

CHAPTER 6B**DEPARTMENT OF EDUCATION
TENURE HEARINGS****Authority**

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2009 d.229, effective June 17, 2009.
See: 41 N.J.R. 1295(a), 41 N.J.R. 2777(a).

Chapter Expiration Date

Chapter 6B, Department of Education Tenure Hearings, expires on June 17, 2014.

Chapter Historical Note

Chapter 6B, Department of Education Tenure Hearings, was adopted as R.1999 d.81, effective March 15, 1999. See: 30 N.J.R. 4307(a), 31 N.J.R. 761(a).

Chapter 6B, Department of Education Tenure Hearings, was readopted as R.2004 d.177, effective April 1, 2004. See: 36 N.J.R. 5(a), 36 N.J.R. 2195(a).

Subchapter 17, Consolidation and Predominant Interest, was adopted as new rules by R.2008 d.148, effective June 16, 2008. See: 40 N.J.R. 834(a), 40 N.J.R. 3618(a).

Chapter 6B, Department of Education Tenure Hearings, was readopted as R.2009 d.229, effective June 17, 2009. As a part of R.2009 d.229, Subchapter 18 was adopted as reserved; and Subchapter 19, Settlements and Withdrawals, was adopted as new rules, effective July 20, 2009. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPLICABILITY**1:6B-1.1 Applicability**

The rules in this chapter shall apply to any hearings arising under the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et seq., except those cases in which criminal charges are also filed. The rules in this chapter implement the provisions of P.L. 1998, c.42. Any aspect of the hearing not covered by these special rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2 THROUGH 3. (RESERVED)**SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE
TRANSMISSION TO THE OFFICE OF
ADMINISTRATIVE LAW****1:6B-4.1 Notice of referral**

(a) Pursuant to N.J.S.A. 18A:6-16, when the Commissioner of Education (Commissioner) or the person appointed to act in the Commissioner's behalf determines that a charge is sufficient to warrant dismissal or reduction in salary of the charged individual, the matter shall be referred for determination to the Office of Administrative Law within 10 days, except that the Commissioner may retain a matter for purposes of determining a summary decision motion made prior to referral.

(b) On the same date as the transmittal of the matter to the Office of Administrative Law, the Commissioner shall issue a notice of referral to the parties to the matter.

SUBCHAPTERS 5 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES;
ADJOURNMENTS; INACTIVE LIST**1:6B-9.1 Scheduling of proceedings**

The hearing shall be held within 30 days after the end of the discovery period.

SUBCHAPTER 10. DISCOVERY

1:6B-10.1 Discovery

(a) The parties shall commence discovery immediately upon receipt of the notice of referral.

(b) A party may notify another party to provide discovery by one or more of the following methods: written interrogatories; production of documents or things; permission to enter upon land or other property for inspection or other purposes; and requests for admissions. These discovery requests shall be initiated by transmitting the request to the receiving party within 30 days of receipt of the notice of referral.

(c) Answers to discovery requests shall be made within 30 days of receipt of the request.

(d) Depositions upon oral examination or written questions and physical and mental examinations are available only upon motion for good cause or upon consent of the parties. A motion for additional discovery shall be filed with the administrative law judge no later than 10 days after the due date for filing of answers to discovery available pursuant to (b) above.

(e) Additional discovery must be completed within 30 days of receipt of an order granting the motion or, if upon the consent of the parties, no later than 30 days from the due date of answers to initial discovery requests.

(f) The judge may extend the discovery period for no more than 30 days due to disputes over sufficiency, completion, or other just cause.

SUBCHAPTERS 11 THROUGH 12. (RESERVED)

SUBCHAPTER 13. PREHEARING CONFERENCES AND
PROCEDURES**1:6B-13.1 Prehearing conferences**

A prehearing conference shall be held within 30 days of referral of the case to the Office of Administrative Law.

SUBCHAPTER 14. CONDUCT OF CASES

1:6B-14.1 Ordering a transcript

Any party requesting a transcript shall file the request within 24 hours of the conclusion of the hearing. Failure to timely request a transcript shall not result in an extension of the time for filing of briefs.

1:6B-14.2 Filing of briefs

(a) If permitted or requested by the judge, briefs shall be filed with the judge:

1. Within 30 days of conclusion of the hearing; or

2. In matters where a transcript has been ordered, within 30 days of receipt of the transcript by the parties, but in no event later than 45 days after conclusion of the hearing.

Amended by R.2009 d.229, effective July 20, 2009.

See: 41 N.J.R. 1295(a), 41 N.J.R. 2777(a).

Rewrote the section.

Case Notes

While N.J.A.C. 1:6B-14.2 does not expressly require post-hearing briefs, it does create an expectation of opportunity for their submission; consequently, a tenured guidance counselor who was alleged to have acted as principal without holding the proper qualifications was unfairly denied the chance to provide a summative perspective of the testimony and evidence taken at the hearing, together with the legal argument addressing the nature of his alleged conduct and the appropriateness of the penalty sought (rejecting 2008 N.J. AGEN LEXIS 805). In re Tenure Hearing of Clayton, OAL Dkt. No. EDU 12196-06, Remand Decision (December 18, 2008).

SUBCHAPTERS 15 THROUGH 16. (RESERVED)

SUBCHAPTER 17. CONSOLIDATION AND
PREDOMINANT INTEREST**1:6B-17.1 Consolidation and predominant interest**

In any instance where a case proceeding under this chapter is based upon allegations of child abuse or neglect instituted by the Department of Children and Families Division of Youth and Family Services (DYFS) or by the Department of Children and Families Institutional Abuse Investigations Unit (IAIU), an order consolidating the matters shall be issued, and DYFS or IAIU, as appropriate, shall be deemed to have the predominant interest with regard to issues relating to the charges of child abuse or neglect.

**1:6B-17.2 Review of orders involving consolidation with
a Division of Youth and Family Services case**

In any instance where a case proceeding under this chapter is consolidated with a Division of Youth and Family Services