Current Issues in School Law

School Official Ethics: Where are We Now?

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School Official Ethics

• School Ethics Act - *N.J.S.A. 18A:12-21*

• Nepotism Regulation *N.J.A.C. 6A:23A-6.2*

• *N.J.S.A. 18A:12-2 – Conflict of Interest*
Collective Negotiations Participation
Collective Negotiations Participation

**Board Member or School Administrator with a “relative” or “other” who is an employee in the school district**

- in the bargaining unit of the contract under negotiations
- supervised by employees in the unit
- not in the unit, but terms of employment linked to unit, or
- board member’s endorsement by the union in election immediately preceding negotiations

**CANNOT SERVE ON NEGOTIATIONS TEAM OR PARTICIPATE IN PLANNING OF NEGOTIATIONS**

**CANNOT VOTE ON THE CONTRACT**
Collective Negotiations Participation

"Relative" - individual's spouse, civil union partner ... domestic partner... , or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, of the individual or of the individual’s spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner or domestic partner by blood, marriage or adoption.
Collective Negotiations Participation

School Ethics Commission
Advisory Opinions Emerging Issues
N.J.S.A. 18A:12-24 (b)

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.
Collective Negotiations Participation

In-District

- A03-13 – Brother-in-law, A22-13 – Father-in-law
- A10-14 – 1st Cousin, A15-13 - Cohabitating partner
- A19-13 - Teacher town council member, board members municipal employees
- A19-15 – Niece, Spouse’s Uncle, Son, 1st Cousin
- A25-15 – Spouse, Relative
- A15-16 – Ex-Spouse
Collective Negotiations Participation


In-District

- A25-15 – Board members with “relative” or “other” employed in-district, members of a local union or receive benefit from CBA, are deemed conflicted under the School Ethics Act; all union matters and all aspects of collective negotiations process, including voting on the collective bargaining agreement.

Collective Negotiations Participation

School Administrator Technical Information Exception

• A22-16 – A conflicted school administrator may serve as a technical resource to the negotiating team and provide technical information necessary to the collective bargaining process when no one else in the school district can provide that information; not full participation.
Collective Negotiations Participation

Board Member or School Administrator with themselves, a “relative” or “other”, an employee in another school district

• If the Board Member is employed in another district and is a member of a bargaining unit represented by a similar state-wide union,

CANNOT SERVE ON NEGOTIATIONS TEAM
CANNOT PARTICIPATE IN ANY ASPECT OF NEGOTIATIONS
CANNOT VOTE ON THE CONTRACT - $
Collective Negotiations Participation

Board Member or School Administrator with a “relative” or “other” who is an employee in another school district

• If the Board Member or School Administrator has an immediate family member in the household, who is employed in another school district and is a member of a bargaining unit represented by a similar state-wide union, per se conflict

CANNOT SERVE ON NEGOTIATIONS TEAM
CANNOT PARTICIPATE IN ANY ASPECT OF NEGOTIATIONS
CANNOT VOTE ON THE CONTRACT - $
Collective Negotiations Participation

**Immediate Family Member**

- **N.J.A.C. 6A:23A-1.2** - spouse, civil union partner, domestic partner, or dependent child residing in household

- State Conflict of Interest Law – *spouse, child, parent, sibling residing in household*
Collective Negotiations Participation

**Board Member or School Administrator with a “relative” or “other” who is an employee in another school district**

- If the Board Member or School Administrator has a “relative” or “other” outside the **household**, who is employed in another district and is a member of a bargaining unit represented by a similar state-wide union; AND

- If the “relative” or “other” is an NJEA or LEA officer; leadership role in the union or district; same time contract negotiations; building “rep”

**CANNOT SERVE ON NEGOTIATIONS TEAM**

**CANNOT PARTICIPATE IN ANY ASPECT OF NEGOTIATIONS**

**CANNOT VOTE ON THE CONTRACT - $**
Collective Negotiations Participation


Out-of-District

• A25-15 – Board members with out-of-household “relative” (sister) member of the same statewide union in another school district does not per se violate the Act by participating in negotiations or vote on the LEA contract; must also have heightened union involvement.

NJEA or LEA officer; negotiations team; leadership role in union or district; same time negotiations; building representative

Collective Negotiations Participation


**Out-of-District**

- A13-15 – Board member, employed in another school district as a supervisor, member of NJPSA affiliate union. No affiliation with NJEA. Board member may negotiate and vote on in-district NJEA contract when there is absolutely no linkage, in either district, between the respective NJEA affiliates and the NJPSA administrators union, which represents the board member.
Collective Negotiations Participation

NJEA – Out of District Conflicts

- A13-13 - Board member employee in special services school district, Board member NJEA field representative
- A09-14 - NJSFT/AFT similar to NJEA – share common traits and common goals
- A34-14 - Board member 26 year NJEA member, 20 year union president, retired NJEA employee; receives NJEA health benefits
- A26-15 – Board member, retired district employee, President of local NJEA affiliate, conflicted; union activity, negotiations and votes, first term.
Personnel Issues
CSA/Supervisor/Principal
Personnel Issues
CSA/Supervisor/Principal

• Board members may not participate in the hiring of a new CSA, supervisor or principal, if they have a “relative” or “other” who is an employee in the school district who would be directly or indirectly supervised by the new hire.
Board members may not participate in any personnel decisions involving a CSA, principal, or supervisor who directly or indirectly supervises the board member’s “relative” or “other” who is employed in the school district.
Personnel Issues
CSA/Supervisor/Principal


In-District

• A03-13 – Brother-in-law
• A15-13 - *Cohabitating partner*, A10-14 – 1st Cousin
• A22-13 – Father-in-law
• A08-14 – Stepdaughter, Stepdaughter-in-law, nephew
• A16-15 – Daughter, Wife, Aunt, “Relative”
• A19-15 – Niece, Spouse’s Uncle, Son, 1st Cousin
• A25-15 – Spouse, *paraprofessional*
• A15-16 – Ex-spouse
Personnel Issues
CSA/Supervisor/Principal

• A05-15 – Board members with spouse, board member with brother employed in district; no vote on motion to advertise for CSA, hiring of selection agency, criteria, job description, search committee, evaluation and contract discussions post-hire, no closed session attendance, not privy to closed session minutes until public.
Personnel Issues
CSA/Supervisor/Principal


In-District

- A19-15 – Board members with nieces, spouse’s uncle, full time employees and son, full-time student, part-time summer substitute, as “relatives” are “others”; may not participate in any matter involving the relative’s employment or supervision including employment matters with superintendent and supervising administrators.

  Reaffirm A10-14 1st Cousin – Other
  Spouse’s cousin’s daughter – no conflict

See A25-14, A30-14, A25-15
Collective Negotiations Participation

Doctrine of Necessity

- A quorum of the board is in conflict
- There is a pressing public need for action
- No alternative forum which can grant relief
- Body is unable to act without the conflicted members taking part

*Allen v. Toms River Regional Board of Education*

Collective Negotiations Participation

School Ethics Commission Resolution on Adopting the Doctrine of Necessity

February 25, 2003

- Board states publicly that it is invoking the doctrine, the reason for doing so and the specific nature of the conflicts of interest.
- Board reads the resolution at a regularly scheduled public meeting, post the notice for 30 days and provide the SEC with a copy.
Collective Negotiations Participation

Doctrine of Necessity
Common Areas of Application

• Voting on collective bargaining agreement
• Participating on negotiations team
• Superintendent search
• Superintendent evaluation

Vineland SEC, Commissioner Decisions
A03-98, A05-14, A11-14, A23-14, A24-14, A08-15
Shared Superintendents

Can a board member be a board member in one school district and an employee in another school district when the districts share a CSA?

- **AO6-13** – Board member in constituent school district, part-time coach in limited purpose regional school district; proposed shared CSA
- **A11-13** – Board member in constituent school district, which shares CSA with regional school district. Board member seeking employment in regional district. If successful, must relinquish seat on constituent board.
Can a board member be a board member in one school district and an employee in another school district when the districts share a CSA?

Board member employed as principal’s secretary in another school district with which board had a shared services agreement, including the superintendent. Merely taking the office did not violate the Act. Distinguished A11-13. Board member employed prior to becoming a board member. SEC concerned with possible future ethical violations.

*Mroczka v. Payone-Wilson 8/23/16*
Shared Services

- A10-14 – Board member, whose spouse is the mayor, cannot serve on the board’s shared services committee; sharing of resources and personnel.

- A10-13 – Board member, spouse local police department employees. Shared services agreement with school district. Recusal from any discussion or vote on shared services.
Volunteerism Summary

- **No general ban** on board member volunteering in-district
- **Infrequent, non-executive in-district** volunteer activities non inherently contradictory to board member duties
  - Reading to a class on Dr. Seuss Day
  - Chaperoning child’s class trip
  - Heads Up to CSA and relevant staff
- Volunteer activities in outside organizations generally OK
  - Self-governing, wholly independent of board member’s role and board of education oversight.
  - E.g. education foundations, PTAs, student activity booster clubs, local recreation organizations
Volunteerism Summary

• Board member volunteer activities **prohibition:**
  – Subject to the supervision, management and direction of school personnel
  – Regular contact with students, parents and staff
  – Active day-to-day presence
  – Enmeshed in the building
  – E.g. volunteer coaches, volunteer club advisors, volunteer playground aides
Volunteerism Summary

Advisory Opinions

• A32-14 – Volunteer assistant theater advisor
• A10-15 – “Lead volunteer” for school club
• A17-15 – Constructing and maintaining props for musicals/plays; Unloading and uploading marching band equipment
• A24-15 – Trustee on Township Education Foundation
• AO7-00 – PTA President
Interview Committees

• A04-12 – Board member’s participation on interview committee for high level administrative and supervisory positions would not violate the School Ethics Act. One or two board members; administrative staff coordinates; participation – observations and assessments; CSA recommendation.

A15-10 – Exit Interviews

N.J.S.A. 18A:12-24.1 (c) (d) “not to administer…”

Retracted A01-15 from public advisory status
Interview Committees Summary

- A31-15 – SEC does not support board member participation in interview process; personnel committees – CSA role
- A04-12 – BOE Member Limited Participation – Higher level administrative positions
- A15-10 – No Exit Interviews
- N.J.S.A. 18A:12-24.1 (c) and (d) “not to administer the schools”
Business Relationships

Board of education members may not have a business relationship with the board of education which is incompatible with their role as a board member.

- A08-13 – Writing skills course; free; vendor recusal
- A20-14 – Signage company contract. Severable?
- A29-14 – Foundation student fundraising event 20%
- A33-15 – Educational resource company
- A42-14 – Supplies
- A18-15 – Bookstore; staff solicitations, discounts
A36-14 – Board member may endorse board candidates provided endorsement is as private citizen and not as board member or board. Electronic or social media. Signage.

