

CHAPTER 3
CONTROVERSIES AND DISPUTES

Authority

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

Source and Effective Date

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

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 3, Controversies and Disputes, expires on August 30, 2005. See: 36 N.J.R. 5032(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Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997.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effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic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: 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 et seq.;
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; and
5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29.

(c) In accordance with N.J.S.A. 18A:7F-5e(3), this chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. Such restorations shall be sought pursuant to the provisions of N.J.A.C. 6:19-5.

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

**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.

“Commissioner” means the Commissioner of Education or his or her designee.

“Contested case” means an adversarial proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required to be adjudicated by the Commissioner after opportunity for agency hearing pursuant to N.J.S.A. 18A:6-9, N.J.S.A. 52:14B-1 et seq. (Administrative Procedure Act) and N.J.A.C. 1:1 (New Jersey Uniform Administrative Procedure Rules).

“Day” means business day when the period specified is less than seven days, and calendar day when the period specified is seven days or more; provided, however, that calculations do not include the day of the action from which they are computed but do include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following.

“Department” means the New Jersey State Department of Education.

“District board of education” means the board of education of a local or regional school district, a county special services school district or a county vocational school district, or the State district superintendent of a State-operated school district, the board of directors of an educational services commission or jointure commission, or the board of trustees of a charter school.

“Filing” means receipt of an original paper by an appropriate officer of the Department. Filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document and requisite copies will follow by mail or hand delivery.

“Indispensable party” means a person(s) without whose inclusion a matter cannot proceed or adequate judgment cannot be entered.

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

“OAL” means the Office of Administrative Law established pursuant to N.J.S.A. 52:14F-1 et seq.

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

“Pro se” means a person who acts on his or her own behalf without an attorney or other nonlawyer representative as permitted by rules of the OAL.

“Representative” means an attorney or other person as permitted by the rules of the OAL appearing on behalf of a party in proceedings governed by this chapter.

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

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

Added definitions “ALJ” and “OAL” and revised “Commissioner” and “Interested persons”.

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

Added definition of “proof of service”.

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

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

Rewrote the section.

**Case Notes**

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

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

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

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

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

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

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

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

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

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

2. A petition on behalf of a minor shall be filed by the parent or legal guardian of the minor. Once such a

petition is filed, the matter shall be subsequently identified by the initials of petitioner(s) and the child(ren).

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

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

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

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

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

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

3. A certificate of service signed by the attorney making service, or the attorney's designee, indicating the address at which each respondent was served; or

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

(d) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. Any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 must file a petition within 90 days of receipt of the notice of the district board's action, or of the action of the district board's agent, which has the effect of denying such benefits, notwithstanding that the Commissioner may hold the petition in abeyance pending determination by the Division of Workers' Compensation as to whether the underlying injury is work-related.

(e) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners

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

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

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

Deleted old text and substituted new.

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

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

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

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

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

Rewrote the section.

#### Law Review and Journal Commentaries

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appeal of school district ruling triggers 90-day appeal compliance despite Commissioner's deference of jurisdiction until worker's compensation determination. *Medeiros v. School District of Jersey City, Hudson County*, 97 N.J.A.R.2d (EDU) 276.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:3-1.4 Format of petition of appeal

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

(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 must 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).

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 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 or telephone number 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 original and two copies of the answer, and of 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 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 of appeal shall be deemed admitted and the Commissioner may render a summary decision.

(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.

1. Any papers filed in conjunction with such a motion shall be submitted in original form with two copies.

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

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

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.

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 Interim relief and/or stay

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

(b) Where a motion for a stay or emergent relief is filed, it shall be accompanied by a letter memorandum or brief which shall address the 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 an application 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 application prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard on that application;
2. Act upon such application upon receipt of the answer; or
3. Transmit the application to OAL for immediate hearing on the motion.

(d) The Commissioner may decide an application 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 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.

(e) All papers submitted in conjunction with applications for interim relief or stay shall be in original form with two copies.

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

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).

#### Case Notes

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

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

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

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.

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

(a) Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the Commissioner. Upon transmittal, requests shall be made to the OAL.

