

PAROCHIAL SCHOOLS

(See "Religion" this index)

PENDENTE LITE

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PENSIONS

(See "Retirement and Pensions" this index)

PETITIONS

(See "Elections" this index)

PHYSICAL EDUCATION

(See "Pupils" this index)

PHYSICAL AND PSYCHIATRIC EXAMINATIONS

Board cannot suspend salary of employee who refuses to submit to examination by board-designated physician (95 N.J.A.R.2d (EDU) 291, Pleasantville, rev'd St. Bd. on other grounds 96 N.J.A.R.2d (EDU) 447)

Board did not violate tenure laws by placing tenured teacher on unpaid involuntary administrative leave following a psychiatric examination it ordered him to undergo; board may keep teacher out until it is satisfied that he has recovered from behavior which caused difficulties in the classroom; teacher's motion for emergent relief is denied (St. Bd. 96:Nov. 6, Hopewell)

Board has right to require physical and psychiatric examination if employee shows evidence of deviation from normal physical or mental health. (96:May 6, Edison)

Board may not compel teacher to submit to exam by board-designated physician after rejecting first two physicians selected by teacher: parties directed to agree on physician (96 N.J.A.R.2d (EDU) 447, Pleasantville, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 291)

Board may require exam by physician who had never previously examined teacher and who had no association with medical center at which he was previously treated (96 N.J.A.R.2d (EDU) 447, Pleasantville, St. Bd. rev'g 95 N.J.A.R.2d (EDU) 291)

Board properly responded to suicide threat by fourth grader by requiring psychiatric evaluation (97:May 19, M.F., aff'd St. Bd. 97:Sept. 3)

Emergent relief granted; employee ordered to submit to physical and psychiatric examinations, cost to be borne by the board. (96:May 6, Edison)

PHYSICAL AND PSYCHIATRIC EXAMINATIONS

- School board member's threat to kill band director reasonable grounds for two week suspension from board activities and psychological exam (96 N.J.A.R.2d (EDU) 298, McB)
- Teacher's petition alleging health problems due to working conditions dismissed when she refused to comply with order for physical exam (96 N.J.A.R.2d (EDU) 940, Rotella-Suarez, aff'd St. Bd. 97:Dec. 3)
- Teacher's request for emergent relief, challenging board's authority to suspend him without pay where he was ineligible for service subsequent to a psychiatric exam under N.J.S.A. 18A:16-4 is denied (97:Dec. 19, Chambers)
- Tenure proceeding: Board could have, but failed to, bypass tenure proceedings by invoking N.J.S.A. 18A:16-1 (90:436, Middletown v. Leo, on remand)

PLUMBER

POLICE

- No duty board member or administration to report off school property underage drinking to police. Failure to do so not ethical violation (96 N.J.A.R.2d (EDU) 143, Ivor)

POLICY

- (See "Boards - Duties and powers of" this index)

PREFERRED ELIGIBILITY LIST

- (See "Abolition of Position - Seniority" this index)

PRINCIPALS

- Arbitrator exceeded his authority in ignoring language in collective bargaining agreement and relying solely on past practice. State operated school districts have strong powers to modify and amend practices of previously ineffective or failed local school districts. City Assn. of Supervisors v. State Operated School District of the City of Newark, 311 N.J. Super. 300 (App. Div. 1998)
- Board violated the tenure and seniority rights of petitioners, tenured principals, when it transferred and reassigned them to the positions of vice principal and department chairpersons without their consent (94:Sept. 4, Bush)

PRINCIPALS

- Commissioner lacks jurisdiction to determine validity of provision in negotiated agreement requiring principals to have license to operate steam generator (95 N.J.A.R.2d (EDU) 282, Druker)
- Inappropriate comments and touching female staff members constitutes conduct unbecoming a teacher (95 N.J.A.R.2d (EDU) Freehold)
- Person holding principal endorsement on administrative certificate is authorized to perform duties involved in supervising media center (94 N.J.A.R.2d (EDU) 311, Lippincott, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 430, aff'd App. Div. 95 N.J.A.R.2d (EDU) 304, certif. den. 142 N.J. 518 (1995))
- Poor ratings in areas of staff development, supervision of instruction and curriculum development constitutes good cause for withholding principal's increment; evaluations not tainted by improper motives or animus of evaluators (94 N.J.A.R.2d (EDU) 537, Simon)
- RIF'd Supervisor of Physical Education may be entitled to Supervisor of Elementary Education position. Matter remanded to determine whether elementary education endorsement required by the board was legally required to perform the functions of the Supervisor of Elementary Education position. No entitlement to principal position. (96 N.J.A.R.2d (EDU) 846, White, remanded St. Bd. 97 N.J.A.R.2d (EDU) 552) (See also 97 N.J.A.R.2d (EDU) 312, 95 N.J.A.R.2d (EDU) 52)
- State Board regulations eliminating requirement that principals have teaching experience upheld (New Jersey Ass'n of School Administrators, App. Div. unpub. op. (Dkt. No. A-1207-88T3, Feb. 21, 1990))
- Title; use of title "principal" inappropriate for position requiring district-wide supervision and management of special education (91:736, Kornberg, aff'd St. Bd. 91:748)
- Transfers
High school to high school reclassified as junior high against recommendation of superintendent deemed invalid (91:506, Brescia)

PRIVATE SCHOOLS

- Challenge to state regulation (N.J.A.C. 6:28-7.1(g) held not ripe for adjudication; parties lack standing; petition dismissed (90:1371, Council of Private Schools for Children with Special Needs, Inc., aff'd St. Bd. 91:2534)

PRIVATE SCHOOLS

- Private schools - funds received by private not-for-profit school for early intervention services to disabled children properly expended for 1988-89 school year. Remanded for determination as to 1985-86 through 1987-88. (95 N.J.A.R.2d (EDU) 153, Early Intervention Programs, St. Bd. aff'g in part, remanded in part 92 N.J.A.R.2d (EDU) 68)
- Rent charged to state by private school for the handicapped that exceeds costs of ownership properly excludable from tuition (96 N.J.A.R.2d (EDU) 406, Coastal Learning Center, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unreported opinion Oct. 23, 1997)
- Regulation serves the legitimate state interest of containing the cost to the public of educating handicapped students (89:1682, Penta Assoc., aff'd w/mod. St. Bd. 90:1784, aff'd w/mod. App. Div. unpub. op. Dkt. No. A-3631-89T1, July 8, 1991, certif. den. 127 N.J. 546 (1991), see also 91:226, Coastal Learning Center, aff'd St. Bd. 92:Oct. 8; 96 N.J.A.R.2d (EDU) 406, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unpub. op. Dkt. No. A-7571-95T2, Oct. 23, 1997)
- State Board regulation limiting reimbursement upheld; constitutional on its face and as applied (89:1682, Penta Assoc., aff'd w/mod. St. Bd. 90:1784, aff'd w/mod. App. Div. unpub. op. Dkt. No. A-3631-89T1, July 8, 1991, certif. den. 127 N.J. 546 (1991), see also 91:226, Coastal Learning Center, aff'd St. Bd. 92:Oct. 8; 96 N.J.A.R.2d (EDU) 406, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unpub. op. Dkt. No. A-7571-95T2, Oct. 23, 1997)

Tuition

- Expenses disallowed based on lack of documentation even though, at time of audit, Department lacked authority to compel production of documents it had requested (95 N.J.A.R.2d 202, Pinelands Learning Center, St. Bd. modifying 95 N.J.A.R.2d (EDU) 199)
- Parent who contracted to pay private school tuition for entire school year was liable for payment even though child withdrew from program after one month (Princeton Montessori Soc., 248 N.J. Super. 474 (App. Div. 1991), certif. denied 127 N.J. 545 (1991))
- Private school for disabled children had to refund a portion of state tuition received for failure to comply with 180 instructional day mandate (95 N.J.A.R.2d (EDU) 487, Somerset Hills School, Inc.)

PRIVATE SCHOOLS

Private school has standing to challenge tuition regulation (89:1682, Penta Assoc., aff'd w/mod. St. Bd. 90:1784, aff'd w/mod. App. Div. unpub. op. Dkt. No. A-3631-89T1, July 8, 1991, certif. den. 127 N.J. 546 (1991), see also 91:226, Coastal Learning Center, aff'd St. Bd. 92:Oct. 8; 96 N.J.A.R.2d (EDU) 406, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unpub. op. Dkt. No. A-7571-95T2, Oct. 23, 1997)

Rent charged to state by private school for the handicapped that exceeds costs of ownership properly excludable from tuition (96 N.J.A.R.2d (EDU) 406, Coastal Learning Center, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 740, aff'd App. Div. unreported opinion Oct. 23, 1997)

PRIVATIZATION AND SUBCONTRACTING

A local board cannot subcontract the services of its child study team to outside individuals. A board may supplement such services, but this situation presupposes an existing team with members who are employed by the district. Outside contractors are permitted in limited circumstances and only to supplement services provided by existing team members (96 N.J.A.R.2d (EDU) 229, Elson, aff'd App. Div. 96 N.J.A.R.2d (EDU) 463)

Board contract with UMDNJ for crisis intervention therapists is valid exercise of managerial prerogative; no evidence of bad faith or interference with rights of guidance counselors or child study team members (94 N.J.A.R.2d (EDU) 301, Edison Twp. Education Assoc., de novo review by St. Bd. 94 N.J.A.R.2d (EDU) 592)

Boards of education may in good faith eliminate CSTs for reasons of economy and join with one or more boards of education or state agencies for basic CST services (97 N.J.A.R.2d (EDU) 356, Vicenzino, aff'd St. Bd. 97:July 7; aff'd 312 N.J. Super. 343 (App. Div. 1998), certif. den. by N.J. Supreme Court C-87, 46,322 (Sept. 11, 1998)

Child Study Team: District may, under N.J.A.C. 6:28-5.1(c), subcontract for CST services for public school students which supplement, but do not supplant, board's own CST (94 N.J.A.R.2d (EDU) 583, Mullin)

PRIVATIZATION AND SUBCONTRACTING

Decision to abolish speech correctionist position and subcontract with ESC for services upheld; decision made in good faith for economic reasons; no violation of tenure rights (92 N.J.A.R.2d (EDU) 197, Impey, aff'd St. Bd. 92 N.J.A.R.2d (EDU) 427, aff'd 273 N.J. Super. 429 (App. Div. 1994), aff'd 142 N.J. 388 (1995))

Decision to subcontract for custodial services made in good faith based on economic reasons; no violation of custodian's tenure rights (94 N.J.A.R.2d (EDU) 172, Angel, aff'd w/modif. St. Bd. 94 N.J.A.R.2d (EDU) 423)

If a board of education establishes a CST, each CST shall be an employee of the board of education. Single positions may not be abolished (97 N.J.A.R.2d (EDU) 356, Vicenzino, aff'd St. Bd. 97:July 7; aff'd 312 N.J. Super. 343 (App. Div. 1998), certif. den. by N.J. Supreme Court C-87, 46,322 (Sept. 11, 1998)

