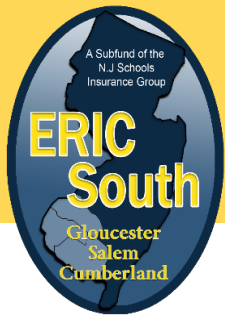


SUB-FUND MEETING

WELCOME!

Friday, January 5, 2024
9:30 AM – 11:30 AM



Welcome Members

Member Name	Member Name
Alloway Township Board of Education	Hopewell Township Board of Education
BOE of the SSSD of the County of Gloucester	Kingsway Regional High Board of Education
BOE of the Vocational SD of the County of Gloucester	Lawrence Township Board of Education (Cumberland)
Bridgeton Board of Education	Lower Alloways Creek Township Board of Education
Buena Regional School District	Mannington Township Board of Education
Clayton Board of Education	Mantua Township Board of Education
Clearview Regional Board of Education	Maurice River Township Board of Education
Commercial Township Board of Education	Millville Board of Education
Compass Academy Charter School	Newfield Board of Education
Cumberland County Vocational Board of Education	Pittsgrove Township Board of Education
Cumberland Regional Board of Education	Quinton Township Board of Education
Deerfield Township Board of Education	Salem City Board of Education
Dennis Township Board of Education	Swedesboro-Woolwich Board of Education
Downe Township Board of Education	Upper Pittsgrove Township Board of Education
Elsinboro Township Board of Education	Vineland City Board of Education
Franklin Township Board of Education (Gloucester)	Washington Township Board of Education (Gloucester)
Glassboro Board of Education	West Deptford Board of Education
Harrison Township Board of Education	Woodbury Board of Education

Next Sub-Fund Meeting

****SAVE THE DATE***

- **Thursday, May 16, 2024**

Time & Location: TBD





Administrator's Professional Development Live Webinar Courses Provided by ERIC South's safety partner MSI

Date	Class Topic	Time	QPA Credits
1/8/2024	Employee Conduct and Violence Prevention in the Workplace	9:00 - 10:30 am	1.5 Ethics CEU
1/9/2024	Preparing for First Amendment Audits	9:00 - 11:00 am	1.0 Office Admin/General Duties CEU
1/16/2024	Ethics for NJ Local Government Employees	9:00 - 11:00 am	2.0 Ethics CEU
1/16/2024	Protecting Children from Abuse In New Jersey Local Government Programs	1:00 - 3:00 pm	1.0 Office Admin/General Duties CEU
1/29/2024	Dealing with Difficult People	1:00 - 2:30 pm	1.0 Office Admin/General Duties CEU
1/31/2024	Employee Conduct and Violence Prevention in the Workplace	1:00 - 3:00 pm	1.5 Ethics CEU
2/6/2024	Implicit Bias in the Workplace	1:00 - 2:30 pm	1.5 Ethics CEU
2/7/2024	Protecting Children from Abuse In New Jersey Local Government Programs	9:00 - 11:00 am	1.0 Office Admin/General Duties CEU
2/7/2024	Productive Meetings Best Practices	1:00 - 2:30 pm	1.5 Office Admin/General Duties CEU
2/13/2024	Ethical Decision Making	9:00 - 11:30 am	1.0 Office Admin/General Duties CEU
2/13/2024	Employee Conduct and Violence Prevention in the Workplace	1:00 - 2:30 pm	1.5 Ethics CEU
2/14/2024	Safety Committee Best Practices	8:30 - 10:00 am	n/a
2/20/2024	Introduction to Communication Skills	9:00 - 11:00 am	n/a
2/21/2024	Employee Conduct and Violence Prevention in the Workplace	9:00 - 10:30 am	1.5 Ethics CEU
2/21/2024	Preparing for the Unspeakable	9:00 - 10:30 am	1.5 Office Admin/General Duties CEU
2/28/2024	Microlearning Theory and Practice	8:30 - 10:30 am	2.0 Office Admin/General Duties CEU
2/29/2024	Public Employers: What You Need to Know	8:30 - 10:00 am	1.5 Office Admin/General Duties CEU



Buildings & Grounds Professional Development Live Webinar Courses Provided by ERIC South's safety partner MSI

Date	Class Topic	Time
1/8/2024	Chipper Safety	11:00 - 12:00 pm
1/9/2024	Back Safety/Material Handling	9:00 - 10:00 am
1/9/2024	Chainsaw Safety	1:00 - 2:00 pm
1/10/2024	Bloodborne Pathogens	8:30 - 9:30 am
1/10/2024	Driving Safety Awareness	1:00 - 2:30 pm
1/11/2024	CDL: Drivers' Safety Regulations	10:00 - 12:00 pm
1/11/2024	Personal Protective Equipment	1:00 - 3:00 pm
1/17/2024	Snow Plow/Snow Removal Safety	8:30 - 10:30 am
1/17/2024	Hazard Communication/Globally Harmonized System (GHS)	1:00 - 2:30 pm
1/18/2024	Lock Out/Tag Out (Control of Hazardous Energy)	7:30 - 9:30 am
1/18/2024	Fire Safety	10:00 - 11:00 am
1/18/2024	Fire Extinguisher Safety	1:00 - 2:00 pm
1/19/2024	Bloodborne Pathogens	8:30 - 9:30 am
1/23/2024	Shop and Tool Safety	8:30 - 9:30 am
1/24/2024	CDL: Supervisors' Reasonable Suspicion	8:30 - 10:30 am
1/24/2024	Bloodborne Pathogens	1:00 - 2:00 pm
1/25/2024	Hazard Communication/Globally Harmonized System (GHS)	8:00 - 9:30 am
1/25/2024	Personal Protective Equipment	10:00 - 12:00 pm
1/25/2024	Safety Committee Best Practices	1:00 - 2:30 pm
1/26/2024	Ladder Safety/Walking & Working Surfaces	1:00 - 3:00 pm
1/29/2024	HazMat Awareness with Hazard Communication/Globally Harmonized System (GHS)	8:30 - 11:30 am
1/30/2024	CDL: Drivers' Safety Regulations	1:00 - 3:00 pm
1/31/2024	Bloodborne Pathogens Administrator Training	8:30 - 10:30 am



Buildings & Grounds Professional Development Live Webinar Courses Provided by ERIC South's safety partner MSI

