

CHAPTER 4**APPEALS****Authority**

P.L. 2008, c. 36.

Source and Effective Date

R.2008 d.225, effective July 8, 2008.
See: 40 N.J.R. 4606(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4, Appeals, expires on January 3, 2010. See: 41 N.J.R. 1921(a).

Chapter Historical Note

Chapter 4, Appeals, was originally codified in Title 6 as Chapter 2, Appeals. Chapter 2, Appeals, was filed and became effective prior to September 1, 1969.

Chapter 2, Appeals, were repealed and adopted as new rules by R.1989 d.67, effective February 6, 1989. See: 20 N.J.R. 2615(a), 21 N.J.R. 288(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, was readopted as R.1994 d.17, effective December 8, 1993. See: 25 N.J.R. 4548(a), 26 N.J.R. 198(b).

Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 2, Appeals, was extended from December 8, 1998 to June 8, 2000. See: 26 N.J.R. 3783(a) and 3942(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, was readopted as R.2000 d.229, effective May 5, 2000. Chapter 2 was recodified as N.J.A.C. 6A:4 by R.2000 d.229, effective June 5, 2000. See: 32 N.J.R. 749(a), 32 N.J.R. 2049(b).

Chapter 4, Appeals, was readopted as R.2005 d.255, effective July 8, 2005. See: 37 N.J.R. 828(b), 37 N.J.R. 2862(a).

Chapter 4, Appeals, was repealed and Chapter 4, Appeals, was adopted as special new rules by R.2008 d.225, effective July 8, 2008. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 6A:4-1.1 Purpose and scope
- 6A:4-1.2 Definitions
- 6A:4-1.3 Appeal of decisions

SUBCHAPTER 2. PROCEDURES FOR APPEAL

- 6A:4-2.1 Who may appeal
- 6A:4-2.2 Time for appeal
- 6A:4-2.3 Computation of time
- 6A:4-2.4 Notice of appeal
- 6A:4-2.5 Record on appeal
- 6A:4-2.6 Filing and service of briefs, motions, and applications
- 6A:4-2.7 Filing and service of briefs
- 6A:4-2.8 Contents of briefs
- 6A:4-2.9 Length of briefs
- 6A:4-2.10 Appendices
- 6A:4-2.11 Extensions of time for briefs
- 6A:4-2.12 Motions

SUBCHAPTER 3. SPECIAL PROCEEDINGS

- 6A:4-3.1 Motion to appear as amicus curiae
- 6A:4-3.2 Motion for stay of a decision of the State Board of Examiners

- 6A:4-3.3 Motion for leave to appeal an interlocutory order, decision or action
- 6A:4-3.4 Emergency relief
- 6A:4-3.5 Motion for clarification and/or reconsideration of a decision of the Commissioner

SUBCHAPTER 4. REVIEW AND DECISION

- 6A:4-4.1 Standard of review
- 6A:4-4.2 Settlement and withdrawal
- 6A:4-4.3 Commissioner's decision

SUBCHAPTER 5. MISCELLANEOUS PROVISIONS

- 6A:4-5.1 Filing of documents; oral argument
- 6A:4-5.2 Relaxation of rules

SUBCHAPTER 1. GENERAL PROVISIONS**6A:4-1.1 Purpose and scope**

This chapter implements the provisions of P.L. 2008, c. 36, which removes the authority of the State Board of Education to hear appeals of determinations of the Commissioner of Education, the State Board of Examiners, and the School Ethics Commission, and provides instead that determinations of the Commissioner shall be deemed final agency actions and determinations of the State Board of Examiners and School Ethics Commission shall be appealable to the Commissioner. The chapter establishes standards and procedures for the filing, briefing and adjudication of appeals, and supercedes any rule with which it may be inconsistent.

6A:4-1.2 Definitions

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the New Jersey State Department of Education or a designated Deputy or Assistant Commissioner acting in the Commissioner’s stead pursuant to N.J.S.A. 18A:4-32 through 34.

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

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

“Pro se” means a person who acts on his or her own behalf without an attorney or other nonlawyer representative as permitted by the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

“Representative” means an attorney or other person as permitted by the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, appearing on behalf of a party in proceedings governed by this chapter.

