

CHAPTER 3

CONTROVERSIES AND DISPUTES

Authority

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

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

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

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

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

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

Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997.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

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effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic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

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

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 6A:3-1.1 Purpose and scope
- 6A:3-1.2 Definitions
- 6A:3-1.3 Filing and service of petition of appeal
- 6A:3-1.4 Format of petition of appeal
- 6A:3-1.5 Filing and service of answer
- 6A:3-1.6 Emergent relief or stay
- 6A:3-1.7 Amendment of petition and answer
- 6A:3-1.8 Permission to intervene or participate
- 6A:3-1.9 Appearance and representation
- 6A:3-1.10 Dismissal or transfer of petition
- 6A:3-1.11 Hearing
- 6A:3-1.12 Summary decision
- 6A:3-1.13 Settlement or withdrawal of contested matter
- 6A:3-1.14 Written decision
- 6A:3-1.15 Motion for stay, reconsideration or clarification of Commissioner's decision
- 6A:3-1.16 Relaxing of rules
- 6A:3-1.17 Awarding of interest

SUBCHAPTER 2. DECLARATORY RULINGS

- 6A:3-2.1 Petition for declaratory ruling
- 6A:3-2.2 Format of petition for declaratory ruling
- 6A:3-2.3 Dissemination of declaratory ruling

SUBCHAPTER 3. ORDER TO SHOW CAUSE

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

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

- 6A:3-4.1 Withholding salary increment

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

- 6A:3-5.1 Filing of written charges and certificate of determination
- 6A:3-5.2 Format of certificate of determination
- 6A:3-5.3 Filing and service of answer to written charges
- 6A:3-5.4 Filing and certification of charges against tenured employees within the Departments of Human Services, Children and Families, Corrections, and Education and within the Juvenile Justice Commission
- 6A:3-5.5 Determination of sufficiency and transmittal for hearing
- 6A:3-5.6 Withdrawal, settlement, or mooted of tenure charges

SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING RELATIONSHIP

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

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

- 6A:3-7.1 Filing and service of petition
- 6A:3-7.2 Answer; record on appeal
- 6A:3-7.3 Schedule of briefing
- 6A:3-7.4 Applications for emergent relief
- 6A:3-7.5 Standard of review
- 6A:3-7.6 Commissioner's decision

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

- 6A:3-8.1 Exceptions to general appeal requirements

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

6A:3-9.1 Commissioner review of penalty recommendations

SUBCHAPTER 10. "ABBOTT" APPEALS

6A:3-10.1 Appeal of Department determinations

**SUBCHAPTER 11. APPLICATIONS FOR ISSUANCE OF
FACILITIES BONDS**

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

**SUBCHAPTER 12. REQUESTS FOR RECORDING OF
JUDGMENT**

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

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

6A:3-1.1 Purpose and scope

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

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

1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 18A:6-17;
2. Termination of sending-receiving relationships pursuant to N.J.S.A. 18A:38-13;
3. Appeals from decisions of the New Jersey State Interscholastic Athletic Association pursuant to N.J.S.A. 18A:11-3;
4. Denials of entitlement to attend school pursuant to N.J.S.A. 18A:38-1;
5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29; and
6. Hearings prior to suspension or revocation of school bus driver endorsements pursuant to N.J.S.A. 18A:39-28 et seq.

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

(d) This chapter shall not apply to appeals of decisions of the State Board of Examiners suspending or revoking teaching certificates, decisions of the School Ethics Commission finding violation of the School Ethics Act, interlocutory decisions of the Board of Examiners or the School Ethics Commission, or requests for relief arising out of legal decisions of the State Board of Education. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

New Rule, R.2000 d.137, effective April 3, 2000.

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

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

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

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

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

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

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

Case Notes

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

To the extent that a diverse group of plaintiffs were appealing an order of the board of a city school system reorganizing the district, the matter was a petition of appeal before the Commissioner of Education and was required to be filed no later than the 90th day from the date of receipt of the notice of that order. The district announced that it would be implementing the plan as early as November 2013 and announced aspects of the plan over the ensuing months. That being so, the petition should have been filed within 90 days of the announcement date in November 2013, and the filing made by them on August 18, 2014 was untimely. Moreover, though the Commissioner had discretion to relax the timeliness rule, such extraordinary relief was reserved only for those situations where a substantial constitutional issue was presented or where a matter of significant public interest was involved, and the instant matter did not satisfy either of those criteria. That being so, those counts of the plaintiffs' petition were properly dismissed. *Graves et al. v. The State Operated Sch. Dist. of Newark, Essex Cty., and Anderson, State Superintendent*, OAL DKT. NO. EDU 10677-14, 2015 N.J. AGEN LEXIS 250, Initial Decision (April 28, 2015).