No broad authority board to contract with outside groups to provide child study team services (96 N.J.A.R.2d (EDU) 229, Elson)

Public employer, acting in good faith may terminate entire custodial staff during the life of existing labor contract and sub-contract for similar services (Ridgewood Building Service, App. Div. unpub. op. (Dkt. No. A-3903-92T2, Apr. 4, 1994))

Tenured psychologist with Educational Services Certification was subject to a RIF and board contracted with Child Study Team Inc. for services. Services contracted were not merely supplementary and beyond authority of board to contract out (96 N.J.A.R.2d (EDU) 229, Elson)

The determination of whether the utilization of outside contracted services constitutes a supplanting or supplementing of the existing team members "involves a review of all surrounding facts and circumstances." (96 N.J.A.R.2d (EDU) 229, Elson)

PROMOTIONS

(See "Teachers" this index)

PSYCHIATRIC EXAMINATIONS

(See "Physical and Psychiatric Examinations" this index)

PSYCHOLOGIST

Salary increment of school psychologist withheld for unsatisfactory performance in testing and evaluation of students. (95 N.J.A.R.2d (EDU) 55, Kaska)

School psychologist's seniority properly based on years of service regardless of number of days worked per week (96 N.J.A.R.2d (EDU) 360, Reid, aff'd St. Bd. 96 N.J.A.R.2d (EDU) 364)

School psychologist who asks special education student if he can call her and who expresses attraction to her guilty of unbecoming conduct - dismissed (97 N.J.A.R.2d (EDU) 104, Marrero, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 319, aff'd App. Div. unpublished op. Dkt. No. A-4913-96T3, March 27, 1998)

PUBLIC HOLIDAYS

PUBLIC RECORDS

(See "Right to Know Law" this index)

PUNITIVE DAMAGES

(See also "Commissioner of Education - Damages" this index)

Punitive damages; in an action under the Conscientious Employee Protection Act, a board of education may be liable for punitive damages for the egregious misconduct of the superintendent of schools and other high-level administrators. Abbamont v. Piscataway Twp. Bd. of Ed., 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Punitive damages may be imposed against board of education under Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. (Abbamont, 138 N.J. 405 (1994), aff'g 269 N.J. Super. 11 (App. Div. 1993)) See 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

Punitive damages; Supreme Court's affirmance by an equally divided court constituted the controlling law under the "law of the case" doctrine and was binding on lower courts in this case. Abbamont v. Piscataway Twp. Bd. of Ed., 314 N.J. Super. 293 (App. Div. 1998), aff'd 163 N.J. 14 (1999)

PUPILS

Admission to school

- Adult pupil: decision to admit pupils over 20 years old is discretionary with each district board (St. Bd. 96:Nov. 6, Ludviksen)
- Age-based admissions policy for 1st grade which distinguished between transferees from public and private schools was not arbitrary or discriminatory and was within discretion of board (92 N.J.A.R.2d (EDU) 640, S.T.B.)
- Board may implement reasonable policy governing admission to first grade (90:655, L.B.) (95:Sept., R.S.)
- Board may properly deny admission to student for failure to undergo a mantoux test or failure to provide documentation that the student should be exempted from the mantoux test (97 N.J.A.R.2d (EDU) 486, M.F., appeal dismissed, St. Bd. 97:July 2)
- Board not obligated to admit student to first grade as a transfer student absent a separate policy for transfer students (96:April 8, R.S.)
- Board's decision not to waive age requirements for admission to kindergarten was within board's discretion and not arbitrary, capricious or unreasonable (94 N.J.A.R.2d (EDU) 28, T.C.)
- Emergent relief denied. Board may not decline to enroll student whom it believes to constitute a possible threat to student safety. May impose interim suspension for period not to exceed 21 days following preliminary hearing. Home instruction to be provided (96 N.J.A.R.2d (EDU) 594, K.B., aff'd State Board 96 N.J.A.R.2d (EDU) 742)
- Emergent relief denied to board seeking to relieve it of obligation to educate pupil whose parents sought waiver of Mantoux Test on religious grounds under Religious Freedom Restoration Act; board must provide home instruction pending final determination of this novel question (St. Bd. 96:Oct. 2, Middletown)
- Foreign exchange students; strict adherence to board of education's new policy re: admissions not warranted where board did not give sufficient notice to those likely to be affected (95:Sept. 22, Pokrovsky, (ALJ decision; dismissed as moot by Commissioner))
- Parent failed to establish that board's entrance age policy was either arbitrary or selectively enforced (96:April 8, R.S.)

PUPILS

Pupil who is of age and has transferred after satisfactory completion of public kindergarten has the right to enter first grade; however, board may re-evaluate pupil performance where warranted (90:655, L.B.)

Sufficient showing of hardship entitles adopted student free education in adoptive family's school district (96 N.J.A.R.2d (EDU) 244, D.E.)

Use of standardized school-readiness test as formal assessment for early admission to kindergarten is within the discretion of the board (91:426, S.V.)

Affidavit pupils

Athletics - See Extracurricular Activities this Index

Hardship shown; child stayed with grandparents while mother was traveling to start a singing career; child had no other place to stay or attend school (97:May 29, A.S.)

Attendance areas

Board decision to change geographic designations for attendance at district kindergartens based on increased enrollments upheld (95 N.J.A.R.2d (EDU) 107, T.M.)

Attendance policy

Policy proposing three day suspension for six times tardy was reasonable (90:630, M.L.A.)

Compulsory attendance laws

Board is reminded of its responsibility to enforce compulsory attendance requirement that student regularly attend school or receive equivalent instruction elsewhere (97 N.J.A.R.2d (EDU) 486, M.F., appeal dismissed, St. Bd. 97:July 2)

Board ordered to provide "appropriate" environment in school and on bus for harassed pupil; pupil ordered to return to school (92 N.J.A.R.2d (EDU) 370, Venezia)

Municipal court is statutorily charged with enforcing compulsory attendance laws (95:April 10, M.G.)

Curriculum

Board acted reasonably in premising consent to change classroom of distractible child upon CST evaluation (89:1366, K.M., dismissed St. Bd. 89:1393, dismissed App.Div. unpub. op.Dkt. No. A-1181-89T1, April 11, 1990)

Challenge to denial of admission to Gifted and Talented program dismissed as moot when parents/child moved out of district (97 N.J.A.R.2d (EDU) 270, Spivak)

PUPILS

Channel One programming which includes commercials does not violate compulsory education statute; programming intended to supplement educational environment and is not part of curriculum (92 N.J.A.R.2d (EDU) 481, Whittle Communications, St. Bd. aff'd in holding limited to facts of case, 93 N.J.A.R.2d (EDU) 90, aff'd App. Div. unpub. op. (Dkt. No. A-2165-92T5, Aug. 2, 1994), certif. denied, 139 N.J. 184 (1995))

Decision not to allow student who failed then successfully repeated 7th grade to skip 8th grade upheld (92 N.J.A.R.2d (EDU) 625, T.J.P.)

Decision not to place pupil in AP English upheld (92 N.J.A.R.2d (EDU) 648, K.L.L. and S.L. aff'd St. Bd. 93 N.J.A.R.2d (EDU) 172)

Decision not to publish student's review of R-rated movies in extracurricular school newspaper violated student's First Amendment rights (Desilets v. Clearview Regional Bd. of Ed., 266 N.J. Super. 531 (App. Div. 1993), aff'd 137 N.J. 585 (1994))

Gifted and talented: Matter moot where child transferred to private school; however, allegations of board's failure to provide gifted and talented education having been raised, County Superintendent is directed to ascertain board's compliance and undertake remedial action if appropriate (94:Nov. 21, Feldman)

Discrimination

Exchange students: prohibiting non-graduating foreign exchange student from participating in graduation ceremony upheld (96 N.J.A.R.2d (EDU) 193, Barcalow)

Dress and appearance

Evaluation

Board properly responded to suicide threat by fourth grader by requiring psychiatric evaluation (97 S.L.D. May 19, M.F., aff'd St. Bd. 97:Sept. 3)

Exclusion from school

Board may properly exclude from school a pupil who has failed to demonstrate that she should be exempt from a Mantoux test and further has not provided a physician's report regarding a subsequent negative chest x-ray (97 N.J.A.R.2d (EDU) 486, M.F., appeal dismissed, St. Bd. 97:July 2)

PUPILS

Extracurricular Activities

- Emergent relief denied. Crowe standard not met in senior prom/graduation participation matter. (96:May 17, D.O'G.)
- Emergent relief denied. Crowe standard not met. Prohibition from attending one's senior prom does not constitute irreparable harm. (96 N.J.A.R.2d (EDU) 695, W.M.B.)
- Emergent relief denied. Crowe standard not met. Student barred from participation in graduation ceremonies due to insufficient course credits; violated board's truancy policy. Board had provided avenues of appeal and opportunities to modify behavior. (96 N.J.A.R.2d (EDU) 697, D.C.)
- Emergent relief denied to pupil suspended from band participation for outburst; while harm to parties in equipoise, harm to pupil is not irreparable; due to factual issues, pupil fails to establish probability of success on the merits (94:Nov. 10, F.McB.)
- Emergent relief granted. Crowe standard met. Discipline imposed, including loss of eligibility to participate in or attend extracurricular activities stayed. Student allowed to attend senior prom. Student did not receive due process to which she was entitled. (96:April 26, Hynes)
- Exclusion from senior activities, including senior prom and graduation, for assault on teacher/cheerleading coach was within the board's scope of authority. (96 N.J.A.R.2d (EDU) 820, D.O'G.)
- Failure to achieve 27.5 credit prerequisite renders basketball player ineligible (96 N.J.A.R.2d (EDU) 527, D.M.)
- High school student had insufficient credits to participate in senior activities including senior trip and senior prom. (96 N.J.A.R.2d (EDU) 695, W.M.B.)
- Petition seeking return of goalie pads dismissed - no proof pads were property of board (96 N.J.A.R.2d (EDU) 586, Vickner)
- Refusal to change student's failing grade upheld (96 N.J.A.R.2d (EDU) 415, J.M.)
- School board member's threat to kill band director reasonable grounds for 2 week suspension from band activities and psychological exam (96 N.J.A.R.2d (EDU) 298, McB)

PUPILS

Waiver of eight semester rule denied. Student's retention in 9th grade and early departure from sports program were results of voluntary action (96 N.J.A.R.2d (EDU) 977, Brady)

Gifted and Talented Programs

Barring students from future proms as punishment for consumption of alcohol before prom in violation of school policy appropriate punishment. (97 N.J.A.R.2d (EDU) 1, R.F.) (See also 92 N.J.A.R.2d (EDU) 79, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 416, aff'd App. Div. unreported opinion Dkt. No. A-5058-92T2, Nov. 22, 1993, certif. den. 135 N.J. 469 (1994), cert. den. U.S. Supreme Court. Oct. 3, 1994)

Gifted and talented program found adequate (95 N.J.A.R.2d (EDU) 454, Kanter)

Grades

Board did not act arbitrarily in refusing to retroactively apply new grading system which was formulated in response to petitioner's complaints (95 N.J.A.R.2d (EDU) 245, K.S.)

