

IN THE MATTER OF THE :
SUSPENSION OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF BARBARA LENTINE BY THE : DECISION
STATE BOARD OF EXAMINERS. :

SYNOPSIS

This matter involves the appeal of an Order of Suspension issued by the State Board of Examiners against the educational certificates of Barbara Lentine, a school nurse formerly employed by the Readington School District (Readington). The appellant was employed by Readington as a school nurse for 29 years, from 1978 until 2007. In March 2007, the district filed tenure charges against her. In May 2007, the tenure charges were settled; Lentine resigned and moved on to a school nurse position with the Elizabeth Board of Education, where she attained tenure and is currently employed. In January 2011, the State Board of Examiners (Board) filed an Order to Show Cause to revoke Lentine’s certificates, asserting that she had: failed to perform her duties in accordance with school health procedures and policies; failed to document nursing services provided to students; falsified documents regarding services provided to students; used a computer for personal purposes; improperly used sick time, and been excessively absent. The matter was transmitted to the Office of Administrative Law as a contested case in March 2011; during the course of the hearings, the Board voluntarily withdrew the charges involving computer use, sick time, and absenteeism.

In a decision issued in July 2012, the ALJ found, *inter alia*, that: regarding witness credibility, two of the Board’s primary witnesses appeared to be biased against the respondent; the motives of Readington in bringing the original tenure charges were somewhat suspect, as Lentine had glowing evaluations as a long-term employee without any hint of a problem, including comments that her office was always organized and her documentation up to date; over her many years of employment, Lentine was never informed of any problem with her paperwork or medical documentation; then she was away at a conference for three days and a substitute nurse – who has since been employed by the district in a full-time capacity – reported that she could not find certain things; an investigation ensued, but at no time did anyone ask Lentine where any of the alleged missing items were located; no documentation was introduced in support of most of the allegations; the district at the time had no written procedures for emergencies and health records; the school district’s investigation was biased; and Lentine’s recordkeeping, though not perfect, did not rise to the level of unbecoming conduct. The ALJ concluded that the Board failed to establish by a preponderance of credible evidence any of the allegations in the Order to Show Cause and, accordingly, determined that the Order should be discharged and the within matter dismissed with prejudice.

The Board subsequently issued an Order of Suspension, which stated that – while the Board is bound by the ALJ’s credibility determinations and would defer to those findings – the Board “cannot countenance” Lentine’s “disregard for appropriate record keeping”. Accordingly, the Board, while “mindful of Lentine’s long and heretofore unblemished record”, adopted the Initial Decision, with modification, to reflect a penalty of a six month suspension of Lentine’s certificates.

On appeal, the Commissioner finds that the Board’s Order of Suspension – while couched as adopting the findings of the ALJ – actually does no such thing, but rather relies on evident mistakes, facts not in the record, and a misreading of the ALJ’s decision to determine that a penalty of suspension must be imposed on Lentine. As such, the Board’s decision was arbitrary, capricious and unreasonable. Given the ALJ’s conclusion that Lentine’s actions never rose to the level of unbecoming conduct and given the fact that he explicitly found that the Board of Examiners had not sustained any of its charges, the Commissioner cannot justify any suspension of Lentine’s certificates.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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SUSPENSION OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
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Order of Suspension by the State Board of Examiners, November 30, 2012

For the Respondent-Appellant, Timothy King, Esq., Oxfeld Cohen, P.C.

For the Petitioner-Respondent State Board of Examiners, Geoffrey N. Stark,
Deputy Attorney General (Jeffrey S. Chiesa, Attorney General of New Jersey)

This case involves an appeal of the State Board of Examiners' (Board) Order of November 30, 2012, suspending appellant Barbara Lentine's School Business Administrator Certificate of Eligibility and School Nurse, Teacher of Health and Physical Education, Supervisor, and Principal certificates for six months.¹ On appeal, the appellant maintains that the Board's decision to suspend her certificates for six months erroneously relies upon evident mistakes, facts not in the record, and a misreading of the decision below in rejecting the Administrative Law Judge's (ALJ) recommended decision dismissing the Order to Show Cause and, instead, imposing a suspension. She further argues that even if the findings of the Board were accepted as factual, the penalty is disproportionate to the alleged offense. Finally, appellant contends that the Doctrine of Laches bars this action against her certificates, as appellant was unfairly prejudiced by the Board's undue delay in bringing this action.

