

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

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 3, Controversies and Disputes, expires on April 23, 2017. See: 43 N.J.R. 1203(a).

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Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997.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effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic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 teaching 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 changes in the operation of the high school, a number of which affected teacher's ability to maintain what he perceived as his accustomed position of status and autonomy (namely, teaching only honors and college prep courses). Teacher had no vested entitlement to teach what he wanted to teach and was no more entitled than any other teacher to determine his own schedule of classes. *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).

Initial Decision (2008 N.J. AGEN LEXIS 329) adopted, which concluded that the Commissioner of Education did not have legal authority

to award a parent damages for lost wages and child care expenses incurred while his son was suspended from school; the award of money damages in cases before the Commissioner occurs only in a limited number of cases authorized by the education statutes. *B.G. ex rel. B.G. v. Bd. of Educ. of East Orange*, OAL Dkt. No. EDU 3036-08, Final Decision (May 20, 2008).

6A:3-1.2 Definitions

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

"ALJ" means an administrative law judge assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

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).

When petitioner on behalf of a minor child failed to timely appeal a decision of the Board of Education that certain conduct was not a confirmed case of harassment, intimidation, and bullying, her petition of appeal was dismissed. Petitioner did not attempt to correct the deficiencies in her original submission not only long after the lapse of the 90 days to file a perfected appeal under N.J.A.C. 6A:3-1.3(i) but after the passage of more than another 90 days from when the Department of Education Bureau of Controversies and Disputes invited her to cure her deficiencies in a timely manner. *E.G.M. o/b/o Minor Child J.M. v. Bd. of Educ. of the Twp. Of Mahwah, Bergen Cnty*, OAL Dkt. No. EDU 02119-13, 2013 N.J. AGEN LEXIS 77, Initial Decision (April 9, 2013).

Petition challenging a decision of a charter school's board of trustees terminating his employment as a school business administrator was timely filed as it was filed within the 90 day period described in N.J.A.C. 6A:3-1.3(i). Since the administrator received actual notice of the determination on June 17, 2011, the 90-day period began to run on June 18, 2011, which was the next succeeding day per N.J.A.C. 6A:3-1.2, the filing of the petition on September 15, 2011 was timely because that was the 90th day after June 18. *Jones v. Bd. of Trs. of the Barack Obama Green Charter High School*, OAL Dkt. No. EDU 13722-11, 2013 N.J. AGEN LEXIS 41, Initial Decision (February 27, 2013).

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that the 90-day limitations period ran from the time petitioner began receiving paychecks at his regular teacher salary instead of his requested supervisory salary, regardless of whether petitioner received a formal decision from the school board regarding his request to be paid at a supervisory rate; each time petitioner received a paycheck over the past 17 years, the board clearly communicated to him that it had determined to continue to pay him at the teacher's salary level and each paycheck served as adequate notice, sufficient to inform him that he was not being paid at a supervisory salary level. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that there was no reason to relax the 90-day limitations period on a petitioner's request for a salary adjustment to reflect the fact that he was in a supervisory position because while the Commissioner has the discretion to relax the rule, this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties; petitioner's claim had no import or significance beyond his personal employment relationship with the school board, making a relaxation of the rule unwarranted. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Nontenured teacher who received a letter of termination on April 25, 2008, but did not file his appeal until September 4, 2008, failed to timely file, even if the limitation period began on May 2, 2008, when the teacher made his request for an informal hearing, because 125 days would have elapsed before he filed his petition. At the latest, the limitation period would have begun on June 2, 2008, when the 30-day response period expired with no communication from the District, but by that date the teacher would have known that the District had failed to comply with what he contended was its statutory obligation (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 132). *Lachenauer v. State-Operated School Dist. of Newark*, OAL Dkt. No. EDU 11820-08, 2009 N.J. AGEN LEXIS 652, Final Decision (March 18, 2009).

Petitioner's appeal was untimely because the 90-day filing period commenced when the board notified her on June 23, 2006 that her son would be transferred to another school and her appeal was not filed with the Commissioner until May 8, 2008; neither petitioner's attempts to contact the principal nor her attempts to request her son's school records were sufficient to put the respondent on notice that petitioner was contesting her son's transfer (adopting 2008 N.J. AGEN LEXIS 993). *D.Q. ex rel. S.Q. v. State Operated School Dist. of Newark*, OAL Dkt. No. EDU 7544-08, 2009 N.J. AGEN LEXIS 640, Final Decision (January 21, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 968) adopted, which found that a teacher was not given the military service credit to which he was entitled for purposes of placement on the salary guide at the time of his hiring and that his request for an adjustment of salary was not time-barred by the 90-day limitation period in N.J.A.C. 6A:3-1.3(i) because the limitation did not apply to N.J.S.A. 18A:29-11, which awarded veterans for their service and which had no functional relationship to teaching — it was a statutory entitlement. *Neeley v. Bd. of Educ. of Franklin*, OAL Dkt. No. EDU 6434-06, 2009 N.J. AGEN LEXIS 636, Final Decision (January 5, 2009).

Non-tenured kindergarten teacher did not waive his right to a hearing in the OAL by failing to ask the board for a written statement of reasons for the nonrenewal and declining to make an informal appearance before the board; while a non-tenured employee had the opportunity to appear informally before the employing board, there was no requirement that he do so. *Korba v. Bd. of Educ. of Clinton*, OAL Dkt. No. EDU 6494-07, 2008 N.J. AGEN LEXIS 1421, Final Decision (December 15, 2008).

