

"Rules of the OAL" means the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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".

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote "Commissioner"; in "Proof of service", added the N.J.A.C. reference.

#### Case Notes

Part-time tenured teacher improperly denied compensation was 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.

Initial Decision (2006 N.J. AGEN LEXIS 896) adopted, which concluded that township and its mayor, representing the residents and students who attended regional high school district schools, lacked standing to request the Commissioner of Education to enjoin and declare null and void the actions of respondents establishing new school attendance boundaries, especially since there was no allegation of any actual or imminent harm caused to the township or its mayor. *Township of Howell v. Bd. of Educ. of Freehold Reg'l School Dist.*, OAL Dkt. No. EDU 2427-06, Commissioner's Decision (December 6, 2006).

Petition failed to establish the "interest" required to maintain a contested case pursuant to N.J.A.C. 6A:3-1.2 since bare assertions of rule violations and generalized contentions that the disputed forms acted solely by their existence to inhibit the mutual development of individual professional improvement plans were simply not enough to establish that the petitioner education association or any of its members would be "substantially, specifically and directly affected by the outcome" of a determination by the Commissioner. *Bedminster Educ. Ass'n v. Bd. of Educ., Bedminster Twnshp.*, OAL Dkt. No. EDU 6720-05, 2006 N.J. AGEN LEXIS 571, Commissioner's Decision (June 16, 2006).

Dispute regarding proper salary credits for out-of-state graduate courses was best resolved by the grievance procedure. *River Dell Regional Board of Education v. Canal*, 93 N.J.A.R.2d (EDU) 784.

Propriety of tape recording closed executive sessions of board of education; Commissioner of Education lacked jurisdiction. *Board of Education of Township of Hamilton v. Fraleigh*, 93 N.J.A.R.2d (EDU) 538.

Parents' challenge to disciplinary action taken against unrelated child; standing. *U.K. and G.K., Parents on Behalf of Minor Child, D.K. v. Board of Education of City of Clifton*, 93 N.J.A.R.2d (EDU) 71.

Memorandum and resignation letter constituted enforceable settlement agreement. *Board of Education of Township of Clinton v. Sirotak*, 92 N.J.A.R.2d (EDU) 628.

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).

#### 6A:3-1.3 Filing and service of petition of appeal

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers (and fax numbers where available) of the petitioner and each respondent, and the original and two copies of the petition and supporting materials, if any, with the Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. In no case shall a petitioner submit materials to the Commissioner which have not been served upon each respondent.

1. Any petition filed jointly by three or more petitioners, where the petitioners are pro se, shall designate one petitioner as a representative of the group for purposes of receipt of service for answer(s), initial correspondence, pretransmittal notices and other communications prior to the agency's determination that the matter is a contested case. In subsequent proceedings, however, if petitioners are acting as a group, the group shall comply with applicable rules of the OAL regarding representation.

2. A petition on behalf of a minor shall be filed by the parent or legal guardian of the minor. Once such a petition is filed, the matter shall be subsequently identified by the initials of petitioner(s) and the child(ren).

3. A petitioner shall notify the Bureau of Controversies and Disputes of any change in address or telephone number prior to transmittal of a matter to the OAL.

(b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.

1. In the case of petitions by unsuccessful bidders challenging an award of bid by a board of education under the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.), the successful bidder shall be named as a respondent.

(c) A petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall include a copy of the ruling or settlement agreement issued by the Division of Workers' Compensation with respect to the injury underlying the claim or provide reasons why the matter constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division makes a determination of work-related injury.

(d) A petitioner claiming that his or her employment was nonrenewed for reasons that are statutorily or constitutionally proscribed shall set forth in the petition at least a minimal

factual basis for such allegation(s), consistent with New Jersey Court Rules at R. 4:5-2.

(e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department's Office of Special Education Programs (OSEP).

1. If a petition appears to raise, in addition to issues within scope of the Commissioner's authority, issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the OSEP, it will be docketed by the Bureau of Controversies and Disputes in accordance with this chapter and also forwarded to OSEP for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7, except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the matter as an education (EDU) case and the ALJ shall render an initial decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. If a petition appears solely to raise issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, it may, after notice to the parties and opportunity to be heard, be transferred to the OSEP in accordance with the provisions of N.J.A.C. 6A:3-1.10(b).

(f) Where a matter is transferred to the Commissioner by a court, it shall be the responsibility of the parties to ensure that the order of transfer, pleadings and any other pertinent papers are forwarded to the Commissioner, c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant(s) will be asked to re-submit the matter to the Commissioner in the form of a duly conformed Petition of Appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.

(g) Consistent with the provisions of N.J.A.C. 1:10A-14, where a petition, or tenure charge pursuant to N.J.A.C. 6A:3-

5, is filed in a matter involving allegations of child abuse and neglect reported to or investigated by the Division of Youth and Family Services (DYFS), the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ to whom a matter is subsequently assigned at the OAL, to protect all DYFS records and reports regarding such abuse and neglect.

1. The final agency decision in any dispute as to the confidentiality of records or reports of child abuse or neglect shall be made by DYFS in accordance with N.J.S.A. 9:6-8, 10a and N.J.A.C. 10:133G.

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

1. An acknowledgment of service signed by the attorney or the attorney's designee for each respondent or signed and acknowledged by the respondent or agent thereof, indicating the address at which each respondent was served;

2. An affidavit of the person making service, sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation, indicating the address at which each respondent was served;

3. A certification indicating the address at which each respondent was served and meeting the requirements of New Jersey Court Rules at R. 1:4-4(b); or

4. A copy of petitioner's receipt for certified mailing or delivery by messenger to each respondent. The return receipt card ("green card") is not required for proof of service by certified mailing.

(i) 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. This rule shall not apply in instances where a specific statute, regulation or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. Any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall file a petition within 90 days of the date of the determination by the Division of Workers' Compensation that either finds the employee to have sustained a compensable injury or settles the compensation claim without a determination of work-related causation, unless the claim constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division has made a determination on the underlying injury, in which case the petition shall be filed within 90 days of receipt of notice of the district board of education's action, or of the action of the district board of education's agent, which has the effect of denying such benefits.

(j) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners or other entity located within the Department, is named as a party, proof of service to the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section. When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this section, but to the attention of the appropriate section of the Division of Law.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Amended by R.2006 d.245, effective July 3, 2006.

See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

Rewrote (c) and (i).

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (e)1, amended the second N.J.A.C. reference.

#### 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

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., C.A.3 (N.J.)* 1994, 7 A.D.D. 911, 42 F.3d 149, rehearing and rehearing in banc denied.

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., D.N.J.* 1993, 817 F.Supp. 14.

Parents of handicapped student did not waive right to reimbursement by placing student in private school and failing to initiate review. *Bernardsville Bd. of Educ. v. J.H., D.N.J.* 1993, 817 F.Supp. 14.

Consideration by Commissioner of constitutionality of public employer's practice of crediting employee's credit union and annuity plans was not untimely under rule requiring that declaratory judgment action be filed within 90 days from receipt of final order. *Board of Educ. of Tp. of Neptune v. Neptune Tp. Educ. Ass'n*, 293 N.J.Super. 1, 679 A.2d 669 (A.D.1996).

Resolution not to rehire principal was final action of the board, requiring appeal within 90 days; letter to principal in August was merely response to her attorney's letter. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Principal informed by school board in April of her third year that she would not be rehired was required to file challenge within 90 days. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Regulation focusing on date of employer's wrongful act as accrual date rather than date consequences are felt by the employee, was not arbitrary or capricious. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Due process rights of assistant superintendent terminated 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).

