

1. Where a matter has already been transmitted to the OAL, at the same time the motion is filed with the Commissioner, a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known.

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

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

Substantially amended.

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

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

Amended to clarify that motions for stays of action or the granting of emergent relief may be directed at parties other than boards of education and that such requested action should be by way of a separate motion; provided that a motion for stay or emergent relief must be accompanied by a letter memorandum or brief addressing the standard for such relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982) and provided that the Commissioner may decide a motion for a stay prior to receipt of an answer, after the filing of an answer or transmit the matter to OAL for an immediate hearing on the motion.

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

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

Rewrote (b) and (d); in (c), changed N.J.A.C. reference in the introductory paragraph; and added (e).

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.

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

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

Section was "Interim relief or stay". Deleted (e).

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 531) adopted, which found that a municipality and its mayor were not entitled to emergent relief in their action seeking to enjoin the board of education's expansion of its sending/receiving agreement with a neighboring township, whereby all of the pre-Kindergarten through 6th grade students at its sole elementary school would be sent to the neighboring school district. It was not clear that petitioners would succeed on the merits and there were significant jurisdictional and standing issues with regard to the petition; additionally, both boards of education and the students would have suffered greater harm than petitioners if the emergent relief was granted because both boards passed resolutions adopting the sending/receiving relationship, drafted budgets approved by the Executive County Superintendent, and acted upon that budget for the 2009-2010 school year scheduled to commence on September 8, 2009. *Borough of Chesilhurst v. Bd. of Educ. of Chesilhurst*, OAL Dkt. No. EDU 8627-09, 2009 N.J. AGEN LEXIS 842, Emergent Relief Decision (August 26, 2009).

Tenured teacher was entitled to emergent relief where the Board withheld his pay, even though there was no criminal indictment and the Board had not certified tenure charges against him; the issue of suspension with pay was independent of the question of whether the teacher could perform his teaching duties while the criminal charges were pending (rejecting 2009 N.J. AGEN LEXIS 462). *Flynn v. Bd. of Educ. of Freehold*, OAL Dkt. No. EDU 4760-09, 2009 N.J. AGEN LEXIS 631, Final Decision (August 3, 2009).

ALJ found no proof of irreparable harm warranting emergent relief where student was not allowed to participate in extracurricular activities after being found in possession of a knife on school property and engaging in a narcotics related activity. *D.C. ex rel. M.C. v. West Essex Reg'l School Bd. of Educ.*, OAL Dkt. No. EDU 03601-07, 2007 N.J. AGEN LEXIS 203, Initial Decision (April 5, 2007).

Local educational services commission (ESC) met the standard for grant of emergent relief under N.J.A.C. 6A:3-1.6, and the appropriate order was to direct renewal of the parties' lease, as sought in the ESC's application, for the entire 2006-07 school year. Although granting such relief effectively ended the dispute without benefit of a plenary hearing, the 2006-07 school year would have been well under way by the time a hearing would have been held, and an order disrupting the school

program mid-year would not issue even in the extremely unlikely event that the ESC did not prevail on the merits of its claim. *Union County Educ. Servs. Comm'n v. Bd. of Educ. of Westfield*, OAL Dkt. No. EDU 7522-06, 2006 N.J. AGEN LEXIS 930, Commissioner's Decision (September 18, 2006).

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. *J.T., a Minor Child v. Barnegat Township*, 93 N.J.A.R.2d (EDS) 89.

Parents were not entitled to emergent relief of having child skip grade; alleged disparate treatment in child repeating grade. In *Matter of T.P. and D.P. on Behalf of Minor Child, T.J.P. v. Board of Education of Borough of Oaklyn*, 92 N.J.A.R.2d (EDU) 625.

Board of Education seeking stay of decision holding that school forfeited two games by playing a transferee student in violation of rule failed to demonstrate irreparable harm, relative hardship, or probability of success on merits. *Board of Educ. of the City of Trenton, Mercer County v. New Jersey State Interscholastic Athletic Ass'n*, 91 N.J.A.R.2d 158 (EDU).

No entitlement to preliminary injunction to prevent distribution of supplemental funds under Quality Education Act. *Board of Educ. of the Bordentown in Regional School Dist. v. Ellis*, 91 N.J.A.R.2d 59 (EDU).

6A:3-1.7 Amendment of petition and answer

(a) Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application.

(b) Following transmittal to the OAL, motions to amend a petition or answer shall be filed with and determined by the OAL in accordance with applicable rules of the OAL.

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

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

Substantially amended.

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

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

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

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

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

Rewrote the section.

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.

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

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

Deleted (a)1.

6A:3-1.8 Permission to intervene or participate

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

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

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

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

Old text deleted and new text inserted.

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

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

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

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

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

Rewrote the section.

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

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

Deleted (b)1.

Case Notes

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

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

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

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

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

6A:3-1.9 Appearance and representation

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

(b) Once a matter has been deemed contested, a district board of education shall be represented by an attorney in accordance with applicable rules of the OAL. Certain corporations other than district boards of education may be represented by non-lawyer representatives in accordance with applicable rules of the OAL.

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

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

Added: (See N.J.A.C. 1:1-1.3.)

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

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

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

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

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

Rewrote the section.

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

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

Rewrote (b).

6A:3-1.10 Dismissal or transfer of petition

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

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

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

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

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

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

Stylistic changes.

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

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

Rewrote the section.

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

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

Rewrote (a); in (b), inserted "and notice to the parties with opportunity to be heard" preceding "transfer the petition".

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

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

Deleted designation (a); and deleted (b).

Case Notes

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

Initial Decision (2008 N.J. AGEN LEXIS 92) adopted, which concluded that school board's petitions, seeking restitution from former administrators on the basis that their employment contracts did not cover compensatory time, were purely contractual matters, and therefore beyond the scope of the Commissioner of Education's subject matter jurisdiction. *Bd. of Educ. of Twp. of North Brunswick v. Sigall*, OAL Dkt. No. EDU 8738-07 and EDU 8739-07 (Consolidated), 2008 N.J. AGEN LEXIS 266, Commissioner's Decision (March 27, 2008).

Matter was outside of the jurisdictional purview of the Commissioner of Education where claim concerned dispute over bidding process for contract involving renovations and alterations of existing security facilities at a municipal building and police department. Although school board contributed \$10,000 to effort, petitioner offered no proofs to establish how the bidding process "primarily" and "directly" arose under the school laws, rather than the laws governing contracts; and evidence demonstrated that the Township undertook the steps necessary to obtain the grant, engaged a consultant who performed all design work and prepared the bid specifications and documents, caused a Notice to Bidders to be published, received, opened and reviewed the bids and awarded the contract to an entity other than petitioner. *Integrated Security Tech., Inc. v. Township of Hardyston*, OAL Dkt. No. EDU 9138-07, 2007 N.J. AGEN LEXIS 1008, Commissioner's Decision (November 7, 2007).

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

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

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

6A:3-1.11 Hearing

Upon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter pursuant to N.J.A.C. 6A:3-1.10, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide

the matter pursuant to N.J.S.A. 18A:4-33 and 18A:4-34, or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner, delegated to an Assistant Commissioner or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL. If the Commissioner retains a matter for hearing directly or through a designee, the matter may, in the Commissioner or designee's discretion, be decided summarily where the record so permits.

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

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

Old text deleted and new text substituted.

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

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

Permitted the designation of an Assistant Commissioner to hear and decide the case.

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

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

Rewrote the section.

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.

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

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

Updated the N.J.A.C. reference.

Case Notes

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

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

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