Where a teacher successfully appealed his 1999 termination and it was determined on remand on Sept. 17, 2007 that he was not entitled to back pay after 2002-03 due to the district's lack of vacant positions within his certification, the teacher's subsequent petition, filed on Dec. 14, 2007, claiming entitlement to employment based on an additional endorsement (Teacher of the Handicapped) he received in 2002 was barred by the 90-day rule of N.J.A.C. 6A:3-1.3. The 90-day period began to run upon the teacher's awareness that the board considered his entitlement to any type of employment in the district to have ended after 2002-03, which occurred at the very latest on December 8, 2006 — the filing date of the Board's brief in the prior proceeding on remand, and for the 2007-08 school year, well before the end of the 2006-07 school year; thus, his Dec. 2007 petition was barred (adopting as modified 2008 N.J. AGEN LEXIS 749). *Ziegler v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 3007-08, 2008 N.J. AGEN LEXIS 1072, Final Decision (November 5, 2008).

Under N.J.A.C. 6A:3-1.3(i), a teacher acquired tenure and her appeal of a board of education's decision non-renewing her position was not time barred after a County Superintendent issued a letter to the teacher clearly holding out the possibility that the teacher could be retained in another position and keep her benefits. Contrary to the board's position, the 90-day period did not begin to run when the teacher received notice in May 2006 that her position was being eliminated and she would have to apply for a maternity leave position; instead, the 90-day period began to run in April 2007 when the board adopted a resolution "non-renewing" the teacher effective June 30, 2007. *Taibi v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 8090-07, 2008 N.J. AGEN LEXIS 1193, Final Decision (September 24, 2008).

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).

Where a ten-month teaching staff member received a letter from the Superintendent dated April 27, 2007, during the eighth month of her third academic year of service, informing her that her contract would not be renewed for the upcoming school year, yet her employment did not end until June 30, 2007, the 90-day time limitation for filing a petition under N.J.A.C. 6A:3-1.3(i) began to run from petitioner's receipt of the April 27 letter; contrary to petitioner's contention that the period ran from June 30 because she was not appealing from the nonrenewal but from the violation of her tenure status, which did not occur until she attained tenure and was terminated on June 30, the period ran from the April 27 letter because petitioner at that time learned that the board was taking action adverse to her interests (adopting and supplementing 2007 N.J. AGEN LEXIS 807, and agreeing that the case was controlled by *Nissman v. Bd. of Educ. of Long Branch*, 272 N.J. Super. 373 (App.Div. 1994)). *Salazar-Linden v. Bd. of Educ. of Holmdel*, OAL Dkt. No. EDU 8194-07, 2008 N.J. AGEN LEXIS 670, Commissioner's Decision (March 3, 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).

6A:3-1.4 Format of petition of appeal

(a) A petition shall include the name, address, telephone number, and, if available, fax number and e-mail address of each petitioner; the name, address, telephone number, and, if available, fax number and e-mail 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:

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

v.

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

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

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.)

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

Signature of petitioner or representative

Date _____

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

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

Signature of petitioner

Sworn and subscribed to before me this

_____ day of _____,
(month) (year)

(Signature of Notary Public or other person
authorized to administer an oath or affirmation)

(b) A petition submitted by a pro se petitioner that substantially includes the requisite information as set forth in (a) above shall be accepted for filing notwithstanding that the petition does not conform to the prescribed technical format, and such petitioner shall be notified of any material deficiencies which shall be remedied before the matter can proceed. However, where a petition does not meet minimal standards regarding parties, allegations or relief sought, it may be returned to the petitioner without being filed.

1. Any submission returned to a petitioner pursuant to this subsection shall be accompanied by a letter noting the date of the submission's receipt and identifying the deficiencies deemed to constitute substantial noncompliance.

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

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

As amended, R.1981 d.265, effective July 9, 1981.

See: 13 N.J.R. 190(a), 13 N.J.R. 397(b), 13 N.J.R. 481(a).

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

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

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

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

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

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

Stylistic changes only.

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

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

Rewrote (a); inserted a new (b); and recodified former (b) and (c) as (c) and (d).

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

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

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

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

In the introductory paragraph of (a), substituted " , address, telephone number, and, if available, fax number and e-mail address" for "and" and a comma for "and" following the second occurrence of "name" and inserted the second occurrence of " , telephone number, and, if available, fax number and e-mail address".

6A:3-1.5 Filing and service of answer

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, unless a shorter period is required by statute, regulation or court order or directed by the Commissioner due to the emergent nature of a matter. The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition.

1. A respondent shall notify the Bureau of Controversies and Disputes of any change in address, telephone number, fax number or e-mail address prior to transmittal of a matter to the OAL.

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

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

(d) The answer, and any supporting papers the respondent includes, shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner. In no case shall a respondent submit materials to the Commissioner which have not been served upon the petitioner and other parties.

(e) Failure to answer a petition within the 20-day period from receipt of service shall result in a notice to the respondent informing the respondent that unless an answer is filed within 10 days of the receipt of said notice, each count in the petition shall be deemed admitted and the Commissioner may decide the matter on a summary basis.

(f) Upon written application by a party, the Commissioner may extend the time for answer, provided that the application was received by the Commissioner prior to the expiration of the initial 20-day period, and provided that a copy of the application was served upon all parties to the contested case.

1. Applicants for extensions are encouraged to secure the consent of the other parties, and where consent has been obtained prior to application to the Commissioner, the application shall so state. Any reasonable request for extension shall be granted when all parties consent. Requests for extensions which are opposed by one or more of the parties may be granted upon a finding of good cause shown.

(g) Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

(h) The provision of (a) above allowing 20 days within which to file an answer, and the provisions of (e) and (f) above in their entirety, shall not apply to answers filed to tenure charges pursuant to N.J.A.C. 6A:3-5.3.

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

Substantially amended.

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

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

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).

