

“Rules of the OAL” means the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added definitions “ALJ” and “OAL” and revised “Commissioner” and “Interested persons”.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added definition of “proof of service”.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote “Commissioner”; in “Proof of service”, added the N.J.A.C. reference.

Case Notes

Part-time tenured teacher improperly denied compensation was not entitled to prejudgment interest against Board of Education. *Bassett v. Board of Educ. of Borough of Oakland, Bergen County*, 223 N.J.Super. 136, 538 A.2d 395 (A.D.1988).

State board’s guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void. *Bd. of Ed., Plainfield, Union Cty. v. Cooperman*, 209 N.J.Super. 174, 507 A.2d 253 (App.Div.1986) certification granted 104 N.J. 448, 517 A.2d 436, affirmed as modified 105 N.J. 587, 523 A.2d 655.

Dispute regarding proper salary credits for out-of-state graduate courses was best resolved by the grievance procedure. *River Dell Regional Board of Education v. Canal*, 93 N.J.A.R.2d (EDU) 784.

Propriety of tape recording closed executive sessions of board of education; Commissioner of Education lacked jurisdiction. *Board of Education of Township of Hamilton v. Fraleigh*, 93 N.J.A.R.2d (EDU) 538.

Parents’ challenge to disciplinary action taken against unrelated child; standing. *U.K. and G.K., Parents on Behalf of Minor Child, D.K. v. Board of Education of City of Clifton*, 93 N.J.A.R.2d (EDU) 71.

Memorandum and resignation letter constituted enforceable settlement agreement. *Board of Education of Township of Clinton v. Sirotnak*, 92 N.J.A.R.2d (EDU) 628.

Teachers associations have standing to contest awarding of service contract. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

6A:3-1.3 Filing and service of petition of appeal

(a) To initiate a contested case for the Commissioner’s determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers (and fax numbers where available) of the petitioner and each respondent, and the original and two copies of the petition and supporting materials, if any, with the Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. In no case shall a petitioner submit materials to the Commissioner which have not been served upon each respondent.

1. Any petition filed jointly by three or more petitioners, where the petitioners are pro se, shall designate one petitioner as a representative of the group for purposes of receipt of service for answer(s), initial correspondence, pretransmittal notices and other communications prior to the agency’s determination that the matter is a contested case. In subsequent proceedings, however, if petitioners are acting as a group, the group shall comply with applicable rules of the OAL regarding representation.

2. A petition on behalf of a minor shall be filed by the parent or legal guardian of the minor. Once such a petition is filed, the matter shall be subsequently identified by the initials of petitioner(s) and the child(ren).

3. A petitioner shall notify the Bureau of Controversies and Disputes of any change in address or telephone number prior to transmittal of a matter to the OAL.

(b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.

1. In the case of petitions by unsuccessful bidders challenging an award of bid by a board of education under the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.), the successful bidder shall be named as a respondent.

(c) A petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall indicate in the petition whether a claim has been filed, or will be filed within the requisite statutory time frame, with the Division of Workers’ Compensation.

(d) A petitioner claiming that his or her employment was nonrenewed for reasons that are statutorily or constitutionally proscribed shall set forth in the petition at least a minimal factual basis for such allegation(s), consistent with New Jersey Court Rules at R. 4:5-2.

(e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department’s Office of Special Education Programs (OSEP).

1. If a petition appears to raise, in addition to issues within scope of the Commissioner’s authority, issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the OSEP, it will be docketed by the Bureau of Controversies and Disputes in accordance with this chapter and also forwarded to OSEP for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the

OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7(f), except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the matter as an education (EDU) case and the ALJ shall render an initial decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. If a petition appears solely to raise issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, it may, after notice to the parties and opportunity to be heard, be transferred to the OSEP in accordance with the provisions of N.J.A.C. 6A:3-1.10(b).

