibit B-2 in the Record. The record contains evidence to show that appellant in the conduct of his office fell short of the requirements of both the law and the code. Evidence was presented to show that appellant did not give sufficient personal attention to the work of his Department. There was evidence that he failed to attend to the maintenance of the schools and to give the proper supervision to the repair of the school buildings and that this failure resulted in the performance of contract work by Board employees on Board time. There was further evidence to indicate that the purchasing of supplies and equipment was not conducted in the best interests of the school district and that the handling of supplies was in a manner not conducive to the efficient operation of the educational program of the school system.

There was no contradictory testimony by the appellant, who, relying upon what he considered to be the strength of his legal position on the procedural questions and the insufficiency of the evidence presented against him, did not consider it necessary to testify in his defense and withdrew from the final hearing.

Without expressing any personal opinion as to whether the appellant should have been dismissed, the Commissioner finds that there is sufficient evidence in the record to support the action of the Board of Education. Therefore, no grounds exist for reversal.

The appeal is dismissed.

October 8, 1953.

Affirmed by State Board without written opinion March 12, 1954.
Pending before Superior Court, Appellate Division.

II

WHEN NEW DISTRICT IS FORMED AND PUPILS ARE EDUCATED IN THE ORIGINAL DISTRICT, THE NEW DISTRICT IS RESPONSIBLE FOR THEIR TUITION

BOARD OF EDUCATION OF THE BOROUGH OF AUDUBON PARK, CAMDEN COUNTY,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF AUDUBON, CAMDEN COUNTY,

Respondent.

For the Petitioner, Joseph Cowgill.
For the Respondent, Edward T. Curry.

DECISION OF THE COMMISSIONER OF EDUCATION

Prior to June 23, 1953, the Borough of Audubon Park and the Borough of Audubon comprised one school district. On June 23, 1953, by referendum, each borough became a school district.

In accordance with R. S. 18:5–5, as amended by chapter 160 of the Laws of 1953, the Borough of Audubon became a new school district under the name of "The Board of Education of the Borough of Audubon" and the Borough of Audubon Park became the remainder district under the name of "The Board of Education of the Borough of Audubon Park."

For the reason that no members of the board of education of the original district resided in Audubon Park, the county superintendent of schools appointed new members to constitute the Board of Education of the Borough of Audubon Park. It was not necessary to make any appointments to the Board of Education of the newly created School District of Audubon for the reason that all the nine members of the Board of the original district resided in the Borough of Audubon. Thus, the Board of Education of the original district and the newly created district had identical membership and for the reason that the Borough of Audubon had the larger amount of taxable property, all books, documents and records were turned over to the Board of Education of the Borough of Audubon. As a result, the original Board and the newly created Board had the same name, the same membership, and all the records.

The Borough of Audubon Park consists of dwelling units erected and owned by the United States Government. Since the Borough of Audubon Park was part of the School District of Audubon, the United States Government through its proper agencies had been paying an annual sum in lieu of taxes to the School District of the Borough of Audubon. The latest payment was made by check to the order of the School District of the Borough of Audubon on July 15, 1953, in the amount of $29,442.11.

The Audubon Park Board contends that this payment of $29,442.11 was made to the new Board of Education of Audubon to cover the entire cost of

educating the Audubon Park pupils in the Audubon Schools for the period of July 1, 1953, to June 30, 1954, and that the Audubon Board is, therefore, obligated to educate the Audubon Park children until June 30, 1954, without further payments.

On the other hand, under date of July 20, 1953, the Board of Education of Audubon Park notified the Board of Education of Audubon that it accepted its proposals to educate its pupils contained in a letter under date of July 9, 1953. The yearly cost of tuition under its proposal accepted by the Audubon Park Board would amount to more than $29,442.11.

It is the contention of the respondent Board that the $29,442.11 payment by the Federal Government was to the original Board, which it should be recalled, had the same name as the new Board of Education of Audubon. This amount, it contends, was to be considered an account receivable, subject to division by the County Superintendent of Schools. The respondent originally believed that the payments made by the Federal Government were for the calendar year and hence that one-half was for the period January 1 to June 30 of a school year and the other one-half was from July 1 to December 30 for the next calendar year. After hearing a statement by Mr. Louis deVeaux of the Tax Division, Public Housing Administration, Housing and Home Insurance Agency, Washington, D. C., that the $29,442.11 was for the school operational year July 1, 1953, through June 30, 1954, respondent conceded that it is not entitled to any part of this amount and is prepared to divest itself of any interest in this payment.

The respondent contends that the Audubon Park Board is responsible for the education of its children either in schools of its own or by sending them to other districts and paying tuition therefor.

