

2019 School Law Update

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Part I

Recent Legislation

Mental Health Instruction

L. 2019, c. 222

- This law requires all school districts to ensure that their health education programs in grades K-12 recognize the multiple dimensions of health by including mental health and the relation of physical and mental health so as to enhance student understanding, attitudes, and behaviors that promote health, well-being, and human dignity.
- The required instruction in mental health shall be adapted to the age and understanding of the students, include, as appropriate, information on substance abuse, and shall be incorporated as part of the district's implementation of the NJ Student Learning Standards in Comprehensive Health and Physical Education.
- The first school year the law will apply to will be 2020-2021.

Instruction in Sexual Abuse Awareness

L. 2019, c. 185

- The law requires every school district to incorporate age-appropriate sexual abuse and assault awareness and prevention education in grades preschool through twelve.
- The Commissioner will provide school districts with age-appropriate sample learning activities and resources.
- This law takes effect for the 2019-2020 school year.

Instruction on Consent

N.J.S.A. 18A:35-4.37; L. 2019, c. 16

- This law requires school districts to incorporate age-appropriate instruction in grades 6-12 on the law and meaning of consent for physical contact and sexual activity as part of the district's implementation of the N.J. Student Learning Standards in Comprehensive Health and Physical Education.
- The instruction shall be designed to increase discussion and awareness that consent is required before physical contact or sexual activity as well as the social, emotional, and relational impact surrounding sexuality, the right to say no to unwanted physical contact or sexual activity, and the virtues of respecting the right of others to say no.
- The Commissioner must provide school districts with age-appropriate sample learning activities and resources designed to implement this requirement.
- The law goes into effect for the 2019-2020 school year.

History of Disabled and LGBT Persons

N.J.S.A. 18A:35-4.35; L. 2019, c. 6

- This law requires school districts to include instruction on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people in an appropriate place in the curriculum of middle school and high school students.
- Every board of education must have policies and procedures in place pertaining to the selection of instructional materials to implement this requirement.
- When adopting instructional materials, a board of education shall adopt inclusive instructional materials that portray the cultural and economic diversity of society including the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, where appropriate.
- This requirement takes effect for the 2020-2021 school year.

Financial Literacy

N.J.S.A. 18A:35-4.34; L. 2018, c. 167

- This law requires school districts to incorporate instruction in financial literacy in each of grades 6-8.
- The purpose of the instruction is to provide middle school students with the basic financial literacy necessary for sound financial decision-making.
- The instruction must meet the requirements established by the State Board of Education and shall
 - Be appropriate to, and reflect the age and comprehension of, the students enrolled in the particular grade level; and
 - Include content on budgeting, savings, credit, debt, insurance, investment, and other issues associated with personal financial responsibility as determined by the State Board.
- The Commissioner will provide sample instructional materials and resources that may be used to support the implementation of this requirement.
- The law takes effect for the 2019-2020 school year.

Endorsements to Teach Health and Physical Education

L. 2019, c. 171

- This law requires that teachers being appointed to teach health and physical education, physical education, or health in grades K-6 must have the corresponding endorsement to the instructional certificate (health and physical education or physical education).
- A school nurse endorsement will be sufficient to teach health in grades K-6.
- The law grandfathers all current teachers holding an elementary school endorsement who have been appointed to teach one of these classes.
- This law takes effect for the 2019-2020 school year.

Salary Inquiries

L. 2019, c. 199

- This law prohibits an employer from:
 - Screening job applicants based on the applicant's salary history; or
 - Requiring that the applicant's salary history satisfy any minimum or maximum criteria.
- The employer may consider salary history in determining salary for the applicant, and may verify the applicant's salary history, if the applicant voluntarily, without employer prompting or coercion, provides the employer with salary history.
- An employer cannot consider an applicant's refusal to volunteer salary information when making employment decisions.
- After an employer makes an offer of employment that includes an explanation of the overall compensation package for the applicant, the employer may request that the applicant provide written authorization for the employer to confirm salary history.

Deaf Student's Bill of Rights

L. 2019, c. 204

- This law establishes a Deaf Student's Bill of Rights and creates a working group on deaf education.
- Additionally, the law requires the Department of Education to develop a parent resource guide and for both the Department of Education and the Department of Health to collect and report data for children who are deaf or hard of hearing.

