

CHAPTER 4 APPEALS

Authority

N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through 18A:6-29, 18A:6-39, 18A:7A-15 and 18A:12-29.

Source and Effective Date

R.2005 d.255, effective July 8, 2005.
37 N.J.R. 828(b), 37 N.J.R. 2862(a).

Chapter Expiration Date

Chapter 4, Appeals, expires on July 8, 2010.

Chapter Historical Note

Chapter 4, Appeals, was originally codified in Title 6 as Chapter 2, Appeals. Chapter 2, Appeals, was filed and became effective prior to September 1, 1969.

Chapter 2, Appeals, were repealed and adopted as new rules by R.1989 d.67, effective February 6, 1989. See: 20 N.J.R. 2615(a), 21 N.J.R. 288(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, was readopted as R.1994 d.17, effective December 8, 1993. See: 25 N.J.R. 4548(a), 26 N.J.R. 198(b).

Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 2, Appeals, was extended from December 8, 1998 to June 8, 2000. See: 26 N.J.R. 3783(a) and 3942(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, was readopted as R.2000 d.229, effective May 5, 2000. Chapter 2 was recodified as N.J.A.C. 6A:4 by R.2000 d.229, effective June 5, 2000. See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Chapter 4, Appeals, was readopted as R.2005 d.255, effective July 8, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:4-1.1 Appealable decisions

(a) Final decisions of the Commissioner of the Department of Education, of the State Board of Examiners, and of the School Ethics Commission are appealable to the State Board of Education as of right. Final decisions include the following:

1. Any determination of the Commissioner, including, as to those separable issues upon which the Commissioner has rendered a final decision, a decision remanding all or part of a controverted case;
2. Any decision of the State Board of Examiners pertaining to the revocation or suspension of a certificate issued by the Board of Examiners; and
3. Any decision of the School Ethics Commission finding a violation of the School Ethics Act (N.J.S.A. 18A:12-29d) at such time as the Commissioner's decision regarding the sanction has been rendered.

(b) The State Board, upon application made pursuant to N.J.A.C. 6A:4-2.3, may grant leave to appeal from an interlocutory order, decision or action of the Commissioner, or his or her representative, or of the Board of Examiners, or of the School Ethics Commission. A decision by the School Ethics Commission finding a violation of the School Ethics Act shall be considered to be an interlocutory decision for purposes of appeal to the State Board.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (a), inserted "as of right" following "Board of Education"; in (b), amended N.J.A.C. reference, and added last sentence.

Case Notes

Challenge to extension of time under N.J.A.C. 1:1-18.8 for the Commissioner to issue a ruling on an appeal was actually a motion for leave to appeal an interlocutory order, rather than a "motion for emergent relief"; interlocutory review of an administrative ruling may be granted in the interest of justice or for good cause shown, and petitioner failed to demonstrate good cause. *Toddertown Child Care Center v. Bd. of Educ.*

of Irvington, OAL Dkt. Nos. EDU 3041-07 and EDU 5430-07 (CONSOLIDATED), SB No. 35-07, 2007 N.J. AGEN LEXIS 974 (December 19, 2007).

6A:4-1.2 Who may appeal

(a) Any party aggrieved by a decision of the Commissioner, or a decision by the Board of Examiners to revoke or suspend certification, or by the School Ethics Commission finding a violation of the School Ethics Act may appeal to the State Board of Education.

(b) Parties jointly interested in a decision or action may join in an appeal therefrom or may appeal separately.

(c) A respondent may cross appeal as provided by N.J.A.C. 6A:4-1.3(b).

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).
In (c), amended N.J.A.C. reference.

6A:4-1.3 Time for appeal

(a) Appeals from final decisions of the Commissioner, or of the Board of Examiners, or of the School Ethics Commission shall be taken within 30 days of the filing date of the decision from which appeal is taken.

