

(b) Following submission and review of personnel actions, the appointing authority shall be notified by the Department of Personnel whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions.

(c) When a regular appointment has been made, the Commissioner may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a).
Amended by R.1994 d.619, effective December 19, 1994.
See: 26 N.J.R. 3510(a), 26 N.J.R. 5002(a).
Amended by R.1998 d.291, effective June 1, 1998.
See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

In (a), inserted "in the career, unclassified or senior executive service" following "personnel actions" and added a new (c).

Case Notes

Representatives of public defender had actual authority to promise promotion to assistant deputy public defender, who accepted lower position than position for which he was eligible based on expectation that he would be promoted after one year. *Walsh v. State*, 290 N.J.Super. 1, 674 A.2d 988 (A.D.1996).

4A:4-1.11 (Reserved)

New Rule, R.1990 d.48, effective January 16, 1990.
See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).
Repealed by R.1996 d.97, effective February 20, 1996.
See: 27 N.J.R. 4048(a), 28 N.J.R. 1201(a).
Section was "Vacancy Review Board: State service".

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.1 Announcements and applications

(a) Notice of open competitive examinations shall be posted on a daily basis on the Department of Personnel web site (<http://www.state.nj.us/personnel/>) or announced by other appropriate means as approved by the Commissioner to secure sufficient qualified candidates.

(b) In order to notify all employees of promotional opportunities, notices of promotional examinations and applications shall be provided to eligible employees by the Department of Personnel or as directed by the Department of Personnel through the appointing authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such posting.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;

3. Minimum qualifications for admission to the examination;

4. Filing information; and

5. In open competitive examinations, a reference to duties and responsibilities.

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

(e) Unless otherwise provided for by the Commissioner, applications for open competitive and local service promotional examinations shall be filed with the Department of Personnel and applications for State service promotional examinations shall be filed with the appointing authority no later than the announced filing date, as established by the Department of Personnel. When mailed, the postmark date will be considered the date on which the application is filed.

(f) Prior to the filing date, an applicant may amend a previously submitted application.

(g) The Department of Personnel may request clarifying information from an applicant.

(h) All examination applications shall remain confidential, except as the Commissioner may determine to be in the public interest.

(i) See N.J.A.C. 4A:4-2.17 for application processing fee procedures.

Petition for Rulemaking: Promotional examination process regarding announcement procedures.

See: 21 N.J.R. 1581(b), 21 N.J.R. 2675(a).
Amended by R.1989 d.570, effective November 6, 1989.
See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added new (d) and recodified old (d)-(g) as (e)-(h) with no change in text.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Added new (i).
Amended by R.1997 d.481, effective November 17, 1997.
See: 29 N.J.R. 3383(a), 29 N.J.R. 4864(a).
Amended by R.2006 d.104, effective March 20, 2006.
See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Rewrote (a).

Case Notes

Announcement of competitive examination was required to contain "minimum qualification requirements" for admission (citing former N.J.A.C. 4:1-8.3). In the *Matter of Critchlow*, 201 N.J.Super. 371, 493 A.2d 66 (App.Div.1985).

4A:4-2.2 Types of examinations

(a) The Commissioner of the Department of Personnel shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following:

1. Written tests;
2. Oral tests;

3. Performance tests;
4. Physical performance tests;
5. Evaluation of education, training or experience;
6. Assessment exercises; and
7. Other appropriate measures of knowledge, skills and abilities.

(b) The Department of Personnel may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided by the Department of Personnel for such service outside normal working hours.

(c) See N.J.A.C. 4A:4-2.14 for rules regarding the accommodation and waiver of examinations for persons with disabilities.

Amended by R.1994 d.72, effective February 7, 1994.
See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

Case Notes

Authority of Commission to design and administer exams versus "real authority" of municipalities regarding hiring practices. *United States v. State of N.J.*, 473 F.Supp. 1199 (1979).

Elements of examination process discussed in relation to labor negotiations. *State v. State Supervisory Employee Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Authority to inquire as to basis for appointments and promotions. *Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978) modified 82 N.J. 1, 410 A.2d 1146 (1980).

Validity of list established by inappropriate exam. *Flynn v. Megaro*, 112 N.J.Super. 148, 270 A.2d 638, (App.Div.1970) cert. denied 57 N.J. 594, 274 A.2d 49.

4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope (See N.J.A.C. 4A:1-1.3 for definition of unit scope);
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or

5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.11), except when:

i. A different residency requirement is specified by law or provided by the Commissioner; or

ii. It appears that there is an inadequate number of qualified residents available for the title.

2. Meet all requirements specified in the examination announcement:

i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority (SEPTA) police officers, Amtrak police officers, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in N.J.S.A. 40A:14-127.1, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.

ii. For good cause, the Commissioner may deem an individual a former law enforcement officer as defined in (b)2i above, even though the individual's separation from service shall not occur except upon a new appointment.

iii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) In announcing open competitive examinations, the Department of Personnel may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections and bilingual). The applicant's eligibility for particular announcements and/or title areas may depend upon the applicant's residency as indicated on the application.

(d) When a promotional examination is announced, an open competitive examination may also be announced.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (b)2i: added text, "Former Municipal Police Officers ... the closing date."

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted new (c); and recodified (c) as (d).

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

In (b)2, inserted references to State troopers, sheriff's officers, sheriff's deputies and County Municipal police Officers in i, added a new ii and recodified former ii as iii.