Child Abuse Hotline

L. 2019, c. 178

- This law requires school districts to prominently display information about the Department of Children and Families' State Central Registry in each school of the district.
- The information must give instructions to call 911 for emergencies and shall include directions for accessing the Department's website or social media platforms for more information on reporting abuse, neglect, and exploitation.
- The information must be in a format and language that is clear, simple, and understandable.
- The information shall be on a poster and displayed at each school in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students.
- The law took effect on August 18, 2019.

Sexual Abuse Task Force

L. 2019, c. 107

- This law creates a task force in the Department of Education on the prevention of, and response to, sexual abuse of children.
- The task force will make recommendations for school policies and training to address sexual abuse of children. In making its recommendations, the task force will:
 - Gather information concerning child sexual abuse throughout the State;
 - Receive reports and testimony from individuals, State and local agencies, community-based organization, and other public and private organizations;
 - Review steps taken and programs established in other states to reduce child sexual abuse;
 - Create goals for State policy that are aimed at preventing child sexual abuse;
 - Create recommendations and guidelines for school policies addressing sexual abuse of children that are flexible enough to allow accommodation for local autonomy and values;
 - Review current instructional programs or curricular provided in New Jersey schools on issues related to child sexual abuse, and create recommendations for a sample curriculum to be utilized by school districts;
 - Create recommendations and guidelines for school personnel to respond appropriately to students affected by sexual abuse, including any recommendations for teacher professional development and training on this issue;
 - Create awareness and guidelines for age-appropriate, evidence-based child sexual abuse awareness, including guidelines for utilizing appropriately trained professionals to provide the student instruction and teacher training on this issue;
 - Create recommendations and guidelines for providing educational material to parents and guardians on the warning signs of child sexual abuse and information on assistance and referrals or resources; and
 - Develop a child sexual abuse protocol to be utilized by all community partners in order to help identify, prevent, and investigate child sexual abuse.

Anti-Bullying Task Force

L. 2019, c. 179

- This law creates a task force to examine, evaluate and make recommendations regarding the implementation of the Anti-Bullying Bill of Rights Act.
- The task force will identify areas of improvement, make recommendations regarding appropriate changes and updates to the law, and shall:
 - Examine and evaluate the effectiveness of the implementation of the Act in New Jersey's schools;
 - Examine any unintended consequences resulting from the implementation of the Act and its implementing regulations; and
 - Present any recommendations deemed necessary and appropriate to modify or update the Act.
- The task force must hold one public hearing, invite the participation of students and families who have experienced bullying, and issue a report within 180 days of its organization.

Disclosure of Online Security Breaches

L. 2019, c. 95

- This law requires any public entity that compiles or maintains computerized records which include personal information to disclose any breach of security of those records when personal information was, or is reasonably believed to have been, accessed by an unauthorized person.
- Disclosure is not required if the public entity can establish that the misuse of the information is not reasonably possible.
- Prior to disclosure to the affected individual, the public entity must report the breach to the State Police for investigation and handling.
- Unless notification will impede a criminal or civil investigation, notification to the affected individuals must occur in the most expedient time possible and without unreasonable delay.
- Generally, the required notice may be provided electronically or in writing.
- The law goes into effect September 1, 2019.

Information Sharing with Police

N.J.S.A. 18A:41-7.1; L. 2019, c. 106

- This law requires a school district to provide law enforcement with a copy of the current blueprints and maps for all schools and school grounds within the school district.
- The school district must provide revised copies any time that there is a change to the blueprints or maps.

Child Abuse Notification

L. 2019, c. 46

- This law requires a board of education, when it determines that a teaching staff member has failed to report an allegation of child abuse in accordance with State law, to submit a report to the State Board of Examiners of its finding.
- The board of education can make the finding either through tenure charges or notification of a disorderly persons conviction for failure to report the child abuse.
- The State Board of Examiners will then review the teacher's certification to determine whether the failure to report warrants the revocation or suspension of the teacher's certificate.

Panic Alarms

L. 2019, c. 33

- This law, named “Alyssa’s Law,” requires each school building to be equipped with at least one panic alarm for use in a school security emergency.
- The alarm must be directly linked to local law enforcement authorities and shall immediately transmit a signal or message to the authorities upon activation.
- The alarm shall not be audible within the school building.

Retention of Surveillance Footage

L. 2019, c. 47

- This law requires the Attorney General, in consultation with the Commissioner, to develop a protocol regarding retention of video footage from school surveillance systems.
- The protocol must address, among other things: a minimum and maximum amount of time that footage may be retained, measures to be taken to limit access to the footage, and compliance with FERPA.