A13-14 – Board member, freelance journalist, reports on town and school events such as games, teams, band, award nights, fund raisers. No reporting on board discussions or issues; no confidential information.
And more…

School Official Ethics Case Law Update 2015-2016
QUESTIONS
I. New Jersey Superior Court, Appellate Division

A. Ethics

1. Appellate Division determined that School Ethics Commission exceeded its authority when it found that a board member who recorded an executive session and shared the tape with her attorney violated section (g) of the Code of Conduct for School Board Members. The SEC failed to find that the private disclosure could have needlessly injured individuals or the schools as required by statute (not code). Appellate Division upheld the SEC’s finding that disclosing executive session material to the board member’s personal attorney was private action that could have compromised the board. *Messner v. Gray*, Dkt No. A-5418-13, 2016 N.J. Super. Unpub. Lexis 703, (App. Div. March 31, 2016).
2. Appellate Division determined that as a preemptive cure for disqualification, a board member-elect, could assign a claim against the board to her adult emancipated daughter before being seated as a board member. No evidence that the assignment was for improper purposes or that board member retained an interest in the claim once assigned. *Stargell v. Snyder*, Dkt. No. A-4021-13, 2016 *N.J. Super. Unpub. Lexis* 485, (App. Div. March 7, 2016).

II. Commissioner of Education

A. Ethics

1. Commissioner appeal of the School Ethics Commission’s March 24, 2015 determination that respondent board members violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members when they conducted a site visit to assess a candidate for interim Superintendent, without Board authority and without approval of the State Monitor, and by advancing the possibility of his employment. The Commission recommended a penalty of censure for the violation. Having carefully reviewed the Commission’s decision and the record in its entirety, the Commissioner finds that the Commission’s decision is supported by sufficient, credible evidence, and that respondents failed to establish that the decision is arbitrary, capricious or contrary to law. *N.J.A.C. 6A:4-1.1(a)*. Additionally, the Commissioner finds that a penalty of censure is appropriate. *Lowell, Smallwood and Simmons v. Board of Education of the City of Asbury Park, Monmouth County* (Comm. 2015:October 16).

2. Commissioner upheld ALJ’s dismissal of ethics charges based on timeliness. Initial petition of appeal in opposition to that board’s application of School Ethics Commission Advisory Opinion A13-13 was defective in that it failed include any allegations against the board and was not timely amended. Successive petition was filed more than a year after the first and accordingly was untimely. *Feinstein and Carter v. Englewood Bd. of Educ.*, (Commr., 2015:Nov. 9).

3. Board member, former employee, assigned payment for unused sick leave to emancipated non-household member day later, January 7, 2014. Board member took office January 7, 2014. Board paid sick leave claim to day later January 20, 2014. Board member had a duty to claim a conflict of interest so long as current conflict of interest exists. One conflict is noted, any duty to cure is mooted. Board member not required to forfeit seat on board. *Chester v. Snyder*, (Comm. 2016:May 6).

B. School Ethics Act – Decisions on Training

1. Charter school trustee failed to complete Governance I training in a timely manner. Numerous notices of the training requirement were provided by the NJSBA, SEC, Executive County Superintendent and the DOE Office of Charter Schools. The SEC recommended to the Commissioner of Education that the trustee be censured for failure to complete the Governance I training program within the required time period for the 2014 training period. Any continued failure in the future to comply with the
statutory requirement to complete training shall result in removal from her position on the board of trustees for a three-year period. Commissioner finds that a penalty of reprimand is appropriate in consequence of respondent’s failure to timely honor an obligation placed upon charter school trustees by law. Similar conduct in the future may result in more severe penalties. Trustee is also admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. Trustee was reprimanded as a school official found to have violated the School Ethics Act. In the Matter of Channell Trader, Camden’s Pride Charter School, Camden County, T01-15, SEC 2016:February 23; Commissioner 2016:April 11; In the Matter of Elizabeth Morrison, Brown Learning Community Charter School, Hudson County, T03-15, SEC 2016:February 23 Commissioner 2016:April 11; In the Matter of Cynthia Williams, Newark Prep Charter School, Essex County, T04-15, SEC 2016:February 23, Commissioner 2016:April 11; In the Matter of Ann Petrocelli, Link Community Charter School, Essex County, T06-15, SEC 2016:February 23, Commissioner 2016:April 11; In the Matter of Robyn Schneider, Ethical Community Charter School, Hudson County, T07-15, SEC 2016:February 23, Commissioner 2016:April 11.

2. Charter school trustee failed to complete Governance I training. Numerous notices of the training requirement were provided by the NJSBA, SEC, Executive County Superintendent and the DOE Office of Charter Schools. The SEC recommended that the trustee be removed from the board as a result of his failure to complete the Governance I training program within the required time period for the 2014 training period. Removal will be effective immediately after the issuance of the Commissioner of Education’s Decision affirming the penalty, for a period of one three-year term or the remaining term of the trustee’s office, whichever is longer. Commissioner concurs with the penalty of removal recommended by the Commission and additionally admonishes respondent for failing to honor an obligation placed upon charter school trustees by law, since such failure has resulted in unnecessary expenditure of administrative and adjudicative resources at both State and local levels. Trustee was removed from office as a school official found to have violated the School Ethics Act, effective immediately. In the Matter of Tom Iacovone, Hope Community Charter School, Camden County, T02-15, SEC 2016:February 23, Commissioner 2016:April 11; In the Matter of Tinia Berger, Newark Prep Charter School, Essex County, T05-15, SEC 2016:February 23, Commissioner 2016:April 11.

III. School Ethics Commission

A. Case Law Determination

1. SEC concurred with the ALJ that the Complainant failed to meet his burden to prove by a preponderance of the credible evidence that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. The ALJ reasoned that the purpose of Respondent’s arm gestures were too “vague” to determine their meaning and too “speculative” to determine their intent; no violation of the Act was found and the complaint was dismissed. Tessler v. Prezioso, SEC 2015:September 22.
2. SEC determined that board president exceeded his authority and took private action that could compromise the board when he unilaterally issued a RICE notice to the SBA. Penalty of reprimand recommended. *Cheng v. Rodas*, SEC 2015:September 23.

3. SEC finds that the Complainant’s unsupported explanation for failure to appear at OAL hearing and insufficient documentation is insufficient to warrant the re-transmittal of this matter to the OAL for hearing. SEC dismisses the Complaint for failure to prosecute. *Antelis v. Armino*, SEC 2015:November 24

4. Board members were endorsed by and received campaign contributions from the local teachers association. One board member initiated, proposed and voted on a motion to non-renew a teacher, contrary to the superintendent’s recommendation.

SEC determined that Complainant did not show that the Respondent accepted the political contribution with the understanding that the contribution was given for the purpose of influencing her in the exercise of her official duties. *N.J.S.A. 18A:12-24(e)* permits the acceptance of a political contribution to a Board candidate as long as there is no quid pro quo for the donation and accepting the donation creates a conflict for that Board member. Once advised by Board Counsel that she was conflicted due to the donation and that she could not serve on the negotiations committee, Respondent willingly accepted assignment to a different committee. SEC observed that the Respondent took no further action to bring her request to fruition and ultimately abstained from the vote to approve the contract.

As to the teacher non-renewal, SEC determined that Respondent conducted Board business in concert with the other Board members commensurate with her Board member duties. Subject to limitations arising from a conflict, any Board member may vote as she chooses from the moment she takes her oath of office. Moreover, Board members are not under any obligation to accept the Superintendent’s recommended candidate for any position and may vote to select another candidate. Moreover, the Act does not prohibit a Board member from voting contrary to the other members nor does it silence a point of view that differs from the rest of the Board or the Superintendent.

No violations of the Code of Ethics for Board Members were proven.

The SEC determined that the Complaint, on its face, failed to allege facts sufficient to maintain a claim that the Respondents violated the Act and hereby dismissed the Complaint for failure to state a claim upon which relief could be granted. *Tobias v. Heinhold & Thomas*, SEC 2015:November 24

5. SEC found no probable cause that a violation of the School Ethics Act occurred and dismissed the complaint. Matter involved a board member who worked for a mortgage company which wrote mortgages for several school district employees, including the interim superintendent, and later voted on matters involving their
employment. Board member was a salaried employee, not a principal, did not receive a commission, did not solicit clients. Mortgage business was not in substantial conflict with his duties as a board member; served the needs of the public. Company did not transact any business with the board. No evidence of any financial or personal involvement. *Scott v. Conti*, SEC 2015:November 24

6. SEC concurs with ALJ determination that complainant failed to prove by a preponderance of the evidence that board member violated the School Ethics Act by allegedly engaging in private action to gather a majority of board members to vote against the renewal of complainant’s contract. Witnesses were credible and persuasive. *Abreu v. Presley*, SEC 2015:December 15

7. SEC found that the complainant failed to meet his burden of proof by relevant, credible evidence that the respondent violated the Code of Ethics for School Board Members. Complainant alleged that the board member violated the Code of Ethics by taking unauthorized photos of the complainant’s minor son as he emerged from a car at the bus stop, and by telling the crossing guard at the bus stop that he was with the board of education conducting a study regarding the transportation program. No photo of the complainant’s child or any other child was taken. Complainant did not demonstrate that the respondent took, displayed or circulated any photos of children related to the bus stop; there was no eyewitness account to corroborate the allegations.

The SEC noted that the voters in the school district decide which candidates will represent them on the school board. The complainant had advised the board president that an ethics complaint would be filed against the board member unless that board member resigned from the board of education. The SEC advised that the seats that duly elected school officials occupy must not be threatened by individuals or outside groups seeking to change the balance of power in their favor through intimidation or coercion. The SEC must not be used as a tool in partisan battles to accomplish political ends. Such conduct sets a poor example for the children of the school district and weakens the public’s trust and confidence in the electoral process. *Karpiak v. Farruggia, Hopatcong Borough Board Of Education, Sussex County, C57-14, SEC 2016:January 26*

8. SEC determined that a board member did not violate the School Ethics Act when she participated in and voted on the tentative 2015-2016 annual school budget which included a line item for the school district’s Career and Technical Services’ automotive technology program. In January 2013, two years earlier, the bumper of the board member’s personal vehicle was repaired by the students in the program. The SEC determined that the complainant failed to demonstrate that the board member garnered any greater benefit for herself than any other resident of the community who chose to use the services of the program, nor did he show that the board member was precluded from availing herself of the services of the program simply because she sat on the board.

The SEC found the complaint to be frivolous and imposed a fine of $500. The SEC found that the complainant’s allegations were false and damaging to the board member’s reputation and to those district personnel whom the complainant intimated were part of a quid pro quo arrangement for free services. By failing to diligently
investigate the factual background, the complainant commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury. The decision emphasized that the SEC tribunal is not a forum where parties seek recourse for political feuds or as a way to thwart the electoral process or redirect its natural path. The SEC cannot allow itself to become an instrument for the community to launch baseless claims against school officials. *Gaitens v. Bathelus, Elizabeth Board of Education, Union County, C29-15, SEC 2016:January 26*

9. SEC determined that a board president did not violate the Code of Ethics for School Board Members by reading a statement at the board meeting regarding the failed vote to renew the superintendent’s contract. The statement to the public explained that five votes were required for renewal, two board members could not vote because of conflicts, and the renewal fell short by one vote as there were only four affirmative votes.

