

TITLE 4A CIVIL SERVICE

Title Historical Note

Pursuant to L. 1986, c.112, effective September 25, 1986, the former Department of Civil Service was replaced by the Department of Personnel. The rules contained in Title 4 of the New Jersey Administrative Code, Department of Civil Service, were repealed pursuant to several rulemakings from 1987 to 1990 and new rules of the Department of Personnel were adopted and codified in Title 4A. For the historical text of rules of the former Title 4, Department of Civil Service, contact the Office of Administrative Law.

CHAPTER 1

GENERAL RULES AND DEPARTMENT ORGANIZATION

Authority

N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 52:14B-3(1) and (3), and 52:14B-4(f); N.J.A.C. 1:30; P.L. 2001, c. 5, P.L. 2001, c. 404, P.L. 2003, c. 246, and P.L. 2006, c. 103; 42 U.S.C. §§12101 et seq.; and 28 CFR Part 35.107.

Source and Effective Date

R.2008 d.214, effective July 1, 2008.
See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 1, General Rules and Department Organization, expires on December 28, 2015. See: 47 N.J.R. 1369(a).

Subchapter 5, Disability Discrimination Grievance Procedure, is exempt under 28 C.F.R. Part 35.

Chapter Historical Note

Chapter 1, General Rules and Department Organization, was adopted as R.1987 d.406, effective October 5, 1987. See: 19 N.J.R. 1011(a), 19 N.J.R. 1827(a). See, also, Title Historical Note prior to this Chapter.

Pursuant to Executive Order No. 66(1978), Chapter 1, General Rules and Department Organization, was readopted as R.1992 d.416, effective September 22, 1992. See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a). Subchapter 5, Disability Discrimination Grievance Procedure, was adopted as R.1993 d.614, effective December 6, 1993. See: 25 N.J.R. 1314(c), 25 N.J.R. 5464(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Rules and Department Organization, was readopted as R.1997 d.434, effective September 22, 1997. See: 29 N.J.R. 3101(a), 29 N.J.R. 4455(a).

Chapter 1, General Rules and Department Organization, was readopted as R.2003 d.111, effective February 13, 2003. See: 34 N.J.R. 3569(a), 35 N.J.R. 1407(a).

Chapter 1, General Rules and Department Organization, was readopted as R.2008 d.214, effective July 1, 2008. See: Source and Effective Date. See, also, section annotations.

Subchapter 1, Purpose, Scope and Definitions, was renamed Purpose, Scope, and Definitions by R.2014 d.099, effective June 2, 2014. See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, General Rules and Department Organization, was scheduled to expire on July 1, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

4A:1-1.1 Purpose

The purpose of these rules is to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with Title 11A, New Jersey Statutes. See N.J.S.A. 11A:1-2.

Case Notes

The Civil Service Act and its accompanying regulations did not require that preliminary notices of disciplinary action be signed by both police director and IAD Commander because the Act and its regulations did not require two signatures for the filing of a complaint. *Grill v. City of Newark*, 709 A.2d 333, 311 N.J.Super. 149 (N.J.Super.L. 1997).

Validity. *Gloucester Cty. Welfare Bd. v. N.J.Civ.Serv.Comm'n*, 93 N.J. 384, 461 A.2d 575 (1983).

4A:1-1.2 Scope, applicability and invalidation

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with these rules.

(b) These rules shall apply only to the career service unless otherwise specified.

(c) These rules shall be considered the means by which the statutory purposes of the merit employment system are carried out. The Commissioner or the Board may relax these rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the rules shall not be affected by such determination.

Amended by R.2008 d.214, effective August 4, 2008.

See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

In (c), substituted "purposes" for "purpose".

Law Review and Journal Commentaries

Civil Service — Disability Retirement — Police Seniority. Judith Nallin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

In a fire captain's suit against a city challenging the failure to appoint him to deputy fire chief, a civil service appointing authority violated the Rule of Three, set forth in N.J.S.A. 11A:4-8, in guaranteeing a promotional candidate that he would receive the appointment of deputy fire chief if he attained the highest score on the examination, particularly because that individual guarantee was not contemporaneously disclosed to the other applicants who sat for the examination. In re Martinez, 403 N.J. Super. 58, 956 A.2d 386, 2008 N.J. Super. LEXIS 206, 28 I.E.R. Cas. (BNA) 760 (App.Div. 2008).

