

CHAPTER 3 CONTROVERSIES AND DISPUTES

Authority

N.J.S.A. 18A:6-9; 18A:6-10; 18A:7-4; 18A:7A-15; 18A:7F-9; 18A:7G-12; 18A:11-3; 18A:12-29; 18A:20-36; 18A:26-10; 18A:28-8; 18A:29-4; 18A:29-14; 18A:33-2; 18A:38-1; 18A:38-13; 18A:39-28; 18A:54-4 and 18A:60-1; and P.L. 2007, c. 260.

Source and Effective Date

R.2010 d.072, effective April 23, 2010.
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Chapter Expiration Date

Chapter 3, Controversies and Disputes, expires on April 23, 2015.

Chapter Historical Note

Chapter 3, Controversies and Disputes, was originally codified in Title 6 as Chapter 24, Controversies and Disputes. Chapter 24 was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.1986 d.157, effective April 10, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.1991 d.57, effective January 11, 1991. See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b). Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 24 was extended from January 11, 1996 to July 11, 1997. See: 26 N.J.R. 3783(a), 26 N.J.R. 3942(a). Pursuant to Executive Order No. 66(1978), Chapter 24 expired on July 11, 1997.

Chapter 24, Controversies and Disputes, was adopted as new rules by R.1997 d.358, effective September 2, 1997. See: 29 N.J.R. 2745(a), 29 N.J.R. 3817(a).

Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997. See: 29 N.J.R. 2591(a), 29 N.J.R. 3806(a).

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.2000 d.137, effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic Athletic Association (NJSIAA), Subchapter 8, Appeals from Local District Determinations of Entitlement to Attend School Based Upon Domicile or Residency in District, Subchapter 9, Review of Penalty Determination of the School Ethics Commission, and Subchapter 10, "Abbott" Appeals, were adopted as new rules by R.2000 d.137, effective April 3, 2000. See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Chapter 3, Controversies and Disputes, was readopted as R.2005 d.109, effective March 10, 2005. See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Chapter 3, Controversies and Disputes, was readopted as R.2010 d.072, effective April 23, 2010. As a part of R.2010 d.072, Subchapter 12, Requests for Recording of Judgment, and Subchapter 13, Hearings Prior to Suspension or Revocation of School Bus Driver Endorsement Pursuant to N.J.S.A. 18A:39-28 et seq., were adopted as new rules, effective May 17, 2010. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:3-1.1 Purpose and scope

(a) This chapter sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

(b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:

1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 18A:6-17;

2. Termination of sending-receiving relationships pursuant to N.J.S.A. 18A:38-13;

3. Appeals from decisions of the New Jersey State Interscholastic Athletic Association pursuant to N.J.S.A. 18A:11-3;

4. Denials of entitlement to attend school pursuant to N.J.S.A. 18A:38-1;

5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29; and

6. Hearings prior to suspension or revocation of school bus driver endorsements pursuant to N.J.S.A. 18A:39-28 et seq.

(c) This chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. In accordance with N.J.S.A. 18A:7F-5e(3), such restorations shall be sought pursuant to the provisions of N.J.A.C. 6A:23-8.10.

(d) This chapter shall not apply to appeals of decisions of the State Board of Examiners suspending or revoking teach-

ing certificates, decisions of the School Ethics Commission finding violation of the School Ethics Act, interlocutory decisions of the Board of Examiners or the School Ethics Commission, or requests for relief arising out of legal decisions of the State Board of Education. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

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).

Amended the N.J.A.C. references throughout.

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (b)4, deleted "and" from the end; in (b)5, substituted "; and" for a period at the end; added (b)6; in (c), substituted "This" for "In accordance with N.J.S.A. 18A:7F-5e(3), this" and "In accordance with N.J.S.A. 18A:7F-5e(3), such" for "Such"; and added (d).

Case Notes

Final investigation decision rendered by the Office of Special Education Programs, pursuant to the Individuals with Disabilities Education Act, cannot be appealed to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

Initial Decision (2008 N.J. AGEN LEXIS 328) adopted, which concluded that the Commissioner of Education had jurisdiction over a residency dispute where parents, who had bought a house in the school district that was not completed yet, signed an affidavit stating that they assumed liability for tuition assessed if their children were not residents of the school district after five weeks; the affidavit did not appear to be a contract as the five-week grace period was a standing general policy of the school board, and even if it were a contract, the Commissioner has clear jurisdiction over claims of violations of the school laws. K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 328) adopted, which explained that the restriction on the jurisdiction of the Commissioner of Education in contract disputes is limited to disputes that do not arise out of the school laws and is typically only applied to teacher contract disputes. K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

ALJ appropriately decided teacher's LAD (N.J.S.A. 10:5-1 et seq.) claim within the context of a school law dispute — which teacher himself initiated by choosing to file his appeal with the Commissioner of Education rather than the Division on Civil Rights, as the Board policy on which teacher relied in asserting Commissioner jurisdiction clearly gave him the option to do. The ALJ correctly analyzed petitioner's claim primarily in terms of school law and secondarily in terms of the standard applicable to claims under the LAD, concluding from her review of the law, testimony and evidence that petitioner had no entitlement under the former and had not met his burden of proof under the latter. Varjian v. Bd. of Educ. of Midland Park, OAL Dkt. No. EDU 9917-05, 2007 N.J. AGEN LEXIS 1009, Commissioner's Decision (October 15, 2007), aff'd, SB NO. 30-07, 2008 N.J. AGEN LEXIS 674 (N.J. State Bd. of Educ., May 27, 2008).

Although teacher claimed that his work environment was rendered hostile by the cumulative effect of numerous adverse actions at the hands of the Board and its administration, for which there was no possible explanation other than discrimination toward him as a former cancer patient, reality revealed by the record was that teacher's absence and return to work coincided with the emergence of a new building-level administration which progressively undertook to make systematic