

CHAPTER 4**APPEALS****Authority**

P.L. 2008, c. 36.

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

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

Chapter 2, Appeals, were repealed and adopted as new rules by R.1989 d.67, effective February 6, 1989.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

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

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

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

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

Chapter 4, Appeals, was repealed and Chapter 4, Appeals, was adopted as special new rules by R.2008 d.225, effective July 8, 2008.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

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

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SUBCHAPTER 5. (RESERVED)**SUBCHAPTER 1. GENERAL PROVISIONS****6A:4-1.1 Purpose and scope**

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

Case Notes

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

6A:4-1.2 Definitions

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

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

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

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

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

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

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

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

6A:4-1.3 Appeal of decisions

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. PROCEDURES FOR APPEAL

6A:4-2.1 Who may appeal

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

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

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

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

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

6A:4-2.2 Time for appeal

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