

CHAPTER 4

SELECTION AND APPOINTMENT

Authority

N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:7-13, 38:23A-2, 40A:9-1.3 through 1.10, 40A:14-9.9, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1 and 40A:14-180; P.L. 1992, c.197 and P.L. 2008, c.29; and Executive Order No. 10 (1982).

Source and Effective Date

R.2009 d.95, effective February 20, 2009.
See: 40 N.J.R. 5891(a), 41 N.J.R. 1206(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Selection and Appointment, expires on February 20, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 4, Selection and Appointment, was adopted as R.1988 d.259, effective June 6, 1988. See: 20 N.J.R. 327(a), 20 N.J.R. 1183(b). See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.

Pursuant to Executive Order No. 66(1978), Chapter 4, Selection and Appointment, was readopted as R.1993 d.270, effective May 12, 1993. See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 1568(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Selection and Appointment, was readopted as R.1998 d.291, effective May 8, 1998. See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Chapter 4, Selection and Appointment, was readopted as R.2003 d.395, effective September 10, 2003. See: 35 N.J.R. 2389(a), 35 N.J.R. 4711(c).

Chapter 4, Selection and Appointment, was readopted as R.2009 d.95, effective February 20, 2009. See: Source and Effective Date. See, also, section annotations.

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

4A:4-1.3 Unclassified appointments

(a) An unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Board.

(b) The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. See N.J.A.C. 4A:3.

Case Notes

Promotion of officer with lesser seniority, municipality not governed by civil service. *Gaskill v. Mayor & Comm'rs. of Bor. of Avalon*, 143 N.J.Super. 391, 363 A.2d 359 (Law Div.1976, affirmed 149 N.J.Super. 364, 373 A.2d 1019 (App.Div.1977)).

Basis for promotion in unclassified service. *State Troopers Fraternal Ass'n State*, 115 N.J.Super. 503, 280 A.2d 235 (Ch.Div.), affirmed 119 N.J.Super. 375, 291 A.2d 840 (App.Div.1972), affirmed 62 N.J. 302, 301 A.2d 141 (1973).

4A:4-1.4 Conditional regular appointments

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment. The original date of appointment will be retained.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
2. The appointee meets the minimum qualifications for the title at the time of the appointment; and
3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

SUBCHAPTER 1. TYPES OF APPOINTMENTS

4A:4-1.1 Career service appointments

(a) Regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of a working test period.

(b) The Commissioner may authorize an appointing authority to make a regular appointment of a qualified person to a title in the noncompetitive division of the career service without an examination. Preference shall be given to disabled veterans and then veterans. See N.J.A.C. 4A:5 on veterans preference.

(c) The Commissioner may authorize the promotion, through promotional examination procedures, from the non-competitive division, of permanent employees who meet the open competitive requirements, to:

1. A related entry level title in the competitive division; or
2. In appropriate situations, to a related above-entry level title in the competitive division.

Case Notes

Physician/director of county medical services in unclassified service; definition of "institution" used in statute. *Morris Cty. v. Civil Service Dept.*, 177 N.J.Super. 25, 424 A.2d 852 (1980).

Validity of appointment to positions for which a vacancy had not been certified. *Adams v. Goldner* 156 N.J.Super. 299, 383 A.2d 1149 (App.Div.1977) affirmed 79 N.J. 78, 397 A.2d 1088 (1979).

Local service employer may only make intra-class transfers on a temporary basis (citing former N.J.A.C. 4:1). In the Matter of Lemko, 151 N.J.Super. 242, 376 A.2d 971 (App.Div.1977).

Township was justified in twice bypassing appointment of police lieutenant, who was on eligible list, to position of police captain. *Robert Oches v. Middletown Township*, 96 N.J.A.R.2d (CSV) 647.

4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Board.

(b) Permanent career service employees and qualified persons without permanent status are eligible for senior executive service appointments. See N.J.A.C. 4A:3-2.