This matter was referred to the Board in the aftermath of tenure charges that were filed against the appellant in March 2007 by her previous employer, the Readington Board of

¹ On January 10, 2013, the Board granted appellant's motion to stay the suspension pending her appeal to the Commissioner.

Education (Readington). On May 8, 2007 the parties entered a settlement agreement on the tenure charges and the appellant resigned. She is currently employed as a School Nurse/Health Services by the Elizabeth Board of Education and has obtained tenure in this title. Pursuant to *N.J.A.C. 6A:9-17(a)*, by letter dated May 16, 2007, Readington notified the State Board of Examiners of the charges and appellant's resignation and sent a copy of the charges to this body on August 23, 2007. The State Board of Examiners issued a Order to Show Cause based on these charges to appellant on January 24, 2011.

During a six day hearing at the Office of Administrative Law (OAL),² after the Board's voluntary withdrawal of several allegations³, this matter sought to determine whether appellant 1) failed to perform school nurse responsibilities in accordance with school health procedures, policies and guidelines; 2) failed to properly document the provision of nursing services to students; and 3) falsified documents regarding the services provided to students.

The Administrative Law Judge found that two of the Board's main witnesses, Debbie Nazzaro and Alina Kocot, appeared to have a bias against the appellant and he had credibility issues with their testimony. He further found Readington's motives in this matter to be somewhat suspect. Appellant was a twenty-nine year employee of the district⁴ with glowing evaluations and no prior problems; it was previously stated that her office was always organized and the documentation kept up to date; no one ever asked appellant where any of the alleged missing items were; there were no written procedures for emergencies and health records; no evidence that over the twenty-nine years of her employment appellant was ever told there was

² The record contains transcripts of hearing conducted on August 17, 2011, February 15, 2012, February 22, 2012, March 9, 2012, March 22, 2012 and May 1, 2012.

³ The Board withdrew charges of using a computer for personal purposes, improper use of sick time and excessive absenteeism.

⁴ The record reflects that appellant was employed by the Readington School District as a school nurse from 1978 to 2007.

anything wrong with her paperwork or medical documentation; difficult to understand that when there was an allegation that a particular record or document could not be found, Readington immediately reached the conclusion that the records did not exist without ever consulting the appellant or the administrative offices. Further, the ALJ noted that very little documentation was presented in support of any of Readington's allegations. Based on all of these factors, the ALJ concluded that Readington's investigation in this matter was biased.

As to the specific charges:

1) Failure to perform her responsibilities in accordance with school health procedures, policies and guidelines – based on the testimony presented, the lack of guidelines, the lack of any notice of deficiencies, appellant's experience and evaluations during her long career in the district, and the previously referenced determination that the investigation was biased, the ALJ reached the following conclusion on this charge:

The Board has not shown that the respondent failed to perform her responsibilities in accordance with school health procedures, policies and guidelines. The Board's own witnesses testified that there were no written procedures for emergencies and health records, and no student health records procedure handbook at this time. The district policy was being carried out inconsistently at each school.

In addition, the respondent has worked for the District for twenty-nine years. She always received positive evaluations and was never told that there was any problem with her recordkeeping until these charges were filed.

The Board has produced testimony that there were documents or records that were incomplete or missing and that the office was disorganized. It does not seem likely that these problems would suddenly begin after twenty-nine years of employment without any reference to these problems.

Respondent's records may not have been perfect, and other nurses may have done a better job, but the record does not indicate there were any significant deficiencies, or that any students had any difficulties as a direct result.

The respondent created or utilized many forms for her office, including a student health awareness list, which lists medical issues, concerns and plans for students and a health office log in sign in sheet. All the required state forms were

completed including the Health History and Appraisal Form. Dr. Frank did not have any problem with her nursing plan, which was required to be filed. (Initial Decision at 31-32)

Consequently, the ALJ determined that the Board had not proven this charge.