(b) Cross appeals may be taken by filing notice of cross appeal within 10 days of service of notice of appeal.

(c) Applications for leave to appeal from interlocutory orders, decisions or actions shall be made within the time provided by N.J.A.C. 6A:4-2.3.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).
In (c), amended N.J.A.C. reference.

6A:4-1.4 Computation of time

(a) A decision of the Commissioner or State Board of Examiners shall be deemed filed three days after the date of mailing to the parties.

(b) For purposes of appeal to the State Board, a decision of the School Ethics Commission finding a violation of the School Ethics Act shall be deemed filed upon the filing of the Commissioner's decision regarding the sanction.

(c) In computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

Amended by R.1994 d.17, effective January 3, 1994.
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Case Notes

Appeal to State Board of Education from commissioner's decision dismissed after appeal filed outside statutory 30-day limit. *Sheridan v. Orange Township Board of Education*, 96 N.J.A.R.2d (EDU) 142.

Parents' appeal to State Board of Education untimely when filed four months after commissioner's decision. *Cranford Township Board of Education v. McGuire*, 96 N.J.A.R.2d (EDU) 140.

6A:4-1.5 Extensions of time

(a) No extension of time may be granted to enlarge the time specified for appeal or for cross appeal.

(b) By notice to the Legal Committee of the State Board of Education, extensions with consent of all parties for filing briefs or exceptions to the report of the Legal Committee may be obtained for a period of time not to exceed an accumulated total of 60 days for all extensions in one case.

(c) Requests for extensions of time without the consent of all parties may be granted only by leave of the Legal Committee.

(d) Extensions of time in excess of an accumulated total of 60 days for all extensions in one case may be granted only by leave of the Legal Committee upon a showing of good cause.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (b), substituted "60" for "30" preceding "days"; and rewrote (c) and (d).

6A:4-1.6 How to appeal

(a) An appeal or cross appeal shall be taken by serving a copy of the notice of appeal or cross appeal upon all other parties and by filing the original with the Legal Committee of the State Board of Education at 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500, and a copy with the Commissioner of Education, the State Board of Examiners, or the School Ethics Commission.

(b) An appeal or cross appeal shall be considered filed upon receipt of notice of appeal by the Legal Committee if hand delivered or upon mailing if appended thereto is a proof of mailing including either:

1. An affidavit of the person mailing the appeal or a certified mail receipt; or
2. A certificate of mailing signed by the attorney for the party filing the appeal.

(c) Where there is no accompanying affidavit or certificate of mailing, the appeal shall be deemed to have been mailed three days before receipt of the appeal by the State Board.

Amended by R.1994 d.17, effective January 3, 1994.
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).
Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (a), amended address; and in (b)1, added reference to certified mail.

6A:4-1.7 Contents of notice of appeal and notice of cross appeal

(a) A notice of appeal or notice of cross appeal shall set forth the name of the party taking the appeal and his or her address or that of his or her attorney if he or she is represented, the names of all other parties, and shall specifically designate the decision appealed from, or such part as appealed from.

(b) Each notice of appeal shall be signed by the attorney of record representing the party taking the appeal or, if such party is appearing pro se, signed by the party.

(c) Each notice of appeal shall have appended thereto a copy of the decision being appealed, including the initial decision, if any, issued by the Office of Administrative Law.

(d) Proof of service shall be appended to the notice of appeal or cross appeal in the form of one of the following:

1. An acknowledgement of service signed by the attorney for the party or signed and acknowledged by the party;
2. An affidavit of the person making service or a certified mail receipt; or
3. A certificate of service appended to the paper to be filed and signed by the attorney for the party making service.

(e) Failure to append proof of service to notice of appeal or cross appeal does not affect the validity of service, and the State Board at any time may allow proof of service to be amended or supplied unless an injustice would result.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Added new (b) and (c); recodified former (b) and (c) as (d) and (e); and in (d)2, inserted reference to certified mail.
Amended by R.2005 d.255, effective August 1, 2005.
See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).

