

**CHAPTER 3  
CONTROVERSIES AND DISPUTES**

**Authority**

N.J.S.A. 18A:6-9; 18A:6-10; 18A:7-4; 18A:7A-15; 18A:7F-9; 18A:7G-12; 18A:11-3; 18A:12-29; 18A:20-36; 18A:26-10; 18A:28-8; 18A:29-4; 18A:29-14; 18A:33-2; 18A:38-1; 18A:38-13; 18A:39-28; 18A:54-4 and 18A:60-1; and P.L. 2007, c. 260.

**Source and Effective Date**

R.2010 d.072, effective April 23, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

**Chapter Expiration Date**

Chapter 3, Controversies and Disputes, expires on April 23, 2015.

**Chapter Historical Note**

Chapter 3, Controversies and Disputes, was originally codified in Title 6 as Chapter 24, Controversies and Disputes. Chapter 24 was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.1986 d.157, effective April 10, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.1991 d.57, effective January 11, 1991. See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b). Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 24 was extended from January 11, 1996 to July 11, 1997. See: 26 N.J.R. 3783(a), 26 N.J.R. 3942(a). Pursuant to Executive Order No. 66(1978), Chapter 24 expired on July 11, 1997.

Chapter 24, Controversies and Disputes, was adopted as new rules by R.1997 d.358, effective September 2, 1997. See: 29 N.J.R. 2745(a), 29 N.J.R. 3817(a).

Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997. See: 29 N.J.R. 2591(a), 29 N.J.R. 3806(a).

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.2000 d.137, effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic Athletic Association (NJSIAA), Subchapter 8, Appeals from Local District Determinations of Entitlement to Attend School Based Upon Domicile or Residency in District, Subchapter 9, Review of Penalty Determination of the School Ethics Commission, and Subchapter 10, "Abbott" Appeals, were adopted as new rules by R.2000 d.137, effective April 3, 2000. See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Chapter 3, Controversies and Disputes, was readopted as R.2005 d.109, effective March 10, 2005. See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Chapter 3, Controversies and Disputes, was readopted as R.2010 d.072, effective April 23, 2010. As a part of R.2010 d.072, Subchapter 12, Requests for Recording of Judgment, and Subchapter 13, Hearings Prior to Suspension or Revocation of School Bus Driver Endorsement Pursuant to N.J.S.A. 18A:39-28 et seq., were adopted as new rules, effective May 17, 2010. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

**6A:3-1.1 Purpose and scope**

(a) This chapter sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

(b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:

1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 18A:6-17;
2. Termination of sending-receiving relationships pursuant to N.J.S.A. 18A:38-13;
3. Appeals from decisions of the New Jersey State Interscholastic Athletic Association pursuant to N.J.S.A. 18A:11-3;
4. Denials of entitlement to attend school pursuant to N.J.S.A. 18A:38-1;
5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29; and
6. Hearings prior to suspension or revocation of school bus driver endorsements pursuant to N.J.S.A. 18A:39-28 et seq.

(c) This chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. In accordance with N.J.S.A. 18A:7F-5e(3), such restorations shall be sought pursuant to the provisions of N.J.A.C. 6A:23-8.10.

(d) This chapter shall not apply to appeals of decisions of the State Board of Examiners suspending or revoking teach-

ing certificates, decisions of the School Ethics Commission finding violation of the School Ethics Act, interlocutory decisions of the Board of Examiners or the School Ethics Commission, or requests for relief arising out of legal decisions of the State Board of Education. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

New Rule, R.2000 d.137, effective April 3, 2000.

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

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

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

Amended the N.J.A.C. references throughout.

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (b)4, deleted "and" from the end; in (b)5, substituted "; and" for a period at the end; added (b)6; in (c), substituted "This" for "In accordance with N.J.S.A. 18A:7F-5e(3), this" and "In accordance with N.J.S.A. 18A:7F-5e(3), such" for "Such"; and added (d).

**Case Notes**

Final investigation decision rendered by the Office of Special Education Programs, pursuant to the Individuals with Disabilities Education Act, cannot be appealed to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

Initial Decision (2008 N.J. AGEN LEXIS 328) adopted, which concluded that the Commissioner of Education had jurisdiction over a residency dispute where parents, who had bought a house in the school district that was not completed yet, signed an affidavit stating that they assumed liability for tuition assessed if their children were not residents of the school district after five weeks; the affidavit did not appear to be a contract as the five-week grace period was a standing general policy of the school board, and even if it were a contract, the Commissioner has clear jurisdiction over claims of violations of the school laws. K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 328) adopted, which explained that the restriction on the jurisdiction of the Commissioner of Education in contract disputes is limited to disputes that do not arise out of the school laws and is typically only applied to teacher contract disputes. K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 329) adopted, which concluded that the Commissioner of Education did not have legal authority to award a parent damages for lost wages and child care expenses incurred while his son was suspended from school; the award of money damages in cases before the Commissioner occurs only in a limited number of cases authorized by the education statutes. B.G. ex rel. B.G. v. Bd. of Educ. of East Orange, OAL Dkt. No. EDU 3036-08, Final Decision (May 20, 2008).

**6A:3-1.2 Definitions**

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

"ALJ" means an administrative law judge assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

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).

Where a teacher successfully appealed his 1999 termination and it was determined on remand on Sept. 17, 2007 that he was not entitled to back pay after 2002-03 due to the district's lack of vacant positions within his certification, the teacher's subsequent petition, filed on Dec. 14, 2007, claiming entitlement to employment based on an additional endorsement (Teacher of the Handicapped) he received in 2002 was barred by the 90-day rule of N.J.A.C. 6A:3-1.3. The 90-day period began to run upon the teacher's awareness that the board considered his entitlement to any type of employment in the district to have ended after 2002-03, which occurred at the very latest on December 8, 2006 — the filing date of the Board's brief in the prior proceeding on remand, and for the 2007-08 school year, well before the end of the 2006-07 school year; thus, his Dec. 2007 petition was barred (adopting as modified 2008 N.J. AGEN LEXIS 749). *Ziegler v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 3007-08, 2008 N.J. AGEN LEXIS 1072, Final Decision (November 5, 2008).

Under N.J.A.C. 6A:3-1.3(i), a teacher acquired tenure and her appeal of a board of education's decision non-renewing her position was not time barred after a County Superintendent issued a letter to the teacher clearly holding out the possibility that the teacher could be retained in another position and keep her benefits. Contrary to the board's position, the 90-day period did not begin to run when the teacher received notice in May 2006 that her position was being eliminated and she would have to apply for a maternity leave position; instead, the 90-day period began to run in April 2007 when the board adopted a resolution "non-renewing" the teacher effective June 30, 2007. *Taibi v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 8090-07, 2008 N.J. AGEN LEXIS 1193, Final Decision (September 24, 2008).

In a dispute between sending and receiving school districts over resource room charges, the sending districts failed to file their appeal within the 90-day limitations period prescribed by N.J.A.C. 6A:3-1.3(i) because they had knowledge of the receiving district's position before the May 14, 2007 opinion letter from the Division of Finance that they claimed started the running of the period. *Bd. of Educ. of Waterford v. Bd. of Educ. of Hammonton*, OAL Dkt. Nos. EDU 6798-07 and EDU 8091-07 (CONSOLIDATED), 2008 N.J. AGEN LEXIS 261, Commissioner's Decision (March 24, 2008).