2) Failure to document nursing services provided to students – the ALJ found that the Board had failed to sustain its burden of proof on this charge. This particular allegation is based on a perceived lack of proper documentation. Finding serious credibility issues with some of the Board’s witnesses, he concluded that the Board has not shown that the documentation was missing. He found a particularly troubling aspect of the investigation here was that when a single inspection could not find certain documents, “the respondent was never asked to explain and indicate where the documentation was located.” (Initial Decision at 32)

3) Falsified documents regarding the services provided to students – the ALJ made the following conclusion:

The basis of this charge is that there were serious discrepancies with the respondent’s attendance records and office visit logs, and when comparing these documents, the respondent treated students when she was out of work. The records further revealed that her records revealed that she treated certain students on dates these students were absent from school.

Respondent does not deny these discrepancies. However, she asserts that she made a mistake. She obtained information of the students being treated from a handwritten referral form. She testified that she may have either misread or wrote the date down incorrectly. She got information from the forms filled out by teachers and would not know if the teachers entered the wrong dates. Either the teacher made a mistake entering the date or she misinterpreted the handwriting.

Clearly, these discrepancies exist. However, the Board has not shown that there was any fraudulent intent. There was not motive or benefit to the respondent to intentionally and fraudulently enter this information. She made a mistake. (Initial Decision at 33)

The ALJ concluded his decision by determining that – although the appellant’s recordkeeping may not have been perfect and she did make some mistakes – the Board had not sustained its burden of establishing by a preponderance of the competent and credible evidence, with respect

to any of the allegations against appellant, that misconduct equating to unbecoming conduct occurred here. He, therefore, discharged the Order to Show Cause and dismissed the matter with prejudice.

Thereafter, upon review, the Board adopted the Initial Decision, with modification as to penalty. In so doing, it stated:

ALJ Stein concluded that Lentine had discrepancies in her medical records and altered the School Health Visit Logs after-the-fact. (Initial Decision, slip op. at 30, 33) The ALJ concluded that these behaviors were not intended to deceive and therefore, no action against Lentine's certificates was warranted. The Board disagrees....Lentine admitted that she did not complete daily logs of student health visits and, instead, completed her log books in June. She also admitted that she took the log home in order to complete the records. While the ALJ may be correct in stating that this conduct did not impact students, that result is mere happenstance and should not be the basis of a reprieve for Lentine. Her admitted conduct and deviation from proper record keeping was dangerous and did, in fact, result in many discrepancies. The Board cannot countenance her disregard for appropriate record keeping and believes that a penalty is warranted here. However, the Board is bound by the ALJ's credibility determinations and will defer to those findings. Moreover, it is also mindful of Lentine's long and heretofore unblemished record. The Board therefore believes that a six month suspension of Lentine's certificates is appropriate here and adopts the Initial Decision, with modification, to reflect that penalty. (State Board of Examiners Order of Suspension, November 30, 2012, at 5)

Appellant's brief on appeal charges that – while purporting to adopt the findings of the ALJ – the Board, in reality, erroneously relied on evident mistakes of fact, conclusions not supported in the record and a misreading of the Initial Decision to reject the ALJ's recommended decision dismissing the Order to Show Cause and, instead, imposed a suspension.

Initially, appellant points out that the Board appears to find actionable that appellant took the logs of student health visits to her home. She argues that this particular allegation was never a part of the wrongdoing alleged in the charges. As such, due process considerations – as licenses are considered property rights – mandate that if the Board concluded that she deserved a suspension for conduct that was never charged in the first place (*ie*: taking logs home) this allegation should have been presented, thereby according appellant an

opportunity to respond to that as a charge. The Board's attempting "to mold the flimsy and unsubstantiated original charges into something they never stood for in the first place is simply unfair, and not in keeping with the principles of due process." (Appellant Brief at 4)

Appellant next charges that the Board's suspension order was based on obviously apparent mistakes of fact. Specifically, the Board's Order states that "ALJ Stein concluded that Lentine had discrepancies in her medical records and altered the School Health Visit Logs after the fact." In support of this statement the Order cites to pages 30 and 33 of the ALJ's decision. Appellant maintains that this statement is totally untrue. Nowhere in the ALJ's decision, much less at pages 30 and 33, is there a finding that she altered any Health Visit Logs, or that she did so after the fact.

