

## CHAPTER 4 APPEALS

### Authority

P.L. 2008, c. 36.

### Source and Effective Date

R.2009 d.248, effective July 10, 2009.  
See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

### Chapter Expiration Date

Chapter 4, Appeals, expires on July 10, 2014.

### Chapter Historical Note

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

Chapter 2, Appeals, were repealed and adopted as new rules by R.1989 d.67, effective February 6, 1989.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

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

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

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

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

Chapter 4, Appeals, was repealed and Chapter 4, Appeals, was adopted as special new rules by R.2008 d.225, effective July 8, 2008. See: 40 N.J.R. 4606(a).

Chapter 4, Appeals, was readopted as R.2009 d.248, effective July 10, 2009. As a part of R.2009 d.248, Subchapter 3, Special Proceedings, was renamed Motions; and Subchapter 5, Miscellaneous Provisions, was repealed, effective August 3, 2009. See: Source and Effective Date. See, also, section annotations.

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### SUBCHAPTER 1. GENERAL PROVISIONS

#### 6A:4-1.1 Purpose and scope

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

#### Case Notes

Once a child is enrolled in a charter school, the charter school becomes responsible for the educational program the child is to receive. When the charter school child study team, in cooperation with the parents, determines that a child shall attend an out-of-district private special education facility in order to receive the program determined to be appropriate to his needs, the resident board of education is not entitled to a due process hearing to challenge that placement. The resident board of education's challenge under N.J.S.A. 18A:36A-11 is to be made by filing an appeal before the Commissioner of Education under N.J.S.A. 18A:6-9. *Garfield Bd. of Educ. v. T.C. ex rel. J.C.*, OAL Dkt. No. EDS 3508-08, 2008 N.J. AGEN LEXIS 894, Final Decision (May 7, 2008).

#### 6A:4-1.2 Definitions

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

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

"Department" means the New Jersey State Department of Education.

“Filing” means receipt of an original paper by an appropriate officer of the Department. With the prior approval of the director of the Bureau of Controversies and Disputes, and generally up to a maximum of 10 pages, filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery. Parties requesting return of a stamped copy of any filing must include an extra copy of the document, together with a self-addressed envelope stamped with sufficient postage for this purpose. Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.

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

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

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

Amended by R.2009 d.248, effective August 3, 2009.  
See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).  
Added definition “Filing”.

### 6A:4-1.3 Appeal of decisions

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

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

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

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

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

of the Superior Court pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-11.1.

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

(d) Interlocutory orders, decisions or actions of the Board of Examiners or the School Ethics Commission may be appealed to the Commissioner by leave granted pursuant to N.J.A.C. 6A:4-3.4.

(e) Requests for relief arising from decisions of the State Board of Education rendered prior to the effective date of P.L. 2008, c. 36 shall be made to the Commissioner by motion in accordance with the provisions of N.J.A.C. 6A:4-3.1.

Amended by R.2009 d.248, effective August 3, 2009.  
See: 41 N.J.R. 1921(a), 41 N.J.R. 2893(a).

In (c)1, inserted “or dismissing a complaint,” and “pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-11.1”; in (d) and (e), updated the N.J.A.C. reference; and in (e), inserted “with”.

## SUBCHAPTER 2. PROCEDURES FOR APPEAL

### 6A:4-2.1 Who may appeal

(a) Any party aggrieved by a decision of the State Board of Examiners suspending or revoking a certificate, or of the School Ethics Commission finding a violation of the School Ethics Act, may appeal to the Commissioner in accordance with the procedures set forth in this chapter.

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

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

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

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

### 6A:4-2.2 Time for appeal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SUBCHAPTER 4. REVIEW AND DECISION****6A:4-4.1 Standard of review**

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

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

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

**6A:4-4.2 Settlement and withdrawal**

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

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

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

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

**6A:4-4.3 Commissioner's decision**

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

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

**6A:4-4.4 Relaxation of rules**

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

ence to such rule is deemed inappropriate or unnecessary or would result in injustice.

(b) Briefing on appeals and motions shall be in accordance with provisions of this chapter; provided, however, that the Commissioner may modify time schedules or direct additional submissions, in his or her discretion or by leave upon motion of a party, where he or she deems it necessary to expedite proceedings or protect the interests of the parties.

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

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