

“Commissioner” means the Commissioner of Education or a designated Assistant Commissioner to whom the Commissioner has delegated the authority to hear and decide a controversy or dispute pursuant to N.J.S.A. 18A:4-33 and 18A:4-34.

“Contested case” means an adversarial proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required to be adjudicated by the Commissioner after opportunity for agency hearing pursuant to N.J.S.A. 18A:6-9, N.J.S.A. 52:14B-1 et seq. (Administrative Procedure Act) and N.J.A.C. 1:1 (New Jersey Uniform Administrative Procedure Rules).

“Day” means business day when the period specified is less than seven days, and calendar day when the period specified is seven days or more; provided, however, that calculations do not include the day of the action from which they are computed but do include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following. Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.

“Department” means the New Jersey State Department of Education.

“District board of education” means the board of education of a local or regional school district, a county special services school district or a county vocational school district, or the State district superintendent of a school district under full State intervention, the board of directors of an educational services commission or jointure commission, or the board of trustees of a charter school.

“Filing” means receipt of an original paper by an appropriate officer of the Department. With the prior approval of the Director of the Bureau of Controversies and Disputes, and generally up to a maximum of 10 pages, filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery. Parties requesting return of a stamped copy of any filing must include an extra copy of the document, together with a self-addressed envelope stamped with sufficient postage for this purpose. Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.

“Indispensable party” means a person(s) without whose inclusion a matter cannot proceed or adequate judgment cannot be entered.

“Interested person(s)” means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.

“OAL” means the Office of Administrative Law established pursuant to N.J.S.A. 52:14F-1 et seq.

“Proof of service” means the provision of proof, pursuant to N.J.A.C. 6A:3-1.3(h), of the delivery of a paper by mail or in person to a party, person or entity to whom or to which papers are required to be transmitted.

“Pro se” means a person who acts on his or her own behalf without an attorney or other nonlawyer representative as permitted by rules of the OAL.

“Representative” means an attorney or other person as permitted by the rules of the OAL appearing on behalf of a party in proceedings governed by this chapter.

“Rules of the OAL” means the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

“State district superintendent” means the superintendent of a school district under full State intervention, as appointed or retained pursuant to N.J.S.A. 18A:7A-35.

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

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

Added definitions “ALJ” and “OAL” and revised “Commissioner” and “Interested persons”.

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

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

Added definition of “proof of service”.

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 “Commissioner”; in “Proof of service”, added the N.J.A.C. reference.

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

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

In definition “Day”, inserted the last sentence; in definition “District board of education”, deleted “State-operated” preceding the fourth occurrence of “school district” and inserted “under full State intervention”; in definition “Filing”, rewrote the second sentence and inserted the third and fourth sentences; and added definition “State district superintendent”.

Case Notes

Part-time tenured teacher improperly denied compensation was not entitled to prejudgment interest against Board of Education. *Bassett v. Board of Educ. of Borough of Oakland, Bergen County*, 223 N.J.Super. 136, 538 A.2d 395 (A.D. 1988).

State board’s guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void. *Bd. of Ed., Plainfield, Union Cty. v. Cooperman*, 209 N.J.Super. 174, 507 A.2d 253 (App.Div. 1986) certification granted 104 N.J. 448, 517 A.2d 436, affirmed as modified 105 N.J. 587, 523 A.2d 655.

Initial Decision (2006 N.J. AGEN LEXIS 896) adopted, which concluded that township and its mayor, representing the residents and students who attended regional high school district schools, lacked standing to request the Commissioner of Education to enjoin and declare null and void the actions of respondents establishing new school attendance boundaries, especially since there was no allegation of any actual or imminent harm caused to the township or its mayor. *Township of Howell v. Bd. of Educ. of Freehold Reg’l School Dist.*, OAL Dkt. No. EDU 2427-06, Commissioner’s Decision (December 6, 2006).

Petition failed to establish the “interest” required to maintain a contested case pursuant to N.J.A.C. 6A:3-1.2 since bare assertions of rule violations and generalized contentions that the disputed forms acted solely by their existence to inhibit the mutual development of individual

professional improvement plans were simply not enough to establish that the petitioner education association or any of its members would be "substantially, specifically and directly affected by the outcome" of a determination by the Commissioner. *Bedminster Educ. Ass'n v. Bd. of Educ., Bedminster Twnshp.*, OAL Dkt. No. EDU 6720-05, 2006 N.J. AGEN LEXIS 571, Commissioner's Decision (June 16, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 589) adopted, which concluded that mayor and borough lacked standing to challenge the refusal of the Department of Education to designate a school district as an Abbott district. *Reiman v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8564-04, 2005 N.J. AGEN LEXIS 1107, Commissioner's Decision (December 27, 2005).

Dispute regarding proper salary credits for out-of-state graduate courses was best resolved by the grievance procedure. *River Dell Regional Board of Education v. Canal*, 93 N.J.A.R.2d (EDU) 784.

Propriety of tape recording closed executive sessions of board of education; Commissioner of Education lacked jurisdiction. *Board of Education of Township of Hamilton v. Fraleigh*, 93 N.J.A.R.2d (EDU) 538.

Parents' challenge to disciplinary action taken against unrelated child; standing. *U.K. and G.K., Parents on Behalf of Minor Child, D.K. v. Board of Education of City of Clifton*, 93 N.J.A.R.2d (EDU) 71.

Memorandum and resignation letter constituted enforceable settlement agreement. *Board of Education of Township of Clinton v. Sirotak*, 92 N.J.A.R.2d (EDU) 628.