Appellant further contends that the Board's Order relies on facts not in the record. The first example of this was when it determined that "Lentine admitted that she did not complete daily logs of student health visits and, instead completed her log books in June." Appellant charges that this is a total misstatement of the record in that completing log books in a specific form at a later date does not equate to failing to complete daily logs. Rather

Lentine testified quite candidly that she relied solely on the copies of the triplicate forms as her logs, which she insisted on each student bringing and maintained religiously. The logs in question that she was later alleged to have "falsified" were her compilations of that data from those individual logs, compilation of which was [duplicative] and completed (after taking said logs home) only due to her supervisor's insistence. Regarding the accuracy of the records, the ALJ did find that there were discrepancies in the later compiled log. (Initial Decision at 33) However, the Board's evident reliance on [the] DAG's assertion as to the number of discrepancies does not seem to take into account the unreliability of the evidence presented in support thereof, as it is unknown whether anyone looked at the actual sign-in sheet to see if the student was actually in the health office on the dates in question, or whether the individual health referral slips showed the correct dates. (Appellant's Brief at 5)

Another example of the Board's reliance on facts not in the record was their finding that appellant exhibited a "disregard for appropriate record keeping" and that there was a "deviation

from proper record keeping.” Such a finding presupposes that there was a specific legal standard of recordkeeping to be met and that the ALJ found a failure to abide by this standard. Quite the contrary, she argues, the ALJ specifically found that this charge was not established due to a lack of guidelines. Moreover, in its Order, the Board did not cite to any objective legal standard establishing the “proper” or “appropriate” record keeping procedure that they refer to. Similarly deficient in rationale is the Board’s finding that the recordkeeping was “dangerous”. This finding is totally devoid of support as it lacks either a factual or legal basis and – to the extent it purports to be based on the ALJ’s findings – is a misrepresentation of the record below. Indeed, the ALJ’s decision below does not have any findings on “danger” or present any facts with respect to any potentially dangerous conditions. Moreover, the Board appears to totally disregard the ALJ’s findings on appellant’s affirmative steps to ensure student safety, for example, utilizing a “student health awareness list, which lists medical issues, concerns and plans for students and an health office log in sign in sheet.” (Initial Decision 32) (Appellant’s Brief at 7) Even assuming, *arguendo*, that the DAG’s assertion that there were twenty-five errors in the logs, albeit a worst case scenario finding, such a number of errors, standing alone, does not equate to danger, particularly in light of the redundancy of the information. “The fact that the ‘log book’ contained some errors after the hasty transferring of a wealth of information pursuant to a supervisor’s request, where the student health visits were originally logged separately on individual referral slips in a different form and elsewhere, does not constitute cause to suspend Lentine’s certificates.” (Appellant’s Brief at 7)

Finally, in this regard, appellant argues that the Board’s Order misrepresents the ALJ’s reasoning for concluding that no action was justified against her certificates, stating that the lack of impact on students was the “basis of a reprieve for Lentine”. She asserts that the Board’s use of the word “reprieve” in and of itself implies that the ALJ found wrongdoing,

where, in fact, none was found. Rather, “[t]he ALJ’s reasoning for concluding no action was warranted against Lentine was the factual finding that the ‘Board has not shown that the respondent has failed to perform responsibilities in accordance with school health procedures, policies, and guidelines. This finding is [based] on the testimony presented, the lack of guidelines, the lack of any notice of deficiency, her experience and evaluations during her long career with the District and the biased investigation.’ ” (Initial Decision at 32) (Appellant’s Brief at 6)