It is by now well established that a petitioner whose cause of action arises out of the nonrenewal of his or her employment must — unless facts necessary to make a claim are unknown at the time — file a petition within 90 days of the *notice of nonrenewal*, and that the running of the regulatory limitations period of N.J.A.C. 6A:3-1.3 is not tolled by the possibility that the petitioner might ultimately persuade the board to offer reemployment through statutory and regulatory mechanisms provided for this purpose. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Ninety-day filing period of N.J.A.C. 6A:3-1.3(i) did not begin to run in October 2005, when the board of education ratified a settlement agreement providing a school employee with a one-year, nontenured employment contract. The employee's claim was nevertheless time-barred because the operative date for the running of the limitations period was not November 21, 2006, when the employee's position was eliminated, but at the earlier time when the employee was notified by letter that the superintendent would recommend that the board not renew the employee's contract. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Where a ten-month teaching staff member received a letter from the Superintendent dated April 27, 2007, during the eighth month of her third academic year of service, informing her that her contract would not be renewed for the upcoming school year, yet her employment did not end until June 30, 2007, the 90-day time limitation for filing a petition under N.J.A.C. 6A:3-1.3(i) began to run from petitioner's receipt of the April 27 letter; contrary to petitioner's contention that the period ran from June 30 because she was not appealing from the nonrenewal but from the violation of her tenure status, which did not occur until she attained tenure and was terminated on June 30, the period ran from the April 27 letter because petitioner at that time learned that the board was taking action adverse to her interests (adopting and supplementing 2007 N.J. AGEN LEXIS 807, and agreeing that the case was controlled by *Nissman v. Bd. of Educ. of Long Branch*, 272 N.J. Super. 373 (App.Div. 1994)). *Salazar-Linden v. Bd. of Educ. of Holmdel*, OAL Dkt. No. EDU 8194-07, 2008 N.J. AGEN LEXIS 670, Commissioner's Decision (March 3, 2008).

N.J.S.A. 34:13A-27(d) worked to ensure that a teaching staff member who sought arbitration in the belief that the withholding of his or her increment constituted discipline — and then had such arbitration enjoined when a dispute arose as to the nature of the withholding — would not be precluded by operation of the 90-day rule (N.J.A.C. 6A:3-1.3(i)) from subsequent appeal to the Commissioner. *Giorgio v. Bd. of Educ. of Bridgeton*, OAL Dkt. No. EDU 8136-06, 2008 N.J. AGEN LEXIS 142, Commissioner's Decision (February 19, 2008).

Provision of N.J.S.A. 18A:38-19 specifying that tuition to be paid by a sending district shall not exceed the actual cost per pupil does not create an "entitlement," outside the scope of the 90-day rule; although a dispute between sending and receiving districts concerning alleged overcharges presented issues of timeliness, the Commissioner decided the merits given the unique circumstances and that both parties were equally to blame, and in the interest of the districts' citizens. *Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights*, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Where a parent sought expungement of disciplinary records from her child's file, even if the provision in a Consent Order reserving to the parent "all rights to future action with respect to any program, placement, and record issues" consensually extended the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) until completion of evaluations and the scheduling of an IEP meeting, the parent's appeal still was not timely filed. *J.G. ex rel. C.G. v. Galloway Community Charter School*, OAL Dkt. No. EDU 6122-07, 2008 N.J. AGEN LEXIS 260, Final Decision (January 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 450) adopted, which concluded that a petition was barred under the 90-day rule of N.J.A.C. 6A:3-1.3(i), where two nontenured teaching staff members received nonrenewal letters on May 1, 2006 that cited budgetary constraints, and the employees did not learn until September 1, 2006 that replacements had been hired for their positions. The 90-day period ran from May 1, 2006; in any event, local boards of education have almost unlimited discretion in terminating nontenured teachers, absent constitutional or legislative constraints, and the teachers did not exercise their right to an informal hearing under N.J.S.A. 18A:27-4.1(b) and N.J.A.C. 6A:32-4.6. *Middletown Educ. Ass'n ex rel. McGee v. Bd. of Educ. of Middletown*, OAL Dkt. No. EDU 12159-06, Commissioner's Decision (August 16, 2007).

Adequate notice requirement should effectuate concerns for individual justice by not triggering the limitations period until the tenured teachers have been alerted to the existence of facts that may equate in law with a post-RIF cause of action; at the same time, it should further considerations of repose by establishing an objective event to trigger the limitations period in order to enable the proper and efficient administration of the affairs of government. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

Notwithstanding that a nonrenewal letter was sent to other nontenured teaching staff members in compliance with the requirements of N.J.S.A. 18A:27-10, it triggered the 90-day filing period set forth in N.J.A.C.

6A:3-1.3(i) by providing the teacher with notice that she would not be offered employment for the following school year. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

N.J.A.C. 6A:3-1.3(i) applies to a petition brought by a local district board of education. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

Although the 90-day rule of N.J.A.C. 6A:3-1.3(i) applied to a local district board of education's petition seeking removal of a board member under N.J.S.A. 18A:12-2 because of his wife's filing of a workers' compensation claim, dismissal of the dispute on procedural grounds would have left unaddressed a question of significant public interest, thus warranting relaxation of procedural rules pursuant to N.J.A.C. 6A:3-1.16. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

The 90-day limitations period of N.J.A.C. 6A:3-1.3(i) begins to run when the petitioner has knowledge of the "existence of the state of facts which might equate in law with a cause of action." *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Ninety-day limitations period of N.J.A.C. 6A:3-1.3(i) ran from the date petitioner learned of his reassignment from the position of high school vice principal, a twelve-month position, to the position of elementary school vice principal, a ten-month position, and not from the later date when petitioner received his first paycheck of the school year and allegedly first learned that the reassignment would affect his salary increase expectancies; not only was it reasonable to charge petitioner with knowledge that elementary vice principalships are ten-month positions, but also tenured employees have no vested right in any future increases in salary. *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Teacher's receipt of notice of the Board's "final action" on the subject of her resignation at its August 16, 2005 meeting triggered the running of N.J.A.C. 6A:3-1.3(i), and consequently any challenge to the action was required to be filed before the Commissioner within 90 days of that time; neither the fact that the teacher continued in the Board's employ subsequent to its acceptance of her resignation nor the teacher's attempt to rescind her resignation by letter dated May 8, 2006 precluded application of the 90-day rule, and therefore the Petition of Appeal at issue, filed nearly 11 months after the Board's final action, was clearly out of time. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Notwithstanding that the limitations rule of N.J.A.C. 6A:3-1.3(i) is to be strictly applied, the Commissioner may relax the rule pursuant to N.J.A.C. 6A:3-1.16 under exceptional circumstances or if there is a compelling reason to do so; such authority, however, is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, or injustice would occur, or the Commissioner finds a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Irrespective that untimeliness barred consideration of a teacher's petition, the teacher was not prevented from acquiring tenure, as such status is statutory in nature and attaches automatically upon the fulfillment of the requisite conditions; however, the fact that the teacher may have acquired tenure at some point during the school year had no bearing whatsoever, as the teacher had resigned from the District and had thus voluntarily relinquished any rights that otherwise might have accrued by virtue of such status. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Township board of education seeking to recoup a tuition overpayment to a special services school district should have acted to file its petition within 90 days of learning of recertified tuition rates (adopting in part, and rejecting in part 2007 N.J. AGEN LEXIS 68). *Bd. of Educ. of Twp. of Pemberton v. Bd. of Educ. of Burlington County Special Services School Dist.*, OAL Dkt. No. EDU 8568-04, 2007 N.J. AGEN LEXIS 317, Commissioner's Decision (April 12, 2007).