Board policy of automatically failing student who cuts physical education is arbitrary, unreasonable and in violation of law; student's grade ordered recalculated (93 N.J.A.R.2d (EDU) 664, W.B., dec. on remand 94 N.J.A.R.2d (EDU) 282)

Board's actions, policies and established definitions regarding plagiarism were not unreasonable or improper (97 N.J.A.R.2d (EDU) 518, M.D.)

Difference of opinion with instructor's evaluation cannot provide basis for changing failing grade when policy and grading system was reasonable and pupil was provided procedural and substantive due process (93 N.J.A.R.2d (EDU) 584, Thaxton)

Emergent relief denied; teacher's decision to base grade point average on test scores alone was not abuse of discretion or failure to comply with board policy (94 N.J.A.R.2d (EDU) 573, B.M.)

Petition seeking to change a final grade is without merit absent a clear showing of bias, bad faith, arbitrariness, statutory violation or constitutional infirmity (91:216, E.C. in the Interest of R.C.)

PUPILS

- Petition to have student's grade expunged filed almost one year after district's decision was dismissed as untimely and clearly beyond 90-day requirement (97:Jan. 17, D.M.) (See 96 N.J.A.R.2d (EDU) 415, J.M.)
- Physical education grading policy reasonable and nondiscriminatory; no requirement that policy be formally adopted by board (92 N.J.A.R.2d (EDU) 525, M.M.)
- Refusal to change student's failing grade upheld (96 N.J.A.R.2d (EDU) 415, J.M.)
- School grading practice of assigning letter grades rather than numerical averages on report cards is not arbitrary, capricious or unreasonable (94 N.J.A.R.2d (EDU) 551, Gorsky)

Graduation

- Attendance at graduation ceremonies is a privilege, not a right (92:June 17, E.M.)
- Attendance at graduation ceremony denied for student on long-term suspension who completed graduation requirements during home instruction (95 N.J.A.R.2d (EDU) 296, R.L.)
- Attendance at graduation exercises may be denied because of indictment on drug charges (90:June 22, Gilchrist, appeal dismissed as moot, St. Bd. 90:Nov. 19)
- Attendance at graduation may be denied for excessive absenteeism (95:June 19, B.B.)
- Board decision to bar student from participation in graduation exercises as punishment for willful and conscious disobedience of chaperone while on class trip was not arbitrary, capricious or unreasonable (91:990, A.T.)
- Board decision to exclude student from participation in graduation pursuant to policy excluding students suspended for more than 15 days from graduation upheld (93:June 16, Mosley)
- Board policy barring student from attending graduation because of alcohol consumption on the way to the prom was already considered and upheld in a prior litigation; therefore this issue is res judicata and the petition must be dismissed (97:Sept. 12, Freedman, aff'd St. Bd. 98:Jan. 7, aff'd App. Div. unpublished op. Dkt. No. A-3533-97T5, Oct. 9, 1998)
- Board's decision to deny graduation participation and diploma to student for failure to pay class fee deemed arbitrary and capricious. (90:1285, Ballato)

PUPILS

- Denial of attendance at graduation exercises in punishment for drunkenness at prom upheld (91:914, A.F.)
- Emergent relief denied. Crowe standard not met in senior prom/graduation participation matter. (96:May 17, D.O'G.)
- Emergent relief denied. Crowe standard not met. Student barred from participation in graduation ceremonies due to assault upon teaching staff member (94:June17, Maurizio)
- Emergent relief denied. Crowe standard not met. Student barred from participation in graduation ceremonies due to consumption of alcohol before senior prom (94:June 24, Byank) (94:June 24, Usher)
- Emergent relief denied. Crowe standard not met. Student barred from participation in graduation ceremonies due to insufficient course credits; violated board's truancy policy. Board had provided avenues of appeal and opportunities to modify conduct. (96 N.J.A.R.2d (EDU) 697, D.C.)
- Emergent relief denied; no irreparable harm (95:July 19, H.M.O.)
- Emergent relief denied; pupil who failed English could not attend ceremony (95:June 29, D.M.)
- Emergent relief denied; pupil who failed physical education due to medical problem could not attend ceremony (95:June 29, A.S.)
- Emergent relief denied to parents seeking order permitting pupil to attend graduation; parents had not followed district's attendance policy requiring notice of absences due to chronic illness (95:June 29, D.K.)
- Emergent relief denied to special education pupil who violated attendance policy; may not participate in graduation ceremonies (95:June 19, P.C.)
- Emergent relief granted and pupil permitted opportunity to demonstrate that board acted arbitrarily in excluding participation in graduation ceremonies due to alleged failure to provide appropriate medical documentation excusing physical education participation (94:June 28, Ippolito)
- Emergent relief granted and pupil permitted to attend ceremony; failing art grade was subjective, and pupil had solid attendance, passed HSPT11, passed all required courses, and petitioner had not been notified of board meeting where matter had been discussed (95:July 7, S.K.)

PUPILS

Emergent relief granted where pupil unwittingly violated the excessive cut policy (matter later withdrawn) (95:July 18, E.D.)

Exclusion from senior activities, including senior prom and graduation, for assault on teacher/cheerleader coach was within the board's scope of authority. (96 N.J.A.R.2d (EDU) 820, D.O'G.)

Exclusion of student from participation in graduation ceremonies upheld (93:June 21, S.M.)

Exercises; denial of participation in ceremonies as punishment for consumption of alcohol before prom upheld (92 N.J.A.R.2d (EDU) 79, R.F. & L.H., aff'd St. Bd. 93 N.J.A.R.2d (EDU) 416, aff'd App. Div. unreported decision Dkt. No. A-5058-92T2, Nov. 22, 1993, certif. den. 135 N.J. 469 (1994) cert. den. U.S. Sup. Ct. Oct. 3, 1994. See 97 N.J.A.R.2d (EDU) 1)

Foreign exchange students who did not earn diploma could be precluded from participating in graduation ceremonies by board policy (96 N.J.A.R.2d (EDU) 193, Barcalow)

Honors

Character evaluation sheet sent to all faculty with instructions to rate only students with whom you have had sufficient contact to make judgment does not constitute impermissible polling of faculty; decision denying pupil to NHS upheld (92 N.J.A.R.2d (EDU) 331, Hook, aff'd St. Bd. 92:Sept. 2)

Commissioner improperly dismissed petition as moot which challenged board's refusal to give reasons for denying pupil membership in National Honor Society for 1992-93 school year (J.B., St. Bd. 94:Nov. 2, rev'g & rem'g 94:March 7, aff'd St. Bd. 98:May 6)

Committee's decision not to invite senior into National Honor Society was not arbitrary, capricious, discriminatory or otherwise illegal; especially where application included puffery and omitted some of pupil's activities (97:Nov. 14, J.B., decision on remand, aff'd St. Bd. 98:May 6, aff'd App. Div. unpublished op. Dkt. No. A-5896-97T1, May 17, 1999)

PUPILS

Decision denying pupil admission to National Honor Society upheld; no evidence that evaluation of student differed from evaluation of all other candidates (94 N.J.A.R.2d (EDU) 119, J.B., aff'd St. Bd. 94 N.J.A.R.2d (EDU) 126, aff'd App. Div. 96 N.J.A.R.2d (EDU) 159, certif. den. 142 N.J. 452 (1995))

It is not arbitrary, capricious or discriminatory for National Honor Society selection committee members to exercise individual, subjective assessments of candidate's credentials (97:Nov. 14, J.B., decision on remand, aff'd St. Bd. 98:May 6, aff'd App. Div. unpublished op. Dkt. No. A-5896-97T1, May 17, 1999)

On remand, Commissioner concurred with the ALJ that the decision to reject J.B.'s application for admission into the Jefferson High School Chapter of the National Honor Society was not arbitrary, capricious, discriminatory or an abuse of discretion (97:Nov. 14, J.B., decision on remand, aff'd St. Bd. 98:May 6, aff'd App. Div. unpublished op. Dkt. No. A-5896-97T1, May 17, 1999)

Valedictorianship to be determined based on final grades according to duly enacted board policy even though student was prematurely named at end of 2nd marking period in mistaken reliance on erroneous past practice (91:846, F.J.T.)

Immunization

Board may properly deny admission to student for failure to undergo a mantoux test or failure to provide documentation that the student should be exempted from the mantoux test (97 N.J.A.R.2d (EDU) 486, M.F., appeal dismissed, St. Bd. 97:July 2)

Nursery School (Pre-Kindergarten)

Board may not charge tuition for four-year olds enrolled in two-year kindergarten program supported by state aid (St. Bd. 96:Dec. 4, Herron, aff'g on other grounds 96 N.J.A.R.2d (EDU) 167) (See 94:Oct. 24, Herron)

Procedural due process

Acceptance of testimony against accused student when student was not present violates student's right to confront witness and taints board's vote to expel her (91:911, S.Z.)

PUPILS

Barring students from future proms as punishment for consumption of alcohol before prom in violation of school policy appropriate punishment. (97 N.J.A.R.2d (EDU) 1, R.F.) (See also 92 N.J.A.R.2d (EDU) 79, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 416, aff'd App. Div. unreported opinion Dkt. No. A-5058-92T2, Nov. 22, 1993, certif. den. 135 N.J. 469 (1994), cert. den. U.S. Supreme Court. Oct. 3, 1994)

Board may of necessity delegate some procedural matters relating to pupil suspension to a committee or to school administrators for the purpose of determining facts and developing recommendations (96 N.J.A.R.2d (EDU) 125, L.T.)

Board ordered to conduct expulsion hearings for students who committed assaults on teachers consistent with due process and state and federal guidelines regarding classified students. (96 N.J.A.R.2d (EDU) 567, Garrity)

Board panel held hearing 34 days after incident and full board did not consider for another 21 days and did so without transcript or written report from panel; constituted procedural due process violation (96 N.J.A.R.2d (EDU) 125, L.T.)

