

CHAPTER 24

CONTROVERSIES AND DISPUTES

Authority

N.J.S.A. 18A:4-15, 18A:6-9, 18A:6-10 et seq., 18A:14-63.1 et seq.,
18A:29-14 and 18A:60-1.

Source and Effective Date

R.1991 d.57, effective January 11, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Chapter Expiration Date

Pursuant to Executive Order No. 22(1994), Chapter 24, Controversies and Disputes, expires on July 11, 1997. See: 26 N.J.R. 3783(a) and 3942(a).

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969. Revisions to this chapter became effective August 20, 1973 as R.1973 d.232. See: 5 N.J.R. 332(a). Further amendments became effective September 18, 1973 as R.1973 d.266. See: 5 N.J.R. 332(b). Further revisions became effective October 6, 1976 as R.1976 d.308. See: 8 N.J.R. 101(d), 8 N.J.R. 505(b). Further revisions became effective July 9, 1981 as R.1981 d.265. See: 13 N.J.R. 190(a), 13 N.J.R. 397(b), 13 N.J.R. 481(a). This chapter was readopted pursuant to Executive Order 66(1978) effective April 10, 1986, with amendments effective May 5, 1986 as R.1986 d.157. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a). Chapter 24 was readopted pursuant to Executive Order No. 66(1978) by R.1991 d.57, effective January 11, 1991. See: Source and Effective Date. See section levels for further amendments.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 6:24-1.1 Definitions
- 6:24-1.2 Filing and service of petition
- 6:24-1.3 Format of petition
- 6:24-1.4 Filing and service of answer
- 6:24-1.5 Interim relief and/or stay
- 6:24-1.6 Amendment of petition and answer
- 6:24-1.7 Permission to intervene
- 6:24-1.8 Appearance pro se
- 6:24-1.9 Dismissal of petition
- 6:24-1.10 Hearing
- 6:24-1.11 Oaths
- 6:24-1.12 Subpoenas
- 6:24-1.13 Summary judgment
- 6:24-1.14 Written decision
- 6:24-1.15 Relaxing of rules
- 6:24-1.16 Awarding of interest

SUBCHAPTER 2. DECLARATORY RULINGS

- 6:24-2.1 Petition for declaratory rulings
- 6:24-2.2 Format of petition for declaratory rulings
- 6:24-2.3 Dissemination

SUBCHAPTER 3. ORDER TO SHOW CAUSE

- 6:24-3.1 Commissioner's order to show cause

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

- 6:24-4.1 Withholding salary increment

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

- 6:24-5.1 Filing of written charges and certificate of determination
- 6:24-5.2 Format of certificate of determination
- 6:24-5.3 Filing and service of answer to written charges
- 6:24-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education

SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

- 6:24-6.1 Request for recount or investigation
- 6:24-6.2 Cost of recounts
- 6:24-6.3 Subpoenas
- 6:24-6.4 Continuation of recheck
- 6:24-6.5 Finding of error/relief

SUBCHAPTER 7. BUDGET APPEAL RULES

- 6:24-7.1 Authority
- 6:24-7.2 Process for certifying the amount of tax levy
- 6:24-7.3 Dispute resolution
- 6:24-7.4 Time for filing petition
- 6:24-7.5 Format and documentation of petition
- 6:24-7.6 Filing and service of answer
- 6:24-7.7 Documentation of answer
- 6:24-7.8 Commissioner's review and decisions
- 6:24-7.9 through 6:24-7.12 (Reserved)

SUBCHAPTER 1. GENERAL PROVISIONS

6:24-1.1 Definitions

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

"ALJ" means an administrative law judge from the Office of Administrative Law.

"Commissioner" as used in these rules, unless a different meaning appears from the context, shall mean the Commissioner of Education or his or her designee.

"Interested person(s)" means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.

"OAL" means the Office of Administrative Law.

"Proof of service" means the provision of proof of the delivery of a paper by mail or in person to a party, person or entity to whom papers are required to be transmitted.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added definitions "ALJ" and "OAL" and revised "Commissioner" and "Interested persons".

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added definition of "proof of service".

Case Notes

Part-time tenured teacher improperly denied compensation not entitled to prejudgment interest against Board of Education. *Bassett v. Board of Educ. of Borough of Oakland, Bergen County*, 223 N.J.Super. 136, 538 A.2d 395 (A.D.1988).

State board's guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void. *Bd. of Ed., Plainfield, Union Cty. v. Cooperman*, 209 N.J.Super. 174, 507 A.2d 253 (App.Div.1986) certification granted 104 N.J. 448, 517 A.2d 436, affirmed as modified 105 N.J. 587, 523 A.2d 655.