In (a), inserted "required by statute, regulation or court order or" preceding "directed by the Commissioner" in the introductory paragraph; in (e), substituted "decide the matter on a summary basis" for "render a summary decision"; added (h).

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

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

In (a)1, substituted a comma for "or" preceding "telephone" and inserted "; fax number or e-mail address"; in (d), deleted "original and two copies of the" preceding "answer" and "of" preceding "any supporting papers"; in (e), inserted "a petition" and deleted "of appeal" following "the petition"; in (g), inserted "; or by the ALJ if the motion is to be briefed following transmittal to the OAL"; and deleted (g)1.

Case Notes

Thirty day period in which the Commissioner of Education was required to determine whether to retain case filed by local school board challenging amount of state aid school district received, or transfer case to Office of Administrative Law (OAL), was never triggered, where Department of Education never filed an answer to school board's petition and Commissioner never determined that school board's petition presented a contested case. *Sloan v. Klagholtz*, 776 A.2d 894 (2001).

6A:3-1.6 Emergent relief or stay

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

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

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;

3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(c) Any party opposing such motion shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6A:3-1.5. However, upon review, the Commissioner may:

1. Act upon such motion prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard;

2. Act upon such motion upon receipt of the answer; or

3. Transmit the motion to the OAL for immediate hearing on the motion.

(d) The Commissioner may decide a motion for interim relief or stay prior to any transmittal of the underlying matter to the OAL for hearing. Once a matter has been transmitted, any subsequent motion for emergent relief shall be filed with the Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL.

1. Where a matter has already been transmitted to the OAL, at the same time the motion is filed with the Commissioner, a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known.

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

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

Substantially amended.

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

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

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

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

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.

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

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

Section was "Interim relief or stay". Deleted (e).

Case Notes

Mother's emergency application to have her middle school aged disabled child placed out of district in lieu of the current IEP's placement was denied because although the mother claimed that the out of district placement was a "good fit" and that the child had been subjected to an assault at the in district school, she did not provide adequate evidence as to either contention; however, pursuant to the "stay put" rule, the mother's alternative request that the child continue to receive in-home instruction as he had been prior to the new IEP was granted pending the due process hearing. *K.S. ex rel. K.S. v. Hackensack Bd. of Educ.*, OAL Dkt. No. EDS 12621-10, 2010 N.J. AGEN LEXIS 631, Order Granting in Part/Denying in Part Emergent Relief (December 1, 2010).

Where a mother gave her verbal consent, albeit reluctantly, to move her child from an out-of-district preschool placement to an in-district placement and allowed the child to attend the first two days of school, the "stay put" placement was the in-district placement. *R.B. ex rel. L.B. v. Clark Twp. Bd. of Educ.*, OAL Dkt. No. EDS 10198-10, 2010 N.J. AGEN LEXIS 554, Order Denying Emergent Relief (September 29, 2010).

Where a 12-year-old impaired student "aged out" of his middle school, the parents were entitled to emergent relief in terms of his new placement because the two placements proposed by the district would have been a fundamental change in his program. The student had been enjoying a small private school in a more restrictive environment with students of similar language/learning impairments; whereas the district's first option would have resulted in a less restrictive, general education setting and the second option, while also being a private school with a more restrictive environment than the first proposed placement, was not comparable to the current placement in terms of a significant portion of the students not being targeted for language based special education services. *K.O. ex rel. G.O. v. Westwood Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 08697-10, 2010 N.J. AGEN LEXIS 439, Order Granting Emergent Relief (August 26, 2010).

Nineteen-year-old student classified as eligible for special education and related services under the category of Traumatic Brain Injury was properly set to graduate where he had already completed five years of high school in order to allow him to transition from college preparation

classes to vocational classes, had earned the requisite credits to graduate, and there was no indication that a sixth year of high school would have been beneficial to him in any way. *N.W. v. East Orange Bd. of Educ.*, OAL Dkt. No. EDS 6025-10, 2010 N.J. AGEN LEXIS 299, Order Denying Emergent Relief (June 16, 2010).

Father was not entitled to emergent relief in the form of a temporary placement of his eight-year-old child in a general education setting instead of at an academy approved for the child's IEP because, although there was an incident at the academy, no proof was presented that the child's safety or current educational placement pursuant to the existing IEP was compromised. *G.M. ex rel. Z.M. v. West New York Bd. of Educ.*, OAL Dkt. No. EDS 05446-10, 2010 N.J. AGEN LEXIS 460, Order Denying Emergent Relief (June 2, 2010).

"Stay put" provision was inapplicable where the child had completed pre-kindergarten and an IEP for the 2009-2010 academic year had been prepared but not implemented; since the proposed IEP for kindergarten was the initial placement following the pre-school placement, there was no current educational placement for stay-put purposes. Stay-put provisions apply to Part B placements and not to early intervention services. *L.R. ex rel. E.R. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 9763-09, 2009 N.J. AGEN LEXIS 624, Emergent Relief Decision (September 4, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 531) adopted, which found that a municipality and its mayor were not entitled to emergent relief in their action seeking to enjoin the board of education's expansion of its sending/receiving agreement with a neighboring township, whereby all of the pre-Kindergarten through 6th grade students at its sole elementary school would be sent to the neighboring school district. It was not clear that petitioners would succeed on the merits and there were significant jurisdictional and standing issues with regard to the petition; additionally, both boards of education and the students would have suffered greater harm than petitioners if the emergent relief was granted because both boards passed resolutions adopting the sending/receiving relationship, drafted budgets approved by the Executive County Superintendent, and acted upon that budget for the 2009-2010 school year scheduled to commence on September 8, 2009. *Borough of Chesilhurst v. Bd. of Educ. of Chesilhurst*, OAL Dkt. No. EDU 8627-09, 2009 N.J. AGEN LEXIS 842, Emergent Relief Decision (August 26, 2009).