Teachers associations have standing to contest awarding of service contract. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

6A:3-1.3 Filing and service of petition of appeal

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers (and fax numbers and e-mail addresses where available) of the petitioner and each respondent, and the original petition and supporting materials, if any, with 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. In no case shall a petitioner submit materials to the Commissioner which have not been served upon each respondent.

1. Any petition filed jointly by three or more petitioners, where the petitioners are pro se, shall designate one petitioner as a representative of the group for purposes of receipt of service for answer(s), initial correspondence, pretransmittal notices and other communications prior to the agency's determination that the matter is a contested case. In subsequent proceedings, however, if petitioners are acting as a group, the group shall comply with applicable rules of the OAL regarding representation.

2. A petition on behalf of a minor shall be filed by the parent or legal guardian of the minor. Once such a petition

is filed, the matter shall be subsequently identified by the initials of petitioner(s) and the child(ren).

3. A petitioner shall notify the Bureau of Controversies and Disputes of any change in address, telephone number, fax number or e-mail address prior to transmittal of a matter to the OAL.

(b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.

1. In the case of petitions by unsuccessful bidders challenging an award of bid by a board of education under the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.), the successful bidder shall be named as a respondent.

(c) A petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall include a copy of the ruling or settlement agreement issued by the Division of Workers' Compensation with respect to the injury underlying the claim or provide reasons why the matter constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division makes a determination of work-related injury.

(d) A petitioner claiming that his or her employment was nonrenewed for reasons that are statutorily or constitutionally proscribed shall set forth in the petition at least a minimal factual basis for such allegation(s), consistent with New Jersey Court Rules at R. 4:5-2.

(e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department's Office of Special Education Programs (OSEP).

1. If a petition appears to raise, in addition to issues within scope of the Commissioner's authority, issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the OSEP, it will be docketed by the Bureau of Controversies and Disputes in accordance with this chapter and also forwarded to OSEP for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7, except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the matter as an education (EDU) case and the ALJ shall render an initial

decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. If a petition appears solely to raise issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, it may, after notice to the parties and opportunity to be heard, be dismissed in accordance with the provisions of N.J.A.C. 6A:3-1.10.

(f) Where a matter is transferred to the Commissioner by a court, it shall be the responsibility of the parties to ensure that the order of transfer, pleadings and any other pertinent papers are forwarded 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, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant(s) will be asked to re-submit the matter to the Commissioner in the form of a duly conformed petition of appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.

(g) Consistent with the provisions of N.J.A.C. 1:10A-14, where a petition, or tenure charge pursuant to N.J.A.C. 6A:3-5, is filed in a matter involving allegations of child abuse and neglect reported to or investigated by the Department of Children and Families (DCF), the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ to whom a matter is subsequently assigned at the OAL, to protect all DCF records and reports regarding such abuse and neglect.

1. The final agency decision in any dispute as to the confidentiality of records or reports of child abuse or neglect shall be made by DCF in accordance with N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G.

(h) Proof of service shall be in the form of one of the following:

1. An acknowledgment of service signed by the attorney or the attorney's designee for each respondent or signed and acknowledged by the respondent or agent thereof, indicating the address at which each respondent was served;

2. An affidavit of the person making service, sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation, indicating the address at which each respondent was served;

3. A certification meeting the requirements of New Jersey Court Rules at R.1:4-4(b) and indicating the address at which each respondent was served and the date and manner of such service; or

4. A copy of petitioner's receipt for certified mailing or delivery by messenger to each respondent. The return receipt card ("green card") is not required for proof of service by certified mailing.

(i) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. Any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall file a petition within 90 days of the date of the determination by the Division of Workers' Compensation that either finds the employee to have sustained a compensable injury or settles the compensation claim without a determination of work-related causation, unless the claim constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division has made a determination on the underlying injury, in which case the petition shall be filed within 90 days of receipt of notice of the district board of education's action, or of the action of the district board of education's agent, which has the effect of denying such benefits.

2. Pursuant to N.J.S.A. 18A:29-14 and 34:13A-27(d), where an increment withholding dispute has been submitted to the Public Employment Relations Commission for determination of whether the withholding was predominantly disciplinary and the Commission determines that the withholding was predominantly for reasons of teaching performance, the teaching staff member's petition shall be filed within 90 days of notice of the Commission's decision, or of the final judicial decision in any appeal from the decision of the Commission, whichever is later.

3. A petitioner seeking to be heard as to why his or her endorsement to operate a school bus should not be suspended or revoked pursuant to N.J.S.A. 18A:39-28 et seq. because a child was found to have been left on the school bus to which he or she was assigned, shall file a petition within 10 business days of the date of the Department of Education's written notice to petitioner of such finding.

(j) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners or other entity located within the Department, is named as a party, proof of service on the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section. When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this subsection, but to the attention of the appropriate section of the Division of Law.

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

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

Deleted old text and substituted new.

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 provide for the filing of two copies of a petition in order to conform to OAL rules which require the transmittal of two copies of any petition; described what documentation may prove that service has been accomplished and when there must be proof of service to Attorney General.

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.2006 d.245, effective July 3, 2006.

See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

Rewrote (c) and (i)1.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (e)1, amended the second N.J.A.C. reference.