Teachers associations have standing to contest awarding of service contract. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

6:24-1.2 Filing and service of petition

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner then shall file proof of service and the original and two copies of the petition with the Commissioner c/o the Director of the Bureau of Controversies and Disputes, New Jersey Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

(b) Proof of service shall be in the form of one of the following:

1. An acknowledgement of service signed by the attorney for the respondent or signed and acknowledged by the respondent or its agent;

2. A sworn affidavit of the person making service;
3. A certificate of service signed by the attorney making service; or
4. A receipt of certified mailing.

(c) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

(d) When the State of New Jersey Department of Education or one of its agents is named as a party, proof of service to the Attorney General of the State of New Jersey is required.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted old text and substituted new.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Amended to provide for the filing of two copies of a petition in order to conform to OAL rules which require the transmittal of two copies of any petition; described what documentation may prove that service has been accomplished and when there must be proof of service to Attorney General.

Law Review and Journal Commentaries

Education—Limitation of Actions—Tenure. *Judith Nallin*, 136 N.J.L.J. 81 (1994).

Education—Public Employees—Teachers. *Steven P. Bann*, 133 N.J.L.J. 65 (1993).

Case Notes

Due process rights of assistant superintendent terminated were not violated by regulation containing 90-day limitation of repose on school law dispute. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Right to reemployment by former assistant superintendent terminated as part of reduction in force was not exempt from 90-day limitation for commencing school law disputes. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

"Adequate notice" which commences running of 90-day limitation on school law disputes is that sufficient to inform individual of some fact that communicating party has duty to communicate. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Informal notice that two positions had been filled triggered 90-day period for commencing action to assert tenure rights. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

School board was not equitably estopped from asserting 90-day limitations by its failures. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

No enlargement or relaxation of 90-day limitation period for asserting tenure claim necessary where petitions were not timely filed after receiving notice. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Delegation of power to promulgate rule provided adequate standards. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Delegation of power to establish rules relating to hearing of controversies authorized creation of time limits. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Ninety-day limitation for initiating controversy before commissioner of schools was enforceable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitation period for initiating controversy before commissioner of schools was not inapplicable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitations period commenced no later than receipt of letter advising former superintendent of appointments of other persons. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Former superintendent was not entitled to discretionary waiver of limitations period. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Requirements for adequate notice to commence running of time to appeal to Commissioner. *Stockton v. Bd. of Ed., Trenton, Mercer Cty.*, 210 N.J.Super. 150, 509 A.2d 264 (App.Div.1986).

Petition for salary increment for time spent on sabbatical denied as filed beyond 90 day limit. *North Plainfield Education Assn. v. Bd. of Ed., North Plainfield Boro., Somerset Cty.*, 96 N.J. 587, 476 A.2d 1245 (1984).

Arbitration proceedings do not alter filing time requirement. *Riely v. Hunterdon Central High School Bd. of Ed.*, 173 N.J.Super. 109, 413 A.2d 628 (App.Div.1980).

Petitioner entitled to an evidentiary hearing on question of whether his resignation was involuntary. *Brunnquell v. Bd. of Educ. of Scotch Plains-Fanwood*, 11 N.J.A.R. 499 (1987).

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit. *Bergenfield Education Assn. v. Bd. of Ed., Bergenfield Boro., Bergen Cty.*, 6 N.J.A.R. 150 (1980) remanded per curiam Docket No. A-2615-81 (App.Div.1983).

Petition for sick leave benefits filed out of time not entitled to discretionary review under former N.J.A.C. 6:24-1.19. *Scotch Plains-Fanwood Assn. of School Aides v. Bd. of Ed., Scotch Plains-Fanwood Regional School District, Union Cty.*, 5 N.J.A.R. 175 (1980).

Petition for pre-1979 sick leave benefits filed out of time. *Scotch Plains-Fanwood Assn. of School Aides v. Bd. of Ed., Scotch Plains-Fanwood Regional School District, Union Cty.*, 5 N.J.A.R. 175 (1980).

Petitioner's claim of wrongful termination of health insurance benefits not barred by 90 day filing limit. *Janus v. Bd. of Ed., Maywood Boro., Bergen Cty.*, 4 N.J.A.R. 105 (1982).

Claim barred by failure to file petition within 90 days after notice of termination. *Moreland v. Passaic Bd. of Ed.*, 3 N.J.A.R. 276 (1980).

Claim barred as filed beyond 90 day limit. *Scelba v. Bd. of Ed., Town of Montclair, Essex Cty.*, 2 N.J.A.R. 70 (1981); 3 N.J.A.R. 136 (1981).

Tolling of filing time. *Shokey v. Bd. of Ed., Cinnaminson Twp., Burlington Cty.*, 1978 S.L.D. 919, 1979 S.L.D. 869.

Prospective application of rule. *Smith v. Bd. of Ed., New Brunswick, Middlesex Cty.*, 1978 S.L.D. 214.