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

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

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

Old text deleted and new text inserted.

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

Stylistic and change of N.J.A.C. cite.

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

Rewrote the section.

#### Case Notes

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

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

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

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

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

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

(a) Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State or by such other person as set forth in applicable rules of the OAL.

1. A corporation shall be represented by an attorney or non-lawyer representative 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.

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

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

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

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

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

Recodified and amended from 1.10. The original section 1.9 was "Conference of counsel" and was repealed.

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

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

Stylistic changes.

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

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

Rewrote the section.

**Case Notes**

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

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

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

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

**6A:3-1.11 Hearing**

(a) Upon the filing of the petition and answer(s) in a contested case, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the case directly and individually or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner or transmitted to the OAL, shall be conducted in accordance with the 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 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.

**Case Notes**

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

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

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

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

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

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.19; good and sufficient reasons for adjournment include court appearances, counsel vacationing out of county, unavailability of witnesses and conflicting counsel schedules. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

**6A:3-1.12 Summary decision**

(a) At any time concurrent with or subsequent to the filing of an answer, but prior to transmittal to the OAL, any party may move before the Commissioner for summary decision. The Commissioner may decide such motion directly consistent with applicable rules of the OAL or transmit it to the OAL for disposition.

1. All papers filed in conjunction with motions for summary decision shall be submitted in original form with two copies.

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

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

Old text deleted and new substituted.

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

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

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

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

Rewrote the section.

**Case Notes**

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

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

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

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

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

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

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

(d) Any proposed settlement, whether submitted to the Commissioner or to the OAL, shall indicate, where the district board of education is a party to the contested matter, that the district board has consented to the terms of such settlement.

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

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

**6A:3-1.14 Written decision**

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a district board of education employee or an employee of a State agency who is accorded tenure under the school law, with the exception of employees of charter schools, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth findings of fact, conclusions of law and an appropriate order pursuant to applicable rules of the OAL.

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

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

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

Recodified from N.J.A.C. 6:24-1.16, new (b) added.  
N.J.A.C. 6:24-1.14 was formerly rules entitled "Stenographic transcript" and the following annotations pertain to that rule:

Amended by R.1986 d.157, effective May 5, 1986.  
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).  
Deleted "either party may . . . such stenographic transcript."  
Repealed by R.1991 d.57, effective February 4, 1991.  
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

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

Rewrote the section.

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

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

1. A motion shall be filed with the Commissioner together with proof of service on each other party, shall be briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner, based upon the criteria set forth for the granting of interim relief at N.J.A.C. 6A:3-1.6, in accordance with applicable rules of the OAL.

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

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

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

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

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

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

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

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

(c) For purposes of this section, a Commissioner's decision shall be deemed filed three days after the date of mailing to the parties.

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

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

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

New Rule, R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
Amended by R.2000 d.276, effective July 3, 2000.  
See: 32 N.J.R. 1112(a), 32 N.J.R. 2469(a).

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

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

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

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

Added text "or her".

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

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

**Case Notes**

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

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

**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 propose, before the Commissioner or the ALJ, whoever is hearing the case, an interest calculation consistent with (c) 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.

**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 regulation 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 regulations 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.

Case Notes

Student's First Amendment rights; restrictions on publication in school newspaper of R-rated movie reviews review and resolution by Commissioner of Education. Desilets on Behalf of Desilets v. Clearview Regional Bd. of Educ., 137 N.J. 585, 647 A.2d 150 (1994).

School board employee's contract dispute outside of Commissioner's jurisdiction. Smith v. Willingboro Township, Burlington County, 97 N.J.A.R.2d (EDU) 205.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. Bergenfield Board of Education v. Efferen, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Existing regional district; change in established method of cost apportionment; approval by voters in each constituent municipality. In the Matter of the Special Election in Northern Burlington County Regional School District, 94 N.J.A.R.2d (EDU) 385.

Declaratory ruling on school board policy to limit employment of supplemental teachers; teachers and taxpayers; standing to challenge. Ridgewood Education Association v. Ridgewood Village Board of Education, 94 N.J.A.R.2d (EDU) 137.