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

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

In the introductory paragraph of (a), inserted "and e-mail addresses" and deleted "and two copies of the" following "original"; in (a)3, substituted a comma for "or" preceding "telephone" and inserted ", fax number or e-mail address"; in (e)2, substituted "dismissed" for "transferred to the OSEP" and deleted "(b)" following the N.J.A.C. reference; in (f), substituted "PO" for "P.O." and "petition of appeal" for "Petition of Appeal"; in the introductory paragraph of (g), substituted "Department of Children and Families (DCF)" for "Division of Youth and Family Services (DYFS)" and the second occurrence of "DCF" for the second occurrence of "DYFS"; in (g)1, substituted "DCF" for "DYFS"; rewrote (h)3; added (i)2 and (i)3; and in (j), substituted the first occurrence of "on" for the first occurrence of "to" and "subsection" for "section".

Law Review and Journal Commentaries

Education—Limitation of Actions—Tenure. Judith Nallin, 136 N.J.L.J. 81 (1994).

Education—Public Employees—Teachers. Steven P. Bann, 133 N.J.L.J. 65 (1993).

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H.*, C.A.3 (N.J.)1994, 7 A.D.D. 911, 42 F.3d 149, rehearing and rehearing in banc denied.

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Parents of handicapped student did not waive right to reimbursement by placing student in private school and failing to initiate review. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Consideration by Commissioner of constitutionality of public employer's practice of crediting employee's credit union and annuity plans was not untimely under rule requiring that declaratory judgment action be filed within 90 days from receipt of final order. *Board of Educ. of Tp. of Neptune v. Neptune Tp. Educ. Ass'n*, 293 N.J.Super. 1, 679 A.2d 669 (A.D.1996).

Resolution not to rehire principal was final action of the board, requiring appeal within 90 days; letter to principal in August was merely response to her attorney's letter. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Principal informed by school board in April of her third year that she would not be rehired was required to file challenge within 90 days. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Regulation focusing on date of employer's wrongful act as accrual date rather than date consequences are felt by the employee, was not arbitrary or capricious. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Due process rights of assistant superintendent terminated not violated by regulation containing 90-day limitation of repose on school law dispute. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Right to reemployment by former assistant superintendent terminated as part of reduction in force was not exempt from 90-day limitation for commencing school law disputes. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

"Adequate notice" which commences running of 90-day limitation on school law disputes is that sufficient to inform individual of some fact that communicating party has duty to communicate. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Informal notice that two positions had been filled triggered 90-day period for commencing action to assert tenure rights. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

School board was not equitably estopped from asserting 90-day limitations by its failures. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

No enlargement or relaxation of 90-day limitation period for asserting tenure claim necessary where petitions were not timely filed after receiving notice. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Delegation of power to promulgate rule provided adequate standards. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Delegation of power to establish rules relating to hearing of controversies authorized creation of time limits. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Ninety-day limitation for initiating controversy before commissioner of schools was enforceable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitation period for initiating controversy before commissioner of schools was not inapplicable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitations period commenced no later than receipt of letter advising former superintendent of appointments of other persons. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Former superintendent was not entitled to discretionary waiver of limitations period. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Requirements for adequate notice to commence running of time to appeal to Commissioner. *Stockton v. Bd. of Ed., Trenton, Mercer Cty.*, 210 N.J.Super. 150, 509 A.2d 264 (App.Div.1986).

Petition for salary increment for time spent on sabbatical denied as filed beyond 90 day limit. *North Plainfield Education Assn. v. Bd. of Ed., North Plainfield Boro., Somerset Cty.*, 96 N.J. 587, 476 A.2d 1245 (1984).

Arbitration proceedings do not alter filing time requirement. *Riely v. Hunterdon Central High School Bd. of Ed.*, 173 N.J.Super. 109, 413 A.2d 628 (App.Div.1980).

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that the 90-day limitations period ran from the time petitioner began receiving paychecks at his regular teacher salary instead of his requested supervisory salary, regardless of whether petitioner received a formal decision from the school board regarding his request to be paid at a supervisory rate; each time petitioner received a paycheck over the past 17 years, the board clearly communicated to him that it had determined to continue to pay him at the teacher's salary level and each paycheck served as adequate notice, sufficient to inform him that he was not being paid at a supervisory salary level. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that there was no reason to relax the 90-day limitations period on a petitioner's request for a salary adjustment to reflect the fact that he was in a supervisory position because while the Commissioner has the discretion to relax the rule, this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties; petitioner's claim had no import or significance beyond his personal employment relationship with the school board, making a relaxation of the rule unwarranted. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Nontenured teacher who received a letter of termination on April 25, 2008, but did not file his appeal until September 4, 2008, failed to timely file, even if the limitation period began on May 2, 2008, when the teacher made his request for an informal hearing, because 125 days would have elapsed before he filed his petition. At the latest, the limitation period would have begun on June 2, 2008, when the 30-day response period expired with no communication from the District, but by that date the teacher would have known that the District had failed to comply with what he contended was its statutory obligation (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 132). *Lachenauer v. State-Operated School Dist. of Newark*, OAL Dkt. No. EDU 11820-08, 2009 N.J. AGEN LEXIS 652, Final Decision (March 18, 2009).