Amended by R.2000 d.444, effective November 6, 2000.

See: 32 N.J.R. 2178(a), 32 N.J.R. 3981(a).

In (b)2, rewrote i and ii.

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (c), deleted "including, but not limited to, entry-level law enforcement examinations," and substituted "shall" for "may."

Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities.
Judith Nallin, 134 N.J.L.J. No. 17, 50 (1993).

Case Notes

Limiting open competitive examination to residents for position of police chief, violated the Civil Service Act, the Board's own regulations, and the rule-making provisions of the Administrative Procedure Act. *Matter of Police Chief (M2010P) South Orange Village*, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

Equitable estoppel: provisional employee worked 8-10 years before test was promulgated. *Omrod v. N.J. Department of Civil Service*, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 75 N.J. 534, 384 A.2d 513.

Issue of examination as artificial barrier to employment. *DeLarmi v. Borough of Fort Lee*, 132 N.J.Super. 501, 334 A.2d 349 (App.Div.1975) certiorari denied 68 N.J. 135, 343 A.2d 423.

Requirement that employee serve specified time in lower classification before becoming eligible for promotion upheld (citing former N.J.A.C. 4:1-8.6). *Watson v. Farrell*, 116 N.J.Super. 434, 282 A.2d 756 (App.Div.1977).

Patient care worker was properly removed from her position for cursing at and prodding patient. *Richardson v. North Princeton Development Center*, 96 N.J.A.R.2d (CSV) 507.

Testimony of mentally disturbed witness with history of lying was insufficient to support charges of employee misconduct. *Dickerson v. North Princeton Development Center*, 96 N.J.A.R.2d (CSV) 504.

Laborer's gambling activities did not "involve or touch on" his employment so as to require forfeiture of his position. *Tudda v. Department of Public Works of the Borough of West Paterson*, 96 N.J.A.R.2d (CSV) 499.

Alcoholic police officer's conduct warranted six-month suspension. *Arose v. Township of Little Egg Harbor Police Department*, 96 N.J.A.R.2d (CSV) 490.

Four-week suspension for sanitation worker's refusal to work second route on holiday was excessive. *Carrico v. Woodbridge Township, Department of Public Works*, 96 N.J.A.R.2d (CSV) 483.

4A:4-2.4 Promotional title scope: local service

(a) If a title which is the subject of a promotional examination is part of a title series, then the examination shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;

2. The next two lower in-series titles used in the local jurisdiction; or

3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one-year permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either serving in:

1. The next lower in-series noncompetitive title used in the local jurisdiction;
2. The next two lower in-series noncompetitive titles used in the local jurisdiction;
3. All related noncompetitive titles; or
4. Any competitive title.

(d) The title scopes described in (a)2, 3 and (c)2 through 4 above or any combination of such scopes may be used when a wider title scope is appropriate or the appointing authority provisionally promotes an employee who does not have permanent status in the next lower in-series title of the title series established by the Department of Personnel.

(e) In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(f) The local jurisdiction may be required to provide the Department of Personnel with copies of ordinances, tables of organization or other evidence of the jurisdiction's use of titles.

Amended by R.1990 d.554, effective November 19, 1990.

See: 22 N.J.R. 2628(a), 22 N.J.R. 3482(a).

Conforms the requirements for local with those in State service.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (d)1 and 2.

Amended by R.2003 d.395, effective October 6, 2003.

See: 35 N.J.R. 2389(a), 35 N.J.R. 4711(c).

Rewrote the section.

Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities.
Judith Nallin, 134 N.J.L.J., No. 17, 50 (1993).

Case Notes

Merit Systems Board's approval of open competitive examination was violation of Civil Service Act, the Board's own regulations, and the rule-making provisions of the Administrative Procedure Act. *Matter of Police Chief (M2010P) South Orange Village*, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, with or without a clause to substitute experience for education;
2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), with or without a clause to substitute experience for education; or
3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.
2. The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title. See N.J.A.C. 4A:1-1.3 for definition of class code.
3. The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.
4. To related titles, pursuant to an established plan approved by the Commissioner.
5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:

1. All applicants who meet the complete open competitive requirements;
2. All applicants who are permanent in a bridge title or titles approved by the Commissioner and who meet the complete open competitive requirements. A bridge title is one which is recognized by the Department of Personnel as related to a higher category title in terms of work performed and knowledge, skills and abilities required;
3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; or

4. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;
2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;
3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;
4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or
5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established as set forth in (d) above.

Correction: Subsection (c) cross-reference should be (a) instead of (b). Amended by R.1993 d.270, effective June 7, 1993. See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a). Revised text.

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in N.J.A.C. 4A:4-2.15;
2. Be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed;
3. Have not received a Performance Assessment Review (PAR) final rating below the Commendable level (or equivalent in an approved local service evaluation program) in each of the two rating periods immediately preceding the announced closing date; and
4. File an application on or before the application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

(c) Except when permitted by the Merit System Board for good cause, such as a documented affirmative action basis, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. The Department of Personnel may recommend to the Board good cause situations where out-of-title work should be accepted.

(d) Employees, with the exception of those serving in an entry level law enforcement or firefighter title, who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a)1 above, include continuous permanent service in any higher related or comparable title. Employees serving in an entry level law enforcement or firefighter title who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (b) above, include continuous permanent service in any higher related or comparable uniformed title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are separated or displaced as a result of layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons as determined by the Commissioner.