Petition for declaratory judgment seeking a ruling that payroll deduction crediting method violated constitutional prohibition would be transmitted to Office of Administrative Law. Board of Educ. of the Tp. of Neptune v. Neptune Tp. Educ. Ass'n, 91 N.J.A.R.2d 29 (EDU).

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

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

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

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

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

6A:3-2.2 Format of petition for declaratory ruling

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

: BEFORE THE COMMISSIONER OF  
: EDUCATION OF NEW JERSEY

CAPTION :  
: PETITION FOR DECLARATORY  
: RULING

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

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

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of \_\_\_\_\_ and determine and declare \_\_\_\_\_.

\_\_\_\_\_  
Signature of petitioner or 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 herein are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Petitioner

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

Sworn and subscribed to before me this  
\_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year)

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

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).  
 Deleted slash and substituted or.  
 Amended by R.1991 d.57, effective February 4, 1991.  
 See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).  
 Reformatting.  
 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), rewrote the petition.

**6A:3-2.3 Dissemination of declaratory ruling**

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

New Rule, R.1991 d.57, effective February 4, 1991.  
 See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).  
 Amended by R.2000 d.137, effective April 3, 2000.  
 See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
 Substituted a reference to declaratory rulings for a reference to declaratory judgments.

**Case Notes**

Denial of declaratory relief was proper. River Dell Board of Education v. Canal, 94 N.J.A.R.2d (EDU) 327.

**SUBCHAPTER 3. ORDER TO SHOW CAUSE**

**6A:3-3.1 Commissioner's order to show cause**

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

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2);
3. Withholding salaries of:
  - i. A county superintendent (N.J.S.A. 18A:7-4); and
  - ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon such member until such time as he or she complies;

4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);
5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13); and
6. Establishing a State-operated school district (N.J.S.A. 18A:7A-14(e)).

(b) Submission by parties of orders to show cause seeking enforcement of litigants' rights shall not be deemed appropriate. Parties seeking enforcement of judgments shall generally bring an action in the Superior Court as provided in New Jersey Court Rules. Such actions as are appropriately brought before the Commissioner due to the need for a further determination on a school law issue in order to resolve the parties' adjudicated rights, are to be initiated by way of petition accompanied, where appropriate, by motion for emergent relief pursuant to N.J.A.C. 6A:3-1.3 and 6A:3-1.6.

Amended by R.1986 d.157, effective May 5, 1986.  
 See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).  
 Substantially amended.  
 Amended by R.1991 d.57, effective February 4, 1991.  
 See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).  
 Added new (b); provision prohibiting orders to show cause except by petition accompanied by motion.  
 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), rewrote the introductory paragraph, and added 6; and rewrote (b).

**SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT**

**6A:3-4.1 Withholding salary increment**

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

Amended by R.1986 d.157, effective May 5, 1986.  
 See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).  
 Deleted old text and inserted new.  
 Amended by R.1991 d.57, effective February 4, 1991.  
 See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).  
 Added "based upon teaching performance"...; added cite to modified statute.  
 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".

**Case Notes**

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.

Negative impact of teacher's absenteeism on continuity of instruction to students warranted withholding salary increments for an academic year. *Kochman v. Keansburg Board of Education*, 95 N.J.A.R.2d (EDU) 212.

Withholding of employment and adjustment increments for school psychologist was for good cause and was not beyond managerial prerogative of school board. *Kaska v. Trenton Board of Education*, 95 N.J.A.R.2d (EDU) 55.

Withholding of salary increment for unsatisfactory performance was not arbitrary, capricious or unreasonable. *Simon v. State-Operated School District of Paterson City*, 94 N.J.A.R.2d (EDU) 537.

Withholding increments due to weakness in classroom management was not unreasonable. *Harrity v. Keansburg Board of Education*, 94 N.J.A.R.2d (EDU) 376.

Recoupment of salary and/or adjustment increments; disciplined tenured teacher; subsequent salary freeze. *Cerato v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 248.