As to the Board’s imposed penalty – appellant argues that even though the ALJ found that the factual evidence did not support a finding that she was guilty of any of the charges and determined that a full dismissal was warranted, the Board acted without regard to the facts found by the ALJ and imposed a severe and excessive penalty which appears to be based solely on findings regarding mistakes in one of many logs kept by appellant. Given the Board’s “shotgun” approach to its allegations of wrongdoing by the appellant, she contends it would be almost impossible for any individual to experience such scrutiny without any mistakes in his or her work routine coming to light. Even assuming as factual, *arguendo*, that some errors did exist, “they were never previously brought to Lentine’s attention by the District, and could not actually cause danger to students. Lentine’s regularly kept logs for such visits were copies of the individual triplicate forms, in addition to the sign in sheets. While this may not have been the best possible recordkeeping practice, such is not the basis for action on Lentine’s certificates, especially since there were no guidelines for such in the district.” (Appellant’s Brief at 8)

Finally, appellant’s appeal documents point out that on the first day of hearing in this matter, she made a motion to dismiss based on the asserted defense of laches, which the ALJ indicated he would decide in his Initial Decision. Although he did not ultimately rule on this motion in his decision, appellant did not again raise the issue in her exceptions as the ALJ’s

decision recommended dismissal of the Order to Show Cause. Now that the Board has issued an Order of Suspension, appellant professes that if her previously discussed appeal arguments do not warrant reversal of the Board's Order, the Commissioner should stay the Order and remand for a ruling on this defense or render a decision on it himself. Specifically, appellant presents the following argument in this regard:

The underlying tenure charges in this matter were finalized by settlement on May 8, 2007. The Board of Examiners received information regarding the charges from Readington's superintendent on May 31, 2007. All of the tenure charges and attachments were sent to the Board of Examiners as of August 23, 2007. The order to show cause, however, was not issued until January 24, 2011, over 42 months after the tenure charges were finalized. There was no pending appeal, no pending criminal charges, or pending collateral proceedings; there was simply no valid justification for the delay.⁵

Lentine was prejudiced by the delay. No reasonable person would expect that the Board of Examiners would issue an order to show cause three-and-one-half years after final resolution of these particular tenure charges. As the charges did not contain "critical" allegations, it was reasonable for Lentine to expect during the passage of this time that such charges would not be brought. As such, Lentine did not make preservation requests and began engaging in records housekeeping. After this significant delay, the case against her relied largely on affidavits alleging a wide breadth of shortcomings in the performance of various tasks. The case and defense relied on assessments of Lentine's quality of work from witnesses who suffered from extremely faulty memory.

In 2011, before the ALJ, the Board argued that this case was put on the back burner by the Board because it was not as "critical" a case as those cases involving violence or sexual misconduct by teachers, (1t84:7-13) it is far more prejudicial to delay in bringing this type of action where the events are not vivid in witness minds. Further, the underlying charges were never adjudicated in tenure proceedings, and the charges rely on such a wide variety of opinions, undocumented events, hearsay, and alleged documentary deficiencies where the underlying documents were not produced. Moreover, it is undisputed that relevant evidence was spoiled or was unavailable. Notwithstanding the unavailability of the certain records alleged to be deficient, the hard drive for Lentine's computer, which may have contained information pertinent to her defense, was destroyed. These various documents may not only go to the issue of disproving the underlying charges, but to establishing mitigating factors as well. (Appellant's Brief at 10 - 11)

⁵ Appellant contends that the Board of Examiners provided no reason for its severely undue delay in instituting this matter "other than the lack of importance of this case." (Appellant's Brief at 10)

In its reply to appellant's brief, the Board initially points out that – pursuant to *N.J.A.C. 6A:4-4.1* – an appeal of an adverse decision of the Board to the Commissioner is subject to a deferential standard of review. As such, if the Board's decision is supported by sufficient credible evidence in the record, it should not be disturbed unless the appellant demonstrated that the Board acted in a manner that was arbitrary, capricious or contrary to law. Here, the Board argues, its decision was not arbitrary or capricious, and fully complied with the standards mandated by the Administrative Procedures Act for an agency modifying the findings of an ALJ's Initial Decision, *i.e.*, stated in sufficient detail the nature of the rejection or modification, the reasons for it, hearing evidence and interpretation upon which it is based and the precise resultant changes caused by the rejection or modification. (*N.J.A.C. 1:1-18.6(b)*) The Board claims its Order deviates from the ALJ's decision in only two ways. First – the ALJ recommended that the Order to Show Cause be discharged and the matter be dismissed with prejudice. Second – the ALJ concluded that no action against appellant's certificates was warranted because her completion of the daily visit logs after the fact was not intended to deceive; the Board, however, found that action was warranted, noting that

