

include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

“Affidavit” means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

“Agency” includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

“Agency head” means the person or body authorized by law to render final decisions in contested cases, except that in the Department of Education, the State Board of Education is the head of an agency but the Commissioner of Education is authorized by statute to render final decisions.

“Appellant” means the party who is requesting a reversal or modification of a prior result.

“Burden of producing evidence” means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or peremptory finding on a material issue of fact.

“Burden of proof” means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence.

“Clerk” means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency to oversee the administration of contested cases.

“Close of the record” means that time when the record for a case closes and after which no subsequently submitted information may be considered by the judge.

“Complainant” means the party who requests action or relief by filing a complaint.

“Contested case” means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties

over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

“Discovery” means the process by which a party is permitted on demand or upon motion granted by a judge to view, inspect or receive a copy of documents, and gain other information necessary to prepare a case for hearing.

“Docket number” means the number given to a case by the Office of Administrative Law, which contains the abbreviation of the agency that sent the case to the Office of Administrative Law, a sequence number and the year. Sample:

HPW	8831	82
agency	sequence no.	year

“Evidence” is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

“Filing” means receipt of an original or clear copy of a paper by the proper office or officer.

“Final decision” means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules.

“Finding of fact” means the determination from proof or official notice of the existence of a fact.

“Hearing” means a proceeding conducted by a judge for the purpose of determining disputed issues of fact, law or disposition.

“Initial decision” means the administrative law judge’s recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision.

“Intervention” means the process by which a non-party may, by motion, obtain all rights and obligations of a party in a case.

“Judge” means an administrative law judge of the State of New Jersey or any other person authorized by law to preside over a hearing in a contested case unless the context clearly indicates otherwise. The term includes the agency head when presiding over a contested case under N.J.S.A. 52:14F-8(b).

“Jurisdiction” means the legal power to hear or decide a case.

“Material fact” means a fact legally consequential to a determination of an issue in the case.

“Mediation” means a proceeding conducted after transmission in which an administrative law judge other than the judge assigned to preside over the hearing attempts to settle or compromise a dispute between opposing parties.

“Motion” means an application to a judge for a ruling or order.

“Participation” means the process by which a non-party may, by motion, be permitted to take limited part in a proceeding.

“Party” means any person or entity directly involved in a case, including a petitioner, appellant, complainant, respondent, intervenor, or State agency proceeding in any such capacity.

“Petitioner” means the party who is requesting relief or action at the hearing.

“Pleadings” means written statements of the parties’ respective claims and defenses. A pleading may be a petition, complaint, answer, order to show cause or any other form permitted by an agency’s rules.

“Plenary hearing” means a complete and full proceeding conducted before a judge, providing the parties with discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses and to make arguments.

“Prehearing conference” means a meeting that may be held in advance of the hearing between the judge, representatives of the parties and, sometimes, the parties to discuss and set out the issues to be decided in the case, how the case will be presented and any other special matters required by the judge to be discussed and resolved in advance of the hearing.

“Presumption” means a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.

“Principal of a close corporation” means either a substantial shareholder of a corporation that is not publicly owned or an officer or executive employee who is actively involved in managing the business of such a corporation.

“Proceeding on the papers” means a summary proceeding conducted without any personal appearance or confrontation of the parties before the judge. The hearing is conducted through the submission of pleadings, affidavits, records or documents to the Office of Administrative Law for a decision by an administrative law judge.

“Proof” means all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

“Pro se” means a person who acts on his or her own behalf without an attorney or other qualified non-lawyer representative.

“Record” means all decisions and rulings of the judge and all of the testimony, documents and arguments presented before, during and after the hearing and accepted by the judge for consideration in the rendering of a decision.

“Relevant evidence” means evidence having any tendency in reason to prove any material fact.

“Respondent” means the party who answers or responds to a request for relief or action.

“Service” means the delivery (by mail or in person) of a paper to a party or any other person or entity to whom the papers are required to be delivered.

“Settlement” means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including:

1. Pre-transmission settlement efforts by an agency;
2. Pre-transmission settlement efforts by an administrative law judge at the request of an agency;
3. Mediation by an administrative law judge; and
4. Post-transmission settlement conferences by an administrative law judge or by a staff attorney employed by the Office of Administrative Law.

“Subpoena” means an official paper that requires a person to appear at a hearing to testify and/or bring documents.