6:24-1.3 Format of petition

(a) The petition must include the name and address of each petitioner, the name and address of or a description sufficient to identify each party respondent, and a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws, and must be verified by oath. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen and should be presented in substantially the following form:

(NAME OF PETITIONER(S)), : BEFORE THE COMMISSIONER
PETITIONER(S), : OF EDUCATION OF NEW JERSEY

V.

(NAME OF RESPONDENT(S)), : PETITION
RESPONDENT(S), :

Petitioner, _____ residing at _____ hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address (or other identification) is _____, pursuant to the authority of the commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

1. (Here set forth in appropriate paragraphs the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner requests that (here set forth prayer for the relief desired).

Signature of petitioner or
his or her attorney

Date _____

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

(Signature)

Sworn and subscribed to before me this
_____ day of _____, 19____

(Signature) _____

(b) Any party to a controversy or dispute before the Commissioner, who is a party to another action before any other administrative agency, arbitration proceeding or court involving the same or similar issue of fact or law, shall indicate the existence of such action or complaint within the petition of appeal or the answer to the Commissioner, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the judgment of the Commissioner and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

(c) Whenever such duplicate filing is discovered, and after the filing of the answer by the respondent, the case will be transmitted to the OAL for initial determination of which agency, if any, has the predominant interest in the outcome of the case.

As amended, R.1981 d.265, effective July 9, 1981.
See: 13 N.J.R. 190(a), 13 N.J.R. 397(b), 13 N.J.R. 481(a).

(a) and (b) added; existing text designated as (c).

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Recodified (c) to (a); (a) and (b) to (b) and (c).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes only.

6:24-1.4 Filing and service of answer

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, which shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. Upon written application by a party the Commissioner may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.

(b) Respondent(s) may not generally deny all the allegations, but shall make specific denials which meet the substance of designated allegations or paragraphs of the complaint.

(c) The Commissioner shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original and two copies of the answer shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Required the filing of two copies to conform to OAL rules and at (e) provided notice to respondents that failure to answer after a second notice shall result in notification that further failure to respond within 10 days will result in the Commissioner rendering summary decision.

6:24-1.5 Interim relief and/or stay

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include, by way of separate motion, an application for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

(b) Where a motion for a stay or emergent relief is filed, it shall be accompanied by a letter memorandum or brief which shall address the standard to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982).

(c) Any party opposing such an application shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6:24-1.4; however, upon review, the Commissioner may:

1. Act upon such application prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard on that application;
2. Act upon such application upon receipt of the answer; or
3. Transmit the application to OAL for immediate hearing on the motion.

(d) The Commissioner may decide such application prior to any transmittal of the matter to the OAL for hearing. After transmittal to OAL, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-12.6.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Amended to clarify that motions for stays of action or the granting of emergent relief may be directed at parties other than boards of education and that such requested action should be by way of a separate motion; provided that a motion for stay or emergent relief must be accompanied by a letter memorandum or brief addressing the standard for such relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982) and provided that the Commissioner may decide a motion for a stay prior to receipt of an answer, after the filing of an answer or transmit the matter to OAL for an immediate hearing on the motion.

6:24-1.6 Amendment of petition and answer

Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend his or her petition, and any respondent may amend his or her answer, at any time and in any manner which the Commissioner deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-6.2.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic and change of N.J.A.C. cite.

6:24-1.7 Permission to intervene

Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the Commissioner. Upon transmittal, requests should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-16.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Old text deleted and new text inserted.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic and change of N.J.A.C. cite.

Case Notes

Class action certification denied as not provided for in regulations. *Lukas v. Dept. of Human Services*, 5 N.J.A.R. 81 (1982), affirmed in part, reversed in part and remanded per curiam Dkt. No. A-5850-82 (App.Div.1984), appeal decided 103 N.J. 126, 510 A.2d 1123.

Standing of exclusive representative. *Winston v. Bd. of Ed., South Plainfield Boro.*, 125 N.J.Super. 131, 309 A.2d 89 (App.Div.1973), affirmed 64 N.J. 582, 319 A.2d 226 (1974).

Discretionary authority. *Jones v. Bd. of Ed., Leonia Boro., Bergen Cty.*, 1974 S.L.D. 293, 1974 S.L.D. 298.

Criteria explained. *Kolbeck v. State Bd. of Ed.*, 1973 S.L.D. 770.

Party standing, intervention, participation and status. *Kolbeck v. State Bd. of Ed.*, 1973 S.L.D. 770.

6:24-1.8 Appearance pro se

Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State or by such persons as set forth in N.J.A.C. 1:1-5.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Added: (See N.J.A.C. 1:1-1.3.)
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic and change of N.J.A.C. cite.