The question to be decided by the Commissioner is whether the Board of Education of the Borough of Audubon is required to educate the Audubon Park Pupils according to the proposals made by the Audubon Board and accepted by the Audubon Park Board, or, whether it is required to furnish such education for the sum of $29,442.11 paid by the Federal Government for the pupils residing in government-owned dwelling units in Audubon Park.

It seems clear to the Commissioner that according to R. S. 18:5–5, on July 1, 1953, Audubon Park became responsible for the education of pupils residing within its boundaries. By the terms of R. S. 18:14–5, a board of education may enter into an agreement with a receiving board to educate its children and for the tuition payment therefor. R. S. 18:14–7 provides for designation by a sending district of receiving high schools for its pupils and provides for the determination of the tuition rate.

It is the opinion of the Commissioner that the proposals made by the Board of Education of the Borough of Audubon and accepted by the Board of Education of the Borough of Audubon Park constitute an agreement by the two boards for the payment of tuition under R. S. 18:14–5 and 18:14–7. Therefore, the Board of Education of the Borough of Audubon is entitled to tuition payments in accordance with the agreement.

The petition is dismissed.

December 11, 1953.

III

Matthew Lyon

In Re Recount of Ballots Cast at the Annual School Election in the Borough of Fair Haven, Monmouth County, on February 9, 1954.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 9, 1954, for the election of members of the Board of Education of the Borough of Fair Haven, Monmouth County:

George H. Woodward	225 votes
Van R. Simpson	266 votes
Emil J. Jakubecy	245 votes
Lewis E. Connor	301 votes
Matthew Lyon	245 votes

Matthew Lyon petitioned the Commissioner for a recount of the ballots cast, which recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Monmouth County in Freehold on Tuesday, March 9, 1954, beginning at 10:00 A. M.

At the conclusion of the recount, the results were as follows:

George H. Woodward	226 votes
Van R. Simpson	266 votes
Emil J. Jakubecy	246 votes
Lewis E. Connor	303 votes
Matthew Lyon	243 votes

There were five ballots which could not be counted, three of which had no marks in the squares preceding the names, and two wherein the voters placed a cross, plus or check mark in the squares preceding the names of four candidates, despite the instruction to the voters to vote for three.

The Commissioner finds and determines that Lewis E. Connor, Van R. Simpson, and Emil J. Jakubecy were duly elected to membership on the Board of Education of the Borough of Fair Haven, Monmouth County, for a term of three years.

March 17, 1954.

IV

William F. Gale

In the Matter of the Recount of Ballots Cast at the Annual School Election in the Township of Princeton, Mercer County, on February 9, 1954.

For William F. Gale, Mr. Louis Gerber.
For Kate E. Nicoll, Mr. Gordon D. Griffin.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 9, 1954, for the election of members to the Board of Education of the Township of Princeton, Mercer County, for the three-year term:

William L. Wilson	642 votes
Louise N. Darke	643 votes
William M. Sloane	583 votes
William F. Gale	611 votes
John W. Landis	601 votes
Kate E. Nicoll	619 votes
Walter M. Weber	1 vote

Upon the petition of William F. Gale, a recount of the ballots cast for candidates for the three-year term was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the Mercer County Court House in Trenton on Wednesday, February 24, 1954, at 10:00 A. M.

At the conclusion of the recount, the results were as follows:

William L. Wilson	628 votes
Louise N. Darke	633 votes
William M. Sloane	575 votes
William F. Gale	600 votes
John W. Landis	592 votes
Kate E. Nicoll	615 votes
Walter M. Weber	1 vote

Thirty-one ballots were voided by agreement of counsel because they contained votes for more than three candidates or no votes at all, and one vote was initialed, plainly indicating a marked ballot. Twenty-three ballots were counted by agreement of counsel. These ballots contained marks substantially in the squares to the left of the names but in some instances extending beyond the squares. Ten ballots were referred by counsel to the Commissioner for determination. All of these ballots have a cross, plus or check mark after the names of the candidates and no marks in the squares preceding the names.

A tally of the 23 ballots counted by agreement adds the following to the total determined at the conclusion of the recount:

William L. Wilson	16	votes	or a	grand	total	of	644 votes
Louise N. Darke	13	votes	or a	grand	total	of	646 votes
William M. Sloane	8	votes	or a	grand	total	of	583 votes
William F. Gale	12	votes	or a	grand	total	of	612 votes
John W. Landis	8	votes	or a	grand	total	of	600 votes
Kate E. Nicoll	12	votes	or a	grand	total	of	627 votes
Walter M. Weber	0	vote	or a	grand	total	of	1 vote

An inspection of the 10 ballots referred to the Commissioner for determination indicates that, even if all the votes most favorable to the several candidates were counted, they could not overcome the lead of William L. Wilson, Louise N. Darke and Kate Nicoll. Therefore, it is not necessary to determine these ballots.