Petitioner's appeal was untimely because the 90-day filing period commenced when the board notified her on June 23, 2006 that her son would be transferred to another school and her appeal was not filed with the Commissioner until May 8, 2008; neither petitioner's attempts to contact the principal nor her attempts to request her son's school records were sufficient to put the respondent on notice that petitioner was contesting her son's transfer (adopting 2008 N.J. AGEN LEXIS 993). *D.Q. ex rel. S.Q. v. State Operated School Dist. of Newark*, OAL Dkt. No. EDU 7544-08, 2009 N.J. AGEN LEXIS 640, Final Decision (January 21, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 968) adopted, which found that a teacher was not given the military service credit to which he was entitled for purposes of placement on the salary guide at the time of his hiring and that his request for an adjustment of salary was not time-barred by the 90-day limitation period in N.J.A.C. 6A:3-1.3(i) because the limitation did not apply to N.J.S.A. 18A:29-11, which awarded veterans for their service and which had no functional relationship to teaching — it was a statutory entitlement. *Neeley v. Bd. of Educ. of Franklin*, OAL Dkt. No. EDU 6434-06, 2009 N.J. AGEN LEXIS 636, Final Decision (January 5, 2009).

Non-tenured kindergarten teacher did not waive his right to a hearing in the OAL by failing to ask the board for a written statement of reasons for the nonrenewal and declining to make an informal appearance before the board; while a non-tenured employee had the opportunity to appear informally before the employing board, there was no requirement that he do so. *Korba v. Bd. of Educ. of Clinton*, OAL Dkt. No. EDU 6494-07, 2008 N.J. AGEN LEXIS 1421, Final Decision (December 15, 2008).

Where a teacher successfully appealed his 1999 termination and it was determined on remand on Sept. 17, 2007 that he was not entitled to back pay after 2002-03 due to the district's lack of vacant positions within his certification, the teacher's subsequent petition, filed on Dec. 14, 2007, claiming entitlement to employment based on an additional endorsement (Teacher of the Handicapped) he received in 2002 was barred by the 90-day rule of N.J.A.C. 6A:3-1.3. The 90-day period began to run upon the teacher's awareness that the board considered his entitlement to any type of employment in the district to have ended after 2002-03, which occurred at the very latest on December 8, 2006 — the filing date of the Board's brief in the prior proceeding on remand, and for the 2007-08 school year, well before the end of the 2006-07 school year; thus, his Dec. 2007 petition was barred (adopting as modified 2008 N.J. AGEN LEXIS 749). *Ziegler v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 3007-08, 2008 N.J. AGEN LEXIS 1072, Final Decision (November 5, 2008).

Under N.J.A.C. 6A:3-1.3(i), a teacher acquired tenure and her appeal of a board of education's decision non-renewing her position was not time barred after a County Superintendent issued a letter to the teacher clearly holding out the possibility that the teacher could be retained in another position and keep her benefits. Contrary to the board's position, the 90-day period did not begin to run when the teacher received notice in May 2006 that her position was being eliminated and she would have to apply for a maternity leave position; instead, the 90-day period began to run in April 2007 when the board adopted a resolution "non-renewing" the teacher effective June 30, 2007. *Taibi v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 8090-07, 2008 N.J. AGEN LEXIS 1193, Final Decision (September 24, 2008).

In a dispute between sending and receiving school districts over resource room charges, the sending districts failed to file their appeal within the 90-day limitations period prescribed by N.J.A.C. 6A:3-1.3(i) because they had knowledge of the receiving district's position before the May 14, 2007 opinion letter from the Division of Finance that they claimed started the running of the period. *Bd. of Educ. of Waterford v. Bd. of Educ. of Hammononton*, OAL Dkt. Nos. EDU 6798-07 and EDU 8091-07 (CONSOLIDATED), 2008 N.J. AGEN LEXIS 261, Commissioner's Decision (March 24, 2008).

It is by now well established that a petitioner whose cause of action arises out of the nonrenewal of his or her employment must — unless facts necessary to make a claim are unknown at the time — file a petition within 90 days of the *notice of nonrenewal*, and that the running of the regulatory limitations period of N.J.A.C. 6A:3-1.3 is not tolled by the possibility that the petitioner might ultimately persuade the board to offer reemployment through statutory and regulatory mechanisms provided for this purpose. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Ninety-day filing period of N.J.A.C. 6A:3-1.3(i) did not begin to run in October 2005, when the board of education ratified a settlement agreement providing a school employee with a one-year, nontenured employment contract. The employee's claim was nevertheless time-barred because the operative date for the running of the limitations period was not November 21, 2006, when the employee's position was eliminated, but at the earlier time when the employee was notified by letter that the superintendent would recommend that the board not renew the employee's contract. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Where a ten-month teaching staff member received a letter from the Superintendent dated April 27, 2007, during the eighth month of her third academic year of service, informing her that her contract would not

be renewed for the upcoming school year, yet her employment did not end until June 30, 2007, the 90-day time limitation for filing a petition under N.J.A.C. 6A:3-1.3(i) began to run from petitioner's receipt of the April 27 letter; contrary to petitioner's contention that the period ran from June 30 because she was not appealing from the nonrenewal but from the violation of her tenure status, which did not occur until she attained tenure and was terminated on June 30, the period ran from the April 27 letter because petitioner at that time learned that the board was taking action adverse to her interests (adopting and supplementing 2007 N.J. AGEN LEXIS 807, and agreeing that the case was controlled by *Nissman v. Bd. of Educ. of Long Branch*, 272 N.J. Super. 373 (App.Div. 1994)). *Salazar-Linden v. Bd. of Educ. of Holmdel*, OAL Dkt. No. EDU 8194-07, 2008 N.J. AGEN LEXIS 670, Commissioner's Decision (March 3, 2008).