Emergent relief denied: Due process rights not violated where board did not hold expulsion hearing until 33 days following initial suspension; home instruction provided in interim (90:June 1, M.D.) (96 N.J.A.R.2d (EDU) 594, K.B., aff'd State Board 96 N.J.A.R.2d (EDU) 742)

Emergent relief enjoining expulsion hearing and reinstating students denied: Interview of parents and students prior to suspension satisfies preliminary hearing requirement (90:Oct. 29, M.G., aff'd 91 N.J.A.R.2d (EDU) 38, aff'd St. Bd. except on issue of res judicata, 92 N.J.A.R.2d (EDU) 364)

Emergent relief granted. Crowe standard met. Discipline imposed, including loss of eligibility to participate in or attend extracurricular activities stayed. Student allowed to attend senior prom. Student did not receive due process to which she was entitled. (96:April 26, Hynes)

PUPILS

- Emergent relief granted. Crowe standard met. Student reinstated. Demonstrated irreparable harm in that she was placed on homebound instruction indefinitely without a remedy at law. Demonstrated likelihood of success on the merits based on board's failure to follow statute and controlling case law. (96 N.J.A.R.2d (EDU) 619, C.F.)
- Expulsion from Key Club in violation of due process (91:724, J.R.)
- Following a hearing on a suspension matter by less than a majority, "the Board as a whole must receive and consider either the transcript or a written detailed report of the hearing, prior to taking any final action against the affected pupil (96 N.J.A.R.2d (EDU) 125, L.T.)
- High school vice principal had reasonable suspicion to search student suspected of possessing drugs. No Miranda warning needed. State v. Biancamano, 284 N.J. Super. 654 (App. Div. 1995)
- If a suspension is to last for more than 10 days, pupil is entitled to a full hearing within 21 days from the start of the suspension with a full record being kept. (96 N.J.A.R.2d (EDU) 619, C.F.)
- Make up exam: Board did not abuse discretion in denying student a second make up exam after he "forgot" about the first (90:886, C.R.)
- Minimal due process requirements for short term suspension met (93 N.J.A.R.2d (EDU) 580, G.H.)
- No violation of due process when pupil caught in possession of alcohol on school grounds punished in accordance with district policy (91:1322, K.L.)
- Student accused of fighting who moved out of state before a decision was made as to his involvement was entitled to a hearing before board only if incident was recorded on his permanent record (91:342, K.G.)
- Student subject to short term suspension for alleged participation in fight entitled to hearing before board if incident recorded on his permanent record and not otherwise subject to removal (91:342, K.G.)
- Student's right to procedural due process not violated by expulsion from summer school without hearing; given limited duration of summer school, fundamental fairness requires only notice and opportunity to be heard (94 N.J.A.R.2d (EDU) 70, Ivory)

PUPILS

Suspensions in excess of 10 days. Due process requires (1) Written notice of the charges; (2) Written statement of the factual allegations on which the suspension is based; (3) Name and address of persons with knowledge of relevant facts; (4) Copies of relevant documents; (5) Notice of a BOE hearing where the student may confront any witness or evidence against her and call witnesses and offer evidence in her defense; (6) Provide a BOE hearing immediately after which the board will issue a decision. (96 N.J.A.R.2d (EDU) 619, C.F.)

Promotion

Pupil had right to rely on board decision to waive promotion policy and allow her to be promoted upon successful completion of summer school; ruling limited to facts of this case (93 N.J.A.R.2d (EDU) 10, D.B.)

Punishment of Generally

Barring students from future proms as punishment for consumption of alcohol before prom in violation of school policy appropriate punishment. (97 N.J.A.R.2d (EDU) 1, R.F.) (See also 92 N.J.A.R.2d (EDU) 79, aff'd St. Bd. 93 N.J.A.R.2d (EDU) 416, aff'd App. Div. unreported opinion Dkt. No. A-5058-92T2, Nov. 22, 1993, certif. den. 135 N.J. 469 (1994), cert. den. U.S. Supreme Court. Oct. 3, 1994)

Barring students from participating in graduation as punishment for consumption of alcohol before prom in violation of school rules appropriate punishment (93 N.J.A.R.2d (EDU) 79, R.F. & L.H., aff'd St. Bd. 93 N.J.A.R.2d (EDU) 416, aff'd App. Div. unreported decision Dkt. No. A-5058-92T2, Nov. 22, 1993, certif. den. 135 N.J. 469 (1994) cert. denied U.S. Sup. Ct. Oct. 3, 1994, see 97 N.J.A.R.2d (EDU) 1)

Board's decision to suspend rather than expel pupil who assaulted teacher not improper or unethical (97 N.J.A.R.2d (EDU) 345, Barna, dismissed St. Bd. 97:Nov. 5) (See also 96 N.J.A.R.2d (EDU) 598)

PUPILS

Board's failure to hold expulsion hearing for student who assaulted teacher not improper where behavior primarily caused by disability. Regulation in place at time required evaluation of non-disabled students prior to expulsion. (96 N.J.A.R.2d (EDU) 598, Barna) See also (97 N.J.A.R.2d (EDU) 345, dismissed St. Bd. 97:Nov. 5)

Board's policy banning backpacks in the classrooms, hallways and cafeteria in the interest of safety was rationally based valid exercise of discretion. (96 N.J.A.R.2d (EDU) 762, C.M.)

Bomb threat: Discipline imposed (home instruction, community service, letter of apology) on student involved in a bomb threat was not arbitrary, capricious or unreasonable (96 N.J.A.R.2d (EDU) 897)

Denial of attendance at graduation exercises in punishment for drunkenness at prom upheld (91:914, A.F.)

Exclusion from senior activities, including senior prom and graduation, for assault on teacher/cheerleading coach was not arbitrary, capricious or in bad faith. (96 N.J.A.R.2d (EDU) 820, D.O'G.)

Exclusion of student from participation in graduation ceremonies upheld (93:June 21, S.M.)

N.J.S.A. 18A:37-2.1 as amended June 1995 no longer requires that a student alleged to have assaulted a teacher be expelled. In this instance, a five day suspension was appropriate (97 N.J.A.R.2d (EDU) 345, Barna, appeal dismissed for failure to perfect, St. Bd. 97:Nov. 5)

Parents do not have standing to challenge appropriateness of disciplinary action taken against someone else's child (93 N.J.A.R.2d (EDU) 71, D.K.)

Alcohol consumption: Five day suspension and expulsion from baseball for remainder of year not affirmed for failure to follow board discipline policy (90:877, C.R.R.)

PUPILS

Attendance at graduation exercises may be denied because of indictment on drug charges (90:June 22, Gilchrist, appeal dismissed as moot, St. Bd. 90:Nov. 19)

Attendance policy

No expungement of failing grade; retesting or replacement tutoring ordered where student was suspended and missed final review (90:630, M.L.A.)

Board decision to bar student from participation in graduation exercises as punishment for willful and conscious disobedience of chaperon while on class trip was not arbitrary, capricious or unreasonable (91:990, A.T.)

Board decision to suspend students for fighting based on three nights of hearings and testimony of 28 witnesses was not arbitrary, capricious or unreasonable (91:342, M.G., dec. on motion, aff'd 92 N.J.A.R.2d (EDU) 38, aff'd St. Bd. (except on issue of res judicata) 92 N.J.A.R.2d (EDU) 364)

Child's vandalism of school property giving rise to vicarious liability of parent was "accident" and therefore "occurrence" under homeowner's insurance policy. Property Casualty Co. of MCA v. Conway, 284 N.J. Super. 622 (App. Div. 1995)

Off-campus conduct: Stay granted for board's decision to bar student from graduation after student was issued citation for off-campus out-of-district drinking after prom (98:June 19, S.H.)

Off-campus conduct: Sufficient nexus exists between citation for underage drinking at party and school prom for school's discipline policy to reach across municipal boundaries (98:June 19, S.H.)

Student bears burden of demonstrating that board decision to expel was arbitrary, capricious or unreasonable (95 N.J.A.R.2d (EDU) 275, K.O.H., aff'd St. Bd. 96 N.J.A.R.2d (EDU) 445)

Suspension and expulsion cases

Alcohol consumption: Stay of expulsion from baseball denied (90:877, C.R.R.)

Assault, lying, foul language and threats; suspension upheld (98:May 22, W.W.)

Assaulting or threatening teaching staff member; suspension upheld (91:1823, K.L.)

Assaulting staff members (96 N.J.A.R.2d (EDU) 567, Garrity) (96 N.J.A.R.2d (EDU) 820, D.O'G.)

PUPILS

Board decision to exclude student from participation in graduation pursuant to policy excluding students suspended for more than 15 days from graduation upheld (93:June 16, Mosley)

Board's decision to suspend rather than expel pupil who assaulted teacher not improper or unethical (97 N.J.A.R.2d (EDU) 345, Barna, dismissed St. Bd. 97:Nov. 5) (See also 96 N.J.A.R.2d (EDU) 598)

Board failed to comply with N.J.S.A. 18A:37-2.1 when it failed to conduct expulsion proceedings for students who assaulted teachers. Board ordered to immediately conduct expulsion hearings consistent with due process and state and federal guidelines regarding classified students. (96 N.J.A.R.2d (EDU) 567, Garrity)

Board's failure to hold expulsion hearing for student who assaulted teacher not improper where behavior primarily caused by disability. Regulation in place at time required evaluation of non-disabled students prior to expulsion. (96 N.J.A.R.2d (EDU) 598, Barna) See also (97 N.J.A.R.2d (EDU) 345, dismissed St. Bd. 97:Nov. 5)

Bomb threat: Discipline imposed (home instruction, community service, letter of apology) on student involved in a bomb threat was not arbitrary, capricious or unreasonable (96 N.J.A.R.2d (EDU) 897, L.F.)

Controlled dangerous substance: Ultimate sanction of expulsion of 12 year old pupil who sold substance believed to be LSD to another student unreasonable under particular facts of case, including age of pupil; Board not required to reinstate pupil but directed to locate appropriate local or county-based education program (97:May 19, C.S., aff'd with clarification of legal standard of review of Board decision St. Bd. 98:Apr. 1)

Decision by board to make Alternative High School only available to student for completion of his education following suspension was not arbitrary, capricious or unreasonable (91:1823, K.L.)

Emergent relief denied to expelled student seeking reinstatement. No likelihood of success on the merits on appeal of expulsion for assault of student. Crowe standard not met. (96:March 6, D.C.)

PUPILS

- Emergent relief denied to student. Board may not decline to enroll student whom it believes to constitute a possible threat to student safety. Student had previously been arrested for marijuana possession at parochial high school. May impose interim suspension for period not to exceed 21 days following preliminary hearing. (96 N.J.A.R.2d (EDU) 594, K.B., aff'd State Board 96 N.J.A.R.2d (EDU) 742, aff'd App. Div. unpublished op. Dkt. No. A-7528-95T2, June 18, 1997)
- Emergent relief denied to suspended pupil seeking immediate reinstatement (95:April 12, R.L.)
- Emergent relief granted. Crowe standard met. Student reinstated. Demonstrated irreparable harm in that she was placed on homebound instruction indefinitely without a remedy at law. Demonstrated likelihood of success on the merits based on board's failure to follow statute and controlling case law. (96 N.J.A.R.2d (EDU) 619, C.F.)
- Emergent relief granted to student expelled from Vocational-Technical program, seeking to participate in high school classes (97:March 7, E.L.)
- Emergent relief: parent's petition for stay of 10th grade pupil's expulsion for marijuana, denied as petitioners have failed to meet the standard for such relief (97:July 31, S.C.B. and L.A.B.)
- Exclusion from senior activities, including senior prom and graduation, for assault on teacher/cheerleading coach was not arbitrary, capricious or in bad faith. (96 N.J.A.R.2d (EDU) 820, D.O'G.)
- Expulsion upheld for punching teacher (95 N.J.A.R.2d (EDU) 275, K.O.H., aff'd St. Bd. 96 N.J.A.R.2d (EDU) 445)
- Expulsion upheld; student assaulted another student, brandished large knife and threatened welfare of fellow students and teachers (95 N.J.A.R.2d (EDU) 110, D.B., aff'd St. Bd. 95 N.J.A.R.2d (EDU) 253)
- Four month suspension for assaulting a teacher was not arbitrary and capricious (97:Aug. 4, P.C.)
- If a suspension is to last for more than 10 days, pupil is entitled to a full hearing within 21 days from the start of the suspension with a full record being kept. (96 N.J.A.R.2d (EDU) 619, C.F.)

