

CHAPTER 6

HEARINGS

Authority

N.J.S.A. 30:1-2 and 52:14B-12.

Source and Effective Date

R.2011 d.002, effective November 29, 2010.
See: 42 N.J.R. 1127(a), 43 N.J.R. 42(a).

Chapter Expiration Date

Chapter 6, Hearings, expires on November 29, 2015.

Chapter Historical Note

Chapter 6, Administrative Hearings and Administrative Reviews, was adopted as R.1984 d.27, effective February 21, 1984, operative April 2, 1984. See: 15 N.J.R. 1725(a), 16 N.J.R. 369(b). Pursuant to Executive Order No. 66(1978), Chapter 6 expired on February 21, 1989.

Chapter 6, Hearings, was adopted as new rules by R.1991 d.13, effective January 17, 1991. See: 22 N.J.R. 3115(a), 23 N.J.R. 61(c).

Pursuant to Executive Order No. 66(1978), Chapter 6, Hearings, was readopted as R.1996 d.5, effective November 30, 1995. See: 27 N.J.R. 3537(a), 28 N.J.R. 181(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Hearings, was readopted as R.2000 d.338, effective July 24, 2000. See: 32 N.J.R. 1694(b), 32 N.J.R. 3069(b).

Chapter 6, Hearings, was readopted as R.2005 d.116, effective March 15, 2005. See: 36 N.J.R. 5639(b), 37 N.J.R. 1185(b).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from March 15, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 1127(a).

Chapter 6, Hearings, was readopted as R.2011 d.002, effective November 29, 2010. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:6-1.1 Purpose and scope

(a) Formal administrative hearings are conducted after transmittal to the Office of Administrative Law by an administrative law judge in accord with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

(b) Subject to any superseding Federal or State law, this chapter sets minimum requirements for division-specific informal conferences and provides procedures for department level informal conferences. The Department level informal conferences will address non-employee and non-contract-related appeals from agency action or inaction in programs administered directly by the Department and not within the jurisdiction of a specific division or not readily assignable to a particular division or particular program.

10:6-1.2 Definitions

The following terms, when used in this chapter, shall have the meanings set forth below, unless the context clearly indicates otherwise:

“Agency head” means the person or body authorized by law to render final decisions in contested cases. At the division level the agency head is, depending on the division’s organizational structure, either the Assistant Commissioner or the Division Director; otherwise the agency head is the Commissioner.

“Commissioner” means the Commissioner of the Department of Human Services.

“Contested case” means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for any agency hearing.

“Department” means the Department of Human Services or any of its organizational components.

“Division” means one of the Department’s units designated by statute as a division, including the Commission for the Blind and Visually Impaired (CBVI).

“Uncontested case” or “noncontested case” means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contest case at N.J.S.A. 52:14B-2.

Amended by R.2005 d.116, effective April 18, 2005.
See: 36 N.J.R. 5639(b), 37 N.J.R. 1185(b).

Rewrote “Division”.

Amended by R.2011 d.002, effective January 3, 2011.
See: 42 N.J.R. 1127(a), 43 N.J.R. 42(a).

In definition “Agency head”, inserted “depending on the division’s organizational structure, either the Assistant Commissioner or”; and in definition “Division”, deleted “and the Office of Education (OOE)” from the end.

10:6-1.3 Formal administrative hearings

(a) If any dispute is required by law to be handled formally, or if a party is dissatisfied with an informal determination and the agency head determines the matter a contested

case, the matter shall be transmitted to the Office of Administrative Law for hearing before an administrative law judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

(b) A case which is determined by the agency head to be a noncontested case may, at the discretion of the agency head and with the concurrence of the Director of the Office of Administrative Law, also be transmitted to the Office of Administrative Law for hearing before an administrative law judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

10:6-1.4 Division-specific informal conferences

Division-specific informal conferences shall be conducted in accord with division-specific rules and the minimum requirements of the rules for Department level informal conferences as set forth in this chapter.

10:6-1.5 Department level informal conferences

(a) Any person aggrieved by any action or inaction of the Department may request either verbally or in writing an informal conference with Department staff to settle any dispute or seek clarification of the Department's rules or policies. Receipt of the request shall be documented and the Department shall respond in writing to any such request, stating the reasons for its determination and advising, in the case of a denial of a request for a conference, that further appeal shall be to the Appellate Division of the Superior Court.

(b) An informal conference shall include a review of pertinent facts and applicable laws, rules and/or policies, and any relevant documents in an attempt to resolve issues giving rise to the request for informal conference.

(c) Department level informal conferences shall address appeals from agency action or agency inaction in programs administered directly by the Department, and not the review or appeal of final administrative hearing decisions of Division Directors nor the consideration of open matters which are under the jurisdiction of a division.

(d) Notice of the availability of an informal conference shall be as follows:

1. Each notice of adverse agency action where a dispute is not required by law to be handled formally shall include the offer of an informal conference.

2. Each notice of agency action containing an offer of informal conference shall specify in writing a reasonable time frame within which a petitioner may accept the offer.

(e) Participants and attendees at informal conferences shall include and be limited to the following:

1. An employee assigned to conduct the informal conference pursuant to written authorization from the agency head and who shall not have had any direct part in the decision-making regarding the disputed matter in question;

2. Any persons permitted by the employee conducting the conference who are able to provide information relevant to the subject of the conference; and

3. The petitioner may participate in the conference and may be accompanied at the conference by the following person(s):

i. An attorney or other representative;

ii. A family member;

iii. A witness or witnesses able to provide information relevant to the subject of the conference; and/or

iv. An interpreter.

(f) The agency may exclude persons other than the petitioner and, as necessary, the petitioner's interpreter, during portions of the conference in which the information or reports to be disclosed are subject to specific confidentiality provisions of Federal or State law.

(g) The Department shall memorialize the conference in a written report to be sent to the petitioner which shall include a statement of the issue, the decision and the basis for the decision, and notice that further appeal shall be to the Appellate Division of the New Jersey Superior Court.

1. Unless otherwise provided by an existing division rule, written reports setting forth the outcome of an informal conference should be issued within 30 days of the conclusion of the conference.

Amended by R.2011 d.002, effective January 3, 2011.

See: 42 N.J.R. 1127(a), 43 N.J.R. 42(a).

In (f), inserted "and, as necessary, the petitioner's interpreter,"; and added (g)1.