

# NJPSA EDUCATION LAW PRIMER

## TENURE AND EVALUATION



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# EDUCATION LAW PRIMER

## Tenure and Evaluation

Tenure - Forfeiture - Withholding of Increment Reassignment  
Transfer Rights of Non-Tenured Staff Members - Seniority

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## INTRODUCTION

This primer will review the various statutes, administrative regulations, and case law affecting tenure, as well as the board's authority to award tenure or remove it, withhold increments, re-assign and transfer teaching staff members, and reduce staff. The intent of this primer is to provide an understanding of the process, both in terms of the rights of staff members and the authority given to boards of education. It should be used only as a guide. Staff members facing any of the issues referred to in this primer are advised to consult with counsel.

## TENURE

### **What is tenure?**

The Tenure Act was originally enacted in 1909. Since then, it has undergone numerous amendments. However, its purpose has not changed. Tenure is designed to offer teaching staff members a measure of security in the positions they hold. It is intended to protect teaching staff members from dismissal for "unfounded, flimsy, or political reasons." *Zimmerman v. Newark Board of Ed.* 38 N.J. 65 (1962).

### **Tenure is a legislative status that may not be superseded contractually**

Tenure is a creation of the legislature. Since it is legislatively created, tenure may be changed only through legislation. In no event may it be superseded by contract. The matter of Local 195, IFPTE, AFL-CIO v. State of New Jersey, 88 N.J. 393 (1982).

### **Conditions which must be met for tenure to be achieved**

The "precise" requirements in the tenure statute

must be met for tenure to be achieved. Teaching staff members must (1) hold appropriate certificates "in full force and effect" issued by the State Board of Examiners, and (2) hold such positions delineated in the tenure statute, or in an otherwise certificated position for the required period, which consists of:

- (a) three consecutive calendar years or any shorter period which may be fixed by the employing board for such purpose; or*
- (b) three consecutive academic years, together with employment at the beginning of the next succeeding academic years; or*
- (c) the equivalent of more than three academic years within a period of any four consecutive academic years.*

### **Is U.S. Citizenship required for tenure?**

Yes. N.J.S.A. 18A:28-3 provides that no teaching staff member "shall acquire tenure unless he is, or until he shall become, a citizen of the United States."

### **Is citizenship required to hold an educational certificate?**

No. N.J.A.C. 6A:9-5.7 provides that to be eligible for a certificate an applicant must be a citizen of the United States or:

- 1) [a] citizen of another country who has declared his or her intention of becoming an United States citizen and who is otherwise qualified may, with the commissioners approval, be granted a teaching certificate for employment as a teacher, with the certificate expiring in five years.*
- 2) in accordance with N.J.S.A. 18A:6-7 [a] citizen of another country who's employed as an exchange teacher by the district board of education pursuant to N.J.A.C. 6A:9-5.15 shall be exempt from the citizenship requirements. The teacher shall file a non-citizen oath to support the constitution of the United States while so employed.*

3) in accordance with N.J.S.A. 18A:6-7 [a] citizen of another country who is eligible for a limited certificate for foreign teachers for employment by a public school district pursuant to N.J.A.C. 6A:9-6.6 shall be exempt from the citizenship requirement. The teacher shall file a non-citizen oath to support the constitution of the United States while so employed.

4) In accordance with N.J.S.A. 18A:26-1, a teacher of foreign languages who has been a resident of the United States for less than 10 years and who is not a citizen of the United States may be granted a teaching certificate and employed as a teacher by a district board of education. The teacher shall file a non-citizen oath to support the constitution of the United States while so employed, as required by N.J.S.A. 18A:6-7.

### **Definition of teaching staff member**

N.J.S.A. 18A:1-1 and N.J.A.C. 6A:9-2.1

*Teaching staff member means 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 require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.*

*“Teaching staff member” is one who holds an office, position or employment, which requires that he or she hold a valid certificate. Ellicott v. Bd. Of Ed. Frankford 251 N.J. Super, 342 (App. Div. 1991)*

### **Can service in one position confer tenure in another position? (i.e. can service as a vice principal confer tenure as a principal? Or can service as a supervisor confer tenure as a vice principal?)**

No. Acquisition of tenure is predicated on service in the position for the requisite statutory period of time.

The statutory language reads:

*For purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position...*

The New Jersey Supreme Court, in the matter of Nelson v. Old Bridge Board of Ed. 148 N.J. 358 (1997), held that tenure was limited to the positions in which a teaching staff member served. It specifically rejected the notion that tenure was transferable to any position covered by the same certificate.

### **May a teaching staff member achieve tenure because his contract covers the statutory period?**

No. A teaching staff member's tenure is statutory and arises only by the passage of time fixed by the statute. The staff member's discharge before the passage

of the required time precludes him from acquiring tenure; this, even if the discharge is in breach of the employment contract which, if it had not been breached, would have extended to or gone beyond the date on which tenure would have been achieved. Canfield v. Board of Ed. of the Borough of Pine Hills 51 N.J. 400 (1968).

### **May part-time teaching staff members achieve tenure?**

Yes. Teaching staff members who provide part-time remedial or supplemental instruction to learning disabled children may acquire tenure if they meet the specific criteria set in N.J.S.A. 18A:28-5. Spiewak v. Board of Ed. of Rutherford 90 N.J. 63 (1982).

### **Does the source of funding of a position affect the ability of a teaching staff member to achieve tenure?**

No. The Supreme Court concluded that all teaching staff members who work in positions for which a certificate is required, who hold valid certificates, and who have worked the requisite number of years, are eligible for tenure. That would include remedial and supplemental teachers who have satisfied the statutory conditions no matter what the source of the funding or their salaries.