PUPILS

- Nine day short term suspension of pupil for slam dancing and striking a teacher upheld (93 N.J.A.R.2d (EDU) 580, G.H.)
- One-day suspension for use of profanity against student upheld (98:Feb. 17, Toms River, aff'd St. Bd. 98: July 1)
- Parents allegation that suspension of daughter was racially motivated were out of time as she sought review six months after the fact (97:Dec. 8, J.H.)
- Pupil's emergent request for stay of district's decision to suspend him and bar his participation at graduation, is granted; where suspension was ordered on basis of mere summons that pupil was drinking off-campus (98:June 19, Hickey)
- Pupil's request for stay of district's 10-day suspension for altercation on bus, denied (97:Nov. 3, K.W.)
- School board member's threat to kill band director reasonable grounds for two week suspension from band activities and psychological exam (96 N.J.A.R.2d (EDU) 298, McB)
- Settled after ALJ found that expulsion for possession of homemade chinese stars was too severe under the circumstances (95:Nov. 6, W.Q.)
- Sexual remarks and inappropriate touching: 4-month suspension with home instruction upheld (95 N.J.A.R.2d (EDU) 296, R.L.)
- Short term suspensions for foul language, defiance of authority and fighting after school hours off school grounds upheld (92 N.J.A.R.2d (EDU) 194, R.F.)
- Stay denied as premature where pupil returns to school after expiration of 21-day suspension and school district has not held due process hearing or taken any further adverse action against pupil (95:Sept. 18, M.B.)
- Stay for emergent relief denied: expulsion for bomb threat upheld (96:Aug. 9, M.R.)
- Student's right to procedural due process not violated by expulsion from summer school without hearing; given limited duration of summer school, fundamental fairness requires only notice and opportunity to be heard (94 N.J.A.R.2d (EDU) 70, Ivory)

PUPILS

Suspensions in excess of 10 days. Due process requires (1) Written notice of the charges; (2) Written statement of the factual allegations on which the suspension is based; (3) Name and address of persons with knowledge of relevant facts; (4) Copies of relevant documents; (5) Notice of a BOE hearing where the student may confront any witness or evidence against her and call witnesses and offer evidence in her defense; (6) Provide a BOE hearing immediately after which the board will issue a decision. (96 N.J.A.R.2d (EDU) 619, C.F.)

Suspension from April to end of school year for selling drugs on school property; emergent relief reinstating student denied (90:June 1, M.D.)

Ten-day suspension for fighting upheld (98:May 4, P.J.)

Three-day suspension for use of profanity against teacher upheld (92 N.J.A.R.2d (EDU) 433, S.G.)

Ten-day detention imposed on pupil for his role as driver of students who disrupted graduation by streaking through ceremony upheld (93 N.J.A.R.2d (EDU) 113, R.W.)

Records of

Administrative Law Judge has no power to order the release of a pupil record (90:112, Fargo, St. Bd. denied motion to vacate, 91:2548)

Board released former student's records in response to subpoena. Board not deliberately indifferent or grossly negligent in failing to train employees about differences between a subpoena and a court order. Britton v. Toms River Regional, Dkt. No. A-1442-96T5, Dec. 2, 1997, unpublished opinion.

Decision to correct pupil's records to reflect both his legal name and name originally registered under is not name change but rather ministerial acknowledgment of his having been enrolled for ten years under a different name (91:2474, Phillips)

Provision of statistical enrollment information to commercial network not abuse of pupil records; however, board directed to ensure that abuse does not occur in future (92 N.J.A.R.2d (EDU) 481, Whittle Communications, St. Bd. aff'd in holding limited to facts of this case, 93 N.J.A.R.2d (EDU) 90, aff'd App. Div. unpub. op. (Dkt. No. A-2165-92T5, Aug. 2, 1994), certif. denied, 139 N.J. 184 (1995))

PUPILS

Teacher's telephone calls to parents did not improperly influence school board election. Pupil records issue (96 N.J.A.R.2d (EDU) 296, Carteret)

Under N.J.A.C. 6:3-2.7(a), noncustodial natural parent has standing to challenge board decision to correct pupil's records to reflect both his legal name as originally registered (91:2474, Phillips)

Whether district must obtain written consent of parent to send records to out-of-district schools to see if they would accept pupil from district, resolved through settlement (95:September 28, Lenape)

Residence for school purposes

Generally

Adoptive family no longer liable for child's tuition expenses after surrendering custody. Financial responsibility rests with DOE (96 N.J.A.R.2d (EDU) 288, Buena)

Child living with guardians who have assumed full care entitled to FAPE in district (96 N.J.A.R.2d (EDU) 434, MacKinney)

County jail does not qualify as a present district of residence for purposes of determination of tuition responsibility (St. Bd. 00:July 5, Somerville, reversing 97 N.J.A.R.2d (EDU) 352)

Pupil entitled to attend schools in district free of charge. Evidence showed family had no intent to live in investment property outside district (96 N.J.A.R.2d (EDU) 458, Norcross)

Special education pupil: although IDEA issues were not subject of residency dispute involving special education pupil, the IDEA was nonetheless implicated where board of education also sought tuition reimbursement from "affidavit pupil"; parents were awarded legal fees as prevailing party. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)

PUPILS

Affidavit pupils

A board of education may not mechanically deny a pupil admission under N.J.S.A. 18A:38-1(b) for failure to provide accompanying documentation to support the sworn statements, but must give consideration of the particular circumstances; further, when a district excludes a pupil from the district's schools on the basis of residency, due process requires that the district provide the pupil with information about the appeals process; recommends that Commissioner of Education promulgate regulations. J.A. v. South Orange-Maplewood Bd. of Ed., 318 N.J. Super. 512 (App. Div. 1999), aff'g w/mod. St. Bd. 97:Aug. 6, aff'g w/mod. 97 N.J.A.R.2d (EDU) 370.

Adoptive family no longer liable for child's tuition expenses after surrendering custody. Financial responsibility rests with DOE (96 N.J.A.R.2d (EDU) 288, Buena)

ALJ's factual findings satisfy the statutory purpose for requiring a sworn statement from mother under N.J.S.A. 18A:38-1b(1). (96 N.J.A.R.2d (EDU) 632, R.G., aff'd State Board 96:August 7)

Appeals: Commissioner's decision regarding student's entitlement to free education in district pursuant to N.J.S.A. 18A:38-1 is a final decision pursuant to N.J.A.C. 6:2-1.1(a), and thus subject to the 30-day limit for appeals; however, particular circumstances may prevent time-bar for appeal (98:May 6, A.McG., St. Bd. remanding to Commissioner)

Child entitled to free education in district where student lived with grandparents; father lived in another state and could not care for student's needs; therefore student not residing with grandparents for sole purpose of obtaining public education (96 N.J.A.R.2d (EDU) 913, C.N.)

Credible evidence supports a finding that petitioner's niece was residing with her due to family and economic hardship (97:Aug. 6; aff'd with modification App. Div. 312 N.J. Super. 512 (App. Div. 1999) (as amended on reconsideration April 9, 1999) (refusing admission without informing of grounds for decision violates student's due process rights)

PUPILS

- Due process: refusing admission of student without informing of grounds for decision violates students due process rights; board must inform of decision, advise how to appeal and of right to attendance while petition is pending. J.A. v. South Orange-Maplewood Bd. of Ed., 312 N.J. Super. 512 (App. Div. 1999) (as amended on reconsideration, April 4, 1999)
- Evidence supports finding that parents are "not capable of supporting" the pupil "due to...economic hardship" (98:May 11, H.O.)
- Family or economic hardship sufficient for admission as affidavit pupil (97 N.J.A.R.2d (EDU) 370, J.A., aff'd St. Bd. 97:Aug. 6)
- Family or economic hardship under N.J.S.A. 18A:38-1(b) must be of such a nature that the parents or guardian are not capable of supporting the child or providing care as a result of the hardship. (96 N.J.A.R.2d (EDU) 628, J.B., rem'd State Board 96:December 4, decision on remand Commissioner 97:February 11, rem'd State Board 97: September 3)
- Grandmother's legal custody of student did not entitle him to attend school in her district: father supported child and guardianship was obtained to comply with requirements of grandmother's lease (95 N.J.A.R.2d (EDU) 226, D.W., appeal dismissed for failure to perfect, 95 N.J.A.R.2d (EDU) 357)
- Minor siblings held to come under *de facto* guardianship of adult sister where sister and other adult siblings were sole caregivers; mother and father did not live in district nor contribute in any way to the care or upkeep of sons and daughters (96 N.J.A.R.2d (EDU) 1012, G.A.)
- Payment of tuition ordered for illegal attendance of affidavit student who did not attend prehearing conference or answer board's counterclaim (96 N.J.A.R.2d (EDU) 921, M.D.)
- Petitioners entitled to a free public education where parents are living in Jordan because of father's illness and children are being supported gratis by family members (97 N.J.A.R.2d (EDU) 476, W.M.I.)

PUPILS

Pupil, a U.S. citizen who previously lived with his parents in South Korea and was later sent to live with his aunt and uncle in Tenafly in order to be educated in the U.S., was entitled to a free education in Tenafly as an affidavit pupil. The Appellate Division found no abuse of discretion in the decision of the State Board to permit P.B.K. to supplement the record after the initial decision to demonstrate financial hardship. P.B.K., on behalf of minor child E.Y. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001); aff'g St. Bd. 00:Jan. 5, rev'g Commissioner 97:Oct. 14); See also 98:April 1, St. Bd. granting motion to supplement record.

Pupil entitled to free education where grandmother has legal custody. Parents owe tuition for attendance up to date that grandmother became guardian (97 N.J.A.R.2d (EDU) 124, V.H., aff'd St. Bd. 97 N.J.A.R.2d (EDU) 554)

Pupil entitled to free education where she is domiciled with grandmother. Parent who merely maintains relationship with pupil but is unable to care for pupil, does not establish domicile (97 N.J.A.R.2d (EDU) 83, J.P.)

Pupils did not have affidavit pupil status where they resided with parents on weekends and summers, parents reported children as dependents on income tax, provided health benefits, spending money, and clothing, and where third party's rental property was owned by parent who deferred rent payment (97 N.J.A.R.2d (EDU) 11, Greater Egg Harbor, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 307, aff'd App. Div. 97 N.J.A.R.2d (EDU) 307)

Student domiciled with grandparents allowed to attend school in grandparents school district; not affidavit requirements (96 N.J.A.R.2d (EDU) 913, C.N.)

Student entitled to attend school in the district as an "affidavit student" because petitioners have proven that they are supporting the student gratis due to family and economic hardships (97:Oct. 29, J.S.C. and V.C.)