Employee returned to her former position at end of working test period. *Durmer v. Ocean County Board of Social Services*, 93 N.J.A.R.2d (CSV) 242.

Return to former position at end of working test period was justified. *Arroyo v. Department of Corrections*, 93 N.J.A.R.2d (CSV) 3.

4A:4-1.10 Approval of appointments by Civil Service Commission

(a) All initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified, or senior executive service are subject to the review and approval of the Civil Service Commission.

1. The Civil Service Commission may direct personnel action freezes in connection with layoffs or other emergent circumstances.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by an appropriate representative of the Civil Service Commission whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions. See N.J.A.C. 4A:3-4.1(b)1 for State appointing authority payroll certification requirements.

(c) When a regular appointment has been made, the Civil Service Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties.

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

Revised (a).

Amended by R.1994 d.619, effective December 19, 1994.

See: 26 N.J.R. 3510(a), 26 N.J.R. 5002(a).

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

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

In (a), inserted "in the career, unclassified or senior executive service" following "personnel actions" and added a new (c).

Amended by R.2013 d.001, effective January 7, 2013.

See: 44 N.J.R. 2149(a), 45 N.J.R. 25(a).

Section was "Approval of appointments by Department of Personnel". In the introductory paragraph of (a), inserted a comma following "unclassified" and substituted "Civil Service Commission" for "Department of Personnel"; in (a)1 and (c), substituted "Civil Service Commission" for "Commissioner"; in (b), substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel" and inserted the last sentence; and in (c), inserted a comma following "delay".

Case Notes

Representatives of public defender had actual authority to promise promotion to assistant deputy public defender, who accepted lower position than position for which he was eligible based on expectation that he would be promoted after one year. *Walsh v. State*, 290 N.J.Super. 1, 674 A.2d 988 (A.D.1996).

4A:4-1.11 (Reserved)

New Rule, R.1990 d.48, effective January 16, 1990.

See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).

Repealed by R.1996 d.97, effective February 20, 1996.

See: 27 N.J.R. 4048(a), 28 N.J.R. 1201(a).

Section was "Vacancy Review Board: State service".

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.1 Announcements and applications

(a) Notice of open competitive examinations shall be posted on a daily basis on the Department of Personnel web site (<http://www.state.nj.us/personnel/>) or announced by other appropriate means as approved by the Commissioner to secure sufficient qualified candidates.

(b) In order to notify all employees of promotional opportunities, notices of promotional examinations and applications shall be provided to eligible employees by the Department of Personnel or as directed by the Department of Personnel through the appointing authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such posting.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;
3. Minimum qualifications for admission to the examination;
4. Filing information; and
5. In open competitive examinations, a reference to duties and responsibilities.

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

(e) Unless otherwise provided for by the Commissioner, applications for open competitive and local service promotional examinations shall be filed with the Department of Personnel and applications for State service promotional examinations shall be filed with the appointing authority no later than the announced filing date, as established by the Department of Personnel. When mailed, the postmark date will be considered the date on which the application is filed.

(f) Prior to the filing date, an applicant may amend a previously submitted application.

(g) The Department of Personnel may request clarifying information from an applicant.

(h) All examination applications shall remain confidential, except as the Commissioner may determine to be in the public interest.

(i) See N.J.A.C. 4A:4-2.17 for application processing fee procedures.

Petition for Rulemaking: Promotional examination process regarding announcement procedures.

See: 21 N.J.R. 1581(b), 21 N.J.R. 2675(a).

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

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

Added new (d) and recodified old (d)-(g) as (e)-(h) with no change in text.

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

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

Added new (i).

Amended by R.1997 d.481, effective November 17, 1997.

See: 29 N.J.R. 3383(a), 29 N.J.R. 4864(a).

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

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

Rewrote (a).

Case Notes

Announcement of competitive examination was required to contain "minimum qualification requirements" for admission (citing former N.J.A.C. 4:1-8.3). In the Matter of Critchlow, 201 N.J.Super. 371, 493 A.2d 66 (App.Div.1985).