In a dispute between sending and receiving school districts over resource room charges, the sending districts failed to file their appeal within the 90-day limitations period prescribed by N.J.A.C. 6A:3-1.3(i) because they had knowledge of the receiving district's position before the May 14, 2007 opinion letter from the Division of Finance that they claimed started the running of the period. *Bd. of Educ. of Waterford v. Bd. of Educ. of Hammonton*, OAL Dkt. Nos. EDU 6798-07 and EDU 8091-07 (CONSOLIDATED), 2008 N.J. AGEN LEXIS 261, Commissioner's Decision (March 24, 2008).

It is by now well established that a petitioner whose cause of action arises out of the nonrenewal of his or her employment must — unless facts necessary to make a claim are unknown at the time — file a petition within 90 days of the *notice of nonrenewal*, and that the running of the regulatory limitations period of N.J.A.C. 6A:3-1.3 is not tolled by the possibility that the petitioner might ultimately persuade the board to offer reemployment through statutory and regulatory mechanisms provided for this purpose. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Ninety-day filing period of N.J.A.C. 6A:3-1.3(i) did not begin to run in October 2005, when the board of education ratified a settlement agreement providing a school employee with a one-year, nontenured employment contract. The employee's claim was nevertheless time-barred because the operative date for the running of the limitations period was not November 21, 2006, when the employee's position was eliminated, but at the earlier time when the employee was notified by letter that the superintendent would recommend that the board not renew the employee's contract. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

N.J.S.A. 34:13A-27(d) worked to ensure that a teaching staff member who sought arbitration in the belief that the withholding of his or her increment constituted discipline — and then had such arbitration enjoined when a dispute arose as to the nature of the withholding — would not be precluded by operation of the 90-day rule (N.J.A.C. 6A:3-1.3(i)) from subsequent appeal to the Commissioner. *Giorgio v. Bd. of Educ. of Bridgeton*, OAL Dkt. No. EDU 8136-06, 2008 N.J. AGEN LEXIS 142, Commissioner's Decision (February 19, 2008).

Provision of N.J.S.A. 18A:38-19 specifying that tuition to be paid by a sending district shall not exceed the actual cost per pupil does not create an "entitlement," outside the scope of the 90-day rule; although a dispute between sending and receiving districts concerning alleged overcharges presented issues of timeliness, the Commissioner decided the merits given the unique circumstances and that both parties were equally to blame, and in the interest of the districts' citizens. *Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights*, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Where a parent sought expungement of disciplinary records from her child's file, even if the provision in a Consent Order reserving to the parent "all rights to future action with respect to any program, placement, and record issues" consensually extended the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) until completion of evaluations and the scheduling of an IEP meeting, the parent's appeal still was not timely filed. *J.G. ex rel. C.G. v. Galloway Community Charter School*, OAL

Dkt. No. EDU 6122-07, 2008 N.J. AGEN LEXIS 260, Final Decision (January 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 450) adopted, which concluded that a petition was barred under the 90-day rule of N.J.A.C. 6A:3-1.3(i), where two nontenured teaching staff members received nonrenewal letters on May 1, 2006 that cited budgetary constraints, and the employees did not learn until September 1, 2006 that replacements had been hired for their positions. The 90-day period ran from May 1, 2006; in any event, local boards of education have almost unlimited discretion in terminating nontenured teachers, absent constitutional or legislative constraints, and the teachers did not exercise their right to an informal hearing under N.J.S.A. 18A:27-4.1(b) and N.J.A.C. 6A:32-4.6. *Middletown Educ. Ass'n ex rel. McGee v. Bd. of Educ. of Middletown*, OAL Dkt. No. EDU 12159-06, Commissioner's Decision (August 16, 2007).

Adequate notice requirement should effectuate concerns for individual justice by not triggering the limitations period until the tenured teachers have been alerted to the existence of facts that may equate in law with a post-RIF cause of action; at the same time, it should further considerations of repose by establishing an objective event to trigger the limitations period in order to enable the proper and efficient administration of the affairs of government. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

Notwithstanding that a nonrenewal letter was sent to other nontenured teaching staff members in compliance with the requirements of N.J.S.A. 18A:27-10, it triggered the 90-day filing period set forth in N.J.A.C. 6A:3-1.3(i) by providing the teacher with notice that she would not be offered employment for the following school year. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

N.J.A.C. 6A:3-1.3(i) applies to a petition brought by a local district board of education. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

Although the 90-day rule of N.J.A.C. 6A:3-1.3(i) applied to a local district board of education's petition seeking removal of a board member under N.J.S.A. 18A:12-2 because of his wife's filing of a workers' compensation claim, dismissal of the dispute on procedural grounds would have left unaddressed a question of significant public interest, thus warranting relaxation of procedural rules pursuant to N.J.A.C. 6A:3-1.16. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

The 90-day limitations period of N.J.A.C. 6A:3-1.3(i) begins to run when the petitioner has knowledge of the "existence of the state of facts which might equate in law with a cause of action." *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Ninety-day limitations period of N.J.A.C. 6A:3-1.3(i) ran from the date petitioner learned of his reassignment from the position of high school vice principal, a twelve-month position, to the position of elementary school vice principal, a ten-month position, and not from the later date when petitioner received his first paycheck of the school year and allegedly first learned that the reassignment would affect his salary increase expectancies; not only was it reasonable to charge petitioner with knowledge that elementary vice principalships are ten-month positions, but also tenured employees have no vested right in any future increases in salary. *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Teacher's receipt of notice of the Board's "final action" on the subject of her resignation at its August 16, 2005 meeting triggered the running of N.J.A.C. 6A:3-1.3(i), and consequently any challenge to the action was required to be filed before the Commissioner within 90 days of that time; neither the fact that the teacher continued in the Board's employ

subsequent to its acceptance of her resignation nor the teacher's attempt to rescind her resignation by letter dated May 8, 2006 precluded application of the 90-day rule, and therefore the Petition of Appeal at issue, filed nearly 11 months after the Board's final action, was clearly out of time. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Notwithstanding that the limitations rule of N.J.A.C. 6A:3-1.3(i) is to be strictly applied, the Commissioner may relax the rule pursuant to N.J.A.C. 6A:3-1.16 under exceptional circumstances or if there is a compelling reason to do so; such authority, however, is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, or injustice would occur, or the Commissioner finds a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Irrespective that untimeliness barred consideration of a teacher's petition, the teacher was not prevented from acquiring tenure, as such status is statutory in nature and attaches automatically upon the fulfillment of the requisite conditions; however, the fact that the teacher may have acquired tenure at some point during the school year had no bearing whatsoever, as the teacher had resigned from the District and had thus voluntarily relinquished any rights that otherwise might have accrued by virtue of such status. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Initial Decision adopted, which concluded that petitioner's claim that her tenure rights were violated was time-barred under N.J.A.C. 6A:3-1.3(i), where petitioner had to have realized the district's position that she was not tenured when she received the letter notifying her of rescission due to excessive absenteeism and tardiness, as a tenured position could not be rescinded by letter; in any event, petitioner did not possess the requisite certification "in full force and effect" to achieve credit towards tenure at any time during her service as vice principal. *Clanton v. State-Operated School Dist. of Newark*, OAL Dkt. No. EDU 7092-06, 2007 N.J. AGEN LEXIS 313, Commissioner's Decision (March 12, 2007).