Chronic absenteeism of teacher; basis to withhold salary increments. *Kochman v. Keansburg Borough Board of Education*, 94 N.J.A.R.2d (EDU) 141.

Withholding salary increments for unsatisfactory performance was not arbitrary, capricious, or unreasonable. *Brown v. Jersey City School District*, 93 N.J.A.R.2d (EDU) 875.

Payment of salary increments neither mandated nor prohibited upon expiration of collective negotiations agreement. *Neptune Township Board of Education v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 791.

Increments withheld; unsatisfactory ratings and excessive absenteeism. *Facone v. Board of Education of City of Jersey City*, 93 N.J.A.R.2d (EDU) 502.

Withholding teacher's employment and adjustment increment; not arbitrary or capricious. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 312.

Payment of increments following expiration of collectively negotiated salary schedule was governed by Employer-Employee Relations Act. *Board of Education of Township of Neptune v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 178.

Board of education under no obligation to return teacher whose increment was withheld to regular salary guide; *New Jersey Employer-Employee Relations Act. Fieseler v. South River Board of Education*, 93 N.J.A.R.2d (EDU) 136.

Increment withholding proceedings; inadequate record; remand. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 41.

Withholding adjustment increment not arbitrary; alleged procedural deficiencies in evaluation process. *Sturn v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 661.

Classroom management; withholding increment and salary adjustment reasonable. *Gnatt v. Board of Education of Manalapan-Englishtown Regional School District*, 92 N.J.A.R.2d (EDU) 589.

Withholding of teacher's increment; no abuse of discretion. *Brown v. Township of South Brunswick Board of Education*, 92 N.J.A.R.2d (EDU) 560.

Withholding of salary increment sustained; insensitivity and lack of compassion towards students. *Byorek v. Board of Education, Scotch Plains-Fanwood School District*, 92 N.J.A.R.2d (EDU) 511.

Withholding increment and salary increase; performance of teaching duties and alleged insubordination. *Backer v. Township of Roxbury Board of Education*, 92 N.J.A.R.2d (EDU) 441, reversed 96 N.J.A.R.2d (EDU) 349.

Withholding adjustment and employment increments; application of absenteeism policy. *Pollard v. Board of Education of Township of Teaneck*, 92 N.J.A.R.2d (EDU) 279.

Failure to show that decision to withhold increments and to place reprimand in file was unreasonable. *Zarro v. Board of Education of Paramus, Bergen County*, 92 N.J.A.R.2d (EDU) 145.

## SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

### 6A:3-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred against an employee of a district board of education or of a State-operated school district pursuant to the Tenure Employees' Hearing Act which are to be brought before the Commissioner, N.J.A.C. 6A:3-1.3 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education or the State district superintendent shall file the original and two copies of the written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

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

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

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

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

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

5. The district board of education or the State district superintendent shall, within three working days, notify in writing the affected employee against whom the charge has been made of the determination, in person or by certified mail to the last known address of the employee and the employee's representative, if known.

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

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

(c) In the event that the tenure charges are charges of inefficiency, except in the case of building principals in State-operated school districts, where procedures are governed by the provisions of N.J.A.C. 6:7, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the secretary of the district board of education or the State district superintendent along with a statement of evidence in support thereof executed under oath.

2. The district board of education, through its board secretary, or the State district superintendent, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, or the State district superintendent shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90-day period, or any longer period provided by the board or

State district superintendent, the board or the State district superintendent intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education or the State district superintendent shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6:3-4.3(f) to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

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

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

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

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

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board or the State district superintendent shall, within 15 days, file such written charges, stated with specificity as to the nature of the inefficiency alleged, together with the required certificate of determination, with the Commissioner together with proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

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

(d) The provisions of this section shall not apply to employees of charter schools pursuant to the provisions of N.J.A.C. 6A:11.

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

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

Added (b)-(c).

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

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

Stylistic changes.

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

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

Rewrote the section.

