

2. Examination announcements shall contain, when appropriate, general information on the eligibility requirements and use of this program.

3. Appointing authorities shall conspicuously post information about this program.

(b) The Department shall make the determination whether prior work experience may be substituted for specified education requirements.

#### Case Notes

Substitution of degrees to meet educational qualifications for testing. Gloucester Cty. Welfare v. N.J. Civ. Serv. Comm'n, 93 N.J. 384, 461 A.2d 575 (1983) (see dissenting opinion).

#### 4A:4-2.13 College Level Examination Program (CLEP)

(a) College Level Examination Program (CLEP) scores are acceptable as a substitution for college credits required for open competitive or promotional examinations. Acceptable scores are those consistent with scores accepted for credit by Thomas A. Edison College as published annually in its catalog.

(b) The following standards shall be considered:

1. Applicants may be considered eligible to take open competitive and promotional examinations by substituting a combination of education, appropriate work experience and acceptable CLEP scores;

2. Acceptable scores on the CLEP General Examination and Subject Examinations will be considered the same as college undergraduate credits;

3. Acceptable scores on the five-part CLEP General Examination may be substituted for up to 30 undergraduate college credits;

4. Where specific course work and/or a major field of study are required in the job specification or examination announcement:

i. An acceptable score on an appropriate CLEP Subject Examination may be substituted for college credit hours;

ii. An acceptable subscore on an appropriate subsection of the CLEP General Examination may be substituted for undergraduate college credit hours for the course work requirement;

5. Acceptable scores achieved on any of the CLEP Subject Examinations shall be viewed to correspond to those credits normally earned during the final two years of a four-year college curriculum;

6. Acceptable scaled scores or subscores on the CLEP General Examination shall be viewed to correspond to those credits normally earned during the first two years of a four-year college curriculum.

(c) Information about testing site locations and application procedures may be obtained from the CLEP Educational Testing Service (ETS), Princeton, New Jersey and Thomas A. Edison College, Trenton, New Jersey.

(d) Examination announcements shall contain general information on eligibility requirements and utilization of CLEP.

(e) Appointing authorities shall conspicuously post information about CLEP.

#### 4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities

(a) Otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, the Department shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional with a physical, mental or emotional affliction, injury, dysfunction, impairment or disability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Department and contain:

i. The examination's title and symbol number, or in the case of a provisional, his or her title and employer;

ii. A statement from an appointing authority utilizing the title that the individual can satisfactorily perform the duties of that title under actual conditions of service;

iii. A physician's statement with supporting medical documentation;

iv. Whether the individual has previously filed for or taken an examination for that title, the results, if any, and whether an accommodation has previously been made; and

v. Agreement to undergo any additional physical or psychological examinations that the Department deems appropriate.

(c) If reasonable accommodation can be made, the waiver request will be denied and arrangements made for such accommodation.

(d) If reasonable accommodation is not possible, the Commissioner will decide whether to grant a waiver, and if

granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised heading and revised (a).

Amended by R.1994 d.72, effective February 7, 1994.

See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

#### 4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Department of Personnel.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. Credit shall be awarded as follows:

- i. Three points for Exceptional; or
- ii. One point for Commendable.

2. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Commendable and credit shall be given for that rating.

3. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations, continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A (except in the case of an intergovernmental transfer of a police officer or a firefighter), voluntary furloughs and the following types of leaves shall not be deducted from seniority.

1. All leaves with pay including sick leave injury (SLI);

2. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and

3. In local service, leave without pay to fill elective office.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five year period immediately preceding the announced closing date.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years as of the announced closing date is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 100 percent, to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10 point maximum.

(h) The score earned by a candidate on an examination announced for more than one title area at a time shall be used for all examinations in those title areas for which the candidate files and is found eligible.

(i) A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Department of Personnel.

(j) Ties in final earned ratings shall not be broken.

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

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

(a)1 clarified; added new (d).

Amended by R.1989 d.570, effective November 6, 1989.

See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added (c)1.

Amended by R.1993 d.45, effective January 19, 1993.

See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Revised (c); redesignated existing (d) as (e); added new (d).

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Deleted (a)2; revised (d); added new (e) and (f); redesignated existing (e) to (g); added new (h).

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted new (h); and recodified (h) as (i).

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Added a new (b)3.

Amended by R.2000 d.11, effective January 3, 2000.

See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

In (c), rewrote 1, and substituted "Commendable" for "Meets Standards" following "deemed" in 2.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Rewrote the introductory paragraph of (d).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (g), added "as of the announced closing date" and increased highest possible score for examination performance from 90 percent to 100 percent; rewrote (h); added (i); recodified former (i) as (j).