A teacher's petition challenging certain action taken by school administrators relative to the teacher's evaluations was filed timely under governing rules because even if the proof of service was not provided within the same period, the teacher in fact provided proof of service within the deadline set by the Department of Education, Bureau of Controversies and Disputes. That being so, dismissal of the petition as untimely would be inappropriate, particularly in light of the fact that the Commissioner of Education had discretion to relax the so-called "90 day" rule where, as here, strict adherence thereto may be deemed inappropriate. That said, because the teacher did not allege that her "student-growth-objective" score was the sole cause for an ineffective or partially effective summative rating for the relevant academic year, the teacher had not asserted a cause of action arising under the 2012 Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, N.J.S.A. 18A:6-117 et seq., her petition was not cognizable by the Commissioner. And even if the claim was reasonably construed to have been raised under the TEACHNJ Act, the teacher did not comply with the appeal process procedure specified therein. Because the Commissioner lacked jurisdiction over the petition, it was properly dismissed. *Goode v. Miles et al*, OAL DKT. NO. EDU 852-15, 2015 N.J. AGEN LEXIS 163, Initial Decision (March 26, 2015).

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

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

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

Although teacher claimed that his work environment was rendered hostile by the cumulative effect of numerous adverse actions at the

hands of the Board and its administration, for which there was no possible explanation other than discrimination toward him as a former cancer patient, reality revealed by the record was that teacher's absence and return to work coincided with the emergence of a new building-level administration which progressively undertook to make systematic changes in the operation of the high school, a number of which affected teacher's ability to maintain what he perceived as his accustomed position of status and autonomy (namely, teaching only honors and college prep courses). Teacher had no vested entitlement to teach what he wanted to teach and was no more entitled than any other teacher to determine his own schedule of classes. *Varjian v. Bd. of Educ. of Midland Park*, OAL Dkt. No. EDU 9917-05, 2007 N.J. AGEN LEXIS 1009, Commissioner's Decision (October 15, 2007), aff'd, SB NO. 30-07, 2008 N.J. AGEN LEXIS 674 (N.J. State Bd. of Educ., May 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 329) adopted, which concluded that the Commissioner of Education did not have legal authority to award a parent damages for lost wages and child care expenses incurred while his son was suspended from school; the award of money damages in cases before the Commissioner occurs only in a limited number of cases authorized by the education statutes. *B.G. ex rel. B.G. v. Bd. of Educ. of East Orange*, OAL Dkt. No. EDU 3036-08, Final Decision (May 20, 2008).

6A:3-1.2 Definitions

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

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

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

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

(a) By operation of N.J.S.A. 18A:12-29(c), the Commissioner shall review penalty recommendations of the School Ethics Commission. Such review shall be limited to the appropriateness of the penalty recommended by the Commission in light of its findings of fact and determinations of violation, and shall proceed in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C.

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

Amended by R.2005 d.109, effective April, 4, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

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

Amended by R.2010 d.072, effective May 17, 2010.
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

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

SUBCHAPTER 10. "ABBOTT" APPEALS

6A:3-10.1 Appeal of Department determinations

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

Amended by R.2005 d.109, effective April 4, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

**SUBCHAPTER 11. APPLICATIONS FOR ISSUANCE OF
FACILITIES BONDS**

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

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

New Rule, R.2005 d.109, effective April 4, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

**SUBCHAPTER 12. REQUESTS FOR RECORDING OF
JUDGMENT**

Case Notes

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

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

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

(b) Requests to the Commissioner pursuant to (a) above shall be made by letter to the Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. Such letter shall indicate how much, if any, of the assessment has already been satisfied; and shall be accompanied by proof of service on each other party and a copy of the Commissioner's decision ordering the assessment.

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

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

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

(a) Where a school bus driver has been notified by the Department's Criminal History Review Unit that a determina-

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

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

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

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

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

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

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

4. That the driver acted with gross negligence.

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

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

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