[r]espondent did not complete the logs when students came to see her, but after the fact, at the conclusion of the school year. As Judge Stein noted in his opinion, Dr. Frank, a Board witness[,] concluded that Respondent's recordkeeping was below standards. (Init. Dec. at 32). It should also be noted that the Judge specifically states that Dr. Frank's testimony was credible. Ibid. Further, Respondent took the logs home with her to complete. The Examiners explained that Respondent's disregard for appropriate recordkeeping, such that it results in discrepancies as exhibited here, warrants action against her certificates, even in light of her "long and heretofore unblemished record." (Board's Reply Brief at 6)

The Board argues that neither of its modifications were contrary to the ALJ's credibility findings and are both supported by the record, thereby satisfying the requirements of *N.J.A.C. 1:1-18.6(b)* and, therefore, its decision should be affirmed.

With regard to appellant's argument that this matter should be barred by the doctrine of laches – as the Board's delay in issuing its Order to Show Cause resulted in undue prejudice to her case – thereby requiring its dismissal, the Board urges that such an argument should be rejected. In support of its position on this issue the Board advances:

Here, Respondent claims that the Examiners' delay in issuing an Order to Show Cause resulted in undue prejudice to her case and requires dismissal of the matter. This argument should be rejected. The Order to Show Cause in this matter sought the revocation of Respondent's certificates based upon numerous allegations of professional misconduct. However the Examiners' decision ultimately found one instance of wrongdoing for which it issued a six-month suspension of Respondent's certificates. Further, the instance of wrongdoing found stemmed from discrepancies in Respondent's record-keeping, of which there was evidence produced at the hearing. Further, as Judge Stein noted in his initial decision, "Respondent does not deny these discrepancies." (Init. Dec. at 33). The delay in issuing an Order to Show Cause in this case did not cause Respondent undue prejudice. Accordingly, the matter should not be dismissed under the doctrine of laches. (Board's Reply Brief at 7-8)

In reaching his determination in this matter, the Commissioner initially recognizes – as was pointed out by the Board – that in reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Examiners so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*.

Upon a thorough review and full consideration of the record and all submissions, the Commissioner is compelled to conclude that the Board's suspension of appellant's certificates is not warranted as he finds and concludes that – under the circumstances herein – the Board's decision in this regard was arbitrary, capricious and unreasonable as it was based on evident mistakes, facts not in the record and a misreading of the ALJ's decision as argued in appellant's brief here, which the Commissioner finds to be consonant with the record and the ALJ's decision.

Although recognizing that the Board is fully authorized to modify a recommended Initial Decision dismissal of an Order to Show Cause and, instead, impose a penalty pursuant to *N.J.A.C.* 1:1-18.6, such modification and assessed penalty must be based upon the evidence in the record. While the Board here maintains that appellant's disregard for what it terms as "appropriate recordkeeping" cannot be "countenanced", it does not provide a reasonable justification for its modification of the ALJ's decision and the imposition of a six-month suspension in light of the fact that no unbecoming conduct of any kind was proven at the OAL. Rather, the ALJ determined that the appellant's proven conduct of mistransferring data from one source to another generally amounted to nothing more than "mistakes" with no adverse consequences, not the "altering" of records "after-the-fact" claimed by the Board – terms which in and of themselves connote intentional, deceitful conduct. Notably, the Board adopted the factual determinations and legal conclusions of the ALJ. The Board's re-categorization – in its Order – of appellant's conduct in this regard as purposeful, fraudulent and dangerous finds no support whatsoever in the record. Given the ALJ's conclusion that the recordkeeping mistakes appellant made did not rise to the level of unbecoming conduct and given the fact that he explicitly found the Board of Examiners had not sustained any of its charges, the Commissioner cannot justify any suspension of her certificates.

Accordingly, the State Board of Examiners' Order of Suspension of appellant's certificates is hereby vacated.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: April 16, 2013
Date of Mailing: April 17, 2013

⁶ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1)