4A:4-2.2 Types of examinations

(a) The Commissioner of the Department of Personnel shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following:

1. Written tests;
2. Oral tests;
3. Performance tests;
4. Physical performance tests;
5. Evaluation of education, training or experience;
6. Assessment exercises; and
7. Other appropriate measures of knowledge, skills and abilities.

(b) The Department of Personnel may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided by the Department of Personnel for such service outside normal working hours.

(c) See N.J.A.C. 4A:4-2.14 for rules regarding the accommodation and waiver of examinations for persons with disabilities.

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

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

Case Notes

Authority of Commission to design and administer exams versus "real authority" of municipalities regarding hiring practices. United States v. State of N.J., 473 F.Supp. 1199 (1979).

Elements of examination process discussed in relation to labor negotiations. State v. State Supervisory Employee Association, 78 N.J. 54, 393 A.2d 233 (1978).

Authority to inquire as to basis for appointments and promotions. Hackensack v. Winner, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978) modified 82 N.J. 1, 410 A.2d 1146 (1980).

Validity of list established by inappropriate exam. Flynn v. Megaro, 112 N.J.Super. 148, 270 A.2d 638, (App.Div.1970) cert. denied 57 N.J. 594, 274 A.2d 49.

4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope (See N.J.A.C. 4A:1-1.3 for definition of unit scope);
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.11), except when:
 - i. A different residency requirement is specified by law or provided by the Commissioner; or
 - ii. It appears that there is an inadequate number of qualified residents available for the title.
2. Meet all requirements specified in the examination announcement:
 - i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority (SEPTA) police officers, Amtrak police officers, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in N.J.S.A. 40A:14-

127.1, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.

ii. For good cause, the Commissioner may deem an individual a former law enforcement officer as defined in (b)2i above, even though the individual's separation from service shall not occur except upon a new appointment.

iii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) In announcing open competitive examinations, the Department of Personnel may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections and bilingual). The applicant's eligibility

(e) The movement of a permanent employee in the non-competitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established as set forth in (d) above.

Correction: Subsection (c) cross-reference should be (a) instead of (b).
Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Revised text.

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in N.J.A.C. 4A:4-2.15;

2. Be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed;

3. Have not received a Performance Assessment Review (PAR) final rating below the Commendable level (or equivalent in an approved local service evaluation program) in each of the two rating periods immediately preceding the announced closing date; and

4. File an application on or before the application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

(c) Except when permitted by the Merit System Board for good cause, such as a documented affirmative action basis, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. The Department of Personnel may recommend to the Board good cause situations where out-of-title work should be accepted.

(d) Employees, with the exception of those serving in an entry level law enforcement or firefighter title, who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a)1 above, include continuous permanent service in any higher related or comparable title. Employees serving in an entry level law enforcement or firefighter title who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (b) above, include continuous permanent service in any higher related or comparable uniformed title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are separated or displaced as a result of layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;

2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or

3. Other valid reasons as determined by the Commissioner.

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

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

Redesignated existing (a)3 as (a)4; added new (a)3.

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

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

Revised (a)1 and 2; revised (f).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 810(a), 29 N.J.R. 1568(b).

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

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

In (a)3, substituted "below the Commendable level" for "of a Four, Marginally Below Standards or Five, Significantly Below Standards" following "rating".

Petition for Rulemaking.

See: 36 N.J.R. 3303(a), 4176(b).

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

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

In (d), added ", with the exception of those serving in an entry level law enforcement or firefighter title," to the first sentence and added the last sentence.

Case Notes

In a fire captain's suit against a city challenging the failure to appoint him to deputy fire chief, a civil service appointing authority violated the Rule of Three, set forth in N.J.S.A. 11A:4-8, in guaranteeing a promotional candidate that he would receive the appointment of deputy fire chief if he attained the highest score on the examination, particularly because that individual guarantee was not contemporaneously disclosed to the other applicants who sat for the examination. In re Martinez, 403 N.J. Super. 58, 956 A.2d 386, 2008 N.J. Super. LEXIS 206, 28 I.E.R. Cas. (BNA) 760 (App.Div. 2008).