### **May a person who fills in for an employee on leave accrue credit toward tenure?**

No. N.J.S.A. 18A:16-1.1 provides that each board of education may designate a person to ...

*“act in place of another during the absence, disability or disqualification of such person, and that the acts of any person so designated shall in all cases be legal and binding but that no such person “shall acquire tenure in the office or employment in which he acts...”*

The temporary employment exception to the tenure statute is limited to employees hired to take the place of an absent teacher. Spiewak v. the Board of Ed. of Rutherford 90 N.J. 63 (1982). This exception applies as well when a staff member is appointed as a “substitute” to fill a vacant position on a long-term basis. N.J.S.A. 18A:16-1.1 provides for the temporary employment of substitute teachers when their service is required because of the temporary absence, even if protracted, of a regular teacher. The emphasis here is that the service of the substitute is temporary because of the expected return of the absent staff member. Sayreville Education Association on behalf of Rucki v. Board of Ed. of the Borough of Sayreville, 193 N.J. Super 424 (App. Div. 1984).

**Does service of a staff member who is not taking the place of another staff member count towards tenure?**

Yes. If the staff member is not working in a position previously held by a teacher who left it on a leave of absence or by a teacher who is otherwise absent, but expected to return, that staff member cannot be excluded from tenure accrual under the exceptions set forth in N.J.S.A. 18A:16-1.1. Kathleen Donvito v. Board of Ed. of the Northern Valley Regional High School District OAL docket number EDU5877-02, (Decision held that home instructor could not be denied tenure)

**By resigning does the staff member relinquish tenure rights?**

Yes. An employee who resigns and leaves a district, no matter what the length of time between resignation and re-employment, relinquishes tenure. Commins v. Bd. Of Woodbridge 1967 S.L.D. 11; Solomon v. Board of Ed. of Princeton Regional School District 1977 S.L.D. 650, affirmed by the State Board 1977 S.L.D. 657 The same principle applies when a staff member voluntarily resigns a position. (i.e. supervisor resigns to return to the classroom)

## PROMOTIONS AND TRANSFERS

**N.J.S.A. 18A:28-6 establishes the conditions upon which teaching staff members may obtain tenure upon a transfer or promotion. The statute provides as follows:**

*Any such teaching staff member under tenure or eligible to obtain tenure... who is transferred or promoted with his consent to another position... shall not obtain tenure in the new position until after:*

*(a) the expiration of a period of employment of two consecutive calendar years in the new position unless a shorter period is fixed by the employing board...; or*

*(b) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;*

*Provided that the period of employment in such new position shall be included in determining the tenure and seniority rights of the former position held by such teaching staff member; and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district... such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or the promotion not occurred together with any*

*increase to which he would have been entitled during the period of such transfer or promotion.*

**Is consent required for a transfer or promotion to “another” position?**

Yes. The statute requires consent if a teaching staff member is promoted or reassigned to a distinctly different position. This means that a vice principal cannot be promoted to a position of principal without his or her consent; that a classroom teacher cannot be promoted to a supervisory position without his or her consent. See Childs v. Union Township Board of Ed. 3 N.J.A.R. 163 (1980).

**Does a reassignment of an elementary principal to a high school principal constitute a transfer to a distinct position requiring consent?**

No, because tenure is achieved in the position of principal – not categories of positions such as high school or elementary school principal. Therefore, a reassignment of an elementary principal to a high school principal does not constitute a transfer to a distinct position and therefore does not require consent. See Stranzl v. Board of Ed. of the City of Paterson 2 N.J.A.R. 16 (1980); Thomas Fedor v. Elmwood Park Board of Ed. 2003 WL 221178322, August 13, 2003 (EDU 766,287).

**Can a high school principal be reassigned to an elementary principalship without his or her consent when the elementary principalship pays a lesser compensation?**

Yes. A high school principal may be transferred to an elementary principalship without consent and such a reassignment does not constitute a tenure violation even if it results in a reduction of the teaching staff member’s salary “expectancy” in future years. However, an actual or real reduction in salary would constitute a tenure violation. See Williams v. Plainfield Board of Ed. 1979 S.L.D. 220; State Board decision at 1979 S.L.D., September 6, 1979; Appellate Division decision at 176 N.J. Super 145 (App. Div. 1980).

**Does the period of employment in the new position count towards tenure and seniority in the former position?**

Yes. N.J.S.A. 18A:28-6 provides that “*the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position...*”

This means that a teaching staff member who, for example, is promoted to a supervisor position after

having served in the classroom for only two years accrues tenure as a classroom teacher after completion of one year as a supervisor. (Tenure is achieved after completion of three consecutive calendar years or three consecutive academic years with employment in the new position at the beginning of the succeeding year.)

**Why does the statute provide that service in the new position be included in determining tenure and seniority in the former position?**

Service in the new position is calculated in determining tenure and seniority in the former position to encourage staff members to accept promotions. If service in a new position could not be calculated into the service requirement in the former position staff members would be more reluctant to accept a promotion prior to accruing tenure in the former position.

**What is a transfer?**

Transfer refers to the right of a school board to assign a teacher to a position within the scope of his or her certification. A tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered and the teacher is not singled out for the transfer on a prohibited basis. N.J.S.A. 18A: 25-1; *Carpenito v. Board of Ed. of the Borough of Rumson*, 322 N.J. Super 522 (App. Div. 1999); *Greenway v. Board of Ed. of the City of Camden*, 129 N.J.L. 46 (Sup. 1942), affirmed 129 N.J.L. 461 (1943).

**Does the statute require that all board members be present when voting on a transfer?**

The statute requires that a majority of the full board approve a transfer. This means that no less than five board members of a nine member board must approve the transfer.

