

# 18A:16-1.3

## LEGISLATIVE HISTORY CHECK Compiled by the NJ State Law Library

**LAWS OF:** 1999 **CHAPTER:** 301

**NJSA:** 18A:16-1.3 (Non-tenured teachers—dismissal—rights)

**BILL NO:** A2395 (Substituted for S1268)

**SPONSOR(S):** Russo and Wisniewski

**DATE INTRODUCED:** September 14, 1998

**COMMITTEE:** **ASSEMBLY:** Education

**SENATE:** -----

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** March 15, 1999 **Re-enacted: December 9, 1999**

**SENATE:** May 10, 1999 **Re-enacted: December 13, 1999**

**DATE OF APPROVAL:** December 23, 1999

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** Second Reprint  
(Amendments during passage denoted by superscript numbers)

### **A2395**

**SPONSORS STATEMENT:** (Begins on page 3 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

### **S1268**

**SPONSORS STATEMENT:** (Begins on page 3 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENTS:** [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** [Yes](#)

**GOVERNOR'S PRESS RELEASE ON CONDITIONAL VETO:** [Yes](#)

**GOVERNOR'S PRESS RELEASE ON SIGNING:** [Yes](#)

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**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 1999, CHAPTER 301, *approved December 23, 1999*  
Assembly, No. 2395 (*Second Reprint*)

1 AN ACT concerning nontenured school district employees and  
2 amending <sup>1</sup>and supplementing<sup>1</sup> P.L.1997, c.200.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 1 of P.L.1997, c.200 (C.18A:16-1.3) is amended to read  
8 as follows:

9 1. A board of education shall notify the State Board of Examiners  
10 whenever a non-tenured, certificated employee is dismissed **[for cause,**  
11 **and the]** prior to the end of any school year for just cause as a result  
12 of misconduct in office. This notification requirement shall not apply  
13 in instances where the employee's contract is not renewed. The State  
14 <sup>1</sup>**[board]** Board of Examiners<sup>1</sup> shall maintain a list containing the  
15 name and Social Security number of the employee and the reason for  
16 the dismissal [for cause. A board of education or the superintendent  
17 of a school district or the] . If a disciplinary grievance arbitration is  
18 conducted pursuant to section 8 of P.L.1989, c.269 (C.34:13A-29) as  
19 to the dismissal, <sup>2</sup>or if the dismissal is appealed to a court or  
20 administrative tribunal of competent jurisdiction<sup>2</sup> the <sup>1</sup>[employee's  
21 name shall not be placed on the list] board of education shall not  
22 notify the State Board of Examiners<sup>1</sup> unless just cause due to  
23 misconduct in office is found by the arbitrator <sup>2</sup>, the court or  
24 administrative tribunal of competent jurisdiction. If a person's name  
25 is placed on the list subsequent to a determination of just cause due to  
26 misconduct in office by the arbitrator and the person later files an  
27 appeal to a court or administrative tribunal of competent jurisdiction,  
28 a board of education shall notify the State Board of Examiners that an  
29 appeal has been filed. The State Board of Examiners shall remove the  
30 person's name from the list and upon any inquiry as to the person's  
31 status on the list, the State Board of Examiners shall indicate that the  
32 person's name has been proposed for inclusion on the list. A board of  
33 education shall notify the State Board of Examiners regarding the final  
34 determination of the court or administrative tribunal of competent  
35 jurisdiction. If a final determination is made that the basis for  
36 dismissal does not constitute misconduct in office, the State Board of

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted November 23, 1998.

<sup>2</sup> Assembly amendments adopted in accordance with Governor's recommendations November 15, 1999.

1 Examiners shall not put the name of the person on the list. If a final  
2 determination is made that the basis for dismissal does constitute  
3 misconduct in office, the State Board of Examiners shall place the  
4 name of the person on the list<sup>2</sup>. Nothing herein shall be deemed to  
5 create a right to tenure beyond the provisions of existing law.

6 The chief school administrator of a public school district or a  
7 nonpublic school, in New Jersey or any other state that has entered  
8 into the interstate agreement on qualification of educational  
9 personnel pursuant to P.L.1969, c.114 (C.18A:26-11 et seq.), may  
10 submit to the State <sup>1</sup>【board】 Board of Examiners<sup>1</sup> the name and  
11 Social Security number of a person who has applied for a position  
12 in the district or 【nonpublic】 school, and the State <sup>1</sup>【board】 Board  
13 of Examiners<sup>1</sup> shall indicate to the 【board or superintendent or】  
14 chief school administrator 【of the nonpublic school】 whether the  
15 【person has been previously dismissed for cause and the】 person's  
16 name appears on the list and if so, the listed reason for the dismissal  
17 <sup>2</sup>or whether the person's name has been proposed for inclusion on the  
18 list<sup>2</sup>. 【This section shall not apply to a school board employee  
19 whose contract is not renewed.】

20 <sup>1</sup>【If a person's name is placed on the list, the State Board of  
21 Examiners shall require the referring school board to notify the  
22 person, in writing, of that placement and the reason for dismissal  
23 which will appear on the list. When an inquiry is received from a  
24 chief school administrator on a person who has applied for a  
25 position, the State board shall require the inquiring chief school  
26 administrator to notify the applicant, in writing, of the inquiry and of  
27 any resulting response by the State board.