Consideration of prior service in determining continuous service requirements for examination. Makowitz v. Civil Service Dep't, 177 N.J. Super. 61, 424 A.2d 1190 (App.Div.1980) certification denied 87 N.J. 326, 434 A.2d 76.

Preemptive rights to new position based on special reemployment list (citing former N.J.A.C. 4:1-12.4). Cunningham v. Dep't of Civil Service, 69 N.J. 13, 350 A.2d 58 (1975).

4A:4-2.7 Promotion upon waiver of competitive examination

(a) Following the announcement of a promotional examination, the Commissioner may authorize the promotion of a qualified permanent employee in the career service by regular

appointment without competitive examination and without the establishment of an eligible list if:

1. The employee has been successfully tested in the basic skills required for the promotional title;
2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;
3. The number of interested eligibles for the promotional examination referred to in (a) above does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

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

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

Revised (a)4.

Amended by R.1997 d.443, effective October 20, 1997.

See: 29 N.J.R. 2731(a), 29 N.J.R. 4456(b).

Substantially amended (a); and in (a)3, inserted "for the promotional examination referred to in (a) above".

Case Notes

Remedy for unlawful discrimination—employee should be promoted to positions earlier denied them as such positions become available (citing former N.J.A.C. 4:1-8.5). *Pilot v. Dep't of Health*, 7 N.J.A.R. 150 (1982) affirmed A-5858-81 (App.Div.1983).

4A:4-2.8 Scheduling of examinations

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Unless the examination notice states otherwise, candidates for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 15 minutes after the designated time.
2. Candidates for oral examinations or examinations containing oral and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time, provided the last scheduled candidate has not started the examination.

(d) A candidate who arrives late and is admitted to the examination shall receive the full allotted time to complete the examination.

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of

examinations when requested by the Department of Personnel.

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

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

Revised (c)1; deleted (c)2; redesignated existing (c)3 to (c)2.

Case Notes

Department of Energy could return employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-1.1). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for professional level engineering promotional examinations under (b) below and public safety open competitive and promotional examinations under (c) below, may be authorized for the following reasons:

1. Error by the Department of Personnel or appointing authority;
2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
3. Documented serious illness or death in the candidate's immediate family;
4. Natural disaster;
5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and
6. Other valid reasons.

(b) For professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;
2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;
3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation; or
4. Error by the Department of Personnel or appointing authority.

(c) For police, fire, correction officer, sheriff's officer, juvenile detention officer and other public safety open competitive and promotional examinations, make-ups may be authorized only in cases of:

1. Death in the candidate's immediate family;
2. Error by the Department of Personnel or the appointing authority; or
3. A catastrophic health condition or injury, which shall be defined as either:
 - i. A life-threatening condition or combination of conditions; or
 - ii. A period of disability required by the candidate's mental or physical health or the health of the candidate's fetus which requires the care of a physician who provides a medical verification of the need for the candidate's absence from work for 60 or more work days.

(d) Employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list, for prospective appointment only, based upon the score obtained, as if the examination had been taken when originally held.

(e) Employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination.

(f) A candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in (a), (b) or (c) above, as applicable. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of one of the valid reasons set forth in (a), (b) or (c) above, as applicable, of which a candidate is aware upon receipt of the examination notice.

(g) Make-up examinations will be administered to the extent possible under the same conditions as the original examination but, in the case of public safety examinations under (c) above, shall be different in content from the original examination.

(h) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the Department of Personnel or appointing authority, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(i) All candidates taking make-up examinations, except physical performance examination, shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or fur-

nished by other candidates who participated in the original examination, or third parties, provided that:

1. In the case of open competitive and promotional public safety examinations referred to in (c) above, candidates shall sign an additional statement accepting the make-up examination as a substitute for the original examination, provided, however, that signing this statement shall not preclude the candidate from challenging the validity of the make-up examination's items, the scoring of the make-up or the make-up test conditions. See N.J.A.C. 4A:4-6.3 and 6.4.