Tenured teacher was entitled to emergent relief where the Board withheld his pay, even though there was no criminal indictment and the Board had not certified tenure charges against him; the issue of suspension with pay was independent of the question of whether the teacher could perform his teaching duties while the criminal charges were pending (rejecting 2009 N.J. AGEN LEXIS 462). *Flynn v. Bd. of Educ. of Freehold*, OAL Dkt. No. EDU 4760-09, 2009 N.J. AGEN LEXIS 631, Final Decision (August 3, 2009).

Parent of an emotionally disturbed eighth-grade student was denied her request for her son to participate in graduation ceremonies because school policy dictated that any student that had received two or more suspensions would not be allowed to participate in the graduation ceremony; the student had been suspended on four separate occasions since March for such behavior as using foul language with a teacher and the principle, engaging in "play fighting" even though he knew it was forbidden, and assaulting another student. *A.W. ex rel. A.W. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 5956-07, 2007 N.J. AGEN LEXIS 442, Final Decision (June 22, 2007).

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.

(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.

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

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

Deleted (a)1.

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.

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.

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

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

Deleted (b)1.

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

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.

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".

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

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

Deleted designation (a); and deleted (b).

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).

Initial Decision (2008 N.J. AGEN LEXIS 92) adopted, which concluded that school board's petitions, seeking restitution from former administrators on the basis that their employment contracts did not cover compensatory time, were purely contractual matters, and therefore beyond the scope of the Commissioner of Education's subject matter jurisdiction. *Bd. of Educ. of Twp. of North Brunswick v. Sigall*, OAL Dkt. No. EDU 8738-07 and EDU 8739-07 (Consolidated), 2008 N.J. AGEN LEXIS 266, Commissioner's Decision (March 27, 2008).

Matter was outside of the jurisdictional purview of the Commissioner of Education where claim concerned dispute over bidding process for contract involving renovations and alterations of existing security facilities at a municipal building and police department. Although school board contributed \$10,000 to effort, petitioner offered no proofs to establish how the bidding process "primarily" and "directly" arose under the school laws, rather than the laws governing contracts; and evidence demonstrated that the Township undertook the steps necessary to obtain the grant, engaged a consultant who performed all design work and prepared the bid specifications and documents, caused a Notice to Bidders to be published, received, opened and reviewed the bids and awarded the contract to an entity other than petitioner. *Integrated Security Tech., Inc. v. Township of Hardyston*, OAL Dkt. No. EDU 9138-07, 2007 N.J. AGEN LEXIS 1008, Commissioner's Decision (November 7, 2007).

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, 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.

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

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

Updated the N.J.A.C. reference.

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.

herence 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.

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that there was no reason to relax the 90-day limitations period on a petitioner's request for a salary adjustment to reflect the fact that he was in a supervisory position because while the Commissioner has the discretion to relax the rule, this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties; petitioner's claim had no import or significance beyond his personal employment relationship with the school board, making a relaxation of the rule unwarranted. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Residency appeal by a school district, challenging the determination that it was the district of residence of a family for school funding purposes, was time-barred under the 30-day filing requirement where the appeal was not filed until 105 days after the decision. The relaxation rule found at N.J.A.C. 6A:3-1.16 was restricted to the rules set forth in Chapter 3 and, even applying general principles of equity, the district failed to advance a compelling reason to justify excusing it from the 30-day filing requirement (adopting 2009 N.J. AGEN LEXIS 168). *Bd. of Educ. of Magnolia v. Bd. of Educ. of Deptford*, OAL Dkt. No. EDU 994-07 and EDU 8783-07, 2009 N.J. AGEN LEXIS 844, Final Decision (May 5, 2009).

Petitioner's untimely appeal was properly dismissed because the delay in filing the claim prevented respondent from reaching an appropriate and efficient resolution regarding her son's transfer and ignoring the 90-day requirement would have contravened the express language of the rule and negated the public policy of encouraging prompt resolution of disputes; relaxation of the 90-day rule is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, 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 (adopting 2008 N.J. AGEN LEXIS 993). *D.Q. ex rel. S.Q. v. State Operated School Dist. of Newark Essex Co.*, OAL Dkt. No. EDU 7544-08, 2009 N.J. AGEN LEXIS 640, Final Decision (January 21, 2009).

Where a teaching staff employee's petition filed on August 14, 2007 was time-barred because it was not filed within 90 days of receipt of the April 27, 2007 letter nonrenewing her contract, and petitioner worked until the end of her contract on June 30, 2007, and claimed her termination was in violation of tenure that she achieved after the nonrenewal letter, there were no compelling grounds for relaxation of the 90-day rule; the complexity of the tenure laws does not excuse an employee

from complying with school law procedural requirements, and petitioner had no tenure when she was told she was being nonrenewed (adopting and supplementing 2007 N.J. AGEN LEXIS 807). *Salazar-Linden v. Bd. of Educ. of Holmdel*, OAL Dkt. No. EDU 8194-07, 2008 N.J. AGEN LEXIS 670, Commissioner's Decision (March 3, 2008).

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.

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

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

1. The Commissioner shall award prejudgment interest when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

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

(d) The rate of interest for the awarding of prejudgment and postjudgment interest shall equal the average rate of return, to the nearest one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

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

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

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

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

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

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).

In (a), inserted "so specify in the petition's request for relief and shall" preceding "propose, before the Commissioner" in 1 and added 2.

Case Notes

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

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

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

SUBCHAPTER 2. DECLARATORY RULINGS**6A:3-2.1 Petition for declaratory ruling**

(a) Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with these rules as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts which are future, contingent, uncertain or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

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

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

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

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

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

Stylistic changes only.