Amended by R.1993 d.45, effective January 19, 1993.
See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Redesignated existing (a)3 as (a)4; added new (a)3.
Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a)1 and 2; revised (f).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 810(a), 29 N.J.R. 1568(b).

Amended by R.2000 d.11, effective January 3, 2000.

See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

In (a)3, substituted "below the Commendable level" for "of a Four, Marginally Below Standards or Five, Significantly Below Standards" following "rating".

Petition for Rulemaking.

See: 36 N.J.R. 3303(a), 4176(b).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (d), added ", with the exception of those serving in an entry level law enforcement or firefighter title," to the first sentence and added the last sentence.

Case Notes

In a fire captain's suit against a city challenging the failure to appoint him to deputy fire chief, a civil service appointing authority violated the Rule of Three, set forth in N.J.S.A. 11A:4-8, in guaranteeing a promotional candidate that he would receive the appointment of deputy fire chief if he attained the highest score on the examination, particularly because that individual guarantee was not contemporaneously disclosed to the other applicants who sat for the examination. In re Martinez, 403 N.J. Super. 58, 956 A.2d 386, 2008 N.J. Super. LEXIS 206, 28 I.E.R. Cas. (BNA) 760 (App.Div. 2008).

Consideration of prior service in determining continuous service requirements for examination. Makowitz v. Civil Service Dep't, 177 N.J. Super. 61, 424 A.2d 1190 (App.Div.1980) certification denied 87 N.J. 326, 434 A.2d 76.

Preemptive rights to new position based on special reemployment list (citing former N.J.A.C. 4:1-12.4). Cunningham v. Dep't of Civil Service, 69 N.J. 13, 350 A.2d 58 (1975).

4A:4-2.7 Promotion upon waiver of competitive examination

(a) Following the announcement of a promotional examination, the Commissioner may authorize the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list if:

1. The employee has been successfully tested in the basic skills required for the promotional title;
2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;
3. The number of interested eligibles for the promotional examination referred to in (a) above does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a)4.

Amended by R.1997 d.443, effective October 20, 1997.

See: 29 N.J.R. 2731(a), 29 N.J.R. 4456(b).

Substantially amended (a); and in (a)3, inserted "for the promotional examination referred to in (a) above".

Case Notes

Remedy for unlawful discrimination—employee should be promoted to positions earlier denied them as such positions become available

(citing former N.J.A.C. 4:1-8.5). *Pilot v. Dep't of Health*, 7 N.J.A.R. 150 (1982) affirmed A-5858-81 (App.Div.1983).

4A:4-2.8 Scheduling of examinations

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Unless the examination notice states otherwise, candidates for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 15 minutes after the designated time.

2. Candidates for oral examinations or examinations containing oral and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time, provided the last scheduled candidate has not started the examination.

(d) A candidate who arrives late and is admitted to the examination shall receive the full allotted time to complete the examination.

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of examinations when requested by the Department of Personnel.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (c)1; deleted (c)2; redesignated existing (c)3 to (c)2.

Case Notes

Department of Energy could return employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-1.1). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for professional level engineering promotional examinations under (b) below and public safety open competitive and promotional examinations under (c) below, may be authorized for the following reasons:

1. Error by the Department of Personnel or appointing authority;

2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;

3. Documented serious illness or death in the candidate's immediate family;

4. Natural disaster;

5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and

6. Other valid reasons.

(b) For professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation; or

4. Error by the Department of Personnel or appointing authority.

(c) For police, fire, correction officer, sheriff's officer, juvenile detention officer and other public safety open competitive and promotional examinations, make-ups may be authorized only in cases of:

1. Death in the candidate's immediate family;

2. Error by the Department of Personnel or the appointing authority; or

3. A catastrophic health condition or injury, which shall be defined as either:

i. A life-threatening condition or combination of conditions; or

ii. A period of disability required by the candidate's mental or physical health or the health of the candidate's fetus which requires the care of a physician who provides a medical verification of the need for the candidate's absence from work for 60 or more work days.

(d) Employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list, for prospective appointment only, based upon the score obtained, as if the examination had been taken when originally held.

(e) Employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination.

(f) A candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in (a), (b) or (c) above, as applicable. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of one of the valid reasons set forth in (a), (b) or (c) above, as applicable, of which a candidate is aware upon receipt of the examination notice.

(g) Make-up examinations will be administered to the extent possible under the same conditions as the original examination but, in the case of public safety examinations under (c) above, shall be different in content from the original examination.

(h) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the Department of Personnel or appointing authority, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(i) All candidates taking make-up examinations, except physical performance examination, shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination, or third parties, provided that:

1. In the case of open competitive and promotional public safety examinations referred to in (c) above, candidates shall sign an additional statement accepting the make-up examination as a substitute for the original examination, provided, however, that signing this statement shall not preclude the candidate from challenging the validity of the make-up examination's items, the scoring of the make-up or the make-up test conditions. See N.J.A.C. 4A:4-6.3 and 6.4.

(j) In extraordinary circumstances, such as an examination that requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. In such cases, candidates will be so notified at least 45 days prior to the date of the examination. The only exception will be documented error on the part of the Department of Personnel or appointing authority, in which case a make-up may be granted if practicable.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a): added language regarding police and fire promotional examinations.