Opioid Overdose Prevention Policy

L. 2018, c. 106

- This law requires boards of education to develop a policy for the emergency administration of opioid antidotes to students and staff.
- The policy would require high schools, and permit any other school, to maintain a supply of opioid antidotes and permit emergency administration of them by a school nurse or trained employee.
- The opioid antidotes must be accessible during regular school hours and during school-sponsored functions that take place on school grounds.
- Each school nurse and employee designated to administer the antidote receive training on standardized protocols for the administration of an opioid antidote to an individual who experiences an opioid overdose.
- The law directs the Department of Education to establish guidelines for school districts to develop their policies.

School Safety Specialist

L. 2018, c. 100

- This law requires the superintendent to designate a school administrator, or a school employee with expertise in school safety and security, as a school safety specialist for the district.
- The school safety specialist shall:
 - Be responsible for the supervision and oversight for all school safety and security personnel, policies, and procedures in the school district;
 - Ensure that these policies and procedures are in compliance with State law and regulations; and
 - Provide the necessary training and resources to school district staff in matters relating to school safety and security.
- The school safety specialist will also serve as the school district liaison with local law enforcement and national, state, and community agencies and organizations in matters of school safety and security.

Off-Campus Events

L. 2019, c. 57

- This law permits a board of education to enact a policy that requires all students to carry a district-issued identification card while the student is at any school-sponsored, off-campus event including field trips and sports programs.
- The Commissioner will develop guidelines concerning the information to be included in the identification card which shall include, at a minimum, the student's name, an up-to-date photograph, and the current school year.
- Additionally, the law also permits a board of education to develop a policy which requires a list to be compiled of the names of students being transported by school bus to a school-sponsored activity.
- The list of students for each bus must be submitted to the principal or designee and be maintained for use in the case of an emergency.

Signs on School Buses

L. 2019, c. 43

- This law requires that there be a sign on every school bus which informs drivers, insofar as practicable, of their duties with respect to passing the bus while it is unloading or loading students.
- The signs must meet requirements prescribed by the State Board of Education regarding color, form, and design.
- School districts and bus contractors must also display on the rear of a school bus a telephone number, website address, or other identifying information that will allow the public to report a bus driver's misconduct while operating the bus.
- This law goes into effect for the 2019-2020 school year.

Certification for Transportation Supervisor

N.J.S.A. 18A:39-19.7; L. 2019, c. 17

- Beginning with the 2021-2022 school year, every newly hired school district transportation supervisor and those with less than eleven years of experience must provide evidence of satisfactory completion of the School Transportation Supervisors Certification Program offered by the Center for Government Services at Rutgers or any other certification program designated by the Commissioner.
- For newly hired transportation supervisors, this requirement is a condition of employment.
- For currently employed transportation supervisors with less than eleven years of experience, they must complete the certification program by January 31, 2023.

Safety Education Programs for Bus Drivers

N.J.S.A. 18A:39-19.1a; L. 2018, c. 160

- This law requires a school district or transportation contractor to provide a safety education program for all permanent and substitute school bus drivers and school bus aides that it employs.
- At a minimum, the training must include:
 - Student management and discipline;
 - School bus accident and emergency procedures;
 - Conducting school bus emergency exit drills;
 - Loading and unloading procedures;
 - School bus stop loading zone safety;
 - Inspecting the school vehicle for students left on board at the end of a route;
 - And the use of a student's education records, including the employee's responsibility to ensure the privacy of the student and the student's records, if applicable.
- In addition to these requirements, the employer must also administer a safety education program that includes defensive driving techniques and railroad crossing procedures to school bus drivers.
- These trainings must occur twice per calendar year.

Medical Examinations for Bus Drivers

L. 2018, c. 151

- This law requires bus drivers to submit a medical examination completed by a medical examiner listed on the National Registry of Certified Medical Examiners maintained by the Federal Motor Carrier Safety Administration as part of the licensing process.
- For school bus drivers over 70, they must annually provide the employer for review at the MVC's biannual inspection satisfactory evidence of continuing physical fitness in the form of a medical examination.
- For school bus drivers over 75, the medical examination must be provided to the employer every six months.