N.J.S.A. 34:13A-27(d) worked to ensure that a teaching staff member who sought arbitration in the belief that the withholding of his or her increment constituted discipline — and then had such arbitration enjoined when a dispute arose as to the nature of the withholding — would not be precluded by operation of the 90-day rule (N.J.A.C. 6A:3-1.3(i)) from subsequent appeal to the Commissioner. *Giorgio v. Bd. of Educ. of Bridgeton*, OAL Dkt. No. EDU 8136-06, 2008 N.J. AGEN LEXIS 142, Commissioner's Decision (February 19, 2008).

Provision of N.J.S.A. 18A:38-19 specifying that tuition to be paid by a sending district shall not exceed the actual cost per pupil does not create an "entitlement," outside the scope of the 90-day rule; although a dispute between sending and receiving districts concerning alleged overcharges presented issues of timeliness, the Commissioner decided the merits given the unique circumstances and that both parties were equally to blame, and in the interest of the districts' citizens. *Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights*, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Where a parent sought expungement of disciplinary records from her child's file, even if the provision in a Consent Order reserving to the parent "all rights to future action with respect to any program, placement, and record issues" consensually extended the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) until completion of evaluations and the scheduling of an IEP meeting, the parent's appeal still was not timely filed. *J.G. ex rel. C.G. v. Galloway Community Charter School*, OAL Dkt. No. EDU 6122-07, 2008 N.J. AGEN LEXIS 260, Final Decision (January 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 450) adopted, which concluded that a petition was barred under the 90-day rule of N.J.A.C. 6A:3-1.3(i), where two nontenured teaching staff members received nonrenewal letters on May 1, 2006 that cited budgetary constraints, and the employees did not learn until September 1, 2006 that replacements had been hired for their positions. The 90-day period ran from May 1, 2006; in any event, local boards of education have almost unlimited discretion in terminating nontenured teachers, absent constitutional or legislative constraints, and the teachers did not exercise their right to an informal hearing under N.J.S.A. 18A:27-4.1(b) and N.J.A.C. 6A:32-4.6. *Middletown Educ. Ass'n ex rel. McGee v. Bd. of Educ. of Middletown*, OAL Dkt. No. EDU 12159-06, Commissioner's Decision (August 16, 2007).

Adequate notice requirement should effectuate concerns for individual justice by not triggering the limitations period until the tenured teachers have been alerted to the existence of facts that may equate in law with a post-RIF cause of action; at the same time, it should further considerations of repose by establishing an objective event to trigger the limitations period in order to enable the proper and efficient administration of the affairs of government. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

Notwithstanding that a nonrenewal letter was sent to other nontenured teaching staff members in compliance with the requirements of N.J.S.A. 18A:27-10, it triggered the 90-day filing period set forth in N.J.A.C. 6A:3-1.3(i) by providing the teacher with notice that she would not be offered employment for the following school year. *Charapova v. Bd. of*

Educ. of Edison, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

N.J.A.C. 6A:3-1.3(i) applies to a petition brought by a local district board of education. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

Although the 90-day rule of N.J.A.C. 6A:3-1.3(i) applied to a local district board of education's petition seeking removal of a board member under N.J.S.A. 18A:12-2 because of his wife's filing of a workers' compensation claim, dismissal of the dispute on procedural grounds would have left unaddressed a question of significant public interest, thus warranting relaxation of procedural rules pursuant to N.J.A.C. 6A:3-1.16. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

The 90-day limitations period of N.J.A.C. 6A:3-1.3(i) begins to run when the petitioner has knowledge of the "existence of the state of facts which might equate in law with a cause of action." *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Ninety-day limitations period of N.J.A.C. 6A:3-1.3(i) ran from the date petitioner learned of his reassignment from the position of high school vice principal, a twelve-month position, to the position of elementary school vice principal, a ten-month position, and not from the later date when petitioner received his first paycheck of the school year and allegedly first learned that the reassignment would affect his salary increase expectancies; not only was it reasonable to charge petitioner with knowledge that elementary vice principalships are ten-month positions, but also tenured employees have no vested right in any future increases in salary. *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Teacher's receipt of notice of the Board's "final action" on the subject of her resignation at its August 16, 2005 meeting triggered the running of N.J.A.C. 6A:3-1.3(i), and consequently any challenge to the action was required to be filed before the Commissioner within 90 days of that time; neither the fact that the teacher continued in the Board's employ subsequent to its acceptance of her resignation nor the teacher's attempt to rescind her resignation by letter dated May 8, 2006 precluded application of the 90-day rule, and therefore the Petition of Appeal at issue, filed nearly 11 months after the Board's final action, was clearly out of time. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Notwithstanding that the limitations rule of N.J.A.C. 6A:3-1.3(i) is to be strictly applied, the Commissioner may relax the rule pursuant to N.J.A.C. 6A:3-1.16 under exceptional circumstances or if there is a compelling reason to do so; such authority, however, is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, or injustice would occur, or the Commissioner finds a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Irrespective that untimeliness barred consideration of a teacher's petition, the teacher was not prevented from acquiring tenure, as such status is statutory in nature and attaches automatically upon the fulfillment of the requisite conditions; however, the fact that the teacher may have acquired tenure at some point during the school year had no bearing whatsoever, as the teacher had resigned from the District and had thus voluntarily relinquished any rights that otherwise might have accrued by virtue of such status. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Township board of education seeking to recoup a tuition overpayment to a special services school district should have acted to file its petition

within 90 days of learning of recertified tuition rates (adopting in part, and rejecting in part 2007 N.J. AGEN LEXIS 68). Bd. of Educ. of Twp. of Pemberton v. Bd. of Educ. of Burlington County Special Services School Dist., OAL Dkt. No. EDU 8568-04, 2007 N.J. AGEN LEXIS 317, Commissioner's Decision (April 12, 2007).