In (c), added “, including the initial decision, if any, issued by the Office of Administrative Law.” following “appealed” and in subsection (d), added “the” following “appended to”.

6A:4-1.8 Record on appeal

(a) The record on appeal shall include all papers, tape recordings, computer disks and exhibits on file with the Commissioner, Board of Examiners or School Ethics Commission, with all entries as to matters made on the record, any stenographic transcript, and all papers filed with or entries made on the records of the State Board.

(b) Upon notice of appeal, the Commissioner, Board of Examiners, or School Ethics Commission shall certify the record and shall remit the record to the State Board within 15 days of receipt of such notice of appeal, together with the notice, two copies of the decision appealed from, and a statement of items comprising the record on appeal which shall be served on each party to the appeal at the same time.

(c) The record shall be retained by the State Board except that any party may be permitted to use any portion of such record in the State Board’s appeals office.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Rewrote (b).
Amended by R.2005 d.255, effective August 1, 2005.
See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).
In (b), substituted “15” for “five”.

6A:4-1.9 Correction or supplementation of the record

(a) A party who questions whether the record fully and truly discloses what occurred in the proceedings below shall apply on motion to the Commissioner, the State Board of Examiners, or the School Ethics Commission to settle the record. The State Board, on motion, may review such determination or, on its own motion, may direct correction of the record.

(b) At any time during the pendency of the appeal, if it appears that evidence unadduced at the proceedings below may be material to the issues on appeal, the State Board may direct, on its own motion or on motion of a party, on such terms as it deems appropriate, that the record on appeal be supplemented by the taking of additional evidence.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Added (a); and designated existing paragraph as (b).

Case Notes

Determination by the New Jersey Department of Human Services, Division of Developmental Disabilities, to offer and fund a placement for an individual to meet the individual’s habilitation needs has no bearing on an interpretation of the laws applicable to a determination of the school district responsible to provide a student a free public education; therefore, parent’s motion to supplement the record on appeal with a letter stating the same was denied. *A.M.S. ex rel. A.D.S. v. Bd. of Educ. of Margate*, OAL DKT. NO. EDU 218-07; SB No. 26-07, 2008 N.J. AGEN LEXIS 138 (January 9, 2008).

6A:4-1.10 Filing and service of briefs, motions, applications, and exceptions

(a) One copy of all briefs, motions, applications, and exceptions filed pursuant to this chapter shall be served on all parties, and proof of such service in conformity with N.J.A.C. 6A:4-1.7(d) shall be appended to an original, which shall be filed with the Legal Committee.

(b) In addition to an original, 17 copies of all briefs, motions, applications, and exceptions shall be filed with the Legal Committee.

(c) All briefs filed pursuant to this chapter shall be deemed filed upon receipt by the Legal Committee.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (a), amended N.J.A.C. reference.
Amended by R.2005 d.255, effective August 1, 2005.
See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).

In (a), substituted “(d)” for “(c)” following “6A:4-1.7”.

6A:4-1.11 Time for serving and filing of briefs

(a) Except as otherwise provided by N.J.A.C. 6A:4-2.3, motion for leave to appeal, the appellant shall serve and file a brief in support of the appeal within 20 days after the appeal has been filed. The respondent shall serve and file an answer brief within 20 days after service of the appellant's brief. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. No other briefs shall be served or filed without leave of the Legal Committee.

(b) If a cross appeal is taken, the party first appealing shall serve and file an appeal brief within 30 days of notice of the cross appeal. Within 30 days thereafter, the cross-appellant shall serve and file a brief in support of the cross appeal, which shall include an answer to appellant's brief. The appellant may file a reply brief within 10 days thereafter. No other briefs shall be served or filed without leave of the Legal Committee.

Amended by R.1994 d.17, effective January 3, 1994.
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).
Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).
In (a), amended N.J.A.C. reference.