Relettered old (b)-(g) as (c)-(h) with no change in text.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (b), (e), (g) and (h).

Amended by R.1994 d.114, effective March 7, 1994.

See: 25 N.J.R. 4823(a), 26 N.J.R. 1225(a).

Amended by R.1994 d.285, effective June 6, 1994.

See: 26 N.J.R. 1183(a), 26 N.J.R. 2256(b).

Amended by R.1997 d.72, effective February 18, 1997.

See: 28 N.J.R. 4978(a), 29 N.J.R. 549(a).

Inserted new (d) and recodified former (d) through (h) as (e) through (i).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Rewrote the section.

4A:4-2.10 Conduct and security of examinations

(a) The Department shall insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(b) In the conduct or administration of an examination, the following shall be considered prohibited actions:

1. Securing, by unauthorized persons, of questions or materials, unless the same are available to all applicants;

2. Securing, by unauthorized persons, of information concerning the number or identity of applicants until all parts of the examination have been held and a resulting eligible list issued;

3. Identification of an applicant's examination papers or work before all examinations have been rated, where anonymity is required;

4. Impersonation of an applicant, either in person or by the improper exchange of applicant numbers or in any other manner;

5. Use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned;

6. A candidate's participation in an examination if it would likely result in physical injury to the candidate or others, or damage to property; or

7. Copying, recording or transcribing any examination question or answer, and/or the removal from any examination room of any question sheet, answer sheet, scrap paper, notes or other papers or materials related to the content of an examination.

(c) Anyone participating in a prohibited action under (b) above shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

(d) See N.J.A.C. 4A:4-2.6 on confidentiality of examination records.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Added new (d).

Case Notes

Once the Department of Personnel (DOP) or Merit System Board discovered that breaches in exam security had occurred, such as fact that unknown individuals had typed out 65 or 71 questions that appeared on sergeant's exam and disseminated them with answers throughout police department prior to the administration of any make-up exams, the make-up civil service exams should have been cancelled and an appropriate remedy fashioned to ensure that all candidates had a fair and competitive exam. In the Matter of Police Sergeant (PM3776V) City of Paterson, 176 N.J. 49, 819 A.2d 1173.

Violations of spirit and purpose of Civil Service rules. *Rox v. Dept. of Civil Service*, 141 N.J.Super. 463, 358 A.2d 819 (App.Div.1976).

4A:4-2.11 Residence standards

(a) In local service, an appointing authority shall provide the Department of Personnel with its residency ordinance or resolution, if any, on an annual basis as determined by the

Department, and shall provide any subsequent modifications within 20 days after adoption.

1. If the appointing authority provides the Department with such a subsequent modification following promulgation of an eligible list, the Department may charge it for the cost of reordering the list.

(b) Where residence requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;

2. Whether time actually spent in the claimed residence exceeds that of other locations;

3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c.246), a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(c) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. See N.J.A.C. 4A:4-4.7(a)7.

(d) The Department of Personnel will review residence requirements for examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment.

(e) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Department for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, the Department may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(f) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

Amended by R.1991 d.498, effective October 7, 1991.
See: 23 N.J.R. 1984(a), 23 N.J.R. 2999(a).

Authorized DOP to enforce residency requirements from examination closing date to the date of appointment.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (b).

Administrative Correction.

See: 25 N.J.R. November 15, 1993.

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Added a new (a) and recodified former (a) through (e) as (b) through (f).

Amended by R.2005 d.65, effective February 22, 2005.

See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In (b)3, inserted "or domestic partner" following "his or her spouse".

Case Notes

Applicant's appeal from determination of Merit System Board that he was not entitled to resident's preference was moot. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J.Super. 494, 582 A.2d 1266 (A.D.1990).

Termination of identification officers due to violation of residency requirements affirmed. *Barr and Payne v. City of Newark Police Department*, 97 N.J.A.R.2d (CSV) 582.

Employee was properly ranked on non-resident portion of eligible list. *Rizzolo v. Newark School District*, 94 N.J.A.R.2d (CSV) 506.

Documentation confirmed residence in Burlington township. In the Matter of *Stephen J. Wenger v. Burlington Township*, 94 N.J.A.R.2d (CSV) 394.

Employee was not resident for purposes of placement on eligibility list. *Lightfoot v. City of Newark*, 93 N.J.A.R.2d (CSV) 109.

Officer was required to live in the state of New Jersey. *Glover v. Middlesex County Probation Department*, 92 N.J.A.R.2d (CSV) 777.

Resident of borough as of announced closing date and as of appointment date entitled to residency preference. *Grembowiec v. Lysiak*, 92 N.J.A.R.2d (CSV) 356.

4A:4-2.12 Professional qualifications substitution program

(a) Applicants for designated open competitive or promotional examinations for professional titles may be permitted to substitute appropriate work experience, on a year-for-year basis, for specified higher educational requirements.

1. For titles requiring specific coursework or major fields of study, the successful completion of the coursework or fields of study shall be required.

Case Notes

Statements made in report of background check of police officer applicant. *Pollinger v. Loigman*, 256 N.J.Super. 257, 606 A.2d 1113 (A.D.1992).

Removal of applicant's name from open competitive list was improper; inability to communicate effectively in English. In the Matter of Bangar, 94 N.J.A.R.2d (CSV) 500.