28 An employee may by application petition the State board to  
29 remove his name from the list, after his name has been on the list for  
30 at least three years. In determining whether the employee's name  
31 shall be removed from the list, the State board shall consider: the  
32 nature and seriousness of the misconduct in office; the age of the  
33 individual when the misconduct in office occurred; whether the  
34 misconduct was an isolated or repeated occurrence; any evidence of  
35 successful work experience after the misconduct in office occurred;  
36 and any other factors deemed relevant by the State board.

37 Nothing herein shall limit the rights of employees to pursue any  
38 remedy permitted by law.】

39 Whenever a board of education notifies the State Board of  
40 Examiners of a person's dismissal for reasons of misconduct, the  
41 board of education shall send the person a simultaneous copy of the  
42 notifying correspondence. Whenever a chief school administrator  
43 inquires about the status on the list of a job applicant, the chief  
44 school administrator shall send the applicant a simultaneous copy of  
45 the inquiry and shall subsequently forward to the applicant a copy of

1 the response received from the State Board of Examiners.<sup>1</sup>

2 Any non-tenured, certificated employee who submits a false name  
3 or Social Security number to a board of education is deemed to be in  
4 violation of N.J.S.2C:28-3.

5 (cf: P.L.1997, c.200, s.1)

6

7 <sup>1</sup>2. (New section) <sup>2</sup>[ a. If a person's name is placed on the list,  
8 or was placed on the list prior to the effective date of P.L. , c.   
9 (C ) (now pending before the Legislature as this bill), the person  
10 may file a petition of appeal pursuant to the provisions of  
11 N.J.S.18A:6-9 challenging the placement of his name on the list.  
12 Upon notification of the filing of an appeal, the State Board of  
13 Examiners shall remove the person's name from the list and upon any  
14 inquiry as to the person's status on the list, the State Board of  
15 Examiners shall indicate that the person's name has been proposed  
16 for inclusion on the list. If the commissioner determines that the  
17 basis for the dismissal constitutes misconduct in office, the person's  
18 name shall then be placed on the list. If the commissioner determines  
19 that the basis of the dismissal does not constitute misconduct in  
20 office, the person's name shall not be placed on the list.

21 b. ]<sup>2</sup> Upon application to the State Board of Examiners, a  
22 person's name shall be removed from the list provided that his name  
23 has been on the list for at least three years.

24

25 <sup>2</sup>3. (New section)<sup>2</sup> Nothing herein shall limit the rights of  
26 employees to pursue any remedy permitted by law. <sup>1</sup>

27

28 <sup>1</sup>[2.] <sup>2</sup>[ 3. <sup>1</sup>] 4.<sup>2</sup> This act shall take effect immediately.

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33 Provides certain protections for dismissed nontenured school  
34 employees whose names are required to be maintained on a list.

# ASSEMBLY, No. 2395

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## STATE OF NEW JERSEY

### 208th LEGISLATURE

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INTRODUCED SEPTEMBER 14, 1998

**Sponsored by:**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen and Passaic)**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**SYNOPSIS**

Provides certain protections for dismissed nontenured school employees whose names are required to be maintained on a list.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning nontenured school district employees and  
2 amending P.L.1997, c.200.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 1 of P.L.1997, c.200 (C.18A:16-1.3) is amended to read  
8 as follows:

9 1. A board of education shall notify the State Board of Examiners  
10 whenever a non-tenured, certificated employee is dismissed **[for cause,**  
11 **and the]** prior to the end of any school year for just cause as a result  
12 of misconduct in office. This notification requirement shall not apply  
13 in instances where the employee's contract is not renewed. The State  
14 board shall maintain a list containing the name and Social Security  
15 number of the employee and the reason for the dismissal **[for cause.**  
16 A board of education or the superintendent of a school district or the]  
17 . If a disciplinary grievance arbitration is conducted pursuant to  
18 section 8 of P.L.1989, c.269 (C.34:13A-29) as to the dismissal, the  
19 employee's name shall not be placed on the list unless just cause due  
20 to misconduct in office is found by the arbitrator. Nothing herein shall  
21 be deemed to create a right to tenure beyond the provisions of existing  
22 law.

23 The chief school administrator of a public school district or a  
24 nonpublic school , in New Jersey or any other state that has entered  
25 into the interstate agreement on qualification of educational personnel  
26 pursuant to P.L.1969, c.114 (C.18A:26-11 et seq.), may submit to the  
27 State board the name and Social Security number of a person who  
28 has applied for a position in the district or **[nonpublic]** school, and the  
29 State board shall indicate to the **[board or superintendent or]** chief  
30 school administrator **[of the nonpublic school]** whether the **[person**  
31 **has been previously dismissed for cause and the]** person's name  
32 appears on the list and if so, the listed reason for the dismissal. **[This**  
33 section shall not apply to a school board employee whose contract is  
34 not renewed.]