Date	Class Topic	Time
2/1/2024	Bloodborne Pathogens	7:30 - 8:30 am
2/1/2024	Personal Protective Equipment	9:00 - 11:00 am
2/2/2024	Asbestos Awareness	8:30 - 10:30 am
2/2/2024	Fire Safety	11:00 - 12:00 pm
2/2/2024	CDL: Drivers' Safety Regulations	1:00 - 3:00 pm
2/5/2024	Shop and Tool Safety	11:00 - 12:00 pm
2/5/2024	Snow Plow/Snow Removal Safety	1:00 - 3:00 pm
2/6/2024	Lock Out/Tag Out (Control of Hazardous Energy)	8:00 - 10:00 am
2/6/2024	Driving Safety Awareness	10:00 - 11:30 am
2/7/2024	Hazard Communication/Globally Harmonized System (GHS)	8:30 - 10:00 am
2/8/2024	Fire Extinguisher Safety	8:30 - 9:30 am
2/9/2024	Bloodborne Pathogens	10:30 - 11:30 am
2/12/2024	Chipper Safety	8:30 - 9:30 am
2/12/2024	Indoor Air Quality Designated Person Training	1:00 - 2:00 pm
2/14/2024	Safety Committee Best Practices	8:30 - 10:00 am
2/14/2024	Ladder Safety/Walking & Working Surfaces	1:00 - 3:00 pm
2/15/2024	Fire Extinguisher Safety	11:00 - 12:00 pm
2/15/2024	Chainsaw Safety	1:00 - 2:00 pm
2/20/2024	Fire Safety	8:30 - 9:30 am
2/20/2024	Lock Out/Tag Out (Control of Hazardous Energy)	10:00 - 12:00 pm
2/20/2024	Hazard Communication/Globally Harmonized System (GHS)	1:00 - 2:30 pm



Buildings & Grounds Professional Development Live Webinar Courses Provided by ERIC South's safety partner MSI

Date	Class Topic	Time
2/21/2024	HazMat Awareness with Hazard Communication/Globally Harmonized System (GHS)	8:30 - 11:30 am
2/21/2024	Bloodborne Pathogens	1:00 - 2:00 pm
2/22/2024	Playground Safety Inspections	1:00 - 3:00 pm
2/23/2024	Snow Plow/Snow Removal Safety	8:30 - 10:30 am
2/23/2024	Personal Protective Equipment	1:00 - 3:00 pm
2/26/2024	CDL: Drivers' Safety Regulations	1:00 - 3:00 pm
2/27/2024	Hazard Communication/Globally Harmonized System (GHS)	1:00 - 2:30 pm
2/28/2024	Ladder Safety/Walking & Working Surfaces	1:00 - 3:00 pm
2/29/2024	Fall Protection Awareness	1:00 - 3:00 pm

Key Features

Incident Roadmap

Suggested steps to take following a network or databreach incident, free consultation with a Breach Coach[®] and access to a breach response team

News Center

Cyber news feeds, threat intelligence, and security, legal, and compliance blogs

Risk Manager Tools

Cost calculators, research tools for causes of incidents and cyber claims payouts, and sample policies, including one for remote working

Cybersecurity Awareness

Resources for ongoing employee education, including general security awareness, anti-phishing, and IP/trade secrets

Ransomware Resources

A guide on must-have ransomware safeguards, ransomware stress test, mock ransomware exercise, and a short ransomware self-assessment survey that can help you reduce your exposure to ransomware and other exploit threats

If you are a NJSIG Package policyholder, please register now.

1. Go to <http://www.eriskhub.com/njsig>
2. Complete the New User Registration form in the center of the webpage. Your Access Code is 364264.
3. Once you've completed registration, you can log in immediately.

NJSIG Employment Practices Hotline Attorney (NEPHA)

[201-623-1223](tel:201-623-1223) | NEPHA@cgajlaw.com

Deductible waived, if E&O claim is made and the hotline was used!

All districts that have school board leader liability or "SBLL" coverage, also referred to as Errors and Omissions or "E&O" coverage, with NJSIG are entitled to use NJSIG's Employment Practices Hotline Attorney (NEPHA) and its accompanying online employment resources, at no additional charge!

These valuable services can help your district avoid making employment decisions that can lead to costly lawsuits. When your district is considering taking an adverse employment action, please be sure to contact the hotline and get some valuable legal input first. An experienced local attorney that understands school law in New Jersey will thoroughly review the issues and promptly provide you with documented advice and a recommended course of action. This is all at no charge to the district. And then, if an E&O claim is made against the district but the district had consulted the hotline first, the district's E&O deductible will be waived for the claim!

(We ask that only superintendents, business administrators, and human resource managers make inquiries to the hotline.)

When to Call the Employment Practices Hotline

On a daily basis, school administrators face many difficult decisions in dealing with their employees. The NEPHA Hotline can help your district make the right decisions and avoid potential liability.

Here are 10 common situations that you may face where the hotline can help:

1. Requests for Family Medical Leave
2. Requests for Pregnancy Leave
3. Requests for Disability Accommodations
4. Coworker or Supervisor Harassment Allegations
5. Discrimination Complaints
6. Progressive Discipline (when to move to the next step)
7. Acquisition of Tenure
8. Reductions in Force
9. Employee transfers
10. Physical and Psychological Evaluations

The above is not intended to be a comprehensive list. When you have concerns regarding a difficult employee decision, **CALL THE HOTLINE!**



REPORT A WORKERS' COMPENSATION CLAIM

NJSIG offers **three** easy ways to file a workers' compensation incident report.

Business Hours:

8:00 AM - 5:00 PM
Monday - Friday

*After standard business hours:
Please leave a message about your injury and you will be contacted within one (1) business day by an intake representative.*



CALL 609-543-3377

NJSIG intake representatives are available during standard business hours. The injured employee will be directed to treatment.

English & Spanish team members available.

REPORT ONLINE

Complete First Report of Injury (FROI) by visiting:
www.njsig.org/froi

If you indicated a need for treatment on the FROI form, you will be contacted by a workers' compensation specialist in 24 to 48 business hours.

DOWNLOAD & SEND

Download FROI in English or Spanish by visiting:
www.njsig.org/reporting-claims#workerscomp

Email fully completed FROI forms to: froij@njsig.org
or fax 609-386-2188.



NJPSAFE

— LEGAL ONE —

*Law, Ethics and Governance for All Leaders, including an
Overview of New and Emerging Issues*

ABCs of Progressive Supervision and Corrective Action Plans and Other Recent Developments

January 5, 2024

David Nash, Esq.

Director of Legal Education and National Outreach

DISCLAIMER

This presentation is intended as a summary of law only and is not meant as legal advice. Please consult your attorney to obtain legal advice.

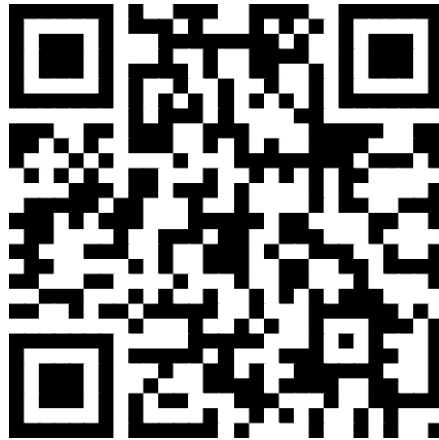


Participants are authorized to use the LEGAL ONE materials provided in this training to offer turnkey training within the respective participant's school district or place of employment, provided that participants provide proper credit to LEGAL ONE for having developed said materials and further provided that such turnkey training is offered at no charge.

Presentation Materials

Today's document(s) can be accessed at

<http://tinyurl.com/LO-EricSouth-240105>



This folder can be accessed for **30 days** from the session date.