Disqualification; lack of job requirements. *City of Trenton v. Porzilli*, 94 N.J.A.R.2d (CSV) 172.

Inability to speak English warranted removal of name from eligible list. *Patel v. Division of Youth and Family Services*, 93 N.J.A.R.2d (CSV) 147.

Removal from eligibility list for position at college was justified by inability to communicate in English. *Shah v. William Paterson College*, 93 N.J.A.R.2d (CSV) 97.

4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;
2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or
3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:
 - i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;
 - ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and
 - iii. See N.J.A.C. 4A:4-2.15(i) for tie scores.

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. A statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tied score;

5. In situations where an appropriate list is used, the title and functions of the appointee's employment; and

6. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Department may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8-1.1 et seq. for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

Amended by R. 1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a)3iii.

Amended by R.1994 d.507, effective October 3, 1994.

See: 26 N.J.R. 2697(b), 26 N.J.R. 3941(a).

Administrative correction.

See: 31 N.J.R. 1186(a).

Petition for Rulemaking.

See: 37 N.J.R. 1540(b), 2703(a).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (b), added language regarding extension of disposition due date.

Law Review and Journal Commentaries

Civil Service. Judith Nallin, 133 N.J.L.J. No. 14, 65 (1993).

Case Notes

The Civil Service Act and its accompanying regulations did not require that preliminary notices of disciplinary action be signed by both police director and IAD Commander because the Act and its regulations did not require two signatures for the filing of a complaint. *Grill v. City of Newark*, 709 A.2d 333, 311 N.J.Super. 149 (N.J.Super.L. 1997).

Stating reasons for administrative actions limits arbitrary determinations, enhances judicial review of agency decisions, and discloses correctable deficiencies to aid in guiding future conduct. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Law Division had jurisdiction over declaratory judgment action seeking statement of reasons why employees were not selected for promotion under the Civil Service Act. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Appointing administrative authority was not required by Civil Service Act or regulations to apprise unsuccessful qualified candidate of reasons for promoting lower-scoring eligible employee. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Minimal requirements for making a valid appointment: when appointment is final. *Thomas v. McGrath*, 145 N.J.Super. 288, 367 A.2d 898 (App.Div.1976), reversed per curiam 75 N.J. 372, 382 A.2d 1121 (1978).

Police captain fails to establish he was impermissibly bypassed for selection of police chief. *Shaffery v. Middletown Township*, 97 N.J.A.R.2d (CSV) 299.

Fire captains properly bypassed; exercise of discretion provided under the "rule of three" and not political discrimination. *Bulger v. Town of Harrison*, 93 N.J.A.R.2d (CSV) 509.

4A:4-4.9 Date of appointment

(a) An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.
2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or
3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall be no later than the disposition due date.

Amended by R.1996 d.98, effective February 20, 1996.
See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

In (a)3 substituted "be no later than" for "coincide with".

4A:4-4.10 Certification of additional eligibles

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that the Department certify additional names.

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire and regular reemployment lists;
2. Appointments to a comparable or lower related title in lieu of layoff; or
3. Appointments to titles previously held on a permanent basis within current permanent continuous service.
4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

Case Notes

Employee who worked out of title during working test period and did not perform the duties of the position was not entitled to permanent status (citing former N.J.A.C. 4:1-13.1 and 13.2). *Cipriano v. Dep't of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

Actual completion of a working test period is a basic condition of permanent employment (citing former N.J.A.C. 4:1-6.4). *Cipriano v. Dep't of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

Working out of title during working test period. *Cipriano v. Department of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

CETA hired police officers. Att'y Gen. F. O. 1977-No. 25 (see footnote).

Dismissal of employee at end of working test period for unsatisfactory performance was warranted, despite employee's claims that decision to dismiss her was made in bad faith. *Schopf v. New Jersey Department of Labor*, 96 N.J.A.R.2d (CSV) 853.

Release of family service specialist at end of working test period was not improper when based in part on comments of co-employees. *Nwosu v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 436.

Working test period justified school security guard's removal for incompetency. *Hogan v. Vineland Board of Education*, 95 N.J.A.R.2d (CSV) 400.

Food service worker on approved medical leave was entitled to additional working test period. *Singletary v. Bergen Pines County Hospital*, 95 N.J.A.R.2d (CSV) 370.

Laborer granted new working test period because job requirement of commercial driver's license not documented in progress report or final report. *Niosi v. Department of Public Works*, 95 N.J.A.R.2d (CSV) 238.

Release of drug abuse counselor at end of working test period; lack of veracity, good communication skills, punctuality and reliability. *Memmot v. Department of Health, Twp. of Freehold*, 95 N.J.A.R.2d (CSV) 118.

Correction officer properly released at end of working test period. *Muhammad v. Department of Corrections*, 94 N.J.A.R.2d (CSV) 609.

Probationary employee failed to show that he was released in bad faith. *Lindsley v. Department of Buildings and Grounds, Monmouth County*, 94 N.J.A.R.2d (CSV) 604.

Deficiency in both quality and quantity of work; release at end of working test period. *Brown v. Department of Labor*, 94 N.J.A.R.2d (CSV) 362.

Demotion justified; performance did not substantially improve during three-month test period. *Smith v. Jersey City Housing Authority*, 94 N.J.A.R.2d (CSV) 381.

Termination of hospital attendant at end of working test period was justified. *Vaidier v. Mercer County Geriatric Center*, 94 N.J.A.R.2d (CSV) 94.