Initial Decision adopted, which concluded that petitioner's claim that her tenure rights were violated was time-barred under N.J.A.C. 6A:3-1.3(i), where petitioner had to have realized the district's position that she was not tenured when she received the letter notifying her of rescission due to excessive absenteeism and tardiness, as a tenured position could not be rescinded by letter; in any event, petitioner did not possess the requisite certification "in full force and effect" to achieve credit towards tenure at any time during her service as vice principal. *Clanton v. State-Operated School Dist. of Newark*, OAL Dkt. No. EDU 7092-06, 2007 N.J. AGEN LEXIS 313, Commissioner's Decision (March 12, 2007).

Where a teacher was nonrenewed and claimed to have first discovered the facts on which the petition was based during litigation against the Board, the claim under N.J.S.A. 18A:27-3.1 concerning evaluations was untimely under N.J.A.C. 6A:3-1.3(i) because, *inter alia*, petitioner must be charged with having known whether and when an observer was in his classroom and whether and when he received evaluations (adopting and supplementing 2007 N.J. AGEN LEXIS 10). *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Petition for appeal must be filed within 90 days of the notice of nonrenewal, not within 90 days of the exhaustion of other avenues and mechanisms. *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 10) adopted and supplemented, which determined that neither *Kaczmarek v. N.J. Tpk. Auth.*, 77 N.J. 329 (1978) nor N.J. Ct. R. 1:13-4 applied to relax the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) where a teacher, who received notice of nonrenewal dated May 1, 2001 and a final letter in June, had filed an action in Superior Court on August 17, 2001 for discrimination and retaliation and later filed an unsuccessful motion to amend to add the subject Title 18A claims; the Title 18A claims were distinct from the initial Superior Court claims and those initial claims had been within the jurisdiction of the court. *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1008) adopted, which concluded that parents' challenge to a mandatory school uniform policy was barred by the 90-day limitations period of N.J.A.C. 6A:3-1.3, which began to run when the Board adopted the policy at a public meeting in June 2006, and the fact that the policy was later amended did not alter this result; the proper standard is not when the Board's action was final, but when a petitioner had or reasonably should have had notice of the Board's action. Even assuming *arguendo* that the petition was timely, the parents failed to satisfy any of the requirements necessary for the granting of emergent relief under N.J.A.C. 6A:3-1.6. *Coles v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 10535-06, Commissioner's Decision (December 8, 2006), *aff'd*, SB No. 01-07, 2006 N.J. AGEN LEXIS 1085 (N.J. State Bd. of Educ. April 4, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 896) adopted, which found that petitioners' challenge to a board of education's policy filed with the Commissioner of Education on February 17, 2006 was time-barred, where the policy in its present form was revised and adopted on May 10, 2004, and had remained unchanged since that date, as was petitioners' challenge to a student attendance plan, approved by the board of education on September 12, 2005; as to petitioners' contention that even if the petition were not timely filed, this was a matter of significant

1. Where a matter has already been transmitted to the OAL, at the same time the motion is filed with the Commissioner, a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known.

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).

Amended to clarify that motions for stays of action or the granting of emergent relief may be directed at parties other than boards of education and that such requested action should be by way of a separate motion; provided that a motion for stay or emergent relief must be accompanied by a letter memorandum or brief addressing the standard for such relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982) and provided that the Commissioner may decide a motion for a stay prior to receipt of an answer, after the filing of an answer or transmit the matter to OAL for an immediate hearing on the motion.

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

Rewrote (b) and (d); in (c), changed N.J.A.C. reference in the introductory paragraph; and added (e).

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.

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Section was "Interim relief or stay". Deleted (e).

**Case Notes**

ALJ found no proof of irreparable harm warranting emergent relief where student was not allowed to participate in extracurricular activities after being found in possession of a knife on school property and engaging in a narcotics related activity. *D.C. ex rel. M.C. v. West Essex Reg'l School Bd. of Educ.*, OAL Dkt. No. EDU 03601-07, 2007 N.J. AGEN LEXIS 203, Initial Decision (April 5, 2007).

Local educational services commission (ESC) met the standard for grant of emergent relief under N.J.A.C. 6A:3-1.6, and the appropriate order was to direct renewal of the parties' lease, as sought in the ESC's application, for the entire 2006-07 school year. Although granting such relief effectively ended the dispute without benefit of a plenary hearing, the 2006-07 school year would have been well under way by the time a hearing would have been held, and an order disrupting the school program mid-year would not issue even in the extremely unlikely event that the ESC did not prevail on the merits of its claim. *Union County Educ. Servs. Comm'n v. Bd. of Educ. of Westfield*, OAL Dkt. No. EDU 7522-06, 2006 N.J. AGEN LEXIS 930, Commissioner's Decision (September 18, 2006).

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. *J.T., a Minor Child v. Barnegat Township*, 93 N.J.A.R.2d (EDS) 89.

Parents were not entitled to emergent relief of having child skip grade; alleged disparate treatment in child repeating grade. In *Matter of T.P. and D.P. on Behalf of Minor Child, T.J.P. v. Board of Education of Borough of Oaklyn*, 92 N.J.A.R.2d (EDU) 625.

Board of Education seeking stay of decision holding that school forfeited two games by playing a transferee student in violation of rule failed to demonstrate irreparable harm, relative hardship, or probability of success on merits. *Board of Educ. of the City of Trenton, Mercer County v. New Jersey State Interscholastic Athletic Ass'n*, 91 N.J.A.R.2d 158 (EDU).

No entitlement to preliminary injunction to prevent distribution of supplemental funds under Quality Education Act. *Board of Educ. of the Bordentown in Regional School Dist. v. Ellis*, 91 N.J.A.R.2d 59 (EDU).

**6A:3-1.7 Amendment of petition and answer**

(a) Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application.

(b) Following transmittal to the OAL, motions to amend a petition or answer shall be filed with and determined by the OAL in accordance with applicable rules of the OAL.

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).

Stylistic and change of N.J.A.C. cite.

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.

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Deleted (a)1.

**6A:3-1.8 Permission to intervene or participate**

(a) Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the Commissioner. Upon transmittal, requests shall be made to the OAL.

(b) Such requests, whether decided by the Commissioner or by the OAL, shall be reviewed in accordance with the standards set forth in applicable rules of the OAL.

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

Old text deleted and new text inserted.

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

Stylistic and change of N.J.A.C. cite.

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.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Deleted (b)1.

**Case Notes**

Class action certification denied as not provided for in regulations. *Lukas v. Dept. of Human Services*, 5 N.J.A.R. 81 (1982), affirmed in part, reversed in part and remanded per curiam Dkt. No. A-5850-82 (App.Div.1984), appeal decided 103 N.J. 126, 510 A.2d 1123.

Standing of exclusive representative. *Winston v. Bd. of Ed., South Plainfield Boro.*, 125 N.J.Super. 131, 309 A.2d 89 (App.Div.1973), affirmed 64 N.J. 582, 319 A.2d 226 (1974).

Discretionary authority. *Jones v. Bd. of Ed., Leonia Boro., Bergen Cty.*, 1974 S.L.D. 293, 1974 S.L.D. 298.

Criteria explained. *Kolbeck v. State Bd. of Ed.*, 1973 S.L.D. 770.

