



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

[www.state.nj.us/perc](http://www.state.nj.us/perc)

ADMINISTRATION/LEGAL  
(609) 292-9830  
CONCILIATION/ARBITRATION  
(609) 292-9898  
UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089  
EMAIL: [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us)

DATE: March 22, 2023  
TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in Counsel's Office since February 23, 2023

**Commission Cases**

**Appeals from Commission Decisions**

No new appeals were filed since February 23.

**Commission Court Decisions**

No new Commission court decisions were issued since February 23.

**Non-Commission Court Decisions Related to the Commission's Jurisdiction**

Appellate Division affirms 6-month suspension, reinstatement of corrections officer on charges of misconduct with inmate

In re Ambrose, 2023 N.J. Super. Unpub. LEXIS 258 (App. Div. Dkt. No. A-0573-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) that affirmed in part an Administrative Law

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Judge's (ALJ) initial decision but modified the sanction to a 6-month suspension, in connection with disciplinary charges brought by the Department of Corrections (DOC) against Mr. Ambroise, a correctional officer at the Edna Mahan Correctional Facility. The charges sought Ambroise's removal for conduct unbecoming and departmental policy violations, including improper or unauthorized contact and undue familiarity with an inmate (oral sex, kissing, and passing a message for the inmate). In her initial decision, the ALJ dismissed the charges related to the oral sex allegation and undue familiarity (passing a message). Among other things, the ALJ gave no weight to a videotaped interview of Ambroise, faulting the interrogation techniques used. She also found the DOC violated Ambroise's Weingarten rights by telling him he could not have union representation during the interview, and that investigators fabricated evidence to coerce Ambroise's confession by saying they had DNA evidence against him. The ALJ questioned the DNA evidence because the DOC provided no testimony about its collection or chain of custody. She also found investigators improperly promised Ambroise a reduced sentence on related criminal charges in exchange for a confession. (Ambroise was found not guilty of the criminal charges). The ALJ sustained a charge of failing to report an unusual incident (the kissing incident), and ordered a 20-day suspension and Ambroise's reinstatement with back pay. On exceptions filed by the DOC, the CSC upheld the dismissal of the conduct unbecoming charge and sustained the failure to report charge, but disagreed with the dismissal of the undue familiarity charge (related to delivering a message for the inmate). The CSC also disagreed with the ALJ's imposition of a 20-day suspension and the DOC's proposed sanction of removal, and instead imposed a 6-month suspension, the most severe sanction absent removal, along with Ambroise's reinstatement with back pay. In affirming, the Appellate Division found no reason to disturb the CSC's conclusion that since the most serious misconduct was not proven, Ambroise should not be removed without a second opportunity to demonstrate his competence, because the CSC: (1) explained its reasons for determining removal was not warranted; (2) considered the serious nature and circumstances of the charges; and (3) weighed Ambroise's lack of a disciplinary record. The Appellate Division further found that although the ALJ mistakenly applied criminal law (because the interview techniques used by the detectives did not amount to a "promise" of a lesser sentence), this did not undermine her credibility determinations regarding the interview.

Third Circuit holds that neither federal Family Educational Rights and Privacy Act nor state Open Public Records Act bars Rutgers from charging fee for producing certain requested records

Doe v. Rutgers, 2023 U.S. App. LEXIS 4626 (3d. Cir. Dkt. No. 22-2087)

The United States Court of Appeals for the Third Circuit, in a non-precedential decision, affirms the District Court's denial of plaintiff-appellant Chris Doe's motion to remand to New Jersey state court, and its grant of a motion to dismiss for failure to state a claim filed by defendant-appellee Rutgers, the State University of New Jersey, in a dispute arising under the New Jersey Open Public Records Act (OPRA) and the federal Family Educational Rights and Privacy Act (FERPA). Doe was subject to academic discipline while enrolled as a graduate student at Rutgers. He later filed OPRA requests seeking academic records held by his professors, related faculty email correspondence, disciplinary records of other graduate students, and email correspondence related to an earlier OPRA request from Doe. Rutgers produced Doe's academic records, but declined to produce disciplinary records involving other students. It agreed to produce the requested faculty email communications, subject to a total service fee of \$7,020 to compensate Rutgers for time and effort needed for review and redaction by Rutgers staff before production. Doe then filed suit against Rutgers and its OPRA administrator in New Jersey state court alleging, among other things, that the service charge violated FERPA's right-of-access provision and was excessive under OPRA. Rutgers removed the case to federal court and secured dismissal. In affirming, the Third Circuit found: (1) Doe's remand motion was correctly denied because the District Court would have had jurisdiction over the lawsuit if originally filed in federal court, as Doe alleged Rutgers violated a federal law by assessing the service charge; (2) Doe's claims related to his first OPRA request were time-barred by OPRA's statute of limitations; (3) the requested email communications were not subject to the FERPA right-of-access provision because they were not Doe's institutional records and were not held by a central custodian; (4) the claims related to the service fee were correctly dismissed because (a) OPRA expressly permits agencies to assess a "special service charge" for records requests involving "an extraordinary expenditure of time and effort to accommodate," and Doe did not plausibly allege the fee was unreasonable or not based on the actual direct cost of production, and (b) neither FERPA nor OPRA bars Rutgers from collecting such a service fee.