Where a teacher was nonrenewed and claimed to have first discovered the facts on which the petition was based during litigation against the Board, the claim under N.J.S.A. 18A:27-3.1 concerning evaluations was untimely under N.J.A.C. 6A:3-1.3(i) because, *inter alia*, petitioner must be charged with having known whether and when an observer was in his classroom and whether and when he received evaluations (adopting and supplementing 2007 N.J. AGEN LEXIS 10). *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Petition for appeal must be filed within 90 days of the notice of nonrenewal, not within 90 days of the exhaustion of other avenues and mechanisms. *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 10) adopted and supplemented, which determined that neither *Kaczmarek v. N.J. Tpk. Auth.*, 77 N.J. 329 (1978) nor N.J. Ct. R. 1:13-4 applied to relax the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) where a teacher, who received notice of nonrenewal dated May 1, 2001 and a final letter in June, had filed an action in Superior Court on August 17, 2001 for discrimination and retaliation and later filed an unsuccessful motion to amend to add the subject Title 18A claims; the Title 18A claims were distinct from the initial Superior Court claims and those initial claims had been within the jurisdiction of the court. *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1008) adopted, which concluded that parents' challenge to a mandatory school uniform policy was barred by the 90-day limitations period of N.J.A.C. 6A:3-1.3, which began to run when the Board adopted the policy at a public meeting in June 2006, and the fact that the policy was later amended did not alter this result; the proper standard is not when the Board's action was final, but when a petitioner had or reasonably should have had notice of the Board's action. Even assuming *arguendo* that the petition was timely, the parents failed to satisfy any of the requirements necessary for the granting of emergent relief under N.J.A.C. 6A:3-1.6. *Coles v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 10535-06, Commissioner's Decision (December 8, 2006), *aff'd*, SB No. 01-07, 2006 N.J. AGEN LEXIS 1085 (N.J. State Bd. of Educ. April 4, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 896) adopted, which found that petitioners' challenge to a board of education's policy filed with the Commissioner of Education on February 17, 2006 was time-barred, where the policy in its present form was revised and adopted on May 10, 2004, and had remained unchanged since that date, as was petitioners' challenge to a student attendance plan, approved by the board of education on September 12, 2005; as to petitioners' contention that even if the petition were not timely filed, this was a matter of significant public interest and there was no prejudice by allowing the matter to proceed, the ALJ simply queried that if the matter was of significant public interest, why had no parents filed a petition of appeal challenging the student attendance plan within the 90-day period. *Township of Howell v. Bd. of Educ. of Freehold Reg'l School Dist.*, OAL Dkt. No. EDU 2427-06, Commissioner's Decision (December 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 344) adopted, which concluded that for purposes of evaluating whether the Board's November 2004 appointment of a nontenured individual rather than petitioner to the position of Assistant Principal for Athletics and Student Activities violated petitioner's tenure, seniority and/or preferred eligibility rights, the June 2004 date that the Board created the position was not the triggering event for the running of the 90-day limitations period; to the extent that the petition challenged the Board's reorganization of the athletic department, however, the claim was time-barred. *McGriff v. Bd. of Educ. of Montclair*, OAL Dkt. No. EDU 10927-04, 2006 N.J. AGEN LEXIS 647, Commissioner's Decision (July 13, 2006).

Where (1) a 1988 Consent Award between an education association and local board of education (Board) had required the Board to assist with the purchase of back pension credits, but petitioner, a social worker, claimed to have not been aware of the Award until 1999, (2) the Division of Pensions, by September 8, 2000 letter, denied petitioner's request to purchase the back credits because the Board had characterized the previous service as that of an independent contractor rather than an employee, and (3) the Teachers' Pension and Annuity Fund (TPAF) Board of Trustees determined in 2004 that petitioner was indeed eligible to purchase the service credits, petitioner's 2004 claim to recover from the local Board the increase in the purchase cost of the credits was rejected, as jurisdiction was with the TPAF Board. To the extent petitioner's claim was based on violation of the Consent Award, jurisdiction was with the Public Employment Relations Commission, and even if not, the claim was time-barred; petitioner clearly had knowledge of the Board's position at the latest upon receipt of the September 8, 2000 letter. *Spitalella v. Bd. of Educ. of Caldwell-West Caldwell School Dist.*, OAL Dkt. No. EDU 1091-05, Commissioner's Decision (June 8, 2006).

Where the evidence clearly established that, at its public meeting of November 12, 2003, a board of education voted to approve the employment contract of an individual as school business administrator/board secretary, such action clearly setting forth the individual's salary and the effective date of the contract, and that at no time during this meeting did the board fix by resolution the credit to be accorded the individual for unused accumulated sick leave days earned in his prior employment, such credit being claimed by the complaining education association to be excessive in comparison to other district employees, it could not reasonably be concluded that, on November 12, 2003, the education association had notice of the existence of any facts which would impose on it a duty to further investigate by inquiring as to the specific terms and conditions of the individual's contract, or compel it to secure a copy

of this document. Rather, the 90-day period under N.J.A.C. 6A:3-1.3(i) began in late January 2005 when the education association was finally provided with a copy of the contract which it had requested in November 2004 when it first became aware of potentially questionable aspects in connection with the contract. *Carteret Educ. Ass'n v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2998-05, 2006 N.J. AGEN LEXIS 653, Commissioner's Decision (May 25, 2006), *aff'd*, SB No. 28-06 (N.J. State Bd. of Educ. November 1, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 15) adopted, which concluded that the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) barred parents' appeal of the denial of credit for their children for the school year due to excessive absences; the letters from the school board denying the parents' appeal constituted notice of a final order, ruling or other action and thereby began the running of the period for filing a contested case. *W.V. and L.V. ex rel. C.V. and Ch. V. v. Bd. of Educ. of Montville*, OAL Dkt. No. EDU 5402-05, 2006 N.J. AGEN LEXIS 220, Commissioner's Decision (February 21, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 534) adopted, finding that a May 7, 2004 letter informing a teacher that the teacher's contract was not being renewed triggered the 90-day limitations period; the teacher's request for reasons for the nonrenewal did not extend the period for filing an appeal. *Suarez v. State-Operated School Dist. of Jersey City*, OAL Dkt. No. EDU 11077-04, 2005 N.J. AGEN LEXIS 1145, Commissioner's Decision (October 28, 2005).

Petition filed on October 20, 2004 was time-barred where petitioner requested changes to the reemployment contract offered to him and received a letter from the School Board dated July 15, 2004, informing petitioner that the Board would not consider any changes to the contract; the July 15 letter triggered the running of the 90-day limitations period of N.J.A.C. 6A:3-1.3 because the period begins when a petitioner learns of facts that would enable him to file a timely claim (adopting with modification 2005 N.J. AGEN LEXIS 531). *Taylor v. Bd. of Educ. of Hardyston*, OAL Dkt. No. EDU 1049-05, 2005 N.J. AGEN LEXIS 1231, Commissioner's Decision (October 27, 2005).

Where petitioner chose to appeal directly to the Commissioner to enforce a school district's compliance with a previous order, rather than proceed in Superior Court, the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) applied; because the 90-day period was triggered on the date that the school district became obligated, pursuant to the previous order, to reassign petitioner to a principalship from a lower position, petitioner's appeal concerning the district's failure to make the reassignment, filed nine days past the deadline, was barred. *Mazzeo v. Bd. of Educ. of Barnegat*, OAL Dkt. No. EDU 4561-05, 2005 N.J. AGEN LEXIS 1278, Commissioner's Decision (September 29, 2005), *aff'd*, SB No. 45-05, 2006 N.J. AGEN LEXIS 109 (N.J. St. Bd. of Educ. February 1, 2006) (adding that the matter did not present exceptional circumstances that would compel relaxation of the 90-day rule, pursuant to N.J.A.C. 6A:3-1.16).

Initial Decision (2005 N.J. AGEN LEXIS 389) adopted, which concluded that the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) applied to petitioner's claim that his salary was reduced in violation of tenure statutes. *Ciamillo v. Bd. of Educ. of Ridgefield*, OAL Dkt. No. EDU 1805-04, 2005 N.J. AGEN LEXIS 1236, Commissioner's Decision (August 31, 2005), *aff'd* and clarified, SB No. 38-05, 2006 N.J. AGEN LEXIS 134 (N.J. State Bd. of Educ. January 4, 2006).