Bus Driver License Revocation

L. 2018, c. 152

- This law requires a board of education or transportation company, when notified by the Department of Education that a school bus driver's license has been suspended or revoked, to verify within one business day of the notification through a statement to the Department that the driver no longer operates a bus.

Part II

Recent Caselaw

Union Speech

Parsippany-Troy Hills Educ. Ass'n v. Parsippany-Troy Hills Bd. of Educ.

Facts:

- The board and the union were involved in heated negotiations regarding a new collective negotiations agreement.
- As part of a campaign to compel the board to agree to a new contract, the union directed its members to post hundreds of signs on classroom windows and doors.
- The signs displayed the union's name and above it stated "I AM PROUD TO BE A TEACHER."
- The union president admitted that the signs were an attempt to build unity.
- The board directed the union to remove the signs because they were intended or designed to promote a position on a labor relations issue in violation of board policy.
- The policy provided that "A teaching staff member shall not engage in any activity in the presence of pupils while on school property, which activity is intended and/or designed to promote, further or assert a position on labor relations issues."
- The union sued, alleging that the removal order violated its First Amendment rights.

Union Speech

Parsippany-Troy Hills Educ. Ass'n v. Parsippany-Troy Hills Bd. of Educ.

Decision:

- The board did not violate the right to free speech by ordering the removal of the signs.
- A public employee's right to free speech is not a license to express one's opinions at any public place and at any time.
- The government as an employer has far broader powers to regulate speech than does the government as sovereign.
- The issue is whether the employee's speech can be characterized as being expression on a matter of public concern. If it is a matter of public concern, then the public employer can only restrict the speech if it has an adequate justification for treating the employee differently from any other member of the public.
- Reasonable restrictions can apply when they arise from a labor dispute, even when the content of the speech does not specifically refer to the labor dispute or negotiations.
- A classroom is not the place for proselytizing students to advance a teacher's financial interests, nor should the classroom be the teacher's soapbox. Therefore the board could reasonably have concluded that the signs would risk interfering with the performance of teachers in educating their students.

Leave for Union Officers

Rozenblit v. Lyles

Facts:

- Jersey City's CNA with its teachers' union contained a provision which permitted the union president and his/her designee to devote all of their time to the union's business and affairs.
- The provision required Jersey City to grant adequate office and parking facilities, and they received their full salaries and benefits.
- Two taxpayers challenged this arrangement, alleging that it was illegal.

Decision:

- The Appellate Division held that this practice was not permitted by New Jersey's education laws and violated public policy.
- The court explained that because the two union officers reported to "work" every day on school property, they could not be considered absent to justify a paid leave of absence.
- The court appeared troubled that these two officers received full-time salaries from Jersey City while not reporting to any district official and were not subject to any administrative oversight.
- Without specific statutory authority allowing a school district to use public funds to pay labor leaders who exclusively devoted their time to the service of another organization, the court could not permit the arrangement to continue.

Tenure Rights

Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist.

Facts:

- In addition to Plaintiff's position as a special education teacher, she also taught special education classes in the District's alternative education program after her regular school day.
- This assignment was voluntary, and she was paid \$20/hour for the time she worked after school and in the evenings for this assignment.
- After the District assigned another teacher to the after-school position, Plaintiff sued claiming she attained tenure in the position separate from her tenured special education position.

Decision:

- The Appellate Division agreed with the Commissioner's analysis that this was an extra-curricular position that was not tenure eligible because the assignment occurred outside of the regular school day and did not require additional certification beyond Plaintiff's teaching certificate.
- The Supreme Court granted Plaintiff's petition for certification and will likely hear the case in the next few months.

Tenure Acquisition

Mirda v. Union Cty. Educ. Svcs. Comm'n

Facts:

- The Petitioner was employed by the ESC as a bedside instructor who was paid on an hourly basis, was not guaranteed any number of hours, and did not receive any benefits.
- She worked fifteen years in this position, generally working six to eight hours per day in a hospital teaching five to seven students.
- She claimed that she attained tenure in this role, but the ESC contended that the position was akin to a substitute teacher and therefore ineligible for tenure.

Decision:

- The Commissioner agreed that Mirda was ineligible for tenure as a bedside instructor.
- While not technically a substitute, she was only needed because the regular classroom teacher was unable to provide instruction during the student's absence.
- She was therefore acting in place of the classroom teacher, allowing the substitute exception to the tenure laws to deny her tenure in the position

Reduction in Force

Lucky v. Bd. of Educ. of Englewood

Facts:

- The board abolished Lucky's position as a Student Assistance Coordinator.
- It then created a new position that combined SAC duties with a School Counselor.
- Lucky did not hold dual certification, but argued that he was entitled to the SAC portion of the position on a part-time basis and contended that the new position was created to defeat his tenure rights.