The SEC determined that the board president did nothing to compromise the board or act beyond the scope of her authority. The statement was benign, factual and instructive. The board president did not blame anyone for the vote; she simply stated factually why the contract renewal did not pass and what the future would hold; the statement only contained the facts regarding the vote for superintendent. The statement was made in an open public forum in the presence of the media; anyone who disagreed with her position could have voiced opposition in public that evening in the same venue. The SEC dismissed the complaint in its entirety for failure to state a claim upon which relief could be granted. *Noonan, et al. v. Greenwood, Mount Ephraim Borough Board Of Education, Camden County, C30-15, SEC 2016:January 26*

10. SEC adopts ALJ initial decision as final decision. Summary judgment granted to respondents; complaint dismissed. Complainant failed to file a responsive pleading to motion to dismiss. *Barquin v. Rodas, SEC: 2016:February 23*

11. SEC determined that a board member did not violate the School Ethics Act when he voted to approve legal fees for Board counsel as to whether the his ability to participate in Board activity was limited due to his sister’s role as an on-call substitute teacher in the District. The Respondent as Board President did exactly what he was authorized to do under the circumstances. He sought legal counsel to clarify his ability to conduct Board business in light of the potential conflict posed by his sister’s position as an on-call substitute teacher in the District. He did not seek counsel on a personal matter or a personal law suit, but rather on an ethical question that would impact the Board as a whole. Board counsel is available to the Board to provide legal advice and research for just such situations. The SEC did not find that the Respondent acted inappropriately. *Capone v. Aiken, Hamilton Township Board of Education, Atlantic County, C28-15, SEC 2016:February 23*

12. SEC determined that the Complainant failed to allege facts sufficient to maintain a claim that the Respondent violated the Code of Ethics for School Board Members and dismissed the Complaint for failure to state a claim upon which relief could be granted. Respondent had advised the Superintendent of schools that the Complainant accosted and threatened her and that the Complainant ultimately pled guilty to disorderly conduct in Municipal Court. The SEC has found that a Board member’s action cannot be both board
action and private action. The underlying assault was a private matter and as such, the Respondent acted as a private citizen when she alerted the Woodstown Superintendent. Board officials do not forfeit their rights as members of the public in personal matters that have nothing to do with the boards on which they sit. Respondent’s actions could not compromise the Gloucester City Board as the private action she took in a personal matter did not call into question any issue, deliberation, or vote taken by the Gloucester City Board. *Mealey v. Borger, Gloucester City Board of Education, Camden County, C32-15, SEC 2016:February 23*

13. School Ethics Commission granted motion to dismiss where petition failed to include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. *Kurdyla v. Weinstock*, SEC 2016:April 26

14. Complaint alleged that superintendent used his office to gain unwarranted privileges. School Ethics Commission found that while it appeared that the superintendent may have exceeded his authority in publishing a clarification letter in response to allegedly erroneous statements made by candidates to board office, no evidence was provided to demonstrate that the superintendent received a benefit or privilege from his unilateral actions. Any potential misconduct should be addressed in a different forum. SEC to contract CSA has duty to set the best example of a school official talking to social media or using children to carry removal note home to current member made by board candidate who challenged his authority goes beyond the role of the CSA. *Schor v. Tomko*, SEC 2016:May 24

15. SEC concurred with ALJ that board members violated certain sections of the Code of Ethics for School Board Members and recommended the penalty of censure. Board members

- Failed to limit their board action to policy making, planning and appraisal, exceeding their authority, failing to consult with other board members to ensure that a proper investigation occurred. Board members pursued an investigation, determined guilt and sought punishment without waiting for the results of a proper investigation.
- Failed to report information received to a constituent to the superintendent for her to investigate rather than concluding prematurely that criminal wrongdoing had occurred.
- Brought their accusations to the prosecutor for investigation after the board as a whole accepted the results of the investigation that nothing untoward had occurred.
- Provided false information and false impressions to the public about the board and its handling of a confidential matter, leading the public to believe that some criminality had occurred and that administration had handled the matter inappropriately.
- Accused a school employee and the superintendent of criminal conduct without evidence and aired their accusations at a public board of education meeting, undermining and compromising school personnel in the proper performance of their duties.
• Attempted to resolve a constituent’s complaint prior to referral to the superintendent and prior to the failure of administration to fashion a solution. *Garrity v. Vander Woude*, SEC 2016:July 26


16. SEC found no probable cause to credit the allegations that the board member violated the School Ethics Act. No evidence that board member undertook any employment or service that could prejudice her independence of judgment in the exercise of her official duties. No demonstrated use of information, not generally available to the public, for financial gain for herself or her family. Any board information discussed after the board meeting was discussed during public session and was not confidential. No matter pending before the board for which the board member had either a personal or business interest. *Coughlin v. Di Folco*, SEC 2016:July 26

17. SEC granted motion to dismiss, determining that board member did not violate the School Ethics Act when he discussed litigation brought by Complainant against the school district at a board meeting public session and publicly named the Complainant. Board member did not indicate that the litigation was related to a student or the minor child. Complaint was dismissed. *Libertucci v. Smith*, SEC 2016:August 23

18. Board member’s employment as a principal’s secretary was not incompatible with service as a board member when the two districts had a shared services agreement, including sharing a superintendent. Merely taking the oath of office did not violate the Act. Such a finding would be tantamount to a determination that she was ineligible to be a board member; a matter over which the SEC has no jurisdiction or authority. No showing that board member took any action in her official capacity which might be expected to impair her objectivity or independence of judgment. SEC distinguished this situation from Advisory Opinion A11-13 in that board member was employed in the school district before becoming a board member; no *quid pro quo* appearance existed. SEC expressed concern with future possible ethical violations. *Mroczka v. Payone-Wilson*, SEC 2016:August 23

19. SEC determined that board of education member, whose sister was an on-call non-contract substitute teacher in the school district, did not violate *N.J.S.A. 18A:12-24(b)* of the School Ethics Act when he participated in various aspects of the search for and hiring of the district’s superintendent, including serving as chair of the search committee. There was no individual or administrator charged with the duty of making on-call substitute teacher assignments. SEC found no information that the respondent secured for himself or his sister an "unwarranted" privilege, advantage or employment. The complaint was dismissed.

Complainant had relied upon a previously issued advisory opinion, A41-14, and the SEC decision in *Martinez v. Albolino*. In Advisory Opinion A41-14, the SEC indicated that, pursuant to *Martinez*, conflicted board members “may not participate in any discussion pre-or post-hire, may not be a part of any aspect of the vetting process or any evaluation and contract discussion post-hire of a superintendent
candidate.” In *Martinez v. Albolino*, the SEC determined that a Board member who had an immediate family member or a relative employed in the district may not participate in the search, selection and/or vote for a new superintendent, irrespective of whether there was an in-house candidate being considered for the position because the Commission maintains that the Board member's involvement in the search, discussion and/or vote for a new Superintendent under such circumstances *would constitute a violation of N.J.S.A.* 18A:12-24(c) (emphasis added).

Because the SEC's prior determination in *Martinez* was limited to a finding of a violation of *N.J.S.A.* 18A:12-24(c), and complainant here has alleged a violation of *N.J.S.A.* 18A:12-24(b), the SEC determined that complainant's reliance on Advisory Opinion A4l-14 and *Martinez* was misplaced.

*Erickson v. Aiken*, SEC 2016:September 28

**B. Advisory Opinions**

1. Commission determined that absent other contributing factors, board members, with relatives, such as a first cousin or first cousin-in-law, employed in school districts represented by the NJEA and local affiliates, are not conflicted when negotiating collectively with the in-district local affiliate. Such familial bonds are too attenuated for the board member to affect collective negotiations in-district. However, the outcome could be different if the relative has executive authority within the local affiliate or the state-wide union. *Advisory Opinion A11-15*, 10/27/15

2. SEC determined that a board member, who is employed as a supervisor in a nearby district and a member of the state-wide and local administrators association, is not conflicted when negotiating with the teacher’s association, so long as no linkage exists between the administrators’ and teachers’ associations. *Advisory Opinion A13-15*, 10/27/15

3. SEC determined that while out-of-district negotiations could have an indirect impact and benefit to a relative employed in another district, a board member has no direct influence on how that district negotiates with its own local bargaining unit. In addition, board member’s ability to create a benefit for an out-of-district family member is further staunched by the enactment of the statewide property tax cap, which limits negotiators on both sides of a contract to how much salary or reimbursement rates may rise. However, evidence of further affiliations would require reconsideration. *Advisory Opinion A16-15*, 10/27/15

4. SEC advised that there is no general prohibition against board members offering to volunteer services within the school district in which they serve. Board member may perform voluntary activities in district so long as they are not in a leadership role over a committee or group nor are subject to the widespread direction from staff, students, other board members or spouses. Intermittent, non-executive volunteer activities are not inherently contradictory to the duties placed on Board members by the Act. *Advisory Opinion A17-15*, 10/27/15

5. SEC advised that the School Ethics Act does not prohibit board member’s ownership of a bookstore patronized by district staff, so long as board member does not solicit business from staff and does not advertise his board member role to same. Should not
seek out business relationship with any school nor participate in any vote on a transaction involving the bookstore.  

Advisory Opinion A18-15, 10/27/15

6. SEC advised that board members with children, nieces, spouse’s uncle, full time employees and son, full-time student, part-time summer substitute, as “relatives” are “others” may not participate in collective negotiations if members of, or receive the benefit of the collectively negotiated agreement. SEC reaffirmed Advisory Opinion A10-14’s determination that first cousins are deemed “others” under the Act. A spouse’s cousin’s daughter, absent additional information, would not constitute a conflict under the Act.  

Advisory Opinion A19-15, 12/15/15

7. SEC advised that board president may serve as trustee on Township Foundation for Educational Excellence, as per Foundation bylaws. Foundation not directly affiliated with the board nor controlled or managed by the board; self-governing entity separate from Board and District. Recusal/abstention may be necessary at the board level, depending on the matter before the board.  

Advisory Opinion A24-15, 12/15/15

8. In A25-15, the SEC responded to a request regarding several board of education members who had relatives who either were full-time employees and members of the local NJEA affiliate union in either their own district or another. The SEC advised that the board members should review recently issued public advisory opinions A11-15, A16-15 and A19-15, which addressed these topics. The SEC further advised that board members with relatives employed in-district, who are members of an NJEA affiliated union, are considered to have a conflict under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. The conflict further extends into the personnel area as to the relative and the relative’s supervisors, and other superiors in the chain of command ending with and including the superintendent. No participation in personnel matters regarding these individuals is permitted, including, but not limited to discussion, evaluation and voting.

Board members who have immediate family members (spouse, child, parent, sibling) in their household, who are employees in another school district and members of a similar statewide union with which the board is negotiating, are also deemed conflicted under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. School administrators who are conflicted in this manner may provide technical information to the board of education when no one else in the school district can do so.