PUPILS

- Student residing with aunt who had a custody order and power of attorney entitled to free public education in district (97 N.J.A.R.2d (EDU) 267, L.A., aff'd St. Bd. 97 N.J.A.R.2d (EDU) 554)
- Student residing with uncle is entitled to free education in district where pupil's parents reside in Korea but student is U.S. citizen; hardship was due to parents financial inability to continue child's schooling in private international school in Korea, and absence of any other school in U.S. for student. P.B.K. v. Tenafly Bd. of Ed., App. Div. (Dkt. No. A-3059-99T3, August 2, 2001, _____ N.J. Super. _____ (App. Div. 2001), aff'g 2000:Jan. 5, St. Bd., rev'g 97:Oct. 14. See also 98:April 1, St. Bd. granting motion to supplement record.
- Student who lived with and was supported solely by district resident in parens patriae relationship entitled to free public education even though his mentally incompetent father refused to sign affidavit (95 N.J.A.R.2d (EDU) 39, Gunderson, aff'd St. Bd. 95 N.J.A.R.2d (EDU) 132)
- Students are entitled to a free public education where the record shows that; they are supported gratis by petitioners due to family hardship, as their concert violinist mother cannot care for them due to her traveling schedule (97:Nov. 10, Borough of Fort Lee, aff'd St. Bd. 98:March 4, aff'd App. Div. unpublished op. Dkt. No. A-4464-97T2, April 19, 1999)
- Supplemental affidavit - uncle with whom student resided, was permitted to supplement record to demonstrate hardship and letters of guardianship to State Board although original affidavit indicated only desire to attend district's schools. P.B.K., on behalf of minor child E.Y. v. Bd. of Ed. of the Borough of Tenafly, 343 N.J. Super. 419 (App. Div. 2001); aff'g St. Bd. 00:Jan. 5, rev'g Commissioner 97:Oct. 14) See also 98:April 1, St. Bd. granting motion to supplement record.
- Tuition must be paid to board of education for students enrolled in but not domiciled in school district (96 N.J.A.R.2d (EDU) 249, Ciabattari)

PUPILS

- Defined (96 N.J.A.R.2d (EDU) 37, Thomas)
- Adoptive family no longer liable for child's tuition expenses after surrendering custody. Financial responsibility rests with DOE (96 N.J.A.R.2d (EDU) 288, Buena)
- Board can "disenroll" students whose family moved outside the school district and order payment of tuition for students following their move outside the district (96 N.J.A.R.2d (EDU) 37, Thomas)
- Board obligated to pay for multiply handicapped student's residential placement; family maintained domicile in district following father's transfer and district provided student's brother with T&E education during period in question (95 N.J.A.R.2d (EDU) 78, M.D., aff'd St. Bd. 95 N.J.A.R.2d (EDU) 154)
- Board's decision to deny enrollment to students was proper as petitioner failed to appear and carry the burden of proving the board's decision to deny enrollment was improper (97:April 7, Borough of Fort Lee) (97:April 7, Y.R.L.)
- Children resided with father where separated parents so agreed, and parents hoped ultimately to reconcile and reside together (90:385, D.R. aff'd St. Bd. 90:409, aff'd App.Div. unpub. op. Dkt. No. A-6597-89T3, June 26, 1991)
- Choice of domicile determinative act, not choice of school districts (96 N.J.A.R.2d 497, Sauro)
- District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited (98:May 26, Livingston, aff'd as modified, St. Bd. 99:Feb. 3, dec. on motions, St. Bd. 99:April 7, stay denied, St. Bd. 99:June 2)
- District of residence for school purposes of homeless student shall be district in which parent or guardian last resided prior to becoming homeless (96 N.J.A.R.2d (EDU) 1003, L.C.)
- Divorced parents demonstrated intent to establish district of father's domicile as the school district of record; out-of-state placement of autistic child does not change domicile, regardless of fiscal constraints thus imposed (98:June 22, Burlington Twp.)
- Documentary proof and witness testimony considered and held to be insufficient (98:June 18, T.B.W.)

PUPILS

- Documentary proof of residency considered and held to be insufficient under circumstances: driver's license, joint bank statement, affidavit of mother indicating living within district and sole support of student; grandfather's 1992 tax return listing mother and student as dependents (96 N.J.A.R.2d (EDU) 18, S.J.S., dismissed St. Bd. 96:March 6, dismissal aff'd App. Div. unpub. op. Dkt. No. A-4789-95T3, petition for certif. den. 149 N.J. 141 (1997). See also, 319 N.J. Super. 528 (App. Div. 1999) involving grandfather's tuition liability.
- Domicile determined by geographical location of bulk of condo unit and assessment of taxes (97 N.J.A.R.2d (EDU) 334, Zadran, motion granted St. Bd. 97:May 7, rev'd St. Bd. 98:April 1)
- Domicile follows that of the father, absent a factual situation undercutting that principle (90:385, D.R., aff'd St. Bd. 90:409, aff'd App. Div. unpub. op. Dkt. No. A-6597-89T3, June 26, 1991)
- Domicile is the district in which the dwelling is located where the lot purchased straddles two districts (96 N.J.A.R.2d (EDU) 854, H.M., rev'd in part as to 1991-92 through 1995-96 tuition, St. Bd. 97 N.J.A.R.2d (EDU) 418)
- Domicile of unemancipated minor is with father; since father never resided at apartment rented for purpose of establishing residency within district, daughter not entitled to free education in town (93 N.J.A.R.2d (EDU) 128, I.P.)
- Domicile or residence of the child will follow that of the parent unless contrary evidence exists (96 N.J.A.R.2d (EDU) 37, Thomas)
- Domicile, parents alleged homelessness, however, failed to properly defend board's decision to remove pupil from district. Commissioner dismissed for failure to prosecute (96 N.J.A.R.2d (EDU) 746, N.O.)
- "Domicile" requires proof of physical presence and the intention to remain there indefinitely (92 N.J.A.R.2d (EDU) 96, Kintos, dec. on remand, 93 N.J.A.R.2d (EDU) 837, stay denied, 93 Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316 mod. o.g. App. Div. 96 N.J.A.R.2d (EDU) 1)
- Domicile was with mother despite student's temporary residence with his father (97:Sept. 10, Borough of Roselle Park)

PUPILS

- Domicile within district established as of the date custody was granted to relative who lived in the district; tuition owed to district for period proceeding the custody order (97:Dec. 24, South Orange-Maplewood)
- Domicile within district established; objective indicia including birth certificates, bills and driver's license support mother's subjective statement as to domicile (95 N.J.A.R.2d (EDU) 49, R.A.)
- Domicile within district not established; no evidence presented to corroborate mother's assertion that she re-established residency in Lower Camden Regional School District (97 N.J.A.R.2d (EDU) 374, M.T.)
- Emergency relief granted to pupil for readmission, although petition was filed beyond 21-day statute of limitations set forth in N.J.S.A. 18A:38-1 (95:Nov. 27, E.R.)
- Emergent relief denied to pupil wishing to complete senior year; fact that actual location of residential structure was not in district boundaries, affects prospect for success on merits (95:Oct. 10, Polo)
- Emergent relief granted. Board required to provide round trip transportation to MAST program for newly resident student. MAST legislation so provides. Commissioner agrees after full hearing. (96 N.J.A.R.2d (EDU) 775, K.F.)
- Emergent relief granted in contested domicile case, applying Crowe, where irreparable harm to pupil would occur in removal from district (96:Feb. 9, N.C.)
- Emergent relief granted in contested domicile case, applying Crowe, where irreparable harm to pupil would occur if admission to district denied (94:Aug. 30, M.D.)
- Equitable estoppel did not operate to prevent board from collecting tuition for pupils illegally attending district where testimony did not establish that board knew, or should have known, that pupils were attending under false affidavits (97 N.J.A.R.2d (EDU) 11, Greater Egg Harbor, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 307, aff'd App. Div. 97 N.J.A.R.2d (EDU) 307)
- Evidence supports finding that mother and children changed domicile from in-district to out-of-district following mother's marriage (95 N.J.A.R.2d (EDU) 74, A. Mc.G., dismissed St. Bd. untimely 96 N.J.A.R.2d (EDU) 140, issue of dismissal remanded App. Div. 98:Feb. 10, decision on remand St. Bd. 98:May 6)

PUPILS

- Existing record demonstrates that parent never entered into a contract to purchase a home in the district; did not lease a home in the district and did not reside at address given (97 N.J.A.R.2d (EDU) 303, Spruill)
- Failure to appear constitutes abandonment of position; board entitled to tuition for that period of time petitioner's granddaughter was ineligible to attend school in the district (97:March 7, M.M.)
- Failure to initiate an action to remove children alleged not to be domiciled in the district from May 1987 to July 1990 was both unexplained and inexcusable (92 N.J.A.R.2d (EDU) 96, Pirozek, dec. on remand 93 N.J.A.R.2d (EDU) 837, stay denied 93:Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316 mod. o.g. App. Div. 96 N.J.A.R.2d (EDU) 1 (Kintos)
- Failure to prosecute; pupil not eligible to attend (95:July 27, M.D.)
- Family or economic hardship sufficient for admission as affidavit pupil (97 N.J.A.R.2d (EDU) 370, J.A., aff'd St. Bd. 97:Aug. 6)
- Father's temporary residence in investment property did not alter domicile of family. Father's residence not necessarily determinative of pupils' domicile (96:Feb. 16, C.L.N.)
- Grandparent/board member ordered to pay tuition for nonresident granddaughter prorated to the time of ineligible attendance. (96 N.J.A.R. 2d (EDU) 680, T.P., appeal dismissed for failure to perfect State Board 96: October 2)
- Grandparent's guardianship established domicile for student. Lack of full support not dispositive (97 N.J.A.R.2d (EDU) 83, J.P.)
- Homeless status will not cease merely because students are residing with relatives, rather there must be a showing that student temporarily lacks a fixed, regular and adequate residence (96 N.J.A.R.2d (EDU) 1003, L.C.)
- Injunction prevents student domiciled in Englewood Cliffs from attending high school in Tenafly even though father employed by Tenafly district (94 N.J.A.R.2d (EDU) 561, R.S.)