35 If a person's name is placed on the list, the State Board of  
36 Examiners shall require the referring school board to notify the person,  
37 in writing, of that placement and the reason for dismissal which will  
38 appear on the list. When an inquiry is received from a chief school  
39 administrator on a person who has applied for a position, the State  
40 board shall require the inquiring chief school administrator to notify  
41 the applicant, in writing, of the inquiry and of any resulting response  
42 by the State board.

EXPLANATION - Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 An employee may by application petition the State board to remove  
2 his name from the list, after his name has been on the list for at least  
3 three years. In determining whether the employee's name shall be  
4 removed from the list, the State board shall consider: the nature and  
5 seriousness of the misconduct in office; the age of the individual when  
6 the misconduct in office occurred; whether the misconduct was an  
7 isolated or repeated occurrence; any evidence of successful work  
8 experience after the misconduct in office occurred; and any other  
9 factors deemed relevant by the State board.

10 Nothing herein shall limit the rights of employees to pursue any  
11 remedy permitted by law.

12 Any non-tenured, certificated employee who submits a false name  
13 or Social Security number to a board of education is deemed to be in  
14 violation of N.J.S.2C:28-3.

15 (cf: P.L.1997, c.200, s.1)

16  
17 2. This act shall take effect immediately.  
18  
19

20 STATEMENT  
21

22 This bill amends P.L.1997, c.200 (C.18A:16-1.3) which requires the  
23 board of education to notify the State Board of Examiners whenever  
24 a nontenured, certificated employee is dismissed for cause. The law  
25 further provides that the State board will maintain a list containing the  
26 names and Social Security numbers of these employees and the reasons  
27 for the dismissals. This bill provides that a name will be placed on the  
28 list only if the employee is dismissed prior to the end of the year for  
29 just cause as a result of misconduct in office. This bill also provides  
30 that if a disciplinary grievance arbitration is conducted as to the  
31 dismissal, an employee's name will not be placed on the list unless just  
32 cause due to misconduct in office is found by the arbitrator. The bill  
33 limits those that may obtain information from the list to chief school  
34 administrators of public school districts or nonpublic schools located  
35 in New Jersey or any other state that has entered into the interstate  
36 agreement on qualification of educational personnel. The bill provides  
37 for notification of the employee if his name is placed on the list, and  
38 the reason for dismissal which will appear on the list. An employee  
39 who is seeking a position in a public school district or nonpublic  
40 school must also be notified when a chief school administrator makes  
41 an inquiry to determine if the employee's name appears on the list.

42 Pursuant to the bill, an employee may petition the State board to  
43 remove his name from the list after it has been on the list for at least  
44 three years. The State board in determining whether or not to remove  
45 the name will consider: the nature and seriousness of the misconduct  
46 in office; the age of the individual when the misconduct in office



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1 occurred; whether the misconduct was an isolated or repeated  
2 occurrence; any evidence of successful work experience after the  
3 misconduct occurred; and any other factors deemed relevant by the  
4 State board.

# ASSEMBLY EDUCATION COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2395

# STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 1998

The Assembly Education Committee favorably reports Assembly Bill No. 2395.

This bill amends P.L.1997, c.200 (C.18A:16-1.3) which requires a board of education to notify the State Board of Examiners whenever a nontenured, certificated employee is dismissed for cause. That law also provides that the State board is to maintain a list containing the names and Social Security numbers of these employees and the reasons for the dismissals.

This bill provides that a name will be placed on the list only if the employee is dismissed prior to the end of the year for just cause as a result of misconduct in office. The bill also provides that if a disciplinary grievance arbitration is conducted as to the dismissal, an employee's name will not be placed on the list unless just cause due to misconduct in office is found by the arbitrator. The bill limits those who may obtain information from the list to chief school administrators of public school districts or nonpublic schools located in New Jersey or any other state that has entered into the interstate agreement on qualification of educational personnel. The bill provides for notification of the employee if his name is placed on the list and the reason for dismissal which will appear on the list. An employee who is seeking a position in a public school district or nonpublic school must also be notified when a chief school administrator makes an inquiry to determine if the employee's name appears on the list.

Under the bill, an employee may petition the State board to remove his name from the list after it has been on the list for at least three years. The State board in determining whether or not to remove the name will consider the nature and seriousness of the misconduct in office; the age of the individual when the misconduct in office occurred; whether the misconduct was an isolated or repeated occurrence; any evidence of successful work experience after the misconduct occurred; and any other factors deemed relevant by the State board.