Board members who have out-of-household relatives who are union members employed by a different board of education, have a different analysis to perform. Employment with union membership in another school district is not automatically a conflict for out-of-household relatives. If the relative has a heightened union role (officer, bargaining team member, union building representative) the board member is conflicted, with the conflict extending to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. School administrators who are conflicted in this manner may provide technical information to the board of education when no one else in the school district can do so.
Board members who are employed in another school district as school administrators and are members of the NJPSA, were referred to previously issued public advisory opinion A13-15. A board member, in this circumstance, may negotiate with the in-district local NJEA affiliate when there is absolutely no linkage, in either district, between the respective NJEA affiliates and the administrators’ union which represents the board member. Board members should consult with their school board attorney as to whether similar statewide union status may create a linkage as NJEA does represent supervisor units in certain school districts and likely has the same goals and objectives for its members as does NJPSA. A25-15, SEC 2016: January 26

9. In advisory opinion A26-15 the SEC responded to a request regarding a newly-appointed board of education member, a 28-year former employee in the school district who served as union president for 13 years. The SEC determined that the board member’s prior employment in the school district and prior service as union president was not a bar to her service on the board of education. However, it did create a conflict of interest for purposes of collective negotiations participation. The SEC considered it reasonable for members of the public to believe that, as a new board member, having so recently been an employee of the school district and union president, she would be unable at this time to separate her past union involvement from her new role on the board. In order to avoid a violation of the Act and to preserve the public trust, the SEC advised that the new board member must recuse herself from any union matters and must abstain from any union-related votes for the duration of her initial term of office. The SEC did not consider this conflict to be in perpetuity, but only for the new board member’s initial term on the board, as she becomes acclimated to her new role of serving the public. After her first term, there would no longer be the appearance that the board member’s independence of judgment and objectivity with regard to the union would be impaired. A26-15, SEC 2016: January 26.

10. In A31-15, the SEC responded to a request for clarification regarding a perceived conflict between the exit interview prohibition of A15-10 and the limited participation in higher level administrative employee interviews of A04-12; each of which was analyzed under N.J.S.A. 18A:12-24.1 (c) and (d) of the Code of Ethics for School Board Members, but with seemingly different results. The SEC advised that it does not support board members conducting interviews for positions below that of superintendent. However, the SEC’s jurisdiction does not extend to actions of the board of education, only to actions of individual board of education members. Accordingly, each individual board of education may determine if it wants to have an interview committee for high-level administrative positions, pursuant to A04-12. As set forth in A04-12, if a board forms an interview committee, no more than one or two board members may participate, the committee would be coordinated by a member of the administrative staff and the board members’ role would be limited. The board members may not conduct the interview, but may offer observations and assessments, with full knowledge that final recommendations are wholly within the purview of the superintendent. For boards of education choosing to have an interview committee, the committee should function with the approval of the superintendent. It is the superintendent’s authority to recommend hires to the board. An interview committee cannot supersede or usurp that authority. A31-15, SEC 2016: January 26.
11. SEC advised that the analysis for collective negotiations conflicts for in-district and out-of-district relatives applies to school administrators as well as board members. 

Advisory Opinion A40-15, 3/22/16

12. SEC advised that the board member would violate N.J.S.A. 18A:12-24(a), and (d) of the Act and N.J.S.A. 18A:12-24.1(c) and (j) of the Code of Ethics for School Board Members if he were to serve as a member of the board of education while also being assigned by the police department as the D.A.R.E. Program Officer, to conduct daily safety checks of the schools and to handle “any matter involving juveniles.” In rendering its advice, the SEC acknowledged that it was not stating a police officer cannot serve on a board of education, but that the assignments of this board member, which required his extensive daily interaction with the schools, presented the inescapable likelihood for conflicts. His assignment to the schools and with juveniles created the situation where his employment was so entangled with matters touching upon the schools and the school district as to be incompatible with his service on the board. Advisory Opinion A01-16, 3/22/16

13. SEC advised that a board member, who would soon be divorced from his spouse, who was employed in the school district, would continue to have a conflict in his board activities due to the ex-spouse’s employment in the school district. The pending divorce would not remove all possible conflicts under the School Ethics Act. The final divorce agreement and decree, which was pending, would be instructive as to the nature of the continuing conflicts for the board member. Issues such as alimony and child support would inform the extent of the continuing conflict.

While the ex-spouse would no longer be a member of the board member’s “immediate family” as the ex-spouse would no longer be in the board member’s household, the ex-spouse would still be considered an “other” for purposes of analysis under N.J.S.A. 18A:12-24(b).

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

The board member was advised not to engage in any board activity in which the board member’s official position is used to extend any unwarranted privilege or advantage to the ex-spouse. The SEC advised the board member to exercise caution and be reasonable in evaluating his conflict and limit his participation in board activities which may violate N.J.S.A. 18A:24(b) and/or violate the public trust. Advisory Opinion A15-16, 6/21/16

14. SEC advised that a superintendent, whose spouse was employed in a neighboring school district and was a member of the local union affiliate of the NJEA, could not fully participate in negotiations, but could provide technical information when no one else in the school district could provide that information. The superintendent could not participate in negotiations, because the spouse, an immediate family member, was a member of the NJEA in another district; a similar statewide union with which the board was negotiating. The union which represented teachers in the superintendent’s school district was an affiliate of the American Federation of Teachers (AFT). See A16-15. The SEC had previously advised, in Advisory Opinion AO9-14, that the
NJEA and AFT were similarly situated unions for the purpose of conflict of interest analysis.

The superintendent could participate in the negotiations process for the limited purpose of providing technical information, restricting his comments and involvement to providing the information requested by the board members and administrators, without violating the School Ethics Act. The SEC advised that the technical exception exists only for those unique situations during labor negotiations when only the conflicted administrator can provide the technical information necessary to the collective bargaining process. The exception does not permit a conflicted administrator to be involved in every facet of the negotiations, but only to serve as a resource in those areas where the administrator possesses expertise, knowledge or access to information that cannot be provided by another person. It does not permit a conflicted administrator to fully participate in negotiations with the local union. The Superintendent was responsible for operational, budgetary and other sensitive matters within the district, and if access to these matters/issues were necessary for aspects of negotiations, and no one else was able to supply it to the negotiations committee, the committee must seek the information from the Superintendent. This is the very purpose of the exception. *Advisory Opinion A22-16* 8/23/16
NEW JERSEY SCHOOL BOARDS ASSOCIATION
WORKSHOP 2016
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Current Issues in School Law

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I. UNITED STATES SUPREME COURT ................................................................. 2
   A. Discrimination ......................................................................................... 2

II. THIRD CIRCUIT COURT OF APPEALS ......................................................... 3
   A. Civil Rights ............................................................................................. 3
   B. Special Education – Placement ............................................................... 3
   C. 1st Amendment ....................................................................................... 3
   D. 14th Amendment ..................................................................................... 3

III. NEW JERSEY DISTRICT COURT DECISIONS ........................................... 3
   A. Defamation ................................................................................................ 3
   B. Discrimination ......................................................................................... 4
   C. Procedural Rules ..................................................................................... 5

IV. NEW JERSEY SUPREME COURT ................................................................. 5
V. NEW JERSEY SUPERIOR COURT APPELLATE DIVISION .......................... 5
   A. Arbitration ............................................................................................... 5
   B. Tenure Arbitration - TEACHNJ ............................................................... 5
   C. Labor Relations ....................................................................................... 6
   D. Child Abuse ............................................................................................ 6
   E. Reduction-in-Force .................................................................................. 6
   F. Educational Endorsement ....................................................................... 6
   G. Tuition ...................................................................................................... 6
   H. Scope Petition .......................................................................................... 7
   I. Defamation ................................................................................................ 7
A. Discrimination

In the wake of the Grutter and Gratz decisions of 2003, the Texas legislature adopted statute guaranteeing the top 10% of each high school class admission to public Texas University. The University of Texas at Austin implemented an admissions program that included race as a factor in the admissions process. A student who was not in the top 10% of her high school class and was denied admission to the University, filed suit alleging that the use of race in the
University’s admissions process violated the equal protection clause. The Court determined that the race-conscious element of the admissions program did not violate the equal protection clause because the University’s compelling interest derives not from enrolling a certain number of minority students, rather it comes from obtaining “the educational benefits that flow from student body diversity. Fisher v. University of Texas at Austin, No. 14–981 (Decided June 23, 2016).

II. THIRD CIRCUIT COURT OF APPEALS

A. Civil Rights
Parents asserted that the school district deprived student of his liberty interest in attending school free from the bullying of peers and the verbal abuse of his teacher. Third Circuit determined that the State’s failure to protect an individual against private violence does not constitute a violation of due process, absent a “special relationship” or a state-created danger, neither of which exist in a peer harassment allegation. Neither did the teacher’s abusive verbal comment rise to a level that would “shock the conscience.” Bridges v. Scranton Area School District, Dkt. No. 14-4565, 2016 U.S. App. Lexis 4667 (3d Cir., March 14, 2016).

B. Special Education – Placement
Third Circuit determined that parents who moved into a new school district were not entitled to have their child remain in the prior district’s out-of-district placement. Rather, parents were entitled to comparable educational services as the student received in the prior district until the new district implemented the prior district’s IEP or deigned its own program. J.F. v. Byram Twp. Bd. of Educ., Civ. No. 14-4466, 2015 U.S. App. LEXIS 18862, (3d Cir. Oct. 29, 2015).

C. 1st Amendment
Third Circuit affirmed the district court’s grant of summary judgment in favor of the school district, finding that pursuant to the Pickering balancing test, the teacher’s speech was not deserving of constitutional protection. Teacher blogged about the daily activities of co-workers, administration, parents and students but the blog did not touch on matters such as fraud, corruption, and illegality in a government agency, and therefore were not of public concern. Munroe v. Central Bucks Sch. Dist., Civ. No. 14-3509, 2015 U.S. App. LEXIS 15781, (3d Cir. Sept. 4, 2015).

D. 14th Amendment
Third Circuit granted summary judgment in favor of physical education teacher who required non-swimming student to be in the swimming pool for the entirety of each class, where student accidentally asphyxiated due to a fatal episode of “dry drowning.” Parents of the student were unable to establish that the teacher’s conduct violated a clearly established constitutional right. Spady v. Bethlehem Area Sch. Dist., 800 F.3d 633 (3d Cir., 2015).

III. NEW JERSEY DISTRICT COURT DECISIONS

A. Defamation
District Court dismissed school’s counterclaim for defamation where parents’ public comments were formed as an opinion and Court expressed concern over the potential chilling effect on matters involving the public interest that such litigation would
B. Discrimination

District Court determined that private school was exempt from the requirements of the NJLAD where the property leased to the school was to be used exclusively as an independent Quaker school. Moment of silence has religious connotations. Sky R. v. Haddonfield Friends School, Civil Action No. 14-5730, 2016 U.S. Dist. LEXIS 43002 (March 31, 2016).

District Court found that social worker failed to meet her initial burden of demonstrating a prima facie case of racial discrimination where building principal spoke Spanish to bilingual Latino employees in front of English-only speaking employees; conduct may have been insensitive, but lacked racial animus. Other interactions between Plaintiff and principal may have been less than pleasant, but did not evidence racial discrimination and did not create a hostile work environment. Edmond v. Plainfield Bd. of Educ., No. 11-cv-2805 2016, U.S. Dist. LEXIS 36010 (D.N.J., March 18, 2016).