Please download all files before the link expires.

Key Topics

- **Revised MOA Between Education and Law Enforcement**
- **Lots of Scenarios and Cases!**
- Inefficiency Charges
 - Actions prior to the Final Summative
 - CAP Standards
 - Inefficiency Charges Defense
- Conduct Unbecoming Review
 - Progressive Discipline / Egregious Conduct
 - Conduct Unbecoming Cases
 - Staff Substance Abuse Issues – Case Comparisons
 - Excessive Absenteeism / Tardiness

MEMORANDUM OF AGREEMENT BETWEEN EDUCATION AND LAW ENFORCEMENT

Recent Guidance

- ***NJDOE 12/13/23 Release of the 2023-2024 Memorandum of Agreement Between Education and Law Enforcement Officials***
- Outlines responsibilities of school officials in terms of reporting to law enforcement, information sharing protocols, handling investigations, ensuring non-discriminatory practices, etc.
- NOTE Section 3.4 clarifies that marijuana or cannabis that is seized must be turned over to law enforcement

Mandatory Reporting to Law Enforcement

- N.J.A.C. 6A:16-6.3
- Possession or distribution of CDS
- Firearm or other weapon
- **Credible threat** of death, serious bodily injury, significant bodily injury (able to assess whether student genuinely intends to carry out threat)
 - Consult with Case Manager to assist in addressing credibility of threat for student with IEP
- Criminal sexual contact
- **Bias-Related Act – Failure to report, inconsistent reporting could be violation of NJLAD**

Group Discussion

- What trends are you seeing regarding staff behavior? Regarding staff performance?
- What protocols do you have in place for addressing behavior that does not rise to the level of tenure charges or nonrenewal?
- What aspects of progressive supervision do you feel most comfortable with?
- What aspects of progressive supervision pose the greatest challenges?

INEFFICIENCY CHARGES AND CORRECTIVE ACTION PLANS

SD's Evaluation Rubric – Does it Align with the Staff Member's Responsibilities?

Suzanne Kulik v. Township of Gloucester - 11/13/17

- Since staff member is a Speech and Language Specialist and/or Speech Therapist, the appropriate review standard is not limited to the criteria of NJSA 18A:6-17.2, et seq. (Section 25)

Analysis:

- "While possible for use regarding specialists, the evaluative measures spoken of at NJSA 18A:6-123 are far from orthodox methods of judging the performance of individual specialists, most of whom have ever changing and highly individualized student case-loads throughout the year with few students having overlapping objectives."
- "Specialist does not deal with typical class-size groups of students."
- They treat a collection of individual diagnoses under IEP's
 - ... making their achievement nearly impossible to measure by objective instruments designed and normed to assess class-wide group growth which the Legislature obviously favored."

Inefficiency Charges

- Inefficiency Charges are an evaluation of whether the School District properly provided the Staff Member with the required Due Process
- The Arbitrator does not “second guess” the judgment of determining with the Staff Member is good/bad – The SD has already done that.

Inefficiency Charges

- Superintendent must file charge of inefficiency whenever employee is rated ineffective or partially effective in one year and then ineffective in the following year
- Superintendent may file charge of inefficiency if rated partially effective 2 years in a row or ineffective in first year and partially effective in year 2
 - Supt. must explain in writing to BOE exceptional circumstances justifying waiting an additional year

Challenging Inefficiency Charges

For inefficiency charges, the arbitrator is only supposed to consider four (4) questions:

1. Whether the employee's evaluation failed to adhere substantially to the evaluation process,
2. Whether there is a mistake in fact in the evaluation,
3. Whether the charges were brought for improper reasons such as political activity, union affiliation or discrimination, (*see next slides*) or
4. Whether the district's actions were arbitrary and capricious.
N.J.S.A 18A:6-17.2.

Protected Classes

- Employers--including parochial schools and public school districts--may not discriminate against staff or students based on:
 - Race
 - Creed
 - Color
 - National origin
 - Ancestry
 - Age
 - Genetic information
 - Pregnancy
 - Sex
 - Religion
 - Disability
 - Military service
 - Atypical cellular blood trait
 - Nationality
- NJLAD also includes:
 - Gender identification or expression
 - Affectional or sexual orientation
 - Marital/domestic partnership/civil union status
 - Hair – Crown Act

ANTI-UNION ANIMUS

IMO Jennifer Ferrara, School District of the City of Newark, 9/18/2023,

Facts: Inefficiency Charges

- 2014-15: Partially Effective
- 2015-20: Effective (Includes Pandemic Years)
- 2020-21: Partially Effective
- 2021-22: Partially Effective

Analysis:

- 2019-20: No annual summative – but had 2 Effective Evaluations
 - Had been selected to be the “model” English Language Arts Teacher pre-pandemic
- November 2020 – Became Newark Teachers’ Union Rep
 - December 2020 – Effective Evaluation Rating
 - January 2021 – Advises Principal that people are afraid to “speak out” at Union Meetings, fearing “repercussions” from Administration
 - March 2021 – Partially Effective Evaluation Rating
 - April 27, 2021 – Written Reprimand for violating SD’s Covid Mask Protocol
 - April 28, 2021 – Questioned necessity as Union as an “intermediary” and rebuked SD for the Written Reprimand
 - May 2021 - Final Summative - Partially Effective and placed on a CAP

Facts (cont'd)

- June 2021 – ELA Teaching Assignment changed to different grades – ELA Coach had requested this change not be made while teacher was on a CAP
- June 2021 – “Respondent made a written complaint to the School District Office of Labor and Employee Relations regarding the Pared Administration’s treatment of teachers. That complaint was in conjunction with a June 17, 2021 WebEx meeting between District Labor Relations Director, J. Watson, Respondent, Montague and other teachers: They complained about asserted “Extremely Toxic and hostile work environment, Targeting, Falsifying information, Slander, Intimidation, Bullying”.”

Facts (cont'd)

- 2021-22 Chronology
 - October 2021 – ELA Coaching was ended
 - December 2021 – Effective Rating
 - January 5, 2022 – Emergency Meeting called, known as the “Climate & Culture” Meeting. Teacher spoke about the “lack of trust of staff w/ Administration”
 - January 13, 2022 – Immediate Supervisor VP Changed
 - Sought information re: Revocation of Tenure from HR Office
 - January 10th through February 7th – Approved Bereavement and FMLA Leave
 - February 17, 2022 – Partially Effective Rating
 - February 23, 2022 – Partially Effective Mid-Year Rating
 - March 16, 2022 – Treatment for a Work Related Injury at Medical Center – Elevated anxiety as a result of VP’s unscheduled visit to her class. Claims VP demanded data re: lesson plans in front of students
 - March 29, 2022 – Partially Effective Rating for Teaching Observation
 - No Post Conference Meeting
 - April 25th to June 23rd – Approved FMLA Leave
 - May 10, 2022 – Tenure Charges Filed

Holding: Tenure Charges Dismissed

“...the District’s Ratings of Respondent violated the Provisions of TeachNJ; that they were influenced by Farrara’s Union activity, were arbitrary and capricious, and failed to adhere to prescribed evaluation processes. I find all of that materially affected Ms. Farrara’s Observations and Evaluations.”