Party standing, intervention, participation and status. *Kolbeck v. State Bd. of Ed.*, 1973 S.L.D. 770.

### 6A:3-1.9 Appearance and representation

(a) Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State or by such other person as set forth in applicable rules of the OAL.

(b) Once a matter has been deemed contested, a district board of education shall be represented by an attorney in accordance with applicable rules of the OAL. Certain corporations other than district boards of education may be represented by non-lawyer representatives in accordance with applicable rules of the OAL.

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

Added: (See N.J.A.C. 1:1-1.3.)

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

Stylistic and change of N.J.A.C. cite.

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 (b).

### 6A:3-1.10 Dismissal or transfer of petition

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

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

Recodified and amended from 1.10. The original section 1.9 was "Conference of counsel" and was repealed.

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 (a); in (b), inserted "and notice to the parties with opportunity to be heard" preceding "transfer the petition".  
Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Deleted designation (a); and deleted (b).

#### Case Notes

Rule allowing the Commissioner of Education to dismiss a petition on grounds that "no sufficient cause for determination has been advanced" was not administrative equivalent of court rule allowing pleadings to be dismissed for "failure to state a claim upon which relief can be granted;" under rule Commissioner had authority to dismiss school board's petition after it failed to submit factual support for its petition's claims. *Sloan v. Klagholtz*, 776 A.2d 894 (2001).

Initial Decision (2008 N.J. AGEN LEXIS 92) adopted, which concluded that school board's petitions, seeking restitution from former administrators on the basis that their employment contracts did not cover compensatory time, were purely contractual matters, and therefore beyond the scope of the Commissioner of Education's subject matter jurisdiction. *Bd. of Educ. of Twp. of North Brunswick v. Sigall*, OAL Dkt. No. EDU 8738-07 and EDU 8739-07 (Consolidated), 2008 N.J. AGEN LEXIS 266, Commissioner's Decision (March 27, 2008).

Nontenured employee's appeal from nonrenewal of employment could not result in a favorable finding despite procedural deficiencies and was dismissed. *Gillison v. Newark Board of Education*, 95 N.J.A.R.2d (EDU) 157.

Dismissal of petition due to delay and failure to comply with conference requirements. *Mangieri v. Bd. of Ed., Carteret Boro., Middlesex Cty.*, 1974 S.L.D. 644, 1975 S.L.D. 1100.

Written submissions and pre-hearing conference. *Bd. of Ed., Haledon Boro. v. Mayor and Council, Haledon Boro., Passaic Cty.*, 1974 S.L.D. 712.

### 6A:3-1.11 Hearing

Upon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter pursuant to N.J.A.C. 6A:3-1.10, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the matter pursuant to N.J.S.A. 18A:4-33 and 18A:4-34, or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner, delegated to an Assistant Commissioner or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL. If the Commissioner retains a matter for hearing directly or through a designee, the matter may, in the Commissioner or designee's discretion, be decided summarily where the record so permits.

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

Old text deleted and new text substituted.

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

Permitted the designation of an Assistant Commissioner to hear and decide the case.

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.

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Updated the N.J.A.C. reference.

#### Case Notes

Parent failed to properly appeal from school board decision. *R.J. v. Lower Camden County Regional School District*, 97 N.J.A.R.2d (EDU) 155.

Decision of school board to expel student for physically assaulting teacher was neither arbitrary, unreasonable, nor capricious. *K.O.H. v. Edison Board of Education*, 95 N.J.A.R.2d (EDU) 275, affirmed 96 N.J.A.R.2d (EDU) 445.

School band member's threat to kill band director was reasonable grounds for suspension from band activities. *McB. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDU) 298.

herence thereto may be deemed inappropriate or unnecessary or may result in injustice.

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

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

Added text "or her".

Recodified from N.J.A.C. 6:24-1.17, R.1991 d.57, effective February 4, 1991.

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

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

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

Substituted "in this chapter" for "herein contained" following "rules" in the first sentence, and inserted "Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL," at the beginning of the second sentence.

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

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

Substituted "the Commissioner's" for "his or her" preceding "discretion" in the second sentence.

**Case Notes**

Discretionary waiver of limitations periods was not appropriate where petition was not filed in timely manner. *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.

Where a teaching staff employee's petition filed on August 14, 2007 was time-barred because it was not filed within 90 days of receipt of the April 27, 2007 letter nonrenewing her contract, and petitioner worked until the end of her contract on June 30, 2007, and claimed her termination was in violation of tenure that she achieved after the nonrenewal letter, there were no compelling grounds for relaxation of the 90-day rule; the complexity of the tenure laws does not excuse an employee from complying with school law procedural requirements, and petitioner had no tenure when she was told she was being nonrenewed (adopting and supplementing 2007 N.J. AGEN LEXIS 807). *Salazar-Linden v. Bd. of Educ. of Holmdel*, OAL Dkt. No. EDU 8194-07, 2008 N.J. AGEN LEXIS 670, Commissioner's Decision (March 3, 2008).

Although the 90-day rule of N.J.A.C. 6A:3-1.3(i) applied to a local district board of education's petition seeking removal of a board member under N.J.S.A. 18A:12-2 because of his wife's filing of a workers' compensation claim, dismissal of the dispute on procedural grounds would have left unaddressed a question of significant public interest – the legal status of a sitting board of education member – thus warranting relaxation of procedural rules pursuant to N.J.A.C. 6A:3-1.16. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

Notwithstanding that the limitations rule of N.J.A.C. 6A:3-1.3(i) is to be strictly applied, the Commissioner may relax the rule pursuant to N.J.A.C. 6A:3-1.16 under exceptional circumstances or if there is a compelling reason to do so; such authority, however, is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, or injustice would occur, or the Commissioner finds a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1008) adopted, which concluded that parents challenging mandatory school uniform policy had not demonstrated grounds to relax the 90-day rule; the matter did not involve a recognized exception to the rule, such as (1) an important and novel constitutional question, (2) an informal or ex parte determination of a legal question by administrative officials, or (3) an important public interest requiring adjudication or clarification, and the authority to relax the rule is rarely invoked. *Coles v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 10535-06, Commissioner's Decision (December 8, 2006), aff'd, SB No. 01-07, 2006 N.J. AGEN LEXIS 1085 (N.J. State Bd. of Educ. April 4, 2007).

Relaxation of the 90-day filing requirement of N.J.A.C. 6A:3-1.3(i) was warranted where parent contacted the Department of Education twice within the 90-day limitations period, seeking assistance, but in neither instance was the parent directed to the proper office for filing a petition of appeal; the claims failed on their merits, however, as there was no showing that the district acted in an arbitrary, capricious, or unreasonable manner in its handling of the student's grades. *C.G. & R.G. ex rel. R.M.G. v. Bd. of Educ. of Brick*, OAL Dkt. No. EDU 2375-05; SB No. 16-06 (N.J. State Bd. of Educ. July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 15) adopted, which concluded that no basis existed to warrant relaxation or waiver of the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) where parent petitioners failed to appropriately identify any substantial constitutional issue or issue of fundamental public interest beyond that of concern to petitioners themselves regarding which grade their children would enter in the school year at issue and failed to demonstrate that strict adherence to the 90-day rule would be inappropriate, unnecessary, and result in injustice; the children had been denied grade promotion due to excessive absences. *W.V. and L.V. ex rel. C.V. and Ch. V. v. Bd. of Educ. of Montville*, OAL Dkt. No. EDU 5402-05, 2006 N.J. AGEN LEXIS 220, Commissioner's Decision (February 21, 2006).