Settlement negotiations do not negate the receipt of adequate notice or toll the running of the limitations period under N.J.A.C. 6A:3-1.3(i). *Ciamillo v. Bd. of Educ. of Ridgefield*, OAL Dkt. No. EDU 1805-04, 2005 N.J. AGEN LEXIS 1236, Commissioner's Decision (August 31, 2005), *aff'd* and clarified, SB No. 38-05, 2006 N.J. AGEN LEXIS 134 (N.J. State Bd. of Educ. January 4, 2006).

Dismissal of teacher's tenure entitlement claim due to untimeliness reversed. *Beshaw v. Board of Education of the Borough of Oakland, Bergen County*, 97 N.J.A.R.2d (EDU) 494.

Appeal of school district ruling triggers 90-day appeal compliance despite Commissioner's deference of jurisdiction until worker's com-

pensation determination. *Medeiros v. School District of Jersey City, Hudson County*, 97 N.J.A.R.2d (EDU) 276.

Petition which alleged that county superintendent had no reasonable basis for requiring substitute teaching certificate for site monitor positions was dismissed as untimely and without merit. *Wynne v. Tillery, Camden County Superintendent of Schools*, 96 N.J.A.R.2d (EDU) 995.

Teacher's complaint that school board wrongfully deducted monies from her salary was dismissed as untimely filed. *Hoffman v. Township of Hillsborough*, 96 N.J.A.R.2d (EDU) 943.

Petition challenging school board's acceptance of instructor's resignation was dismissed as not timely filed. *Wilson v. Toms River Regional School District*, 96 N.J.A.R.2d (EDU) 872.

School administrator's request for payment of unused vacation time was denied based upon untimely filing of petition. *McCrea v. Upper Saddle River Board of Education*, 96 N.J.A.R.2d (EDU) 817.

Timely resignation entitled principal to unused vacation pay. *Gilson v. Board of Education of the Township of Dennis*, 96 N.J.A.R.2d (EDU) 801.

Failure to provide suspended student with notice of charges or timely hearing required student's reinstatement. *C.F. v. City of Wildwood Board of Education*, 96 N.J.A.R.2d (EDU) 619.

Expulsion hearing must be held within 21 days of student's suspension for assault on teacher. *Garrity v. State Operated School District of Paterson*, 96 N.J.A.R.2d (EDU) 568.

Statutory period to file petition challenging school board's salary action commenced upon notification of that action. *Conklin v. Old Bridge Township Board of Education*, 96 N.J.A.R.2d (EDU) 502.

Tenured school psychologist's petition appealing denial of claim for benefits was timely if it was filed with Commissioner within 90 days after school board's denial subsequent to Workers' Compensation determination. *Sweet v. Jackson Township Board of Education*, 96 N.J.A.R.2d (EDU) 471.

Commissioner of Education has jurisdiction over appeal of school board attendance policy determination. *F.C. v. Palmyra Board of Education*, 96 N.J.A.R.2d (EDS) 329.

School board's attempt to obtain teacher's suspension for resigning without notice failed for failure to file within ninety days. *Elmwood Park Board of Education v. Farrell*, 95 N.J.A.R.2d (EDU) 375.

Claim for injury sustained while in employ of school board must be filed within 90 days of denial. *Verneret v. Elizabeth Board of Education*, 95 N.J.A.R.2d (EDU) 134.

Petition for accrued vacation was untimely when filed more than 90 days after final action of dismissal on tenure charges. *Romanoli v. Willingboro Board of Education*, 95 N.J.A.R.2d (EDU) 81.

Nontenured teacher's appeal of termination; untimely. *Portee v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 381.

Tenured teacher's petition for reinstatement was not time-barred. *Cahn v. Borough of Deal Board of Education*, 94 N.J.A.R.2d (EDU) 330.

Appeal filed after 30 day limitation; dismissal. *University Bus Co. v. Paterson School District*, 94 N.J.A.R.2d (EDU) 223.

Custodian's appeal filed more than a year after his replacement was untimely. *Raymond v. River Edge Borough Board of Education*, 94 N.J.A.R.2d (EDU) 203.

No final action approving of school closing; petition for emergent relief premature. *Brodie v. Board of Education of Township of Saddle Brook*, 93 N.J.A.R.2d (EDU) 694.

Petition challenging assignment of pupil as resident pupil in school district responsible to pay educational component of pupil's placement at facility was time barred. *Board of Education of City of Atlantic City v. New Jersey Department of Education*, 93 N.J.A.R.2d (EDU) 667.

Petition alleging violation of seniority rights created under previous administrative decision; 90-day rule. *Metzger v. Board of Education of Township of Willingboro*, 93 N.J.A.R.2d (EDU) 548.

90-day period of limitation applied to sexual harassment claim. *Ward v. Board of Education of Bridgewater-Raritan School District*, 93 N.J.A.R.2d (EDU) 435.

Date of filing petition related back to date of filing complaint with Superior Court. *Driggs v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 317.

Resolution whether 90-day rule applied to bar claim warranted remand. *Driggs v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 158.

Contractor lacked standing to challenge bid specifications. *Green v. Board of Education of Township of Old Bridge*, 93 N.J.A.R.2d (EDU) 115.

Letter from board informing teacher of resolution terminating employment initiated 90-day period. *Nissman v. Board of Education of Township of Long Beach Island*, 92 N.J.A.R.2d (EDU) 621.

Application of 90-day rule; date of meeting at which teacher learned other teacher appointed to position commenced period. *Davenport v. Butler Board of Education*, 92 N.J.A.R.2d (EDU) 614.

Ninety-day rule would be relaxed in interest of justice and fairness, and entire controversy doctrine would not be invoked; rights of tenured teacher. *Boles v. Board of Education of Vocational Schools of County of Bergen*, 92 N.J.A.R.2d (EDU) 554.

Letter reasonably placed service provider on notice of refusal by board of education to pay for services; 90-day rule. *Morris-Union Jointure Commission v. Board of Education of Borough of South River*, 92 N.J.A.R.2d (EDU) 453.

Letter indicating expulsion proceedings would not be instituted; notice of "final action" for purposes of 90-day appeal time limit. *Markulin and Neptune Township Education Association v. Board of Education of Township of Neptune*, 92 N.J.A.R.2d (EDU) 406.

Receipt of letter commenced 90-day period for filing appeal regarding claimed violation of tenure and seniority rights resulting from reduction in force. *Sasse v. Board of Education of Borough of Point Pleasant*, 92 N.J.A.R.2d (EDU) 339.

Petition for sick leave benefits timely filed. *Verneret v. Board of Education of City of Elizabeth*, 92 N.J.A.R.2d (EDU) 191.

Final report required for each year of special education contract constituted final action for 90-day rule. *Early Intervention Programs of Monmouth and Ocean Counties v. Ellis (John), Osowski (Jeffrey), Jones (James A.)*, 92 N.J.A.R.2d (EDU) 68.

Petitioner entitled to an evidentiary hearing on question of whether his resignation involuntary. *Brunquell 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.

#### 6A:3-1.4 Format of petition of appeal

(a) A petition shall include the name and address of each petitioner; the name and address of each party respondent; a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws; the relief petitioner is seeking; and a notarized statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen. A petition should be presented in substantially the following form:

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote (b) and (d); in (c), changed N.J.A.C. reference in the introductory paragraph; and added (e).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

#### Case Notes

ALJ found no proof of irreparable harm warranting emergent relief where student was not allowed to participate in extracurricular activities after being found in possession of a knife on school property and engaging in a narcotics related activity. D.C. ex rel. M.C. v. West Essex Reg'l School Bd. of Educ., OAL Dkt. No. EDU 03601-07, 2007 N.J. AGEN LEXIS 203, Initial Decision (April 5, 2007).