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).

In (a), substituted "rule" for "regulation" preceding "within the jurisdiction" and substituted "rules" for "regulations" preceding "as they pertain" in the introductory paragraph.

the nature of a withholding, the Public Employment Relations Commission shall determine whether the basis for the withholding is predominately disciplinary or predominantly for reasons of teaching performance; where the basis is found to be predominantly for reasons of teaching performance, a petition of appeal may thereafter be filed within the time frame set forth at N.J.S.A. 34:13A-27(d) (see N.J.A.C. 6A:3-1.3(i)2).

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

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

Deleted old text and inserted new.

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

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

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

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

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

Substituted "petition of appeal" for "formal petition of appeal for a hearing" following "file 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 the section.

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

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

Substituted "teaching staff member's" for "teacher's" throughout; in the introductory paragraph of (a), substituted "teaching staff member" for "teacher" and "set forth" for "outlined"; and in (a)1, inserted "or predominantly for reasons of teaching performance; where the basis is found to be predominantly for reasons of teaching performance, a petition of appeal may thereafter be filed within the time frame set forth at N.J.S.A. 34:13A-27(d) (see N.J.A.C. 6A:3-1.3(i)2)".

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 24) adopted, which concluded that teacher's failure to maintain appropriate classroom discipline justified the withholding of his salary increment. It was the burden of teacher to prove by a preponderance of the credible and competent evidence that school district was arbitrary or capricious in withholding his salary increment. *Gementgis v. State-Operated Sch. Dist. of Newark*, OAL Dkt. No. EDU 1117-06, 2008 N.J. AGEN LEXIS 250, Commissioner's Decision (March 5, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 781) adopted, which concluded that withholding of tenured teacher's salary increment was a reasonable exercise of the school board's lawful discretionary authority where teacher failed to implement appropriate instructional managerial practices and disciplinary procedures in his gym classes, despite prior warnings in previous school years (involving teacher's use of derogatory names for students and requiring that they sit within a storage closet as a form of discipline). While teacher claimed that his students were trying to get him in trouble, he failed to present any competent or credible evidence to support this contention. *Newsome v. Dumont Bd. of Educ.*, OAL Dkt. No. EDU 11390-06, 2008 N.J. AGEN LEXIS 251, Commissioner's Decision (January 4, 2008).

Teacher not entitled to salary increments for period of paid suspension pending determination of certified tenure charges. *DiPillo v. Township of Randolph*, 97 N.J.A.R.2d (EDU) 238.

Guidance counselor failed to refute school board's showing that poor performance warranted denial of salary increment. *Besty Kidd v. Board of Education of the Penns Grove-Carney's Point Regional School District*, 97 N.J.A.R.2d (EDU) 143.

Showing R-rated film to 12 and 13-year-old students was poor judgment warranting denial of tenured teacher's salary increment for year. *Capizola v. South Plainfield Board of Education*, 95 N.J.A.R.2d (EDU) 479, supplemented 96 N.J.A.R.2d (EDU) 440.

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".

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

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

In the introductory paragraph of (a), substituted "N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply in" for "In", deleted "State-operated" preceding "school district", "N.J.A.C. 6A:3-1.3, Filing and service of petition, shall not apply" following "Act" and "original and two copies of the" preceding "written" and inserted "under full State intervention"; and in the introductory paragraph of (c), inserted "and vice principals" and "under full State intervention," and deleted "State-operated" preceding "school".

Petition for Rulemaking.

See: 44 N.J.R. 1796(a), 2063(a).

Amended by R.2013 d.120, effective October 7, 2013.

See: 45 N.J.R. 1292(a), 45 N.J.R. 2211(a).

Rewrote the introductory paragraphs of (a) and of (b); in (a)1, deleted "in order" following "filed"; in (b)1, substituted "person(s)" for "person or persons"; in (b)2, substituted "Along" for "Charges along", and inserted "charges" following "evidence"; in (b)5, inserted "provide" following "shall", and deleted "provide" preceding "written"; in (b)6, substituted "If" for "In the event" and "district board of education" for "board", and deleted "that such" following "finds", "that" preceding "the charges", and "file such" preceding "written charges"; in the introductory paragraph of (c), substituted "If" for "In the event that", and inserted "pursuant to N.J.S.A. 18A:6-17.3"; deleted former (c)1 through (c)9; inserted new (c)1 through (c)6; and recodified former (c)10 as (c)7.

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).

Very generic provision on discipline of employees included in a collective bargaining agreement (CBA) between the Lyndhurst Education Association and the Board of Education of the Township of Lyndhurst did not meet the legal requirements for a schedule and specifics per N.J.A.C. 6A:3-5.1(a)1 allowing minor discipline to be encompassed within the CBA and stand as an exception to the Tenured Employees Hearing Act (Tenure Act), N.J.S.A. 18A:6-10 et seq. Given that finding, the Board lacked legal authority to suspend a school nurse who had tenure without bringing charges under the Tenure Act and the nurse was entitled to a summary decision that the three-day suspension that had been imposed was invalid and ordering the Board to pay her for the three days. *Conte v. Bd. of Educ. of Lyndhurst*, OAL Dkt. No. EDU

11282-12, 2013 N.J. AGEN LEXIS 49, Initial Decision (February 26, 2013).

Board's failure to provide a modified individual professional improvement plan (PIP) and reasonable assistance compelled dismissal of inefficiency tenure charges against school social worker. In re Tenure Hearing of Parise, OAL Dkt. No. EDU 5793-03, 2008 N.J. AGEN LEXIS 1189, Final Decision (August 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 298) adopted, which found that tenure charges were not defective for being predicated on the vice-principal's arrest, indictment, and entry into the Pretrial Intervention Program, because the charges clearly articulated the reasons for arrest, i.e., possession of cocaine and drug paraphernalia, and supported the OAL hearing on the underlying facts. In re Tenure Hearing of Thomas, OAL Dkt. No. EDU 1763-08 (EDU 5908-07 On Remand), Commissioner's Decision (May 23, 2008).

