

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Chapter 2, Appeals, were repealed and adopted as new rules by R.1989 d.67, effective February 6, 1989.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.

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).

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.

(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.

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

Rewrote the section.

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