Local educational services commission (ESC) met the standard for grant of emergent relief under N.J.A.C. 6A:3-1.6, and the appropriate order was to direct renewal of the parties' lease, as sought in the ESC's application, for the entire 2006-07 school year. Although granting such relief effectively ended the dispute without benefit of a plenary hearing, the 2006-07 school year would have been well under way by the time a hearing would have been held, and an order disrupting the school program mid-year would not issue even in the extremely unlikely event that the ESC did not prevail on the merits of its claim. Union County Educ. Servs. Comm'n v. Bd. of Educ. of Westfield, OAL Dkt. No. EDU 7522-06, 2006 N.J. AGEN LEXIS 930, Commissioner's Decision (September 18, 2006).

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. J.T., a Minor Child v. Barnegat Township, 93 N.J.A.R.2d (EDS) 89.

Parents were not entitled to emergent relief of having child skip grade; alleged disparate treatment in child repeating grade. In Matter of T.P. and D.P. on Behalf of Minor Child, T.J.P. v. Board of Education of Borough of Oaklyn, 92 N.J.A.R.2d (EDU) 625.

Board of Education seeking stay of decision holding that school forfeited two games by playing a transferee student in violation of rule failed to demonstrate irreparable harm, relative hardship, or probability of success on merits. Board of Educ. of the City of Trenton, Mercer County v. New Jersey State Interscholastic Athletic Ass'n, 91 N.J.A.R.2d 158 (EDU).

No entitlement to preliminary injunction to prevent distribution of supplemental funds under Quality Education Act. Board of Educ. of the Bordentown in Regional School Dist. v. Ellis, 91 N.J.A.R.2d 59 (EDU).

#### 6A:3-1.7 Amendment of petition and answer

(a) 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 the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application.

1. Any amendment or application to amend shall be submitted in original form with two copies.

(b) Following transmittal to the OAL, motions to amend a petition or answer shall be filed with and determined by the OAL in accordance with applicable rules of the OAL.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

#### 6A:3-1.8 Permission to intervene or participate

(a) 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 shall be made to the OAL.

(b) Such requests, whether decided by the Commissioner or by the OAL, shall be reviewed in accordance with the standards set forth in applicable rules of the OAL.

1. Any request for intervention or participation shall be submitted in original form with two copies.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

#### 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.

#### 6A:3-1.9 Appearance and representation

(a) 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 other person as set forth in applicable rules of the OAL.

(b) Once a matter has been deemed contested, a district board of education shall be represented by an attorney in accordance with applicable rules of the OAL. Certain corporations other than district boards of education may be represented by non-lawyer representatives in accordance with applicable rules of the OAL.

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.  
 Amended by R.2000 d.137, effective April 3, 2000.  
 See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
 Rewrote the section.  
 Amended by R.2005 d.109, effective April 4, 2005.  
 See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).  
 Rewrote (b).

### 6A:3-1.10 Dismissal or transfer of petition

(a) At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

(b) If a petition is filed with the Bureau of Controversies and Disputes which appears, because of the nature of its allegations, to be more properly filed with another office in the Department, or with the Division on Civil Rights, the Bureau Director may confer with appropriate staff in such office or division and, upon agreement that the matter should properly be before such office or division and notice to the parties with opportunity to be heard, transfer the petition without docketing it as a school law dispute before the Commissioner. In all such cases, notice of the transfer shall be promptly provided to the parties, and such notice shall include the date the petition was filed with the Bureau.

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.  
 Amended by R.2000 d.137, effective April 3, 2000.  
 See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
 Rewrote the section.  
 Amended by R.2005 d.109, effective April 4, 2005.  
 See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).  
 Rewrote (a); in (b), inserted "and notice to the parties with opportunity to be heard" preceding "transfer the petition".

#### Case Notes

Rule allowing the Commissioner of Education to dismiss a petition on grounds that "no sufficient cause for determination has been advanced" was not administrative equivalent of court rule allowing pleadings to be dismissed for "failure to state a claim upon which relief can be granted;" under rule Commissioner had authority to dismiss school board's petition after it failed to submit factual support for its petition's claims. *Sloan v. Klagholtz*, 776 A.2d 894 (2001).

Nontenured employee's appeal from nonrenewal of employment could not result in a favorable finding despite procedural deficiencies and was dismissed. *Gillison v. Newark Board of Education*, 95 N.J.A.R.2d (EDU) 157.

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.

### 6A:3-1.11 Hearing

Upon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter pursuant to N.J.A.C. 6A:3-1.10(a), the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the matter pursuant to N.J.S.A 18A:4-33 and 18A:4-34, or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner, delegated to an Assistant Commissioner or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL. If the Commissioner retains a matter for hearing directly or through a designee, the matter may, in the Commissioner or designee's discretion, be decided summarily where the record so permits.

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.  
 Amended by R.2000 d.137, effective April 3, 2000.  
 See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
 Rewrote the section.  
 Amended by R.2005 d.109, effective April 4, 2005.  
 See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).  
 Rewrote the section.

#### Case Notes

Parent failed to properly appeal from school board decision. *R.J. v. Lower Camden County Regional School District*, 97 N.J.A.R.2d (EDU) 155.

Decision of school board to expel student for physically assaulting teacher was neither arbitrary, unreasonable, nor capricious. *K.O.H. v. Edison Board of Education*, 95 N.J.A.R.2d (EDU) 275, affirmed 96 N.J.A.R.2d (EDU) 445.

School band member's threat to kill band director was reasonable grounds for suspension from band activities. *McB. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDU) 298.

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; good and sufficient reasons for adjournment include court appearances, counsel vacationing out of county, unavailability of witnesses and conflicting counsel schedules. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

### 6A:3-1.12 Summary decision

(a) At any time concurrent with or subsequent to the filing of an answer, but prior to transmittal of a matter to the OAL,

any party may move before the Commissioner for summary decision. The Commissioner may decide the motion directly or transmit it to the OAL for disposition.

1. All papers filed in conjunction with motions for summary decision shall be submitted in original form with two copies together with proof of service on each other party.

(b) Applications for summary decision after a matter has been transmitted to the OAL shall be filed with the ALJ in accordance with applicable rules of the OAL.

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).

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote (a).

#### 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.

#### 6A:3-1.13 Settlement or withdrawal of contested matter

(a) Prior to transmittal to the OAL, a petitioner may withdraw a petition at any time. Upon such withdrawal, the Commissioner shall discontinue all proceedings and notify all parties accordingly. Following transmittal to OAL, a petitioner may request withdrawal in accordance with applicable rules of the OAL.

(b) Prior to transmittal to the OAL, parties to a contested matter may notify the Commissioner of settlement at any time.

1. Where settlement occurs prior to the filing of an answer, the matter shall be deemed withdrawn pursuant to (a) above.

2. Where settlement occurs subsequent to the filing of an answer, the parties shall set forth the full settlement terms for review and approval by the Commissioner.

(c) Following transmittal of a matter to the OAL, parties shall effectuate settlement in accordance with applicable rules of the OAL.

(d) Where the district board of education is a party to a contested matter, any proposed settlement, whether submitted to the Commissioner or to the OAL, shall indicate, by signature of the board attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

(e) A proposed settlement, whether submitted to the Commissioner or to the OAL, shall not include terms restricting access to records or information deemed public by law, nor shall it include terms requiring disclosure of information protected from such disclosure by law.

(f) The provisions of this section shall not apply to settlement and withdrawal of tenure matters, which are governed by N.J.A.C. 6A:3-5.6.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote (d); added (f).

#### 6A:3-1.14 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 an employee of a State agency who is accorded tenure under the school law, with the exception of employees of charter schools, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth findings of fact, conclusions of law and an appropriate order pursuant to applicable rules of the OAL.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education, except where otherwise provided by law; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by the Commissioner, the State Board or a court.