Initial Decision adopted, which concluded that petitioner's claim that her tenure rights were violated was time-barred under N.J.A.C. 6A:3-1.3(i), where petitioner had to have realized the district's position that she was not tenured when she received the letter notifying her of rescission due to excessive absenteeism and tardiness, as a tenured position could not be rescinded by letter; in any event, petitioner did not possess the requisite certification "in full force and effect" to achieve credit towards tenure at any time during her service as vice principal. Clanton v. State-Operated School Dist. of Newark, OAL Dkt. No. EDU 7092-06, 2007 N.J. AGEN LEXIS 313, Commissioner's Decision (March 12, 2007).

Where a teacher was nonrenewed and claimed to have first discovered the facts on which the petition was based during litigation against the Board, the claim under N.J.S.A. 18A:27-3.1 concerning evaluations was untimely under N.J.A.C. 6A:3-1.3(i) because, *inter alia*, petitioner must be charged with having known whether and when an observer was in his classroom and whether and when he received evaluations (adopting and supplementing 2007 N.J. AGEN LEXIS 10). Bradford v. Bd. of Educ. of Union, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Petition for appeal must be filed within 90 days of the notice of nonrenewal, not within 90 days of the exhaustion of other avenues and mechanisms. Bradford v. Bd. of Educ. of Union, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 10) adopted and supplemented, which determined that neither *Kaczmarek v. N.J. Tpk. Auth.*, 77 N.J. 329 (1978) nor N.J. Ct. R. 1:13-4 applied to relax the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) where a teacher, who received notice of nonrenewal dated May 1, 2001 and a final letter in June, had filed an action in Superior Court on August 17, 2001 for discrimination and retaliation and later filed an unsuccessful motion to amend to add the subject Title 18A claims; the Title 18A claims were distinct from the initial Superior Court claims and those initial claims had been within the jurisdiction of the court. Bradford v. Bd. of Educ. of Union, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1008) adopted, which concluded that parents' challenge to a mandatory school uniform policy was barred by the 90-day limitations period of N.J.A.C. 6A:3-1.3, which began to run when the Board adopted the policy at a public meeting in June 2006, and the fact that the policy was later amended did not alter this result; the proper standard is not when the Board's action was final, but when a petitioner had or reasonably should have had notice of the Board's action. Even assuming *arguendo* that the petition was timely, the parents failed to satisfy any of the requirements necessary for the granting of emergent relief under N.J.A.C. 6A:3-1.6. Coles v. Bd. of Educ. of Bayonne, OAL Dkt. No. EDU 10535-06, Commissioner's Decision (December 8, 2006), *aff'd*, SB No. 01-07, 2006 N.J. AGEN LEXIS 1085 (N.J. State Bd. of Educ. April 4, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 896) adopted, which found that petitioners' challenge to a board of education's policy filed with the Commissioner of Education on February 17, 2006 was time-barred, where the policy in its present form was revised and adopted on May 10, 2004, and had remained unchanged since that date, as was petitioners' challenge to a student attendance plan, approved by the board of education on September 12, 2005; as to petitioners' contention that even if the petition were not timely filed, this was a matter of significant

Case Notes

Student's First Amendment rights; restrictions on publication in school newspaper of R-rated movie reviews review and resolution by Commissioner of Education. *Desilets on Behalf of Desilets v. Clearview Regional Bd. of Educ.*, 137 N.J. 585, 647 A.2d 150 (1994).

School board employee's contract dispute outside of Commissioner's jurisdiction. *Smith v. Willingboro Township, Burlington County*, 97 N.J.A.R.2d (EDU) 205.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Existing regional district; change in established method of cost apportionment; approval by voters in each constituent municipality. In the Matter of the Special Election in Northern Burlington County Regional School District, 94 N.J.A.R.2d (EDU) 385.

Declaratory ruling on school board policy to limit employment of supplemental teachers; teachers and taxpayers; standing to challenge. *Ridgewood Education Association v. Ridgewood Village Board of Education*, 94 N.J.A.R.2d (EDU) 137.

Petition for declaratory judgment seeking a ruling that payroll deduction crediting method violated constitutional prohibition would be transmitted to Office of Administrative Law. Board of Educ. of the Tp. of Neptune v. Neptune Tp. Educ. Ass'n, 91 N.J.A.R.2d 29 (EDU).

Failure to raise affirmative defense of non-compliance with petition filing deadline; tolling of filing period. *Fischbach v. Bd. of Ed., North Bergen*, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1984).

Declaratory judgment denied regarding seniority standards. *Howley v. Ewing Twp. Bd. of Ed.*, 6 N.J.A.R. 509 (1982).

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit and possible justification for relaxation of time limit. *Bergenfield Education Assn. v. Bd. of Ed., Bergenfield Boro., Bergen Cty.*, 6 N.J.A.R. 150 (1980), remanded per curiam Docket No. A-2615-81 (App.Div.1983).

Teachers associations have standing to contest awarding of service contract as their organizational rights and relationships will be affected by outcome of proceedings. *New Jersey Education Assn. v. Essex Cty. Educational Services Commissions*, 5 N.J.A.R. 29 (1981).