(f) Where a matter is transferred to the Commissioner by a court, it shall be the responsibility of the parties to ensure that the order of transfer, pleadings and any other pertinent papers are forwarded to the Commissioner, c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant(s) will be asked to re-submit the matter to the Commissioner in the form of a duly conformed Petition of Appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.

(g) Consistent with the provisions of N.J.A.C. 1:10A-14, where a petition, or tenure charge pursuant to N.J.A.C. 6A:3-5, is filed in a matter involving allegations of child abuse and neglect reported to or investigated by the Division of Youth and Family Services (DYFS), the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ to whom a matter is subsequently assigned at the OAL, to protect all DYFS records and reports regarding such abuse and neglect.

1. The final agency decision in any dispute as to the confidentiality of records or reports of child abuse or neglect shall be made by DYFS in accordance with N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G.

(h) Proof of service shall be in the form of one of the following:

1. An acknowledgment of service signed by the attorney or the attorney's designee for each respondent or signed and acknowledged by the respondent or agent thereof, indicating the address at which each respondent was served;

2. An affidavit of the person making service, sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation, indicating the address at which each respondent was served;

3. A certification indicating the address at which each respondent was served and meeting the requirements of New Jersey Court Rules at R. 1:4-4(b); or

4. A copy of petitioner's receipt for certified mailing or delivery by messenger to each respondent. The return receipt card ("green card") is not required for proof of service by certified mailing.

(i) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. Any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall file a petition within 90 days of receipt of notice of the district board of education's action, or of the action of the district board of education's agent, which has the effect of denying such benefits. Upon filing of the district board of education's answer to the petition, the Commissioner shall, where a workers' compensation claim has been or is intended to be filed, transmit the matter to the OAL with the request that the petition be held in abeyance pending determination by the Division of Workers' Compensation as to whether the underlying injury is work-related.

(j) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners or other entity located within the Department, is named as a party, proof of service to the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section. When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this section, but to the attention of the appropriate section of the Division of Law.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted old text and substituted new.

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Amended to provide for the filing of two copies of a petition in order to conform to OAL rules which require the transmittal of two copies of any petition; described what documentation may prove that service has been accomplished and when there must be proof of service to Attorney General.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.
 Sec: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).
 Rewrote the section.

Law Review and Journal Commentaries

Education—Limitation of Actions—Tenure. Judith Nallin, 136 N.J.L.J. 81 (1994).

Education—Public Employees—Teachers. Steven P. Bann, 133 N.J.L.J. 65 (1993).

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., C.A.3 (N.J.)*1994, 7 A.D.D. 911, 42 F.3d 149, rehearing and rehearing in banc denied.

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., D.N.J.*1993, 817 F.Supp. 14.

Parents of handicapped student did not waive right to reimbursement by placing student in private school and failing to initiate review. *Bernardsville Bd. of Educ. v. J.H., D.N.J.*1993, 817 F.Supp. 14.

Consideration by Commissioner of constitutionality of public employer's practice of crediting employee's credit union and annuity plans was not untimely under rule requiring that declaratory judgment action be filed within 90 days from receipt of final order. *Board of Educ. of Tp. of Neptune v. Neptune Tp. Educ. Ass'n*, 293 N.J.Super. 1, 679 A.2d 669 (A.D.1996).

Resolution not to rehire principal was final action of the board, requiring appeal within 90 days; letter to principal in August was merely response to her attorney's letter. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Principal informed by school board in April of her third year that she would not be rehired was required to file challenge within 90 days. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Regulation focusing on date of employer's wrongful act as accrual date rather than date consequences are felt by the employee, was not arbitrary or capricious. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D. 1994), certification denied 137 N.J. 315, 645 A.2d 142.