(c) A Commissioner's decision shall be deemed filed three days after the date of mailing to the parties.

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).

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Added (c).

### 6A:3-1.15 Motion for stay, reconsideration or clarification of Commissioner's decision

(a) Any party may make a motion for stay of a Commissioner's decision pending a determination on appeal to the State Board of Education or the court, as the case may be. Such motion shall be made subsequent to, or concurrent with, the filing of a notice of appeal with the State Board or the court, but within 30 days of the filing of the Commissioner's decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, accompanied by a copy of the notice of appeal and a letter memorandum or brief which addresses the standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b). The motion may be further briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner based upon the above-referenced criteria.

(b) Any party may make a motion for reconsideration or clarification of the Commissioner's decision within 10 days of the filing of the Commissioner's decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, shall be briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner in accordance with applicable rules of the OAL.

2. A motion for reconsideration shall be considered based upon the following:

i. Claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;

ii. Newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;

iii. Newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation or misconduct could not have been previously known; or

iv. Reversal of a prior judgment on which the present matter is based.

3. A motion for clarification shall be considered based upon necessity as specifically demonstrated in the papers submitted with the motion.

(c) The filing of a motion for clarification or reconsideration shall not, in and of itself, relieve the parties from compliance with any judgment or order of the Commissioner.

(d) The filing of a motion for clarification or reconsideration shall not, in and of itself, alter the filing date of the Commissioner's decision for purposes of appeal.

(e) All papers filed in conjunction with motions for stay, reconsideration or clarification shall be submitted in original form with two copies.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2000 d.276, effective July 3, 2000.

See: 32 N.J.R. 1112(a), 32 N.J.R. 2469(a).

In (b), substituted a reference to 10 days for a reference to 30 days in the introductory paragraph, rewrote i and iii in 2, and inserted "specifically" in 3.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

### 6A:3-1.16 Relaxing of rules

The rules in this chapter 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. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in the Commissioner's 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).

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Substituted "in this chapter" for "herein contained" following "rules" in the first sentence, and inserted "Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL," at the beginning of the second sentence.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Substituted "the Commissioner's" for "his or her" preceding "discretion" in the second sentence.

#### 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.

Although the 90-day rule of N.J.A.C. 6A:3-1.3(i) applied to a local district board of education's petition seeking removal of a board member under N.J.S.A. 18A:12-2 because of his wife's filing of a workers' compensation claim, dismissal of the dispute on procedural grounds would have left unaddressed a question of significant public interest — the legal status of a sitting board of education member — thus warranting relaxation of procedural rules pursuant to N.J.A.C. 6A:3-1.16. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

Notwithstanding that the limitations rule of N.J.A.C. 6A:3-1.3(i) is to be strictly applied, the Commissioner may relax the rule pursuant to N.J.A.C. 6A:3-1.16 under exceptional circumstances or if there is a compelling reason to do so; such authority, however, is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, or injustice would occur, or the Commissioner finds a substantial constitutional issue or other issue of fundamental public

interest beyond that of concern only to the parties themselves. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1008) adopted, which concluded that parents challenging mandatory school uniform policy had not demonstrated grounds to relax the 90-day rule; the matter did not involve a recognized exception to the rule, such as (1) an important and novel constitutional question, (2) an informal or ex parte determination of a legal question by administrative officials, or (3) an important public interest requiring adjudication or clarification, and the authority to relax the rule is rarely invoked. *Coles v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 10535-06, Commissioner's Decision (December 8, 2006), aff'd, SB No. 01-07, 2006 N.J. AGEN LEXIS 1085 (N.J. State Bd. of Educ. April 4, 2007).

Relaxation of the 90-day filing requirement of N.J.A.C. 6A:3-1.3(i) was warranted where parent contacted the Department of Education twice within the 90-day limitations period, seeking assistance, but in neither instance was the parent directed to the proper office for filing a petition of appeal; the claims failed on their merits, however, as there was no showing that the district acted in an arbitrary, capricious, or unreasonable manner in its handling of the student's grades. *C.G. & R.G. ex rel. R.M.G. v. Bd. of Educ. of Brick*, OAL Dkt. No. EDU 2375-05; SB No. 16-06 (N.J. State Bd. of Educ. July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 15) adopted, which concluded that no basis existed to warrant relaxation or waiver of the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) where parent petitioners failed to appropriately identify any substantial constitutional issue or issue of fundamental public interest beyond that of concern to petitioners themselves regarding which grade their children would enter in the school year at issue and failed to demonstrate that strict adherence to the 90-day rule would be inappropriate, unnecessary, and result in injustice; the children had been denied grade promotion due to excessive absences. *W.V. and L.V. ex rel. C.V. and Ch. V. v. Bd. of Educ. of Montville*, OAL Dkt. No. EDU 5402-05, 2006 N.J. AGEN LEXIS 220, Commissioner's Decision (February 21, 2006).

Adopting and modifying on other grounds the Initial Decision (2005 N.J. AGEN LEXIS 531), which concluded that no compelling or

exceptional circumstances existed to warrant relaxation of the 90-day rule, where the Board offered petitioner a contract, petitioner asked for changes, the Board refused by letter, and the discussions ended there, unlike *Polaha v. Buena Reg'l School Dist.*, 212 N.J. Super. 628 (App.Div. 1986). *Taylor v. Bd. of Educ. of Hardyston*, OAL Dkt. No. EDU 1049-05, 2005 N.J. AGEN LEXIS 1231, Commissioner's Decision (October 27, 2005).

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).

### 6A:3-1.17 Awarding of interest

(a) The Commissioner may, pursuant to the criteria of this section, award prejudgment and/or postjudgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

1. Any petitioner seeking award of prejudgment interest shall so specify in the petition's request for relief and shall propose, before the Commissioner or the ALJ, whoever is hearing the case, an interest calculation consistent with (d) below.

2. Any party seeking postjudgment interest shall file a new petition in accordance with N.J.A.C. 6A:3-1.3, addressing the criteria set forth in (c)2 below and proposing an interest calculation consistent with (d) below.

(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.

6. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the board or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. Pursuant to N.J.S.A. 18A:6-11, 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, except in the case of building principals in State-operated school districts, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the secretary of the district board of education or the State district superintendent along with a statement of evidence in support thereof executed under oath. In the event the charges are against the chief school administrator of a district board of education, they shall be filed, along with the required statement of evidence, by a designated board member(s) upon the direction of the district board as ascertained by majority vote of the full board.

2. The district board of education, through its board secretary, or the State district superintendent, 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 and the employee's representative, if known, 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, or the State district superintendent 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 district board of education or State district superintendent, the district board of education or the State district superintendent 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 or

the State district superintendent shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6A:32-4.3 or 4.4, 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 or the State district superintendent, the administrator(s) responsible for bringing such charges to the attention of the district board of education or the State district superintendent shall notify the district board of education or the State district superintendent in writing of what charges, if any, have not been corrected. In the event the charges are against a chief school administrator of a district board of education, the district board shall determine by majority vote of the full board what charges, if any, have not been corrected.

6. The district board of education or the State district superintendent, upon receipt of the written notification or upon the district board's determination in the case of a chief school administrator, 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 district board of education or the State district superintendent, to the notification of the employee by the district board of education or the State district superintendent 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, or the State district superintendent shall determine, 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.

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's

representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

10. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Petition for Rulemaking

See: 38 N.J.R. 2216(a).

Amended by R.2006 d.245, effective July 3, 2006.

See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

In (c)1, added the last sentence; in (c)4, substituted "6A:32-4.3 or 4.4," for "6:3-4.3(f)"; in (c)5, added the last sentence; and in (c)6, inserted "or upon the district board's determination in the case of a chief school administrator".