STATEMENT TO  
**ASSEMBLY, No. 2395**

with Assembly Floor Amendments  
(Proposed By Assemblyman RUSSO )

ADOPTED: NOVEMBER 23, 1998

These floor amendments do the following in regard to the situation of a non-tenured, certificated employee who is dismissed for just cause as a result of misconduct in office prior to the end of the school year and whose name is required to be placed on a list of such individuals by the State Board of Examiners:

1. provide that if a disciplinary grievance arbitration is conducted, the board of education shall not notify the State Board of Examiners until just cause due to misconduct in office is found by the arbitrator. The bill in its present form only precludes the person's name from being placed on the list until such a determination is made;

2. provides that if a person's name is placed on the list, or was placed on the list prior to the bill's effective date, the person may file a petition of appeal with the commissioner challenging the placement of his name on the list. Upon notification of the filing of an appeal, the State Board of Examiners shall remove the person's name from the list and upon any inquiry as to the person's status on the list, the State Board of Examiners is to indicate that the person's name has been proposed for inclusion on the list. If the commissioner determines that the basis for dismissal constitutes misconduct in office, then the person's name shall be placed on the list;

3. requires that upon application to the State Board of Examiners, a person's name will be removed from the list if it has been on the list for at least three years; and

4. clarifies reference to the State Board of Examiners.

**SENATE, No. 1268**

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

INTRODUCED JUNE 29, 1998

**Sponsored by:**

**Senator JOSEPH A. PALAIA**

**District 11 (Monmouth)**

**SYNOPSIS**

Provides certain protections for dismissed nontenured school employees whose names are required to be maintained on a list.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning nontenured school district employees and  
2 amending P.L.1997, c.200.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 1 of P.L.1997, c.200 (C.18A:16-1.3) is amended to read  
8 as follows:

9 1. A board of education shall notify the State Board of Examiners  
10 whenever a non-tenured, certificated employee is dismissed **[for cause,**  
11 **and the]** prior to the end of any school year for just cause as a result  
12 of misconduct in office. This notification requirement shall not apply  
13 in instances where the employee's contract is not renewed. The State  
14 board shall maintain a list containing the name and Social Security  
15 number of the employee and the reason for the dismissal **[for cause.**  
16 A board of education or the superintendent of a school district or the]  
17 . If a disciplinary grievance arbitration is conducted pursuant to  
18 section 8 of P.L.1989, c.269 (C.34:13A-29) as to the dismissal, the  
19 employee's name shall not be placed on the list unless just cause due  
20 to misconduct in office is found by the arbitrator. Nothing herein shall  
21 be deemed to create a right to tenure beyond the provisions of existing  
22 law.

23 The chief school administrator of a public school district or a  
24 nonpublic school , in New Jersey or any other state that has entered  
25 into the interstate agreement on qualification of educational personnel  
26 pursuant to P.L.1969, c.114 (C.18A:26-11 et seq.), may submit to the  
27 State board the name and Social Security number of a person who  
28 has applied for a position in the district or **[nonpublic]** school, and the  
29 State board shall indicate to the **[board or superintendent or]** chief  
30 school administrator **[of the nonpublic school]** whether the **[person**  
31 **has been previously dismissed for cause and the]** person's name  
32 appears on the list and if so, the listed reason for the dismissal. **[This**  
33 section shall not apply to a school board employee whose contract is  
34 not renewed.]

35 If a person's name is placed on the list, the State Board of  
36 Examiners shall require the referring school board to notify the person,  
37 in writing, of that placement and the reason for dismissal which will  
38 appear on the list. When an inquiry is received from a chief school  
39 administrator on a person who has applied for a position, the State  
40 board shall require the inquiring chief school administrator to notify  
41 the applicant, in writing, of the inquiry and of any resulting response  
42 by the State board.

EXPLANATION - Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1     An employee may by application petition the State board to remove  
2 his name from the list, after his name has been on the list for at least  
3 three years. In determining whether the employee's name shall be  
4 removed from the list, the State board shall consider: the nature and  
5 seriousness of the misconduct in office; the age of the individual when  
6 the misconduct in office occurred; whether the misconduct was an  
7 isolated or repeated occurrence; any evidence of successful work  
8 experience after the misconduct in office occurred; and any other  
9 factors deemed relevant by the State board.

10     Nothing herein shall limit the rights of employees to pursue any  
11 remedy permitted by law.

12     Any non-tenured, certificated employee who submits a false name  
13 or Social Security number to a board of education is deemed to be in  
14 violation of N.J.S.2C:28-3.

15 (cf: P.L.1997, c.200, s.1)

16

17     2. This act shall take effect immediately.