PUPILS

Institutionalized children

Board disputing Division of Finance determination must demonstrate by preponderance of credible evidence that pupils were not residents of district at time of incarceration (93 N.J.A.R.2d (EDU) 336, Atlantic City)

Incarcerated children (92 N.J.A.R.2d (EDU) 545, Atlantic City)

Parents need not reimburse district for children's tuition for period when family did not reside in district due to construction problem with their new home; showing of good-faith intention to be domiciled in district was sufficient (97 N.J.A.R.2d (EDU) 82, Livingston, rev'g St. Bd. 95 N.J.A.R.2d (EDU) 585, aff'g 95 N.J.A.R.2d (EDU) 582)

Regular, partial use by family of condo as residence but not as main domicile does not qualify children to receive free public education in condo's district (95 N.J.A.R.2d (EDU) 214, Whasun Lee, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 77, aff'd and remanded on issue of equitable estoppel and unclean hands, re: tuition, App. Div. 97 N.J.A.R.2d (EDU) 78, remanded St. Bd. 96:Dec. 4, on remand, ALJ determined equitable estoppel did not prevent board from recovering tuition for entire period of ineligible attendance because parent came to table with unclean hands; commissioner adopted ALJ findings in part but reversed on issue of unclean hands barring principle of equitable estoppel for all but one year of ineligible attendance; St. Bd. affirmed with clarification that record did now show that for 1990-94 period the parent understood that owning property in town that was rented did not entitle children to attend school tuition-free; App. Div. (Docket No. A-5978-98T2, Aug. 7, 2000), reversed and remanded to St. Bd. for reconsideration of its decision giving due deference to ALJ credibility determinations, certif. den. 165 N.J. 677 (2000), decision on remand, St. Bd. 02:July 2)

Sister who supported and provided for her brother successfully established entitlement of her brother to a free education in her district of residence (98:April 16, M.H.R.)

PUPILS

- State Facilities Planning Act, N.J.S.A. 18A:17B-1, et seq., where pupil with educational disability, whose parent was homeless, was residing in institution, private-school tuition to be paid by district of residence, i.e., present district of residence of parent with whom pupil last lived. N.J.S.A. 18A:7B-12. Remanded by Commissioner to determine whether DYFS's placement outside district, without district input, was due to emergent circumstances, justifying nonconformance with N.J.A.C. 6:28-7.4(b)5(ii) (97 N.J.A.R.2d (EDU) 134, Prospect Park)
- Landlord of an in-district residence who is domiciled out of district not entitled to tuition free school attendance for his daughter, nor to tuition abatement based on property taxes paid on rental property (96 N.J.A.R.2d (EDU) 804, S.P., stay denied St. Bd. 96:Sept. 4, aff'd St. Bd. 96:Oct. 2, aff'd App. Div. unreported opinion Oct. 16, 1997)
- Mother not capable of supporting or providing care for child due to family or economic hardship (96 N.J.A.R.2d (EDU) 632, R.G., aff'd St. Bd. 96:Aug. 7)
- Parent failed to prove by preponderance of the evidence that son was a resident of Paramus when all addresses listed for student and parent were outside Paramus (96:Dec. 19, S.A.)
- Parent ordered to pay tuition where pupil resided outside of district (97 N.J.A.R.2d (EDU) 281, Egg Harbor)
- Parent owes tuition if she fails to provide proof of domicile (97 N.J.A.R.2d (EDU) 303, Spruill)
- Parents with shared custody jointly and severally liable for tuition @ 1/180 of annual per pupil cost per diem. Pupils domiciled in Clifton 9/93-3/94, Passaic 3/94-6/94. (96 N.J.A.R.2d 497, Sauro)
- Payment of tuition ordered for illegal attendance of affidavit student who did not attend prehearing conference or answer board's counterclaim (96 N.J.A.R.2d (EDU) 921, M.D.)
- Petition dismissed as petitioner was twice provided with an opportunity to be heard and both times failed to appear; tuition assessed against petitioner in amount of \$6,422.00 (97:April 17, P.V.)

PUPILS

- Petition of appeal is appropriately dismissed where petitioner was twice afforded an opportunity to be heard and both times failed to appear. Tuition assessed for period of ineligible attendance (97:April 17, P.V.)
- Petitioner established through a preponderance of the evidence that he was domiciled in Cherry Hill and any entitlements which flow from that fact must be provided (97:Sept. 22, B.M.)
- Petitioner failed to defend or otherwise show cause why her children were by law entitled to attend the school district, petition admitted the children were not residents or domiciled in the school districts: students were ordered to be removed from the school districts (96 N.J.A.R.2d (EDU) 37, Thomas)
- Petitioner met the burden of proof in establishing that she was incapable of providing care for her son due to family or economic hardship and that his grandparents were supporting him gratis (97:July 28, C.M., aff'd St. Bd. 97:Dec. 3)
- Petitioner will be assessed tuition for period of time not a resident in the district where the petitioner fails to prosecute the case (97 N.J.A.R.2d (EDU) 155, R.J.)
- Petitioner's children not domiciled in Belleville where petitioner's condo unit was located primarily in Newark (97 N.J.A.R.2d (EDU) 334, Akbar Zadrán, motion granted, St. Bd. 97:May 7, reversed St. Bd. 98:April 1)
- Petitioners satisfied the requirement of N.J.S.A. 18A:38(b)1 in establishing that they were supporting the students gratis due to the natural parents economic and physical hardship (97 N.J.A.R.2d (EDU) 476, W.M.I. and A.I.)
- Pupil may have many residences, however, Commissioner looks to where student is domiciled to determine district where student may receive free public education (97 N.J.A.R.2d (EDU) 122, R.N., aff'd St. Bd. 97 N.J.A.R.2d 553)
- Pupil's attorney not timely notified of board's decision. 21 day appeal statute of limitations waived. Remand to OAL for hearing (96 N.J.A.R.2d (EDU) 641, H.S.)

PUPILS

Pupils did not have affidavit pupil status where they resided with parents on weekends and summers, parents reported children as dependents on income tax, provided health benefits, spending money, and clothing, and where third party's rental property was owned by parent who deferred rent payment (97 N.J.A.R.2d (EDU) 11, Greater Egg Harbor, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 307; aff'd App. Div. 97 N.J.A.R.2d (EDU) 307)

Pupils entitled to attend schools in district free of charge. Evidence showed family had no intent to live in investment property outside district (96 N.J.A.R.2d (EDU) 458, Norcross)

Respondent presented sufficient evidence of homelessness during November and December 1994; from January 1995 to the present evidence shows that respondent is domiciled in Scotch Plains and therefore petitioner is owed tuition for that period of time. Further, respondent's son is ordered removed from Madison public schools (97:July 11, Madison, aff'd St. Bd. 97:Dec. 3); See also, 98: Jan. 9 (aff'd St. Bd.)

School district responsible for FAPE for child who lives with grandparents who are not legal guardians and who do not provide 100% support (96 N.J.A.R.2d (EDU) 285, J.R.) (See also J.H.R. v. East Brunswick, 308 N.J. Super. 100 (App. Div. 1998))

State Residential Treatment Facility: Where student resides in treatment facility and parents no longer reside in New Jersey, it is then responsibility of State to pay tuition for placement (St. Bd. 00:June 7, Wildwood, rev'g 96:Dec. 30) (See also remand 95:Oct. 6)

Student and mother who resided with relations and friends out of necessity were not homeless (93 N.J.A.R.2d (EDU) 895, Maurice River, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 306)

Student is not homeless, and not entitled to go to last district of residence, where student does have a fixed regular and adequate residence (96 N.J.A.R.2d (EDU) 1003, L.C.)

Student living with non-relative quasi-guardian is eligible to attend school within guardian's school district if he establishes economic hardship (95 N.J.A.R.2d (EDU) 476, S.L.)

PUPILS

- Student not entitled to a free public education where petitioner failed to produce any evidence that student was residing with step-father who was a domiciliary of the district (97 N.J.A.R.2d (EDU) 281, Egg Harbor)
- Student's domicile is determined by domicile of custodial parent even if custodial parent is occasionally incapable of caring for child (95 N.J.A.R.2d (EDU) 506, Summit City Bd. of Ed.)
- Students not domiciled in district must remit tuition for period of ineligible attendance (97 N.J.A.R.2d (EDU) 374, M.T.)
- Students who were living with petitioner gratis, while parents were attempting to emigrate from Taiwan were entitled to free public education (97:July 10, G.L.)
- Sufficient showing of hardship entitles adopted student free education in adoptive family's school district (96 N.J.A.R.2d (EDU) 244, D.E.)
- Temporary residence provision of 18A:38-1(d) did not apply; only applies where a person would not otherwise have a domicile (97 N.J.A.R.2d (EDU) 78, Lee, App. Div. aff'g and remanding St. Bd. 97 N.J.A.R.2d (EDU) 77, aff'g 95 N.J.A.R.2d (EDU) 214)
- Testimony by parent as to intended domicile must be weighed for credibility against other indicia of domicile including tax returns and telephone records (92 N.J.A.R.2d (EDU) 96, Kintos, dec. on remand, 93 N.J.A.R.2d (EDU) 837, stay denied 93:Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316, aff'd as mod. App. Div. 96 N.J.A.R.2d (EDU) 1. Motion for reconsideration granted Dkt. No. A-4944-93T5, Nov. 15, 1995 - Board barred from recovery 87-88, 88-89, 89-90)
- The unique and compelling circumstances in this case constitute family hardship sufficient to meet the standard of N.J.S.A. 18A:38-16(1), notwithstanding the fact that J.B.'s parents are financially capable of supporting him (97:Feb. 11, J.B.)

PUPILS

Tuition: Grandfather who was driving force in grandchild's attending school even though he did not reside in district, liable for tuition for 1994-95 school year; N.J.S.A. 18A:38-1(b)(2) enabling district to seek reimbursement from "parent or guardian" effective Jan. 11, 1994 not intended to apply retroactively (96 N.J.A.R.2d (EDU) 18, S.J.S., dismissed St. Bd. 96:March 6, aff'd App. Div. unpub. op. Dkt. No. A-4799-95T3, Jan. 9, 1997); See also, S.J.S., 319 N.J. Super. 528 (App. Div. 1999) for subsequent decision on tuition reimbursement)

Tuition to be assessed against a parent is determined by multiplying the school district's annual per pupil cost by the number of days of actual ineligible attendance from the first date of ineligible attendance up to and inclusive of the date of the Commissioner's decision (96 N.J.A.R.2d (EDU) 37, Thomas)

Where a parent or guardian is chronically transient, i.e. not homeless but having a series of short term residencies, tuition for a student placed in a state facility is the responsibility of the parent or guardian's district of present residence, if residence can be determined (St. Bd. 00:July 5, Somerville, reversing 97 N.J.A.R.2d (EDU) 352)

Where no credible evidence found to support claim that student resided in district, appeal will be dismissed and parent assessed costs of tuition (96 N.J.A.R.2d (EDU) 999, H.C.J.) (96 N.J.A.R.2d (EDU) 1009, Cebula)

Year round occupation of seasonal campground in violation of campground bylaws and local ordinances shows intent sufficient to establish domicile for school purposes (93 N.J.A.R.2d (EDU) 461, K.K. & P.K.)

Searches and seizures

Drug testing policy for student athletes (mandatory and random) upheld. Vernonia v. Acton, 115 S.Ct. 2386 (1995)

High school vice principal not required to give Miranda warning, had reasonable suspicion to search student suspected of possessing drugs. State v. Biancamano, 284 N.J. Super. 654 (App. Div. 1995)

High school vice principal not required to reveal identity of confidential informant. State v. Biancamano, 284 N.J. Super. 654 (App. Div. 1995)

PUPILS

School district enjoined from screening its athletes for drug use, at least until it provides a strong factual basis for determining that tests are needed. Upheld 8/26 TRO. Wilson v. Ridgefield Park Bd. of Ed., Dkt. No. L-7984-97, Oct. 28, 1997.