6:24-1.9 Dismissal of petition

At any time after the receipt of the answer and prior to transmittal of the pleadings to the OAL, the Commissioner, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, failure to prosecute or other good reason.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Recodified and amended from 1.10. The original section 1.9 was "Conference of counsel" and was repealed.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic changes.

Case Notes

Dismissal of petition due to delay and failure to comply with conference requirements. *Mangieri v. Bd. of Ed., Carteret Boro., Middlesex Cty.*, 1974 S.L.D. 644, 1975 S.L.D. 1100.

Written submissions and pre-hearing conference. *Bd. of Ed., Haledon Boro v. Mayor and Council, Haledon Boro., Passaic Cty.*, 1974 S.L.D. 712.

6:24-1.10 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the case directly and individually or transmit the matter for hearing before the OAL. Should the Commissioner retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-13.1.)

(b) Upon transmittal to the OAL, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the Commissioner or the ALJ, whoever is hearing the case.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Old text deleted and new text substituted.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Permitted the designation of an Assistant Commissioner to hear and decide the case.

Case Notes

Petitioner is entitled to evidentiary hearing on question of whether state of mind was such as to render resignation from position involuntary, warranting relaxation of 90-day time-bar. *Brunnquell v. Bd. of Educ. of Scotch Plains-Fanwood*, 11 N.J.A.R. 499 (1987).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.11. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.19. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

6:24-1.11 Oaths

The Commissioner or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Added text "or the ALJ, whoever is hearing the case,".
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Upper case titles and deleted N.J.A.C. cite.

6:24-1.12 Subpoenas

Subpoenas requiring the appearance of persons or the production of documents may be issued at the discretion of the Commissioner or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-11.1.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted text "Any witnesses summoned . . . evidence is requested."

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Application of former regulation to class action. *Rivera v. Bd. of Ed., Perth Amboy, Middlesex Cty.*, 1974 S.L.D. 226.

6:24-1.13 Summary judgment

(a) Should the Commissioner determine to decide a motion for summary judgment prior to transmission to OAL such motion shall be subject to the following process:

1. If a statement of the material facts has been agreed upon by the parties and the Commissioner, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval, or at the direction, of the Commissioner, or if for any other reason there are no issues of fact to be heard, the Commissioner shall require all parties to submit briefs on the matter. Such briefs shall be submitted within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. The Commissioner shall thereupon determine the matter on the basis of the total record before him or her.

2. At any time prior to transmittal to the OAL any party may move for summary judgment, which motion shall be decided by the Commissioner on the basis of conference stipulations, affidavits and briefs. The parties must submit said affidavits and briefs within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. Applications for summary judgment made after transmittal to the OAL shall be subject to the provision of N.J.A.C. 1:1-12.5.

3. Unless otherwise ordered by the Commissioner, there shall be no oral argument in connection with a summary judgment action. If the Commissioner grants oral argument, it shall be limited to 30 minutes for each party and shall not include testimony of witnesses.

As amended, R.1973 d.232, effective August 10, 1973.

See: 5 N.J.R. 332(a).

As amended, R.1973 d.266, effective September 18, 1973.

See: 5 N.J.R. 332(b).

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-1.15 with stylistic changes.

N.J.A.C. 6:24-1.13 was formerly entitled "Evidence" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Old text deleted and new substituted.

Repealed by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Admissibility of documentary evidence under former N.J.A.C. 6:24-1.11. *Bd. of Ed., Oakland Boro. v. Mayor and Council, Oakland Boro., Bergen Cty.*, 1974 S.L.D. 1114.

6:24-1.14 Written decision

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a district board of education employee or employees of the Departments of Human Services, Corrections or Education serving under tenure, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order pursuant to the provisions of N.J.A.C. 1:1-18.6.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education pursuant to N.J.A.C. 6:2-1; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by either the Commissioner or State Board pursuant to N.J.A.C. 6:2-2.2.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted (b)-(e).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-1.16, new (b) added.

N.J.A.C. 6:24-1.14 was formerly rules entitled "Stenographic transcript" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted "either party may . . . such stenographic transcript."

Repealed by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

6:24-1.15 Relaxing of rules

The rules herein contained shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of, the Commissioner in connection with the determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the Commissioner, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "or her".

Recodified from N.J.A.C. 6:24-1.17, R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Discretionary waiver of limitations periods was not appropriate where petition was not filed in timely manner. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Grant of extended sick leave within school board's discretion; no vested rights arise from such discretionary action. *Adell v. Bd. of Ed., Fair Lawn Boro., Bergen Cty.*, 2 N.J.A.R. 327 (1980).

6:24-1.16 Awarding of interest

(a) The Commissioner pursuant to the criteria herein may award both pre-judgment and/or post-judgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

(b) "Interest" is defined as follows:

1. Pre-judgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

2. Post-judgment interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. Pre-judgment interest shall be awarded by the Commissioner when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. Post-judgment interest shall be awarded when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) Rate of interest shall be awarded as follows:

1. Pre-judgment interest shall be awarded based upon the average rate of interest earned on investments by the party responsible for such payment during the period of time in which the monies awarded were illegally detained.