Case Notes

Failure to file brief; dismissal of appeal. *Miller v. New Jersey State Board of Examiners*, 93 N.J.A.R.2d (EDU) 134.

6A:4-1.12 Failure to meet filing deadlines

(a) Failure to meet the filing deadline for an appeal brief or brief in support of a cross appeal may be viewed as a failure to perfect the appeal or cross appeal. Accordingly, on its own motion, the State Board may move to dismiss such appeal or cross appeal.

(b) If a respondent fails to meet the filing deadline for an answer brief, the record may be closed and the State Board may consider the matter on the record then before it.

Case Notes

Failure to timely file brief; appeal dismissed. *Paszamant v. Board of Education of Borough of Highland Park*, 92 N.J.A.R.2d (EDU) 329.

6A:4-1.13 Contents of briefs

(a) The cover of each formal brief filed pursuant to this chapter shall contain the following information:

1. The name of the State Board of Education and the State Board docket number for the action;
2. The title of the action;
3. The designation of the parties before the Commissioner and the designation of the parties in the action before the State Board;
4. The title of the document and the designation of the party for whom it is filed; and

5. The name and office address of the attorney of record and the names of any attorneys "of counsel" or "on the brief" or the name and address of the party submitting the brief if such party is appearing pro se.

(b) All briefs shall be typed and plainly legible. All formal briefs shall be typed double spaced.

(c) All briefs shall be bound or stapled.

(d) Each formal brief filed by an appellant shall contain the following material under distinct titles, arranged in the following order:

1. A table of contents, including the point headings to be argued.
2. If the appeal raises questions concerning educational policies, a concise and specific statement of those policies.
3. A concise procedural history including a statement of the nature of the proceedings and a reference to the order, decision or action appealed from or sought to be reviewed.
4. A concise statement of the facts material to the issues on appeal supported by references to the record and transcript. The statement shall be in the form of a chronological narrative summarizing all pertinent evidence, but shall not be a summary of all the evidence adduced at hearing, witness by witness.
5. The legal argument for the appellant, under appropriate point headings, distinctively printed or typed, into as many parts as there are to be argued.

(e) All briefs shall be dated and shall be signed by the party submitting the brief if such party is appearing pro se or by the attorney of record if the party is represented.

(f) All briefs shall strictly preserve the anonymity of any minor who is a party to or witness in the matter by such means as using initials in place of the names of those minors.

(g) All briefs shall include a statement in parentheses in the point heading that clearly identifies any point that was neither briefed nor argued in the proceedings prior to the appeal to the State Board.

(h) In lieu of filing a formal brief in accordance with (d) above, the appellant may file a letter brief. Letter briefs may be typed either single or double-spaced, but shall not exceed 15 pages. Letter briefs shall conform with the requirements of this section, except for those provisions which are expressly applicable only to formal briefs. No cover need be annexed, provided that the information required is included in the heading of the letter.

(i) Respondent's answer brief shall conform to the requirements of this section, but shall include a counter-statement of facts only if respondent disagrees with the statement of facts in appellant's brief.

(j) A brief in support of a cross appeal shall conform to the requirements of this section.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).
Rewrote the section.

(k) Appellant's reply brief shall conform to the requirements of this section.

Amended by R.1994 d.17, effective January 3, 1994.
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).
Amended by R.2000 d.229, effective June 5, 2000.

6A:4-1.14 Appendices

(a) An appeal brief or brief in support of a cross appeal shall have appended thereto an appendix containing, as the first item, the decision appealed from, including any decision

issued by the Office of Administrative Law, and such parts of the record, including evidentiary exhibits or portions thereof, upon which the appellant or cross-appellant relies, or upon which it should reasonably be assumed the respondent will rely in meeting the issues raised. If answers to interrogatories are included in the appendix, a copy of the interrogatories also shall be included.