Due process rights of assistant superintendent terminated not violated by regulation containing 90-day limitation of repose on school law dispute. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Right to reemployment by former assistant superintendent terminated as part of reduction in force was not exempt from 90-day limitation for commencing school law disputes. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

"Adequate notice" which commences running of 90-day limitation on school law disputes is that sufficient to inform individual of some fact that communicating party has duty to communicate. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Informal notice that two positions had been filled triggered 90-day period for commencing action to assert tenure rights. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

School board was not equitably estopped from asserting 90-day limitations by its failures. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

No enlargement or relaxation of 90-day limitation period for asserting tenure claim necessary where petitions were not timely filed after

receiving notice. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Delegation of power to promulgate rule provided adequate standards. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Delegation of power to establish rules relating to hearing of controversies authorized creation of time limits. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Ninety-day limitation for initiating controversy before commissioner of schools was enforceable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitation period for initiating controversy before commissioner of schools was not inapplicable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitations period commenced no later than receipt of letter advising former superintendent of appointments of other persons. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Former superintendent was not entitled to discretionary waiver of limitations period. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Requirements for adequate notice to commence running of time to appeal to Commissioner. *Stockton v. Bd. of Ed., Trenton, Mercer Cty.*, 210 N.J.Super. 150, 509 A.2d 264 (App.Div.1986).

Petition for salary increment for time spent on sabbatical denied as filed beyond 90 day limit. *North Plainfield Education Assn. v. Bd. of Ed., North Plainfield Boro., Somerset Cty.*, 96 N.J. 587, 476 A.2d 1245 (1984).

Arbitration proceedings do not alter filing time requirement. *Riely v. Hunterdon Central High School Bd. of Ed.*, 173 N.J.Super. 109, 413 A.2d 628 (App.Div.1980).

Dismissal of teacher's tenure entitlement claim due to untimeliness reversed. *Beshaw v. Board of Education of the Borough of Oakland, Bergen County*, 97 N.J.A.R.2d (EDU) 494.

Appeal of school district ruling triggers 90-day appeal compliance despite Commissioner's deference of jurisdiction until worker's compensation determination. *Medeiros v. School District of Jersey City, Hudson County*, 97 N.J.A.R.2d (EDU) 276.

Petition which alleged that county superintendent had no reasonable basis for requiring substitute teaching certificate for site monitor positions was dismissed as untimely and without merit. *Wynne v. Tillery, Camden County Superintendent of Schools*, 96 N.J.A.R.2d (EDU) 995.

Teacher's complaint that school board wrongfully deducted monies from her salary was dismissed as untimely filed. *Hoffman v. Township of Hillsborough*, 96 N.J.A.R.2d (EDU) 943.

Petition challenging school board's acceptance of instructor's resignation was dismissed as not timely filed. *Wilson v. Toms River Regional School District*, 96 N.J.A.R.2d (EDU) 872.

School administrator's request for payment of unused vacation time was denied based upon untimely filing of petition. *McCrea v. Upper Saddle River Board of Education*, 96 N.J.A.R.2d (EDU) 817.

Timely resignation entitled principal to unused vacation pay. *Gilson v. Board of Education of the Township of Dennis*, 96 N.J.A.R.2d (EDU) 801.

Failure to provide suspended student with notice of charges or timely hearing required student's reinstatement. *C.F. v. City of Wildwood Board of Education*, 96 N.J.A.R.2d (EDU) 619.

Expulsion hearing must be held within 21 days of student's suspension for assault on teacher. *Garrity v. State Operated School District of Paterson*, 96 N.J.A.R.2d (EDU) 568.

Statutory period to file petition challenging school board's salary action commenced upon notification of that action. *Conklin v. Old Bridge Township Board of Education*, 96 N.J.A.R.2d (EDU) 502.

Tenured school psychologist's petition appealing denial of claim for benefits was timely if it was filed with Commissioner within 90 days after school board's denial subsequent to Workers' Compensation determination. *Sweet v. Jackson Township Board of Education*, 96 N.J.A.R.2d (EDU) 471.

Commissioner of Education has jurisdiction over appeal of school board attendance policy determination. *F.C. v. Palmyra Board of Education*, 96 N.J.A.R.2d (EDS) 329.