The Commissioner finds and determines that William L. Wilson, Louise N. Darke and Kate Nicoll were duly elected to membership on the Board of Education of the Township of Princeton in the County of Mercer for the three-year term.

March 17, 1954.

V

Edward Sampson

In Re Recount of Ballots Cast at the Annual School Election in the Township of Fairfield, Cumberland County, on February 9, 1954.

For the Petitioner, Isaac I. Serata.

Decision of the Commissioner of Education

At the annual school election held on Tuesday, February 9, 1954, in the Township of Fairfield, Cumberland County, the following results were announced for the three-year term:

Reuben Cuff	77 votes
Kenneth Husted	44 votes
Alfred Wright	41 votes
Edward Sampson	41 votes
William Emmons	37 votes
Willard Rieger	1 vote

Upon petition of Edward Sampson, a recount of the votes cast was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools in Bridgeton, New Jersey, on Thursday, March 11, 1954, at 11:00 A. M.

The results of the recount are as follows:

Reuben Cuff	77 votes
Kenneth Husted	44 votes
Alfred Wright	41 votes
Edward Sampson	41 votes
William Emmons	34 votes
Willard Rieger	1 vote
Walter Emmons	1 vote
Emmons	2 votes

There were seven ballots which could not be counted because they contained votes for more than three candidates, despite the instruction to the voters to vote for three, and one ballot with pasters for Alfred Wright and Edward Sampson without a cross, plus or check mark in the square preceding the name, but with a cross above the last name.

Since the recount resulted in a tie vote for Alfred Wright and Edward Sampson, it now becomes the duty of the County Superintendent of Schools, pursuant to R. S. 18:4–7d, to appoint a member to serve until the next annual school election.

March 17, 1954.

VI

BOARD OF EDUCATION CAN ONLY FILL VACANCY OCCURRING DURING ITS OFFICIAL LIFE

IN THE MATTER OF THE APPEAL OF MILTON BRUCK,

Petitioner,

vs.

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE BOROUGH OF NORTH ARLINGTON IN RE THE APPOINTMENT OF JAMES W. O'CONNELL AS A MEMBER OF SAID BOARD TO FILL THE UNEXPIRED TERM OF PETER R. TONNER,

Respondent.

For the Petitioner, Bruck & Bigel, Mr. Milton Bruck, of Counsel.
For the Respondent, Milton Schleider.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner seeks to have declared null and void the appointment of James W. O'Connell to fill the unexpired term of Peter R. Tonner as a member of the Board of Education of the Borough of North Arlington.

The case was submitted to the Commissioner on a petition of appeal and answer. A conference between counsel for the petitioner and respondent and the Assistant Commissioner of Education in Charge of Controversies and Disputes was held on Tuesday, February 23, 1954, in Trenton.

The petition states that on January 25, 1954, Peter R. Tonner, a member of the North Arlington Board of Education whose term would have expired in February, 1955, submitted his resignation to the Board. At the meeting of the North Arlington Board of Education held on February 2, 1954, the aforesaid resignation was accepted by a vote of 3 to 1, the petitioner having voted in the negative. At the same meeting, the Board adopted a resolution appointing James W. O'Connell to fill the unexpired term of Peter R. Tonner by a vote of 3 to 1, the petitioner having voted in the negative. The vacancy was filled in accordance with R. S. 18:7–55, which reads as follows:

> "The board may fill a vacancy in its membership except as provided in section 18:7–51 of this Title and except a vacancy caused by a failure to elect, or by removal of a member for failure to have the qualifications required by section 18:7–11 of the Revised Statutes or as the result of a recount or contested election or one which is not filled within sixty-five days after the occurrence of the vacancy. The person so appointed shall serve only until the organization meeting of the board after the next election for members."

Mr. James W. O'Connell was given the oath of office as a member of the North Arlington Board of Education immediately following the meeting of February 2, 1954, and became a member of the board.

The petitioner prays that the Commissioner of Education enter an order declaring the attempted appointment of James W. O'Connell to be null and void.

The North Arlington Board of Education filed an answer with the Commissioner of Education dated February 11, 1954. The organization meeting of the new Board was held on February 15, 1954, in accordance with Section 18:7–53, the pertinent part of which provides:

> "A board shall organize annually by the election of one of its members as president and another as vice president. The organization meeting shall be held at eight o'clock P. M. on the first Monday following the annual meeting in February. Notice of such organization meeting shall be transmitted by the district clerk to all members constituting the new board. Upon the organization of such new board the term of the retiring members shall immediately expire. . . ."