Release of probationary police officer; working test period. *Burchardt v. Union Township Police Department*, 93 N.J.A.R.2d (CSV) 618.

Release of assistant engineer at end of his working test period justified. *De Botton v. Borough of Fair Lawn*, 93 N.J.A.R.2d (CSV) 579.

Release at end of work test period was not justified. *Hall v. Newark Housing Authority*, 93 N.J.A.R.2d (CSV) 432.

Removal at end of working test period for unsatisfactory services was not in bad faith. *Amin v. Department of Transportation*, 93 N.J.A.R.2d (CSV) 406.

Release at end of working test period was not in bad faith. *Capone v. State-Operated School District of Jersey City*, 93 N.J.A.R.2d (CSV) 395.

No showing of bad faith; termination at end of employee's working test. *Capone v. State-Operated School Dist. of City of Jersey City, Hudson County*, 93 N.J.A.R.2d (CSV) 395.

Removal at end of working test period was not action taken in bad faith. *Aller v. Department of Labor*, 93 N.J.A.R.2d (CSV) 390.

Decision to remove at the conclusion of working test period was not formulated in bad faith. *Aller v. Department of Labor*, 93 N.J.A.R.2d (CSV) 390.

Termination of officer was in bad faith. *Bowers v. Irvington Township Police Department*, 93 N.J.A.R.2d (CSV) 55.

Good faith; termination at the end of a working test period. *Davis v. Department of Transportation*, 92 N.J.A.R.2d (CSV) 769.

Suspension and release at end of working test period. *Evelina v. William Paterson College of New Jersey*, 92 N.J.A.R.2d (CSV) 738.

Release from position at the end of working test period was justified. *Meyrick v. Hunterdon County Sheriff's Office*, 92 N.J.A.R.2d (CSV) 692.

No error in release at the end of working test period. *Edington v. Treasury Department*, 92 N.J.A.R.2d (CSV) 673.

Release after working test period; not bad faith. *Phillips v. New Jersey Department of Human Services*, 92 N.J.A.R.2d (CSV) 602.

Department of Transportation improperly used a working test period as a basis for terminating inspector's employment. *Andres v. N.J. Department of Transportation*, 92 N.J.A.R.2d (CSV) 481.

Employee released in good faith at end of working test period. *Johnson v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 363.

Bad faith termination of recruit because of unsatisfactory working test period. *Smith v. Northern State Prison*, 92 N.J.A.R.2d (CSV) 342.

Release at end of extended working test period; not justified. *Vegotsky v. Office of Administrative Law*, 92 N.J.A.R.2d (CSV) 162.

Release at end of working test period; failure to demonstrate bad faith. *Downs v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 94.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-13.7). *Davis v. Newark Public Library*, 9 N.J.A.R. 84 (1987).

4A:4-5.2 Duration

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

(b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:

1. In local service, a period of three months of active service, which may not be extended.

2. In State service, a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request should be submitted to the Department of Personnel at least five working days before the end of the four month period. The appointing authority shall notify the employee of the extension in writing on or before the last day of the four month period.

i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Commissioner for an additional 44 work days. For purposes of this subsection, any part of a day shall constitute a work day.

ii. An employee serving in an intermittent title who is furloughed prior to completing the working test period, shall resume the working test period upon return from furlough.

(c) When notice of termination is served following the last day of the working test period pursuant to N.J.A.C. 4A:2-4.1(c), the working test period shall end on the date of service of the notice.

(d) Persons appointed to entry level law enforcement, correction officer, juvenile detention officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers, but shall not include the local service competitive title of Police Assistant. See N.J.A.C. 4A:3-3.7A. Persons appointed in local service to the competitive title of Police Assistant shall serve a three-month working test period.

1. In local service, law enforcement officers who are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training course. However, major disciplinary procedures applicable to employees serving in a working test period (see N.J.A.C. 4A:2-2) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.

i. Law enforcement officers who have successfully completed the police training course prior to appointment shall begin their working test period on the date of regular appointment.

2. Appeals from failure to successfully complete the police training course shall be in accordance with procedures established by the Police Training Commission. See N.J.A.C. 13:1-11.

(e) An approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.

1. A paid leave of absence for a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1 shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one year period.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (d): added "juvenile detention officer."

In (d)1: added text, "However ... regular appointment." Added 1. to subsection (e) regarding a paid leave of absence.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (b)2.

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (d), added "but shall not include the local service competitive title of Police Assistant," reference to N.J.A.C. 4A:3-3.7A and the last sentence.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that any slight delays in transmitting the request to extend an employee's working test period were certainly not indicative of bad faith on the part of the appointing authority, where the employee was released at the end of the extended working test period. In re Vилlecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Employee with permanent title of Children's Supervisor who accepted a position as a Human Services Specialist I with the county appointing authority when the county privatized its Children's Shelter was never laid off; the county rescinded its planned layoff, as all affected employees had accepted alternate employment within the county, and the employee's new position was a provisional appointment, pending promotional examination procedures. In re Garcia, OAL Dkt. No. CSV 11932-07, 2008 N.J. AGEN LEXIS 595, Merit System Board Decision (May 7, 2008).