Corrective Action Plan Issues

- A CAP is not intended to be punitive – it is meant to be a tool for improvement
- Creating a CAP is required to be a collaborative effort of both the SD and Staff Member
- Staff Members must understand that there is no “getting off the CAP”
 - They are on it for the full school year until they receive an Effective Rating
- Being placed on a CAP is meant to serve as notice to the Staff Member that, in essence, they are on a year long probation and must improve their performance to keep their position.

Challenges - Corrective Action Plans

- Must be developed for any teaching staff member rated ineffective or partially effective
- **Written** plan developed by teaching staff member serving in supervisory capacity in collaboration with teaching staff member
- Include specific issues- not a generalized review
- Must include:
 - Timelines for corrective action
 - Responsibilities of individual teaching staff member
 - Responsibilities of District
 - Specific support that the District shall provide

Inefficiency Common Problems: Staff

Bad Attitude

- Staff Member Only Appears to Want “Off the CAP”
- Poor Relationships with Students, Parents and coworkers
- Pretending to Not Understand the Process
- Failure to Take Advantage of Opportunities
- “Half Hearted” Attempts at Improvements
- Unnecessary / Unexplained Delays
 - Late CAP Agreements
 - Late Submission of SGO Scores
- Failure to Complain **DURING** the Process / Pre-Charges

Inefficiency Common Problems: School District

Bad Faith Actions

- Arbitrary timing of Evaluations
- Lack of Time to Improve Between Evaluations
- Lack of Constructive Feedback
- Lack of Specifics / Examples in Feedback
- Lack of Identified Purpose for Assigned Tasks
- Failure to Follow Established Procedures
- “Ragland” Appearance

CONDUCT UNBECOMING REVIEW

Tenure Charges - Conduct Unbecoming

- Utilize process if desired outcome is suspension or termination of tenured staff member
- Tenured employees enjoy statutory protection against loss of compensation and termination.
- **Teaching staff members** may be dismissed or reduced in compensation for inefficiency, incapacity, conduct unbecoming, or other just cause.

-defined as “a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and **includes a school nurse and a school athletic trainer.**

- A **secretary, assistant secretary, school business administrator or business manager** may be dismissed or reduced in compensation for neglect, misbehavior or other offense.
- **Janitorial employees** may be dismissed or suspended or reduced in compensation for neglect, misbehavior, or other offense, or pursuant to a reduction in the number of janitorial employees.

“Other Just Cause” Charges Examples

- Usually filed simultaneously with Conduct Unbecoming Charges
 - Insubordination
 - Incapacity
 - Unprofessional Conduct
 - Inappropriate Behavior
 - Disruptive Behavior
 - Lack of Professionalism
 - Excessive Absenteeism / Tardiness

Progressive Discipline

- A review of the Tenure Cases demonstrates that one of the primary reasons that employees are **not** terminated when Tenure Charges are filed is due to a lack of “Progressive Discipline”
- School Districts must be able to demonstrate that the employee has been given notice of the problem **and** that there have been legitimate attempts by the School District to solve the problem prior to the step of seeking termination.
- **Egregious behavior** such as Sexual Misconduct or endangering a student / staff member do not necessarily need to show a history of “Progressive Discipline”

Progressive Discipline

Definition: The actions are remedial, increasingly more severe, proportionate and appropriate to the nature of the problem.

Examples:

- Verbal warning/discussion
- Letter of reprimand
- Recommendations to withhold increment
- Recommendation for suspension/dismissal

Things to consider when weighing degree of discipline:

- Intention
- Number of occurrences
- Previous corrective measures
- Time frame
- Severity

Egregious Conduct Examples

- Spitting on a student
 - *Lat Sall v. SOSD of City of Paterson* - 5/13/15
- Helping students cheat on a test
 - *Radzik v. Woodbridge Township* - 8/4/14
- Condoning / participating in a drug deal
 - *Hamilton Township BOE v. Young* - 5/2/14
- Inappropriate communications with students
 - *Blackhorse Pike Reg. SD v. Clune* - 8/18/14
- Assaulting a student
 - *Barnes v. SOSD Paterson* - 3/24/15
- Inappropriately “touching” / harassing a student
 - *Dunckley v. Rockaway Twp BOE* - 6/13/16
 - *Davis v. SD of Asbury Park* - 5/15/14
- Inappropriate personal conduct outside of school / streaking
 - *Bringhurst v. Vineland SD* - 11/30/12

SCENARIOS



Scenario 1

- An elementary school teacher comes to you first thing in the morning and complains that he is uncomfortable with withholding information from parents about their children. He has a student in his 4th grade class, Jenny, who began the school year as Jeremy and then transitioned in October.
- The teacher said he believes the district policy prohibiting such disclosure is illegal and that is why he decided he couldn't keep lying to the parents of one of his students. So he called Jenny's parents last night to explain that their child had "decided to become a girl." He says that since the policy is illegal AND he has deeply held religious views that he needed to follow he can't be punished for following his conscience. He further says that he can't understand how someone can just change their gender, and he cannot be expected to go along with hiding this, given the mental health issues that the student must be experiencing in order to think that "he is a girl."
- What do you do?

Scenario 2

- Ms. Jones, a veteran middle school math teacher who has been with you for 30 years, comes to you on Monday morning and is clearly upset. She asks to meet privately in your office. She says that she accidentally posted something online last night. She thought she was sharing a comment in a private chat with a few friends but she actually posted it publicly. Her comment was “why is George Floyd’s death more important than the death of our men in blue? After all, if he just cooperated and did what he was told, he would have been fine.”
- Ms. Jones says she was “mortified” when she realized she had posted her comment publicly, since some people “wouldn’t understand” what she meant, and that she took it down after only being up for 10 minutes. She further explains that she has been asking for training on technology use and social media for years, and she never gets any meaningful support from the district. She also says the district doesn’t ever offer training on what we are allowed to say on our time on social media.
- Within 30 minutes, you received more than a dozen phone calls from irate parents demanding that you fire the racist teacher.
- You then get a call from the Superintendent who asks you to come to her office and explain why “all hell is breaking loose” and what you intend to do about it.
- What do you do?

Conduct Unbecoming Decisions

Gregory Janicki v. Washington Twshp SD – 8/31/2021

- Conduct Unbecoming Charges & Other Just Cause Charges filed against tenured Music Teacher.
 - Allegations that he skipped training sessions/meetings re: LGBTQ issues, and other unprofessional behavior in relation to the SD's LGBTQ policies. He also engaged in conduct that is “antagonistic and discriminatory towards students and coworkers in the LGBTQ community, causing turmoil with staff members, and putting the SD at risk for violation state/federal anti-discrimination laws and directives.”
 - Progressive Discipline demonstrated – Increment Withholding
 - See also 3/25/21 Prior Arbitration Decision – MTD granted
- Decision: Sustained. Teacher Dismissed.