On February 15, 1954, the new North Arlington Board of Education adopted a resolution reading in part as follows:

> ". . . that the answer heretofore filed by Milton Schleider on behalf of the Board of Education, in the matter of the appeal filed by Milton Bruck contesting the appointment of James W. O'Connell, be and the same is hereby abandoned; and . . . that the employment of Milton Schleider to represent the Board of Education in the matter of Milton Bruck re the appointment of James W. O'Connell, be and the same is hereby terminated; . . ."

The attorney, Mr. Milton Schleider, formerly representing the Board of Education of North Arlington, requested permission to file an answer in

behalf of James W. O'Connell. This was granted with the approval of the petitioner, Mr. Milton Bruck, a board member and an attorney who represented himself in this proceeding. In the answer filed on behalf of Mr. O'Connell, counsel contends that the North Arlington Board of Education properly and in due course appointed James W. O'Connell to fill the vacancy for the unexpired term which would end at the organization meeting after the next annual school election in February, 1955. He further contends that there was no election, within the meaning of Section 18:7–55, by which a member could be elected to fill the vacancy on the North Arlington Board of Education, inasmuch as the resignation of Peter R. Tonner was not submitted to the Board for action twenty days prior to the annual school election in accordance with Section 18:7–25. This section provides that nominating petitions shall be filed with the secretary at least twenty days before the date of the election.

It was held by the Supreme Court in the case of *Skladzien* vs. *Bayonne*, 12 Misc. 602, aff. 115 N. J. L. 203, that

> ". . . boards of education are not continuous bodies and that each board may exercise all the powers granted it by the Legislature and it is not competent for a board by appointment or contract, to preclude its successor or successors from exercising such powers."

Therefore, the Board of Education was within its rights in appointing James W. O'Connell to fill the vacancy until the organization meeting of the new Board of Education on February 15, 1954, its power being authorized by the Legislature in Section 18:7–55. In this act the Legislature did not grant to a board of education the power to fill a vacancy over a longer period than the life of the existing board. Accordingly, the Commissioner finds and determines that the term of James W. O'Connell, appointed by the North Arlington Board of Education on February 2, 1954, expired at 8:00 P. M. on February 15, 1954, in accordance with Section 18:7–53, *supra*.

The present Board of Education is without power to fill the vacancy as it was caused by the expiration of the appointed term of James W. O'Connell and not by the resignation of Peter R. Tonner. There was a failure to elect a member to fill the unexpired term at the annual school election on February 9, 1954. As provided in Section 18:7–4:

> ". . . A vacancy in the board shall be filled at the next annual meeting, and the person elected to fill it shall be elected for the unexpired term only."

Mr. Tonner's resignation was accepted by the Board on February 2, 1954, which was less than the twenty days required by Section 18:7–25, which reads:

> "Nominating petitions shall be filed with the district clerk at least twenty days before the date of the election."

Therefore, it was impossible to provide a place on the ballot for the voters of the school district to elect a member to the Board for the unexpired term. It, therefore, becomes the duty of the County Superintendent of Schools to

appoint from the citizens of the Borough of North Arlington a person having the legal qualifications of a Board member to fill the unexpired term until February, 1955, as provided by Section 18:4–7d:

> "A county superintendent of schools may:
>
> d. Appoint members of the board of education for a new township, incorporated town, or borough school district and for any school district under his supervision which shall fail to elect members at the regular time or in case of a vacancy in the membership of the board of education which occurs by reason of removal of a member for failure to have the qualifications required by section 18:7–11 of the Revised Statutees or as the result of a recount or contested election or which is not filled within sixty days of the occurrence of the vacancy. Such appointees shall serve only until the organization meeting of the board of education after the next election in the district for members of the board of education."

The appeal is sustained and the County Superintendent of Schools of Bergen County is authorized to appoint a member to fill the vacancy on the North Arlington Board of Education to serve until the organization meeting of the Board following the annual school election in February, 1955.

April 2, 1954.

DECISIONS OF STATE BOARD OF EDUCATION AND SUPERIOR COURT RENDERED ON DECISIONS OF THE COMMISSIONER OF EDUCATION PRINTED IN 1952-1953 BULLETIN

JOHN E. CULLUM

Petitioner-Appellant,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BERGEN, IN THE COUNTY OF HUDSON

Defendant-Respondent.

Decided by the Commissioner of Education November 14, 1952

Decided by the State Board of Education March 6, 1953

DECISION OF THE SUPERIOR COURT, APPELLATE DIVISION
No. A-415-52, September Term, 1952

Argued July 20, 1953. Decided September 8, 1953.
Before Judges McGeehan, Proctor and Lloyd.
Morton Isaacs argued the cause for Appellant.
Isadore Glauberman argued the case for Respondent.
The opinion of the Court was delivered by LLOYD, J. A. D. (Temporarily assigned).