#### Case Notes

State Department of Education properly denied a petition for an amendment to administrative rule N.J.A.C. 6A:3-5.1(a), which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees, as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 52:14B-15; and tenured employees are not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ.*, 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).

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).

Even assuming *arguendo* that some of the allegations relating to the teacher's performance could be characterized as inefficiency, and thus subject to the 90-day improvement plan requirement of N.J.S.A. 18A:6-11, the Board more than amply demonstrated the teacher's unbecoming conduct, and such charges warranted the teacher's dismissal (*aff'd* 2007 N.J. AGEN LEXIS 311). In re *Tenure Hearing of Hill*, OAL Dkt. No. EDU 5979-06; C NO. 176-07; SB No. 14-07, 2007 N.J. AGEN LEXIS 977 (October 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 589) adopted, which concluded that infirmities in tenure charges under N.J.S.A. 18A:6-11 were sufficient to preclude them from proceeding to hearing and adjudication;

the board failed to provide "a written statement of evidence" under oath, and the charges were so general in nature that respondent was unable to "submit a written statement of position." In re *Tenure Hearing of King*, OAL Dkt. No. EDU 4489-07, 2007 N.J. AGEN LEXIS 1005, Commissioner's Decision (September 18, 2007).

Notice from school board; termination proceedings. *Jackson v. Englewood Board of Election*, 94 N.J.A.R.2d (EDU) 520.

Evidence established that it was reasonable for board of education to refuse to certify tenure charges. *Bey v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 288.

#### 6A:3-5.2 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 or the State district superintendent:

1. That the district board of education or the State district superintendent 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 or by the State district superintendent in accordance with N.J.S.A. 18A:7A-39; and

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.

(b) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

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.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), inserted references to State district superintendents throughout; and added (d).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (b), substituted "who are governed by" for "pursuant to" following "charter schools" and amended the N.J.A.C. reference.

#### 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.

#### 6A:3-5.3 Filing and service of answer to written charges

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed

with the Commissioner to file a written response to the charges. Except as to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. Any papers filed in conjunction with a motion to dismiss shall be submitted in original form with two copies. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner.

(b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging district board of education or the State district superintendent. Such district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.  
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

#### 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).

### **6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education and in the Juvenile Justice Commission**

(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, or within the Juvenile Justice Commission pursuant to N.J.S.A. 52:17B-170, other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6A:3-5.1(b) except as set forth in this section. 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, the Director of the Office of Educational Services in the Juvenile Justice Commission, or with an individual within the Department of Education designated by the Commissioner, as appropriate. 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. 6A:3-5.1(b).

period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging district board of education or the State district superintendent. Such district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

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Dismissal of tenured clerk; inadequacies which remained uncorrected despite 90 day remediation period. In *Matter of the Tenure Hearing of Carson*, 94 N.J.A.R.2d (EDU) 250.

Tenured school principal's chronic and excessive absenteeism warranted termination. *Camden School District v. Rucker*, 94 N.J.A.R.2d (EDU) 190.

School counselor failed to establish by a preponderance of evidence that she was terminated on the basis of religion. *Miller v. Holmdel Township Board of Education*, 94 N.J.A.R.2d (CRT) 185.

Dismissal of custodian; drug testing protocols. In *Matter of the Tenure Hearing of Caravello*, 94 N.J.A.R.2d (EDU) 163.

Abolition of position and demotion was not shown as arbitrary, capricious, unreasonable or otherwise unfair decision. *Nuber v. Jersey City School District*, 94 N.J.A.R.2d (EDU) 25.

Terminated employee was entitled to payment for accrued vacation. *Lowe v. Orange City Board of Education*, 93 N.J.A.R.2d (EDU) 789.

Dismissal of teacher as alcoholic not warranted. In *Matter of the Tenure Hearing of Howard*, 93 N.J.A.R.2d (EDU) 788.

Dismissal of teacher was warranted for unbecoming conduct. In *Matter of the Tenure Hearing of Smith*, 93 N.J.A.R.2d (EDU) 729.

Prison vocational teacher did not breach duty by bringing construction materials obtained from inmate's relatives into prison or by supplying keys to another inmate. In *Matter of the Tenure Hearing of Samano*, 93 N.J.A.R.2d (EDU) 710.

Chronic and excessive absences warranted dismissal of tenured teacher from school district. *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 604, 95 N.J.A.R.2d (EDU) 105.

Gross insensitivity and humiliation of students warranted loss of pay. In *Matter of Tenure Hearing of Feinsod*, 93 N.J.A.R.2d (EDU) 590.

Board of education reasonably accommodated alcoholic teacher; dismissal. *State Operated School District of Jersey City v. Howard*, 93 N.J.A.R.2d (EDU) 556.

Teacher's acquiring, possessing, and using stolen cars, as well as other misconduct, warranted dismissal. *School District of Township of Irvington v. Smith*, 93 N.J.A.R.2d (EDU) 526.

Teacher dismissed; marijuana grown at home. *Board of Education of Willingboro v. Lott*, 93 N.J.A.R.2d (EDU) 516.

Teacher's striking and pushing student warranted loss of pay. In *Matter of Tenure Hearing of Boyd*, 93 N.J.A.R.2d (EDU) 445.

Record established corporal punishment and other charges warranting termination of teacher. In *Matter of Tenure Hearing of Harrell*, 93 N.J.A.R.2d (EDU) 387.

Teacher's conduct and comments to students constituted unbecoming conduct; termination. *School District of Flemington-Raritan Regional v. Gilson*, 93 N.J.A.R.2d (EDU) 378.

Custodian's insubordination, neglect of duty and excessive absenteeism warranted termination. In *Matter of Tenure Hearing of Riddick*, 93 N.J.A.R.2d (EDU) 345.

Love letters sent to students; dismissal of teacher. In *Matter of Tenure Hearing of Mantone*, 93 N.J.A.R.2d (EDU) 322.

Procedural defects warranted dismissal of tenure proceedings. In *Matter of Tenure Hearing of Beam*, 93 N.J.A.R.2d (EDU) 320.

Incapacitating psychological difficulties; dismissal of teacher. In *Matter of Tenure Hearing of McCoy*, 93 N.J.A.R.2d (EDU) 297.

Record established conduct unbecoming superintendent of schools; termination. In *Matter of Tenure Hearing of Horowitz*, 93 N.J.A.R.2d (EDU) 232.

Insensitive utterances, inappropriate physical gestures and intimidation tactics of teacher in dealing with students; dismissal. *Board of Education of Princeton Regional School District v. Campbell*, 93 N.J.A.R.2d (EDU) 196.

Teacher's chronic and excessive absenteeism; removal. In *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 147.

Developmental center teacher's striking of client; dismissal. In *Matter of Tenure Hearing of Wagner*, 93 N.J.A.R.2d (EDU) 143.

Absenteeism, abuse of prescription drugs, and drug test refusal; dismissal of teacher. In *Matter of Tenure Hearing of Pellagatti*, 93 N.J.A.R.2d (EDU) 121.

Record established that superintendent engaged in conduct unbecoming teaching staff member; dismissal. In *Matter of Tenure Hearing of Romanoli*, 93 N.J.A.R.2d (EDU) 82.

Teacher's substantiated screaming, verbal abuse and inappropriate discipline warranted monetary penalty and teacher training; no termination. *Randolph Township Board of Education v. Dipillo*, 93 N.J.A.R.2d (EDU) 13.

Chronic tardiness and excessive absenteeism constituted conduct unbecoming teacher; ongoing nature of conduct warranted dismissal. In *Matter of Tenure Hearing of Meade-Stephens*, 92 N.J.A.R.2d (EDU) 550.

School custodian's dishonesty; termination. In *Matter of Tenure Hearing of Depasquale*, 92 N.J.A.R.2d (EDU) 537.