**Boards have broad transfer authority - within certification**

An involuntary transfer of a tenured teacher from a position of reading teacher in a departmentalized junior high school to a position as third grade elementary teacher in connection with a district reorganization was not improper and teacher was not entitled to be returned to a position. *Moore v. Cherry Hill Township Board of Ed.* 92 N.J.A.R. 2D (585), affirmed at 93 N.J.A.R. 2D 173.

In *Carpenito v. Board of Educ. of Borough of Rumson*, 322 N.J. Super. 522, 535 (App. Div. 1999) the court held that a board must be permitted to

maintain control over the administration of its schools where its *“conduct is in compliance with the tenor and spirit of the Tenure laws. An employee should not be permitted to remain in a desired position to subvert a school board’s managerial authority to lawfully assign and transfer its staff within the scope of their certification, absent disciplinary reasons or bad faith.”*

**Can boards transfer an employee outside of the employee’s certification?**

Not if such a transfer would violate the employee’s tenure rights. A school employee with tenure as a teacher under an instructional certificate and tenure as a cooperative education coordinator under an educational services certificate split her day between work performed under the instructional certificate and work performed under her educational services certificate. The school board gave her cooperative education duties to another person and reassigned petitioner to full-time teaching duties. The Commissioner adopted the ALJ’s analysis that petitioner’s tenure rights had been violated. In analogizing the situation to one in which a tenured principal was reassigned to a full-time classroom position, the ALJ commented, *“while it is acknowledged a school principal may be assigned to teach certain classes, there’s no authority for a transfer from a tenured principal position to a full-time teaching position.”* *Gerdes v. Spotswood Board of Ed.* 92 N.J.A.R. 2D 170 (EDU) 168 decided February 6, 1992.

**Are seniority rights triggered by transfer of staff members?**

The court in *Carpenito* also made clear that seniority rights are not triggered when a school board transfers or assigns its tenured teaching staff members to other positions within the teacher’s appropriate certification.

**Must the superintendent recommend a transfer?**

Yes. N.J.S.A. 18A:27-4.1 provides:

*Notwithstanding the provisions of any law, rule or regulation to the contrary, (a) A board of education shall appoint, transfer or remove a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the school membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons.*



### **What employee rights are triggered when a transfer is for disciplinary reasons?**

The legislature adopted amendments to the Public Employee – Employer Relations Act in 1990 granting to school employees additional rights by prohibiting disciplinary transfers.

N.J.S.A. 34:13A-25

*Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.*

Boards retain the prerogative to transfer school personnel. Transfers may not be subject to collective negotiations or grievances or arbitration. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed. 78 N.J. 144 (1978)

When there is a dispute as to whether a transfer is Disciplinary, the process is for the union to file a petition before PERC. PERC then makes findings as to whether the transfer is predicated on performance related reasons or whether it is disciplinary.

### **When is a transfer deemed to be disciplinary?**

PERC has stated that the “*case law does not establish a bright line test for assessing whether a transfer is disciplinary and therefore legally arbitrable. But, read together, our decisions indicate that we have found transfers to be disciplinary where they were triggered by an incident for which the employee was reprimanded or otherwise disciplined or were closely related in time to an alleged incident of misconduct. In all these cases we noted that the employer did not explain how the transfer furthered its educational or operational needs. See Ocean Tp. 18 NJPER 450 (1997). Also see West New York Board of Ed., 17 NJPER 248 (1991) where teacher was transferred shortly after he posted signs protesting layoffs. By contrast we have found transfers not to be disciplinary where they were affected predominantly to further an employer’s educational, operational, or staff objectives. See Sea Girt Bd. Of Ed. 17 NJPER 158 (1991) where teacher transfer intended to accomplish the board’s goal of maintaining kindergarten enrollment. Also see Long Branch Board of Ed. 18 NJPER 132 (1992) where facts did not establish that transfer was a response to teacher’s critical comments at board meeting. In the Matter of the West New York Board of Ed and Joseph Amara 27 New Jersey Pub. Employee Rep. ¶ 32037 (2001).*”

## **NONTENURED TEACHING STAFF MEMBERS**

### **N.J.S.A. 18A:27-10 Nontenured teaching staff member; offer of employment for next succeeding year by May 15**

*On or before May 15 in each year, each non-tenured teaching staff member continuously employed by a board of education since the preceding September 30 shall either receive:*

*(a) A written offer of a contract for employment from the board of education for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or*

*(b) A written notice from the chief school administrator that such employment will not be offered.*

### **N.J.S.A. 18A:27-11 Failure to give timely notice of termination deemed as offer of employment for next succeeding year**

*Should any board of education fail to give to any non-tenure teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered, all within the time and in the manner provided by this act, then said board of education shall be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education.*

### **N.J.S.A. 18A:27-12 Notice of acceptance; written notice by June 1 deadline**

*If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance, in writing, on or before June 1 in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance the provisions of this article shall no longer be applicable.*

### **What is the superintendent’s role in renewing a nontenured teaching staff member’s contract?**

N.J.S.A. 18A:27-4.1 provides:

*(b) A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A non-tenured officer or employee who is not recommended for renewal by the chief school administrator shall*

*be deemed non-renewed. Prior to notifying the officer or employee of the non-renewal, the chief school administrator shall notify the board of the recommendation not to renew the officer or employee's contract and the reasons for the recommendation.*

*An officer or an employee whose employment contract is not renewed shall have the right to a written statement of reasons for a non-renewal pursuant to... [N.J.S.A. 18A:27-3.2]... and to an informal appearance before the board. The purpose of the appearance shall be to permit the staff member to convince the members of the board to offer re-employment. The chief school administrator shall notify the officer or employee of the non-renewal pursuant, where applicable, to the provision... [N.J.S.A. 18A:27-10].*

*(c) Provisions of this section shall not apply to the appointment, transfer, removal, renewal or non-renewal of a person who is the treasurer of school money, election officer, board auditor, board attorney or board secretary, except the board secretary who performs business administration functions.*

**Does the superintendent's decision not to renew a nontenured staff member's contract require board approval?**

No. N.J.S.A. 18A:27-4.1 provides that a non-tenured employee who is not recommended for renewal by the superintendent or chief school administrators shall be deemed non-renewed.