The issue is the validity of the appointment of petitioner-appellant as Superintendent of the Schools of the Township of North Bergen for the term of five years.

On January 13, 1952, the office of Superintendent of Schools for the Township of North Bergen became vacant by reason of the death of the incumbent Madden. The defendant-respondent consisted of five members, who appointed a secretary. The Board consisted of Stephen H. Magnus, President; Edith Beck, Vice-President; John Halligan, George Eichler and Edward H. Marck. James J. Goodman was Secretary.

On January 16, 1952, all the members of the Board, with the exception of Eichler, went to luncheon. In addition to said members, Goodman and two school principals accompanied them. At said luncheon, the four board members present, after some discussion, agreed that they should observe a thirty-day period of mourning after which time the Board would begin the task of selecting a new Superintendent; and George Eichler, the absent member, who was later informed of this agreement, acquiesced therein. Applicants for the office, other than petitioner-appellant, who asked Board members about filing applications were told not to file an application until the thirty-day period of mourning had expired.

About January 20, 1952, Marck and Halligan contacted Magnus and Eichler for the purpose of discussing the appointment of a Superintendent but they refused because of the mourning period.

Marck had been a member of the Board about nine months; his term would expire on January 31, 1952, and a few days after January 16, it became known that he was not being reappointed by the appointing power, the Mayor of the Township of North Bergen.

On January 23, 1952, one Harry Buesser, a North Bergen Township Commissioner, asked Secretary Goodman "to have a letter prepared calling a special meeting for next Monday night" but Goodman informed him the request could not be complied with because under the resolution adopted by the Board of Education, the secretary could call a special meeting only if ordered by the President or if he received a request in writing from three members of the Board.

On January 24, 1952, there is evidence that Buesser met Mrs. Beck and asked her whether she would sign the notice of such meeting. Upon her telling him she would not do so, he stated: "O.K., if you don't sign, your husband will be fired from his job in the morning."

On the afternoon of January 28, 1952, Marck went to the office of the defendant-respondent, examined the records and resolution concerning the requirements for calling a special meeting. As he was leaving, Goodman entered the office, said "Hello," and Marck nodded. Up to this time, no request was made of Goodman to call a special meeting. A little while thereafter Goodman, because of illness, went to Atlantic City, where he remained until about February 2, 1952.

On January 29, 1952, Halligan, Marck and Beck signed two notices which were served on the other members of the Board, Magnus and Eichler, one by registered mail and the other personally. The same day they served a notice on Goodman, by leaving it at his office as he was out of town, directing him to call a meeting of the Board. Said notices called for a meeting of the Board to be held on January 31, 1952, at 8:00 P. M., for the purpose of considering the appointment of a Superintendent of Schools and for such other business as might come before the meeting.

The meeting was held at said time; Marck, Halligan and Beck being present. These three passed a resolution, which had been prepared and signed previously, appointing petitioner-appellant Superintendent of Schools of the Township of North Bergen for the term of five years, commencing immediately.

The next day, February 1, 1952, the new Board of Education, at its regular organization meeting, repudiated said resolution passed at the so-called meeting of January 31, 1952.

An appeal from the action of the new Board was taken to the Commissioner of Education, who held that the meeting of January 31 was not legally called and, therefore, the appointment of petitioner-appellant was invalid. An appeal from this ruling was then taken to the State Board of Education which Board affirmed the decision of the Commissioner of Education.

Rule 136 of the State Board of Education reads as follows:

> "Board of Education—Call of Special Meetings. In every school district of the State, it shall be the duty of the Secretary or District Clerk of the Board of Education to call a special meeting of the Board whenever he is requested by the President of the Board to do so or whenever there shall be presented to such Secretary or District Clerk a petition signed by a majority of the whole number of members of the Board of Education requesting the calling of such a special meeting."

and the Board, defendant-respondent, adopted a resolution on February 1, 1951, as follows:

> "*Resolved,* That Special Meetings shall be called on not less than twenty-four hours notice by the Secretary, in writing, upon the order of the President or on the written request of three members of the Board.
>
> "All notices of Special Meetings shall state the object for which such meetings are called."

Special meetings are usually called in cases of emergency or, as the word indicates, for special or specific reasons. The notices given by the three members of the Board did not comply with the Board's own resolution. The special meeting held pursuant to such notice was illegal. *Apgar* vs. *Van Sickle,* 46 N. J. L. 492. Further, it will be noted the meeting was called for the purpose of *considering* the appointment of a Superintendent of Schools. At said meeting there was no "considering," which has been defined—"to deliberate about and ponder over" (Black's Law Dictionary, 4th Ed.). The resolution appointing petitioner-appellant had been prepared and signed before the meeting was called and the adoption of the resolution was merely a matter of form.