Decision:

- The Commissioner held that the board's actions were proper because it had proven valid educational reasons for combining the positions: that the board could offer better integrated counseling services and improve efficiency in the delivery of counseling services to students.
- Therefore there was no basis for the Commissioner to split the position and order the board to give Lucky the SAC portion of the position's duties.
- Since Lucky did not hold a school counselor certificate, he was not eligible to hold the position.

Psychiatric Examinations of Staff

Cummings v. Bd. of Educ. of Little Egg Harbor

Facts:

- After falling asleep at work multiple times and contacting DCPD regarding a student's parent when it was questionable whether a referral was appropriate (and failing to notify the principal as required by district policy), the superintendent directed the employee to obtain a physical and mental examination.
- The employee consented to the physical examination, but refused to obtain the mental examination.

Decision:

- The Commissioner held under these facts the board had sustained its burden of proving the employee had a deviation from normal mental health, requiring an examination.
- In reaching this conclusion, the Commissioner stressed that school districts have the obligation to ensure that employees are physically and mentally fit to perform the duties required to maintain the integrity of the school system.
- The bar set by the statute which permits examinations of employees is low in light of the paramount importance of the health, safety, and wellbeing of students.

Legal Holidays

Corcoran v. Queen City Acad. Charter Sch.

Facts:

- The charter school's calendar required teachers to work on Columbus Day, a legal holiday.
- Corcoran informed the school that he planned to observe Columbus Day and would not be attending the scheduled professional day that was planned.
- The school classified the absence as a personal day.
- Claiming the loss of a personal day violated N.J.S.A. 18A:25-3 (which provides that no teaching staff member shall be required to perform his duties on any holiday and shall face no deduction from salary), he sued to have his personal day restored.

Decision:

- The Commissioner concluded that salary as used in N.J.S.A. 18A:25-3 also includes vacation and personal leave, and that the loss of a personal day is equivalent to a financial loss.
- Since Columbus Day was a legal holiday, the school violated the law by charging the teacher a personal day.

Vested Rights

Barila v. Bd. of Educ. of Cliffside Park

Facts:

- For many years, the CNA between the Board and the teachers' union permitted teachers to receive a maximum of \$25,000 for accumulated sick leave.
- After bargaining, the Board and the union agreed to decrease the maximum to \$15,000 in exchange for other concessions.
- Teachers who had accumulated more than \$15,000 of accumulated sick leave under prior CNAs sued, contending the new maximum did not apply to them.

Decision:

- The Appellate Division held that the new maximum could not apply to the teachers with more than \$15,000 because they obtained vested rights because the compensation was earned during the teachers' service under prior CNAs.
- Therefore, the union could not bargain away this compensation without the teachers' express consent.
- The Supreme Court granted the Board's petition for certification and will likely hear the case in the next few months.

OPRA and Student Records

L.R. v. Camden City Pub. Sch. Dist.

Facts:

- Plaintiffs submitted OPRA requests statewide seeking copies of various student records in redacted form.
- In October 2017, the Appellate Division held that access to student records cannot be provided under OPRA, even if the records are redacted, unless the requestor provides written consent from the parents or a court order.

Decision:

- The Supreme Court, in a 3-3 tie, affirmed the decision of the Appellate Division that student records are not generally available under OPRA unless the individual making the request is the parent or has written consent.
- The Supreme Court did provide courts with a number of non-exclusive factors to consider when determining whether to grant a court order allowing access to student records including: (1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating towards access.

Supervision of Students

L.E. v. Plainfield Pub. Sch. Dist.

Facts:

- On the last day of Plaintiff's freshman year of high school, she was at her scheduled gym class outside where there was no supervision.
- Two male students approached her, one of whom offered to reconcile after he had recently been bullying her.
- She then entered the school building to go to the bathroom, followed by the boys. None of the three had hall passes.
- One of the boys invited her into the boys' bathroom, she consented, and after entering an unwanted sexual encounter occurred.

Decision:

- The Appellate Division held that school personnel's supervisory responsibilities can extend to the prevention of unwanted sexual encounters between students.
- While a school cannot shelter students from all harm, reasonable measures are required to protect students.
- The school breached its duty to Plaintiff through the complete lack of supervision on the day the assault occurred.