“Telephone hearing” means a proceeding conducted by telephone conference call.

“Uncontested case” means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

“Withdrawal” means a decision by a party voluntarily relinquishing a hearing request or a raised defense.

Amended by R.2002 d.198, effective July 1, 2002.

See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

Amended “Settlement”.

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

Added definition “Close of the record”; and deleted definitions “Conclusion of hearing” and “Conference hearing”.

Case Notes

Resident of a continuing care retirement facility appealing his dismissal or discharge from such facility to Department of Community Affairs (DCA) is legally entitled to a plenary hearing, and such hearing must be conducted by either the Commissioner of the DCA or by Office of Administrative Law pursuant to the Commissioner’s referral for adjudication. *Seabrook Village v. Murphy*, 853 A.2d 280, 371 N.J.Super. 319.

Amended by R.2001 d.180, effective June 4, 2001.

See: 33 N.J.R. 1040(a), 33 N.J.R. 1926(a).

In (k)4, inserted "or 14.14" following "1:1-14.4"; added (k)7.

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

Deleted former (g); recodified former (h) through (m) as (g) through (l); in (i), substituted "(j)" for "(m)"; in (j)4, inserted "and 14.15"; in (k), substituted "(j)" for "(k)" and "(g)" for "(h)"; and in (l), substituted "(j)1" for "(k)1".

Amended by R.2008 d.151, effective June 16, 2008.

See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).

Added (m).

Case Notes

In employment discrimination case, Administrative Law Judge's denial of all fees for one of the employee's attorneys was not "law of the case," and the ALJ's subsequent modification of that ruling to allow payment for certain services was adopted by the Director; except for specified matters relating to the hearing itself, delineated in N.J.A.C. 1:1-14.10(j), any ruling of the ALJ is subject to review by the agency head at the conclusion of the case. *Heusser v. N.J. Highway Auth.*, OAL Dkt. No. CRT 01863-98, 2005 N.J. AGEN LEXIS 1071, Final Decision (August 30, 2005).

Granting of partial summary judgment is not effective until a final agency review has been rendered on an issue, either upon interlocutory review pursuant to a request by respondent or at end of the contested case (citing former N.J.A.C. 1:1-9.7 and 1:1-16.5). *Kurman v. Fairmount Realty Corp.*, 8 N.J.A.R. 110 (1985).

Order of the Administrative Law Judge may be reviewed by the Commissioner of the Department of Education and by the Commissioner of the Department of Human Services whether upon the interlocutory review or at the end of special education case (citing former N.J.A.C. 1:1-9.7). *A.N. v. Clark Bd. of Educ.*, 6 N.J.A.R. 360 (1983).

1:1-14.11 Ordering a transcript; cost; certification to court; copying

(a) A transcript of any proceeding which has been sound recorded may be obtained by filing a request with the Clerk. The requesting party shall notify all other parties of the request. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the preparer. The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the preparer shall forward the transcript to the requesting party and the copy to the Clerk. The preparer shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(b) An unofficial copy of a sound recorded proceeding may be obtained by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) A transcript of any stenographically recorded proceeding may be obtained by requesting the appropriate stenographic firm to prepare a transcript, except as specified in (d) below. The requesting party shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is the State or a political subdivision thereof,

the stenographic firm may require a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding. The reporter shall promptly prepare the transcript and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The reporter shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(d) When the preparation of a transcript is being requested for an appeal to court, whether the proceeding was sound or stenographically recorded, the request shall be made as follows:

1. For cases heard by an Administrative Law Judge, the request shall be made to the Clerk of the Office of Administrative Law;
2. For cases heard by an agency head, the request shall be made to the Clerk of that agency.

(e) All transcript preparation requests pursuant to (d) above for appeal to a court shall include one copy of the transcript for the Clerk and any additional copies required by R. 2:6-12. The form of the transcript request shall conform with the requirements of R. 2:5-3(a) and be accompanied by the deposit required by R. 2:5-3(d).

1. The Clerk shall promptly arrange for the preparation of the transcript. Upon completion of the transcript, the preparer shall bill the requesting party for any sum due or shall reimburse the requesting party for any overpayment and shall forward the original and any copies ordered pursuant to R. 2:6-12 to the requesting party. When the last volume of the entire transcript has been delivered to the appellant, the preparer shall forward to the Clerk the copy of the transcript prepared for the Clerk.