The members of the Board of Education of a municipality are public officers holding positions of public trust. They stand in a fiduciary relationship to the people whom they have been elected or appointed to serve. "As fiduciaries and trustees of the public weal they are under an inescapable obligation to serve the public with the highest fidelity. In discharging the duties of their office they are required to display such intelligence and skill as they are capable of, to be diligent and conscientious, to exercise their discretion not arbitrarily, but reasonably, and above all to display good faith, honesty and integrity." *Driscoll* vs. *Burlington-Bristol Bridge Co.* 8 N. J. R. 433 (p. 474).

The appointment of Superintendent of Schools is of the utmost importance as "he shall have a seat on the Board and the right to speak on all educational matters but not the right to vote." R. S. 18:6-37. The appointment of the Superintendent by the Board was not only in pursuance of an illegal notice but exceeded the purpose stated in said notice. There could have been no valid appointment under the notice given.

The decision of the Board of Education is affirmed.

27 N. J. Super. 243 (Superior Court)

Decision of New Jersey Supreme Court

Argued March 8, 1954—Decided May 3, 1954.

The opinion of the court was delivered by

Jacobs, J. This is an appeal, pursuant to certification granted under R. R. 1:10–2, from a judgment in favor of the defendant-respondent, originally rendered by the Commissioner of Education, affirmed without opinion by the State Board of Education, and affirmed by the Appellate Division in an opinion reported in *Cullum* vs. *Board of Education of North Bergen Tp.*, 27 N. J. Super. 243 (1953).

Robert E. Madden, Superintendent of Schools for the Township of North Bergen, died on January 13, 1952. Three days later Stephen H. Magnus, president of the North Bergen Board of Education, Edith Beck, vice-president, and John Halligan and Edward H. Marck, members, met at luncheon and agreed that they would observe a 30-day mourning period before undertaking the task of selecting a new school superintendent. George Eichler, the remaining member of the board, was informed of the agreement and acquiesced. North Bergen school principals who were interested in being considered for the appointment were told by the president and vice-president not to file applications until after the mourning period had expired.

Mr. Marck had been a member of the board for about nine months and his term was about to expire on January 31, 1952. He learned that he would not be reappointed and on January 20 he suggested to the president and vice-president of the board that the appointment of the superintendent be considered. They declined because of the mourning period. On January 23 Township Commissioner Harry Buesser called upon James J. Goodman, secretary of the board, and asked that he call a special meeting; the request was refused on the ground that, under the board's resolution, special meetings were to be called only upon order of the president or upon written request of three members. Mr. Marck testified that he had asked the commissioner to obtain a notice from Mr. Goodman calling a special meeting for the purpose of appointing a superintendent. Vice-President Beck testified that on January 24 the Commissioner asked her whether she would sign a request for a special meeting and threatened that her husband "would be out of a job" if she did not.

At about the same time Mr. Marck met the plaintiff John E. Cullum, a North Bergen school principal, and told him that he had better prepare his application for appointment as superintendent. Under date of January 24 the plaintiff addressed a letter application to the secretary of the board listing his qualifications and experience. On January 28 Mr. Marck visited the board's office and examined its records and resolutions with particular reference to the notice requirement for special meetings. As he was leaving, Mr. Goodman entered and although they exchanged greetings there was no discussion between them. Later that day Mr. Goodman went to Atlantic City, allegedly because of illness, and did not return home until Saturday night, February 2. On January 29 Messrs. Marck and Halligan went to the board's office with a letter, signed by themselves and Mrs. Beck and addressed to Mr. Goodman, requesting that he call a special meeting for January 31.

Since Mr. Goodman could not be located the letter was left at his office and notices signed by Messrs. Marck and Halligan and Mrs. Beck were then served personally on Messrs. Magnus and Eichler. The notices stated that a meeting of the board would be held at the Assembly Chambers, Town Hall, on January 31 at 8 P. M. "for the purpose of considering the appointment of a Superintendent of Schools and for such other business as may come before said meeting."