Homelessness/Residency

Bd. of Educ. of Mount Olive v. Bd. of Educ. of Englewood

Facts:

- A family used to live in Englewood, then moved to Florida for a few months.
- Upon returning to New Jersey, the family moved to a campground in Mount Olive.
- They lived in a mobile home that had a kitchen, hot water, and flushing toilets.
- Mount Olive claimed that the family was homeless and Englewood was responsible for tuition.

Decision:

- The Commissioner held that the family was not homeless because they had a fixed, regular, and adequate place to live..
- While the family's living situation was unconventional, they chose to live in the mobile home, which they did not plan to leave, making it their domicile.
- They were not homeless simply because they lived in a campground facility.

HIB – Identification of Classified Student

DeFalco v. Bd. of Educ. of Hamilton

Facts:

- During class and in the presence of other students, a teacher directed a classified student to visit the child study team or guidance office if he was unable or unwilling to perform work in her class.
- This comment caused the student to feel uncomfortable and embarrassed.
- After the board decided this constituted HIB, the teacher appealed and argued that her conduct fell within normal student-teacher relationship and were an acceptable means of referring the student to the CST for support.

Decision:

- The Commissioner held that the conduct met all of the elements of HIB.
- He rejected the claim that it was normal student-teacher conduct because it violated the district's policy against publicly labeling a student with a disability.
- Therefore, her conduct could not be construed to fall within the normal student-teacher relationship.

Summer Homework

L.M. v. Bd. of Educ. of Allamuchy

Facts:

- The district assigned summer homework assignments, and the Petitioner directed her child not to complete them.
- After the district assigned the student a zero for these assignments, she challenged the district's authority to assign summer homework and sought to have the zeros removed from her child's grades.
- She contended that the board policy on homework did not specifically mention summer homework, did not specify a consequence for failing to complete the work, and that a school district lacks the authority to require the completion of homework outside of the 180-day school year.

Decision:

- The Commissioner held that the school district has the ability to assign summer homework, even if there is not a specific mention of it in a policy.
- There was no reason to change the student's grades because there was no evidence that the grades were given for anything other than a consequence to complete the assigned work.

Transportation/Checking for Students

Arcos v. Criminal History Review Unit

Facts:

- Upon completion of Arcos's first route, she did not conduct a visual inspection of her bus for students and began her next route.
- There was still a student on the bus as she arrived at the bus stop for her next route, when she discovered the student.
- She dropped off all of the students from the second route, then dropped off the remaining student from the first route.
- Arcos challenged the suspension of her school bus endorsement, claiming that since she was still driving she had not reached the end of the transportation route and noting that the student was never alone.

Decision:

- The Commissioner held that the conclusion of a route means just that-a driver must visually inspect the bus after each route, not the end of their shift.
- Since Arcos did not complete her duty to inspect the bus, the suspension of her endorsement was required.

Sending-Receiving Relationships

Bd. of Educ. of the Twp. of Mine Hill v. Bd. of Educ. of the Town of Dover

Facts:

- Mine Hill sought to partially sever its sending-receiving relationship with Dover to have the seventh and eighth grade students educated in Mine Hill (high school students would still attend Dover), and proposed a two-year phase-out program.
- Dover did not challenge it, and the parties entered into a settlement agreement (but without the two-year phase out program).
- The Commissioner rejected the OAL's approval of the settlement in February 2018, as the parties had not followed the criteria for termination of sending-receiving relationships, and remanded for further proceedings.
- Interested parties were given the opportunity to submit written comments for the Commissioner's consideration (seventeen were submitted), and the application also included the settlement agreement, the feasibility study, updated enrollment information, and submissions from both boards.

Decision:

- The Commissioner still denied the application, because there was no transitional plan, and that would have a substantial negative impact on the education of the Mine Hill students, hindering the continuity of education (e.g., current seventh graders would go to Mine Hill for eighth grade and then back to Dover for ninth grade). Additionally, the Commissioner found that the proposed severance would have a substantial negative impact on the racial composition of Dover High School (three percent reduction in white students attending DHS overall, but that would mean a reduction in the gross number of white students at DHS by forty-five percent, going from 38 white students to 17 white students in Year One, and from 31 white students to 14 in Year Two).