Adopting and modifying on other grounds the Initial Decision (2005 N.J. AGEN LEXIS 531), which concluded that no compelling or exceptional circumstances existed to warrant relaxation of the 90-day rule, where the Board offered petitioner a contract, petitioner asked for changes, the Board refused by letter, and the discussions ended there, unlike *Polaha v. Buena Reg'l School Dist.*, 212 N.J. Super. 628 (App.Div. 1986). *Taylor v. Bd. of Educ. of Hardyston*, OAL Dkt. No. EDU 1049-05, 2005 N.J. AGEN LEXIS 1231, Commissioner's Decision (October 27, 2005).

Grant of extended sick leave within school board's discretion; no vested rights arise from such discretionary action. *Adell v. Bd. of Ed., Fair Lawn Boro., Bergen Cty.*, 2 N.J.A.R. 327 (1980).

**6A:3-1.17 Awarding of interest**

(a) The Commissioner may, pursuant to the criteria of this section, award prejudgment and/or postjudgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

1. Any petitioner seeking award of prejudgment interest shall so specify in the petition's request for relief and shall propose, before the Commissioner or the ALJ, whoever is hearing the case, an interest calculation consistent with (d) below.

2. Any party seeking postjudgment interest shall file a new petition in accordance with N.J.A.C. 6A:3-1.3, addressing the criteria set forth in (c)2 below and proposing an interest calculation consistent with (d) below.

(b) "Interest" is defined as follows:

1. Pre-judgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

2. Post-judgment interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. The Commissioner shall award prejudgment interest when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. The Commissioner shall award postjudgment interest when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) The rate of interest for the awarding of prejudgment and postjudgment interest shall equal the average rate of return, to the nearest one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

New Rule, R.1986 d.157, effective May 5, 1986.

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

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

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

Recodified from N.J.A.C. 6:24-1.18, 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).

In (a), inserted "so specify in the petition's request for relief and shall" preceding "propose, before the Commissioner" in 1 and added 2.

#### Case Notes

Sufficiency of notice of required teacher's physical and mental examination (citing former regulation). *Hoffman v. Jannarone*, 401 F.Supp. 1095 (D.N.J.1975), affirmed in part, reversed in part and remanded 532 F.2d 746 (3rd Cir.1976).

Prejudgment interest was not required absent deliberate violation of compensation statute, bad faith or other improper motive. *Bassett v. Board of Educ. of Borough of Oakland, Bergen County*, 223 N.J.Super. 136, 538 A.2d 395 (A.D.1988).

Exception to decision filed under former N.J.A.C. 6:24-1.17 to correct inadvertent omission of teacher's certification from record. *Blue v. Bd. of Ed., Jersey City*, 2 N.J.A.R. 206 (1980).

declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts which are future, contingent, uncertain or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

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

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

Added text "upon receipt and review of the answer."

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 only.

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).

In (a), substituted "rule" for "regulation" preceding "within the jurisdiction" and substituted "rules" for "regulations" preceding "as they pertain" in the introductory paragraph.

#### Case Notes

Student's First Amendment rights; restrictions on publication in school newspaper of R-rated movie reviews review and resolution by Commissioner of Education. *Desilets on Behalf of Desilets v. Clearview Regional Bd. of Educ.*, 137 N.J. 585, 647 A.2d 150 (1994).

School board employee's contract dispute outside of Commissioner's jurisdiction. *Smith v. Willingboro Township, Burlington County*, 97 N.J.A.R.2d (EDU) 205.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Existing regional district; change in established method of cost apportionment; approval by voters in each constituent municipality. In the Matter of the Special Election in Northern Burlington County Regional School District, 94 N.J.A.R.2d (EDU) 385.

Declaratory ruling on school board policy to limit employment of supplemental teachers; teachers and taxpayers; standing to challenge. *Ridgewood Education Association v. Ridgewood Village Board of Education*, 94 N.J.A.R.2d (EDU) 137.

Petition for declaratory judgment seeking a ruling that payroll deduction crediting method violated constitutional prohibition would be transmitted to Office of Administrative Law. *Board of Educ. of the Tp. of Neptune v. Neptune Tp. Educ. Ass'n*, 91 N.J.A.R.2d 29 (EDU).

Failure to raise affirmative defense of non-compliance with petition filing deadline; tolling of filing period. *Fischbach v. Bd. of Ed., North Bergen*, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1984).

Declaratory judgment denied regarding seniority standards. *Howley v. Ewing Twp. Bd. of Ed.*, 6 N.J.A.R. 509 (1982).

## SUBCHAPTER 2. DECLARATORY RULINGS

### 6A:3-2.1 Petition for declaratory ruling

(a) Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with these rules as they pertain to petitions. A

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit and possible justification for relaxation of time 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).

Teachers associations have standing to contest awarding of service contract as their organizational rights and relationships will be affected by outcome of proceedings. New Jersey Education Assn. v. Essex Cty. Educational Services Commissions, 5 N.J.A.R. 29 (1981).

Administrators association has standing to seek declaratory ruling on evaluation deadline issue even though not a party to contract negotiations. Willingboro Administrators Assn. v. Willingboro Education Assn., 1 N.J.A.R. 327 (1980).

6A:3-2.2 Format of petition for declaratory ruling

(a) The format of the petition for declaratory ruling follows:

CAPTION : BEFORE THE COMMISSIONER OF : EDUCATION OF NEW JERSEY : : : PETITION FOR DECLARATORY : RULING

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, hereby requests the Commissioner to render a declaratory ruling concerning the application of (N.J.S.A. 18A:\_\_\_\_, N.J.A.C. 6:\_\_\_\_, N.J.A.C. 6A:\_\_\_\_) to the controversy which has arisen between petitioner and respondent who resides at \_\_\_\_\_ by reason of:

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of \_\_\_\_\_ and determine and declare \_\_\_\_\_.

Signature of petitioner or representative

Date: \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

- 1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

Signature of petitioner

Sworn and subscribed to before me this \_\_\_\_ day of (month), (year)

(Signature of Notary Public or other person authorized to administer an oath or affirmation)

Amended by R.1986 d.157, effective May 5, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a). Deleted slash and substituted or. Amended by R.1991 d.57, effective February 4, 1991. See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b). Reformatting.

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 petition.

6A:3-2.3 Dissemination of declaratory ruling

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory ruling through the executive county superintendents of schools.

New Rule, R.1991 d.57, effective February 4, 1991. See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b). Amended by R.2000 d.137, effective April 3, 2000. See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Substituted a reference to declaratory rulings for a reference to declaratory judgments. Amended by R.2010 d.072, effective May 17, 2010. See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b). Inserted "executive".

Case Notes

Denial of declaratory relief was proper. River Dell Board of Education v. Canal, 94 N.J.A.R.2d (EDU) 327.