Social worker demonstrated sufficient evidence of district retaliation in response to her allegations of discrimination where she was transferred to a different school and subjected to a demand for a psychiatric evaluation. The board’s demand for the evaluation was not redacted in it’s response to a separate OPRA request for board minutes which then resulted in the demand being posted to a blogger’s website. Claim of improper publication survived board’s motion for summary judgment. Edmond v. Plainfield Bd. of Educ., No. 11-cv-2805 2016, U.S. Dist. LEXIS 36010 (D.N.J., March 18, 2016).


Security guard of 16 years allege that the district engaged in discriminatory and racially-motivated adverse employment actions, consisting of outside duty assignments, disparate treatment for uniform violations, and workplace harassment in retaliation for a previously filed grievance. District court dismissed all individual claims against director of security filed under Title VII and the NJLAD because the director of security was not an employee under Title VII and the director could not aid and abet his own harassing conduct under the NJLAD. Moreover, none of the allegations of racial harassment rose to the level of an adverse employment action.

### C. Procedural Rules

Subsequent to prior settlement of the underlying Open Public Records Act matter, school district moved to enforce the settlement agreement and plaintiff moved to reopen the matter and for recusal of the magistrate, which were both denied. District Court determined that a motion for reconsideration may be based on one of three separate grounds: "(1) an intervening change in controlling law; (2) new evidence not previously available; or (3) to correct a clear error of law or to prevent manifest injustice." The court further determined that a motion for reconsideration is not an opportunity to "ask the Court to rethink what it has already thought through." "Rather, the rule permits reconsideration only when dispositive factual matters or controlling decisions of law' were presented to the court but were overlooked." *Daponte v. Barnegat Twp. Sch. Dist.*, Civ. No. 12-4016, 2015 U.S. Dist. LEXIS 118136, (D.N.J. Sept. 4., 2015).

District Court determined that special education parents pled sufficient facts to amend a complaint pursuant to Fed. R. Civ. P. 15, which provides that the Court “should freely give leave when justice so requires.” An amendment must be permitted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment. The Court further clarified that amendment of the complaint is futile if the amendment will not cure the deficiency in the original complaint or if the amended complaint cannot withstand a renewed motion to dismiss. Here, plaintiff demonstrated that amendment would not be futile because once a school district opens a preschool for the disabled, it is required, pursuant to N.J.S.A. 18A:44-1, to admit nondisabled peers, thus allowing disabled preschool students to be educated with their nondisabled peers. *A.S. v. Harrison Twp. Bd. of Educ.*, Civil No. 14-147, 2015 U.S. Dist. Lexis 132036, (Sept. 29, 2015).

### IV. NEW JERSEY SUPREME COURT

No Substantive School Law Decisions Reported

### V. NEW JERSEY SUPERIOR COURT APPELLATE DIVISION

#### A. Arbitration

In matter regarding two non-tenured fixed-term employees (custodian and paraprofessional) court held that decisions of non-renewal of non-tenured employees, akin to reducing the workforce, are not subject to mandatory negotiation and arbitration. The presumption of arbitrability for public employees adopted in *N.J.S.A. 34:13A-5.3* does not eviscerate a board of education’s statutory authority to determine whether to retain non-tenured contract employees upon the expiration of their contract terms. A non-tenured employee (custodian) whose employment is not renewed, cannot claim a disciplinary motive and invoke the grievance procedure of a CNA which does not otherwise permit such an action. The revocation of a valid employment contract (paraprofessional) cannot be retroactively relabeled a non-renewal and is arbitrable under the contract clause in this case. *Egg Harbor Twp. Bd. of Educ. v. Egg Harbor Twp. Educ. Ass'n*, Dkt. No. A-3035-14T1 (App. Div. February 2, 2016).

#### B. Tenure Arbitration - TEACHNJ
Appellate Division reversed Chancery Division decision which overturned an arbitrator’s award suspending a math teacher for 120 days, but ultimately restoring him to his tenured position. The arbitrator found a violation of the board’s acceptable use policy, but failed to find that the teacher’s suggestive comments to female peers created a hostile work environment. Appellate Division, in acknowledging the court’s limited role in review of arbitration decisions, held that the board failed to show that the award was procured by undue means. The court clearly explained the judicial standards of review of an arbitrator’s decision and concluded that to be fatal, the arbitrator’s decision must result in a failure of intent to comply with the law or be so gross as to suggest fraud or misconduct. *Bound Brook v. Cirapompa*, Dkt. No. A-2198-14, 2015 N.J. Super. LEXIS 185 (App. Div. Oct. 29, 2015). Petition for certification granted by N.J. Supreme Court, limited to the issue of the arbitrator’s reliance on *Lehman v. Toys R Us*, in dismissing the board’s conduct unbecoming charge.

C. Labor Relations
Appellate Division reversed PERC determination, holding that PERC improperly abandoned its long-standing dynamic status quo doctrine. PERC initially held that Atlantic County's failure to pay salary increments during the period of an expired collective bargaining agreement was not an unfair labor practice. The Appellate Division determined that PERC's administrative reversal was in conflict with its legislative mandate. *IMO County of Atlantic and PBA Local 243*, Dkt. No. A-2477-13 and A-0107-14 (App. Div. March 9, 2016).

D. Child Abuse

E. Reduction-in-Force
Appellate Division affirmed a Civil Service Commission determination that a custodian, who was the subject of a reduction, was not entitled to lateral title rights to other custodial titles in the district where the Commission’s “title comparability” determination was not arbitrary, capricious or unreasonable. *IMO Mingo, Newark School District*, Dkt. No. A-5602-13, 2016 N.J. Super. Unpub. LEXIS 706, (App. Div. March 15, 2016).

F. Educational Endorsement
Appellate Division affirmed Commissioner’s decision removing a tenured athletic trainer for failing to maintain his athletic trainer license; no tenure hearing required. Lapse of Board of Medical Examiners license, for more than five years, invalidates both educational services certificate and athletic trainer endorsement. *Hunsicker v. Board of Education of the High Point Regional High School*, Dkt. No. A-3314-14, 2016 N.J. Super. Unpub. Lexis 1147, (App. Div. May 18, 2016)

G. Tuition
Appellate Division affirmed Commissioner’s decision denying that portion of tuition costs associated with services provided by an unlicensed teacher. Teacher acquired emergency certificate for the 2005-06 school year, but failed to resolve administrative difficulties or apply for emergency certification for 2006-07. School district failed to ensure that teacher was properly licensed for 2006-07, after having been made aware of licensure issues during the preceding year. Private school did not show it took a series of steps to comply with its regulatory obligation, nor did it provide a reasonable explanation why it did not comply. Pineland Learning Center v. New Jersey Department of Education, Dkt No. A-4854-13, 2016 N.J. Super. Unpub. Lexis 1005, (App. Div. May 3, 2016).

H. Scope Petition
Appellate Division affirmed PERC decision ordering arbitration in part, and restraining arbitration in part regarding a baseball coach’s grievance over the board’s decision not to appoint him to a coaching position following a RIF. The increased workload for coaches who remained following the RIF affected the terms and conditions of employment of those coaches and was therefore, subject to arbitration, as was the board’s decision to appoint a different coach as an act of alleged anti-union animus. Board’s decision to implement the RIF was upheld, as was the decision to appoint site managers to handle administrative duties formerly performed by coaches. I.M.O. Belleville Township Board of Education Petitioner-Appellant v. Belleville Education Association, Dkt. No. A-4690-14, 2016 N.J. Super. Unpub. Lexis 1126 (App. Div. May 16, 2016).

I. Defamation
District Court dismissed claim of libel against the board for Facebook and Instagram postings by a single board member, holding that the theory of respondeat superior was not applicable against a board member who was not acting within his role as a board member at the time the statements were posted. Marino v. Westfield Bd. of Educ., Civ. No. 16-Cv-00361 2016 U.S. Dist. Lexis 65168, (D.N.J. May 18, 2016).

J. Discrimination
Summary judgment vacated. Appellate Division determined there were sufficient genuine issues of material fact as to supervisor’s negative remarks about plaintiff’s weight to create a hostile work environment and questioned whether the fitness for duty examination accurately corresponded to plaintiff’s job requirements. Plaintiff contended that the school district unfairly discharged her because of her obesity in violation of the Law Against Discrimination. Matter remanded for trial. Sheridan v. Egg Harbor Twp. Bd. of Educ., DOCKET NO. A-5394-13T2, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, Decided January 7, 2016

Appellate Division upheld a jury award of over $880,000 in favor of a vice-principal who was subjected to racial discrimination. Appellate Division found no error in allowing former superintendent and former board members lay opinion testimony as to factual events underlying their conclusions that discrimination was at the root of plaintiff’s claims. Williams v. Asbury Park Bd. of Educ., Dkt. No. A-3389-13, 2015 N.J. Super. Unpub. Lexis 2422, (App. Div. Oct. 23, 2015)

K. Ethics
Appellate Division determined that School Ethics Commission exceeded its authority when it found that a board member who disclosed executive session in formation to
her attorney violated section (e) of the Code of Conduct for School Board Members. The SEC failed to find that the private disclosure could have needlessly injured individuals or the schools. However, the court upheld the SEC’s finding that disclosing executive session material to the board member’s personal attorney was private action that could have compromised the board. Messner v. Gray, Dkt No. A-5418-13, 2016 N.J. Super. Unpub. Lexis 703 (App. Div. March 31, 2016).

Appellate Division determined that as a preemptive cure for disqualification, a board member-elect, could assign a claim against the board to her adult emancipated daughter before being seated as a board member. No evidence that the assignment was for improper purposes or that board member retained an interest in the claim once assigned. Stargell v. Snyder, Dkt No. A-4021-13, 2016 N.J. Super. Unpub. Lexis 485 (App. Div. March 7, 2016).

L. Leaves of Absence

M. Tort Claims Act
Appellate Division upheld, in part, dismissed in part, and remanded former student’s claims of negligence where student suffered a partially severed finger in a weight-lifting drill in the school hallway. Expert testimony was not required to demonstrate the standard of care that should have been used in supervising the activity. The Court upheld the dismissal of the former student’s claim for pain and suffering for failure to present proof of medical expenses in excess of $3600, but allowed the claim for permanent disfigurement to move forward. Hardy v. Sparta Township High School, Dkt. No. A-5417-13, 2016 N.J. Super. Unpub. Lexis 1117 (App. Div. May 16, 2016).

N. Scope of Negotiations
Appellate Division determined that non-renewal of a non-tenured custodian by the superintendent is not subject to disciplinary grievance procedures where, despite the fact that the non-renewal touched upon job security and was filed well after the normal date for such action, the grievance of a non-renewal is not contemplated by the collective negotiations agreement. The exercise of a public employer’s right to non-renew shall not be second-guessed as a pre-text for discipline. Egg Harbor Twp. Bd. of Educ. v. Egg Harbor Twp. Ed. Assn., A-3035 (2015 N.J. Super. Lexis 205 (App. Div. Feb. 2, 2016).

O. Student Residency
Appellate Division upheld board determination that student was not domiciled where father, who had been domiciled, was incarcerated and mother did not reside within district. Domicile of the child of separated parents is established in the domicile where the child spends the most time. *I.J. o/b/o/ Q.J. v. Hamilton Twp. Bd. of Educ.*, Dkt. No. A-4619, 2016 *N.J. Super Unpub.* Lexis 149, (App Div. Jan. 26, 2016).