#### Case Notes

Validity of excluding performance evaluations (EPEIS) from the scoring of promotional examinations when evaluating supervisors and their subordinates are candidates for same position is proper (citing former N.J.A.C. 4:1-9.5). *Honachefsky v. N.J. Civil Service Comm'n*, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

Evaluation of education and experience in excess of minimum requirements not violative of due process (citing former N.J.A.C. 4:1-9.14). *Brown v. State of New Jersey*, 115 N.J.Super. 348, 279 A.2d 872 (App.Div.1971) certification denied 59 N.J. 273, 281 A.2d 535.

#### 4A:4-2.16 Retention and inspection of examination records

(a) The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;
2. All applications;
3. The examination papers and scoring keys;
4. A description of the examination, including the date held, rating system and minimum score required, if any;
5. The list of eligibles;
6. The failure roster; and
7. Any other pertinent information.

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection.

1. Examination records listed in (a)2 above shall not be open to public inspection but may be open to inspection by an appointing authority, on condition that the appointing authority not disclose the records to outside persons, where:

- i. An application was completed by an eligible;
- ii. The eligible's name has been certified to the appointing authority for appointment; and

iii. The appointing authority requests inspection of the application due to a reasonable suspicion that the eligible has submitted inconsistent information regarding his or her qualifications for employment.

2. Examination records listed in (a)6 above shall not be open to public inspection but shall be open to inspection by the appointing authority to which the eligible list has been certified, upon request by the appointing authority and on condition that the appointing authority not disclose the records to outside persons.

3. Should an appointing authority, in violation of (b)1 or 2 above, disclose examination records with which it has been provided to outside persons, the appointing authority may be subject to sanctions in accordance with N.J.A.C. 4A:10-2.1.

4. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

Amended by R.1992 d.41, effective January 21, 1992.

See: 23 N.J.R. 2906(b), 24 N.J.R. 229(b).

Revised (a)3 and 4.

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Added (a)6, recodified former (a)6 as 7; rewrote (b).

#### 4A:4-2.17 Application processing fees

(a) A \$15.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. The Commissioner shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring and administering the examination, including the processing of any appeals or reviews associated with the examination. Receipts derived from this application fee shall be appropriated to the Department for use in developing, procuring and administering law enforcement officer and firefighter examinations, including the processing of any appeals or reviews associated with those examinations.

2. When announcements for an examination list more than one title area (such as police, sheriff, and corrections), a processing fee shall be charged for each title area selected by the applicant.

(b) The fee shall be paid by check or money order, made payable to NJDOP, which shall be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Department of Personnel, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance—a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.
2. Work First New Jersey Act—a copy of the applicant's Families First card.
3. Supplemental Security Income—a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").
2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Department of Personnel for fees refunded to applicants.

New Rule, R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted (a)1.

Amended by R.1999 d.128, effective April 19, 1999.

See: 31 N.J.R. 199(a), 31 N.J.R. 1061(a).

In (a), added "except as provided as follows" at the end of the introductory paragraph, inserted a new introductory paragraph in 1, and recodified former 1 as i; and in (d), substituted "benefits under the Work First New Jersey Act" for "Aid to Families with Dependent Children" in the introductory paragraph, and rewrote 2.

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (a), increased processing fee from \$5.00 to \$15.00; recodified (a)1i as (a)2 and rewrote the paragraph.

### SUBCHAPTER 3. ELIGIBLE LISTS

#### 4A:4-3.1 Types of eligible lists

(a) The Commissioner may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures.
2. Promotional, which shall include permanent employees who meet qualification requirements.
3. Regular reemployment, which shall include former permanent employees who resigned in good standing, retired, or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;
4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and
5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

#### 4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

Repeal and New Rule, R.1989 d.569, effective November 6, 1989.

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

Amended by R.1990 d.346, effective July 16, 1990.

See: 22 N.J.R. 1300(a), 22 N.J.R. 2143(a).

Changes made to accurately reflect N.J.S.A. 45:14B-1 et seq. concerning the licensing of psychologists.

Amended by R.1993 d.46, effective January 19, 1993.

See: 24 N.J.R. 3596(a), 25 N.J.R. 292(a).

Redesignated existing (b)-(g) as (c)-(h); added new (b).

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a)2 and (e).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Rewrote (d)1; deleted former (d)2; recodified former (d)3 as (d)2.

#### Law Review and Journal Commentaries

Public Employment—Police. Steven P. Bann, 136 N.J.L.J. No. 14, 70 (1994).