School board's attempt to obtain teacher's suspension for resigning without notice failed for failure to file within ninety days. *Elmwood Park Board of Education v. Farrell*, 95 N.J.A.R.2d (EDU) 375.

Claim for injury sustained while in employ of school board must be filed within 90 days of denial. *Verneret v. Elizabeth Board of Education*, 95 N.J.A.R.2d (EDU) 134.

Petition for accrued vacation was untimely when filed more than 90 days after final action of dismissal on tenure charges. *Romanoli v. Willingboro Board of Education*, 95 N.J.A.R.2d (EDU) 81.

Nontenured teacher's appeal of termination; untimely. *Portee v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 381.

Tenured teacher's petition for reinstatement was not time-barred. *Cahn v. Borough of Deal Board of Education*, 94 N.J.A.R.2d (EDU) 330.

Appeal filed after 30 day limitation; dismissal. *University Bus Co. v. Paterson School District*, 94 N.J.A.R.2d (EDU) 223.

Custodian's appeal filed more than a year after his replacement was untimely. *Raymond v. River Edge Borough Board of Education*, 94 N.J.A.R.2d (EDU) 203.

No final action approving of school closing; petition for emergent relief premature. *Brodie v. Board of Education of Township of Saddle Brook*, 93 N.J.A.R.2d (EDU) 694.

Petition challenging assignment of pupil as resident pupil in school district responsible to pay educational component of pupil's placement at facility was time barred. *Board of Education of City of Atlantic City v. New Jersey Department of Education*, 93 N.J.A.R.2d (EDU) 667.

Petition alleging violation of seniority rights created under previous administrative decision; 90-day rule. *Metzger v. Board of Education of Township of Willingboro*. 93 N.J.A.R.2d (EDU) 548.

90-day period of limitation applied to sexual harassment claim. *Ward v. Board of Education of Bridgewater-Raritan School District*, 93 N.J.A.R.2d (EDU) 435.

Date of filing petition related back to date of filing complaint with Superior Court. *Driggins v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 317.

Resolution whether 90-day rule applied to bar claim warranted remand. *Driggins v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 158.

Contractor lacked standing to challenge bid specifications. *Green v. Board of Education of Township of Old Bridge*, 93 N.J.A.R.2d (EDU) 115.

Letter from board informing teacher of resolution terminating employment initiated 90-day period. *Nissman v. Board of Education of Township of Long Beach Island*. 92 N.J.A.R.2d (EDU) 621.

Application of 90-day rule; date of meeting at which teacher learned other teacher appointed to position commenced period. *Davenport v. Butler Board of Education*. 92 N.J.A.R.2d (EDU) 614.

Ninety-day rule would be relaxed in interest of justice and fairness, and entire controversy doctrine would not be invoked; rights of tenured teacher. *Boles v. Board of Education of Vocational Schools of County of Bergen*, 92 N.J.A.R.2d (EDU) 554.

Letter reasonably placed service provider on notice of refusal by board of education to pay for services; 90-day rule. *Morris-Union Jointure Commission v. Board of Education of Borough of South River*. 92 N.J.A.R.2d (EDU) 453.

Letter indicating expulsion proceedings would not be instituted; notice of "final action" for purposes of 90-day appeal time limit. *Markulin and Neptune Township Education Association v. Board of Education of Township of Neptune*, 92 N.J.A.R.2d (EDU) 406.

Receipt of letter commenced 90-day period for filing appeal regarding claimed violation of tenure and seniority rights resulting from reduction in force. *Sasse v. Board of Education of Borough of Point Pleasant*, 92 N.J.A.R.2d (EDU) 339.

Petition for sick leave benefits timely filed. *Verneret v. Board of Education of City of Elizabeth*, 92 N.J.A.R.2d (EDU) 191.