(j) In extraordinary circumstances, such as an examination that requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. In such cases, candidates will be so notified at least 45 days prior to the date of the examination. The only exception will be documented error on the part of the Department of Personnel or appointing authority, in which case a make-up may be granted if practicable.

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

In (a): added language regarding police and fire promotional examinations.

Relettered old (b)-(g) as (c)-(h) with no change in text.
Amended by R.1993 d.270, effective June 7, 1993.

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

Revised (b), (e), (g) and (h).
Amended by R.1994 d.114, effective March 7, 1994.

See: 25 N.J.R. 4823(a), 26 N.J.R. 1225(a).

Amended by R.1994 d.285, effective June 6, 1994.

See: 26 N.J.R. 1183(a), 26 N.J.R. 2256(b).

Amended by R.1997 d.72, effective February 18, 1997.

See: 28 N.J.R. 4978(a), 29 N.J.R. 549(a).

Inserted new (d) and recodified former (d) through (h) as (e) through (i).

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

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

Rewrote the section.

Case Notes

When the Civil Service Commission on September 10, 2008 permitted two police sergeants to sit for the upcoming September 25, 2008 Police Lieutenant examination, the Commission did not find that there was error in the original decision to disqualify them based on their cheating during the 2005 exam, but only found that disqualifying them would have meant that neither could have been considered for promotion for a period of six years, which it found unduly harsh; therefore, because the officers could not demonstrate that there was error on the part of the appointing authority in disqualifying them, they failed to meet the criteria for granting a make-up examination in order to have time to study and prepare for the upcoming test. In re Gialanella, OAL Dkt. No. CSV 5772-07, 2008 N.J. AGEN LEXIS 1061, Final Decision (September 24, 2008).

4A:4-2.10 Conduct and security of examinations

(a) The Department shall insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(b) In the conduct or administration of an examination, the following shall be considered prohibited actions:

1. Securing, by unauthorized persons, of questions or materials, unless the same are available to all applicants;

2. Securing, by unauthorized persons, of information concerning the number or identity of applicants until all parts of the examination have been held and a resulting eligible list issued;

3. Identification of an applicant's examination papers or work before all examinations have been rated, where anonymity is required;

4. Impersonation of an applicant, either in person or by the improper exchange of applicant numbers or in any other manner;

5. Use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned;

6. A candidate's participation in an examination if it would likely result in physical injury to the candidate or others, or damage to property; or

7. Copying, recording or transcribing any examination question or answer, and/or the removal from any examination room of any question sheet, answer sheet, scrap paper, notes or other papers or materials related to the content of an examination.

(c) Anyone participating in a prohibited action under (b) above shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

(d) See N.J.A.C. 4A:4-2.16 on confidentiality of examination records.

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

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

Added new (d).

Administrative correction.

See: 42 N.J.R. 1515(a).

Case Notes

Once the Department of Personnel (DOP) or Merit System Board discovered that breaches in exam security had occurred, such as fact that unknown individuals had typed out 65 or 71 questions that appeared on sergeant's exam and disseminated them with answers throughout police department prior to the administration of any make-up exams, the make-up civil service exams should have been cancelled and an appropriate remedy fashioned to ensure that all candidates had a fair and competitive exam. In the Matter of Police Sergeant (PM3776V) City of Paterson, 176 N.J. 49, 819 A.2d 1173.

Violations of spirit and purpose of Civil Service rules. *Rox v. Dept. of Civil Service*, 141 N.J.Super. 463, 358 A.2d 819 (App.Div.1976).