#### Case Notes

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

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

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

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

#### 6A:3-5.2 Format of certificate of determination

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

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

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

3. That such determination was made by a majority vote of the whole number of members of the district board of education or by the State district superintendent in accordance with N.J.S.A. 18A:7A-39; and

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

(b) The provisions of this section shall not apply to employees of charter schools pursuant to the provisions of N.J.A.C. 6A:11.

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).

#### Case Notes

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

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

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

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges.

(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 must be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging board of education or the State district Superintendent. Such board or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

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

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that he or she 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 pursuant to the provisions of N.J.A.C. 6A:11.

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

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

Rewrote the section.

#### Case Notes

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

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

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education, or within the Juvenile Justice Commission pursuant to N.J.S.A. 52:17B-170, other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6A:3-5.1(b) except as set forth in this section. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in the Juvenile Justice Commission, or by an individual within the Department of Education designated by the Commissioner, as appropriate. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6A:3-5.1(b).

(b) The Director of Employee Relations, the Director of the Office of Educational Services or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of his/her determination in writing in the manner prescribed by N.J.A.C. 6A:3-5.1(b).

(c) In the event that the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then he or she shall file such charges and the required certification with the Commissioner of Education together with proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6A:3-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising out of the Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections, the Director of the Office of Educational Services for charges arising out of the Juvenile

Justice Commission or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

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

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

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

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

(f) 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 with the Commissioner.

(g) 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 must be received prior to the expiration of the 15-day answer period, and a copy must be served upon the charging department, which shall promptly notify the Commissioner of its opposition, if any, to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges shall 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.

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

New Rule, R.1989 d.553, effective November 6, 1989.

See: 21 N.J.R. 1939(b), 21 N.J.R. 3461(a).

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

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

Rewrote the section.

**Case Notes**

Former school principal not entitled to tenure as assistant superintendent. *Gittelman v. Township of Hamilton*, Mercer County, 97 N.J.A.R.2d (EDU) 200.

High school teacher's sexual liaison with student warranted removal of tenure. *Board of Education of the City of Camden v. Hovington*, 97 N.J.A.R.2d (EDU) 168.

Teacher's drunkenness during school hours did not warrant removal of tenure. In the Matter of the Tenure Hearing of William Koller, 97 N.J.A.R.2d (EDU) 157.

Minimal evidence of rehabilitation offered by teacher was insufficient to offset seriousness of drug importation conspiracy conviction, and thus disqualification from teaching was warranted. In the Matter of the Disqualification from School Employment of Palumbo, 96 N.J.A.R.2d (EDU) 534.

Teacher was detenured and dismissed on grounds that her behavior was unprofessional toward students, hostile toward co-workers, insubordinate toward superiors, and in violation of professional ethics. In the Matter of the Tenure of Sheth, 96 N.J.A.R.2d (HED) 9.

Corrective action requiring reduction of tenured janitor's salary could not take effect until end of school year. *Gerity v. Woodbridge Board of Education*, 95 N.J.A.R.2d (EDU) 522.

Inability to work due to severe depression warranted tenured clerk's dismissal for incapacity. *Matter of Tenure Hearing of Stanley*, 95 N.J.A.R.2d (EDU) 495.

Plea of guilty to criminal sexual conduct was not act of employment warranting forfeiture, but was unbecoming conduct warranting termination. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 457.

Choking and shaking of student was unbecoming a teaching staff member and warranted tenured teacher's dismissal under circumstances. *Matter of Tenure Hearing of Johnston*, 95 N.J.A.R.2d (EDU) 439.

Addressing female staff members in such a matter as to deprive them of their dignity was conduct unbecoming a teaching staff member. *Freehold Regional v. Kotkin*, 95 N.J.A.R.2d (EDU) 431.

Absenteeism was unbecoming conduct warranting tenured teacher's removal. *Matter of Tenure Hearing of Rucker*, 95 N.J.A.R.2d (EDU) 350.

Inappropriate discussions with students regarding sexual matters warranted tenured teacher's dismissal. *Matter of Tenure Hearing of Roberts*, 95 N.J.A.R.2d (EDU) 349.