Sending-Receiving: Extraordinary Services

Bd. of Educ. of the Twp. of East Brunswick v. Bd. of Educ. of the City of Trenton

Facts:

- East Brunswick and Trenton have entered into multiple sending/receiving agreements for tuition and transportation costs relating to the education of a particular student, except for the costs of one-on-one aides. Trenton is the LEA that creates the IEP, and East Brunswick is the receiving district.
- Trenton tried to argue that it did not have to pay for the one-on-one aides, and that it could have obtained them at a reduced cost through an outside vendor, and was refusing to pay for the one-on-one aide (even though the student needed it).

Decision:

- The ALJ concluded that: Trenton is obligated to pay East Brunswick the direct costs it incurred by providing a one-on-one aide for the student from the date the student started and for so long as the student remains in East Brunswick schools and requires an aide
- East Brunswick has no obligation to use the services of one-on-one aides provided by Trenton, which cannot limit its payment to East Brunswick based on the amount that Trenton would have paid its outside vendor for the same services.
- The Commissioner found that by law, East Brunswick can charge Trenton for the cost of the aide, and Trenton's attempt to negotiate a lower amount does not change the result: "The obligation to pay arises from the law, not from a contract."

Tuition to Attend Vocational Districts

T.W. o/b/o M.W. v. Bd. of Educ. of the Freehold Reg'l High School District

Facts:

- The student, a Monmouth County resident, was denied admission to the Monmouth County Vocational School District's (MCVSD) Electricity Program, but was admitted to the Mercer County Technical School's (MCTS) Electrical Construction Program. Parents sought to have Freehold, his resident district, pay for his tuition at MCTS pursuant to N.J.A.C. 6A:19-2.3(a)(2).
- The Board noted that since the County maintained such a program, it was not required to pay for the MCTS tuition as per the regulation. The parent argued that because MCVSD denied admission to the student, it did not "offer the same program as the non-resident county vocational school where the student has been admitted."

Decision:

- ALJ Buono denied the parent's request for emergent relief, and then found in Freehold's favor after a motion for summary decision. He found that while the statute and implementing regulations are designed to foster access to county vocational schools, they "do not guarantee enrollment or tuition-free attendance," recognizing that a student's right to attend "is subject to admissions standards and available space." (MCVSD had twenty spots, and there were seventy applicants to the program; M.W. was not one of the top twenty students based upon grades and attendance, with a 1.59 GPA and over ten absences in both his ninth and tenth grade years).
- The Commissioner agreed with the thorough and well-written opinion and adopted it as his own.

Busing to County Vocational Schools

Passaic Cty. Tech. Institute v. Bd. of Educ. of Paterson

Facts:

- After Paterson ceased providing courtesy busing to students living within 2.5 miles of the county vocational school, the county vocational school began providing transportation to students residing in two school districts who lived within 2.5 miles of the county vocational school.
- Claiming that the failure to provide courtesy busing forced the students to walk dangerous routes which frustrated their right to obtain an education at the county vocational school, the county vocational district filed a petition with the Commissioner seeking reimbursement for its transportation costs and an order requiring the school districts to designate the walking routes as hazardous and provide courtesy busing in the future.

Decision:

- The ALJ held that students attending a county vocational school do not have greater rights to transportation than students attending a district's own schools. Therefore, since neither school district provided transportation to any of their students who resided within 2.5 miles of their high school, there was no obligation that the school districts provide busing to county vocational students who lived within 2.5 miles of their school.
- The ALJ also held that the school districts had no legal obligation to designate a walking route as hazardous since they did not provide any courtesy transportation.

Termination of Custodian

Kesim v. Bd. of Educ. of the Borough of New Providence

Facts:

- The Board decided to terminate Kesim as a custodian following a physical altercation with another employee (and other previous incidents that resulted in discipline), gave him written notice that it was terminating him pursuant to the notice provision, and placed him on paid leave through his termination date. Kesim claimed that he was tenured and that the termination violated the law.
- Kesim had worked for the Board since October 1998, but in each year of his employment, he received and signed (like all custodians) an Employment Contract that allowed for the termination of the contract by either party with 30 days' notice in writing.

Decision:

- The CNA had an odd provision stating that "permanent status" was given to all custodians after the beginning of their fourth consecutive year of employment, but also gives the Board the right to relieve employees of their duties for just cause through the notice provision in the annual contract.
- The Commissioner found that this clause did not equate to a grant of tenure, which needs to be a clear, express provision (and the past practice did not support such a reading), and that the Board properly terminated Kesim on contractual notice for just cause.