When the Civil Service Commission on September 10, 2008 permitted two police sergeants to sit for the upcoming September 25, 2008 Police Lieutenant examination, the Commission did not find that there was error in the original decision to disqualify them based on their cheating during the 2005 exam, but only found that disqualifying them would have meant that neither could have been considered for promotion

for a period of six years, which it found unduly harsh; therefore, because the officers could not demonstrate that there was error on the part of the appointing authority in disqualifying them, they failed to meet the criteria for granting a make-up examination in order to have time to study and prepare for the upcoming test. In re Gialanella, OAL Dkt. No. CSV 5772-07, 2008 N.J. AGEN LEXIS 1061, Final Decision (September 24, 2008).

4A:4-2.11 Residence standards

(a) All open competitive examination announcements and noncompetitive job postings or announcements for State and local service shall inform applicants of the requirements for New Jersey residency in accordance with P.L. 2011, c. 70.

(b) In local service, an appointing authority shall provide the Civil Service Commission with its residency ordinance or resolution, if any, on an annual basis or as requested by an appropriate representative of the Commission, and shall provide any subsequent modifications within 20 days after adoption.

1. If the appointing authority provides the Commission with such a subsequent modification following promulgation of an eligible list, the Commission may charge it for the cost of reordering the list.

(c) Where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;

2. Whether time actually spent in the claimed residence exceeds that of other locations;

3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(d) To establish that an applicant has a principal residence in New Jersey, the following standards, set forth in P.L. 2011, c. 70, shall be used:

1. Whether the applicant spends most of his or her nonworking time at the residence;

2. Whether the residence is most clearly the center of the applicant's domestic life. In making this determination, the factors set forth in (c)3 and 6 above may be utilized; and

3. Whether the residence is designated as the applicant's legal address and legal residence for voting. In making this determination, the factors set forth in (c)5 above may be utilized. The fact that the applicant is domiciled in the State of New Jersey shall not by itself satisfy the New Jersey residency requirement.

(e) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. See N.J.A.C. 4A:4-4.7(a)7.

(f) The Commission will review residence requirements that apply to examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment, including the New Jersey residency requirement set forth in P.L. 2011, c. 70.

(g) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Commission for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, an appropriate representative of the Commission may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(h) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

(i) A break in public service for purposes of P.L. 2011, c. 70 shall mean an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. A leave of absence or a resignation/new appointment pursuant to

N.J.A.C. 4A:4-7.9 shall not be considered a break in public service.

Amended by R.1991 d.498, effective October 7, 1991.

See: 23 N.J.R. 1984(a), 23 N.J.R. 2999(a).

Authorized DOP to enforce residency requirements from examination closing date to the date of appointment.

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

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

Revised (b).

Administrative Correction.

See: 25 N.J.R. November 15, 1993.

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

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

Added a new (a) and recodified former (a) through (e) as (b) through (f).

Amended by R.2005 d.65, effective February 22, 2005.

See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In (b)3, inserted "or domestic partner" following "his or her spouse".

Amended by R.2012 d.056, effective March 5, 2012.

See: 43 N.J.R. 2691(a), 44 N.J.R. 576(a).

Rewrote the section.

Case Notes

Applicant's appeal from determination of Merit System Board that he was not entitled to resident's preference was moot. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J.Super. 494, 582 A.2d 1266 (A.D.1990).

Termination of identification officers due to violation of residency requirements affirmed. *Barr and Payne v. City of Newark Police Department*, 97 N.J.A.R.2d (CSV) 582.

Employee was properly ranked on non-resident portion of eligible list. *Rizzolo v. Newark School District*, 94 N.J.A.R.2d (CSV) 506.

Documentation confirmed residence in Burlington township. In the *Matter of Stephen J. Wenger v. Burlington Township*, 94 N.J.A.R.2d (CSV) 394.

Employee was not resident for purposes of placement on eligibility list. *Lightfoot v. City of Newark*, 93 N.J.A.R.2d (CSV) 109.

Officer was required to live in the state of New Jersey. *Glover v. Middlesex County Probation Department*, 92 N.J.A.R.2d (CSV) 777.

Resident of borough as of announced closing date and as of appointment date entitled to residency preference. *Grembowiec v. Lysiak*, 92 N.J.A.R.2d (CSV) 356.