#### Case Notes

Remand was required where record did not disclose basis for agency's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Applicant found to be psychologically unfit for real estate analyst position properly removed from certified list for such position. *Cooper v. Department of Community Affairs*, 96 N.J.A.R.2d (CSV) 255.

#### 4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision or situation being appealed.

2. An appeal must be filed with the Department of Personnel as indicated on the notice advising of disqualification.

(b) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

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

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

In (a): added "and administration" and replaced "unfitness" with "disqualification" describing types of appeals.

Amended by R.1993 d.162, effective April 5, 1993.

See: 24 N.J.R. 4467(a), 25 N.J.R. 1511(b).

Revised (a); deleted existing (b); redesignated existing (c)-(d) to (b)-(c) with revisions in text.

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Deleted (a)3; deleted (b) and (c); and recodified former (b)2 as (b).

#### Case Notes

Department of Personnel did not sufficiently disclose basis for its grading decision on police sergeant's civil service examination to satisfy due process or to provide for meaningful appellate review. *Brady v. Department of Personnel*, 289 N.J.Super. 557, 674 A.2d 616 (A.D.1996).

Statements made in report of background check of police officer applicant were absolutely privileged. *Pollinger v. Loigman*, 256 N.J.Super. 257, 606 A.2d 1113 (A.D.1992).

### SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

#### 4A:4-7.1 Transfers within the same governmental jurisdiction

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate jurisdiction.

(b) If the transferred employee is concurrently appointed to a title other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 et seq., 4A:4-7.6 and 4A:4-7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) A permanent transfer shall require the consent of both organizational units, the affected employee, and the approval of the Department of Personnel.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. The consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods or for any other documented purpose which is in the best interest of the public service. All temporary transfers must be approved by the Commissioner of the Department of Personnel.

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The Commissioner may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

i. The organizational unit to which the transfer is being made;

ii. The effective date of the transfer; and

iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Commissioner of the Department of Personnel finds that a more immediate transfer is required to provide a needed service.

Public Notice: Petition for amendment.

See: 27 N.J.R. 2805(a).

Amended by R.1996 d.426, effective September 16, 1996.

See: 28 N.J.R. 2106(b), 28 N.J.R. 4223(a).

Added provisions relating to emergency transfers.

Amended by R.1997 d.411, effective October 6, 1997.

See: 29 N.J.R. 2732(b), 29 N.J.R. 4279(b).

In (a)1, added second sentence.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

#### Case Notes

Status of attorney as private plan hearing officer throughout the period in question rendered assignment of new supervisor not "transfer." *Morley v. State*, Dept. of Labor, 276 N.J.Super. 223, 647 A.2d 1312 (A.D.1994).

Scope of negotiation: transfer and reassignment provisions. In re *IFPTE Local 195 v. State*, 88 N.J. 393, 443 A.2d 187 (1982).

Improper transfer. *State v. Richford*, 161 N.J.Super. 165, 391 A.2d 531 (App.Div.1978).

Transfer requires change from one position to another of the same class—petitioner's change in position was not a transfer even though position was substantially similar (citing former N.J.A.C. 4:1-15.1 and 15.4). *State Administrative Office of the Courts v. Richford*, 161 N.J.Super. 165, 391 A.2d 531 (App.Div.1978).

Intraclass transfers. In re *Appeal of Lembo*, 151 N.J.Super. 242, 376 A.2d 971 (App.Div.1977).

Rights of employee voluntarily transferred (statutory). *Widmer v. Township of Mahwah*, 151 N.J.Super. 79, 376 A.2d 567 (App.Div.1977).

Approval from Civil Service Comm'n required prior to county board of freeholders transferring employees from classified to unclassified positions (citing former N.J.A.C. 4:1-5.4). *Bergen Cty. v. New Jersey Dep't of Civil Service*, 115 N.J.Super. 90, 278 A.2d 232 (App.Div.1971).

Transfer from classified to unclassified positions. *Bergen County v. Dept. of Civil Service of N.J.*, 115 N.J.Super. 90, 278 A.2d 232 (App.Div.1971).

#### 4A:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within 90 days of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction and the affected employee, and the approval of the Department of Personnel.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and 40A:14-122.8.

(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Department of Personnel approve the title, based on the following criteria:

i. The title(s) shall have substantially similar duties and responsibilities;



ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;

iii. There shall be no special skills, licenses, certification or registration requirements for the new title which are not also mandatory for the former title; and

iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

(e) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the priority of an open competitive list with regard to an intergovernmental transfer; N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; N.J.A.C. 4A:6-1.2, Vacation leave, 4A:6-1.3, Sick leave, and 4A:6-1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for layoff purposes; and N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

New Rule, R.2001 d.420, effective November 19, 2001.  
See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

#### 4A:4-7.2 Reassignments

A reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. See N.J.A.C. 4A:4-7.7 for appeals.