Final report required for each year of special education contract constituted final action for 90-day rule. *Early Intervention Programs of Monmouth and Ocean Counties v. Ellis (John), Osowski (Jeffrey), Jones (James A.)* 92 N.J.A.R.2d (EDU) 68.

Petitioner entitled to an evidentiary hearing on question of whether his resignation involuntary. *Brunnquell v. Bd. of Educ. of Scotch Plains-Fanwood*, 11 N.J.A.R. 499 (1987).

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit. *Bergenfield Education Assn. v. Bd. of Ed., Bergenfield Boro., Bergen Cty.*, 6 N.J.A.R. 150 (1980) remanded per curiam Docket No. A-2615-81 (App.Div.1983).

Petition for sick leave benefits filed out of time not entitled to discretionary review under former N.J.A.C. 6:24-1.19. *Scotch Plains-Fanwood Assn. of School Aides v. Bd. of Ed., Scotch Plains-Fanwood Regional School District, Union Cty.*, 5 N.J.A.R. 175 (1980).

Petition for pre-1979 sick leave benefits filed out of time. *Scotch Plains-Fanwood Assn. of School Aides v. Bd. of Ed., Scotch Plains-Fanwood Regional School District, Union Cty.*, 5 N.J.A.R. 175 (1980).

Petitioner's claim of wrongful termination of health insurance benefits not barred by 90 day filing limit. *Janus v. Bd. of Ed., Maywood Boro., Bergen Cty.*, 4 N.J.A.R. 105 (1982).

Claim barred by failure to file petition within 90 days after notice of termination. *Moreland v. Passaic Bd. of Ed.*, 3 N.J.A.R. 276 (1980).

Claim barred as filed beyond 90 day limit. *Scelba v. Bd. of Ed., Town of Montclair, Essex Cty.*, 2 N.J.A.R. 70 (1981); 3 N.J.A.R. 136 (1981).

Tolling of filing time. *Shokey v. Bd. of Ed., Cinnaminson Twp., Burlington Cty.*, 1978 S.L.D. 919, 1979 S.L.D. 869.

Prospective application of rule. *Smith v. Bd. of Ed., New Brunswick, Middlesex Cty.*, 1978 S.L.D. 214.

6A:3-1.4 Format of petition of appeal

(a) A petition shall include the name and address of each petitioner; the name and address of each party respondent; a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws; the relief petitioner is seeking; and a notarized statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen. A petition should be presented in substantially the following form:

ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon such member until such time as the member complies;

4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);

5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13); and

6. Establishing a State-operated school district (N.J.S.A. 18A:7A-14(e)).

(b) Parties to contested matters shall not submit or request the issuance of orders to show cause seeking enforcement of litigants' rights. Parties seeking enforcement of judgments of the Commissioner shall generally bring an action in the Superior Court as provided in New Jersey Court Rules at R. 4:67-6. Such actions as are appropriately brought before the Commissioner due to the need for a further determination on a school law issue in order to resolve the parties' adjudicated rights, are to be initiated by way of a petition conforming to the requirements of N.J.A.C. 6A:3-1.3, accompanied, where appropriate, by a motion for emergent relief with a letter memorandum or brief addressing the standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b).

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added new (b); provision prohibiting orders to show cause except by petition accompanied by motion.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), rewrote the introductory paragraph, and added 6; and rewrote (b).

Amended by R.2005 d.109, effective April 4, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (a), substituted "or" for "of" preceding "party to show cause" in the introductory paragraph and substituted "the member" for "he or she" in 3ii; rewrote (b).

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

6A:3-4.1 Withholding salary increment

(a) Where a district board of education acts to withhold a teacher's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teacher may file a petition of appeal according to the procedures outlined in this chapter.

1. Disputes involving the withholding of a teacher's salary increment for predominately disciplinary reasons shall be subject to the grievance procedures established by law in accordance with N.J.S.A. 34:13A-26. Pursuant to

N.J.S.A. 34:13A-27, if there is a dispute as to the nature of a withholding, the Public Employment Relations Commission shall determine whether the basis for the withholding is predominately disciplinary.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted old text and inserted new.

Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Added "based upon teaching performance" . . . ; added cite to modified statute.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Substituted "petition of appeal" for "formal petition of appeal for a hearing" following "file a".

Amended by R.2005 d.109, effective April 4, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Case Notes

Teacher not entitled to salary increments for period of paid suspension pending determination of certified tenure charges. *DiPillo v. Township of Randolph*, 97 N.J.A.R.2d (EDU) 238.

Guidance counselor failed to refute school board's showing that poor performance warranted denial of salary increment. *Besty Kidd v. Board of Education of the Penns Grove-Carney's Point Regional School District*, 97 N.J.A.R.2d (EDU) 143.

Showing R-rated film to 12 and 13-year-old students was poor judgment warranting denial of tenured teacher's salary increment for year. *Capizola v. South Plainfield Board of Education*, 95 N.J.A.R.2d (EDU) 479, supplemented 96 N.J.A.R.2d (EDU) 440.

Negative impact of teacher's absenteeism on continuity of instruction to students warranted withholding salary increments for an academic year. *Kochman v. Keansburg Board of Education*, 95 N.J.A.R.2d (EDU) 212.

Withholding of employment and adjustment increments for school psychologist was for good cause and was not beyond managerial prerogative of school board. *Kaska v. Trenton Board of Education*, 95 N.J.A.R.2d (EDU) 55.

Withholding of salary increment for unsatisfactory performance was not arbitrary, capricious or unreasonable. *Simon v. State-Operated School District of Paterson City*, 94 N.J.A.R.2d (EDU) 537.

Withholding increments due to weakness in classroom management was not unreasonable. *Harrity v. Keansburg Board of Education*, 94 N.J.A.R.2d (EDU) 376.

Recoupment of salary and/or adjustment increments; disciplined tenured teacher; subsequent salary freeze. *Cerato v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 248.

Chronic absenteeism of teacher; basis to withhold salary increments. *Kochman v. Keansburg Borough Board of Education*, 94 N.J.A.R.2d (EDU) 141.

Withholding salary increments for unsatisfactory performance was not arbitrary, capricious, or unreasonable. *Brown v. Jersey City School District*, 93 N.J.A.R.2d (EDU) 875.

Payment of salary increments neither mandated nor prohibited upon expiration of collective negotiations agreement. *Neptune Township Board of Education v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 791.

Increments withheld; unsatisfactory ratings and excessive absenteeism. *Faccone v. Board of Education of City of Jersey City*, 93 N.J.A.R.2d (EDU) 502.

Withholding teacher's employment and adjustment increment; not arbitrary or capricious. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 312.

Payment of increments following expiration of collectively negotiated salary schedule was governed by Employer-Employee Relations Act. *Board of Education of Township of Neptune v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 178.

Board of education under no obligation to return teacher whose increment was withheld to regular salary guide; New Jersey Employer-Employee Relations Act. *Fieseler v. South River Board of Education*, 93 N.J.A.R.2d (EDU) 136.

Increment withholding proceedings; inadequate record; remand. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 41.

Withholding adjustment increment not arbitrary; alleged procedural deficiencies in evaluation process. *Sturm v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 661.

Classroom management; withholding increment and salary adjustment reasonable. *Gnatt v. Board of Education of Manalapan-Englishtown Regional School District*, 92 N.J.A.R.2d (EDU) 589.

Withholding of teacher's increment; no abuse of discretion. *Brown v. Township of South Brunswick Board of Education*, 92 N.J.A.R.2d (EDU) 560.

Withholding of salary increment sustained; insensitivity and lack of compassion towards students. *Byorek v. Board of Education, Scotch Plains-Fanwood School District*, 92 N.J.A.R.2d (EDU) 511.

Withholding increment and salary increase; performance of teaching duties and alleged insubordination. *Backer v. Township of Roxbury Board of Education*, 92 N.J.A.R.2d (EDU) 441, reversed 96 N.J.A.R.2d (EDU) 349.