P. Tenure Dismissal
Appellate Division upheld the New Jersey Institute of Technology’s dismissal of a tenured professor. Professor recommended the employment of an individual with whom he had a romantic relationship and changed the grade of another student with whom he had a professional relationship and had co-authored a book. The court found that state officials are obligated to interventionist conduct with respect to a close family member or an individual with whom the public official has an "intimate personal involvement." *I.M.O. the Tenure Hearing of Hawk*, Dkt. No. A-2019-13, 2015 *N.J. Super. Unpub.* Lexis 2173 (App. Div. 2015).


Q. Charter Schools
Appellate Division affirms Commissioner of Education determination, rejecting board of education’s request to reduce the tuition rate in the 2010-2011 school year to four charter schools for district students attending those charter schools. Following an earlier remand from the Appellate Division, the Commissioner concluded in his second final agency decision that he lacked the authority to reduce the tuition, notwithstanding a regulation that had been on the books since 2010 stating that he possessed the authority. The issue was the amount of surplus retained by the charter schools. The board argued that the tuition should have been reduced given the charter schools’ surpluses. It should be noted that the regulation in question was repealed by the State Board in 2015. The authorizing legislation for the regulation, N.J.S.A. 18A:36A-12, had been amended in 2000, removing the discretion from the Commissioner. *Piscataway Twp. Bd. of Educ. v. Hespe*, Dkt. No. A-5890-13T4, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, Decided February 4, 2016.

Appellate Division affirmed the Department of Education determination declining to renew the Greater Newark Charter School’s charter after placing the school on a brief probationary period. The DOE considered the 2012-2013 test scores, found them inadequate, and concluded that with the low student growth percentile scores, an ineffective board of trustees and administration, and other problems, GNCS was not likely to improve. The Appellate Division deferred to the expertise of the DOE, which based its decision not to renew on substantial credible evidence in the record and did not act in an arbitrary, capricious or unreasonable manner. *Greater Newark Charter Sch. v. N.J. Dep’t of Educ.*, Dkt. No. A-3852-13T1, (App. Div. January 15, 2016).

R. Special Education
Appellate Division affirmed a final determination of the Department of Education Office of Special Education Programs (OSEP) that parents were entitled to an
independent educational evaluation before agreeing to the school district’s individualized education plan (IEP). *N.J.A.C. 6A:14-2.5(c)* entitled a parent to an independent educational evaluation if the parent disagrees with an evaluation obtained by the public agency. USDOE had advised that the code provision violated the independent educational evaluation provisions of federal law. *Haddon Twp. Sch. Dist. v. N.J. Dep't of Educ.*, Dkt. No. A-1626-14T4, (App. Div. February 4, 2016).

VI. **SUPERIOR COURT, CHANCERY/LAW DIVISION**

A. **Non-renewal**

Law Division determined not to grant school district’s motion to dismiss for failure to state a claim upon which relief can be granted where board did not publicly discuss or deliberate teacher’s non-renewal. Despite the fact that members of the public spoke in favor of the teacher at two consecutive board meetings, the board did not publicly comment nor respond to the public comments. At the end of the second meeting, the board moved and unanimously approved a resolution, identified only by number, terminating the teacher’s employment. The teacher’s complaint alleged that the board’s failure to deliberate her continued employment was evidence that the board discussed and deliberated her employment in private and simply ratified their decision at the end of the second public meeting. While acknowledging that the board had no affirmative obligation to engage in dialogue with the teacher, her supporters, or each other during the public hearing and prior to voting, the court found that the allegations raised a potential violation of OPMA. At this stage, the court’s duty on a motion to dismiss was to give the teacher the benefit of the doubt, which required the dismissal of the board’s motion. *Zuniga v. City of Orange*, ESX-L-4530-15, (Jan. 22, 2016 slip op.)

VII. **COMMISSIONER OF EDUCATION**

A. **Anti-Bullying Act**

Commissioner adopted ALJ’s summary decision finding that the board was not arbitrary, capricious, or unreasonable in finding that intermittent student conflicts did not rise to the level of harassment, intimidation, or bullying where the board’s investigation failed to reveal a distinguishing characteristic as a basis for the conduct and was inconclusive as to the intent of the girls involved. Although the parents argued that the board should have considered an asserted “power differential” between the students, the ALJ determined that a personal breakdown in the relationship between two students is a mutual non-power-based conflict that is not
about a characteristic of the targeted student. **R.A. v. Hamilton Bd. of Educ., (Commr., 2016: June 22).**

Board of education did not act in an arbitrary or capricious manner when it determined that a student’s comments about his classmate’s vegetarian lifestyle constituted an act of harassment, intimidation and bullying (HIB). Incident in question occurred in a middle school cafeteria between two eleven year old sixth grade students. A board hearing affirmed the superintendent’s initial finding of HIB. The parents appealed the board decision to the Commissioner of Education who found that being a vegetarian was a distinguishing characteristic and motivated the comments. **G.C. o/b/o C.C. v. Board of Education of the Township of Montgomery, Commissioner 2016: April 22.**

**B. Certification**

Commissioner determined that teacher engaged in unprofessional conduct when he failed to provide sufficient notice in order to resign to join the FBI. Commissioner further determined that while he lacked discretion with respect to finding a violation, he retained authority as to the penalty to be imposed where teacher alleged that the FBI training began immediately and his request for a leave of absence was denied by the board. Matter remanded in part to determine whether teaching certificates should be suspended for up to one year. **I.M.O. Certificates of IM, (Commr., 2016: June 30).**

**C. Conflict-of-Interest**

School nurse who earned accrued but unused sick leave as an employee retired, and subsequently filed a demand with the board, seeking reimbursement. While the demand was pending, the school nurse was elected to the board. Prior to taking the oath of office, school nurse/board member–elect assigned her claim for unused sick leave to her emancipated adult daughter. Subsequent to reorganization, the administration of the oath of office, and the seating of the board member, the board paid the claim for unused sick leave to the adult daughter. Commissioner determined that board member remained qualified for board membership because the asserted conflict was mooted due to the board’s payment of the claim. **Chester v. Snyder, (Commr., 2016: May 6) (See also, Stargell v Snyder, A-4021-13, (App. Div., March 7, 2016, unpub.).**

**D. Reduction-in-Force**

Commissioner determined that the district did not violate the tenure rights of attendance officers when it abolished 49 attendance officer positions and transferred their duties to student support teams comprised of a principal or vice principal, social worker, guidance counselor, parent coordinator, school resource officer, nurse, and two teachers, whose duties on the SST were voluntary and in addition to their primary role at each school; the SST does not warn children, parents or guardians of persistent absences, as required by **N.J.S.A. 18A:38-29**, nor do members of the SST – except for the school resource officer – have authority to make an arrest. **Newark Teachers Union Local 481 v. Newark State-Operated Sch. Dist., (Commr., 2016: May 12).**

**E. Tenure Dismissal**

Commissioner dismissed two physical education teachers for racially derogatory comments inadvertently overheard by students. The teachers successfully appealed their dismissals as overly harsh in light of existing Commissioner precedent. On remand from the Appellate Division, Commissioner determined to reduce the penalty
to a 120-day suspension following Appellate Division’s suggestion. Commissioner also gave notice that prospective conduct that is similar to that engaged in by the teachers will result in dismissal. **I.M.O. Tenure Hearing of Geiger and Jones, (Commr., 2016: June 6)**.

Fifteen years after charges were filed alleging excessive absenteeism, Commissioner dismissed teacher and found that teacher can be dismissed for excessive absences even where absences are for legitimate health reasons. Commissioner recognized that the factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher’s prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring. Here, such factors warranted dismissal. **I.M.O. Tenure Hearing of Gillespie, (Commr., 2016: June 9)**.

On remand from the Appellate Division, with tenure charges pending before the same arbitrator, in a matter involving a claim for salary and benefits from the 121st day of her suspension, the Commissioner concurred with the ALJ that teacher is entitled to back pay, less mitigation, for the period beginning on the 121st day of her suspension through the date of the original arbitration decision, which sustained the tenure charges against her. The Appellate Division’s remand did not dismiss the tenure charges against petitioner; the matter was remanded as part of the petitioner’s appeal process. The TEACHNJ arbitrator decision ended the petitioner’s entitlement to full pay under the 120-day provision. If petitioner is ultimately successful in having tenure charges reversed on appeal, she would be entitled to full back pay, up to the date of reinstatement to her teaching position. **Pugliese v. State Operated Sch. Dist. Newark, (Commr., 2016: April 12)**.

**F. Salary Increments**

Commissioner determined that employee has the burden of demonstrating that the board’s implementation of an increment withholding was arbitrary, capricious, and unreasonable. Where employee was absent for 23 days during the school year, such absences had a negative impact on student achievement. In addition, teacher’s annual evaluation disclosed that he was rated partially effective in several areas and ineffective in several other areas. Commissioner noted that tenure statutes are inapplicable to increment withholdings in that the term inefficiency, as used in the increment withholding statute does not equate to the term as used in tenure dismissal actions. **Baran v. Jersey City Bd. of Educ., (Commr., 2016: June 30)**.

Commissioner determined that following a reduction-in-force for financial reasons, tenured supervisors were not entitled to receive a salary that was based on a pro-rated reduction of their pre-RIF salaries where the board reduced their 12-month positions to 10-month positions, concluding that the board had statutory authority to reduce petitioners’ salaries onto a lower salary guide at a step coinciding with their seniority and level of experience. The Commissioner held that “when an employee of a board of education is transferred for proper reason to a position which has a lesser salary expectation, that employee is entitled only to the salary in the new position according to his/her appropriate step on the salary scale.” Commissioner distinguished prior precedent where employees were reassigned within the same salary guide, enabling the board to freeze their salaries until the guide became commensurate with their salaries. Commissioner further determined that supervisors were not fired from the
prior supervisory positions and re-hired into the reduced positions, instead they were reduced and reassigned to the new positions. *Vidal-Turner v. Atlantic City Bd. of Educ.*, (Commr., 2016: June 16).

Commissioner reversed ALJ’s summary decision in favor of the school district’ action withholding a tenured teacher’s increment based on two consecutive years of written reprimands for conduct-based incidents. Commissioner found that teacher’s rebuttals to the written reprimands raised genuine issues of fact that precluded summary judgment and remanded to the ALJ for a plenary hearing. *Wicks v. Farmingdale Bd. of Educ.*, (Commr., 2016: June 9).

G. Procedural Rules
Commissioner determined that he lacked jurisdiction to impose an implied contract between the charter school and an instructional aide where the charter school failed to provide notice of non-renewal or a new contract by May 15. Unlike superintendents and teaching staff members, no provision under the school laws creates such a benefit for paraprofessionals. *Tanner v. Trustees of Community Charter School of Paterson* (Commr., 2016: May 6).

Commissioner determined that student’s petition of appeal seeking admission into the vocational school’s cosmetology program was filed beyond the ninety day filing period as set forth at *N.J.A.C. 6A:3-1.3(i)*. School district properly denied admission based on established policy, seventh grade student failed to meet the standards for admission. No violation of equal protection or special education laws. *A.S. v. Gloucester County Vo-Tech.*, (Commr., 2016: June 20).