Merit System Board has right to relax rules of timeliness of appeal for good cause. Matter of Allen, 262 N.J. Super. 438, 621 A.2d 87 (A.D.1993).

Appellate Division improperly reviewed action of Civil Service Commissioner in deciding educational qualifications (citing former rule N.J.A.C. 4:1-1.4). Gloucester Cty. Welfare Bd. vs. N.J. Dep't of Civil Service, 93 N.J. 384, 461 A.2d 575 (App.Div.1983).

Jurisdiction: Civil Service v. PERC. City of Hackensack v. Winner, 162 N.J. Super. 1, 392 A.2d 187 (App.Div.1978) modified and affirmed, 82 N.J. 1, 410 A.2d 1146 (1980).

Public employer authority to bend Civil Service Commission by collective bargaining agreement. State v. State Supervisory Employees Association, 78 N.J. 54, 393 A.2d 233 (1978).

Transfer of case of provisional employee who was discharged during county reorganization and was entitled to retroactive consideration of her qualifications for permanent civil service employee status to Department of Personnel was proper, where department had special expertise and competence in area. Melani v. County of Passaic, 345 A.2d 579.

Authority of Commission to use appeals panels in regard to salary disputes. Abramson v. Farrell, 122 N.J. Super. 30, 298 A.2d 705 (1972).

County College Law pertains: nonprofessional and non-instructional employees of county community colleges are not subject to Civil Service. Atlantic Comm. College v. Civil Service Commission, 59 N.J. 102, 279 A.2d 820 (1971).

Though the Division of Selection Services correctly determined that two applicants for the promotional examination for Assistant Director of Maintenance Services (PC0010S), Hudson County did not meet the required experience as of the closing date, there was a basis for admitting both of the applicants to the subject examination. While the work experience of one of the applicants did not precisely mirror the requirements contained in the announcement, the totality of his varied levels of experience as a provisional Assistant Director of Maintenance Services, Maintenance Supervisor and his experience performing lead worker duties as a plumber for several years warranted his admission to the subject examination, which was for the title that he held provisionally. As for the other candidate, the totality of her varied levels of experience as Program Monitor/Unit Chief, Monitor, and Project Administrator since April 2001 warranted her admission to the subject examination. Since good cause within the meaning of the governing regulations was present, the rules were properly relaxed and the applicants were properly admitted to the examination. In re Amabile et al, Ass't Dir. of Maint. Servs. (PC0010S), Hudson Cnty., CSC Docket Nos. 2014-2957 and 2014-3015 (Consolidated), 2014 N.J. CSC LEXIS 555, Final Administrative Determination (August 15, 2014).

Office of Employee Relations won an order relaxing the provisions of N.J.A.C. 4A:3-4.5 and N.J.A.C. 4A:3-4.13 so that wage provisions concerning certain state government managers (SGMs) contained in collectively bargained agreements between the State and an union could be implemented. The provisions could not be implemented because they were otherwise at variance with controlling regulations. The fact that the terms were negotiated in good faith between the state and the union and did not implicate any other rules constituted good cause for the relaxation of the two cited rules. In re State Government Managers, CSC Docket No. 2015-307, 2014 N.J. CSC LEXIS 683, Final Administrative Determination (August 14, 2014).

Employee who missed the professional level engineering promotional examination due to his having been assigned to serve as the DOT Liaison for the 2014 USA Special Olympic Games was entitled to be admitted to a make-up examination. The employee established that he was the Incident Management Lead for the Traffic Operations South Office and was the DOT's "point of contact" for the event and that two employees who were originally scheduled to assist the employee with this assignment in fact did were not available to do so. Inasmuch as the employee's request was timely made and the circumstances which caused him to miss the examination were fully substantiated, good cause existed to admit the employee to the examination. In re McVeigh, Senior Eng'r Traffic (PS7158T), Dep't of Transp., CSC Docket No. 2015-268, 2014 N.J. CSC LEXIS 553, Final Administrative Determination (August 14, 2014).