Evidence sustained finding of unbecoming conduct against teacher where he was found to have sent student a birthday card and a gift to a nail salon and to have created a clandestine email account exclusively for himself and the student. Teacher was not dismissed from his tenured employment but was required to forfeit 120 days of salary (Initial Decision adopted except as to penalty, 2008 N.J. AGEN LEXIS 209). In re Tenure Hearing of Dennis, OAL Dkt. No. EDU 5080-07, 2008 N.J. AGEN LEXIS 1249, Commissioner's Decision (May 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 808) adopted as to its finding that the petitioner acquired tenure as a clerical employee by virtue of her service as an attendance aide, but rejected as to its implicit conclusion that the petitioner's tenure protection continued when she accepted the separate and nontenurable position of classroom aide. Because no relief could be awarded as a result of the petitioner's one-time tenured status, petition was dismissed. *Colon-Serrano v. Bd. of Educ. of Plainfield*, OAL Dkt. No. EDU 11588-06, 2008 N.J. AGEN LEXIS 252, Commissioner's Decision (January 28, 2008), aff'd, SB NO. 10-08, 2008 N.J. AGEN LEXIS 724 (N.J. State Bd. of Educ., June 28, 2008).

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'g 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 that accompanies the written charges shall contain a certification by the district board of education secretary or the State district superintendent:

1. The district board of education or the State district superintendent has determined 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 the employee was suspended and, if so, whether such suspension was with or without pay; and

3. The 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.

(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. Petition for Rulemaking.

See: 44 N.J.R. 1796(a), 2063(a).

Amended by R.2013 d.120, effective October 7, 2013.

See: 45 N.J.R. 1292(a), 45 N.J.R. 2211(a).

In the introductory paragraph of (a), substituted “that” for “which”; in (a)1, substituted “The” for “That the”, and deleted “that” following “determined”; in (a)2, inserted a comma following “place”, deleted “or not” following “whether”, and inserted “and” at the end; in (a)3, substituted “The” for “That such”, and substituted a period for “; and” at the end; and deleted (a)4.

Case Notes

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

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) Except as specified in N.J.A.C. 6A:3-5.1(c)5, 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 the motion is filed within the time allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the arbitrator if the motion is to be briefed following transmittal to an arbitrator.

(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, or the 10-day answer period specified in N.J.A.C. 6A:3-5.1(c), and a copy shall be served upon the charging district board of education or the State district superintendent. The district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension that is received after the 15-day period allotted for answer to tenure charges, or after the 10-day period allotted in N.J.A.C. 6A:3-5.1(c), 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) If no answer is filed within the requisite time period and no request for extension is made, or if the request is denied by the Commissioner, or 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.

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

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

In (a)1, deleted the second sentence and inserted “, or by the ALJ if the motion is to be briefed following transmittal to the OAL”.

Amended by R.2013 d.120, effective October 7, 2013.

See: 45 N.J.R. 1292(a), 45 N.J.R. 2211(a).

In the introductory paragraph of (a), substituted “Except as specified in N.J.A.C. 6A:3-5.1(c)5, an” for “An”; in (a)1, substituted the third occurrence of “the” for “that such”, “arbitrator” for “ALJ”, and “an arbitrator” for “the OAL”; in the introductory paragraph of (b), inserted “or the 10-day answer period specified in N.J.A.C. 6A:3-5.1(c),” and substituted “The” for “Such”; rewrote (b)1; and in (c), substituted “If” for “Where” and “if the” for “such”, and deleted “where” following “Commissioner, or”.

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 within the Departments of Human Services, Children and Families, Corrections, and Education and within 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,

when the Commissioner's ability to render a timely decision would not be compromised by granting a party's request for additional time within which to make required submissions.

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), substituted "together with proof of service upon the petitioner(s)" for "appendix and transcript"; rewrote (d).

6A:3-7.4 Applications for emergent relief

(a) Where a petitioner is seeking emergent relief, a petition shall be filed in accordance with N.J.A.C. 6A:3-7.1, except as set forth below, and shall be accompanied by a separate motion and brief meeting the requirements of N.J.A.C. 6A:3-1.6.

1. The petitioner shall include with the petition the Record on Appeal obtained from the NJSIAA, including a Statement of Items comprising such record, or a certification attesting that such record and statement have been requested and will be provided to the Commissioner within three days, unless a shorter time frame is directed by the Commissioner due to a matter's extreme urgency or a longer time frame is agreed upon by the parties and the Commissioner.

2. Where the relief sought in the petition will become moot upon the Commissioner's decision on the motion for emergent relief, petitioner's brief shall additionally address the merits of the petition so that the Commissioner's decision on the emergent application shall resolve the entire controversy without further proceedings.

(b) Within three days of its receipt of a verified petition with motion for emergent relief, or within such shorter period as may be directed by the Commissioner due to a matter's extreme urgency, the NJSIAA and any other respondent shall file an answer to the petition in the same form and manner as prescribed by N.J.A.C. 6A:3-1.5, together with a brief in opposition to petitioner's submission pursuant to (a) above and proof of service upon the petitioner(s).

(c) After the filing of briefs pursuant to (a) and (b) above, no further briefs shall be allowed except as directed by the Commissioner and the record of the matter shall be deemed closed.

New Rule, R.2005 d.109, effective April 4, 2005.