(b) All appendices shall be bound or stapled and the pages thereof arranged in clearly designated numerical order.

(c) An appendix shall not include any document that would supplement the evidentiary record made before the Commissioner unless motion to supplement the record has been made and granted by the State Board as provided by N.J.A.C. 6A:4-1.9.

Amended by R.1994 d.17, effective January 3, 1994.

See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Added a new (b); recodified former (b) as (c), and amended N.J.A.C. reference.

Amended by R.2005 d.255, effective August 1, 2005.

See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).

In (a), added “, as the first item,” preceding “the decision appealed from”, added “, including any decision issued by the Office of Administrative Law,” preceding “and such parts of the record,” and added the last sentence.

6A:4-1.15 Length of briefs

(a) Initial briefs of parties, if formal briefs, shall not exceed 40 pages exclusive of tables of contents and appendices.

(b) Letter briefs and reply briefs shall not exceed 15 pages.

(c) These page limits may be relaxed only by leave of the Legal Committee, which may be applied for ex parte.

Amended by R.1994 d.17, effective January 3, 1994.

See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Case Notes

Evidence supported administrative law judge’s determination on use of unnecessary force tenure charges. In re: Tenure Hearing of Doyle, 201 N.J.Super. 347, 493 A.2d 54 (App.Div.1985).

6A:4-1.16 Inadequacy or impropriety of briefs and papers

(a) If a brief does not substantially conform to this subchapter or is so inadequate that justice cannot be done without the State Board’s independent review of the record or research of the law, the State Board may order the same suppressed and direct the filing within a fixed period of time of a new brief.

(b) The State Board may, on its own or motion by a party, strike a brief of any part of a brief that is profane or abusive of the State Board or another person.

(c) If a brief or other paper filed fails to preserve the anonymity of any minor who is a party or was a witness in the case, the State Board may order the same suppressed.

Amended by R.1994 d.17, effective January 3, 1994.

See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

6A:4-1.17 Exceptions to reports of the Legal Committee

(a) Whenever there is a written report of the Legal Committee as provided by N.J.A.C. 6A:4-3.1(d), the parties may serve and file exceptions within 10 days of the date on which the report is filed. Exceptions shall be filed concurrently and shall not exceed 10 pages. No other papers shall be served or filed without leave of the Legal Committee.

(b) Written reports of the Legal Committee shall be deemed filed three days after the date of mailing to the parties.

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (a), amended N.J.A.C. reference.

6A:4-1.18 Motions

(a) Every motion shall be accompanied by a brief, conforming to the requirements of either N.J.A.C. 6A:4-1.13(d) or (h). The brief shall explain clearly the nature of the action, the relief sought by the moving party and why the movant is entitled thereto.

(b) Every brief shall have appended to it any decision or order of the Commissioner, School Ethics Commission, or State Board of Examiners granting or denying the relief sought or challenged, and such portions of the record upon which the movant either relies or should reasonably assume the opposing party will rely.

(c) Each motion shall be accompanied by an affidavit setting forth fully the factual basis upon which the motion is based.

(d) The moving party shall serve one copy of the moving papers on all other parties, and file with the Legal Committee an original and 17 copies thereof.

(e) Except as provided by N.J.A.C. 6A:4-2.4, Emergency relief, an opposing party shall have 10 days after service of the movant’s papers to serve and file the same number of papers in opposition. The opposing party’s brief shall explain clearly the grounds for opposition, annexing any papers relied on that were not included in the moving party’s appendix. If no opposing brief is filed, the State Board may consider the motion unopposed.

(f) Without leave of the Legal Committee, which may be applied for ex parte, supporting and answering briefs shall not exceed 15 pages, exclusive of table of contents and appendix.

(g) No other papers shall be filed by either party without leave of the Legal Committee.

(h) Unless otherwise directed by the State Board, there shall be no oral argument on motions.

Amended by R.1994 d.17, effective January 3, 1994.