H. Reduction-In-Force
Commissioner determined that when the board conducted a RIF of all CST members and outsourced all CST services to a private vendor, that vendor was only approved by the state to provide supplemental and second opinion services, therefore the board’s contract with the vendor was ultra vires and a violation of tenure rights. Moreover, all positions subject to the RIF were required pursuant to statute. Board was ordered to restore lost salary and benefits and emoluments less mitigation. *Bloomfield E.A. o/b/o/ the Child Study Team*, (Commr., 2015: Dec. 18).

I. Board Member Removal
Commissioner upholds board member *N.J.S.A. 18A:12-3* removal for missing more than three consecutive meetings without good cause. Board adopted bylaw, which provided that if a board member missed three consecutive meetings without good cause, the Board may remove that member. ALJ determined that board member received timely notice, attended the meeting prior to the removal meeting but failed to demonstrate that his absences were for good cause. Board’s action to remove the board member was not arbitrary, without rational basis or induced by improper motives. *Daniel Esteves v. Board of Education of the Town of Kearny*, Commissioner 2016: April 14

J. Teacher Certification
On an appeal of a Board of Examiners three-year suspension of teacher’s certificates, Commissioner remanded matter to Examiners for re-consideration of penalty because teacher successfully completed conditions of PTI and was released early from probation following her guilty to DWI and endangering the welfare of a child duty for
driving while intoxicated with her 12-year-old child in the car. *I.M.O. Certificates of Cornine*, (Commr., 2015:Nov. 2).

**K. Residency**

Commissioner reversed initial decision dismissing parent appeal of the interim executive county superintendent’s determination that child was not homeless. Commissioner found that homelessness is a fact specific determination that cannot rest upon a simple calculation of the time that children have spent in a particular location and that such a determination must be based upon a fact-specific examination of a family’s circumstances. Remand and consolidation ordered. *H.F. v. Teaneck Bd. of Educ.*, (Commr., 2015:Dec. 14).

**L. Tenure Rights**

Commissioner determined that high school principal transferred to elementary school principal position did not suffer injury to her tenure rights. Despite the fact that the salary guide provided less compensation for elementary principals than for high school principals, no violation of tenure rights occurred where principal was not reduced in salary. *Rodriguez v. New Brunswick Bd. of Educ.*, (Commr., 2015:Dec. 9).

**M. Student Discipline**

Commissioner determined that in order to discipline a student-athlete by imposing a thirty-day suspension from athletic activities for off-campus alcohol consumption, the district must demonstrate a clear nexus between the behavior and student health or safety. The district must then establish that the behavior materially and substantially interfered with the orderly operation of the school. Commissioner determined that the board was arbitrary, capricious, and unreasonable in imposing discipline because the off-campus conduct did not materially and substantially interfere with the orderly operation of the school. *T.H. v. Upper Freehold Reg’l. Bd. of Educ.*, (Commr: 2015: Nov. 19).

**N. Decisions on Training**

Charter school trustee failed to complete Governance I training. Numerous notices of the training requirement were provided by the NJSBA, SEC, Executive County Superintendent and the DOE Office of Charter Schools. Commissioner concurs with the penalty of removal recommended by the Commission. Trustee was removed from office as a school official found to have violated the School Ethics Act, effective immediately. *In the Matter of Tom Iacovone, Hope Community Charter School, Camden County, T02-15, SEC 2016: February 23, Commissioner 2016:April 11*.

**O. Sending – Receiving**

Deal sought to sever its sending-receiving relationship with Asbury Park and enter into a new sending-receiving relationship with the Shore Regional Board of Education. Deal’s feasibility study demonstrated, to the Commissioner’s satisfaction, that there were no substantial negative educational, financial or racial impact will incur to any of the school districts upon severance of the current sending-receiving relationship between Deal and Asbury Park or upon establishment of the proposed sending-receiving relationship between Deal and Shore Regional. Commissioner approved Deal’s severance with Asbury Park and establishment of a send-receive relationship with Shore Regional. *In the Matter of the Petition of the Board of Education of the Borough of Deal for Severance of its Sending-Receiving
VIII. SCHOOL ETHICS COMMISSION

A. Ethics Complaints

C04-16, 05/24/16 – Complaint alleged that superintendent used his office to gain unwarranted privileges. School Ethics Commission found that while it appeared that the superintendent may have exceeded his authority in publishing a clarification letter in response to allegedly erroneous statements made by candidates to board office, no evidence was provided to demonstrate that the superintendent received a benefit or privilege from his unilateral actions. Any potential misconduct should be addressed in a different forum.

On a motion for summary judgment, the SEC determined that a board member’s actions at a public meeting, questioning every item on the bill list were not actions taken to benefit herself or her immediate family members in violation of N.J.S.A. 18A:12-24(c). Nor was a board member’s public opposition and display of a “Vote No” lawn sign a personal promise that could compromise the board violation of N.J.S.A. 18A:12-24(e). No evidence was produced indicating that the board member made personal promises to encourage others to vote against the referendum or took action beyond the scope of her authority. C11-15, SEC 2015: Aug. 27.

The SEC noted that the voters in the school district decide which candidates will represent them on the school board. The complainant had advised the board president that an ethics complaint would be filed against the board member unless that board member resigned from the board of education. The SEC advised that the seats that duly elected school officials occupy must not be threatened by individuals or outside groups seeking to change the balance of power in their favor through intimidation or coercion. The SEC must not be used as a tool in partisan battles to accomplish political ends. Such conduct sets a poor example for the children of the school district and weakens the public’s trust and confidence in the electoral process. Karpia v. Farruggia, Hopatcong Borough Board Of Education, Sussex County, C57-14, SEC 2016: January 26.

The SEC determined that a board member did not violate the School Ethics Act when he voted to approve legal fees for Board counsel as to whether his ability to participate in Board activity was limited due to his sister’s role as an on-call substitute teacher in the District. The Respondent as Board President did exactly what he was authorized to do under the circumstances. He sought legal counsel to clarify his ability to conduct Board business in light of the potential conflict posed by his sister’s position as an on-call substitute teacher in the District. He did not seek counsel on a personal matter or a personal lawsuit, but rather on an ethical question that would impact the Board as a whole. Board counsel is available to the Board to provide legal advice and research for just such situations. The SEC did not find that the Respondent acted inappropriately. Capone v. Aiken, Hamilton Township Board of Education, Atlantic County, C28-15, SEC 2016: February 23.

B. Advisory Opinions

Commission determined that absent other contributing factors, board members, with relatives, such as a first cousin or first cousin-in-law, employed in school districts
represented by the NJEA and local affiliates, are not conflicted when negotiating collectively with the in-district local affiliate. Such familial bonds are too attenuated for the board member to effect collective negotiations in-district. However, the outcome could be different if the relative has executive authority within the local affiliate or the state-wide union. (Advisory Opinion A11-15).

SEC determined that a board member, who is employed as a supervisor in a nearby district and a member of the state-wide and local administrators association, is not conflicted when negotiating with the teacher’s association, so long as no linkage exists between the administrators’ and teachers’ associations.. (Advisory Opinion A13-15).

SEC responded to a request regarding several board of education members who had relatives who either were full-time employees and members of the local NJEA affiliate union in either their own district or another. The SEC advised that the board members should review recently issued public advisory opinions A11-15, A16-15 and A19-15, which addressed these topics. The SEC further advised that board members with relatives employed in-district, who are members of an NJEA affiliated union, are considered to have a conflict under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. The conflict further extends into the personnel area as to the relative and the relative’s supervisors, and other superiors in the chain of command ending with and including the superintendent. No participation in personnel matters regarding these individuals is permitted, including, but not limited to discussion, evaluation and voting. (Advisory Opinion A25-15).

IX. STATE BOARD OF EXAMINERS

A. Suspension of Certificates – Selective Decisions

Atlantic County Prosecutor’s Office advised the Examiners that music teacher was not truthful when he denied any knowledge of another teacher’s dating relationship with a student. Although no criminal charges were filed, Examiners determined that such conduct was unbecoming and issued a six-month suspension of his teaching certificates. I.M.O. Certificates of Arena, (Exam., 2016: June 23).

Examiners determined to suspend the certificates of teacher who was indicted on 23 counts of 1st degree aggravated sexual assault and 17 counts of 2nd degree endangering the welfare of a child. Teacher responded to the Examiners order to show cause, admitting to the indictment but arguing that the suspension of her certificates during the pendency of the criminal charges should not result in punishment based on unproven charges. Examiners found that her potential disqualification from teaching because of her indictment warranted suspension of her teaching certificates pending the resolution of the criminal charges filed against her. I.M.O. Certificates of Dufault, (Exam., 2016: June 23).

Examiners determined to suspend the teaching certificates of teacher of 38 years with an unblemished record where the Office of Fiscal Accountability and Compliance (“OFAC”) reported that teacher admitted during an OFAC investigation that she created an answer key for portions of the 2010 NJASK. Teacher asserted that the building principal threatened her. Although she did not serve as a test examiner,
feared retribution from the principal, and cooperated upon his removal, Examiners suspended her certificates for six months. **I.M.O. Certificates of Medves, (Exam., 2016: June 23).**

State Board of Examiners ordered revocation of employee’s School Social Worker’s certificate. Social Worker’s exposing his penis to a female teacher on school grounds, coupled with his unwelcome comments made to four other female staff members demonstrated that social worker repeatedly crossed a boundary that should exist between professional colleagues. While the ALJ, in recommending a two year certificate suspension, lauded the social worker for his interactions with students, he is responsible for his conduct as a whole. On balance, the State Board of Examiners found that his conduct warrants certificate revocation, rejecting the ALJ’s recommendation. **IMO the Certificates of Holloway, Exam. 2014: April 4**

X. **TEACHNJ ARBITRATION**

A. **Rules**

Arbitrator determined that arbitrators have inherent authority to hear and determine dispositive motions despite the lack of such authority in the statute in light of Commissioner’s express delegation of that authority to the arbitrator in the instant matter. **I.M.O. Tenure Hearing of Churchill, Camden City Bd. of Educ., (TEACHNJ: 2016, Jan. 5).**

Arbitrator determined that 141-day delay between summative conference and the filing of tenure charges did not act as a time bar to the prosecution of tenure charges. The drafting and review of tenure charges are not comparable to the transcription and publication of meeting minutes required by the Open Public Meetings Act. Moreover, respondent failed to demonstrate that the time lapse materially supported one or more of the four statutory factors to be determined by the arbitrator. Teacher’s motion for summary judgment held in abeyance during the arbitration proceedings. **I.M.O. Tenure Hearing of Churchill, Camden City Bd. of Educ., (TEACHNJ: 2016, Jan. 5).**

B. **Inefficiency**

Tenured art teacher who was rated partially effective on 2013-14 summative evaluation and ineffective on 2014-15 summative evaluation filed motion to dismiss asserting a fatally defective evaluation process where the district did not (1) provide at least three observations, (2) did not provide at least one announced observation, preceded by a pre-conference; and (3) did not observe at least once each semester. Arbitrator found that she had authority to rule on dispositive motions, Arbitrator found that despite several other evaluations, the district’s failure to comply with the statutory requirements deprived the teacher of due process protections and materially affected the outcome of Hannah’s evaluations. Reinstatement with back pay and emoluments ordered. **I.M.O. Tenure Hearing of Hannah, State-Operated Sch. Dist. Newark, (TEACHNJ: Feb. 6).**

Arbitrator determined that charges of inefficiency were proven where teacher scored partially proficient on during two consecutive summative evaluations. Despite scoring highly effective on the student growth objective portion of the evaluation, Respondent teacher’ average was scored partially effective on the four domains of the performance evaluation. Despite the fact that no evidence was produced that one of the evaluators was properly trained in the evaluation tool, the observations arising
from that evaluation were consistent with those of other evaluators and therefore did not impact the overall evaluation. Dismissal ordered. I.M.O. Tenure Hearing of Lewis, (TEACHNJ: 2016, Jan. 12).