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

Former N.J.A.C. 6A:3-7.4, Standard of review, recodified to N.J.A.C. 6A:3-7.5.

6A:3-7.5 Standard of review

(a) In determining appeals from NJSIAA decisions, the Commissioner's scope of review shall be appellate in nature.

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute his or her judgment for that of the NJSIAA, even

if the Commissioner might judge otherwise in a de novo review.

2. The Commissioner shall not overturn NJSIAA's application of its own rules absent a demonstration by the petitioner that such rules were applied in an arbitrary, capricious, or unreasonable manner.

Recodified from N.J.A.C. 6A:3-7.4 by R.2005 d.109, effective April 4, 2005.

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

Former N.J.A.C. 6A:3-7.5, Commissioner's decision, recodified to N.J.A.C. 6A:3-7.6.

6A:3-7.6 Commissioner's decision

The Commissioner shall issue a written decision which shall resolve entire controversy before the Commissioner. The decision shall constitute, pursuant to N.J.S.A. 18A:11-3, the final decision of the State administrative agency for purposes of appeal to the Appellate Division of the Superior Court.

Recodified from N.J.A.C. 6A:3-7.5 by R.2005 d.109, effective April 4, 2005.

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

SUBCHAPTER 8. APPEALS FROM DISTRICT BOARD OF EDUCATION DETERMINATIONS OF ENTITLEMENT TO ATTEND SCHOOL BASED UPON DOMICILE OR RESIDENCY IN DISTRICT

6A:3-8.1 Exceptions to general appeal requirements

(a) Appeals of district board of education determinations with respect to entitlement to attend school pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 shall generally proceed in accordance with the provisions of N.J.A.C. 6A:3-1, except as set forth below.

1. Petitions in letter form shall be accepted from pro se petitioners, provided that such petitioners use the form provided at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word) or prepare a letter wherein they:

i. Identify themselves by name, address, telephone number, and, where available, fax number and e-mail address;

ii. Identify the respondent district board of education;

iii. Clearly indicate that they are appealing from a determination of ineligibility to attend school in the district based upon residency or domicile and provide the date on which such determination was made; and

iv. Include a signed attestation, which need not be notarized, that:

(1) Their claim of entitlement is based upon facts which are true to the best of their knowledge and belief; and

(2) They understand that they may be assessed tuition for the period of the child(ren)'s ineligible attendance and that such assessment may be recorded on the judgment docket of the court, if the Commissioner determines that the appeal has been abandoned or withdrawn and/or that the child(ren) are ineligible for a free education in the district.

2. Petitions from pro se petitioners need not be served on the respondent district board of education, but may be filed solely with the Bureau of Controversies and Disputes. Upon the receipt of any such petition, the Bureau will transmit by facsimile a copy of the petition and its appended supporting materials, if any, to the district board of education and the executive county superintendent, together with notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

i. Nothing in (a)2 above shall preclude a pro se petitioner from serving a petition on a respondent district board of education in accordance with N.J.A.C. 6A:3-1.3. In such cases, the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioner's child(ren) pending the outcome of the appeal, shall commence on receipt of the petition, rather than on any subsequent notice from the Bureau.

ii. Petitions filed by represented petitioners must conform to the requirements of N.J.A.C. 6A:3-1.3, including proof of service on the district board of education. Such petitions will not be transmitted to the district board or executive county superintendent by the Bureau of Controversies and Disputes as set forth in this section; however, upon receipt of any such petition, the Bureau will transmit by facsimile the notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

3. In any instance where a petitioner has not included a copy of the district board of education's written determination of ineligibility as part of the petition, the district board of education shall file a copy of such determination with its answer.

(b) Where appeal is taken from a determination of ineligibility under N.J.S.A. 18A:38-1(b)1 ("affidavit" students), such appeal shall be filed by the resident making the claim of entitlement and shall not be filed by the parent or legal guardian.

(c) Hearing of appeals filed pursuant to this subchapter shall be on an expedited basis in accordance with the provisions of N.J.S.A. 18A:38-1.

(d) Where a petition is abandoned through withdrawal, failure to prosecute or any means other than settlement agreeing to waive or reduce tuition and the Commissioner determines that the child(ren) are ineligible for a free education in the district, and where the record includes a calculation reflecting the rate(s) of tuition for the year(s) at issue, the per diem rate of tuition for the current year, and the date on which the student's ineligible attendance began, payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6, may be ordered by the Commissioner in the decision finding abandonment of the appeal. Where the record does not include such a calculation, but the district board of education has filed a counterclaim for tuition along with its answer to the petition, the counterclaim shall proceed to hearing at the OAL notwithstanding that the petition has been withdrawn or abandoned.

(e) Nothing in this subchapter shall preclude a district board of education from seeking payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6.1(a), for a student it determines to be ineligible to attend school in the district.

(f) The provisions of this subchapter shall not apply to disputes arising from a district board of education's assignment of a student to a particular school within the district or to appeals of district board of education determinations not to permit continued attendance by a student who was, but no longer is, eligible to attend school in the district. Such disputes shall be filed, and proceed, in accordance with the general provisions of N.J.A.C. 6A:3-1.

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.2010 d.072, effective May 17, 2010.

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

In the introductory paragraph of (a), inserted "and N.J.A.C. 6A:22" and substituted "N.J.A.C. 6A:3-1" for "this chapter"; rewrote the introductory paragraph of (a)1; in (a)1i, deleted "and" preceding "telephone", and inserted "; and," and "; fax number and e-mail address"; rewrote (a)1iv; rewrote the introductory paragraph of (a)2; added (a)2ii; added new (d); recodified former (d) and (e) as (e) and (f); in the introductory paragraph of (e), updated the N.J.A.C. reference; and deleted (e)1.