Administrators association has standing to seek declaratory ruling on evaluation deadline issue even though not a party to contract negotiations. *Willingboro Administrators Assn. v. Willingboro Education Assn.*, 1 N.J.A.R. 327 (1980).

6A:3-2.2 Format of petition for declaratory ruling

(a) The format of the petition for declaratory ruling follows:

: BEFORE THE COMMISSIONER OF
: EDUCATION OF NEW JERSEY

CAPTION

:
: PETITION FOR DECLARATORY
: RULING

Petitioner, _____, residing at _____, hereby requests the Commissioner to render a declaratory ruling concerning the ap-

plication of (N.J.S.A. 18A:_____, N.J.A.C. 6:_____, N.J.A.C. 6A:_____) to the controversy which has arisen between petitioner and respondent who resides at _____ by reason of:

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of _____ and determine and declare _____.

Signature of petitioner or
representative

Date: _____

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

Signature of petitioner

Sworn and subscribed to before me this
_____ day of _____ (month), _____ (year)

(Signature of Notary Public or other person
authorized to administer an oath or affirmation)

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

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

Deleted slash and substituted or.

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

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

Reformatting.

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

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

In (a), rewrote the petition.

6A:3-2.3 Dissemination of declaratory ruling

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory ruling through the executive county superintendents of schools.

New Rule, R.1991 d.57, effective February 4, 1991.

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

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

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

Substituted a reference to declaratory rulings for a reference to declaratory judgments.

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

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

Inserted "executive".

Case Notes

Denial of declaratory relief was proper. *River Dell Board of Education v. Canal*, 94 N.J.A.R.2d (EDU) 327.

SUBCHAPTER 3. ORDER TO SHOW CAUSE

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

(a) If in the course of supervising the schools, and following investigation, the Commissioner becomes aware of violation(s) of the school laws in school districts which if true would entitle the Commissioner to impose a sanction on the Commissioner's own initiative, the Commissioner may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing, and the right to a contested case hearing is independent of, and in addition to, this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2 and 18A:7F-9);
3. Withholding salaries of:
 - i. An executive county superintendent (N.J.S.A. 18A:7-4); or
 - ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon such member until such time as the member complies;
4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);
5. Withdrawing approval of a private vocational school, correspondence school, or online school, or the programs or staffing thereof (N.J.S.A. 34:15C-10.2(b));
6. Placing a district under full State intervention (N.J.S.A. 18A:7A-15); and
7. Withholding or recovery of State aid due to unreasonable, ineffective or inefficient expenditures (N.J.S.A. 18A:7F-9 and N.J.A.C. 6A:23A-5.1).

(b) Parties to contested matters shall not submit or request the issuance of orders to show cause seeking enforcement of litigants' rights. Parties seeking enforcement of judgments of the Commissioner shall generally bring an action in the Superior Court as provided in New Jersey Court Rules at R.4:67-6.

1. Such actions as are appropriately brought before the Commissioner due to the need for a further determination on a school law issue in order to resolve the parties' adjudicated rights, are to be initiated by way of a petition

conforming to the requirements of N.J.A.C. 6A:3-1.3, accompanied, where appropriate, by a motion for emergent relief with a letter memorandum or brief addressing the standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b).

2. Requests for enforcement of a monetary award through recording of the Commissioner's final order of assessment on the judgment docket of the Superior Court pursuant to N.J.S.A. 2A:58-10 shall be made in accordance with N.J.A.C. 6A:3-12.1.

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).

Added new (b); provision prohibiting orders to show cause except by petition accompanied by motion.

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

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

In (a), rewrote the introductory paragraph, and added 6; and rewrote (b).

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

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

In (a), substituted "or" for "of" preceding "party to show cause" in the introductory paragraph and substituted "the member" for "he or she" in 3ii; rewrote (b).

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

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

In (a)2, inserted "and 18A:7F-9"; in (a)3i, substituted "An executive" for "A" and "or" for "and" at the end; rewrote (a)5 and (a)6; added (a)7; recodified the former third sentence of (b) as (b)1; in (b)1, italicized "*Crowe v. DeGioia*" and the second occurrence of "*N.J.*"; and added (b)2.

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 514) adopted, which found that a tenured language arts teacher's teaching certificate was properly suspended for one year after the teacher failed to give 60 days notice of her resignation, as required by N.J.S.A. 18A:28-8. The teacher's resignation less than two weeks before the start of the school year constituted a disruption to the District both financially and instructionally. In re Suspension of Teaching Certificate of Gillivray, OAL Dkt. No. EDU 12099-08, 2009 N.J. AGEN LEXIS 751, Final Decision (September 14, 2009).

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

6A:3-4.1 Withholding salary increment

(a) Where a district board of education acts to withhold a teaching staff member's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teaching staff member may file a petition of appeal according to the procedures set forth in this chapter.

1. Disputes involving the withholding of a teaching staff member's salary increment for predominately disciplinary reasons shall be subject to the grievance procedures established by law in accordance with N.J.S.A. 34:13A-26. Pursuant to N.J.S.A. 34:13A-27, if there is a dispute as to

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

10. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added (b)-(c).

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 the section.

Petition for Rulemaking
See: 38 N.J.R. 2216(a).

Amended by R.2006 d.245, effective July 3, 2006.
See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

In (c)1, added the last sentence; in (c)4, substituted "6A:32-4.3 or 4.4," for "6:3-4.3(f)"; in (c)5, added the last sentence; and in (c)6, inserted "or upon the district board's determination in the case of a chief school administrator".