Withholding adjustment and employment increments; application of absenteeism policy. *Pollard v. Board of Education of Township of Teaneck*, 92 N.J.A.R.2d (EDU) 279.

Failure to show that decision to withhold increments and to place reprimand in file was unreasonable. *Zarro v. Board of Education of Paramus, Bergen County*, 92 N.J.A.R.2d (EDU) 145.

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

6A:3-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred before the Commissioner against an employee of a district board of education or of a State-operated school district pursuant to the Tenure Employees' Hearing Act, N.J.A.C. 6A:3-1.3, Filing and service of petition, shall not apply. In place of the usual petition, the district board of education or the State district superintendent shall file the original and two copies of the written charges and the required certificate of determination with the Commissioner together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated agreement between a district board of education and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed in order to impose minor discipline on a person serving under tenure.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the secretary of the district board of education or the State district superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education or the State district superintendent a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of the tenured employee's written statements of position and evidence under oath, or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.

5. The district board of education or the State district superintendent shall, within three working days, provide written notification of the determination to the employee against whom the charge has been made, in person or by certified mail to the last known address of the employee and the employee's representative, if known.

6. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the board or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, except in the case of building principals in State-operated school districts, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the secretary of the district board of education or the State district superintendent along with a statement of evidence in support thereof executed under oath.

2. The district board of education, through its board secretary, or the State district superintendent, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, or the State district superintendent shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90-day period, or any longer period provided by the district board of education or State district superintendent, the district board of education or the State district superintendent intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education or the State district superintendent shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6:3-4.3(f) to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90-day period for improvement, or such longer period as may be provided by the district board of education or the State district superintendent, the administrator(s) responsible for bringing such charges to the attention of the district board of education or the State district superintendent shall notify the district board of education or the State district superintendent in writing of what charges, if any, have not been corrected.

6. The district board of education or the State district superintendent, upon receipt of the written notification, shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90-day period, or such longer period as may be provided by the district board of education or the State district superintendent, to the

notification of the employee by the district board of education or the State district superintendent shall not exceed 30 calendar days.

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

10. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added (b)-(c).

Amended by R.1991 d.57, effective February 4, 1991.

See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Petition for Rulemaking

See: 38 N.J.R. 2216(a).

Case Notes

Tolling of time to determine probable cause for dismissing tenured teacher during response time and for day of service. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Adequate certification of charges against tenured employee where document containing jurat was signed four days before secretary signed certification. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Notice from school board; termination proceedings. *Jackson v. Englewood Board of Election*, 94 N.J.A.R.2d (EDU) 520.

Evidence established that it was reasonable for board of education to refuse to certify tenure charges. *Bey v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 288.

6A:3-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary or the State district superintendent:

1. That the district board of education or the State district superintendent has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education or by the State district superintendent in accordance with N.J.S.A. 18A:7A-39; and

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(b) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), inserted references to State district superintendents throughout; and added (d).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (b), substituted “, who are governed by” for “pursuant to” following “charter schools” and amended the N.J.A.C. reference.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

Issue of form over substance in remedying procedural defect. In re: *Tenure Hearing of Kizer*, 1974 S.L.D. 505.

6A:3-5.3 Filing and service of answer to written charges

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the

charges. Except as to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. Any papers filed in conjunction with a motion to dismiss shall be submitted in original form with two copies. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner.

(b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging district board of education or the State district superintendent. Such district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education and in the Juvenile Justice Commission

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education, or within the Juvenile Justice Commission pursuant to N.J.S.A. 52:17B-170, other than for

reasons of inefficiency shall comport with the process as described in N.J.A.C. 6A:3-5.1(b) except as set forth in this section. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in the Juvenile Justice Commission, or

with an individual within the Department of Education designated by the Commissioner, as appropriate. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6A:3-5.1(b).