See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (a), amended N.J.A.C. references; in (b), added reference to School Ethics Commission; in (c), substituted "based" for "founded"; and in (e), amended N.J.A.C. reference.

6A:4-1.19 Relaxation of the rules

The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration and elimination of unnecessary delay. Unless otherwise stated, any rule may be relaxed in any case by the State Board, in its discretion, if adherence to such rule would result in an injustice.

SUBCHAPTER 2. MISCELLANEOUS PROCEEDINGS

6A:4-2.1 Motion to appear as amicus curiae

(a) A motion for leave to appear as amicus curiae shall state with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise with respect thereof.

(b) The State Board shall grant the motion if it is satisfied under all the circumstances that the motion is timely, that the applicant's participation will assist in the resolution of an issue of public importance, and that no party to the litigation will be unduly prejudiced thereby. The decision granting the motion shall fix a briefing schedule.

(c) An amicus curiae who has been granted leave to appear in a case before the Commissioner may, without seeking further leave, file a brief and appear in an appeal taken to the State Board from the decision or order entered therein.

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

In (b), substituted "decision" for "order" in last sentence.

6A:4-2.2 Motion for stay of a decision of the Commissioner or State Board of Examiners

(a) A motion to stay a determination of the Commissioner or Board of Examiners pending determination of an appeal to the State Board shall first be made to the Commissioner or Board of Examiners.

1. Motions shall be made to the Commissioner in accordance with N.J.A.C. 6A:3-1.15.

2. Motions shall be made to the Board of Examiners concurrent with or subsequent to the filing of a notice of appeal to the State Board, together with a supporting affidavit and proof of service on each party.

(b) If the motion is denied by the Commissioner or Board of Examiners, a motion for stay may be made to the State Board in accordance with N.J.A.C. 6A:4-1.18. If the motion is granted by the Commissioner or Board of Examiners, a motion to dissolve the stay may be made to the State Board in accordance with N.J.A.C. 6A:4-1.18. The motion shall have appended to it the decision of the Commissioner or Board of Examiners granting or denying a stay, along with the decision of the Commissioner or Board of Examiners from which a stay was sought, including the initial decision, if any, issued by the Office of Administrative Law.

(c) The motion and affidavit filed in accordance with N.J.A.C. 6A:4-1.18 shall set forth fully that portion of the Commissioner's or Board of Examiner's decision with respect to which a stay or dissolution of a stay is sought, the factual basis on which the motion is founded, and the reasons why the motion should be granted.

(d) Any party opposing the motion shall file and serve within 10 days of service of such motion an answering affidavit in the same manner, setting forth the reasons why the motion should be denied.

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

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

Rewrote the section.

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Rewrote the section.

Amended by R.2005 d.255, effective August 1, 2005.

See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).

In (b), added the last sentence.

6A:4-2.3 Motion for leave to appeal an interlocutory order, decision or action

Motion for leave to appeal an interlocutory order, decision or action shall be made by filing a motion for leave to appeal to the State Board of Education within five days after the action or service of the interlocutory decision or order. Motion for leave to appeal shall conform to the requirements of N.J.A.C. 6A:4-1.18, except that the brief in support of the motion shall also include the merits of the issues sought to be appealed. The respondent's answer shall be filed within 10 days of service of motion.

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Amended N.J.A.C. reference.

6A:4-2.4 Emergency relief

(a) Applications for emergency relief shall conform to the requirements of N.J.A.C. 6A:4-1.18. Opposing parties shall be given opportunity under the circumstances to file papers in response to an application for emergency relief.

(b) Applications for emergency relief shall be considered on an expedited basis and as provided by N.J.A.C. 6A:4-3.3.

Amended by R.1994 d.17, effective January 3, 1994.

See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Amended by R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Deleted former (a); and recodified former (b) and (c) as (a) and (b), and amended N.J.A.C. references.