18

19

20

#### STATEMENT

21

22     This bill amends P.L.1997, c.200 (C.18A:16-1.3) which requires the  
23 board of education to notify the State Board of Examiners whenever  
24 a nontenured, certificated employee is dismissed for cause. The law  
25 further provides that the State board will maintain a list containing the  
26 names and Social Security numbers of these employees and the reasons  
27 for the dismissals. This bill provides that a name will be placed on the  
28 list only if the employee is dismissed prior to the end of the year for  
29 just cause as a result of misconduct in office. This bill also provides  
30 that if a disciplinary grievance arbitration is conducted as to the  
31 dismissal, an employee's name will not be placed on the list unless just  
32 cause due to misconduct in office is found by the arbitrator. The bill  
33 limits those that may obtain information from the list to chief school  
34 administrators of public school districts or nonpublic schools located  
35 in New Jersey or any other state that has entered into the interstate  
36 agreement on qualification of educational personnel. The bill provides  
37 for notification of the employee if his name is placed on the list, and  
38 the reason for dismissal which will appear on the list. An employee  
39 who is seeking a position in a public school district or nonpublic  
40 school must also be notified when a chief school administrator makes  
41 an inquiry to determine if the employee's name appears on the list.

42     Pursuant to the bill, an employee may petition the State board to  
43 remove his name from the list after it has been on the list for at least  
44 three years. The State board in determining whether or not to remove  
45 the name will consider: the nature and seriousness of the misconduct  
46 in office; the age of the individual when the misconduct in office

**S1268 PALAIA**

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1 occurred; whether the misconduct was an isolated or repeated  
2 occurrence; any evidence of successful work experience after the  
3 misconduct occurred; and any other factors deemed relevant by the  
4 State board.

# SENATE EDUCATION COMMITTEE

## STATEMENT TO

### **SENATE, No. 1268**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 18, 1999

The Senate Education Committee reports favorably Senate Bill No. 1268 with committee amendments.

As amended, this bill revises the statute that requires a board of education to notify the State Board of Examiners whenever a non-tenured, certificated employee is dismissed prior to the end of any school year for just cause as a result of misconduct. The notification requirement would not apply in instances when the employee's contract is not renewed. A list containing the name and Social Security number of the employee and the reason for the dismissal is maintained by the State Board of Examiners. If a disciplinary grievance arbitration is conducted as to the dismissal, or if the dismissal is appealed to a court or administrative tribunal of competent jurisdiction, the board of education would not notify the State Board of Examiners unless just cause due to misconduct is found by the arbitrator, the administrative tribunal or the court. The chief school administrator of a public school district or a nonpublic school in New Jersey or any other state that has entered into the interstate agreement on qualification of educational personnel may submit to the State Board of Examiners the name and Social Security number of a person who has applied for a position in the district or school, and the board would indicate to the chief school administrator whether the person's name appears on the list, and if so, the listed reason for the dismissal.

Whenever a board of education notifies the State Board of Examiners of a person's dismissal for reasons of misconduct, the board of education must send the person a simultaneous copy of the notifying correspondence. Whenever a chief school administrator inquires about the status on the list of a job applicant, the chief school administrator must send the applicant a simultaneous copy of the inquiry and subsequently forward to the applicant a copy of the response received from the State Board of Examiners.

If a person's name is placed on the list, and the person is not entitled to contractual remedy or statutory appeal processes, the person may file a petition of appeal challenging that placement. Upon



notification of the filing of an appeal, the State Board of Examiners would remove the person's name from the list and upon any inquiry as to the person's status on the list, the State Board of Examiners would indicate that the person's name has been proposed for inclusion on the list. If the commissioner determines that the basis for the dismissal constitutes misconduct, the person's name would then be placed on the list. If the commissioner determines that the basis for the dismissal does not constitute misconduct, the person's name would not be placed on the list. Upon application to the State Board of Examiners, a person's name would be removed from the list, provided that the person's name has been on the list for at least three years. Any person whose name was placed on the list prior to the effective date of the act could petition the commissioner within 180 days of that effective date for a determination that his name should be removed from the list prior to the elapsing of the three-year period on grounds that the stated basis for his dismissal did not constitute misconduct or on grounds that his dismissal was found unwarranted by an arbitrator, or an administrative tribunal of competent jurisdiction.

Amendments were adopted which provide: 1) an exception for the notification procedure in the case of a disciplinary grievance arbitration proceeding or when the dismissal is appealed to a court or administrative tribunal of competent jurisdiction; 2) a requirement for copies of notices to be sent to the person who is dismissed and copies of inquiries and responses to be sent to a job applicant; and 3) a procedure whereby a person could file an appeal if his name were placed on the list either before or after the effective date of the bill and could file an application to have his name removed from the list after a period of three years.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 1268**

with Senate Floor Amendments  
(Proposed By Senator PALAIA)

ADOPTED: MAY 10, 1999

These amendments limit the scope of misconduct to misconduct in office, eliminate reference to the appeal of a dismissal to a court, and revise the procedure for appeal when a person's name is placed the list prior to the effective date of the act.

**ASSEMBLY BILL NO. 2395**

**(FIRST REPRINT)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Assembly Bill No. 2395 (First Reprint) with my recommendations for reconsideration.