**Does the superintendent have to explain to the board his/her reasons for non-renewal?**

Yes. N.J.S.A. 18A:27-4.1 states that prior to notifying the employee of the non-renewal the chief school administrator shall notify the board of the recommendation for non-renewal and the reasons for the recommendation.

**Is the superintendent's recommendation for renewal of a staff person's contract required?**

Yes. However, a board may nevertheless determine on its own, after a staff member requests a hearing, to reject the superintendent's recommendation. A board must have a rational basis underlying its decision.

**How is a nontenured teacher's performance measured?**

**N.J.S.A. 18A:27-3.1. Non-tenured teaching staff; observation and evaluation; conference; purpose**

*Every board of education in this State shall cause each nontenured teaching staff member employed by it to be observed and evaluated in the performance of her or his duties at least three times during each school year but not less than once during each semester. Said evaluations are to take place before*

*April 30 each year. The evaluations may cover that period between April 30 of one year and April 30 of the succeeding year excepting in the case of the first year of employment where the three evaluations must have been completed prior to April 30. The number of required observations and evaluations may be reduced proportionately when an individual teaching staff member's term of service is less than one academic year. Each evaluation shall be followed by a conference between that teaching staff member and his or her superior or superiors. The purpose of this procedure is to recommend as to reemployment, identify any deficiencies, extend assistance for their correction and improve professional competence.*

But, *Dore v. Bedminster* 185 N.J. Super. 447 (App. Div. 1982) said:

*Lack of strict compliance with statute providing for evaluation of non-tenured teaching staff members employed by each board of education in the State was not sufficient reason to afford non-reemployed teacher either reinstatement or financial reward.*

## **NON-RENEWAL OF NON-TENURED TEACHING STAFF MEMBERS**

### **N.J.S.A. 18:27-3.2 Statement of reasons**

*Any teaching staff member receiving notice that a teaching contract for the succeeding school year will not be offered may, within 15 days thereafter, request in writing a statement of the reasons for such non-employment which shall be given to the teaching staff member in writing within 30 days after the receipt of such request.*

### **Hearing requirement**

*Donaldson v. Board of Ed of North Wildwood* 65 N.J. 236 (1974) established the right of a teaching staff member to have a hearing before an employing board as to the "reasons" given for the teacher's non-renewal. The Donaldson decision preceded the codification of the right to a hearing. Explaining its rationale for finding in favor of a teacher's right to a hearing, the Court said:

*It appears evident to us that on balance the arguments supporting the teacher's request for a statement of reasons overwhelm any arguments to the contrary. The teacher is a professional who has spent years in the course of attaining the necessary education and training. When he is engaged as a teacher he is fully aware that he is serving a probationary period and may or may not ultimately attain tenure. If he is not reengaged and tenure is thus precluded he is surely interested in knowing why and every human*



*consideration along with all thoughts of elemental fairness and justice suggest that, when he asks, he be told why. Perhaps the statement of reasons will disclose correctable deficiencies and be of service in guiding his future conduct; perhaps it will disclose that the non-retention was due to factors unrelated to his professional or classroom performance and its availability may aid him in obtaining future teaching employment; perhaps it will serve as a significant discipline on the board itself against arbitrary or abusive exercise of its broad discretionary powers.*

**N.J.A.C. 6:3-4.2 Procedure for appearance of non-tenured teaching staff members before a district board of education upon receipt of a notice of non-reemployment.**

- (a) Whenever a non-tenured teaching staff member has requested in writing and has received a written statement of reasons for non-reemployment pursuant to N.J.S.A.18A:27-3.2 he or she may request in writing an informal appearance. Whenever a non-tenured teaching staff member has requested in writing an informal appearance before the district board of education. Such written request must be submitted to the board within 10 calendar days of receipt of the board's statement of reasons.
- (b) Such an informal appearance shall be scheduled within 30 calendar days from receipt of the board's statement of reasons.
- (c) Under the circumstances described in this section, a non-tenured teaching staff member's appearance before the board shall not be an adversary proceeding. The purpose of such an appearance shall be to permit the staff member to convince the members of the board to offer reemployment.
- (d) Each district board shall exercise discretion in determining a reasonable length of time of the proceeding, depending upon the specific circumstances in each instance.
- (e) Each district board shall provide adequate written notice to the employee regarding the date and time of the informal appearance.
- (f) The non-tenured teaching staff member may be represented by counsel or one individual of his or her own choosing.
- (g) The staff member may present witnesses on his or her behalf. Such witnesses need not present testimony under oath and shall not be cross-examined by the board. Witnesses shall be called into the meeting to address the board one at a time and shall be excused from the meeting after making their statements.

(h) The proceeding of an informal appearance before the district board as described herein may be conducted pursuant to N.J.S.A. 10:4-12(b)(8) – Open Public Meetings Act

(i) Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of its final determination. Such notification may be delegated by the board to its superintendent or board secretary.

**Summary**

- 1) Request for appearance before board must be made within 10 days of receipt of statement reasons.
- 2) Purpose is to convince the board to re-employ the staff member who has not been renewed.
- 3) Appearance before the board to be scheduled within 30 days of receipt of statement of reasons.
- 4) Hearing is not to be adversarial. Teaching staff member is afforded the right to be represented, to make a statement, to present witnesses, and to request that the hearing be in public.
- 5) The board may set reasonable time limitations for the hearing.
- 6) The board is to notify staff member of its determination within three days following staff member's appearance.

