

**1:1-18.8 Extensions of time limits**

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted in writing to the Director of the Office of Administrative Law. If the Director concurs in the request, he or she shall sign a proposed order no later than the date the time limit for the initial decision is due to expire and shall forward the proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order to the transmitting agency head and served on all parties. If the agency head approves the request, he or she shall within 10 days sign and issue the order and cause it to be served on all parties and the Director of the Office of Administrative Law. If the extended time limit necessitates an extension of the deadline for the final decision, the requirements of (e) below apply.

(e) If the agency head requests an extension of the time limit for filing a final decision, he or she shall sign and forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director approves the request, he or she shall within 10 days of receipt of the proposed order sign and issue the order and cause it to be served on all parties.

(f) Any order granting an extension must set forth the factual basis constituting good cause for the extension, set forth the dates of any previous extensions, and establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only in the case of extraordinary circumstances.

Amended by R.1992 d.213, effective May 18, 1992.

See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Revised (c), (e) and (f).

**Case Notes**

Decision by ALJ recommending that college board of trustees follow its written procedures for denying reappointment to director of educational opportunity fund was "deemed adopted" by the board, where the board took no action to adopt, reject, or modify the ALJ's decision within 45 days, and did not seek an extension of time to do so within

that period, there was no emergency justifying delay. *Newman v. Ramapo College of N.J.*, 349 N.J.Super. 196, 793 A.2d 120.

Automatic approval of administrative law judge's recommendations was not applicable. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Provision for automatic adoption of administrative law judge's recommendations will not be literally enforced where agency head is not dragging his feet in issuing final decision. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

It was proper exercise of discretion to grant nunc pro tunc extension of time for Hackensack Meadowlands Development Commission (HMDC) to issue its final decision regarding intermunicipal tax-sharing obligations under Hackensack Meadowlands Reclamation and Development Act. *Town of Secaucus v. Hackensack Meadowlands Development Com'n*, 267 N.J.Super. 361, 631 A.2d 959 (A.D.1993), certification denied 139 N.J. 187, 652 A.2d 175.

Three month delay in providing findings and legal conclusions for decision itself untimely; equitable factor against reconsideration of administrative law judge's (ALJ) decision. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Inherent power to reconsider decision. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Initial decision of administrative law judge (ALJ) shall be "deemed adopted". *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Board of Trustees of Public Employee Retirement System failed to make showing justifying setting aside decision. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

**SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS****1:1-19.1 Settlements**

(a) Where the parties to a case wish to settle the matter, and the agency head has not consented to the settlement terms, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

(c) If the agency head has approved the terms of the settlement, the parties shall:

1. File with the Clerk and the assigned judge, if known, a stipulation of dismissal, signed by the parties,

their attorneys, or their non-lawyer representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f); or

2. If the parties prefer to have the settlement terms incorporated in the record of the case, then the full terms of the settlement shall be disclosed in a consent order signed by the parties, their attorneys, or their non-attorney representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f). The consent order shall be filed with the Clerk and the assigned judge, if known.

(d) The stipulation of dismissal or consent order under (c) above shall be deemed the final decision.

Amended by R.1987 d.461, effective November 16, 1987.

See: 19 N.J.R. 1593(a), 19 N.J.R. 2131(c).

(b)1.-2. added to clarify that in those cases where the agency head, either in person or through counsel, has consented to the settlement terms.

Amended by R.1995 d.300, effective June 19, 1995.

See: 27 N.J.R. 1343(a), 27 N.J.R. 2383(a).

#### Case Notes

Emotionally disturbed child and his parent were "prevailing parties". E.P. by P.Q. v. Union County Regional High School Dist. No. 1, D.N.J.1989, 741 F.Supp. 1144.

#### 1:1-19.2 Withdrawals

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.

(b) When a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the Office of Administrative Law for appropriate disposition.

(c) After the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case.

Amended by R.1990 d.71, effective February 5, 1990.

See: 21 N.J.R. 3589(a), 22 N.J.R. 334(b).

In (a): deleted language specifying the entering of an initial decision for withdrawals and added, "discontinue ... for appropriate disposition".

In (b): specified that Clerk shall return matter to agency which had transmitted the case to OAL.

In (c): deleted language referring to decision granting withdrawal.

Amended by R.1991 d.44, effective February 4, 1991.

See: 22 N.J.R. 3278(b), 23 N.J.R. 293(a).

In (a): deleted "in writing" from withdrawal procedure request.

#### Law Review and Journal Commentaries

Law Against Discrimination. Judith Nallin, 138 N.J.L.J. No. 15, 23 (1994).