6A:4-1.3 Appeal of decisions

(a) Decisions of the Commissioner, including decisions in controversies and disputes arising under the school laws pursuant to N.J.A.C. 6A:3, shall be deemed final agency actions appealable to the Appellate Division of the Superior Court.

(b) Appeals of decisions of the State Board of Examiners suspending or revoking certificates pursuant to N.J.A.C. 6A:9-17 shall be taken to the Commissioner in accordance with the procedures set forth in this chapter.

1. Appeals of decisions of the Board of Examiners denying issuance of a certificate shall proceed as contested cases in accordance with the provisions of N.J.A.C. 6A:3.

(c) Appeals of decisions of the School Ethics Commission finding that a school official has violated the School Ethics Act, including the Code of Ethics for School Board Members, shall be taken to the Commissioner in accordance with the procedures set forth in this chapter; except that where the official found to have violated the act is an officer or employee of the New Jersey School Boards Association, the decision of the School Ethics Commission as to both violation and sanction shall be deemed final agency action appealable to the Appellate Division of the Superior Court.

1. Decisions of the School Ethics Commission finding that probable cause does not exist to credit the allegations in a complaint shall be deemed final agency actions appealable to the Appellate Division of the Superior Court.

2. Unless the Commission's underlying finding of violation is appealed, in which case the matter shall proceed in accordance with N.J.A.C. 6A:4-2.2(b), a sanction recommended by the Commission for a school official other than an officer or employee of the New Jersey School Boards Association shall be reviewed by the Commissioner in accordance with the provisions of N.J.A.C. 1:6C and 6A:3-9.1.

(d) Interlocutory orders, decisions or actions of the Board of Examiners or the School Ethics Commission may be appealed to the Commissioner by leave granted pursuant to N.J.A.C. 6A:4-3.3.

(e) Requests for relief arising from decisions of the State Board of Education rendered prior to the effective date of P.L. 2008, c. 36 shall be made to the Commissioner by motion in accordance the provisions of N.J.A.C. 6A:4-2.12.

SUBCHAPTER 2. PROCEDURES FOR APPEAL
6A:4-2.1 Who may appeal

(a) Any party aggrieved by a decision of the State Board of Examiners suspending or revoking a certificate, or of the School Ethics Commission finding a violation of the School

Ethics Act, may appeal to the Commissioner in accordance with the procedures set forth in this chapter.

1. Parties aggrieved by decisions of the State Board of Examiners denying issuance of a certificate shall proceed in accordance with the provisions of N.J.A.C. 6A:3.

2. Parties taking exception to the recommended sanction of the School Ethics Commission but not disputing the Commission's finding of violation shall proceed in accordance with the provisions of N.J.A.C. 1:6C and 6A:3-9.1.

(b) Parties jointly interested in a decision or action may join in an appeal therefrom or may appeal separately.

(c) A respondent may cross appeal as provided by N.J.A.C. 6A:4-2.2(c).

6A:4-2.2 Time for appeal

(a) Appeals from final decisions of the Board of Examiners shall be filed within 30 days of the filing date of the decision from which appeal is taken.

(b) Appeals from final decisions of the School Ethics Commission finding a violation of the School Ethics Act shall be filed within 30 days of the filing date of the decision from which appeal is taken.

1. Where appeal is taken from the Commission's finding of violation, the Commissioner's review of the Commission's recommended sanction pursuant to N.J.S.A. 18A:12-29(c) will be deferred and incorporated into the Commissioner's review on appeal.

i. Where a notice of appeal pursuant to N.J.A.C. 6A:4-2.4 has been filed on or before the due date for exceptions to the Commission's recommended sanction pursuant to N.J.A.C. 1:6C-18.1 (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

ii. Where a notice of appeal pursuant to N.J.A.C. 6A:4-2.4 has not been filed on or before the due date for exceptions to the Commission's recommended sanction pursuant to N.J.A.C. 1:6C-18.1 (13 days from the date the decision is mailed by the Commission), exceptions must be filed by that date in order to be considered by the Commissioner in his or her review of the sanction pursuant to (b)1 above.

2. Where the matter on appeal has been heard at the OAL, the Commissioner shall request from the OAL such extension(s) of time for rendering of the final agency decision on the Commission's recommended sanction as are necessary to accommodate proceedings on appeal.

(c) Cross appeals may be taken by filing notice of cross appeal within 10 days of service of notice of appeal.