Case Notes

High school student who did not achieve requisite number of credits was not entitled to emergency relief to participate in graduation ceremonies. *D.C. v. Board of Education of the Township of Parsippany Troy Hills*, 96 N.J.A.R.2d (EDU) 697.

High school student who did not achieve requisite number of credits was not entitled to emergency relief to attend his senior prom. *W.M.B. v. Woodbury District Board of Education*, 96 N.J.A.R.2d (EDU) 695.

Decision on petition for emergent relief in form of enjoining expulsion hearings was not res judicata with respect to due process claim. *M.G., on behalf of her minor child, K.G., Et Al. v. Board of Education of Monmouth Regional High School District*, 92 N.J.A.R.2d (EDU) 364.

6A:4-2.5 Appeal from the grant or rejection of an application to establish a charter school

(a) As provided by N.J.S.A. 18A:36A-4d, a district board of education or a charter school applicant who is aggrieved by the grant or rejection of an application to establish a charter school pursuant to N.J.S.A. 18A:36A-1 et seq. may appeal the Commissioner's decision to the State Board.

(b) Such appeal shall be filed within 30 days after the decision appealed from is filed as computed under N.J.A.C. 6A:4-1.4.

(c) Upon certification of the record on appeal by the Commissioner and its transmittal to the State Board pursuant to N.J.A.C. 6A:4-1.8, the briefing schedule shall be established for a given appeal and all parties notified thereof.

(d) In accordance with N.J.S.A. 18A:36A-4d, the State Board shall render its decision within 30 days of the close of briefing by the parties. In the event that the State Board does not act within that time, the decision of the Commissioner shall be deemed final.

(e) Unless otherwise provided by these rules, the provisions of this chapter shall be applicable to appeals filed under this subsection.

Repealed by R.1994 d.17, effective January 3, 1994.

See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Section was "Appeal from a decision of the Commissioner on school budget cap waiver applications".

New Rule, R.2000 d.229, effective June 5, 2000.

See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

6A:4-2.6 Issuance of an administrative order creating a State-operated school district

(a) A recommendation made to the State Board by the Commissioner for the issuance of an administrative order creating a State-operated school district shall be deemed filed three days after the date of mailing to the respondent.

(b) The Commissioner shall certify the record upon which the recommendation is based and remit the record, so certified, together with two copies of the recommendation to the State Board within three days after the recommendation is filed.

(c) Within 10 days after the recommendation is filed, a respondent contesting the recommendation shall file a notice of intention to contest with the State Board of Education and with the Commissioner, identifying the recommendation and stating that the respondent intends to contest it. A notice filed on behalf of a district board of education shall have appended thereto a certification that the district board has authorized the filing of the notice by resolution of the district board adopted by roll call vote.

(d) Within 15 days after the filing of notice, the respondent shall file with the State Board an original and 17 copies of its exceptions to the recommendation, and shall serve one copy upon the Commissioner.

1. The exceptions shall specify the basis upon which the respondent contests the recommendation and shall include the respondent's argument, clearly and concisely stated, as to why the State Board should not issue an administrative order creating a State-operated school district.

2. Any transcript or exhibit admitted into evidence, or portion thereof, relied upon shall be specifically identified.

3. The respondent's exceptions may be in letter form, but shall not exceed 30 pages unless leave of the State Board has been obtained.

(e) Within 10 days after the respondent has filed its exceptions, the Commissioner may file a response not exceeding 30 pages, which shall specifically identify any transcript or exhibit admitted into evidence, or portion thereof, upon which the Commissioner relies in the response.

(f) No other papers shall be served or filed without leave of the State Board.

(g) Oral argument before the State Board, or a committee thereof, may be granted on request of the respondent made by a separate captioned paper filed concurrently with its exceptions, or, in the case of any recommendation, upon direction of the State Board.