SUBCHAPTER 3. ORDER TO SHOW CAUSE

6A:3-3.1 Commissioner's order to show cause

(a) If in the course of supervising the schools, and following investigation, the Commissioner becomes aware of violation(s) of the school laws in school districts which if true would entitle the Commissioner to impose a sanction on the Commissioner's own initiative, the Commissioner may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing, and the right to a contested case hearing is independent of, and in addition to, this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

- 1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2 and 18A:7F-9);
3. Withholding salaries of:
i. An executive county superintendent (N.J.S.A. 18A:7-4); or
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 private vocational school, correspondence school, or online school, or the programs or staffing thereof (N.J.S.A. 34:15C-10.2(b));

6. Placing a district under full State intervention (N.J.S.A. 18A:7A-15); and

7. Withholding or recovery of State aid due to unreasonable, ineffective or inefficient expenditures (N.J.S.A. 18A:7F-9 and N.J.A.C. 6A:23A-5.1).

(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.

1. 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).

2. Requests for enforcement of a monetary award through recording of the Commissioner's final order of assessment on the judgment docket of the Superior Court pursuant to N.J.S.A. 2A:58-10 shall be made in accordance with N.J.A.C. 6A:3-12.1.

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).

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (a)2, inserted "and 18A:7F-9"; in (a)3i, substituted "An executive" for "A" and "or" for "and" at the end; rewrote (a)5 and (a)6; added (a)7; recodified the former third sentence of (b) as (b)1; in (b)1, italicized "*Crowe v. DeGioia*" and the second occurrence of "*N.J.*"; and added (b)2.

## 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 teaching staff member's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teaching staff member may file a petition of appeal according to the procedures set forth in this chapter.

1. Disputes involving the withholding of a teaching staff member'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 or predominantly for reasons of teaching performance; where the basis is found to be predominantly for reasons of teaching performance, a petition of appeal may thereafter be filed within the time frame set forth at N.J.S.A. 34:13A-27(d) (see N.J.A.C. 6A:3-1.3(i)2).

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.

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Substituted "teaching staff member's" for "teacher's" throughout; in the introductory paragraph of (a), substituted "teaching staff member" for "teacher" and "set forth" for "outlined"; and in (a)1, inserted "or predominantly for reasons of teaching performance; where the basis is found to be predominantly for reasons of teaching performance, a petition of appeal may thereafter be filed within the time frame set forth at N.J.S.A. 34:13A-27(d) (see N.J.A.C. 6A:3-1.3(i)2)".

### 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.

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).  
Amended by R.2006 d.245, effective July 3, 2006.  
See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

In (c)1, added the last sentence; in (c)4, substituted "6A:32-4.3 or 4.4," for "6:3-4.3(f)"; in (c)5, added the last sentence; and in (c)6, inserted "or upon the district board's determination in the case of a chief school administrator".

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In the introductory paragraph of (a), substituted "N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply in" for "In", deleted "State-operated" preceding "school district", "N.J.A.C. 6A:3-

1.3, Filing and service of petition, shall not apply" following "Act" and "original and two copies of the" preceding "written" and inserted "under full State intervention"; and in the introductory paragraph of (c), inserted "and vice principals" and "under full State intervention," and deleted "State-operated" preceding "school".

#### Case Notes

State Department of Education properly denied a petition for an amendment to administrative rule N.J.A.C. 6A:3-5.1(a), which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees, as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 52:14B-15; and tenured employees are not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ.*, 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).

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).

Initial Decision (2008 N.J. AGEN LEXIS 298) adopted, which found that tenure charges were not defective for being predicated on the vice-principal's arrest, indictment, and entry into the Pretrial Intervention Program, because the charges clearly articulated the reasons for arrest, i.e., possession of cocaine and drug paraphernalia, and supported the OAL hearing on the underlying facts. In re Tenure Hearing of Thomas, OAL Dkt. No. EDU 1763-08 (EDU 5908-07 On Remand), Commissioner's Decision (May 23, 2008).

Even assuming arguendo that some of the allegations relating to the teacher's performance could be characterized as inefficiency, and thus subject to the 90-day improvement plan requirement of N.J.S.A. 18A:6-11, the Board more than amply demonstrated the teacher's unbecoming conduct, and such charges warranted the teacher's dismissal (aff'g 2007 N.J. AGEN LEXIS 311). In re Tenure Hearing of Hill, OAL Dkt. No. EDU 5979-06; C NO. 176-07; SB No. 14-07, 2007 N.J. AGEN LEXIS 977 (October 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 589) adopted, which concluded that infirmities in tenure charges under N.J.S.A. 18A:6-11 were sufficient to preclude them from proceeding to hearing and adjudication; the board failed to provide "a written statement of evidence" under oath, and the charges were so general in nature that respondent was unable to "submit a written statement of position." In re Tenure Hearing of King, OAL Dkt. No. EDU 4489-07, 2007 N.J. AGEN LEXIS 1005, Commissioner's Decision (September 18, 2007).

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. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

(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.

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (a)1, deleted the second sentence and inserted “, or by the ALJ if the motion is to be briefed following transmittal to the OAL”.

#### 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, Children and Families, 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, Children and Families, 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 the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or 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).

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 an agency 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 pursuant to N.J.S.A. 18A:60-1.

(b) The Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education, as the case may be, shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15-day time period, 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 dismissal or reduction of salary and shall notify the affected employee of the determination in writing in the manner prescribed by N.J.A.C. 6A:3-5.1(b).

(c) In the event that the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then such person shall file such charges and the required certification with the Commissioner of Education together with the name of the Deputy Attorney General who will be representing the agency 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.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6A:3-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the Juvenile Justice Commission; or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Fam-

ilies, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education:

1. That the director or responsible person 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 on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and

3. 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.

(f) 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 with the Commissioner consistent with the provisions of N.J.A.C. 6A:3-5.3(a).

(g) 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 department, which shall promptly notify the Commissioner of its opposition, if any, to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges shall 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.

(h) 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.

New Rule, R.1989 d.553, effective November 6, 1989.

See: 21 N.J.R. 1939(b), 21 N.J.R. 3461(a).

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.

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Section was "Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education and in the Juvenile Justice Commission". Rewrote the introductory paragraph of (a) and rewrote (b), (c), (d) and the introductory paragraph of (e).

## Case Notes

Former school principal not entitled to tenure as assistant superintendent. *Gittelman v. Township of Hamilton, Mercer County*, 97 N.J.A.R.2d (EDU) 200.

High school teacher's sexual liaison with student warranted removal of tenure. *Board of Education of the City of Camden v. Hovington*, 97 N.J.A.R.2d (EDU) 168.

Teacher's drunkenness during school hours did not warrant removal of tenure. In the Matter of the Tenure Hearing of William Koller, 97 N.J.A.R.2d (EDU) 157.

Minimal evidence of rehabilitation offered by teacher was insufficient to offset seriousness of drug importation conspiracy conviction, and thus disqualification from teaching was warranted. In the Matter of the Disqualification from School Employment of Palumbo, 96 N.J.A.R.2d (EDU) 534.

Teacher was detoured and dismissed on grounds that her behavior was unprofessional toward students, hostile toward co-workers, insubordinate toward superiors, and in violation of professional ethics. In the Matter of the Tenure of Sheth, 96 N.J.A.R.2d (HED) 9.

Corrective action requiring reduction of tenured janitor's salary could not take effect until end of school year. *Gerity v. Woodbridge Board of Education*, 95 N.J.A.R.2d (EDU) 522.

Inability to work due to severe depression warranted tenured clerk's dismissal for incapacity. *Matter of Tenure Hearing of Stanley*, 95 N.J.A.R.2d (EDU) 495.

Plea of guilty to criminal sexual conduct was not act of employment warranting forfeiture, but was unbecoming conduct warranting termination. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 457.