## **EMPLOYEE DISCIPLINE: WITHHOLDING OF INCREMENTS**

**18A:29-14. Withholding increments; causes; notice of appeals**

*Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefore, to the member concerned. The member may appeal from such action to the Commissioner under rules prescribed by him. The Commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The Commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment.*

### **Do staff members have a right to an increment?**

No. Increments are earned. The annual increment is in the nature of a reward for meritorious service to the school district. Board of Educ. of Bernards Tp. v. Bernards Tp. Educ. Ass'n., 79 N.J. 311, 321 (1979). The determination of an annual increment after evaluation by a school board serves the dual statutory objectives of affording teachers economic security and of encouraging quality in performance. Kochman v. Board of Ed. Of the Borough of Keansburg 94 N.J.A.R. 2d 141 (1993).

### **Can a board withhold an increment for any reason, or for no reason?**

No. Increments may only be withheld for reasons of inefficiency or other good cause.

### **Can an increment be withheld because of excessive absenteeism?**

Yes, but... In Kuehn v. Bd. of Ed. of Twp. of Teaneck, decided by the State Board, February 1, 1983, the State Board considered a case in which the board, acting pursuant to an unwritten board policy, withheld a teacher's increment because, using her annual and accumulated sick leave, the teacher had been absent more than 90 days during the school year. The State Board emphasized that the teacher, who had been seriously ill, was statutorily entitled to use her annual accumulated sick leave under N.J.S.A. 18A:30-1 and N.J.S.A. 18A:30-3 and that withholding her increment solely on the basis of the number of absences obviated that statutory right. Accordingly, the State Board concluded that because the board had not considered the particular circumstances of the absences, its action was arbitrary and without rational basis.

### **In challenging an increment withholding, who bears the burden of proof? What is the burden that must be met?**

*The petitioner staff member bears the burden to demonstrate by a preponderance of credible evidence that the increment withholding was arbitrary, capricious or otherwise, was unreasonable. The determination of an employing board of education to withhold salary increments from a teaching staff member may not be reversed unless the action is found to be arbitrary, without rational basis, or induced by improper motives. Kopera v. West Orange Board of Ed., 60 N.J. Super 288 (App. Div. 1960).*

### **Commissioner of Education has jurisdiction to hear appeals of performance based increment withholdings**

As the authority for an increment withholding action rests in N.J.S.A. 18A:29-14, jurisdiction to hear and determine appeals rests with the Commissioner of Education.

### **Scope of review by the Commissioner**

Scope of review by Commissioner of Education is not to substitute his judgment for those who made the evaluation but to determine whether they had a reasonable basis for their conclusion. He cannot redetermine for himself whether teacher had in fact been unsatisfactory as a teacher. Kopera v. Bd of Ed. of West Orange 60 N.J. 288 (App. Div. 1960).

### **1990 PERC amendments: Increment withholdings deemed disciplinary are grievable and arbitrable**

Prior to the 1990 amendments to the Public Employer-Employee Relations Act, increment denials were not arbitrable except in the context of advisory arbitration. Bd. of Ed. of Bernards Tp. v. Bernards Tp. Ed. Assoc. 79 N.J. 311 (1979). Only the Commissioner of Education had the authority to reverse a board's decision to withhold an increment. The 1990 amendments changed the process by requiring that increment withholdings deemed to be disciplinary be subject to binding arbitration.

### **Shift of burden**

Aside from the change of who hears the case, the amendments also shift the burden of proof. In disciplinary increment withholding cases the burden of proof shifts to the board of education requiring it to prove by a preponderance of credible evidence the reasonableness of its action. In performance based increment withholdings the burden is on the teaching staff member to demonstrate by a preponderance of credible evidence the unreasonableness of the board's determination.

### **N.J.S.A. 34:13A-26. Withholding of employee's increment for predominately disciplinary reasons**

*Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary reasons shall be subject to the grievance procedures established pursuant to law.*

### **N.J.S.A. 34:13A-27. Dispute whether withholding increment is predominately disciplinary; PERC decides**

(a) If there is a dispute as to whether a withholding of an increment of a teaching staff member is disciplinary, the commission (Public Employment Relations Commission) shall determine whether the withholding is predominately disciplinary...

(b) If the Commission determines that the basis for an increment withholding is predominately disciplinary, the dispute shall be resolved through the grievance procedures established pursuant to law...

**N.J.S.A. 34:13A-29. Grievance procedures; binding arbitration as terminal step; burden of proof**

(a) The grievance procedures that employers covered by this act are required to negotiate shall require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

(b) In any grievance procedure negotiated pursuant to this act, the proof of proof shall be on the employer... seeking to impose discipline...

## **EMPLOYEE DISCIPLINE: TENURE CHARGES**

### **Dismissal and reduction in compensation of persons under tenure**

#### **N.J.S.A. 18A:6-10 - The Tenure Hearing Law**

No person shall be dismissed or reduced in compensation ...

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state...except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held ... by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education... provided ...Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

#### **Summary**

- 1) Basis of tenure charges is incapacity, unbecoming conduct or other just cause.
- 2) Hearing required before Commissioner or person appointed to act on his behalf.
- 3) Charges must be signed by the person making them.
- 4) Nothing in the tenure laws may prevent a reduction in force (RIF).