Costs incurred by tenured teacher in defending against criminal charges not shown to have arisen from performance of his duties were not indemnifiable. *Bower v. East Orange Board of Education*, 95 N.J.A.R.2d (EDU) 345, reversed 287 N.J. Super. 15, 670 A.2d 106.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. *Jersey City School District v. Howard*, 95 N.J.A.R.2d (EDU) 301.

Inappropriate sexual behavior warranted long-term suspension with homebound instruction until end of school. *R.L. and K.L. v. Kingsway Board of Education*, 95 N.J.A.R.2d (EDU) 296.

Excessive absenteeism provided sufficient cause for school board to terminate employee from her position as a tenured secretary. *Matter of Tenure Hearing of Jones*, 95 N.J.A.R.2d (EDU) 285.

Use of illegal amphetamines in breach of drug rehabilitation contract with school board was unbecoming and warranted tenured teacher's dismissal. *Matter of Yanniello Tenure Hearing*, 95 N.J.A.R.2d (EDU) 262.

Comments in class implying eugenic disability of children for superior performance were not protected by free speech and warranted tenured teacher's termination. *Campbell v. Princeton Board of Education*, 95 N.J.A.R.2d (EDU) 211, certification denied 665 A.2d 1111, 142 N.J. 518.

Employment of corporal punishment through use of physical force to lift chin of one student, thereby causing head to strike wall, was unacceptable and warranted forfeiture of six months' salary for tenured teacher. *Matter of Tenure Hearing of Di Pillo*, 95 N.J.A.R.2d (EDU) 206.

Custodians were tenured under resolution of school board and were not required to prove their efficiency to avoid termination. *Zielinski v. East Brunswick Board of Education*, 95 N.J.A.R.2d (EDU) 161, affirmed 96 N.J.A.R.2d (EDU) 3.

Positive cocaine test was sufficiently trustworthy to support tenured custodian's dismissal by school district. *Matter of Tenure Hearing of Caravello*, 95 N.J.A.R.2d (EDU) 160.

Employee terminated from tenured position with school board was entitled to be paid value of vacation time accrued by her at that time. *Lowe v. Orange Board of Education*, 95 N.J.A.R.2d (EDU) 139.

Repetitive conduct that put students at risk justified dismissal of tenured teacher. *Matter of Tenure Hearing of Harrell*, 95 N.J.A.R.2d (EDU) 137.

Charges of inefficiency brought against tenured teacher were dismissed as moot when teacher thereafter retired. *Barshatky v. Freehold Board of Education*, 95 N.J.A.R.2d (EDU) 71.

Allowing classroom situation that was a risk to students' safety warranted dismissal of teacher from tenured position. *City of Paterson v. Rubin*, 95 N.J.A.R.2d (EDU) 13.

Participation in activity violative of public trust warranted two-year suspension of teaching certificates. *Matter of Pedrick Teaching Certificates*, 95 N.J.A.R.2d (EDE) 1.

Termination; insubordination. In the Matter of the Disciplinary Hearing of McCargo, 94 N.J.A.R.2d (EDU) 524.

Tenured prison teacher's unauthorized correspondence with prison inmate; termination. In the Matter of the Tenure Hearing of Jacqueline Holmes-Williams, 94 N.J.A.R.2d (EDU) 447.

Board failed to prove that teacher engaged in conduct unbecoming a teacher. In the Matter of the Tenure Hearing of David C. Borrelli, 94 N.J.A.R.2d (EDU) 424.

Hitting students and making personal remarks to student; dismissal. In the Matter of the Tenure Hearing of Charles Talley, 94 N.J.A.R.2d (EDU) 395.

Award of benefits to tenure eligible teaching staff members retroactively applied. *Trenton Education Association v. Trenton Board of Education*, 94 N.J.A.R.2d (EDU) 328.

Termination of tenured teacher; cocaine. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 304.

Dismissal; sexually explicit discussions with students. In the Matter of the Tenure Hearing of Frank Roberts, 94 N.J.A.R.2d (EDU) 284.

Termination of nontenured custodian; harassing a female student. *Hugg v. Pinelands Regional School District Board of Education*, 94 N.J.A.R.2d (EDU) 279.