During the afternoon of January 31 Messrs. Marck and Halligan called at the board's office and arranged to have a formal resolution typed; it named the plaintiff as superintendent of schools for the term of five years commencing January 31 at a salary of $7,500 for the first and second years, $8,000 for the third and fourth years and $8,500 for the fifth year. At 7 P. M. on January 31, 1952, Messrs. Marck and Halligan and Mrs. Beck met "in caucus" and at 7:55 P. M. they signed the resolution appointing the plaintiff as superintendent. At 8 P. M., in the presence of Messrs. Marck and Halligan and Mrs. Beck, the public meeting was called to order; Messrs. Magnus and Eichler did not attend. Mr. Halligan acted as temporary chairman and after brief formal preliminaries the resolution was adopted without any discussion and above objection from the floor that the appointment was being made without its "consideration" as provided in the notice. In response to the objection Mr. Halligan stated: "We have met since 7:00 o'clock in caucus and we have decided who is the superintendent, so we are presenting to you now at 8:00 o'clock a resolution naming Mr. Cullum as Superintendent of Schools." Apparently the appointment had been decided upon and made without any examination whatever of any applications on file. Mr. Halligan testified that he had not even seen the plaintiff's application until a copy was handed to him on his way from the caucus to the public meeting. Mr. Marck testified that he never saw any applications; he acknowledged that although he had asked the plaintiff to file a "resume of his record" he at no time made any similar request or suggestion to other local school principals who were openly interested in being considered for the appointment and who had withheld their applications until expiration of the mourning period.

On February 1 the organization meeting of the board was held and was attended by all members, including Mr. Marck's successor. With Mr. Halligan and Mrs. Beck voting in the negative, a resolution was adopted declaring the position of superintendent of schools to be vacant and directing that the plaintiff's name as superintendent be removed from the board's records. On February 18 the plaintiff filed his petition with the Commissioner of Education seeking an order compelling the board to carry out the terms of the resolution which appointed him as superintendent. The Commissioner denied relief on the ground that since the board's secretary had not signed the notice the meeting of January 31 had not been legally called and that the appointment made was therefore invalid. The Appellate Division agreed that the meeting had not been legally called and affirmed the Commissioner's decision without finding it necessary to pass upon the additional grounds advanced by the board in support of its position that the appointment of the plaintiff was illegal and void.

[1] R. S. 18:6–27 and R. S. 18:6–37 authorize the board to appoint a superintendent of schools for a term not to exceed five years; there are no

express statutory provisions governing the meeting at which the appointment is made but the rules of the State Board of Education and the local board in North Bergen do embody provisions applicable generally to special meetings. See R. S. 18:6–19. Thus rule 136 of the State Board provides that it shall be the duty of the secretary of the local board to call a special meeting whenever he is requested to do so by the president or by a petition signed by a majority of the members of the local board. A rule of the local board provides that special meetings "shall be called on not less than twenty-four hours notice by the Secretary, in writing, upon the order of the President or on the written request of three members of the Board." The purposes underlying this rule seem to be clear. The judgment as to when a special meeting shall be called rests entirely in the president or a majority of the board; if either the president or a majority of the board decides that a special meeting shall be called then it becomes the absolute duty of the secretary to call a special meeting on not less than 24 hours' notice. The secretary's call of the meeting pursuant to the president's order or the written request of the majority is ministerial and is in nowise discretionary.

When Mr. Marck delivered the duly signed request that a special meeting be called for January 31 Mr. Goodman, if he had been in his office, would have been obliged to comply forthwith. In fact, he had left his office without notifying anyone where he could be located but his absence could not effectively frustrate the wishes of the majority. Under the circumstances they had the clear right to perform the ministerial act of serving the notice. *Cf. Whipple* vs. *Christie*, 122 Minn. 73, 141 N. W. 1107 (Sup. Ct. 1913); *Board of Education, etc.* vs. *Stevens*, 261 Ky. 475, 88 S. W. 2d 3 (Ct. App. 1935). See also *Hicks* vs. *Long Branch Commission*, 69 N. J. L. 300, 305 (E. & A., 1903). The vital thing was not the presence of the secretary's signature but the service of the notice in due and reasonable time on the other members of the board. The requirement that the notice be signed by the secretary, after his receipt of appropriate order or request, was directory rather than mandatory and may be considered to have been waived by the secretary's absence from town without notification of his whereabouts, whether by design or inadvertence. See *In re Norrell's Estate*, 139 N. J. Eq. 550, 553 (E. & A., 1947); *Sharrock* vs. *Borough of Keansburg*, 15 N. J. Super. 11, 17 (App. Div., 1951).