Corporal punishment; loss of pay. *Board of Education of City of New Brunswick v. Murphy*, 92 N.J.A.R.2d (EDU) 527.

Teacher's erratic behavior and tolerance of sexual talk in class; dismissal. *Morris School District Board of Education v. Brady*, 92 N.J.A.R.2d (EDU) 410.

Punishment and abuse of students; dismissal of teacher. In *Matter of Tenure Hearing of Courtney*, 92 N.J.A.R.2d (EDU) 399.

Discretion to conduct inquiry into board of education election; inquiry warranted. In *Matter Election Inquiry in School District of Township of Pennsauken, Camden County*, 92 N.J.A.R.2d (EDU) 219.

Board of education election void; irregularities. In *Matter of Annual School Election Held in Chesilhurst School District*, 92 N.J.A.R.2d (EDU) 213.

Tenured school custodian; excessive absenteeism. *Passaic Board of Education v. Viani*, 92 N.J.A.R.2d (EDU) 76.

Patient elopement; suspension of psychiatric hospital teacher. *New Jersey Department of Human Services, Greystone Park Psychiatric Hospital v. Pescatore*, 92 N.J.A.R.2d (EDU) 8.

No entitlement to indemnification of costs of criminal defense. *Bower v. Board of Education of City of East Orange, Essex County*, 92 N.J.A.R.2d (EDU) 5.

### 6A:3-5.5 Determination of sufficiency and transmittal for hearing

(a) Within 15 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges

are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. Where the charges are determined sufficient, the matter shall, within 10 days of such determination, be transmitted to the OAL for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.11 or 1.12.

1. A notice of transmittal shall be issued to the parties by the Department of Education on the same date as the matter is transmitted to the OAL.

(b) Where a party to a tenure matter so requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to the OAL. Thereafter, requests to hold the matter in abeyance shall be directed to the OAL Clerk or the ALJ in accordance with the rules of the OAL. Any request for abeyance, whether directed to the Commissioner or the OAL, shall be consistent with the intent of N.J.S.A. 18A:6-16 as amended by P.L. 1998, c.42.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (a), substituted "pursuant to N.J.A.C. 6A:3-1.11 or 1.12" for "for purposes of deciding a motion for summary decision" in the introductory paragraph; rewrote (b).

#### **6A:3-5.6 Withdrawal, settlement or mooted of tenure charges**

(a) Once tenure charges are certified to the Commissioner, such charges may be withdrawn or settled only with the Commissioner's approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the ALJ, shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions* (S.L.D.) 842, 846):

1. Accompaniment by documentation as to the nature of the charges;
2. Explication of the circumstances justifying settlement or withdrawal;
3. Consent of both the charged and charging parties;
4. Indication that the charged party entered into the agreement with a full understanding of his or her rights;
5. A showing that the agreement is in the public interest; and
6. Where the charged party is a teaching staff member, a showing that the teaching staff member has been advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate.

(b) A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an

employee's separation from service. Where tenure charges have been certified to the Commissioner by a district board of education, any proposed settlement shall indicate, by signature of the board attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

(c) A proposed withdrawal or settlement of tenure charges shall be submitted to the Commissioner prior to transmittal of such charges to the OAL; thereafter, it shall be submitted to the ALJ in accordance with applicable rules of the OAL.

(d) Where tenure proceedings are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6A:9-17.4.

(e) Where a proposed settlement requires the tenured employee to relinquish a certificate issued by the State Board of Examiners, upon approval of the settlement agreement, the Commissioner shall forward the matter to the State Board of Examiners for proceedings in accordance with N.J.A.C. 6A:9-17.11.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (a), substituted "the teaching staff member" for "he or she" preceding "has been advised" in 6; rewrote (b); in (d), amended the N.J.A.C. reference; added (e).

#### **Case Notes**

Teacher's resignation renders tenure charges against the teacher moot. *In re Tenure Hearing of Castel*, OAL Dkt. No. EDU 3428-07, 2008 N.J. AGEN LEXIS 256, Commissioner's Decision (March 17, 2008).

Settlement agreement was rejected for failure to follow the *Cardonick* standards, where, *inter alia*, no justification for the settlement was offered other than avoidance of the cost, uncertainty, and inconvenience of litigation while still obtaining removal of the respondent from employment with the district; the mere fact that the terms of a proposed tenure settlement call for the teaching staff member's resignation or retirement does not in and of itself assure that the *Cardonick* standards have been met. *In re Tenure Hearing of Langley*, OAL Dkt. No. EDU 2212-07, 2008 N.J. AGEN LEXIS 139, Commissioner's Decision (February 19, 2008).

Where a settlement agreement was rejected for failure to follow the *Cardonick* standards, the Commissioner reminded the parties that tenure charges and related case documents, unless sealed for good cause shown, are a matter of public record as is the information specified in N.J.S.A. 47:1A-10 of the New Jersey Open Public Records Act. *In re Tenure Hearing of Langley*, OAL Dkt. No. EDU 2212-07, 2008 N.J. AGEN LEXIS 139, Commissioner's Decision (February 19, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 841) adopted, which concluded that a tenured secretary did not have a right to resign in good standing when her position was forfeited as a result of criminal proceedings. Contrary to the secretary's contention, N.J.A.C. 6A:3-5.6(d) did not apply, as the secretary did not hold any educational

certificates; moreover, the rule does not recognize any inherent right to resign, but merely allows the Commissioner to refer the matter to the educational licensing authority once a teacher has resigned. *Whaley v. Bd. of Educ. of Irvington*, OAL Dkt. No. EDU 1164-06, Commissioner's Decision (November 28, 2006).

Settlement's statement that the parties wished to avoid the risks and expenses of litigation, which neither explained why certified tenure charges should be dropped in the particular case nor why it was in the public's best interest, was not sufficient under the *Cardonick* standards. In *re Tenure Hearing of Cuykendall*, OAL Dkt. No. EDU 12576-05, 2006 N.J. AGEN LEXIS 648, Commissioner's Decision (June 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 168) adopted, which concluded that tenure charges against a teacher were mooted by the teacher's removal as a tenured employee based upon a prior set of charges. In *re Tenure Hearing of Mujica*, OAL Dkt. No. EDU 5184-01, 2006 N.J. AGEN LEXIS 660, Commissioner's Decision (April 25, 2006).

Commissioner is not expressly required under N.J.A.C. 6A:3-5.6 to review resignations or retirements during the pendency of tenure proceedings; pending tenure charges can and should be dismissed when there is a unilateral resignation or retirement. In *re Tenure Hearing of Saez*, OAL Dkt. No. EDU 11306-05 (ON REMAND), 2006 N.J. AGEN LEXIS 77, Initial Decision (February 22, 2006).

Tenure charges certified by school district against teacher would be dismissed as moot, where teacher unilaterally retired from her position with district. *State-Operated School District of Newark, v. Elmena Jean*,

2001 WL 1609142, N.J. Adm. Nov 27, 2001, (Nos. EDU 11456-99, EDU 1546-98).

Tenured vocational education teacher's unilateral resignation rendered moot charges alleging teacher wrongfully negotiated into his own bank account a check payable to school district and, on numerous occasions, submitted vouchers for and received funds from district to which he was not entitled. In the Matter of the Tenure Hearing of Troy Jenkins, School District of the Township of Pemberton, Burlington County, 2002 WL 31958731, N.J. Adm., Dec 18, 2002, (NO. EDU 6094-00S).

## SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING RELATIONSHIP

### 6A:3-6.1 Application for termination or change in allocation or apportionment

(a) An application for change of designation of a high school (termination or severance of relationship) or of allocation or apportionment of students pursuant to N.J.S.A. 18A:38-13 shall be made by petition of appeal, accompanied by the required feasibility study, and shall proceed in accordance with the provisions of this chapter except as set forth below.