Resisting arrest and attempt to injure police officers; dismissal of teaching staff member. In the Matter of the Tenure Hearing of Henderck, 94 N.J.A.R.2d (EDU) 268.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Within 15 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. Where the charges are determined sufficient, the matter shall, within 10 days of such determination, be transmitted to the OAL for further proceedings, unless the Commissioner retains the matter for purposes of deciding a motion for summary decision.

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

(b) Where the parties to a tenure matter jointly so request, the Commissioner may hold the matter in abeyance at any time prior to transmittal to the OAL.

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

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

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

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

(b) A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. A settlement agreement shall not be proposed to the Commissioner without an indication on the record that its terms have been approved by the district board of education.

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

(d) Where tenure proceedings are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6:11-3.5.

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

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

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

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

(b) Where an application for change is unanswered within the requisite filing period, or is answered by a filing or filings indicating that each respondent does not oppose the application, the Commissioner shall so notify the petitioning district board of education and each respondent district board of education. At the next public meeting of each district board of education following notice from the Commissioner, each district board shall announce that the record before the Commissioner shall remain open for a period of 20 days from the date of the announcement in order that interested persons or entities may submit written comments to the Commissioner. Such announcement shall indicate the manner in which, and the address to which, comments may be submitted to the Commissioner as set forth in N.J.A.C. 6A:3-1.2 and 1.3, and shall further indicate the nature and purpose of such comments as set forth in (c) below.

1. Each district board of education shall, within 10 days of the date of the announcement, submit to the Commissioner a certification indicating the date the announcement was made and the content of the announcement.

(c) Comments submitted pursuant to (b) above shall not exceed 10 pages in length, shall be served on all parties to the case, shall include proof of such service when filed with the Commissioner, and shall specifically address the following statutory standard for the Commissioner's review of applications for change in designation, allocation or apportionment:

1. Comments shall address the question of whether the proposed change in designation, allocation or apportionment will result in a substantial negative impact in any of the affected districts in one or more of the following areas: educational and financial implications; quality of education received by students; and racial composition of the student populations.

(d) Each party to the application for change shall have 20 days to reply to any comments at the close of the designated comment period.

(e) If the Commissioner determines, upon review of the record at the close of the period established for submission of comments and replies, that further inquiry, fact-finding or exploration of legal argument is required in order to determine the matter consistent with the standard of statute, the Commissioner shall direct such further proceedings as the Commissioner deems necessary.

SUBCHAPTER 7. APPEALS FROM DECISIONS OF  
THE NEW JERSEY STATE  
INTERSCHOLASTIC ATHLETIC  
ASSOCIATION (NJSIAA)

**6A:3-7.1 Filing and service of petition**

(a) To initiate an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) before the Commissioner, a petitioner shall prepare and serve a verified petition in the same form and manner as prescribed by this chapter, except as set forth below.

1. The petitioner shall include with the petition a copy of the final NJSIAA decision from which appeal is being taken.

2. The petitioner shall include a certification stating that the petitioner has exhausted the internal appeal procedures of the NJSIAA set forth in the NJSIAA constitution, bylaws and rules and regulations as adopted by member schools pursuant to law, and that the decision appealed from is a final determination of the NJSIAA.

(b) The Commissioner shall summarily dismiss any petition filed prior to exhaustion of internal NJSIAA appeal procedures.

(c) The Commissioner shall summarily dismiss any petition seeking to appeal a determination of the NJSIAA in an area that is expressly designated as not appealable by the NJSIAA constitution, bylaws or rules and regulations as adopted by member schools pursuant to law.

(d) Upon filing of a petition, the appeal shall not proceed in accordance with this chapter, except as it pertains to filing requirements and standards for applications for emergent relief, but shall instead proceed as set forth in this subchapter.

**6A:3-7.2 Answer; record on appeal**

(a) Within 10 days of its receipt of a verified petition, or within such shorter period designated by the Commissioner due to the emergent nature of an appeal, 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.

(b) Together with its answer, the NJSIAA and any other respondent shall concurrently file and serve upon the peti-

tioner a Statement of Items Comprising the Record on Appeal.