4A:4-2.12 Professional qualifications substitution program

(a) Applicants for designated open competitive or promotional examinations for professional titles may be permitted to substitute appropriate work experience, on a year-for-year basis, for specified higher educational requirements.

1. For titles requiring specific coursework or major fields of study, the successful completion of the coursework or fields of study shall be required.

years of service, and so on. Any service time in excess of nine years shall be awarded the 10-point maximum.

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

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

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

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

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

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

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

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

Added (c)1.

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

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

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

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

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

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

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

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

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

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

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

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

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

Added a new (b)3.

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

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

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

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

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

Rewrote the introductory paragraph of (d).

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

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

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

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In (d), substituted "as provided in (e) below" for "in the case of an intergovernmental transfer of a police or a firefighter"; added new (e); and recodified former (e) through (j) as (f) through (k).

Amended by R.2009 d.95, effective March 16, 2009.

See: 40 N.J.R. 5891(a), 41 N.J.R. 1206(a).

Rewrote (d); recodified former (e) as (d)3; and recodified former (f) through (k) as (e) through (j).

Amended by R.2014 d.045, effective March 17, 2014.

See: 45 N.J.R. 525(a), 46 N.J.R. 497(a).

In (a)1 and (i), substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; rewrote (c)1; added new (c)2; recodified former (c)2 and (c)3 as (c)3 and (c)4; in (c)3, substituted "Successful in the case of both a three-level rating scale and a five-level rating scale," for "Commendable"; in (d)1ii, inserted a comma following "extension"; and in (e)1, substituted "five-year" for "five year".

Case Notes

Validity of excluding performance evaluations (EPEIS) from the scoring of promotional examinations when evaluating supervisors and their subordinates are candidates for same position is proper (citing former

N.J.A.C. 4:1-9.5). *Honachefsky v. N.J. Civil Service Comm'n*, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

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

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

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

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

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

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

- i. An application was completed by an eligible;
- ii. The eligible's name has been certified to the appointing authority for appointment; and
- iii. The appointing authority requests inspection of the application due to a reasonable suspicion that the eligible has submitted inconsistent information regarding his or her qualifications for employment.

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

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

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

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

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

Revised (a)3 and 4.

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

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

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

4A:4-2.17 Application processing fees

(a) A \$25.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. Veterans shall be charged a processing fee of \$15.00 for each open competitive and promotional examination application, unless the examination falls under paragraphs (a)2 or 3 below.

2. The Civil Service Commission shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring and administering the examination. Receipts derived from this application fee shall be appropriated to the Commission for use in developing, procuring and administering law enforcement officer and firefighter examinations.

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

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

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

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

1. General Assistance—a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.

2. Work First New Jersey Act—a copy of the applicant's Families First card.

3. Supplemental Security Income—a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

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

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").

2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Civil Service Commission for fees refunded to applicants.

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

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

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

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

Inserted (a)1.

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

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

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

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

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

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

Amended by R.2011 d.173, effective June 20, 2011.

See: 43 N.J.R. 470(a), 43 N.J.R. 1419(b).

In the introductory paragraph of (a), substituted "\$25.00" for "\$15.00"; added new (a)1; recodified former (a)1 and (a)2 as (a)2 and (a)3; rewrote (a)2; in (a)3, deleted a comma following "sheriff"; in (b), substituted "NJCSC" for "NJDOF" and "and" for "which shall be"; in (c) and (e)2, substituted "Civil Service Commission" for "Department of Personnel"; and in the introductory paragraph of (d), deleted a comma following "work First New Jersey Act".

SUBCHAPTER 3. ELIGIBLE LISTS

Subchapter Historical Note

Petition for Rulemaking. See: 40 N.J.R. 6232(b).

4A:4-3.1 Types of eligible lists

(a) The Chair/CEO may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures;

2. Promotional, which shall include permanent employees who meet qualification requirements;

3. Regular reemployment, which shall include former permanent employees who resigned in good standing, received a general resignation, retired or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;

4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and