Donna Coleman v. Borough of Roselle SD – 8/20/21

- Conduct Unbecoming, Insubordination & Other Just Cause Charges filed against 17 year Tenured English Teacher for post on her personal Face Book account during May 2020 re: George Floyd.
 - Post reported to SD. Many responses to the post
 - SD claimed the incident had caused serious, negative and lasting damage to the Roselle School District community environment and that she provided no plausible explanation to justify her actions and her failure to show any remorse for her hurtful behavior.
- Decision: Sustained. Teacher Dismissed.

Tenure Dismissal

I/M/O the Tenure Hearing of Cory LaBov, Woodbine SD Commissioner 1/20/2022

- Tenured teacher failed to respond to charges of Unbecoming Conduct
- As per *N.J.A.C. 6A:3-5.3* and *6A:3-5.4*, charges are deemed admitted due to teacher's failure to respond.
- Commissioner finds that the District's charge of unbecoming conduct has been proven and warrants the respondent's dismissal.

Tenure Dismissal

I/M/O the Tenure Hearing of Richard Wilder, SD of City of Camden, Commissioner 1/20/2022

- Tenured teacher failed to respond to charges of Unbecoming Conduct
 - Teacher investigated by PA Dept of Human Services for allegations of causing sexual abuse or exploitation of a child through any act or failure to act
 - Teacher was “indicated” for sexual abuse and/or exploitation of a child
- As per *N.J.A.C. 6A:3-5.3* and *6A:3-5.4*, charges are deemed admitted due to teacher’s failure to respond.
- Commissioner finds that the District’s charge of unbecoming conduct has been proven and warrants the respondent’s dismissal.

SCENARIOS



Scenario 3 – Anonymous Students

- You receive a call from a parent of a middle school student complaining that her daughter Danielle is being made to feel very uncomfortable in her science class by Mr. Marshall. The parent says the teacher likes to put his hands on Danielle's shoulders when he is walking around the class checking student's work, and will often comment on what Danielle is wearing.
- The parent says at least 4 of Danielle's female classmates feel the same way. But the parent then says that the students are all afraid of being retaliated against, so you have to promise you will keep their names anonymous. Otherwise, none of the students is going to cooperate in an investigation.
- What do you do?

Scenario 4 – Drastic Change

- You are the elementary principal. Your secretary, Ms. Efficient, has been with you for the past 10 years. She has always been effective, proactive and very friendly with everyone who comes into the building. Her behavior has started to change significantly in the past two months. She has been late to work 4 times, she has misplaced important paperwork on several occasions, and has lost her temper several times while speaking with staff members who she felt were being rude. You have spoken with her privately about her behavior on two occasions and she has said she “doesn’t want to talk about her personal business” other than to say she is “at my limit” and she deserves some slack considering all she does for the school.
- But this morning, you see a 2nd grade student walking into school two minutes late. Ms. Efficient looks up from her computer and says “Darnell, what’s wrong with you. Why are you always late. Are you special?” Darnell looks at Ms. Efficient and says nothing. However, Darnell’s mother was in the doorway and overheard the comments. She confronts Ms. Efficient, saying “how dare you speak to my son that way.” She then marches into the principal’s office and closes the door, saying “what are you going to do about Ms. Efficient. She is out of control. She can’t speak to our kids this way!”
- What do you say to the parent?
- Ms. Efficient meanwhile becomes extremely upset and begins crying. She calls her husband to pick her up. The next day she informs the district she is suffering from bipolar disorder and is taking an extended leave to receive treatment.
- What does the district do?

Scenario 5 – Employee Substance Use

- An employee, Jack Stoner, comes into work on Monday morning and comments to his supervisor that “Thank God New Jersey has finally entered the 21st century on marijuana use. It was great to relax with my friends on Saturday evening.”
- Later that day, another school employee shows you a post from Stoner on social media saying the same thing he told you.
- The employer is concerned that the employee may still be under the influence of marijuana, since it is known to stay in a person’s system for an extended period of time.
- May the supervisor require the employee to go for a drug test? What additional information, if any, is needed?
- How should you respond to the social media post?
- What if an administrator is walking down the hall and overhears Mr. Stoner talking with his class saying “you all have every right to push for further change to our misguided laws on marijuana. If you wanted, you and your parents could lobby for full legalization for everyone. If that’s how you felt. That’s democracy in action.”

Latest Guidance on Employee Use of Cannabis

- May have policy allowing for immediate medical exam for staff suspected of being under the influence
- If staff suspected of using cannabis, need to engage in two-step testing process
- See September 2022 Guidance from Cannabis Regulatory Commission
 - A scientifically reliable objective testing method that indicates the presence of cannabinoid metabolites in the employee’s bodily fluid alone is insufficient to support an adverse employment action. However, such a test combined with evidence-based documentation of physical signs or other evidence of impairment during an employee’s prescribed work hours may be sufficient to support an adverse employment action.
- See Model Form - Reasonable Suspicion Observed Behavior Report
 - Physical Signs
 - Behavioral Signs
 - Other Evidence

Karp v. Barnegat BOE

5/26/16

- SD's evidence in support of charges
 - Transcribed notes and emails of Superintendent concerning conversations with board attorney, local police, prosecutor's office, Strauss Esmay
 - Unsigned statements of two school administrators who interviewed students allegedly involved
 - Administrator statement and evidence statement include student initials, but not student names
 - Sworn statement signed under oath by the Superintendent that the evidence as presented is truthful

Karp v. Barnegat BOE

5/26/16

- Teacher's Arguments
 - Denied Allegations
 - No signed statements from the complaining students or School Administrators
 - Allegations are required to be filed in writing **with specificity**
 - No dates of the alleged behavior are provided
 - The names of the persons involved were not provided, and it is impossible for the teacher to identify the people involved solely by the initials given by the SD
 - The Superintendent did not assert any **direct** knowledge of the facts relied on pertaining to the challenges – i.e. relied solely on hearsay
 - The SD did not follow its own procedures
 - Required it to obtain written statements from the complaining students and witnesses
 - Superintendent was required to “hear the evidence herself”, and not merely rely on the statements of others

TENURE CHARGES – RIGHT TO INFORMATION
IMO Tenure Charges against James Marion,
Wallkill Valley Regional HS District, (April 24, 2023).

- Conduct unbecoming—allegations of sexually provocative comments, hugging and shoulder touching
- IAIU investigation: unfounded
- Motion to dismiss tenure charges
 - **Teacher alleged that he did not receive student witness names until 2 months after case referred to arbitrator; did not receive the IAIU report until 4 months after case referred to arbitrator; and never received summary of witness testimony**
 - Motion granted: tenure charges dismissed with prejudice since SD failed to adhere to the requirements of N.J.S.A. 18A:6-17.1(b)(3)

Mental Health Under ADA

- Americans with Disabilities Act protects anyone with a disability, defined as:
 - A physical or mental impairment that substantially limits a major life activity of a person, or
 - A record of such an impairment, or
 - Being regarded as having such impairment.
- Major life activities include:
 - Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, *concentrating, thinking, communicating* or working. Also includes the operation of a major bodily function, such as *neurological function*.