#### Case Notes

Entire controversy doctrine should not have precluded supplementary arbitration as to salary under collective negotiation agreement of police investigators with less than seven years service. *Jersey City Police Officers Benev. Ass'n v. City of Jersey City*, 257 N.J.Super. 6, 607 A.2d 1314 (A.D.1992).

Employee who was demoted and reassigned failed to establish bad faith. *Crooms v. Newark School District*, 94 N.J.A.R.2d (CSV) 73.

Pharmaceutical consultant established that appointing authority acted contrary to administrative rules regarding reassignment. *Frantz v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 372.

#### 4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocations assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to a relocation of an office or unit, or a closing or phasedown in anticipation of closing of a State operation.

1. In order to be eligible to participate in the program, an employee's new job site must be at least 25 miles from the prior job site.

2. Relocation assistance will be requested, paid and verified by the receiving appointing authority.

(b) Such assistance may consist of all or part of the following:

1. A commutation allowance applied to the round trip mileage between an employee's domicile and new job site, reduced by the normal commutation mileage between the domicile and the previous job site.

i. The allowance shall be equal to the standard State Mileage Allowance for operating a personal motor vehicle, and shall be limited to a period of six months from the effective date of the transfer.

ii. An employee who is offered fully paid car, van pooling or mass transit options shall not be eligible for a commutation allowance.

2. A one-time moving expense allowance which is to be set by the Commissioner not to exceed \$1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the job site.

ii. The move must be made within one year of the effective date of the transfer.

3. The relocation allowance which is to be set by the Commissioner not to exceed \$1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including but not limited to broker's fees and closing costs.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the new job site.

ii. The move must be made within one year of the effective date of the transfer.

(c) Relocation assistance shall be limited at the employee's option to commutation allowance under (b)1 above or the moving expense allowance and the relocation allowance under (b)2 and 3 above.

Amended by R.1989 d.569, effective November 6, 1989.  
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a): deleted "permanent", which had defined employees.  
Amended by R.1993 d.270, effective June 7, 1993.  
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).  
Revised (a).

#### 4A:4-7.4 Retention of rights

(a) An employee who is temporarily transferred shall retain promotional rights in the promotional unit scope from which he or she has transferred.

(b) An employee who is transferred in accordance with N.J.A.C. 4A:4-7.1, intergovernmentally transferred (other than an employee transferring to police officer or transferring to firefighter) in accordance with N.J.A.C. 4A:4-7.1A or is reassigned shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. In State service, an employee's rate of compensation, anniversary date and administrative leave entitlements shall be retained.

(c) An employee who is permanently transferred due to a combining of functions or operations of two or more organizational units shall retain promotional rights in the prior promotional unit scope only for promotional examinations he or she has filed for or taken.

(d) An employee who is reassigned from one promotional unit scope to another shall retain no promotional rights in the former unit.

Amended by R.2001 d.420, effective November 19, 2001.  
See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

In (b), rewrote the first sentence.  
Amended by R.2006 d.104, effective March 20, 2006.  
See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (b), substituted "(other than an employee transferring to police officer or transferring to firefighter)" for "(other than an employee in a police officer or firefighter title)."

#### Case Notes

Temporary transfers of classified personnel are subject to regulations promulgated by the Dep't of Civil Service (citing former N.J.A.C. 4:1-15.5). *Zamboni v. Stamler*, 199 N.J.Super. 378, 489 A.2d 1169 (App.Div.1985).

#### 4A:4-7.5 Transfer during a working test period

(a) An employee who is serving a working test period may only be transferred due to a transfer or combining of functions or operations, or the exercise of lateral displacement rights in the course of layoff procedures.

(b) An employee who is permanently transferred during the working test period due to a combining of functions or

operations or the exercise of lateral displacement rights shall be permitted to complete working test period in the new organizational unit.

Amended by R.1993 d.270, effective June 7, 1993.  
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).  
Revised text.

#### 4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation entitlements.

2. In State service, the employee's rate of compensation on direct movement as adjusted or workweek, work year and the employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(c) If the nature of the work, education and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, if the new title is in the competitive division, and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures shall be waived, permanent status retained, and aggregate seniority granted, if the employee has previously held the title on a permanent basis during current continuous service. See N.J.A.C. 4A:8-2.4(e).

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.



4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Commissioner.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a), (c) and (d).

#### **4A:4-7.7 Appeals**

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

#### **4A:4-7.8 Voluntary demotion**

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.