Rules governing intergovernmental transfers were properly relaxed to allow for the formal transfer of a permanent employee who had been laid off from one municipality in November and was transferred to and hired by another municipality the following month. Though the sending and receiving municipalities had both signed off on the transfer, the documentation was not sent to the Civil Service Commission due to an oversight. Under these facts, there was no question but that it was appropriate for the transfer to be approved retrospectively. In re Westlund, Berkeley Twp., CSC Docket No. 2015-232, 2014 N.J. CSC LEXIS 512, Final Administrative Determination (August 14, 2014).

Claims by employees that they were underpaid based on the applicable salary ranges were not properly considered because they were not timely filed and because there was no showing of good cause for the relaxation of the rule that such appeals had to be filed within 20 days after either the claimant had notice of the decision or action or reasonably should have known of it. Moreover, even if the appeals had been timely filed, they lacked merit. In re Vogt, et al., Jersey City, CSC Docket Nos. 2011-4505 to 2011-4512 (Consolidated) (On Remand), 2014 N.J. CSC LEXIS 488, Final Administrative Determination (August 14, 2014).

Though the Division of Selection Services correctly determined that an applicant seeking admission to the open competitive examination for Mechanic (M0013S), Brick School District was below the minimum requirements in experience for that examination, the applicant showed

experienced a decrease of \$ 725,000 in tax revenues and its surplus had dropped to below \$ 1 million. Twp. of Sparta, Layoffs 2010 (Lehman), v. Twp. of Sparta, Dep't of Pub. Works, OAL Dkt. No. CSV 00239-11, AGENCY Dkt. No. 2009-529, 2014 N.J. AGEN LEXIS 170, Initial Decision (April 8, 2014).

Employee did not complete his working test period as a Supervising Investigator, Law and Public Safety because N.J.A.C. 4A:4-5.2(a) provides that the working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. That is, a working test period begins on the date of regular appointment, which is defined per N.J.A.C. 4A:1-1.3 in relevant part as employment of a person to a position in the noncompetitive division of the career service. Per N.J.A.C. 4A:4-5.2(b)2, the length of the working test period in State service is a period of four months of active service, which may be extended on request of an appointing authority for an additional two months. Thus, even though the employee was appointed to the title at issue on December 10, 2011, that appointment was as an "acting" Supervising Investigator, Law and Public Safety and did not trigger a working test period, which can only commence on the date of regular (that is, not "acting") appointment. In re Mullan, Dep't of Law & Pub. Safety, CSC Docket No. 2013-1602, 2013 N.J. CSC LEXIS 1199, Final Administrative Action (December 19, 2013).

A "provisional" appointment refers to employment in the competitive division of the career service pending the appointment of a person from an eligible list. N.J.A.C. 4A:1-1.3. Thus, there cannot be a "provisional" appointment to a noncompetitive title. In re Mullan, Dep't of Law & Pub. Safety, CSC Docket No. 2013-1602, 2013 N.J. CSC LEXIS 1199, Final Administrative Action (December 19, 2013).

Administrative Law Judge concluded that the administrator of a public nursing and rehabilitation center did not act in bad faith when she declined to extend an offer of employment to a certified nursing assistant at the conclusion of the working test period established by N.J.A.C. 4A:1-1.3. This was consistent with N.J.A.C. 4A:4-5.1, which indicated that the purpose of the test period was to allow the appointing authority to determine whether an employee could satisfactorily perform the required duties. Here, since the administrator had shown that the assistant was not willing to discharge the duties of the position nor to accept constructive criticism intended to assist her in improving her performance, the assistant had the burden to show that the administrator had acted in bad faith, a burden that the assistant had failed to carry. In re Perez, Cnty. of Cape May, Dep't of Crest Haven, OAL Dkt. No. CSV 13678-13, 2013 N.J. AGEN LEXIS 236, Initial Decision (September 17, 2013).

County was not entitled to an order cancelling a certification for Computer Service Technician (C0562M), Middlesex County, that was issued in connection with a provisional appointment made to the subject title by the county's board of social services. Though the board of social services was an autonomous agency within the meaning of N.J.A.C. 4A:4-3.7(e), N.J.A.C. 4A:8-2.1(c)1i and N.J.A.C. 4A:1-1.3, an eligible list that was formulated in connection with a position within the board of social services applied to all positions in the county. The only exception to this rule involved special reemployment lists which were treated differently. Because the list at issue here was not a special reemployment list, the county was required to utilize the eligible list that was issued in connection with the board of social services. In re Computer Serv. Technician (C0562M), Middlesex Cnty., CSC Docket No. 2013-2299, 2013 N.J. CSC LEXIS 854, Final Administrative Action (August 16, 2013).