Summary of Bill

This bill amends current law which requires a board of education to notify the State Board of Examiners ("State board") whenever a nontenured, certificated employee is dismissed for cause. The law further requires the State board to maintain a list containing the names and Social Security numbers of these employees and the reasons for the dismissals. This bill clarifies the existing law to provide that a name will be placed on the list only if the employee is dismissed prior to the end of the school year for just cause as a result of misconduct in office. This bill also provides that if a disciplinary grievance arbitration is conducted as to the dismissal, a board of education shall not notify the State board of the dismissal until just cause due to misconduct in office is found by an arbitrator.

Additionally, the bill limits those that may obtain information from the list to chief school administrators of public school districts or nonpublic schools located in New Jersey or any other state that has entered into the interstate agreement on qualification of educational personnel. The bill provides for notification to the employee if his name is placed on the list and the reason for dismissal which will appear on the list. An employee who is seeking a position in a public school district or nonpublic school must also be notified when a chief school administrator makes an inquiry to determine if the employee's name appears on the list.

Further, the bill provides that if a person's name is placed on the list, or was placed on the list prior to the bill's effective date, the person may file a petition of appeal with the Commissioner of Education ("Commissioner") challenging the placement of his name on the list. Upon notification of the filing of an appeal, the State board is required to remove the person's name from the list and upon any inquiry as to the person's status on the list, the State board is to indicate that the person's name has been proposed for inclusion on the list. If the Commissioner of Education determines that the basis for dismissal constitutes

misconduct in office, then the person's name shall be placed on the list.

Finally, the bill requires that upon application to the State board a person's name will be removed from the list if it has been on the list for at least three years.

#### Recommended Action

This bill improves upon current law by clarifying and supplementing the requirements concerning placement of a nontenured certificated employee's name on the State Board of Examiners list of employees that have been dismissed for cause. Additionally, I support the provisions in the bill that provide notice to the employee and clarify that the purpose of the list is to aid school districts and nonpublic schools in reviewing a potential employee's record of "misconduct in office" rather than whether an employee was dismissed for "cause." It is important that the list be used and maintained properly due to its use as a reference for future employers.

Although the purpose of the legislation is laudable, I recommend that the bill be amended to address concerns regarding the appeal procedure for nontenured certificated employees whose names have been placed on the list. Without restriction, the bill specifies that the nontenured certificated employee may file a petition of appeal with the Commissioner challenging the placement of his or her name on the list. Currently, the Commissioner only has jurisdiction in matters involving dismissals of nontenured certificated employees if the employee's statutory or constitutional rights are violated. This new avenue of appeal appears to be unnecessary as an adequate appeal process already exists. Moreover, I have been advised that this unrestricted right of appeal would create an undue administrative burden on the Department of Education. For these reasons, I recommend that this provision be removed. Further, I recommend that the bill specify that an employee's name be placed on the list only if just cause due to misconduct in office is found by both the arbitrator, and also a court or administrative tribunal of competent jurisdiction if the case is appealed. Finally, I recommend that if a name is placed on the list prior to an appeal being filed, the person's name be removed from the list pending the outcome of the appeal and that a notation be made that the person's name has been proposed for inclusion on the list.

Therefore, I herewith return Assembly Bill No. 2395 (First Reprint) and recommend that it be amended as follows:

- Page 2, Section 1, Line 19: After “dismissal,” insert “or if the dismissal is appealed to a court or administrative tribunal of competent jurisdiction,”
- Page 2, Section 1, Line 21: After “arbitrator” insert “, the court or administrative tribunal of competent jurisdiction”
- Page 2, Section 1, Line 22: Before “Nothing” insert “If a person’s name is placed on the list subsequent to a determination of just cause due to misconduct in office by the arbitrator and the person later files an appeal to a court or administrative tribunal of competent jurisdiction, a board of education shall notify the State Board of Examiners that an appeal has been filed. The State Board of Examiners shall remove the person’s name from the list and upon any inquiry as to the person’s status on the list, the State Board of Examiners shall indicate that the person’s name has been proposed for inclusion on the list. A board of education shall notify the State Board of Examiners regarding the final determination of the court or administrative tribunal of competent jurisdiction. If a final determination is made that the basis for dismissal does not constitute misconduct in office, the State Board of Examiners shall not put the name of the person on the list. If a final determination is made that the basis for dismissal does constitute misconduct in office, the State Board of Examiners shall place the name of the person on the list.”
- Page 2, Section 1, Line 34: After “dismissal” insert “or whether the person’s name has been proposed for inclusion on the list”
- Page 3, Section 2, Line 26: Delete “If a person’s name is placed on the list, or was”
- Page 3, Section 2, Lines 27-38: Delete in entirety
- Page 3, Section 2, Line 39: Delete “b.”

Page 3, Section 2, Line 42:

Before “Nothing” insert “3.”