**Written charges; written statement of evidence; filing; statement of position by employee; certification of determination; notice**

#### **18A:6-11 (corresponding administrative code section is N.J.A.C. 6A:3-5.1)**

*Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statement of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address.*

*In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the Commissioner for a hearing pursuant to N.J.S.A. 18A:6-16, together with a certificate of such determination. Provided, however, that if the charge is inefficiency, prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency. The consideration and actions of the board as to any charge shall not take place at a public meeting.*

#### **Summary**

- 1) Charges must be written and accompanied by supporting sworn statement.
- 2) Charges with supporting evidence must be forwarded forthwith to employee.
- 3) Employee must be given opportunity to submit a written response.
- 4) Certification of charges required by majority of full membership of the board.
- 5) If board chooses to certify it shall notify employee forthwith.
- 6) Upon certification, charges are to be forwarded to the Commissioner.
- 7) Charges of inefficiency must allow for 90-day improvement period.

**Also see N.J.A.C. 6A:3-5.1:**

- 1) "Forthwith" means transmittal to the employee must be within three working days.
- 2) Employee's written response must be sworn.
- 3) Employee's written response must be filed within 15 days of receipt.
- 4) Board shall determine by a majority vote of its full membership within 45 days after receipt of employee's response whether there is probable cause to certify charges.
- 5) Within three working days board shall provide written notification of determination to the employee.
- 6) In the event the board certifies charges then, within 15 days, the board shall file written charge with the Commissioner.
- 7) The action or behavior underlying the charge shall be stated with specificity and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the board and proof of service upon the employee and the employee's representative, if known.

**Board preliminarily reviews charges; Commissioner decides charges**

*Local school board should not be at one and the same time the investigator, prosecutor and judge of charges against secretary business manager of the local school system. Hoek v. Bd. Of Ed. Of Asbury 76 N.J. Super. 448 (App. Div. 1962)*  
*Local boards have jurisdiction only to preliminarily review of charges to determine whether the charges if proven are sufficient to warrant dismissal or reduction in pay. Upon such a finding the district board is to certify the charges to the Commissioner who has the duty of conducting a hearing and rendering decision. In re Fulcomer 93 N.J. Super. 404 (App. Div. 1967).*

**Board must act to certify charges within 45 days of Receipt**

**18A:6-13**

*If the board does not make a determination within 45 days after receipt of the written charge, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is of inefficiency, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon.*

*Failure to give teacher time to answer and failure by board to act within 45 days of charges being sent to teacher warranted dismissal of charges. Matter of Tenure Hearing of Beam 93 N.J.A.R. 2d. (EDU) 320.*

**Unbecoming Conduct**

**(i) Speech**

*Tenured teacher, who served as president of teachers' bargaining association, delivered orientation day speech which referred to dismissal of two nontenured teachers, superintendent's involvement in local politics, removal of books from English curriculum and dearth of black faculty, which described school system as snake pit for young teachers and the superintendent as a villain, which suggested that nontenured teachers refrain from criticism until they obtained tenure, which described school district's hiring practices as callous economic gesture and which spoke generally against school administration and in particular, against superintendent warranted her dismissal from employment. Pietrunti v. Board of Ed. of Brick 128 N.J. Super. 149 (App. Div. 1974).*

*Comments made by tenured teacher when he called a radio talk show and revealed his refusal to teach African-American literature in his literature class were within his First Amendment rights and could not be used as a basis for tenure charges seeking dismissal The teacher had told radio talk show host Bob Grant that he had refused to include in his literature class ten short stories and poems that were translations from Swahili and Bantu. The teacher said on the radio show that he handed the list back to the administrator and told the administrator that until these items became a part of the regular curriculum, he refused to teach them. He also related that a banner was placed in one of the school's classrooms which read, "200 years of the United States History, 2000 years of African History." The teacher told Grant that the difference "... is that in 200 years we went to the moon. After 2000 years they're still over there urinating in their drinking and bathing water." Matter of the Tenure Hearing of Clark 95 N.J.A.R. 2d (EDU) 164 (1995).*

**(ii) Drugs**

*Use of illegal amphetamines while attending a school sponsored conference, such use being in breach of health improvement program contract tenured teacher signed with school board following her completion of a rehabilitation program for drug dependency, was unbecoming conduct and, notwithstanding teacher's status as a handicapped person by reason of drug dependency, was sufficient to warrant dismissal from tenured position, since teacher must have understood upon signing contract that further use of amphetamines would result in disciplinary action by school board despite its initial accommodation of teacher's dependency and support for her effort to obtain treatment. In Matter of Tenure Hearing of Sondra Yanniello,*

Bd. Of Ed. of City of Millville. 95 N.J.A.R. 2d (EDU) 262 affirmed and modified at 97 N.J.A.R. 2d (EDU) 250.

### **(iii) Conduct towards student**

*Teacher's writing love letters to female students over a period of a few months constituted unbecoming conduct and warranted dismissal.*

Matter of Tenure Hearing of Mantone, 93 N.J.A.R. 2d (EDU) 322, affirmed 93 N.J.A.R. (EDU) 789

*Teacher's use of profanity, derogatory remarks about women, sexual references, sleeping in class, and racial and ethnic slurs constituted unbecoming conduct and warranted removal from position.* Matter of Tenure Hearing of Sheridan 92 N.J.A.R. 2d (EDU) 550 (1992) affirmed 92 N.J.A.R. 2d (EDU) 393.

### **(iv) Chronic absenteeism**

*Tenured teacher's chronic tardiness and excessive absenteeism, which resulted in pronounced deficit in education of her students, constituted conduct unbecoming teaching staff member; ongoing nature of such conduct and teacher's unwillingness to alter it despite repeated warnings and disciplinary action warranted dismissal from employment with State-operated school district.* Matter of Tenure Hearing of Meade –Stephens, 92 N.J.A.R. 2d (EDU) 550 (1992).

### **Incapacity**

*Tenured teacher with 17 years of experience may be dismissed from his position where the evidence overwhelmingly demonstrates lack of classroom control and an incapacity to teach in an assigned area in spite of many years of experience.* Bd. of Ed. Lawrence Twp. v. Lester Helmus, 2 N.J.A.R. 334 (1980).

