

6A:4-3.5 Emergency relief in matters on appeal

(a) Applications for emergency relief shall be made by motion conforming to the requirements of N.J.A.C. 6A:4-3.1. Opposing parties shall be given reasonable opportunity under the circumstances to file papers in response to an application for emergency relief.

(b) Applications for emergency relief shall be considered on an expedited basis and shall be reviewed in accordance with N.J.A.C. 6A:4-4.1(b).

Recodified from N.J.A.C. 6A:4-3.4 and amended by R.2009 d.248, effective August 3, 2009.

See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

Section was "Emergency relief". In (a), substituted "be made by motion conforming" for "conform" and updated the N.J.A.C. reference. Former N.J.A.C. 6A:4-3.5, Motion for clarification and/or reconsideration of a decision of the Commissioner on appeal, recodified to N.J.A.C. 6A:4-3.6.

6A:4-3.6 Motion for clarification and/or reconsideration of a decision of the Commissioner on appeal

(a) A motion for clarification and/or reconsideration of a Commissioner's decision rendered pursuant to this chapter shall be served and filed within 10 days after the Commissioner has filed his or her decision. The motion shall conform to the requirements of N.J.A.C. 6A:4-3.1 and include a copy of the decision from which clarification and/or reconsideration is sought.

(b) Motions for reconsideration shall be entertained based solely upon the following:

1. Claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;
2. Newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;
3. Newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation or misconduct could not have been previously known; or
4. Reversal of a prior judgment on which the present matter is based.

(c) Motions for clarification shall be considered based upon necessity as specifically demonstrated in the papers submitted with a motion.

(d) The filing of a motion for clarification or reconsideration shall not, in and of itself, relieve the parties from compliance with any judgment or order of the Commissioner.

Recodified from N.J.A.C. 6A:4-3.5 and amended by R.2009 d.248, effective August 3, 2009.

See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

Section was "Motion for clarification and/or reconsideration of a decision of the Commissioner". In (a), updated the N.J.A.C. reference.

SUBCHAPTER 4. REVIEW AND DECISION

6A:4-4.1 Standard of review

(a) In determining appeals from decisions of the State Board of Examiners or the School Ethics Commission pursuant to this chapter, the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the Board or the Commission acted in a manner that was arbitrary, capricious or contrary to law.

(b) In determining motions for stay or emergency relief, the Commissioner shall apply the following standards pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The movant will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the movant's claim is settled;
3. The movant has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the movant will suffer greater harm than the respondent will suffer if the requested relief is not granted.

6A:4-4.2 Settlement and withdrawal

(a) An appellant may withdraw an appeal at any time prior to issuance of the Commissioner's decision, whereupon the Commissioner shall discontinue all proceedings and notify all parties accordingly.

(b) An appeal may be settled at any time prior to issuance of the Commissioner's decision, provided that the parties shall notify the Commissioner of any proposed settlement and shall set forth the full settlement terms for the Commissioner's review and approval.

1. Where the district board of education is party to an appeal, any proposed settlement shall indicate, by signature of the board attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

2. A proposed settlement shall not include terms restricting access to records or information deemed public by law, nor shall it include terms requiring disclosure of information protected from such disclosure by law.

6A:4-4.3 Commissioner's decision

(a) Commissioner determinations rendered pursuant to this chapter shall be embodied in a written decision and shall be deemed final agency actions appealable to the Appellate Division of the Superior Court.

(b) The Commissioner's decision shall be mailed to all parties or their representatives of record and shall be deemed filed three days after the date of such mailing.

6A:4-4.4 Relaxation of rules

(a) The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration and elimination of unnecessary delay. Unless otherwise stated, any rule not reflecting a statutory requirement or an applicable rule of administrative procedure may be relaxed by the Commissioner, in his or her discretion, if strict adherence to such rule is deemed inappropriate or unnecessary or would result in injustice.

(b) Briefing on appeals and motions shall be in accordance with provisions of this chapter; provided, however, that the Commissioner may modify time schedules or direct additional submissions, in his or her discretion or by leave upon

motion of a party, where he or she deems it necessary to expedite proceedings or protect the interests of the parties.

Recodified from N.J.A.C. 6A:4-5.2 by R.2009 d.248, effective August 3, 2009.

See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

SUBCHAPTER 5. (RESERVED)

6A:4-5.1 (Reserved)

Repealed by R.2009 d.248, effective August 3, 2009.

See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

Section was "Filing of documents; oral argument".

6A:4-5.2 (Reserved)

Recodified to N.J.A.C. 6A:4-4.4 by R.2009 d.248, effective August 3, 2009.

See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

Section was "Relaxation of rules".