2. The Clerk shall transmit the transcript copy to the court and comply with the requirements of R. 2:5-3.

(f) For cases in which an agency possesses a transcript of the hearing being appealed, the request for copying under R. 2:5-3(a) shall be made to the Clerk of that agency. Upon receiving such a request, the Clerk shall make the existing transcript available to the appellant for reproduction for filing and service.

(g) Any transcript that is required by law to be filed with a Clerk shall be considered a public document which is available upon request for copying, as required by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(h) The following shall apply to all transcripts:

1. Transcripts must be prepared in accordance with State standards established by the Administrative Director of the Courts.

2. Unless a proceeding has been sealed, any person may request a transcript or a recording of the proceeding. However, if the person requesting a transcript or tape recording was not a party to the proceeding, the requester, when making the request, must also notify all parties of the request. If a party objects to the request, a written objection must be filed immediately with the Clerk and served on the requester and all other parties to the proceeding. This objection shall be reviewed by the judge who presided over the proceeding.

3. If a proceeding was sealed, only parties to the proceeding may request a transcript or a tape recording and the contents of the transcript or recording shall not be disclosed to anyone except in accordance with the order sealing the proceeding.

(i) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(j) Where the Division of Ratepayer Advocate is representing public interest in a proceeding and another party to the proceeding is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Ratepayer Advocate upon request the official transcript.

Amended by R.1990 d.68, effective February 5, 1990.

See: 21 N.J.R. 1181(b), 21 N.J.R. 3587(a), 22 N.J.R. 334(a).

In (a)-(c): Deleted language specifying that "any party, or person, with a legitimate need, may obtain" or "may request a transcript."

In (a): Added sentence that the requesting party shall notify all other parties of the request. Established new rate for security deposit. Specified responsibilities of the preparer regarding transcripts and billings.

In (c): Revised section to include new rate for security deposit and added sentence, "The reporter shall bill ... for any overpayment".

Added new sections (d)-(h), recodifying old (d)-(e) as new (i)-(j).

In (j): Deleted sentence regarding payment for official transcripts by state agencies.

Amended by R.2002 d.198, effective July 1, 2002.

See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

In (j), substituted references to Ratepayer Advocate for references to Public Advocate throughout.

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

In (g), substituted "Open Public Records Act" for "Right to Know Law".

Case Notes

Inmate charged with prison drug trafficking not entitled to verbatim recording of disciplinary proceeding. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

Unofficial copy of the sound recording of Office of Administrative Law proceedings may not be substituted for the official hearing transcript, and will not be considered if so submitted. The Commissioner

may not make additional findings of fact based on testimony for which no official transcript was provided. *Strengthen Our Sisters v. Bd. of Educ. of West Milford*, OAL Dkt. No. EDU 11097-08, 2009 N.J. AGEN LEXIS 733, Final Decision (July 8, 2009).

State Board of Education does not have the authority to waive or modify standards established by the Administrative Director of the Courts for the preparation of hearing transcripts or to reduce the deposit required by the Office of Administrative Law for the preparation of transcripts, or in the case at hand to require a local school board to share the cost of transcripts ordered by appellants challenging the school board's denial of their request to provide transportation for their children. *T.F.S. ex rel. J.R.S. v. Bd. of Educ., South Brunswick Twnshp.*, OAL Dkt. Nos. EDU 6674-02 and EDU 10118-05; C Nos. 400-05 and 264-06; SB No. 36-06, 2005 N.J. AGEN LEXIS 1490 (April 9, 2007).

Regulations governing administrative proceedings are clear in providing that a copy of a sound recording of a hearing obtained from the Office of Administrative Law (OAL) is "unofficial"; here, the tape purportedly contained testimony from another case, it was not a copy obtained from OAL, and appellant failed to demonstrate that the testimony on the tape was relevant to the conduct alleged in the instant charges. In re *Tenure Hearing of McCullough*, EDU No. 6702-03S; C No. 70-06; SB No. 12-06, 2006 N.J. AGEN LEXIS 929 (October 4, 2006).

Rule allows respondent an opportunity to obtain a transcript of proceeding (citing former N.J.A.C. 1:1-3.3). *Div. of Motor Vehicles v. Exum*, 5 N.J.A.R. 298 (1983).

1:1-14.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;

3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;

4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;

6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;

7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or