New four-month working test period was granted in the title of Assistant District Parole Supervisor based on the totality of the circumstances, including the employee's satisfactory performance during the majority of the working test period and the lack of opportunity to remedy performance deficiencies brought to the employee's attention during the latter part of the working test period; the procedural irregularity caused by the fact that the working test period start date was not the same as the regular appointment date was not enough to justify granting permanent status to the employee under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Merit System Board directed the Division of Human Resource Information Services to reevaluate DOP practice of approving regular appointment dates that were not consistent with working test period start dates, resulting in uncertainties concerning the ending date of an employee's working test period and the time within which notice must be served under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Working test period extended 30 days to compensate for four weeks of approved leave and vacation. Regrut v. Warren County, 95 N.J.A.R.2d (CSV) 460.

Working test period for public employee was extended by approved leave of absence. Wilczynski v. Water Pollution Control, 95 N.J.A.R.2d (CSV) 378, reversed 96 N.J.A.R.2d (CSV) 300.

Food service worker on approved medical leave was entitled to additional working test period. Singletary v. Bergen Pines County Hospital, 95 N.J.A.R.2d (CSV) 370.

Supervisor was entitled to two-month extension of second working test period. McClellan v. Department of Community Affairs, 94 N.J.A.R.2d (CSV) 19.

4A:4-5.3 Progress reports

(a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Commissioner has extended the working test period in State service pursuant to N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.

(b) For entry level law enforcement, correction officer and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c) The appointing authority shall furnish the employee with a copy of all reports.

(d) In State service, the appointing authority shall:

1. Retain all reports for an employee in his or her individual personnel file;

2. When an employee is being separated or returned to his or her permanent title due to unsatisfactory performance, submit to the Department of Personnel, within five days following the last day of the working test period, copies of all progress reports and the final report and the written notice of separation or return to his or her permanent title;

3. Retain all progress reports and related material for the length of an employee's service and for six years following his or her separation from State service, if applicable; and

4. Retain for auditing any other records so identified by the Department of Personnel.

(e) In local service, the appointing authority shall furnish working test period progress reports to the Department of Personnel upon request.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (c); added new (d) and (e).

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that the absence of a justification letter along with the employee's fifth-month progress report did not constitute a showing of bad faith entitling the terminated employee to a new working test period;

the employee was counseled numerous times about her deficiencies. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Evaluation of probationary police officer's performance during working test period was deficient. *Love v. Irvington Township Police Department*, 93 N.J.A.R.2d (CSV) 482.

Failure to give employee written progress report during working test period; bad faith. *Sokolowsky v. Township of Freehold Dept. of Code Enforcement*, 92 N.J.A.R.2d (CSV) 155.

Employee was entitled to new working test period. *Richardson v. Department of Corrections, New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 63.

4A:4-5.4 Working test period appeals

(a) An employee may be separated for unsatisfactory performance at the end of the working test period. See N.J.A.C. 4A:2-4 for procedures.

(b) An employee may be disciplined during the working test period. See N.J.A.C. 4A:2-2 and 3 for procedures.

Case Notes

Improperly terminated public employee with some work deficiencies was entitled to new working test period instead of permanent appointment to position. *Saleem v. Department of Citizen Services*, 95 N.J.A.R.2d (CSV) 204.

4A:4-5.5 Restoration to eligible list or former title

(a) An employee who, either during or at the end of a working test period, resigns in good standing or is separated due to unsatisfactory performance may, upon request, be restored to an eligible list, if the Commissioner determines that the employee is suitable for appointment to another position.

1. The Commissioner may consider:
 - i. Whether the list can be certified to another appointing authority;
 - ii. The recommendation of the employee's former appointing authority; and
 - iii. Any other relevant factors.

2. Any employee who has been removed for disciplinary reasons shall not be restored to an eligible list.

3. Any employee who has filed an appeal pursuant to N.J.A.C. 4A:2-4 shall have his or her request for restoration held in abeyance pending the appeal.

(b) An employee who is laid off during the working test period shall be restored to the eligible list from which he or she was appointed.

(c) A permanent employee serving a working test period in another title shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

Amended by R.1989 d.570, effective November 6, 1989. See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added new (b) and relettered old (b) as new (c). Amended by R.1990 d.553, effective November 19, 1990. See: 22 N.J.R. 2629(a), 22 N.J.R. 3482(b).

Provision insures that permanent employee accrues seniority in permanent title during working test period in another title.

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

4A:4-6.1 Examination and selection disqualification

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;
2. Is ineligible, by law, for employment in the title;
3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;
4. Has failed to pass examination procedures;
5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;
6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;
7. Has a prior employment history which relates adversely to the title; or
8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or
9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Added new (a)8; redesignated (a)8 to (a)9.

Law Review and Journal Commentaries

Arrests—Civil Service—Police. *Judith Nallin*, 133 N.J.L.J. No. 6, 57 (1993).

Case Notes

Arrest justifies removal of applicant's name from eligibility list where circumstances surrounding arrest adversely relate to the employment

sought, and agency must state specifically its reasons for removal. *Tharpe v. City of Newark Police Dept.*, 261 N.J.Super. 401, 619 A.2d 228 (A.D.1992).

Remand was required where administrative record from Merit System Board did not disclose basis for Board's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Removal of provisional juvenile detention officer from eligible list because of prior employment history was improper without hearing by Merit System Board. *Matter of Wiggins*, 242 N.J.Super. 342, 576 A.2d 932 (A.D.1990).