Page 3, Section 3, Line 45:

Delete “3” insert “4”

Respectfully,

/s/ Christine Todd Whitman

Governor

[seal]

Attest:

/s/ Richard S. Mroz

Chief Counsel to the Governor

## **Governor Conditionally Vetoes Piece of Legislation**

Gov. Christie Whitman today conditionally vetoed the following piece of legislation:

**A-2395**, sponsored by Assembly Members David C. Russo (R-Bergen/Passaic) and John S. Wisniewski (D-Middlesex) and Senator Joseph A. Palaia (R-Monmouth), which provided certain protections for dismissed nontenured school employees whose names are required to be maintained on a list by State Board of Examiners. The bill clarified existing law by providing that a name will be placed on the list only if the employee is dismissed prior to the end of the year for just cause as a result of misconduct in office. The bill also provided that if a disciplinary grievance is conducted as to the dismissal, an employee's name will not be placed on the list unless just cause due to misconduct in office is found by an arbitrator.

The Governor said that although the purpose of the legislation is laudable, she recommended that the bill be amended to address concerns regarding the appeal procedure for nontenured certificated employees whose names have been placed on the list. Without restriction, the bill specifies that the nontenured certificated employee may file a petition of appeal with the Commissioner of Education challenging the placement of his or her name on the list. The Governor said currently the Commissioner only has jurisdiction in matters involving dismissals of nontenured certificated employees if the employee's statutory or constitutional rights are violated. This new avenue of appeal appears to be unnecessary as an adequate appeal process already exists, she said. Moreover, the Governor said, she has been advised that this unrestricted right of appeal would create an undue administrative burden on the Department of Education. She said the provision should be removed. Additionally, she recommended that the bill specify that an employee's name be placed on the list only if just cause due to misconduct in office is found by both the arbitrator, and also a court or administrative tribunal of competent jurisdiction if the case is appealed. Gov. Whitman also recommended that if a name is placed on the list prior to an appeal being filed, the person's name be removed from the list pending the outcome of the appeal and that a notation be made that the person's name has been proposed for inclusion on the list.

*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: December 23, 1999

## **Governor Signs Bill Protecting Senior Citizens from Fraud And Murder Victims' Rights, Among Other Legislation**

Governor Christie Whitman today signed "Nielsa's Law" which amends the murder statute in New Jersey to permit the display of a photograph of a murder victim at the sentencing portion of the murder trial. The Governor also signed the Senior Citizens Fraudulent Claims Act that seeks to amend the New Jersey Consumer Fraud Act to impose heightened penalties against individuals who defraud senior citizens.

### **Neilsa's Law**

"The passage of Nielsa's Law doesn't bring back Nielsa Mason or ease the tremendous pain and suffering of the Mason family, but I believe the bill will ensure that murder victims, who obviously can't be present at trial, are represented in a dignified matter," said Gov. Whitman. "It's something the Mason family wanted at the trial on their murdered daughter's behalf - and we listened to their pleas to make the system more accommodating for survivors."

This bill amends the murder statute to permit the display of a photograph of a murder victim at the sentencing portion of the murder trial, in capital and non-capital murders. It would authorize such a photograph to be shown to a jury during the death penalty phase of a capital case, as well as to a judge during the sentencing portion of a non-capital case.

It also amends the law that permits crime victims to make "victim impact" statements to the sentencing court - authorizing victims to display photographs as part of their victim impact statements to the court in homicide cases.

Under previous law, victims could make victim impact statements to the sentencing court and to the penalty phase jury in a death penalty case. The law was silent as to whether photographs could be displayed and, as a result, some courts permitted such displays while others prohibited them in the absence of statutory guidance on this subject. Nielsa's Law authorizes the Supreme Court to issue court rules governing these displays to ensure uniformity regarding the photo's size, the permissible duration of the display and where in the courtroom the display may take place.

Nielsa's Law, **A-17**, was sponsored by Assembly Members Jack Collins (R-Salem/Cumberland/Gloucester) and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senators Diane B. Allen (R-Burlington/Camden), Dr. Gerald Cardinale (R-Bergen) and Raymond J. Zane (D-Salem/Cumberland/Gloucester).

### **Senior Citizens Fraudulent Claims Act**



Referring to her passage of the Senior Citizens Fraudulent Claims Act, Gov. Whitman said "We need to protect the many faces in our New Jersey family - and that includes our elderly family members. Our state has one of the largest senior citizen populations in the nation - and it's growing. That's why I applaud this Act and its goal of protecting our seniors from fraud."

Introduced following a Feb.1997 report by the Division of Consumer Affairs' Elder Fraud Task Force, the Senior Citizens Fraudulent Claims Act applies to seniors over 60 years old and aims to amend the New Jersey Consumer Fraud Act through enhanced penalties for fraud.

If the Attorney General's Office were to successfully bring an action to enforce the Consumer Fraud Act on behalf of a senior citizen, the courts will now have to order restitution at twice the amount wrongfully acquired from the senior citizen. Also, any person who fails to make such a court-ordered restitution is subject to punishment for criminal contempt. The bill amends the Consumer Fraud Act to clarify that any penalties imposed under the Act are to be exclusive of (and in addition to) any monies or property that are ordered to be paid or restored.