2. Post-judgment interest shall be awarded based upon the prevailing rate of interest established by court rules at the time that the right to the monetary claim was determined. (See New Jersey Court Rules, R. 4:42-11(a).)

New Rule R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-1.18, stylistic changes.

Case Notes

Sufficiency of notice of required teacher's physical and mental examination (citing former regulation). *Hoffman v. Jannarone*, 401 F.Supp. 1095 (D.N.J.1975), affirmed in part, reversed in part and remanded 532 F.2d 746 (3rd Cir.1976).

Prejudgment interest was not required absent deliberate violation of compensation statute, bad faith or other improper motive. *Bassett v. Board of Educ. of Borough of Oakland, Bergen County*, 223 N.J.Super. 136, 538 A.2d 395 (A.D.1988).

Exception to decision filed under former N.J.A.C. 6:24-1.17 to correct inadvertent omission of teacher's certification from record. *Blue v. Bd. of Ed., Jersey City*, 2 N.J.A.R. 206 (1980).

SUBCHAPTER 2. DECLARATORY RULINGS

6:24-2.1 Petition for declaratory rulings

Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the Commissioner. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the Commissioner. If upon receipt and review of the answer such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "upon receipt and review of the answer."

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes only.

Case Notes

Failure to raise affirmative defense of non-compliance with petition filing deadline; tolling of filing period. *Fischbach v. Bd. of Ed., North Bergen*, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1984).

Declaratory judgment denied regarding seniority standards. *Howley v. Ewing Twp. Bd. of Ed.*, 6 N.J.A.R. 509 (1982).

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit and possible justification for relaxation of time limit. *Bergenfield Education Assn. v. Bd. of Ed., Bergenfield Boro.*, 6 N.J.A.R. 150 (1980), remanded per curiam Docket No. A-2615-81 (App.Div.1983).

Teachers associations have standing to contest awarding of service contract as their organizational rights and relationships will be affected by outcome of proceedings. *New Jersey Education Assn. v. Essex Cty. Educational Services Commissions*, 5 N.J.A.R. 29 (1981).

Administrators association has standing to seek declaratory ruling on evaluation deadline issue even though not a party to contract negotiations. *Willingboro Administrators Assn. v. Willingboro Education Assn.*, 1 N.J.A.R. 327 (1980).

6:24-2.2 Format of petition for declaratory rulings

(a) The format of the petition for declaratory rulings follows:

CAPTION

: BEFORE THE COMMISSIONER OF
: EDUCATION OF NEW JERSEY
:
: PETITION FOR DECLARATORY
: JUDGMENT

Petitioner, _____, residing at _____ hereby requests the Commissioner to render a declaratory judgment concerning the application of (N.J.S.A. 18A:_____, N.J.A.C. 6:_____) to the controversy which has arisen between petitioner and respondent who resides at _____ by reason of: _____

1. (Here set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of _____ and determine and declare _____

Signature of petitioner or
his or her attorney

Date: _____

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

(Signature)

Sworn and subscribed to before me this
_____ day of _____, 19____

(Signature)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted slash and substituted or.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Reformatting.

6:24-2.3 Dissemination

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory judgment through the county superintendents of schools.

New Rule, R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

SUBCHAPTER 3. ORDER TO SHOW CAUSE

6:24-3.1 Commissioner's order to show cause

(a) If in the course of supervising the schools, and following investigation, the Commissioner should become aware of violation(s) of the school laws in school districts which if true would entitle him or her to impose a sanction on his or her own initiative, he or she may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing and, where authorized by law, the right to a contested case hearing is independent of and in addition to this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2);
3. Withholding salaries of:
 - i. A county superintendent (N.J.S.A. 18A:7-4); and

ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon him or her until such time as he or she complies;

4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);

5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13).

(b) Submission by parties of orders to show cause seeking enforcement of litigants' rights shall not be deemed appropriate. Such actions are to be initiated by way of petition accompanied by motion for emergent relief pursuant to N.J.A.C. 6:24-1.2 and 6:24-1.5.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added new (b); provision prohibiting orders to show cause except by petition accompanied by motion.

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

6:24-4.1 Withholding salary increment

Where a district board of education acts to withhold a teacher's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14 as modified by N.J.S.A. 34:13A-1, the teacher may file a formal petition of appeal for a hearing according to the procedures outlined in this chapter.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted old text and inserted new.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added "based upon teaching performance" ...; added cite to modified statute.