(h) If no notice is filed as provided by (c) above, or exceptions are not filed within the 15 day period provided by (d) above, the decision of the State Board will be based solely on the record certified to it by the Commissioner.

(i) Except as otherwise provided, the rules included in this chapter are applicable to proceedings pursuant to this section.

(j) Determinations of the State Board made pursuant to this section shall be embodied in a written decision, which

shall be certified to the Commissioner and simultaneously mailed to the respondent or its attorney of record.

(k) The decision of the State Board shall be deemed filed three days after the date of mailing.

6A:4-2.7 Motions for clarification and/or reconsideration of a State Board decision

A motion for clarification and/or reconsideration shall be served and filed within 10 days after the State Board has filed its decision in the matter unless such time is enlarged by leave of the Legal Committee. The motion shall conform to the requirements of N.J.A.C. 6A:4-1.18 and shall include a copy of the decision from which clarification and/or reconsideration is sought.

Amended by R.1998 d.37, effective January 5, 1998.
See: 29 N.J.R. 4221(a), 30 N.J.R. 67(a).
Amended by R.2005 d.255, effective August 1, 2005.
See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).
Added the last sentence.

SUBCHAPTER 3. REVIEW AND DECISION

6A:4-3.1 Functions of the Legal Committee

(a) The Legal Committee shall supervise the preparation of and make available to the State Board the entire record, and shall transmit to each member of the Board the basic documents in the case file, which shall include, but not be limited to:

1. The decision appealed from;
2. Appellant's brief, further memoranda and briefs; and
3. Respondent's answering brief, further memoranda and briefs.

(b) Except as otherwise provided, the Legal Committee shall have the authority to accelerate the time schedule established by this chapter, or to stay such time schedule on its own or motion of a party, as it deems necessary to insure that the proceedings are expeditious and that the interests of the parties are protected.

(c) Except where otherwise required by law and except in appeals in which the Legal Committee has assigned a report which is to be mailed to the parties as provided by (d) below, the Legal Committee shall report to the State Board at public meeting of the Board and recommend its conclusions within 60 days after reviewing an appeal.

(d) Prior to the consideration of a given appeal by the State Board, the Legal Committee may submit to the members of the State Board a written report setting forth its recommendations.

1. Whenever there is such a written report of the Legal Committee, it shall be mailed simultaneously to all parties or their attorneys of record, and opportunity for exceptions shall be provided pursuant to N.J.A.C. 6A:4-1.17.

2. Each report, along with any exceptions, then shall be transmitted to each member of the State Board in advance of consideration of the matter by the Board.

Amended by R.1994 d.17, effective January 3, 1994.
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).
Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).
Amended (c); and in (d)1, amended N.J.A.C. reference.

6A:4-3.2 Oral argument

(a) Appeals to the State Board shall be considered without oral argument unless argument is directed by the Legal Committee or the State Board.

(b) Oral argument before the Legal Committee or before the State Board will be granted at the discretion of the Committee or the State Board only if the respective body is convinced that this procedure is necessary for a fair determination of the case.

(c) A party requesting oral argument shall make the request by filing a separate captioned paper within 10 days after service of the respondent's brief concisely presenting the reasons why oral argument is necessary.

(d) Even when reasons are proffered by a party, the Legal Committee and/or the State Board may deny a request for oral argument when not convinced that this procedure is necessary to make a fair determination of the case.

6A:4-3.3 Authority to decide applications for emergency relief

The President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6A:4-2.4 unless the determination would constitute the final decision with respect to the controversy.

Amended by R.2000 d.229, effective June 5, 2000.
See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).
Amended N.J.A.C. reference.

6A:4-3.4 Decision of the State Board

(a) The State Board shall make final determinations with respect to each controversy by resolution at open public meeting.

(b) Each final determination of the State Board shall be embodied in a written decision, which shall be mailed to all parties or their attorneys of record.

(c) Decisions of the State Board shall be deemed filed three days after the date of mailing to the parties.