In the absence of permanent status in a career service title, the Board lacks jurisdiction to entertain major discipline appeals and there is no right to a hearing. In re Gooden, OAL Dkt. No. CSV 6905-05, 2006 N.J. AGEN LEXIS 630, Final Decision (May 24, 2006).

Enrollment in retirement system is neither immediate nor automatic (citing former N.J.A.C. 4:1-2.1). Frew v. Bd. of Trustees Public Employees' Retirement System, 8 N.J.A.R. 16 (1984).

4A:1-1.4 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:30-3.6.

SUBCHAPTER 2. RECORDS

4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;
3. Final orders of the Commissioner or Board; and
4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other statute, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Rule of court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered

government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

1. Appeal files in Merit System Board, Commissioner of Personnel and Division of Equal Employment Opportunity and Affirmative Action matters, including written submissions of the parties and all other related documentation used to make an administrative determination in these matters. However, final decisions of the Board and the Commissioner, including the bases for these decisions, shall be considered public records.

(d) See N.J.A.C. 4A:4-2.16 concerning examination records.

Amended by R.1992 d.416, effective October 19, 1992.

See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised (b); added new (c).

Amended by R.2008 d.214, effective August 4, 2008.

See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

Added new (c); and recodified former (c) as (d).

SUBCHAPTER 3. ORGANIZATION

4A:1-3.1 General provisions

(a) The Civil Service Commission is established in, but not of, the Department of Labor and Workforce Development in the Executive Branch of State Government, and consists of the:

1. Chairperson;
2. Civil Service Commission; and
3. Such subdivisions as the Chairperson may deem necessary.

Amended by R.2011 d.158, effective June 6, 2011.

See: 43 N.J.R. 336(a), 43 N.J.R. 1331(a).

Rewrote the introductory paragraph of (a) and (a)1 and (a)2; and in (a)3, substituted "Chairperson" for "Commissioner".

4A:1-3.2 Chairperson

(a) The Chairperson shall:

1. Serve as chairperson of the Civil Service Commission; and
2. Serve as the administrator, the chief executive officer and the appointing authority of the Commission, as well as the request officer of the Commission, within the meaning of such term as defined in P.L. 1944, c. 112, §1.

(b) The Chairperson, on behalf of the Commission, shall:

1. Maintain a management information system to implement Title 11A, New Jersey Statutes;
2. Establish necessary programs and policies for the State and local service;

3. Between meetings of the Commission, provide for interim remedies or relief in a pending appeal where warranted, and review requests for interlocutory review of an order or ruling by an administrative law judge;

4. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations and other appropriate groups;

5. Make required reports to the Governor and Legislature;

6. Approve appointments in the State and local service; and

7. Perform such other duties as prescribed by law and these rules.

Amended by R.2011 d.158, effective June 6, 2011.

See: 43 N.J.R. 336(a), 43 N.J.R. 1331(a).

Section was "Commissioner of Personnel". In the introductory paragraph of (a), substituted "Chairperson" for "Commissioner of Personnel"; in (a)1, substituted "Civil Service Commission; and" for "Merit System Board."; rewrote (a)2; added the introductory paragraph of (b) and (b)3; recodified former (a)3 and (a)4 as (b)1 and (b)2; deleted former (a)5 and (a)6; and recodified former (a)7 through (a)10 as (b)4 through (b)7.

Case Notes

Powers and duties; approval of classification plans. Gloucester Cty. Welfare Bd. v. N.J. Civ. Serv. Comm'n., 93 N.J. 384, 461 A.2d 575 (1983) and (dissenting opinions).

4A:1-3.3 Civil Service Commission

(a) The Civil Service Commission shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;

2. Render final administrative decisions on appeals and on other matters referred by the Chairperson;

3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;

4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity;

5. Perform such other duties as prescribed by law and these rules.

Amended by R.1992 d.416, effective October 19, 1992.

See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised (a)2.

Amended by R.2011 d.158, effective June 6, 2011.