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

In the introductory paragraph of (a), substituted "N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply in" for "In", deleted "State-operated" preceding "school district", "N.J.A.C. 6A:3-1.3, Filing and service of petition, shall not apply" following "Act" and

"original and two copies of the" preceding "written" and inserted "under full State intervention"; and in the introductory paragraph of (c), inserted "and vice principals" and "under full State intervention," and deleted "State-operated" preceding "school".

Petition for Rulemaking.

See: 44 N.J.R. 1796(a), 2063(a).

Case Notes

State Department of Education properly denied a petition for an amendment to administrative rule N.J.A.C. 6A:3-5.1(a), which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees, as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 52:14B-15; and tenured employees are not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ.*, 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).

Tolling of time to determine probable cause for dismissing tenured teacher during response time and for day of service. *Matter of Tenure Hearing of Cowan*, 224 N.J. Super. 737, 541 A.2d 298 (A.D.1988).

Adequate certification of charges against tenured employee where document containing jurat was signed four days before secretary signed certification. *Matter of Tenure Hearing of Cowan*, 224 N.J. Super. 737, 541 A.2d 298 (A.D.1988).

Board's failure to provide a modified individual professional improvement plan (PIP) and reasonable assistance compelled dismissal of inefficiency tenure charges against school social worker. In re *Tenure Hearing of Parise*, OAL Dkt. No. EDU 5793-03, 2008 N.J. AGEN LEXIS 1189, Final Decision (August 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 298) adopted, which found that tenure charges were not defective for being predicated on the vice-principal's arrest, indictment, and entry into the Pretrial Intervention Program, because the charges clearly articulated the reasons for arrest, i.e., possession of cocaine and drug paraphernalia, and supported the OAL hearing on the underlying facts. In re *Tenure Hearing of Thomas*, OAL Dkt. No. EDU 1763-08 (EDU 5908-07 On Remand), Commissioner's Decision (May 23, 2008).

Evidence sustained finding of unbecoming conduct against teacher where he was found to have sent student a birthday card and a gift to a nail salon and to have created a clandestine email account exclusively for himself and the student. Teacher was not dismissed from his tenured employment but was required to forfeit 120 days of salary (Initial Decision adopted except as to penalty, 2008 N.J. AGEN LEXIS 209). In re *Tenure Hearing of Dennis*, OAL Dkt. No. EDU 5080-07, 2008 N.J. AGEN LEXIS 1249, Commissioner's Decision (May 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 808) adopted as to its finding that the petitioner acquired tenure as a clerical employee by virtue of her service as an attendance aide, but rejected as to its implicit conclusion that the petitioner's tenure protection continued when she accepted the separate and nontenurable position of classroom aide. Because no relief could be awarded as a result of the petitioner's one-time tenured status, petition was dismissed. *Colon-Serrano v. Bd. of Educ. of Plainfield*, OAL Dkt. No. EDU 11588-06, 2008 N.J. AGEN LEXIS 252, Commissioner's Decision (January 28, 2008), *aff'd*, SB NO. 10-08, 2008 N.J. AGEN LEXIS 724 (N.J. State Bd. of Educ., June 28, 2008).

Even assuming *arguendo* that some of the allegations relating to the teacher's performance could be characterized as inefficiency, and thus subject to the 90-day improvement plan requirement of N.J.S.A. 18A:6-11, the Board more than amply demonstrated the teacher's unbecoming

conduct, and such charges warranted the teacher's dismissal (aff'g 2007 N.J. AGEN LEXIS 311). In re Tenure Hearing of Hill, OAL Dkt. No. EDU 5979-06; C NO. 176-07; SB No. 14-07, 2007 N.J. AGEN LEXIS 977 (October 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 589) adopted, which concluded that infirmities in tenure charges under N.J.S.A. 18A:6-11 were sufficient to preclude them from proceeding to hearing and adjudication; the board failed to provide "a written statement of evidence" under oath, and the charges were so general in nature that respondent was unable to "submit a written statement of position." In re Tenure Hearing of King, OAL Dkt. No. EDU 4489-07, 2007 N.J. AGEN LEXIS 1005, Commissioner's Decision (September 18, 2007).

Notice from school board; termination proceedings. Jackson v. Englewood Board of Election, 94 N.J.A.R.2d (EDU) 520.

Evidence established that it was reasonable for board of education to refuse to certify tenure charges. Bey v. Board of Education of City of Newark, 93 N.J.A.R.2d (EDU) 288.

6A:3-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary or the State district superintendent:

1. That the district board of education or the State district superintendent has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education or by the State district superintendent in accordance with N.J.S.A. 18A:7A-39; and

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(b) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

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.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), inserted references to State district superintendents throughout; and added (d).

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

In (b), substituted "who are governed by" for "pursuant to" following "charter schools" and amended the N.J.A.C. reference.
Petition for Rulemaking.

See: 44 N.J.R. 1796(a), 2063(a).

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. Wichert v. Walter, 606 F.Supp. 1516 (D.N.J.1985).

Issue of form over substance in remedying procedural defect. In re: Tenure Hearing of Kizer, 1974 S.L.D. 505.

6A:3-5.3 Filing and service of answer to written charges

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

(b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging district board of education or the State district superintendent. Such district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

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).

In (a)1, deleted the second sentence and inserted "or by the ALJ if the motion is to be briefed following transmittal to the OAL".

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. Wichert v. Walter, 606 F.Supp. 1516 (D.N.J.1985).

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

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 determination 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 Com-

missioner 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.