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

6:24-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred against an employee of a district board of education pursuant to the Tenure Employees' Hearing Act which are to be brought before the Commissioner, N.J.A.C. 6:24-1.2 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education shall file the written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be filed in writing with the secretary of the district board of education, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee within three working days of the date they were filed with the secretary of the district board. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of respondent's written statement of evidence under oath, or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary. (See N.J.S.A. 18A:6-11.)

5. The district board of education shall forthwith notify in writing the affected employee against whom the charge has been made of its determination, in person or by certified mail to the last known address of the employee.

6. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charge and the required certificate of determination with the Commissioner together with proof of service upon the employee.

7. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency must be filed with the secretary of the district board of education along with a statement of evidence in support thereof executed under oath.

2. The district board of education, through its board secretary, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected

employee within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90 day period, or any longer period provided by the board, it intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6:3-1.21(f) to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90 day period for improvement, or such longer period as may be provided by the district board of education, the administrator or administrators responsible for bringing such charges to the attention of the board shall notify the board in writing of what charges, if any, have not been corrected.

6. The district board of education upon receipt of the written notification shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90 day period, or such longer period as may be provided by the board, to the notification of the employee by the board shall not exceed 30 calendar days.

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

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary. (See N.J.S.A. 18A:6-11.)

9. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

10. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Added (b)-(c).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

Case Notes

Tolling of time to determine probable cause for dismissing tenured teacher during response time and for day of service. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Adequate certification of charges against tenured employee where document containing jurat was signed four days before secretary signed certification. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

6:24-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary:

1. That the district board of education has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education;

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

Issue of form over substance in remedying procedural defect. In re: *Tenure Hearing of Kizer*, 1974 S.L.D. 505.

6:24-5.3 Filing and service of answer to written charges

The filing and service of an answer to written charges pursuant to the Tenure Employees' Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

6:24-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6:24-5.1(b) except as herein noted. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections or by an individual within the Department of Education designated by the Commissioner of Education. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b).

(b) The Director of Employee Relations, the Director of the Office of Educational Services or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of his/her determination in writing in the manner prescribed by N.J.A.C. 6:24-5.1(b)5.

(c) In the event that the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then he or she shall file such charges and the required certification with the Commissioner of Education together with proof of service upon the employee.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6:24-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising in the Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and

3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) The filing and service of an answer to written charges pursuant to the Tenure Employees Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

New Rule, R.1989 d.553, effective November 6, 1989.
See: 21 N.J.R. 1939(b), 21 N.J.R. 3461(a).

SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

6:24-6.1 Request for recount or investigation

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the Commissioner and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the Commissioner.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the Commissioner or an ALJ.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Old (b)-(d) repealed and new (b)-(c) substituted.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic changes only.

6:24-6.2 Cost of recounts

Cost of recounts shall be in compliance with N.J.S.A. 18A:14-63.6 and 63.7.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Old text deleted and new substituted.

6:24-6.3 Subpoenas

In any school election recount initiated pursuant to this subchapter, the Commissioner shall have the power to subpoena necessary witnesses to testify and to produce books, papers, documents and other objects designated in the subpoena.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Substituted "subchapter" for "act".
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic changes only.

6:24-6.4 Continuation of recheck

In districts where election machines have been used, the Commissioner shall ascertain from the party or parties applying for a recount which voting machines shall be rechecked. In the event that it shall appear during the course of the recheck that there has been a sufficient change in the tally of the votes cast to alter the result of the election, any candidate who appears then to have been defeated, or, in the event of a question, proposition or referendum, the parties in interest who may be affected adversely, may, within five days of such changed result, apply to the Commissioner to continue the recheck on his or her behalf upon the same terms and conditions under which the original recheck was held.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Added text "or her".
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic changes only.

6:24-6.5 Finding of error/relief

Where the Commissioner finds as a result of a recount or an inquiry that an error has occurred which alters the result of the election or that irregularities have occurred sufficient to influence the outcome, he or she shall order such relief as is appropriate.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Substantially amended.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Stylistic changes only.

SUBCHAPTER 7. BUDGET APPEAL RULES

6:24-7.1 Authority

Unless otherwise expressly noted, all provisions of this subchapter governing a petition by a district board of education appealing a board of school estimate's or a governing body's or bodies' decision to reduce a school budget have been prescribed by the Commissioner and approved by the State Board of Education pursuant to N.J.S.A. 18A:6-9, 18A:22-14, 18A:22-17, 18A:22-37, *Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick*, 48 N.J. 94 (1966) and *Board of Education of Deptford Township v. Mayor and Council of Deptford Township*, 116 N.J. 305 (1989).

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted "school board" and substituted "district board of education".

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added reference to board of school estimates and cite to statute and cases.

Administrative change.

See: 23 N.J.R. 1410(c).

6:24-7.2 Process for certifying the amount of tax levy

(a) In type I districts or type II districts having a board of school estimate, the following process for certifying the amount of tax levy necessary for school purposes shall be implemented.