See: 43 N.J.R. 336(a), 43 N.J.R. 1331(a).

Section was "Merit System Board". In the introductory paragraph of (a), substituted "Civil Service Commission" for "Merit System Board"; and in (a)2, substituted "Chairperson" for "Commissioner, except for those matters listed in N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner".

Case Notes

Police officer hired after completing the required police training course under the alternate route authorized by a 1998 amendment to the Police Training Act, N.J.S.A. 52:17B-66 through 52:17B-77.6, may be subject to a one-year probationary period prescribed by a municipal ordinance, during which the officer can be terminated without cause. *Azzara v. Township of Waterford*, 392 N.J. Super. 322, 920 A.2d 725, 2007 N.J. Super. LEXIS 120 (App.Div. 2007).

Autonomous political subdivisions; relationship of Civil Service Act to firemen. *Oughton v. Board of Fire Comm'rs, etc.*, 168 N.J. Super. 434, 403 A.2d 69 (Law Div. 1979) on reconsideration 178 N.J. Super. 633, 429 A.2d 1096 (Law Div. 1980) affirmed in part, reversed in part 178 N.J. Super. 565, 429 A.2d 1059, certification denied 87 N.J. 367, 434 A.2d 1055.

Discretion of Civil Service Commission to hold open competitive exams. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Jurisdiction. *City of Hackensack v. Winner*, 162 N.J. Super. 1, 392 A.2d 187 (App.Div. 1978) mod. on other ground 82 N.J. 1, 410 A.2d 1146 (1980).

Power of local service employer to effect out of class temporary transfer. *In re Appeal of Lembo*, 151 N.J. Super. 242, 376 A.2d 971 (App.Div. 1977).

Statutory managerial issue not subject to PERC: to be decided by CSC. *Patrolmen's Benev. Assoc. v. City of Elizabeth*, 146 N.J. Super. 257, 369 A.2d 931 (App.Div. 1976).

Authority of Commission to approve CETA hiring in local service. *White v. City of Paterson*, 137 N.J. Super. 220, 348 A.2d 798 (App.Div. 1975).

Powers and duties, abuse of discretion, quasi-judicial v. quasi-legislative function. *Abramson, et al. v. Farrell*, 122 N.J. Super. 30, 298 A.2d 705 (App.Div. 1972).

Certain county community college employees not subject to Civil Service. *Atlantic Comm. College v. Civil Service Commission*, 59 N.J. 102, 279 A.2d 820 (1971).

Statutory grant of power; minimum height requirement for police officers. *Mulligan v. Wilson*, 110 N.J. Super. 167, 264 A.2d 745 (App.Div. 1970).

SUBCHAPTER 4. DELEGATION, CONSOLIDATION AND PILOT PROGRAMS

4A:1-4.1 Delegation to appointing authorities

(a) The Commissioner may delegate to an appointing authority one or more of the following functions:

1. Classifying and reclassifying positions;
2. Announcing examinations and collecting applications;
3. Administering examinations prepared by the Department of Personnel;
4. Implementing promotions upon waiver of competitive examination;
5. Certifying lists of eligibles; and

6. Other technical personnel functions.

(b) A delegation shall be in writing, designating the appointing authority representative who will be accountable for the delegation, and signed by the Commissioner. Appointing authority employees in carrying out delegated functions are also responsible to the Department of Personnel in performing such functions. The delegation memorandum shall contain:

1. The functions to be delegated;
2. The specific manner in which the delegation will be implemented;
3. The Department of Personnel representative who will have primary responsibility for supervision of the delegation;
4. The duration of the delegation, which in no event shall exceed three years, but may be renewed; and
5. Provisions for appropriate notice advising of the delegation and stating the name, address and telephone number of the representative of the appointing authority and Department of Personnel employee to be contacted in case of complaints.

(c) Department of Personnel staff may be assigned to assist in performing the delegated functions.

(d) The Commissioner may cancel, modify or limit the delegation order at any time.

(e) The following functions may not be delegated:

1. The construction of an examination;
2. Appeal decisions of the Department, Commissioner or Board; and
3. A function of the Board.

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial and identifiable costs. Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials and facilities after offset by savings effected by the delegation.

(g) The Department of Personnel will conduct appropriate audits of delegated functions.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (f): added "identifiable" to define costs.