### **Insubordination**

*Evidence was sufficient to find tenured teacher insubordinate with respect to failure to provide required lesson plans, rejection of assistance from school administration, and failure to take corrective action, warranting dismissal from employment.* Township of Teaneck, Bergen County v. Wilburn. 91 N.J.A.R. 2nd (EDU) 48.

### **Inefficiency**

#### **(i) Notice, N.J.A.C. 6A:3-5.1**

- 1) *Initial charges of inefficiency shall be stated with specificity with a supporting sworn statement of evidence.*
- 2) *The board shall serve a copy of charge together with supporting evidence to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.*

#### **(ii) Improvement Plan**

- 1) *The board shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90-day period, or any longer period provided by the board, it intends to certify charges of inefficiency to the commissioner pursuant to N.J.A.C. 18A:6-11.*
- 2) *Concurrent with notifying the employee of charges of inefficiency, the board shall direct that there be a modification of the individual professional improvement plan (PIP) mandated by N.J.A.C. 6:3-4.3(f) to assure that the plan addresses the specific charges of inefficiency and comports with the time lines established for correction.*
- 3) *Upon completion of the minimal 90-day period for improvement, or such longer period as may be provided by the board, the administrator(s) responsible for bringing the charges shall notify the board in writing of what charges, if any, have not been corrected.*
- 4) *Upon receipt of the written notification, the board shall, within 30 calendar days notify the affected employee in writing that all of the inefficiencies that have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The rationale underlying this rule is that a teacher whose teaching effectiveness is called into question after years of meritorious service in a school district should, in recognition of that contribution, be afforded an opportunity to demonstrate that he is still capable of effective teaching. He can only avail himself of that opportunity if he understands clearly the basis for the criticism supporting the allegations of inefficiency and is offered constructive advice as to how he might restore his teaching skills.* Rowley v. Board of Education of Manalapan-Englishtown 205 N.J. Super. 65 (App. Div 1985).

*In proving charges of inefficiency the board has a "heavy responsibility" to demonstrate that it has "rendered positive assistance to the tenured employee to overcome the inefficiencies.* Rowley v. Board of Education of Manalapan-Englishtown 205 N.J. Super. 65 (App. Div 1985) *While the record may well support a charge of inefficiency, such a charge could not be sustained since respondent was not afforded written notice and the 90-day correction period required by N.J.S.A. 18A:6-11.* In the Matter of the Tenure Hearing of Millicent Smith, 94 N.J.A.R. 2d, O.A.L. Docket #EDU 2838-92, April 13, 1994.

#### **(iii) If inefficiencies persist**

- 1) *In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a sworn statement of evidence in opposition to those charges.*

2) Upon receipt of such written statement of evidence or upon expiration of the allotted 15-day time period, the board shall determine by a majority vote of its full membership, within 45 days, whether there is probable cause to credit the evidence in support of the charges.

3) In the event the board finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated will be representing the board and proof of service upon the employee and the employee's representative, if known.

#### **Tenure charges to be voted on in executive session**

##### **N.J.S.A. 18A:6-11**

*The consideration and actions of the board as to any charge shall not take place at a public meeting.*

#### **Proceedings before Commissioner; hearing**

##### **N.J.S.A. 18A:6-16 (Corresponding administrative code section is N.J.A.C. 6A:3-5.3)**

*Upon receipt of such a charge and certification ... the Commissioner or the person appointed to act in the Commissioner's behalf... shall examine the charges and certification. The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the Commissioner. Upon a showing of good cause, the Commissioner may grant an extension of time. The Commissioner shall render a determination on the sufficiency of charges as set forth below within 15 days immediately following the period provided for a written response to the charges. If, following receipt of the written response to the charges, the Commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall within 10 days of making that determination refer the case to the Office of Administrative Law for further proceedings, except that when a motion for summary decision has been made prior to that time, the Commissioner may retain the matter for purposes of deciding the motion.*

#### **Summary**

- 1) The person against whom the charges are filed shall have 15 days to respond.
- 2) The sufficiency of the charges is to be determined within 15 days thereafter.
- 3) If determined to be insufficient, the charges shall be dismissed.

- 4) If determined to be sufficient the charges shall be referred to the OAL

#### **Board's authority to suspend principals and teachers**

##### **N.J.S.A. 18A:25-6**

*The superintendent of schools may, with the approval of the president or presidents of the board or boards employing him, suspend any assistant superintendent, principal or teaching staff member, and shall report such a suspension to the board or boards forthwith. The board or boards, each by a recorded roll call majority vote of its membership, shall take such action for the restoration or removal of such person as it shall deem proper.*

#### **Can a teaching staff member be suspended with pay pending the board's investigation of tenure charges?**

Yes. Due process rights of teacher were not violated when she was placed on suspension with pay until local board of education found probable cause to believe charges of conduct unbecoming of teacher were true. *Emri v. Evesham Tp. Bd. Of Ed.* 327 F. Supp. 2d. 463 (2004).

#### **Can a teaching staff member be suspended without pay if tenure charges are certified?**

##### **18A:6-8.3. Suspended employee or officer of board of education; Shall receive full pay except when tenure charges are certified**

*Any employee or officer of a board of education in this State who is suspended from his employment, office or position, other than by reason of indictment, pending any investigation, hearing or trial or any appeal therefrom, shall receive his full pay or salary during such period of suspension, except that in the event of charges against such employee or officer brought before the board of education or the Commissioner pursuant to law, such suspension may be with or without pay or salary.*

#### **Suspension upon certification of charge; compensation; reinstatement**

##### **18A:6-14 - suspension may be without pay for up to 120 days**

*Upon certification of any charge to the Commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension.*

*Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.*

### **Summary**

- 1) Employee may be suspended without pay up to 120 days once charges are certified to the Commissioner.
- 2) Compensation is to be resumed on the 121st day or day after extended period.
- 3) But, employee-caused delay in proceedings may extend suspension of pay.
- 4) Upon dismissal of charges 120-day pay must be returned to employee.
- 5) But, any pay received by employee from other employment shall be deducted.