1. On or before March 18, the board of school estimate shall fix and determine the amount of money necessary to be appropriated for use of the public schools for the ensuing school year pursuant to the provisions of N.J.S.A. 18A:22-14.

2. If the amount so appropriated shall be less than the amount proposed to the board of school estimate by the district board of education, the board of school estimate shall present to the district board of education, the municipal governing body or bodies and the county superintendent a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

3. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the board of school estimate has reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

4. The governing body of each municipality comprising a type I district or a type II district having a board of school estimate shall appropriate on or before April 28 the amount certified by the board of school estimate.

5. Should a municipal governing body or bodies certify an amount less than that appropriated by the board of school estimate pursuant to N.J.S.A. 18A:22-17, it or they shall provide the district board of education and the county superintendent those line items wherein reductions were effectuated and the supporting reasons for such reductions. The governing body or bodies shall further certify that the amount appropriated for school purposes is sufficient to ensure the provision of a thorough and efficient system of education.

(b) In type II districts the following process for certifying the amount of tax levy necessary for school purposes shall be implemented upon rejection of either or both the current expense and capital outlay budget by the voters of the district.

1. If voters reject the tax levy for either or both capital outlay and current expense at the annual school election, the district board of education shall supply to the governing body or bodies within two days from the defeat of the referendum the following information:

i. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters);

ii. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

iii. Pupil enrollment by grade for the district as of June 30, preceding; October 15 preceding; and that projected for October of the next school year;

iv. Salary schedules for all employees;

v. Number of schools and classrooms in each;

vi. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

vii. Advertised budget for the next school year; and

viii. If a capital budget is in dispute, a substantiation for each proposed capital project.

2. The governing body or bodies of the municipality or municipalities involved shall as soon as immediately practicable, consistent with N.J.S.A. 18A:22-37, consult with the district board of education for purposes of arriving at a tax levy sufficient to assure the provision of a thorough and efficient system of education.

3. By April 28th, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated sufficient to provide a thorough and efficient system of education.

4. If the amount so appropriated shall be less than that which was submitted to the voters by the district board of education, the municipal governing body or bodies shall present to the board of education and the county superintendent of schools a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

5. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the governing body or bodies have reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

New Rule, R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Administrative change to (a)2 and 5.

See: 23 N.J.R. 1410(c).

6:24-7.3 Dispute resolution

(a) Upon receipt of the reduced line item budget and the supporting reasons for such reductions, the county superintendent shall schedule a conference which shall be attended by representatives of the district board of education and representatives of the municipal governing body or bodies for purposes of reaching agreement on a tax levy to be certified sufficient to provide a thorough and efficient system of education. The county superintendent shall not be precluded from initiating actions designed to assist the parties in resolving budgetary issues prior to formal action by the governing body or bodies.

(b) At said conference it shall be the responsibility of the county superintendent to review with the parties their respective positions relative to the line item reductions recommended by the governing body or bodies and/or the board of school estimate.

(c) If an agreement is reached between the parties at the conference to accept the reductions as certified and such agreement is approved by the county superintendent, no further action shall be required unless the district board of education has submitted a notice of intent to appeal or a petition of appeal in which case the parties shall submit a consent order to the Commissioner no later than 10 days from the conclusion of the conference.

(d) Should no agreement be reached settling the case at the conference, any agreement reached as to stipulation of facts or narrowing of differences shall be submitted to the Commissioner.

(e) Any agreement concluded between the district board of education and the governing body or bodies which results in a lower budget than approved by the county superintendent pursuant to N.J.S.A. 18A:7D-27 shall be submitted to the county superintendent for his or her approval in order to ensure that such reduction does not impair the district's ability to provide a thorough and efficient system of education.

(f) Should the county superintendent, acting for the Commissioner, determine that the budget reduction agreed upon results in providing an amount less than that which is necessary to ensure a thorough and efficient system of education, the Commissioner shall issue an order to show cause directing the district board of education and governing body or bodies to show cause why the amount agreed upon is sufficient to ensure a thorough and efficient system of education.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

6:24-7.4 Time for filing petition

(a) Within 20 days after the certification by either the board of school estimate or the governing body in a type I district or the governing body or bodies in a type II district with a board of school estimate and within 15 days of the certification by the governing body or bodies in a type II district, the district board of education shall notify the governing body or bodies of its intent to appeal the reduction of the certification to the Commissioner of Education.

(b) A petition by a district board of education appealing the decision of its board of school estimate or its governing body or bodies to certify a tax levy less than that deemed necessary by the district board to insure a thorough and efficient educational program shall be taken no later than 30 days following the governing body's or bodies' decision.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted "school board" and substituted "district board of education".

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-7.2 and added timelines at new (a).