Search of student's book bag by assistant principal reasonable since based on report by another student and assistant principal's personal knowledge that student had been disciplined for possession of CDS (Moore, 254 N.J. Super. 295, (App. Div. 1992))

Search of student's hand luggage prior to field trip not violative of Fourth Amendment rights (Desilets, 265 N.J. Super. 370 (App. Div. 1993), aff'd as mod. App. Div. 96 N.J.A.R.2d (EDU) 1. Motion for reconsideration granted Dkt. No. A-4944-93-T5, Nov. 15, 1995 - Board barred from recovery 87-88, 88-89, 89-90)

Transportation

Board of education owed tuition from nonresident student attending free public school (96 N.J.A.R.2d (EDU) 536, Livingston)

Board refusal to reestablish former bus stop was arbitrary and capricious (93 N.J.A.R.2d (EDU) 798, Peary, St. Bd. rev'g 93 N.J.A.R.2d (EDU) 167)

Board's refusal to extend minibus service to petitioners was arbitrary and capricious (97 N.J.A.R.2d (EDU) 416, Shrewsbury, State Board rev'g 96 N.J.A.R.2d (EDU) 795)

Board responsible for transportation of student enrolled in Vocational Technical School, despite the fact that student is not enrolled in any district school but is rather home schooled for half day (97:Nov. 5, Jack Jacobs, aff'd in part, remanded in part, St. Bd. 98:March 4)

Emergent relief denied; board not required to provide transportation while question of distance from home to school is pending (95:Oct. 3, Balsamo)

Emergent relief granted. Board required to provide round trip transportation to MAST program for newly resident student. MAST legislation so provides. Commissioner agrees after full hearing. (96 N.J.A.R.2d (EDU) 775, K.F.)

Provision of safe conditions to and from bus stops was a municipal function (97 N.J.A.R.2d (EDU) 416, Shrewsbury, St. Bd. rev'g 96 N.J.A.R.2d (EDU) 795)

PUPILS

Pupils who live within two miles of school not entitled to busing under N.J.S.A. 18A:39-1 even if route is dangerous; safety conditions of roadway are responsibility of municipality, not board (93 N.J.A.R.2d (EDU) 162, Potter)

Tuberculin Testing

Board may properly deny admission to student for failure to undergo a mantoux test or failure to provide documentation that the student should be exempted from the mantoux test (97 N.J.A.R.2d (EDU) 486, M.F., appeal dismissed, St. Bd. 97:July 2)

Tuition

Adoptive family no longer liable for child's tuition expenses after surrendering custody. Financial responsibility rests with DOE (96 N.J.A.R.2d (EDU) 288, Buena)

Board not responsible for educational expenses of 21-year-old pupil in a correctional facility because he had "aged out" of entitlement to free public education (98:May 22, Morris Hills)

Board not responsible for tuition or other educational expenses while youngster is incarcerated (90:1466, Lakewood)

District entitled to reimbursement of tuition for entire period of ineligible attendance despite district's initial two-year acceptance of pupils into the system (96 N.J.A.R.2d (EDU) 854, H.M., rev'd as to 91-92 through 95-96 school years 97 N.J.A.R.2d (EDU) 418)

District entitled to reimbursement of tuition for two pupils not domiciled in district (93 N.J.A.R.2d (EDU) 897, Kwon)

District entitled to tuition for period when respondent's house within the district was under construction but not habitable nor inhabited (98:May 26, Livingston, aff'd as modified, St. Bd. 99:Feb. 3, dec. on motions, St. Bd. 99:April 7, stay denied, St. Bd. 99:June 2)

District not responsible for private school tuition costs of students who left public school because of fear for their safety in traveling to and from school; safety of students in township is responsibility of police (93 N.J.A.R.2d (EDU) 424, B.J.)

District not responsible for tuition for residential placement of a student where DYFS failed to consult district prior to placing child (97:Sept. 25, Prospect Park)

PUPILS

Domicile of unemancipated minor is with father; since father never resided at apartment rented for purpose of establishing residency within district, daughter not entitled to free education in town (93 N.J.A.R.2d (EDU) 128, I.P.)

Equitable estoppel may prevent school board from collecting tuition for non-resident attendance if parents in good faith were misled by school officials (95 N.J.A.R.2d (EDU) 214, Whasun Lee, aff'd 97 N.J.A.R.2d (EDU) 77, aff'd and remanded on issue of equitable estoppel and unclean hands, re: tuition, App. Div. 97 N.J.A.R.2d (EDU) 78, remanded St. Bd. 96:Dec. 4, on remand, ALJ determined equitable estoppel did not prevent board from reconvening tuition for entire period of ineligible attendance because parent came to table with unclean hands; commissioner adopted ALJ findings in part but reversed on issue of unclean hands barring principle of equitable estoppel for all but one year of ineligible attendance; St. Bd. affirmed with clarification that record did not show that for 1990-94 period the parent understood that owning property in town that was rented did not entitle children to attend school tuition-free; App. Div. (Docket No. A-5978-98T2, Aug. 7, 2000), reversed and remanded to St. Bd. for reconsideration of its decision giving due deference to ALJ credibility determinations, certif.. den. 165 N.J. 677 (2000), decision on remand St. Bd. 02:July 2)

Grandparent/board member ordered to pay tuition for nonresident granddaughter prorated to the time of ineligible attendance (96 N.J.A.R.2d (EDU) 680, T.P., appeal dismissed for failure to perfect State Board 96:Oct. 2)

In action for back tuition alleging non-residence, board does not have to show where family actually domiciled; need only show that family not domiciled at locations they claim as domicile (92 N.J.A.R.2d (EDU) 96, Kintos, dec. on remand, 93 N.J.A.R.2d (EDU) 96, Kintos, dec. on remand, 93 N.J.A.R.2d (EDU) 837, stay denied 93:Dec. 16, aff'd St. Bd. 94 N.J.A.R.2d (EDU) 316, aff'd as mod. App. Div. 96 N.J.A.R.2d (EDU) 1. Motion for reconsideration granted Dkt. No. A-4944-93-T5, Nov. 15, 1995 - Board barred from recovery 87-88, 88-89, 89-90)

Mother directed to pay tuition for son's junior and senior years because she failed to produce evidence that son was supported by aunt (91:998, Fair Lawn)

PUPILS

- Non-resident pupil: Parent ordered to remove children from district; back tuition assessed (90:July 9, Pennsauken)
- Non-resident student attending free public school owes school board tuition reimbursement (96 N.J.A.R.2d (EDU) 536, Livingston)
- Parent failed to meet burden of proof of showing that equitable principles should bar the District from recovering tuition for period of ineligible attendance; ordered to pay tuition for period from January 1994 through June 1995 (97:Dec. 8, Whasun Lee, aff'd with clarification, St. Bd 99:June 2, reversed and remanded for reconsideration giving due deference to ALJ credibility determination, App. Div. unpub. op. Dkt. No. A-5978-98T2, Aug. 7, 2000, denied 165 N.J. 677 (2000), decision on remand St. Bd. 02:July 2)
- Parent ordered to pay tuition where pupil resided outside of district (97 N.J.A.R.2d (EDU) 281, Egg Harbor)
- Parent owes tuition if she fails to provide proof of domicile (97 N.J.A.R.2d (EDU) 303, Spruill)
- Parent responsible for tuition - not bona fide resident of the district (97 N.J.A.R.2d (EDU) 11, Greater Egg Harbor, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 307, aff'd App. Div. 97 N.J.A.R.2d (EDU) 307)
- Parent who contracted to pay private school tuition for entire school year was liable for payment even though child withdrew from program after one month (Princeton Montessori Soc., 248 N.J. Super. 474, (App. Div. 1991), certif. denied, 127 N.J. 545 (1991))
- Parents liable for tuition during period their children were ineligible to attend school (96 N.J.A.R.2d (EDU) 854, H.M., rev'd as to 91-92 through 95-96 school years 97 N.J.A.R.2d (EDU) 418)
- Payment of tuition ordered for illegal attendance of affidavit student who did not attend prehearing conference or answer board's counterclaim (96 N.J.A.R.2d (EDU) 921, M.D.)

PUPILS

- Present district of residence of parent or guardian with whom child lived prior to most recent admission to State correctional facility responsible for tuition; if residence cannot be determined, State will assume responsibility for tuition (92 N.J.A.R.2d (EDU) 545, Atlantic City)
- Residency dispute: Although IDEA issues were not the subject of residency dispute involving special education pupil, the IDEA was nonetheless implicated where board of education also sought tuition reimbursement; thus Superior Court had jurisdiction over IDEA's fee shifting provision; parents were awarded legal fees as prevailing party. JHR v. East Brunswick Bd. of Ed., 308 N.J. Super. 100 (App. Div. 1998) (See also 96 N.J.A.R.2d (EDU) 285, J.R.)
- Responsibility for tuition of incarcerated children (93 N.J.A.R.2d (EDU) 336, Atlantic City)
- State Facilities Planning Act, N.J.S.A. 18A:17B-1, et seq., where pupil with educational disability, whose parent was homeless, was residing in institution, private-school tuition to be paid by district of residence, i.e., present district of residence of parent with whom pupil last lived. N.J.S.A. 18A:7B-12. Remanded by Commissioner to determine whether DYFS's placement outside district, without district input, was due to emergent circumstances, justifying nonconformance with N.J.A.C. 6:28-7.4(b)5(ii) (97 N.J.A.R.2d (EDU) 134, Prospect Park)
- State is fiscally responsible where pupil is placed by DYFS and the parents' district of residence is out of state (St. Bd. 00:June 7, Wildwood, rev'g 96:Dec. 30) (See also remand 95:Oct. 6)
- State's unauthorized placement of child in private school may result in waiver of reimbursement from school district (97 N.J.A.R.2d (EDU) 134, Prospect Park)
- Student not domiciled in district must remit tuition for period of ineligible attendance (97 N.J.A.R.2d (EDU) 374, M.T.)
- Sufficient showing of hardship entitles adopted student free education in adoptive family's school district (96 N.J.A.R.2d (EDU) 244, D.E.)

PUPILS

Temporary custody order obtained by grandmother insufficient to establish children's eligibility for free public education absent showing of non-support by mother (95 N.J.A.R.2d (EDU) 74, A. Mc.G., dismissed St. Bd. untimely 96 N.J.A.R.2d (EDU) 140, issue of dismissal remanded App. Div. 98:Feb. 10, decision on remand St. Bd. 98:May 6)

Tuition must be paid to board of education for students enrolled in but not domiciled in school district (96 N.J.A.R.2d (EDU) 249, Ciabattari)

Tuition ordered for unauthorized attendance where parents failed to file response (95:Sept. 20, Livingston) (95:Oct. 19, Kearny) (95:Nov. 6, Kearny) (97:Nov. 14, Twp. of Fairfield)

Tuition ordered for unauthorized attendance where parents failed to file response; however, Commissioner has no jurisdiction to declare parents disorderly persons or to award fees and costs (95:March 15, Green Brook)