Initial Decision (2008 N.J. AGEN LEXIS 318) adopted, which concluded that removal of applicant's name from the eligibility list for Human Service Specialist I was warranted because the applicant could not communicate in English sufficiently to perform the functions of the position. In re *Sheth*, OAL Dkt. No. CSV 5771-07, 2008 N.J. AGEN LEXIS 507, Final Decision (May 21, 2008).

Modification of removal to resignation in good standing was warranted where employee underwent successful rehabilitation after arrest on drug charges. *Beachum v. Vineland City Board of Education*, 96 N.J.A.R.2d (CSV) 312.

Fact that drug screening guidelines were not strictly followed during unannounced screening did not require removal of positive test result from state police recruit's record. In the *Matter of the Appeal of Wayne Paterno*, 96 N.J.A.R.2d (POL) 5.

Removal of dismissed provisional police officer's name from eligibility list was justified by poor past performance. *Grafje v. Hudson County Sheriff*, 95 N.J.A.R.2d (CSV) 476.

Advanced information about contents of promotional examination disqualified public employee from eligibility for promotion. *Motiani v. State Department of Transportation*, 95 N.J.A.R.2d (CSV) 121.

Removal of assistant engineer traffic's name from list for senior engineer traffic appropriate; employee attempted to get knowledge about examination. *Motiani v. State Department of Transportation*, 95 N.J.A.R.2d (CSV) 121.

Removal from eligibility list for fire lieutenant not warranted. *Brown v. City of Gloucester*, 93 N.J.A.R.2d (CSV) 464.

History of erratic emotional instability warranted removal of applicant's name from eligible list for family service specialist position. *Calhoun v. Division of Youth and Family Services*, 93 N.J.A.R.2d (CSV) 268.

County was justified in removing applicant's name from open competitive list. *Strasser v. Camden County*, 92 N.J.A.R.2d (CSV) 497.

4A:4-6.2 Actions against disqualified persons

(a) A disqualification under N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;
2. Refusal to test an individual;
3. Refusal to place a candidate's name on an eligible list;
4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

(b) Major disciplinary procedures shall be applicable to removal of an employee who is permanent or serving in a working test period.

Case Notes

Remand was required where record did not disclose basis for agency's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Process servers have no statutory right to tenure (citing former N.J.A.C. 4:1-8.14). *New Jersey District Court Assoc., Inc., v. New Jersey Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (App.Div.1985) affirmed 208 N.J.Super. 527, 506 A.2d 742 (1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Absent contractual, statutory or implied right to continued employment, employment termination invokes no substantive due process protection of a property interest (citing former rule N.J.A.C. 4:1-8.14). *N.J. District Court Associates, Inc., v. N.J. Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (Law Div.1985) affirmed 209 N.J.Super. 527, 506 A.2d 742 (App.Div.1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Where a former public employee's dismissal was not attributable to delinquency or misconduct, former N.J.A.C. 4:1-8.14 did not disqualify the employee from public service in the future. *Battaglia v. Union County Welfare Bd.*, 88 N.J. 48, 438 A.2d 530, 1981 N.J. LEXIS 1683 (1981), writ of certiorari denied by 456 U.S. 965, 102 S. Ct. 2045, 72 L. Ed. 2d 490, 1982 U.S. LEXIS 2038, 50 U.S.L.W. 3881 (1982).

Interest in liberty protected by due process clause; right to post-termination evidentiary hearing (citing former N.J.A.C. 4:1-8.14). *Campbell v. Atlantic Cty. Bd. of Freeholders*, 145 N.J.Super. 316, 367 A.2d 912 (Law.Div.1976) affirmed per curiam 158 N.J.Super. 14, 385 A.2d 311 (App.Div.1978).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). *Valluzzi v. Bergen County*, 10 N.J.A.R. 89 (1988), adopted—*Merit System Bd.*, App.Div. A-3269-87, 3/3/88.

Discretion of Bd. of Trustees to refund contributions to pension fund after employee was dismissed for delinquent performance of his duties. Refund granted (citing former N.J.A.C. 4:1-8.14). *Maddox v. Bd. of Trustees*, 2 N.J.A.R. 372 (1980).

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring and administration (see N.J.A.C. 4A:4-6.4);
2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and
3. Examination related matters other than (a)1 and (a)2 above (see N.J.A.C. 4A:4-6.6) including:
 - i. Disqualifications under N.J.A.C. 4A:4-6.1;
 - ii. List extension or revival; and
 - iii. Denial of veterans preference for a particular examination.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Commissioner, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)l: Made stylistic revisions.

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (a)3iii, added "for a particular examination."

Case Notes

Merit System Board bears burden of establishing job-validity of its psychological tests. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Appointing authority has discretion under "rule of three" statute to appoint any of top three candidates while statute mandating preference for residents in the event of tie scores were pertinent in placing three people on list (citing former N.J.A.C. 4:1-9.6; 4:2-9.1; 4:3-9.1). *Gallagher v. Irvington*, 190 N.J.Super. 394, 463 A.2d 969 (App.Div.1983).

Claim of failure to promote due to anti-union animus. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978). Modified and affirmed 82 N.J. 1, 410 A.2d 1146 (1980).

Jurisdiction, Civil Service Commission and PERC. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978) modified 82 N.J. 1, 410 A.2d 1146.

4A:4-6.4 Review of examination items, scoring and administration

(a) No later than five business days after the examination has been held, candidates for multiple choice examinations