Added text describing substantial costs.

4A:1-4.2 Consolidation State service

(a) The Commissioner, in consultation with affected departments, may direct the temporary or permanent consolidation and coordination of personnel, training and related functions in the State service.

(b) A consolidation order may affect one or more State agencies and shall designate the functions to be consolidated.

(c) Consolidation may be directed for one or more of the following reasons:

1. An appointing authority has demonstrated inadequate or improper performance;
2. Economy or efficiency; or
3. Emergent situations.

(d) To effectuate a consolidated function, the Commissioner may transfer necessary employees, positions, funding and equipment to the Department of Personnel from other State departments.

4A:1-4.3 Pilot programs

(a) The Commissioner may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and these rules.

(b) Pilot programs may include, but are not limited to, the following:

1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the Commissioner and include:

1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program, including an explanation of how the program furthers the purposes of Title 11A, New Jersey Statutes;
5. A summary of appointing authority consultations with negotiations representatives;
6. Evaluation criteria;
7. A statement identifying the sections, if any, of these rules or of Title 11A, New Jersey Statutes with which the program is at variance; and
8. Such other information as required by the Commissioner.

(e) The Commissioner shall verify that proper notice to and consultations with affected negotiations representatives have taken place.

(f) The Commissioner may accept, modify or reject the program and establish appropriate conditions.

Amended by R.1992 d.416, effective October 19, 1992.

See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Added new (e); redesignated existing (e) as (f).

Amended by R.1997 d.434, effective October 20, 1997.

See: 29 N.J.R. 3101(a), 29 N.J.R. 4455(a).

Amended (d)4; inserted (d)6 and (d)7; and recodified existing (d)6 as (d)8.

Case Notes

Statutory requirement that appointing authorities who request pilot program affecting the civil service must consult with affected negotiations representatives before submission of proposal, does not mandate negotiations with representatives; it requires however, notification of and, when requested, discussion with those representatives. *Communications Workers of America v. New Jersey Dept. of Personnel*, 154 N.J. 121, 711 A.2d 890 (N.J. 1998).

Pilot programs under which list of people who could be hired from a certification would be expanded and under which length of work test period for local government employees would be increased exceeded scope of powers constitutionally delegated by statute. *Communications Workers of America, AFL-CIO v. New Jersey Dept. of Personnel*, 299 N.J.Super. 166, 690 A.2d 695 (A.D.1997).

Civil Service Commission established a Pilot Program to provide for the promotion of permanent Department of Environmental Protection (DEP) employees to the title of State Park Police Officer Trainee pursuant to N.J.S.A. 11A:2-11(i) and N.J.A.C. 4A:1-4.3(d). The current recruitment process utilizing open competitive procedures had not met the needs of the DEP. However, absent a Pilot Program, current Civil Service promotional processes made it virtually impossible for the appointing authority to promote employees from its existing staff to State Park Police Officer Trainee. It made little sense to require the DEP to recruit interested applicants outside of State service using open competitive procedures when it had current employees interested in a change of career path. In re State Park Police Officer Trainee Pilot Program, CSC Dkt. No. 2013-3010, 2013 N.J. CSC LEXIS 636, Final Decision (June 6, 2013).

SUBCHAPTER 5. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

4A:1-5.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“ADA” means the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq.

“Agency” means the New Jersey Department of Personnel.

“Designated decision maker” means the Commissioner of Personnel or his or her designee.

4A:1-5.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 4A:1-5. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Department of Personnel
PO Box 317
Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if

any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

Administrative Change.
See: 26 N.J.R. 197(b).

4A:1-5.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey Department of Personnel
PO Box 317
Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 4A:1-5.5 through 5.8.

Administrative Change.
See: 26 N.J.R. 197(b).

4A:1-5.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 4A:1-5.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of

Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

4A:1-5.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 4A:1-5.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;
2. The address and telephone number of the grievant or alternate contact person; and
3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

4A:1-5.7 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date: _____

Name of grievant: _____

Address of grievant: _____

Telephone number of grievant: _____

Name, address and telephone number of alternate contact person: _____

Agency alleged to have denied access:

Department: _____

Division: _____

Bureau or office: _____

Location: _____

Incident or barrier: _____

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 4A:1-5.4.

4A:1-5.8 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.