Mental Health Condition as Disability Under ADA

- Mental health diagnosis is recognized. See Duda v. Franklin Park Pub. Sch. Dist. No. 84, 133 F.3d 1054 (7th Cir. 1998)
- Depression or ADD diagnosis not enough. Must demonstrate that it substantially limits a major life activity that affects job performance. See Fuoco v. Lehigh University, 981 F. Supp.2d 352 (E.D. Pa. 2013)
- Claim of panic disorder and generalized anxiety not enough, in absence of info on impact on major life activities. Bialko v. Quaker Oats Co, 434 Fed.Appx. 139 (3rd Cir. 2011)
- Unspecified learning disability, leading to difficulty in remembering appointments, not sufficient. See Stephan v. West Irondequoit Cent. Sch. Dist., 450 Fed. Appx. 77 (2d Cir. 2011)

Interactive Process Critical

Taylor v. Phoenixville Sch. Dist., 184 F. 3d 296 (3rd Cir. 1999)

- No need for “magic words” to put employer on notice
- Secretary served for 20 years, glowing evaluations
- Hospitalized and diagnosed with bipolar disorder
- Brought suit under ADA
- Court reversed summary judgment for district, held district was on notice and had not engaged in meaningful “interactive process”
 - Learn precise nature of disability
 - Discuss potential accommodations

SUBSTANCE ABUSE ISSUES – CASE COMPARISON

Tenure Case Comparison – Alcohol Issues

- ***Monaco v. East Hanover Township SD - 12/1/14***
 - Tenured teacher arrested for Drunk Driving in the town in which she taught
 - While being arrested, she told police that they couldn't arrest her because she was a teacher in the town and was "friends" with the Mayor.
 - Refused to admit that she had been "in the wrong" (this was her second DUI)
 - Tenure charges granted – Teacher terminated.
- ***Zepralka v. Greater Egg Harbor Regional High Sch. Dist. BOE - 9/4/15***
 - Tenured 19 year secretary, with no prior disciplinary record, caught consuming alcohol on school property, during school hours
 - Secretary admitted she had a problem and checked herself into Rehab.
 - Secretary completed Rehab program and was medically cleared to return to work.
 - SD had a Zero Tolerance Policy – said that she could not RTW and filed CU Tenure Charges seeking Dismissal
 - Secretary was allowed to RTW with a "Last Chance Agreement".

Tenure Case Comparison – Alcohol Issues

Nicholas Cilento v. Woodbridge Twp BOE 12/5/20

- **Conduct Unbecoming Charges** against Special Education teacher for consuming alcohol on school grounds, during the school day (vodka in a water bottle).
- Decision: Granted in part. Teacher is to be reinstated on a Last Chance basis and be made whole for all loss for his time out of service, with the exception of a 3 month unpaid disciplinary suspension.

- See Next Slide...

Certificate Suspension – Board Termination

Nicholas Cilento v. Board of Education of the Township of Woodbridge, Commissioner 2/6/2023

- Teacher appealed board removal from tenured teaching position after State Board of Examiners suspended his certificates for two years.
- Tenure arbitrator had found unbecoming conduct (drinking and possessing alcohol on school grounds), not dismissal, suspended from employment for 3 months. BOE reinstated. **State Board of Examiners imposed two-year certificate suspension 10/28/21.** Commissioner upheld 6/23/22.
- Board terminated employment after suspension of certificate. (11/18/21, effective 10/28/21.) **ALJ concluded that the Board acted appropriately** and in accordance with the law when it removed petitioner from his tenured teaching position, because petitioner did not have a valid teaching certificate at the time of the Board's decision. *N.J.S.A. 18A:26-2* and *N.J.A.C. 6A:9B-5.1(c)* **Commissioner upholds board termination.**
- Arguments – BOE should have waited until after the appeal, place on inactive list at OAL

Jared Deppeler v. Board of Education of the Township of Middletown, Monmouth County, 2/17/2023, (#42-23)

Facts:

- Former tenured teacher was absent for a majority of the 2017-18 year due to alcohol issues. He resigned.
- Claims SD ordered Psychiatric Evaluation w/o providing written statement of reasons or right to a hearing, violated sick leave rights, and ordered a Last Chance Agreement – all violating his rights
 - Seeks LCA voided
 - Payment for unused sick leave
 - Rescind his resignation and reemploy w/o loss of tenure or seniority rights with full salary and benefits

Analysis:

- Failed to prove that BOE lacked authority to institute the above
 - Teacher voluntarily entered into LCA
 - LCA was appropriate – did not include Sick Leave issues
- BOE's October 2017 letters to teacher re: concerned with ability to perform job, sufficed as "written notice"
 - Teacher exhibited excessive absenteeism w/o notice to the SD
 - SD concerned – 2x requested Welfare Checks by local police
- BOE need not notify of right to hearing
 - However, must convene one if it is requested
- Teacher voluntarily resigned and did not rescind prior to BOE accepting the resignation

Holding:

ALJ Dismissed the Petition; Commissioner Affirmed

ADDITIONAL CONDUCT UNBECOMING CASES

January 2023 Arbitration Case Decision

Jodi Bocco v West Long Branch SD – 1/17/23

Facts

- Current charges of Insubordination & CU against tenured Phys. Ed. Teacher for failure to attend Psychiatric Evaluation w/o valid excuse
- December 2012 Arbitration Decision
 - CU charges for improper conduct / comments and difficulties working w/ staff / students
 - Dismissed from School Counselor & SAC positions
- 2014-15 through 2020-21 SY: “troubling behavior”
 - Teacher claims these complaints and prior CU Charges were Retaliation for reporting / attempting to report complaints of child abuse and HIB policy violations
 - Based on concerns of “troubling behavior”, teacher directed to undergo a Psychiatric Evaluation by BOE Directive
 - Teacher never attended
 - Teacher never appealed BOE Decision to Commissioner
 - SD provided written notice on multiple occasions to teacher and her attorney
 - Tenure Charges filed January 2022
 - Attorney withdrew May 2022 – extensions granted to find new counsel

January 2023 Arbitration Case Decision

Jodi Bocco v West Long Branch SD – 1/17/23

Holding

- Tenure Charges Granted, Teacher is Dismissed
 - Continuous claims of Retaliation by SD after she made various reports over approximately 10 years
 - No finding re: Validity
 - On multiple occasions, SD directed Teacher to attend psychiatric evaluation
 - She never did – claimed harassment/retaliation
 - Any challenge to validity of BOE directive should have been filed with Commissioner of Education.
 - No valid reason offered for non-compliance
 - A lesser penalty would not “rehabilitate her conduct or ensure against further insubordinate behavior”