Although the notice simply stated that the special meeting was being called for the purpose of "considering" the appointment of a superintendent, it was sufficient to advise that after consideration the appointment would be made. Such was its obvious purport and there is no dispute that it was so understood by the two members who absented themselves. Their position was not that the appointment at the meeting was unanticipated; on the contrary, they have consistently asserted that the appointment had, in bad faith, been prearranged in disregard of the moratorium and without proper consideration of prospective applicants or the welfare of North Bergen's school system. It would seem clear that instead of boycotting the public meeting the minority should have attended it. But, be that as it may, there still remains for determination the controlling legal issue as to whether the manner in which the board majority exercised the power of appointing a superintendent constituted official action which was taken arbitrarily or in

bad faith and should, therefore, be set aside under the wholesome principles recently restated by this court in *Grogan* vs. *DeSapio*, 11 N. J. 308, 325 (1953). There, three of the five city commissioners of Hoboken met in advance of the organization meeting and signed resolutions which allocated all the municipal functions with only skeletal powers and duties assigned to the absent minority. In setting aside the resolutions, which had been adopted at the organization meeting, this court noted that there was evidence that the majority had not considered "the needs of the municipality" or "the economic administration of the government" or "the qualifications and experience of each commissioner," and that the record indicated "a lack of exercise of discretion and an arbitrary determination." Upon the showing in the instant matter we have reached a similar conclusion.

[2] The members of the respondent board of education hold positions of public trust and must at all times faithfully discharge their functions with the public interest as their polestar. See *Driscoll* vs. *Burlington-Bristol Bridge Co.*, 8 N. J. 433, 474 (1952), certiorari denied 344 U. S. 838, 73 S. Ct. 25, 97 L. Ed. 652 (1952), rehearing denied 344 U. S. 888, 73 S. Ct. 181, 97 L. Ed. 687 (1952). Amongst their most vital and responsible duties is the proper selection of personnel, particularly the school superintendent. *Cf. Townsend* vs. *School Trustees*, 41 N. J. L. 312, 313 (Sup. Ct., 1879). When Mr. Madden died they might forthwith have undertaken the task of selecting a new superintendent. Instead they agreed to observe a 30-day mourning period and interested school principals were told not to file applications until its expiration. It may be assumed that the agreement was not legally binding and that Mr. Marck and his colleagues retained the right to call for earlier consideration of the matter. In such event, however, elemental good faith and fairness demanded that the interested principals be duly notified so that their applications might be filed and passed upon before a selection was made. Although Mr. Cullum was told by Mr. Marck to file his application in anticipation of the special meeting, he was the only prospective applicant who was thus favored.

The notices served by the majority on the minority members stated that a meeting of the board would be held at 8 P. M. for the purpose of considering the appointment of a superintendent. No notice of the preceding 7 P. M. caucus was ever served and it was not attended by the minority. It may fairly be inferred that no applicant, other than Mr. Cullum, was given any consideration by the majority at the caucus preceding the signing of the resolution at 7:55 P. M. When the 8 o'clock meeting was called to order, the resolution appointing Mr. Cullum was immediately presented as a *fait accompli*. Although the meeting had been called to *consider* the appointment of a superintendent, there were no deliberations whatever and the public had no timely opportunity to be heard on the matter. And although the minority members, if they had attended, would presumably have had opportunity to speak before the vote was taken publicly, they likewise would have been faced with the fact that the majority had, in advance, agreed upon the appointee and signed the formal resolution of appointment.

[3, 4] The circumstances convince us that there was, in the language of Justice Burling in the *Grogan* case, "a lack of exercise of discretion and an arbitrary determination." At no time did the majority consider the needs of

the local community, or seek to ascertain and evaluate the identities, qualifications and experience of the available candidates, or deliberate on the course best calculated to serve the local school system. On the contrary, they seem to have permitted extraneous personal and petty political influences to dictate their action. The open meeting they held was nothing more than a sham and as Judge Hartshorne suggested in *Grogan* vs. *DeSapio*, 15 N. J. Super. 604, 611 (Law Div. 1951), it ought to be dealt with "as if it had never occurred." The Legislature has unmistakably and wisely provided that meetings of boards of education shall be public (R. S. 18:5–47); if a public meeting is to have any meaning or value, final decision must be reserved until fair opportunity to be heard thereat has been afforded. This in no wise precludes advance meeting during which there is free and full discussion, wholly tentative in nature; it does, however, justly preclude private final action such as that taken by the majority in the instant matter.

[5] The lower tribunals made no findings, except as to the alleged insufficiency of the notice, and the proceedings might be remanded for that purpose. See *Delaware L. & W. R. Co.* vs. *City of Hoboken*, 10 N. J. 418, 425 (1952). But the issue is of public importance and its ultimate determination would be substantially deferred by such action. We have, therefore, carefully examined the full record and have made the independent findings embodied in this opinion. See R. R. 4:88–13. *Cf. Waldor* vs. *Untermann*, 10 N. J. Super. 188, 191 (App. Div., 1950). Accordingly, the judgment invalidating the resolution appointing the plaintiff as superintendent of schools of the Township of North Bergen is:

Affirmed.

For affirmance—Chief Justice Vanderbilt, and Justices Wachenfeld, Burling, Jacobs, and Brennan—5.

For reversal—Justices Heher and Oliphant—2.

15 N. J. 285 (Supreme Court)