Unfitness in office may be proven by one incident, if sufficiently flagrant, or by a series of incidents.

### **Commissioner must approve settlement or withdrawal of tenure charges**

#### **N.J.A.C. 6A:3-5.6**

In re Cardonick, State Board decision of April 6, 1983, requires that settlement documents must:

- 1) *Include documentation as to the nature of the charges.*
- 2) *Explain circumstances justifying settlement or withdrawal.*
- 3) *Have the consent/agreement of the both charging and charged parties*
- 4) *State that the charged parties understood his/her rights.*
- 5) *Provide a showing that the agreement is in the public interest.*
- 6) *Where the charged party is a teaching staff member, show that he/she has been advised of the commissioner's duty to refer tenure determinations resulting in loss of positions to State Board of Examiners for possible suspension or revocation of certificate.*
- 7) *Where tenure charges have been certified to the Commissioner by a district board of education, proposed settlement shall indicate, by signature of the board attorney or inclusion of a board resolution authorizing settlement, that board has consented to the terms of the settlement.*

*In addition, if prior to the conclusion of the tenure proceedings the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges.*

## **CRIMINAL PROCEEDINGS**

### **Suspension pending outcome of indictment**

*Board of education may suspend staff member pending outcome of indictments charging him with malfeasance in office. Authority is not limited by title 18A relating to suspension imposed as punishment for neglect, misbehavior or other offense and requiring written charges and a hearing. Romanowski v. Board of Ed. of the City of Jersey City 89 N.J. Super. 38 (App. Div. 1965).*

### **Forfeiture of position upon criminal conviction**

N.J.S.A. 2C:51-2 provides for forfeiture of public office under specified circumstances:

*(a) A person holding any public office, position, or employment, elective or appointive, under the government of the State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office or position if:*

- 1) *He is convicted under the laws of this State for an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;*
- 2) *He is convicted of an offense involving or touching such office, position or employment; or*
- 3) *The Constitution or statute other than the code so provides.*

*(b) A court of this State shall enter an order of forfeiture pursuant to subsection a:*

- 1) *Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of such forfeiture pending a hearing on the merits at the time of the sentencing; or*
- 2) *Upon application of the county prosecutor or the Attorney General when the forfeiture is based upon a conviction of an offense under the laws of another state or of the United States. An order of forfeiture pursuant to this paragraph shall be deemed to have taken effect on the date the person was found guilty by the trier of fact or pled guilty to the offense.*



**For forfeiture to occur offense must “touch and involve” employment**

Offense giving rise to tenured custodian’s conviction on guilty plea to criminal sexual conduct with his adult stepdaughter alleged to be mentally handicapped, may have involved and touched on employment, but given debate on issue, it did not warrant automatic forfeiture of custodian’s public position without first affording him a full hearing that would thereby provide trier of fact with a complete record of offense, all mitigating circumstances, and relevant expert opinion. Bergenfield Board of Ed. V. Efferen 95 N.J.A.R. 2d (EDU) 304 (1994) remand 96 N.J.A.R. 2d (EDU) 842 (1994).

N.J.S.A. 2C:51-2(g) authorizes a local board of education to apply for an order of forfeiture. State v. Ercolano 335 N.J. Super. 236, N.J. Super. (App. Div. 2000).

**Assault of a student requires forfeiture**

*..There are some offenses that have such “an obvious connection to employment” that a forfeiture would automatically flow from a conviction. Defendant’s conviction for an assault upon a student at school during the school day is ... obviously connected to his employment...The municipal court judge based defendant’s conviction upon a finding that he “grabbed” a student at school during the school day and “pushed [him] against the wall.” Defendant is bound by this finding, which compels the conclusion that defendant’s conviction “involve[d]” or “touch[ed]” his employment. Therefore, there is no need for an evidentiary hearing. State v. Ercolano 335 N.J. Super. 236, N.J. Super. (App. Div. 2000).*

**Forfeiture of position-charges of unbecoming conduct “superfluous”**

*School superintendent who was convicted on charges of federal tax evasion was not entitled to a hearing on forfeiture of his tenured position; federal conviction was sufficient grounds for forfeiture, and hearing to determine whether his conviction constituted “conduct unbecoming” to justify dismissal from tenured position was superfluous. In re Vitacco 347 N.J. Super. 337 (App. Div. 2002).*

**When does forfeiture occur?**

*Municipal court judge correctly concluded that defendant’s forfeiture became effective the day defendant was found guilty and sentenced. State v. Ercolano, 335 N.J. Super 236, N.J. Super. (App. Div. 2000).*

## DISTRICT REPORTING RESPONSIBILITY

**N.J.A.C. 6A:9-17.4**

*The chief school administrator shall notify the Board of Examiners when:*

- 1) Tenured teaching staff members who are accused of criminal offenses or unbecoming conduct resign or retire from their positions;*
- 2) Nontenured teaching staff members who are accused of criminal offenses or unbecoming conduct, resign, retire or are removed from their positions;*
- 3) A certificate holder fails to maintain any license, certificate or authorization pursuant to N.J.A.C.6A:9-4.1(b) that is mandated in order for the holder to serve in a position; or*
- 4) He or she becomes aware that a certificate holder has been convicted of a crime while in the district’s employ.*