February 2022 Tenure Case Decision

Stavros Siskas v. Rutherford SD – 2/25/22

- April 9, 2021 Siskas stopped for failing to signal before turning and failure to stop for a pedestrian
 - Teacher claimed he had just come from funeral home (Mother's recent funeral service) while police searched vehicle.
 - Teacher was arrested.
 - Failed to immediately report arrest to the SD – but ultimately reported w/i 14-Day Interval required by NJ Statute.
 - BOE suspended teacher w/ pay during investigation
 - Fabricated Circumstances of arrest during report to SD
 - Set a PW on SD laptop, denying SD access – eliminated Hard Drive – and denied doing it
 - Situation was Conduct Unbecoming
 - Tenure charges filed (many details redacted by Arbitrator)

Decision: Tenure charges Affirmed. Grievance Denied

NON-CERTIFICATED STAFF

Non-Certificated Staff Members

- **P.L. 2020, c.66 (8/13/2020)** – Employees who are not teaching staff members (**non-certificated staff**) shall have the right to submit to binding arbitration (through the contractual grievance procedure) any dispute regarding whether there is **just cause for a disciplinary action**, including, but not limited to:
 - reprimands, withholding of increments, **termination or non-renewal of an employment contract, expiration or lapse of an employment contract or term, or lack of continuation of employment,**

Non-Certificated Staff Members

- **P.L. 2020, c.66 (8/13/2020)** The ability to submit these matters to binding arbitration is **irrespective of the reason for the employer's action or failure to act, and irrespective of any contractual or negotiated provision or lack thereof.**
- In the arbitration, the burden of proof shall be on the employer.
- Nothing in this section shall be regarded as affecting the right of any teaching staff member or majority representative to submit to binding arbitration any dispute involving or relating to a teaching staff member.

Just Cause Test

- 1. FAIR NOTICE** Did management make the worker aware of the rule or policy which they are being accused of violating?
- 2. PRIOR ENFORCEMENT** Has management recently enforced the rule or policy or penalized other workers for violating the same rule or policy?
- 3. DUE PROCESS** Did management conduct an interview or hearing before issuing the discipline, take action promptly and list charges precisely?
- 4. SUBSTANTIAL PROOF** Was management's decision to accord discipline based on credible and substantial evidence?
- 5. EQUAL TREATMENT** Is the punishment management is proposing consistent with the punishment other workers received for the same or substantially similar offense?
- 6. PROGRESSIVE DISCIPLINE** During the disciplinary process, did management issue at least one level of discipline that allowed the employee an opportunity to improve?
- 7. MITIGATING AND EXTENUATING CIRCUMSTANCES** Was the discipline proportional to the gravity of the offense, taking into account any mitigating, extenuating or aggravating circumstances?

SCENARIOS



Scenario 6

- You have two custodians in your building who work in the evenings. While each is expected to work 8 hour shifts, as the principal you have occasionally allowed some flexibility for each to start work early or late, and have told each of them that they are “a professional” and as long as they “put in a good day’s work and get everything done,” you won’t micromanage their schedules.
- You then receive a phone call from a board member wondering why one of the custodians is at the bowling alley when he is supposed to be working.
- The next day the superintendent directs that an investigation be launched to determine if the 2 night custodians are working full shifts. By reviewing district video and social media posts, the district determines that each custodian has either come in late or left early at least 10 times in the past school year.
- What do you do?

Scenario 7

- You are the school principal and pride yourself on how well you relate with your staff. You know it is important to have a sense of humor and often try to fill staff meetings with moments of levity.
- As the first staff meeting of the year, you decide to show a video made by a well-known black comedian that mimicks the outrageous complaints you sometimes here from parents, and then showing how school principals would like to respond but can't in the real world. The comedian at various points feigns extreme anger in showing how he would like to respond to various requests.
- Most of the staff members appear to find the video very amusing, and there is a good deal of laughter.
- However, one staff member is not amused and files a complaint with the district's affirmative action officer, claiming that the video was racially offensive and feeds into stereotypes about angry black men.
- You are upset. You truly thought the video would be taken in good fun and did not intend to offend anyone. When questioned about how you chose this video, you note that it had gone viral online and you had shared with a diverse group of teachers in advance who had indicated that they also thought it was funny.
- What did you do wrong if anything?
- What does the district do now?

Scenario 8

- You are the assistant principal for the middle school. You are out to dinner with your spouse at a small bar and grill in the same town as your school district. While dining, you notice a heated argument taking place at the bar between Mr. Barnes, who is a parent of one of your students and Ms. Jones, a teacher who lives locally. The parent has just called the teacher “a clueless left-wing nut who is trying to indoctrinate all the students with her radical agenda.” You are worried the parent may become violent and decide to step in when he is pointing his finger close to Ms. Jones’s face.
- You say “that’s enough Mr. Barnes, let’s step away, and try to guide him away by the shoulder.” He pushes you hard and says “get your hands off me. I will have you fired.”
- What do you do in that moment?
- The next morning, you see a video posted that shows you putting your hand on Mr. Barnes shoulder and saying “that’s enough.” The caption says “Are we going to let school principals assault us now?” The video does not show anything that happened before or after you put your hand on Mr. Barnes shoulder.
- What do you do now?

April 2022 Case on Working Partial Days

Johns & Lopez v. Belleville SD – 4/18/22

- Absences:
 - Failure to Report & Excessive Absenteeism – 2 Night Custodians
 - Left position 1 hr 15 minutes early multiple times (3pm-11pm) – March 2021 (believes happened prior as well)
 - Did not seek permission to leave early
 - Teachers/Staff noted the lack of “cleanliness” of the building and other issues
 - During Covid-19 period – Additional Health Protocols / danger to staff/children
 - Pulled video and discovered leaving early frequently
- Prior Discipline:
 - Johns – No prior Discipline
 - Lopez – Has Letters of Reprimand (2008-2014) included issues with injuries
 - 17 years of service with no discipline in the last 7 years
- Defense:
 - Claims had been told that once the work was done, they could leave early (denied)
 - They had reported to work early, so they were still completing the required hours of work
 - Fluctuation of schedules led to confusion
 - Lopez & Johns remorseful
- **Holding:**
 - Received full pay for working less than required 8.5 hours
 - Claim of creating a dangerous situation for staff/students not supported by examples
 - Dust / Unclean Marker Boards does not equal a “dangerous situation”
 - Credible confusion as to who could give permission to leave early
 - Demonstrated a lack of judgment
 - Reinstate w/o Back Pay
 - **Termination Time Converts to Unpaid Suspensions**

Tenure Charges – All or Nothing???