Teacher’s arguments that her transition from teaching high school special education classes to a second grade inclusion class should have been considered in her evaluations and that she did not receive sufficient support from her co-teacher were arguments of an educational nature and was beyond the arbitrator’s authority. No statutory requirement that the district implement a research-based monitoring program for other than first year teachers, therefore the multi-phased corrective action plan implemented by the district was educationally based and not subject to the arbitrator’s substantive review. Dismissal ordered. I.M.O. Tenure Hearing of Lewis, (TEACHNJ: 2016, Jan. 12).

In a consolidated matter, Arbitrator determined that she lacked sufficient evidence to determine that student growth objectives were unilaterally implemented by administration, there was also insufficient evidence for the Arbitrator to determine whether evaluation scores were calculated incorrectly where it was unclear as to how sub-indicators were factored into the scoring rubric. Accordingly, the Arbitrator was unable to determine that the district failed to comply with evaluation procedures and left such determination to the individual arbitrators. I.M.O. Tenure Hearing of Osborne, Paterson State-Operated Sch. Dist., (TEACHNJ: 2016, Jan. 14).

C. Conduct Unbecoming
Arbitrator determined that tenured secretary did in fact place her daughter in the temporary care and custody of her brother due to family instability and not for the purpose of avoiding tuition payments. The fact that both mother and child were observed exiting an out-of-district location on two successive mornings did not defeat proofs of in-district residential guardianship. Reinstatement with back pay and full emoluments ordered. I.M.O. Tenure Hearing of Clark-Huff, Elizabeth City Bd. of Educ., (TEACHNJ, 2016: Jan. 15).

Arbitrator determined that approximately 380 absences over a 19 year period did not constitute chronic absenteeism where tenured secretary’s use of time did not exceed the days to which she was entitled. Time that secretary was assigned to the “rubber-room” which tenure charges were investigated should not be held against her. Reinstatement with back pay and full emoluments ordered. I.M.O. Tenure Hearing of Clark-Huff, Elizabeth City Bd. of Educ., (TEACHNJ, 2016: Jan. 15).

Arbitrator determined that school district did not demonstrate that a special education teacher engaged in conduct unbecoming by failing to report absences where evidence demonstrated a legitimate work-related injury and that teacher reported her health status to the health office instead of the attendance office. Charges dismissed. I.M.O. Tenure Arbitration of Vaughn, Newark State-Operated Sch. Dist., (TEACHNJ 2016: Feb. 22).

Arbitrator determined that the district demonstrated that special education director engaged in unbecoming conduct where she falsely certified that a special education placement was a religious school and therefore ineligible for a public placement during a special education due process hearing. Dismissal ordered. I.M.O. Tenure Arbitration of Tobia, Lakewood Sch. Dist. (TEACHNJ, 2016: Feb. 4).
Arbitrator determined that the district failed to demonstrate conduct unbecoming against a tenured custodian who provided students with electrical tape while in the boys bathroom. No evidence demonstrated that the custodian bound or gagged the boys, restrained their departure from the bathroom. Custodian not fully responsible for substantial media attention garnered when the facts were “mis-reported” and did not cause lawsuits to be filed. Reinstatement with back pay and full emoluments ordered. I.M.O. Tenure Arbitration of Garifine, Long Branch (TEACHNJ, 2016: Feb. 15).

Arbitrator determined that the district failed to substantiate charges of inefficiency where no mid-year observation was completed and observations took place late in the year, due to an approved leave of absence, giving teacher on a CAP little time to demonstrate improvement. I.M.O. Tenure Arbitration of Ebert, Newark State-Operated School District (TEACHNJ, 2016: Feb. 22).

Arbitrator determined that the district demonstrated unbecoming conduct where art teacher filed excessive student incident reports and made derogatory statements to and about students and requested “better-behaved” students for her classes. Teacher’s acknowledgment of fear in regard to her students was taken as an expression of racism by the district. Teacher was found to have generally failed to manage her students. Reinstatement ordered, without back pay and an independent medical evaluation to determine her fitness to manage students. I.M.O. Tenure Arbitration of Ebert, Newark State-Operated School District (TEACHNJ, 2016: Feb. 22).

Arbitrator determined that board failed to sustain charges of conduct unbecoming where teacher was videotaped in the classroom directing profanity at a student. Arbitrator discredited video as full and accurate representation of events and credited teacher’s unrebutted testimony that the video was play-acting and designed with the legitimate purpose of correcting the conduct of a disruptive student. The arbitrator determined that the video was clearly not a bona fide altercation, the words were not spoken in anger or with bad intent. I.M.O. Tenure Arbitration Okundaye, Newark State Operated School District (TEACHNJ, 2016: Feb. 9)

Arbitrator found that tenured faculty advisor culpable where he forged vendor signatures on district requisitions over a period of many years as a matter of expedience and not for financial gain. While forgery would normally sustain summary judgment in favor of dismissal, here both the auditor and business administrator testified credibly that such forgery did not violate any law or policy. Reinstatement with two-year increment withholding ordered. I.M.O. Tenure Arbitration of Carr, Carlstadt-East Rutherford Regional High School (TEACHNJ, 2016: Feb. 1).

Arbitrator ordered 120 suspension without pay for chronic tardiness. Arbitrator relied on the “Elkouri Principles,” which explain that all written instruments should be interpreted using the same general principles, to affirm charges of chronic absenteeism. Teacher was tardy 49 times during the 2013-14 school year and 40 times through March of the 2014-15 school year. Charges of inefficiency dismissed. (I.M.O. Tenure Hearing of Anderson, TEACHNJ, 2015: Aug., 19).
Arbitrator determined that because the TeachNJ Act does not provide for the amendment of tenure charges, the district is unable to amend filed charges of inefficiency to include certifications that fall under section 8 of the Act. District must ensure that all of the procedural protections established in the Act are provided to teachers during inefficiency proceedings. (I.M.O. Tenure Hearing of Kelly-Gamble, TeachNJ Arb., 2015: August 24).

Arbitrator determined that TEACHNJ did not provide for filing amended tenure charges of inefficiency. The arbitrator also determined that Section 8 of the TEACHNJ Act was the appropriate provision for charges of inefficiency rather than Section 8 of the Act. Arbitrator further found that where dates and specifications of the amended charges were identical to the original charges, no such amended charges had been filed. Matter dismissed based on collateral estoppel, res judicata and the entire controversy doctrine. (I.M.O. Tenure Hearing of Lenz, TeachNJ Arb., 2015: Aug. 24).

Arbitrator determined that while the state-takeover statute authorizes the state-district superintendent to implement tenure charges against of inefficiency after a twelve month cycle, district administrators failure implement a formal corrective plan makes the prosecution of the tenure matter arbitrary, capricious, and unreasonable. Reinstatement with back-pay ordered. (I.M.O. Tenure Hearing of Mashore, TEACHNJ Arb., 2015: Aug., 24).

XI. NEW JERSEY DIVISION ON CIVIL RIGHTS
No Reported School Decisions

XII. NEW JERSEY GOVERNMENT RECORDS COUNCIL
GRC determined that while the records custodian violated OPRA by failing to individually and timely respond to a request for work schedule and leave records of the custodian of records, such denial was not unlawful where the custodian timely provided responsive records that were in existence. Subsequent notice that the balance of the requested records did not exist was not timely. No evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did not rise to the level of a knowing and willful violation. (Schleerer v. N.J. Dept. of Educ., GRC, 2015: July 30).

XIII. NEW LEGISLATION
P.L.2015, c.96. -see S2484 - Requires DOE to conduct study on options and benefits of instituting later school start time in middle school and high school.

S2081 / A3790 - Limits expulsions and suspensions for students in preschool through grade 2 with certain exceptions; requires early detection and prevention programs for behavioral issues in preschool through grade 2

A2292 / S372 - Requires review of Core Curriculum Content Standards to ensure guidance for substance abuse instruction provided to public school students incorporates most recent evidence-based standards and practices

A2563 / S1753 - Directs institutions of higher education and proprietary degree-granting institutions to provide Higher Education Student Assistance Authority with graduation and
transfer rates of State tuition aid grant recipients

A2566 / S496 - Establishes Response to Intervention initiative in DOE to support and encourage school districts in implementation of Response to Intervention framework

A2689 / S754 - "Secure Schools for All Children Act"; establishes State aid program for security services, equipment, or technology to ensure safe and secure school environment for nonpublic school students

A3405 / S1822 - Permits certain public institutions of higher education to make purchases and contract for services as participating contracting units in cooperative pricing systems and through use of nationally-recognized and accepted cooperative purchasing agreements

BILL VETOED:

S86 / A3629 – CONDITIONAL - Establishes Class Three special law enforcement officers to provide security in public and nonpublic schools and county colleges

XIV. NEW REGULATIONS

N.J.A.C. Chapter 7 - Managing for Equality and Equity in Education (April 4, 2016)
N.J.A.C. Chapter 9B - State Board of Examiners and Certification (May 13, 2016)
N.J.A.C. Chapter 14 – Special Education (Feb. 3, 2016)
N.J.A.C. Chapter 15 - Bilingual Education (March 21, 2016)

Proposed re-adoption of N.J.A.C. 6A:7, Managing for Equality and Equity in Education. The chapter provides standards governing equality in educational programs to guarantee each student equal access to all educational programs, services, and benefits of the school district regardless of his or her race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.

N.J.A.C. 6A:9B -5.15, 11.10 Notice of Action on Petition for Rulemaking Persons Assigned to Work with Interscholastic Swimming and/or Diving Programs, Petitioner’s request denied

48 N.J.R. 141(b) - 1/19/2016 - N.J.A.C. 6A:14-1.3 Notice of administrative correction, special education, definition of dyslexia

48 N.J.R. 205(a) - 2/1/2016 - N.J.A.C. 6A:3-5.1 and 5.2
Notice of Receipt of and Action on Petition for Rulemaking Filing of Written Charges and Certificate of Determination; and Format of Certificate of Determination Request denied.

48 N.J.R. 337(a) - 2/16/2016 - N.J.A.C. 6A:2-2.4 Commissioner Reporting Responsibilities

48 N.J.R. 280(a) - 2/16/2016