Case Notes

Duty of local boards to appeal municipal budgetary reductions that threaten deprivation of necessary staff and facilities. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

6:24-7.5 Format and documentation of petition

(a) The format of the petition shall be the same as that set forth in N.J.A.C. 6:24-1.3.

(b) The district board of education shall attach to its petition a copy of a resolution adopted by a majority of its members authorizing the filing of such a petition and setting forth its reasons for doing so.

(c) The district board of education shall attach to its petition a copy of the following form:

Proposed tax levy adopted by the district board of education	Amount of tax levy certified by governing body or bodies
Current expense \$_____	Current expense \$_____
Capital outlay \$_____	Capital outlay \$_____
Amount of reduction in the budget by governing body or bodies	
	Current expense \$_____
	Capital outlay \$_____
Amount of reduction in dispute before the Commissioner	
	Current expense \$_____
	Capital outlay \$_____

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Form was substantially amended.

Recodified from N.J.A.C. 6:24-7.3 by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

Case Notes

Commissioner of education's review of budgetary reductions not precluded on failure of municipal governing body to file statement of reasons. Board of Educ. of Deptford Tp. v. Mayor and Council of Deptford Tp., 225 N.J.Super. 76, 541 A.2d 1080 (A.D.1988), certification granted 113 N.J. 333, 550 A.2d 449, judgment modified, affirmed and remanded 116 N.J. 305, 561 A.2d 589.

6:24-7.6 Filing and service of answer

The governing body or bodies shall file an answer with the Commissioner not later than 15 days after receiving the district board of education's petition.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Amended "board's" to read "district board of education's".

Recodified from N.J.A.C. 6:24-7.4 by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

N.J.A.C. 6:24-7.6 was formerly entitled "Conference of parties with county superintendent" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

(e) added.

Repealed by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

6:24-7.7 Documentation of answer

(a) In conjunction with its answer, the governing body or bodies shall forward to the Commissioner a copy of the information which was given to the district board of education and the county superintendent at the time the reduction was made including the following documents:

1. A copy of the current expense line item budget detailing specific reductions that were effectuated by the governing body or bodies along with the statement of supporting reasons for each of the line item reductions;

2. A copy of the capital outlay budget detailing specific reductions that were effectuated along with a statement of supporting reasons for each of the line item reductions; and

3. Accompanying the foregoing shall be a certification stating the date on which the documents were originally given to the district board of education.

Recodified from N.J.A.C. 6:24-7.5, repealed and replaced by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

N.J.A.C. 6:24-7.7 was formerly entitled "Hearings" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Repealed old 7.7 and recodified 7.8 with substantial amendments.

Repealed by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Administrative change to (a)1.

See: 23 N.J.R. 1410(c).

Case Notes

Statement of reasons to accompany reductions of school budget when municipality certifies reductions to county board of taxation. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Statement of reasons following rejection of proposed budget must be provided for any line-item reduction. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

6:24-7.8 Commissioner's review and decisions

(a) Within 20 days from the filing of the governing body's or bodies' answer to the district board of education's Petition of Appeal, the following submissions shall be filed with the Commissioner:

1. The governing body or bodies shall set forth its or their position in written form detailing by individual line item its or their reasons for effectuating the economies which represent the subject matter of the dispute. In so doing, the governing body or bodies shall provide sufficient detail based upon that data provided to it or them by the district board of education at the time of the budget defeat. Should the governing body or bodies fail to provide the district board of education with the specific line item reductions and the reasons for same, it or they shall bear the burden of demonstrating that its or their actions were not arbitrary or capricious.

2. The district board of education shall set forth its position in written form detailing by individual line item why the amount by which the governing body or bodies reduced the line item is necessary to meet the requirement of providing a thorough and efficient system of education.

3. Each party may, in addition to its written position, submit sworn affidavits from individuals whose input may be relevant to assisting the Commissioner in rendering a determination.

4. Within 10 days from receipt of the written position of the opposing party, each party may file responses to such positions.

5. Within five days of the receipt of the responses to each other's written positions or the expiration of the time period for filing responses, each party may submit to the Commissioner a final summation of its position.

6. Upon the receipt of the summaries submitted by the parties or the expiration of the time period for filing, the Commissioner shall review the total record before him or her and render a written decision which shall be a final decision unless or until reversed upon appeal.

7. Should the Commissioner find that there are material issues of fact to be determined, he or she may conduct an evidentiary hearing or transmit the case to the OAL for a hearing on all of the disputed issues that remain undecided.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Stringent scope of review where voters have rejected school board's budget. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Commissioner may not lightly override a municipality's political concerns in reviewing school budget decisions. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Dismissal of municipality's answer too drastic a remedy for failure to timely file statement of reasons of budgetary reduction. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Decision on budget proposal should be based on constitutional standards and not merely on procedural grounds. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

6:24-7.9 through 6:24-7.12 (Reserved)

Repealed by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).