Sanjuan v. School District of West New York, 473 N.J.Super. 416 (App. Div. 2022) 8/25/2022, pending before NJ Supreme Ct

- Teacher sought to vacate tenure arbitration award which demoted her from assistant principal to 4th grade teacher; 120 day suspension without pay. Chancery Division confirmed the award. Teacher appealed.
- App. Div. affirms arbitrator's determination that Sanjuan was not entitled to backpay withheld from her during her suspension-without-pay period based upon his determination that her conduct was unbecoming of a teaching staff member. **Sanjuan placed a piece of paper on the steps after her fall in school to misrepresent how the incident occurred, and refused to reveal who told her about the video of the incident. “manipulate the scene” of her fall, made a “false report of the incident” and “continued lying”**
- App. Div. reverses and remands because upon determining conduct to be unbecoming but that Sanjuan should not be terminated, **arbitrator lacked the statutory authority to demote her from her assistant principal position** and he could only reduce her salary. Sanjuan should be reinstated to her assistant principal position.
- On remand, arbitrator must determine to what extent, if any, Sanjuan's salary should be further reduced through suspending her without pay or withholding salary increments, or a combination thereof.
- ***Case is now pending before NJ Supreme Court. NJPSA submitted amicus brief in support of right of arbitrator to terminate from one tenured position but not necessarily all.***

Tenure Charges – Public Behavior, Social Media

Michael Smurro v. Neptune SD – 7/13/22

Facts

- CU charges v. VP – Highly Effective Evals and no prior discipline

Basis of Charges:

- On a Saturday at a restaurant with his wife, when she became upset about the presence and conduct of someone that she thought was a biological male, dressed as a woman, that used the women’s bathroom.
 - Wife made loud comments overheard by nearby patrons, who began to film. VP claims when things would calm down, the person filming would agitate the situation
 - VP claimed that when he tried to leave with his wife, the videoer moved toward his wife – video of VP stating “Do you want me to fight this guy right here?”
 - VP through beer on the man/camera filming, saying “Here you go, pal.”
- Videos went viral – SD received hundreds of complaint / angry emails and VM messages; Protests
 - SD had to modify the internal email system
 - A lot of press

Defenses

- Only Supt. Testified for the SD – VP claimed lack of evidence of “loss of confidence” in VP
- No evidence of ongoing disruption to SD
- While he admits poor judgment, the VP claims that the majority of the allegations are about his wife’s conduct, not his, and that one situation should not ruin his career.

Holding:

- One isolated unpremeditated incident that did not directly involve staff/students, with no prior instances and/or discriminatory or intolerant beliefs or behavior (not transphobic)
- SD failed to meet burden of proving teacher is unfit for position of authority / affected moral and efficiency of SD
- 6-month unpaid suspension.
- Reinstate and make whole for the loss with the exception of the 6-month disciplinary suspension

Tenure Charges – Judgment Call on Humor

Joseph Putrino v. Montclair SD – 10/18/22

Facts:

- CU Charges v. Principal:
 - Showing a racially offensive video on September 2, 2020 during a convocation presentation to staff which was available by livestream
 - Supt. stopped video before completion
 - Inappropriate, particularly in light of the times
 - Claims it mocked SD’s Covid-19 Safety Protocols and demeaned head custodian
 - Video shows a Black man angrily yelling about kids’ virtual learning experience – perpetrates the “angry Black man” stereotype
 - Did not believe Principal’s apology
 - NAACP expressed its displeasure
 - Created a schedule for teachers which fell significantly short of the 1250 minutes of weekly pupil contact time allowed under the provisions of the 2018-2021 Collective Bargaining Agreement between Petitioner and the Montclair Teachers’ Education Association.

Defenses:

- Known for “humor” on the job
- Received Josh Pray’s 2020 viral video from several people (including Black Educators) – they thought it was funny. It has been shown on “The Today Show” and in commercials
- Offered examples of Principal’s diversity efforts in the SD
- Received different treatment from Black Assistant Principal - sent out a district-wide eblast celebrating the life of Meir Kahane for Jewish Heritage Month. Kahane is a documented racist and known terrorist – caused negative response from the Jewish Community and local media
 - Apology was accepted and issued a “two to three day suspension”
- Schedule Issue – analysis done of the wrong year

Tenure Charges – Judgement Call on Humor

Holding: Granted in part; Denied in part

- Dismissal not warranted considering the “mixed reaction”, prior un-blemished history, and different treatment from another staff member.
- Changing Dismissal to the same penalty as the other Administrator (2 or 3 days)
 - Award of Back Pay / Benefits for time beyond Suspension Term
- Dismiss Charges relating to 2020-21 schedule

Tenure Charges Excessive Absenteeism

Batts v. Roselle SD – 6/24/22

- Absences:
 - Tenured Elementary Teacher
 - 400 Consecutive Days (10/2/17 – 2/11/19)
 - Failed to work since 2017 w/o showing incapacity - chronic absenteeism
 - Failed to provide medical documentation

- Prior Discipline:

- Defense:
 - Car Accident = legitimate reason
 - Satisfactory Evaluations / No Prior Discipline
 - No offer to help improve absenteeism issues / warnings of problem (No Progressive Discipline)
 - Failed to show harm caused by the absences
 - Miscalculation of absences
 - 168 days during 2017-18
 - 38 days – September/October of 2018
 - Substantial portion of 206 days were approved leave (only consider 117 days)
 - Ready to RTW w/o restriction

- **Holding: Reinstated**
 - SD failed to show incapacity (ex: no IME)
 - SD failed to show an adverse impact
 - Reimburse Fully

Disclosure – Pass the Trash

A.B. v. BOE of the City of Hackensack, Commissioner 10/21/2021, aff'd App. Div. 10/5/2023

- **Teacher challenged BOE release of information concerning her former employment** as a teacher in the Hackensack school district; sought employment with the Clifton BOE. (2019) BOE contended that it was obligated to release the information.
- **Pursuant to “Pass the Trash”, N.J.S.A. 18A:6-7.6 through 7.13**, Clifton submitted a questionnaire to Hackensack inquiring about whether petitioner had been the subject of a child abuse or sexual misconduct investigation. **The Board answered “Yes” and that petitioner had resigned while the allegations were pending or under investigation.** As a result, Clifton withdrew its offer to hire the teacher.
- While employed in Hackensack (2013) teacher shared two sexually explicit posts on social media to which several students had access. “Kiss me, I’m Irish, F*** me, I’m Irish,” “Women say, men only think with their penis – Ladies, don’t be afraid to blow their minds.”
- Hackensack board became aware of posts, considered taking disciplinary action. Teacher, her union representatives, and her legal counsel met with the Board and its legal representation, resulting in a settlement agreement (4/25/13) including teacher’s resignation. **Agreement contained a confidentiality provision with the disclaimer “to the extent provided by law.”**

Disclosure – Pass the Trash

A.B. v. BOE of the City of Hackensack, Commissioner 10/21/2021, aff'd App. Div. 10/5/2023

- Commissioner finds that it is **reasonable that the Board conducted an investigation into sexual misconduct** based on petitioner's actions. Petitioner's social media posts could meet the definition of electronic communications that are directed toward or with a student that are designed to establish a sexual relationship with the student, such as making sexually suggestive comments. **It is sufficient that her actions could meet the definition and that the Board opened an investigation.**
- Commissioner agrees with the ALJ that **N.J.S.A. 18:6-7.12 did not exempt settlement agreements entered into before June 1, 2018 from the mandatory disclosure** provisions of the "Pass the Trash" statute. Petitioner also consented to the disclosure of information by signing an authorization form and that her settlement agreement provided a waiver of its confidentiality provision when required by law.
- **Appellate Division affirmed.**

Conclusion

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