1. The record on appeal shall consist of all relevant papers on file with the NJSIAA, including all exhibits considered by the involved NJSIAA committees and the stenographic transcript of any such committee hearings. Disputes about the content of the record shall be determined by the Commissioner prior to the establishing of a briefing schedule pursuant to N.J.A.C. 6A:3-9.3.

(c) The petitioner shall obtain from the NJSIAA a copy of the hearing transcript(s) of NJSIAA proceedings and other documents identified as the record on appeal, and shall transmit them to the Commissioner as an appendix to the brief required pursuant to N.J.A.C. 6A:3-9.3.

(d) Any appeal from a decision of the NJSIAA shall be based exclusively on the record established in the internal proceedings before the NJSIAA, as specified in the Statement of Items Comprising the Record on Appeal or as determined by the Commissioner in the event of a dispute. Supplementation of the record shall not be permitted except as directed by the Commissioner.

**6A:3-7.3 Schedule of briefing**

(a) Within 10 days from the filing of the respondent(s)' answers and the Statement of Items Comprising the Record on Appeal, the petitioner shall file a brief setting forth the argument for its petition, together with an appendix containing the record and the transcript of NJSIAA proceedings and a proof of service upon the NJSIAA and any other respondent.

(b) The NJSIAA and any other respondent shall file briefs in opposition within 10 days of the receipt of the petitioner's brief, appendix and transcript.

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

(d) Nothing in this section shall preclude the Commissioner from establishing a shorter briefing schedule when necessitated by the emergent nature of a matter.

**6A:3-7.4 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.

**6A:3-7.5 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.

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**SUBCHAPTER 8. APPEALS FROM LOCAL  
DISTRICT 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 shall generally proceed in accordance with the provisions of this chapter, except as set forth below.

1. Petitions in letter form shall be accepted from pro se petitioners, provided that such petitions:

- i. Identify themselves by name, address, and telephone number where available;
- 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 their claim of entitlement is based upon facts which are true to the best of their knowledge and belief.

2. Appeals from pro se petitioners need not be submitted in triplicate or served on the respondent district board of education, but may instead be filed directly with the Bureau of Controversies and Disputes. Upon the receipt of any such appeal, the Bureau will transmit by facsimile a copy of the petition to the district board, together with notice of the board'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 this paragraph shall preclude a pro se petitioner from serving a petition on a respondent board of education in accordance with N.J.A.C. 6A:3-1.3. In such cases, the board'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 subsequent notice from the Bureau.

3. In any instance where a petitioner has not included a copy of the district board's written determination of ineligibility as part of the petition, the district board 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) Nothing in this section shall preclude a district board of education from seeking payment of tuition for a student it determines to be ineligible to attend school in the district.

1. Where a person claiming entitlement to attend school in the district has filed an appeal with the Commissioner but withdraws or otherwise abandons the appeal prior to its adjudication on the merits, upon the Commissioner's finding that the appeal has been so withdrawn or abandoned, the board may remove the student from school and seek tuition for the period of ineligible attendance; provided, however, that where a counterclaim has been filed by the board, and the record includes 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, the Commissioner may order payment of tuition in his decision on withdrawal or abandonment of the appeal.

(e) The provisions of this section shall not apply to disputes arising from a district board's assignment of a student to a particular school within the district.

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**SUBCHAPTER 9. REVIEW OF PENALTY  
DETERMINATIONS OF THE SCHOOL  
ETHICS COMMISSION**

**6A:3-9.1 Commissioner review of penalty recommendations**

The Commissioner shall review penalty determinations of the School Ethics Commission pursuant to N.J.S.A. 18A:12-29(c). 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, which are not reviewable by the Commissioner, and shall proceed in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C.

SUBCHAPTER 10. "ABBOTT" APPEALS

dance with the provisions of this chapter, except as set forth in N.J.A.C. 6:19A-9.

**6A:3-10.1 Appeal of Department determinations**

Appeals of Department determinations made pursuant to the provisions of N.J.A.C. 6:19A shall proceed in accor-