The Senior Citizens Fraudulent Claims Act legislation, **A- 1512**, was sponsored by Assembly Members Joseph R. Malone (R-Burlington/Monmouth/Ocean) and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senator Norman M. Robertson (R- Essex/Passaic).

In addition, Gov. Whitman signed today these pieces of legislation:

**S-1235**, sponsored by Senators Dr. Gerald Cardinale (R-Bergen) and Leonard T. Connors (R-Atlantic/Burlington/Ocean) and Assemblyman John V. Kelly (R-Bergen/Essex/Passaic), clarifies the 30-year rent control exemption for certain rental multiple dwelling units constructed without initial mortgage financing. The bill's purpose is to increase the availability of newly constructed rental housing for New Jersey residents and clarify the original intent of the Legislature in providing this exemption when it was enacted in 1987.

**S-1808**, sponsored by Senator Dr. Gerald Cardinale (R-Bergen) and Assembly Members Jeffrey W. Moran (R-Atlantic/Burlington/Ocean) and Anthony Impreveduto (D-Bergen/Hudson), exempts fair market value commercial leases and terminal rental adjustment clause (TRAC) leases from the provisions of the "Consumer Protection Leasing Act." The initiative is designed to increase leasing opportunities for State businesses as it recognizes that the consumer protections in the Act are not needed for businesses that establish "bargained-for" contracts. Most other states, including New York and California, exempt commercial leases from their leasing statutes.

**ACS, A-1352 and A-200**, sponsored by Assembly Members Carol J. Murphy (R-Essex/Morris/Passaic), Alan M. Augustine (R-Middlesex/Morris/Somerset/Union), George F. Geist (R-Camden/Gloucester), Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Charles K. Zisa (D-Bergen) and Senator John J. Matheussen (R-Camden/Gloucester), clarifies the crime of hindering a prosecution. Hindering is a crime of the third or fourth degree, or a disorderly persons offense, depending on the underlying circumstances. The bill amends the statute to say that hindering: 1) is when a person provides false information to a police officer regardless of whether the information is volunteered or is in response to an inquiry; (2) applies when false information is provided to hinder

detention or investigation of a criminal defense; and (3) includes false information given to a police officer connected with a violation of the motor vehicle laws and a civil State investigator in connection with the violation of the Fraud Prevention Act.

**SCS, A-1793**, sponsored by Assemblyman Paul DiGaetano (R-Bergen/Essex/Passaic), authorizes the creation of a non-lapsing recreation trust fund by counties and municipalities that have not established a board of recreation commissioners. The fund is to be used to offset the costs of operating county or municipal recreational programs. Currently, only counties or municipalities with an established board of recreation commissioners can create a dedicated fund for recreational purposes. The bill gives flexibility to those who do not wish to establish a full board of commissioners.

**A-1172**, sponsored by Assemblywoman Connie Myers (R-Warren/Hunterdon/Mercer) and Senators Diane B. Allen (R-Burlington/Camden) and William E. Schluter (R-Warren/Hunterdon/Mercer), creates procedures for the takeover of certain small sewer companies. The bill allows the Department of Environmental Protection and the Board of Public Utilities to order the takeover of a small sewer company where there is a record of significant, unresolved environmental violations. Currently, the BPU can order the takeover of a small water company by another public or private entity, if it determines that the former can't adequately serve its customers.

This legislation authorizes the DEP and BPU to order the acquisition of both a small water company and a small sewer company if either company has a record of significant, unresolved violations, provided both companies serve a common residential development, were established by a developer to service that development and are under common control and ownership.

Entities taking over a small water sewer company will not be held liable for prior environmental liabilities, including penalties or levies against the previous owner. Public entities will be given expedited access to capital financing provided by the Environmental Infrastructure Trust for upgrades necessary for the proper operation of the small sewer of water company.

**A-2395**, sponsored by Assembly Members David C. Russo (R-Bergen/Passaic) and John S. Wisniewski (D-Middlesex) and Senator Joseph A. Palaia (R-Monmouth), provides certain protections for dismissed non-tenured, certified school employees whose names are required to be maintained on a list. The list, maintained by the State Board of Examiners, contains the names and Social Security numbers of these employees, and the reason for dismissal.

The bill clarifies existing law by providing that a name will only be placed on the list if the employee is dismissed prior to the end of the year for just cause as a result of misconduct in office. If a disciplinary grievance arbitration is conducted, an employee's name can only be placed on the list if just cause due to misconduct is found by the arbitrator.

Also, an employee must be notified if his or her name is placed on the list and must be told when a chief school administrator seeks such information. The bill limits those who can obtain information from this list and says that a person may petition their name being included on the list to the Commissioner of Education. Finally, upon application a person's name will be removed if it has been on the list for at least three years.

Governor Whitman conditionally vetoed this legislation in June of this year. The Governor's recommendations were met and the legislation now clarifies the role of the Commissioner of Education. Specifically, the Commissioner can rule on whether a name is properly on a list, however it does not expand his jurisdiction in determining misconduct.