Choking and shaking of student was unbecoming a teaching staff member and warranted tenured teacher's dismissal under circumstances. *Matter of Tenure Hearing of Johnston*, 95 N.J.A.R.2d (EDU) 439.

Addressing female staff members in such a matter as to deprive them of their dignity was conduct unbecoming a teaching staff member. *Freehold Regional v. Kotkin*, 95 N.J.A.R.2d (EDU) 431.

Absenteeism was unbecoming conduct warranting tenured teacher's removal. *Matter of Tenure Hearing of Rucker*, 95 N.J.A.R.2d (EDU) 350.

Inappropriate discussions with students regarding sexual matters warranted tenured teacher's dismissal. *Matter of Tenure Hearing of Roberts*, 95 N.J.A.R.2d (EDU) 349.

Costs incurred by tenured teacher in defending against criminal charges not shown to have arisen from performance of his duties were not indemnifiable. *Bower v. East Orange Board of Education*, 95 N.J.A.R.2d (EDU) 345, reversed 287 N.J. Super. 15, 670 A.2d 106.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. *Jersey City School District v. Howard*, 95 N.J.A.R.2d (EDU) 301.

Inappropriate sexual behavior warranted long-term suspension with homebound instruction until end of school. *R.L. and K.L. v. Kingsway Board of Education*, 95 N.J.A.R.2d (EDU) 296.

Excessive absenteeism provided sufficient cause for school board to terminate employee from her position as a tenured secretary. *Matter of Tenure Hearing of Jones*, 95 N.J.A.R.2d (EDU) 285.

Use of illegal amphetamines in breach of drug rehabilitation contract with school board was unbecoming and warranted tenured teacher's dismissal. *Matter of Yanniello Tenure Hearing*, 95 N.J.A.R.2d (EDU) 262.

Comments in class implying eugenic disability of children for superior performance were not protected by free speech and warranted tenured teacher's termination. *Campbell v. Princeton Board of Education*, 95 N.J.A.R.2d (EDU) 211, certification denied 665 A.2d 1111, 142 N.J. 518.

Employment of corporal punishment through use of physical force to lift chin of one student, thereby causing head to strike wall, was unacceptable and warranted forfeiture of six months' salary for tenured teacher. *Matter of Tenure Hearing of Di Pillo*, 95 N.J.A.R.2d (EDU) 206.

Custodians were tenured under resolution of school board and were not required to prove their efficiency to avoid termination. *Zielinski v. East Brunswick Board of Education*, 95 N.J.A.R.2d (EDU) 161, affirmed 96 N.J.A.R.2d (EDU) 3.

Positive cocaine test was sufficiently trustworthy to support tenured custodian's dismissal by school district. *Matter of Tenure Hearing of Caravello*, 95 N.J.A.R.2d (EDU) 160.

Employee terminated from tenured position with school board was entitled to be paid value of vacation time accrued by her at that time. *Lowe v. Orange Board of Education*, 95 N.J.A.R.2d (EDU) 139.

Repetitive conduct that put students at risk justified dismissal of tenured teacher. *Matter of Tenure Hearing of Harrell*, 95 N.J.A.R.2d (EDU) 137.

Charges of inefficiency brought against tenured teacher were dismissed as moot when teacher thereafter retired. *Barshatky v. Freehold Board of Education*, 95 N.J.A.R.2d (EDU) 71.

Allowing classroom situation that was a risk to students' safety warranted dismissal of teacher from tenured position. *City of Paterson v. Rubin*, 95 N.J.A.R.2d (EDU) 13.

Participation in activity violative of public trust warranted two-year suspension of teaching certificates. *Matter of Pedrick Teaching Certificates*, 95 N.J.A.R.2d (EDE) 1.

Termination; insubordination. In the Matter of the Disciplinary Hearing of McCargo, 94 N.J.A.R.2d (EDU) 524.

Tenured prison teacher's unauthorized correspondence with prison inmate; termination. In the Matter of the Tenure Hearing of Jacqueline Holmes-Williams, 94 N.J.A.R.2d (EDU) 447.

Board failed to prove that teacher engaged in conduct unbecoming a teacher. In the Matter of the Tenure Hearing of David C. Borrelli, 94 N.J.A.R.2d (EDU) 424.

Hitting students and making personal remarks to student; dismissal. In the Matter of the Tenure Hearing of Charles Talley, 94 N.J.A.R.2d (EDU) 395.

Award of benefits to tenure eligible teaching staff members retroactively applied. *Trenton Education Association v. Trenton Board of Education*, 94 N.J.A.R.2d (EDU) 328.

Termination of tenured teacher; cocaine. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 304.

Dismissal; sexually explicit discussions with students. In the Matter of the Tenure Hearing of Frank Roberts, 94 N.J.A.R.2d (EDU) 284.

Termination of nontenured custodian; harassing a female student. *Hugg v. Pinelands Regional School District Board of Education*, 94 N.J.A.R.2d (EDU) 279.

Resisting arrest and attempt to injure police officers; dismissal of teaching staff member. In the Matter of the Tenure Hearing of Henderck, 94 N.J.A.R.2d (EDU) 268.

Dismissal of tenured clerk; inadequacies which remained uncorrected despite 90 day remediation period. In the Matter of the Tenure Hearing of Carson, 94 N.J.A.R.2d (EDU) 250.

Tenured school principal's chronic and excessive absenteeism warranted termination. *Camden School District v. Rucker*, 94 N.J.A.R.2d (EDU) 190.

School counselor failed to establish by a preponderance of evidence that she was terminated on the basis of religion. *Miller v. Holmdel Township Board of Education*, 94 N.J.A.R.2d (CRT) 185.

Dismissal of custodian; drug testing protocols. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 163.

Abolition of position and demotion was not shown as arbitrary, capricious, unreasonable or otherwise unfair decision. *Nuber v. Jersey City School District*, 94 N.J.A.R.2d (EDU) 25.

Terminated employee was entitled to payment for accrued vacation. *Lowe v. Orange City Board of Education*, 93 N.J.A.R.2d (EDU) 789.

Dismissal of teacher as alcoholic not warranted. In the Matter of the Tenure Hearing of Howard, 93 N.J.A.R.2d (EDU) 788.

Dismissal of teacher was warranted for unbecoming conduct. In the Matter of the Tenure Hearing of Smith, 93 N.J.A.R.2d (EDU) 729.

Prison vocational teacher did not breach duty by bringing construction materials obtained from inmate's relatives into prison or by supplying keys to another inmate. In the Matter of the Tenure Hearing of Samano, 93 N.J.A.R.2d (EDU) 710.

Chronic and excessive absences warranted dismissal of tenured teacher from school district. *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 604, 95 N.J.A.R.2d (EDU) 105.

Gross insensitivity and humiliation of students warranted loss of pay. In *Matter of Tenure Hearing of Feinsod*, 93 N.J.A.R.2d (EDU) 590.

Board of education reasonably accommodated alcoholic teacher; dismissal. *State Operated School District of Jersey City v. Howard*. 93 N.J.A.R.2d (EDU) 556.

Teacher's acquiring, possessing, and using stolen cars, as well as other misconduct, warranted dismissal. *School District of Township of Irvington v. Smith*. 93 N.J.A.R.2d (EDU) 526.

Teacher dismissed; marijuana grown at home. *Board of Education of Willingboro v. Lott*. 93 N.J.A.R.2d (EDU) 516.