Tenure Charges: Inappropriate Student Contact

Bd. of Educ. of the Twp. of Mahwah v. Miguel

Facts:

- Miguel was accused of numerous improper acts. Most egregious, he sent a link of his personal blog—containing graphic and patently offensive descriptions of his sexual encounters—to his supervisor, apparently believing she would appreciate it because they had a friendly relationship. He later remarked about one of the encounters to a student, using graphic language.
- On a different occasion, related to the student body's planned walkout to protest school violence, Miguel goaded one of his students to walk out of the building despite the administration's orders that any protest must be limited to the auditorium. The goading continued even after the student expressed fear that his disobedience would aggravate his anxiety disorder and would jeopardize his college prospects.

Decision:

- The arbitrator viewed the numerous charges as a clear pattern showing that Miguel did not recognize appropriate teacher-student boundaries, was insensitive to students' feelings and concerns, and flagrantly defied school policies. Termination was therefore justified.

Tenure Charges: Theft of Time and Neglect of Duties

Neptune Bd. of Educ. v. Wilson

Facts:

- Wilson, a head custodian, was alleged to have shirked his duties during the winter break, neglecting to work for more than twenty of his assigned hours and drinking while on duty, evidenced by an empty vodka bottle found in the early childhood center.
- A review of security camera footage, prompted by discovery of the vodka bottle, showed various other suspicious activity during the relevant time, including potential drug use in a classroom. Frequently, Wilson and his coworker positioned themselves in a corner where they knew the camera did not film.

Decision:

- The arbitrator acknowledged the respondent's defense that there was no indisputable direct evidence of alcohol or drug use. In particular, the Board subjected Wilson to a drug screening, which came up negative (though it was conducted a month after the alleged drug use). Regardless, the arbitrator found the circumstantial evidence to be compelling and sustained the charges.

Tenure Charges: Disparaging Public Comments

Union City Bd. of Educ. v. Valencia

Facts:

- Valencia, head of the teachers' union, was approached in her office by an undercover "operative" from Project Veritas, a conservative organization aiming to expose corruption among public-sector unions. The operative secretly recorded the meeting, and the footage was posted online to great media attention. It was extensively edited for length and content, consistent with the organization's anti-union slant.
- The meeting regarded the operative's "brother," ostensibly a district teacher who had been in an altercation with a student. Valencia counseled the operative about how to ensure that her brother would avoid trouble and keep his job. Valencia also made several disparaging comments about the district and its students and, most seriously, claimed that the union was successfully protecting an unnamed teacher accused of sexual misconduct.

Decision:

- The arbitrator granted that the video posted online was not necessarily an accurate representation of Valencia's actual conduct. The online video showed only seventeen minutes of the hour-and-a-half meeting, and clips had been arranged out of order and without context. (Inexplicably, neither party produced the full video as evidence.) Moreover, Valencia had believed she was speaking with a woman who was truly distressed about her brother's troubles, and so some of the respondent's words were designed to comfort the woman, not to represent her candid feelings about the district. Valencia acknowledged that she had exercised poor judgment and made remarks that she should not have made.
- In light of Valencia's impeccable record and the fact that her remarks were prompted by a scam that was calculated to bait her, the arbitrator only withheld her increment for one year and denied her backpay.

Tenure Charges: False Harassment Claims

School District of the Township of Wayne v. An

Facts:

- An, a child psychologist, received an email from the building principal reminding her to sign in and out whenever she entered or left the building, consistent with security-related district policy. Apparently out of frustration by the reprimand, she sent a private text message to some of her coworkers, with whom she was friendly, speaking ill of the principal. ***She threatened to fabricate a racially-based HIB complaint against him and urged her coworkers to testify in her favor.*** One of the coworkers reported the conversation.

Decision:

- Sustaining the tenure charges, the arbitrator observed that it is not unusual for employees to “blow off steam” about a superior, even using the sort of crude language the respondent here used. However, threatening to fabricate an HIB complaint—even jokingly—rises to a higher level. To put such a threat into writing jeopardizes the victim’s professional reputation and livelihood, regardless that it was supposed to be a private conversation. Moreover, An urged her coworkers to lie for her. This single incident, the arbitrator determined, **was severe enough to merit termination.**

Questions?