SUBCHAPTER 9. REVIEW OF PENALTY RECOMMENDATIONS OF THE SCHOOL ETHICS COMMISSION

6A:3-9.1 Commissioner review of penalty recommendations

(a) By operation of N.J.S.A. 18A:12-29(c), the Commissioner shall review penalty recommendations of the School Ethics Commission. Such review shall be limited to the appropriateness of the penalty recommended by the Commission in

light of its findings of fact and determinations of violation, and shall proceed in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C.

(b) Appeals of findings of violation by the School Ethics Commission, or of interlocutory decisions of the Commission, shall be made to the Commissioner pursuant to the provisions of N.J.A.C. 6A:4. Pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-11.1, appeals of findings that probable cause does not exist to credit the allegations in a complaint, or of dismissals of complaints, shall be made directly to the Appellate Division of Superior Court.

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

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

Substituted "recommendations" for "determinations" in the first sentence.

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

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

Inserted designation (a); in (a), substituted "By operation of N.J.S.A. 18A:12-29(c), the" for "The", deleted "pursuant to N.J.S.A. 18A:12-29(c)" following the first occurrence of "Commission" and "which are not reviewable by the Commissioner," following "violation,"; and added (b).

SUBCHAPTER 10. "ABBOTT" APPEALS

6A:3-10.1 Appeal of Department determinations

Appeals of Department determinations shall be made pursuant to the provisions of applicable rules or directives of the court and shall proceed in accordance with the provisions of N.J.A.C. 6A:3-1, except as otherwise required by such rules or directives.

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.

SUBCHAPTER 11. APPLICATIONS FOR ISSUANCE OF FACILITIES BONDS

6A:3-11.1 Application to issue bonds following defeated referenda

Applications for an order of the Commissioner authorizing the issuance of bonds without voter approval pursuant to N.J.S.A. 18A:7G-12 may be made, and shall proceed, in accordance with the provisions of N.J.A.C. 6A:26-3.7(i).

New Rule, R.2005 d.109, effective April 4, 2005.

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

SUBCHAPTER 12. REQUESTS FOR RECORDING OF JUDGMENT

Case Notes

Board of education won a summary decision on its claim that it was entitled to tuition reimbursement for the period during which an

ineligible student actually attended a school in the district. Also, and upon the entry of an order to that effect by the Commissioner of the N.J. Department of Education, the board was entitled to request per N.J.A.C. 6A:3-12 that the order be recorded on the judgment docket of the appropriate court. N.J.A.C. 6A:22-6.2(a)2. J.G. ex rel S.G. v. Lenape Reg. High Sch. Dist. Bd. Educ., OAL Dkt. No. EDU 15129-11, 2013 N.J. AGEN LEXIS 50, Initial Decision (March 4, 2013).

6A:3-12.1 Recording of assessments on judgment docket of Superior Court

(a) Where the Commissioner has, in a final decision in a contested case, assessed a fixed amount of money against a non-prevailing party, the party(ies) to whom relief was awarded may request the Commissioner to issue an order notifying the Clerk of the Superior Court that the final order of assessment is subject to recording on the judgment docket of the court pursuant to N.J.S.A. 2A:58-10.

(b) Requests to the Commissioner pursuant to (a) above shall be made by letter to 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. Such letter shall indicate how much, if any, of the assessment has already been satisfied; and shall be accompanied by proof of service on each other party and a copy of the Commissioner's decision ordering the assessment.

1. Upon the Department's receipt of a conforming letter of request, the non-prevailing party shall be afforded an opportunity to provide reasons why the Commissioner should not seek recording of the judgment. Such reasons may not dispute the fact that monies are owed or the amount of such monies as reflected in the final order of assessment, but shall be limited to claims of error in the amount of judgment sought, for example, because payments have been made that the letter of request does not reflect.

SUBCHAPTER 13. HEARINGS PRIOR TO SUSPENSION OR REVOCATION OF SCHOOL BUS DRIVER ENDORSEMENT PURSUANT TO N.J.S.A. 18A:39-28 ET SEQ.

6A:3-13.1 Request for hearing upon notice of impending suspension or revocation

(a) Where a school bus driver has been notified by the Department's Criminal History Review Unit that a determination has been made that suspension or revocation, as the case may be, of the driver's school bus endorsement is warranted pursuant to N.J.S.A. 18A:39-28 et seq. because a child was left on the school bus to which the driver was assigned notwithstanding the driver's obligation to conduct a visual inspection at the end of the transportation route to assure that no pupil is left on the bus, the driver may contest such determination through the filing of a petition of appeal according to the procedures set forth in N.J.A.C. 6A:3-1.

1. Such petition shall be filed within 10 business days of the date of the Department's written notice to petitioner of such determination.

2. In addition to the service requirements of N.J.A.C. 6A:3-1.3(a) and (j), such petition shall additionally be served on the Department c/o Manager, Criminal History Review Unit, New Jersey State Department of Education, PO Box 500, Trenton, New Jersey 08625-0500.

(b) The following aspects of the Department's determination may be contested:

1. That a pupil was left on the bus at the end of the driver's route;

2. That the incident in question was the driver's second offense;

3. That the pupil was harmed as a result of foreseeable danger; and

4. That the driver acted with gross negligence.

(c) Where no petition is filed within the requisite time frame, or where a petitioner does not prevail before the Commissioner in demonstrating that the Department's determination was in error, the Department's Criminal History Review Unit will:

1. Notify the Motor Vehicle Commission of its obligation pursuant to N.J.S.A. 18A:39-28 et seq. to suspend or revoke, as the case may be, the driver's school bus endorsement; and

2. Notify the driver's employer that the driver is ineligible, for the period of suspension or permanently, as the case may be, for continued employment as a school bus driver.