Teacher's striking and pushing student warranted loss of pay. In *Matter of Tenure Hearing of Boyd*, 93 N.J.A.R.2d (EDU) 445.

Record established corporal punishment and other charges warranting termination of teacher. In *Matter of Tenure Hearing of Harrell*, 93 N.J.A.R.2d (EDU) 387.

Teacher's conduct and comments to students constituted unbecoming conduct; termination. *School District of Flemington-Raritan Regional v. Gilson*, 93 N.J.A.R.2d (EDU) 378.

Custodian's insubordination, neglect of duty and excessive absenteeism warranted termination. In *Matter of Tenure Hearing of Riddick*, 93 N.J.A.R.2d (EDU) 345.

Love letters sent to students; dismissal of teacher. In *Matter of Tenure Hearing of Mantone*, 93 N.J.A.R.2d (EDU) 322.

Procedural defects warranted dismissal of tenure proceedings. In *Matter of Tenure Hearing of Beam*, 93 N.J.A.R.2d (EDU) 320.

Incapacitating psychological difficulties; dismissal of teacher. In *Matter of Tenure Hearing of McCoy*, 93 N.J.A.R.2d (EDU) 297.

Record established conduct unbecoming superintendent of schools; termination. In *Matter of Tenure Hearing of Horowitz*, 93 N.J.A.R.2d (EDU) 232.

Insensitive utterances, inappropriate physical gestures and intimidation tactics of teacher in dealing with students; dismissal. *Board of Education of Princeton Regional School District v. Campbell*, 93 N.J.A.R.2d (EDU) 196.

Teacher's chronic and excessive absenteeism; removal. In *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 147.

Developmental center teacher's striking of client; dismissal. In *Matter of Tenure Hearing of Wagner*, 93 N.J.A.R.2d (EDU) 143.

Absenteeism, abuse of prescription drugs, and drug test refusal; dismissal of teacher. In *Matter of Tenure Hearing of Pellagatti*, 93 N.J.A.R.2d (EDU) 121.

Record established that superintendent engaged in conduct unbecoming teaching staff member; dismissal. In *Matter of Tenure Hearing of Romanoli*, 93 N.J.A.R.2d (EDU) 82.

Teacher's substantiated screaming, verbal abuse and inappropriate discipline warranted monetary penalty and teacher training; no termination. *Randolph Township Board of Education v. Dipillo*, 93 N.J.A.R.2d (EDU) 13.

Chronic tardiness and excessive absenteeism constituted conduct unbecoming teacher; ongoing nature of conduct warranted dismissal. In *Matter of Tenure Hearing of Meade-Stephens*, 92 N.J.A.R.2d (EDU) 550.

School custodian's dishonesty; termination. In *Matter of Tenure Hearing of Depasquale*, 92 N.J.A.R.2d (EDU) 537.

Corporal punishment; loss of pay. *Board of Education of City of New Brunswick v. Murphy*, 92 N.J.A.R.2d (EDU) 527.

Teacher's erratic behavior and tolerance of sexual talk in class; dismissal. *Morris School District Board of Education v. Brady*, 92 N.J.A.R.2d (EDU) 410.

Punishment and abuse of students; dismissal of teacher. In *Matter of Tenure Hearing of Courtney*, 92 N.J.A.R.2d (EDU) 399.

Discretion to conduct inquiry into board of education election; inquiry warranted. In *Matter Election Inquiry in School District of Township of Pennsauken, Camden County*, 92 N.J.A.R.2d (EDU) 219.

Board of education election void; irregularities. In *Matter of Annual School Election Held in Chesilhurst School District*, 92 N.J.A.R.2d (EDU) 213.

Tenured school custodian; excessive absenteeism. *Passaic Board of Education v. Viani*, 92 N.J.A.R.2d (EDU) 76.

Patient elopement; suspension of psychiatric hospital teacher. *New Jersey Department of Human Services, Greystone Park Psychiatric Hospital v. Pescatore*, 92 N.J.A.R.2d (EDU) 8.

No entitlement to indemnification of costs of criminal defense. *Bower v. Board of Education of City of East Orange, Essex County*, 92 N.J.A.R.2d (EDU) 5.

### 6A:3-5.5 Determination of sufficiency and transmittal for hearing

(a) Within 15 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. Where the charges are determined sufficient, the matter shall, within 10 days of such determination, be transmitted to the OAL for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.11 or 1.12.

1. A notice of transmittal shall be issued to the parties by the Department of Education on the same date as the matter is transmitted to the OAL.

(b) Where a party to a tenure matter so requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to the OAL. Thereafter, requests to hold the matter in abeyance shall be directed to the OAL Clerk or the ALJ in accordance with the rules of the OAL. Any request for abeyance, whether directed to the Commissioner or the OAL, shall be consistent with the intent of N.J.S.A. 18A:6-16 as amended by P.L. 1998, c.42.

New Rule, R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
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 "pursuant to N.J.A.C. 6A:3-1.11 or 1.12" for "for purposes of deciding a motion for summary decision" in the introductory paragraph; rewrote (b).

### 6A:3-5.6 Withdrawal, settlement or mooted of tenure charges

(a) Once tenure charges are certified to the Commissioner, such charges may be withdrawn or settled only with the Commissioner's approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the ALJ, shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions* (S.L.D.) 842, 846):

1. Accompaniment by documentation as to the nature of the charges;
2. Explication of the circumstances justifying settlement or withdrawal;
3. Consent of both the charged and charging parties;
4. Indication that the charged party entered into the agreement with a full understanding of his or her rights;
5. A showing that the agreement is in the public interest; and
6. Where the charged party is a teaching staff member, a showing that the teaching staff member has been advised

of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate.

(b) A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. Where tenure charges have been certified to the Commissioner by a district board of education, 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.

(c) A proposed withdrawal or settlement of tenure charges shall be submitted to the Commissioner prior to transmittal of such charges to the OAL; thereafter, it shall be submitted to the ALJ in accordance with applicable rules of the OAL.

(d) Where tenure proceedings against a teaching staff member are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6A:9-17.4.

(e) Where a proposed settlement requires the tenured employee to relinquish a certificate issued by the State Board of Examiners, upon approval of the settlement agreement, the Commissioner shall forward the matter to the State Board of Examiners for proceedings in accordance with N.J.A.C. 6A:9-17.11.

New Rule, R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).  
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 "the teaching staff member" for "he or she" preceding "has been advised" in 6; rewrote (b); in (d), amended the N.J.A.C. reference; added (e).

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (d), inserted "against a teaching staff member".

#### Case Notes

Teacher's resignation renders tenure charges against the teacher moot. *In re Tenure Hearing of Castel*, OAL Dkt. No. EDU 3428-07, 2008 N.J. AGEN LEXIS 256, Commissioner's Decision (March 17, 2008).

Settlement agreement was rejected for failure to follow the *Cardonick* standards, where, *inter alia*, no justification for the settlement was offered other than avoidance of the cost, uncertainty, and inconvenience of litigation while still obtaining removal of the respondent from employment with the district; the mere fact that the terms of a proposed tenure settlement call for the teaching staff member's resignation or retirement does not in and of itself assure that the *Cardonick* standards have been met. *In re Tenure Hearing of Langley*, OAL Dkt. No. EDU 2212-07, 2008 N.J. AGEN LEXIS 139, Commissioner's Decision (February 19, 2008).

Where a settlement agreement was rejected for failure to follow the *Cardonick* standards, the Commissioner reminded the parties that tenure