

**CHAPTER 3
CONTROVERSIES AND DISPUTES**

Authority

N.J.S.A. 18A:4-15, 18A:6-9, and 52:14B-1 et seq.; (specific types of hearings) N.J.S.A. 18A:6-10 et seq., 18A:7A-34 et seq., 18A:7A-39, 18A:7G-12, 18A:11-3, 18A:12-29, 18A:29-14, 18A:38-1, 18A:38-13 and 18A:60-1.

Source and Effective Date

R.2005 d.109, effective March 10, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Chapter Expiration Date

Chapter 3, Controversies and Disputes, expires on March 10, 2010.

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Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997.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effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic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: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 6A:3-1.1 Purpose and scope
- 6A:3-1.2 Definitions
- 6A:3-1.3 Filing and service of petition of appeal
- 6A:3-1.4 Format of petition of appeal
- 6A:3-1.5 Filing and service of answer
- 6A:3-1.6 Interim relief or stay
- 6A:3-1.7 Amendment of petition and answer
- 6A:3-1.8 Permission to intervene or participate
- 6A:3-1.9 Appearance and representation

- 6A:3-1.10 Dismissal or transfer of petition
- 6A:3-1.11 Hearing
- 6A:3-1.12 Summary decision
- 6A:3-1.13 Settlement or withdrawal of contested matter
- 6A:3-1.14 Written decision
- 6A:3-1.15 Motion for stay, reconsideration or clarification of Commissioner's decision
- 6A:3-1.16 Relaxing of rules
- 6A:3-1.17 Awarding of interest

SUBCHAPTER 2. DECLARATORY RULINGS

- 6A:3-2.1 Petition for declaratory ruling
- 6A:3-2.2 Format of petition for declaratory ruling
- 6A:3-2.3 Dissemination of declaratory ruling

SUBCHAPTER 3. ORDER TO SHOW CAUSE

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

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

- 6A:3-4.1 Withholding salary increment

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

- 6A:3-5.1 Filing of written charges and certificate of determination
- 6A:3-5.2 Format of certificate of determination
- 6A:3-5.3 Filing and service of answer to written charges
- 6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education and in the Juvenile Justice Commission
- 6A:3-5.5 Determination of sufficiency and transmittal for hearing
- 6A:3-5.6 Withdrawal, settlement or mooted of tenure charges

SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING RELATIONSHIP

- 6A:3-6.1 Application for termination or change in allocation or apportionment

SUBCHAPTER 7. APPEALS FROM DECISIONS OF THE NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION (NJSIAA)

- 6A:3-7.1 Filing and service of petition
- 6A:3-7.2 Answer; record on appeal
- 6A:3-7.3 Schedule of briefing
- 6A:3-7.4 Applications for emergent relief
- 6A:3-7.5 Standard of review
- 6A:3-7.6 Commissioner's decision

SUBCHAPTER 8. APPEALS FROM DISTRICT BOARD OF EDUCATION DETERMINATIONS OF ENTITLEMENT TO ATTEND SCHOOL BASED UPON DOMICILE OR RESIDENCY IN DISTRICT

- 6A:3-8.1 Exceptions to general appeal requirements

SUBCHAPTER 9. REVIEW OF PENALTY RECOMMENDATIONS OF THE SCHOOL ETHICS COMMISSION

- 6A:3-9.1 Commissioner review of penalty recommendations

SUBCHAPTER 10. "ABBOTT" APPEALS

- 6A:3-10.1 Appeal of Department determinations

SUBCHAPTER 11. APPLICATIONS FOR ISSUANCE OF FACILITIES BONDS

- 6A:3-11.1 Application to issue bonds following defeated referendum

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; and
5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29.

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

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.

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.

“Commissioner” means the Commissioner of Education or a designated Assistant Commissioner to whom the Commissioner has delegated the authority to hear and decide a controversy or dispute pursuant to N.J.S.A. 18A:4-33 and 18A:4-34.

“Contested case” means an adversarial proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required to be adjudicated by the Commissioner after opportunity for agency hearing pursuant to N.J.S.A. 18A:6-9, N.J.S.A. 52:14B-1 et seq. (Administrative Procedure Act) and N.J.A.C. 1:1 (New Jersey Uniform Administrative Procedure Rules).

“Day” means business day when the period specified is less than seven days, and calendar day when the period specified is seven days or more; provided, however, that calculations do not include the day of the action from which they are computed but do include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following.

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

“District board of education” means the board of education of a local or regional school district, a county special services school district or a county vocational school district, or the State district superintendent of a State-operated school district, the board of directors of an educational services commission or jointure commission, or the board of trustees of a charter school.

“Filing” means receipt of an original paper by an appropriate officer of the Department. Filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document and requisite copies will follow by mail or hand delivery.

“Indispensable party” means a person(s) without whose inclusion a matter cannot proceed or adequate judgment cannot be entered.

“Interested person(s)” means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.

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

“Proof of service” means the provision of proof, pursuant to N.J.A.C. 6A:3-1.3(h), of the delivery of a paper by mail or

in person to a party, person or entity to whom or to which papers are required to be transmitted.

“Pro se” means a person who acts on his or her own behalf without an attorney or other nonlawyer representative as permitted by rules of the OAL.

“Representative” means an attorney or other person as permitted by the rules of the OAL appearing on behalf of a party in proceedings governed by this chapter.