#### Case Notes

Discharged employee's election to file national origin discrimination charge with the Equal Employment Opportunity Commission pursuant to federal law precluded employee from bringing state court national origin discrimination claim after the EEOC determined that employee failed to demonstrate probable cause for administrative determination of discrimination. *Hernandez v. Region Nine Housing Corp.*, 286 N.J.Super. 676, 670 A.2d 95 (A.D.1996).

Law Against Discrimination did not jurisdictionally prevent plaintiff from filing complaint in superior court after withdrawing her administrative complaint. *Aldrich v. Manpower Temporary Services*, 277 N.J.Super. 500, 650 A.2d 4 (A.D.1994), certification denied 139 N.J. 442, 655 A.2d 445.

### SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

#### 1:1-20.1 Scheduling of mediation

(a) Mediation may be scheduled, at the discretion of the Director, when requested by the transmitting agency, or by all parties to a hearing. Mediation shall not be scheduled in any matter where the transmitting agency has a mediation program available to the parties to the case.

(b) When a request for mediation is granted, the Office of Administrative Law shall supply the parties with a list containing not less than six administrative law judges as suggested mediators. Each party may strike two judges from the list and the Office of Administrative Law will not assign any judge who has been stricken from the list to conduct the mediation. The Office of Administrative Law shall notify the parties of the assigned mediator.

New Rule, R.1999 d.413, effective December 6, 1999.

See: 31 N.J.R. 2290(a), 31 N.J.R. 2717(a), 31 N.J.R. 3999(a).

Former N.J.A.C. 1:1-20.1, Conduct of mediation, recodified to N.J.A.C. 1:1-20.2.

#### 1:1-20.2 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1. All parties to the mediation shall make available for the mediation a person who has authority to bind the party to a mediated settlement.
2. All parties must agree in writing to the following:
  - i. Not to use any information gained solely from the mediation in any subsequent proceeding;
  - ii. Not to subpoena the mediator for any subsequent proceeding;
  - iii. Not to disclose to any subsequently assigned judge the content of the mediation discussion;
  - iv. To mediate in good faith; and
  - v. That any agreement of the parties derived from the mediation shall be binding on the parties and will have the effect of a contract in subsequent proceedings.

3. The mediator shall, within 10 days of assignment, schedule a mediation at a convenient time and location.

4. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling a hearing and, where appropriate, may consider sanctions under N.J.A.C. 1:1-14.14.

5. The mediator may at any time return the matter to the Clerk and request that a hearing be scheduled before another judge.

6. No particular form of mediation is required. The structure of the mediation shall be tailored to the needs of the particular dispute. Where helpful, parties may be permitted to present any documents, exhibits, testimony or other evidence which would aid in the attainment of a mediated settlement.

(b) In no event shall mediation efforts continue beyond 30 days from the date of the first scheduled mediation unless this time limit is extended by agreement of all the parties.

Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

See: 23 N.J.R. 639(a), 23 N.J.R. 1786(a).

In (a)5, revised N.J.A.C. citation.

Recodified from N.J.A.C. 1:1-20.1 and amended by R.1999 d.413, effective December 6, 1999.

See: 31 N.J.R. 2290(a), 31 N.J.R. 2717(a), 31 N.J.R. 3999(a).

In (a), deleted a former 2, and recodified former 3 through 7 as 2 through 6. Former N.J.A.C. 1:1-20.2, Conclusion of mediation, recodified to N.J.A.C. 1:1-20.3.

### 1:1-20.3 Conclusion of mediation

(a) If the transmitting agency is a party to the mediation, successful mediation shall be concluded by a mediation agreement.

(b) If the transmitting agency is not a party, successful mediation shall be concluded by initial decision.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate proceeding or for return to the transmitting agency.

Amended by R.1997 d.158, effective April 7, 1997.

See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

In (c), inserted "or for return to the transmitting agency".

Recodified from N.J.A.C. 1:1-20.2 by R.1999 d.413, effective December 6, 1999.

See: 31 N.J.R. 2290(a), 31 N.J.R. 2717(a), 31 N.J.R. 3999(a).

## SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

### 1:1-21.1 Transmission to the Office of Administrative Law

(a) Any agency head may request under N.J.S.A. 52:14F-5(o) the assignment of an administrative law judge to conduct an uncontested case, including rule making and investigatory hearings. Public or investigatory hearings conducted pursuant to a rulemaking shall proceed in accordance with N.J.S.A. 52:14B-4(g). The agency head may make such a request by letter and by completing the applicable portions of an N.J.A.C. 1:1-8.2 transmittal form.